

OSFI GUIDELINE E-17 – BACKGROUND CHECKS ON DIRECTORS AND SENIOR MANAGEMENT

In February 2008, the Office of the Superintendent of Financial Institutions (“OSFI”) released the final version of Guideline E-17 – *Background Checks on Directors and Senior Management of FREs*, which sets out principles to assist federally regulated entities (“FREs”) in the establishment of policies and procedures to conduct assessments of the suitability and integrity of their directors and senior management. All FREs are expected to be in compliance with the Guideline by **January 31, 2009**.

In recent years, the Basel Committee on Bank Supervision, the International Association of Insurance Supervisors and the international Financial Action Task Force have all issued recommendations that applicable local regulators/members should evaluate directors and senior managers of financial institutions for appropriate expertise and integrity. OSFI Guideline E-17 is intended to ensure consistency with international standards.

Guideline E-17 requires an FRE to have a written Assessment Policy approved by its board of directors. The FRE must also identify as “Responsible Persons” those individuals who play a significant role in the management of the FRE. For each Responsible Person, the FRE would need to obtain sufficient information to determine whether the Responsible Person possesses the suitability and integrity to properly perform the duties of his or her position.

The Guideline indicates that an assessment may include a review of the following:

- criminal records, records of securities-related sanctions or disciplinary actions;
- evidence that the proposed Responsible Person possesses the required education, skills, qualifications and experience (which would presumably be evident in any event in the hiring process);
- an attestation that the Responsible Person has not been held civilly liable in connection with business or financial misconduct, fraud or mismanagement; and
- attestations that the Responsible Person has no conflicts that could create a material risk that the Responsible Person would be unable to discharge their duties.

However, the Guideline states that Individual FREs can adopt different approaches to conducting assessments having regard to their structure, size, complexity and risk profile.

The FRE’s Assessment Policy should require an assessment to be conducted before a person is appointed to a Responsible Person position unless it would be imprudent to delay the

appointment. Thereafter, updated assessments of each Responsible Person would be conducted at intervals specified in the Assessment Policy, which should be no longer than 5 years. Updated assessments can focus only on aspects that can change over time. FREs can rely on attestations from Responsible Persons to conduct update assessments. However, FREs are expected to independently verify Responsible Persons' criminal records at least every 7 years.

The Guideline can be found at

http://www.osfi-bsif.gc.ca/app/DocRepository/1/eng/guidelines/sound/guidelines/E17_final_e.pdf

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