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March 9, 2010

Joint and Trust Account Disclosure By-Law Results of 2009 / 2010 Comprehensive Review

From April to September 2009, CDIC consulted with member institutions, interested stakeholders and with the public through its April 2009 Consultation Paper on the CDIC *Joint and Trust Account Disclosure By-law* (Disclosure By-law).

The Canada Deposit Insurance Corporation (CDIC) insures eligible deposits held at its member institutions up to \$100,000 per depositor, per member institution, per insurance category. Pursuant to the CDIC Act, in order for a depositor to benefit from the separate \$100,000 coverage afforded to joint or trust accounts, the joint or trust interests must be disclosed on the records of the member institution in the time, manner and form prescribed by by-law. The 1995 Disclosure By-law was made for this purpose.

The attached paper summarizes and responds to the comments received and presents CDIC's proposed amendments to the Disclosure By-law. It is intended to bring the changes into effect before the end of 2010. Final consultation will be completed through pre-publication in the Canada Gazette.

If you have any comments on the attached, please provide them to the undersigned no later than June 15, 2010 by mail to 17th Floor, 50 O'Connor Street, P.O. Box 2340, Station D, Ottawa, Ontario K1P 5W5, or by email to schisholm@cdic.ca.

JOINT AND TRUST ACCOUNT DISCLOSURE BY-LAW

RESULTS OF 2009 / 2010 COMPREHENSIVE REVIEW

March 5, 2010

This Paper presents the results of CDIC's comprehensive review of the Joint and Trust Account Disclosure By-law (Disclosure By-law) and includes proposed amendments that take into consideration the very useful comments received to the April 2009 Consultation Paper.

Three industry associations, one member institution, two law societies, a public trustee, an individual and a regulator made submissions to CDIC. Recurring themes are evident from the comments. The industry associations voiced concern about amendments to the Disclosure By-law that would require institutions to make systems changes or would result in pro-active steps being taken by them to obtain additional information from depositors or trustees. Non-member respondents tended to support more involvement by members in the disclosure process, such as reminders to trustees about disclosure requirements.

Included are the following Appendices:

- A. draft of the Amending By-law;
- B. the proposals set out in the April 2009 Consultation Paper;
- C. the relevant sections of the CDIC Act; and
- D. the current Disclosure By-law.

PROPOSED AMENDMENTS

The purpose of the Disclosure By-law is to ensure member institutions' records contain sufficient information to enable CDIC to make timely determinations of insured joint and trust deposits in the event of a member institution failure. This involves assurance that accurate aggregation by depositor and insurance category can take place at any point in time. In suggesting the following changes, CDIC has sought a balance between obtaining more information and imposing obligations that would require significant systems changes or considerable operational challenges for members. Although some of the changes suggested in the consultation paper (e.g. requiring SIN number of trust beneficiaries) would have supported faster aggregation of joint and trust accounts, and therefore faster insurance determinations by CDIC, privacy issues and/or significant systems



implications raised by member institutions have resulted in the decision not to pursue them. In addition, no requirements are being suggested that result in extensive compliance implications for member institutions.

Keeping the foregoing in mind, CDIC is proposing the following amendments to the Disclosure By-law:

1. During the month of April in each year, member institutions will be required to remind trustee-depositors of their annual disclosure requirements. Compliance with this requirement can be achieved with evidence that the reminder has been sent without any necessity to track receipt by each trustee-depositor. For example, a mass communication to all depositors recorded as holding moneys "ITF" would meet the requirement. (See proposed section 6.1).
2. The proposed amendments clarify that member institutions must include disclosed information in their records. There is no requirement that this information be captured in a standardized way, but rather that it is captured in the records. If the information is currently being captured in the records of the member, no change will be needed. (see proposed changes to sections 3, 4, 5, and 6).
3. CDIC is proposing to extend to more trustees the use of alphanumeric identifiers set out in Section 7. Subparagraph 7(1)(e) of the By-law currently extends this privilege to a trustee depositor that is "a person who is acting as a trustee of moneys for others in the course of business and is *required* to hold the deposit in trust by the rules of a securities commission, stock exchange or other regulatory or self-regulating organization that audits compliance with those rules". The proposed amendment to this section provides that as long as the trustee is *not prohibited* from holding the monies in trust and meets the other aspects of the provision, the trustee can make use of alphanumeric identifiers. In addition, a new subparagraph 7(1)(f) is being included to clarify that regulated federal or provincial trust companies when acting as a trustee-depositor with a member institution are included as trustees entitled to use alphanumeric identifiers.
4. In the event of an insurance determination, under Section 8 of the By-law, it is in CDIC's discretion whether to request additional information from trustees about beneficiaries and beneficial interests. As a matter of practice, notwithstanding the discretion, CDIC would request updated information from trustees about beneficiaries and beneficial interests. In the circumstances, a new Section 8.1 is proposed that obligates trustees to update the disclosed information within 20 business days after an institution failure. Section 8 maintains the CDIC discretion



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with respect to requiring additional information. The new Section 8.1 eliminates the aspect of CDIC discretion that had caused some concern.

5. The timing of the required annual disclosure will not change. However, at present, trustee depositors are limited as to when they can correct omissions in previous years' disclosure about beneficiaries and beneficial interests. If a trustee failed to disclose this information in any particular year, under the current wording of the By-law, the error can only be corrected at the time of the next annual disclosure (i.e., during May of each year). The draft amendment to Subsection 6(2) permits updating disclosure at any time.

IMPLEMENTATION TIMING

It is expected that the amendments will have completed the consultative process and be brought into effect before the end of 2010. Member institutions should therefore be prepared to notify trustee-depositors during the month of April 2011 of the disclosure requirements.

APPENDIX A

DRAFT AMENDING BY-LAW

FOR PUBLIC CONSULTATION

DRAFT

2010-03-03 (13:59)
(SOR/DORS)

BY-LAW AMENDING THE CANADA DEPOSIT INSURANCE CORPORATION JOINT AND TRUST ACCOUNT DISCLOSURE BY-LAW

AMENDMENTS

1. The portion of section 3 of the *Canada Deposit Insurance Corporation Joint and Trust Account Disclosure By-Law*¹ before paragraph (a) is replaced by the following:

3. For the purposes of subsection 3(1) of the schedule, a depositor that is acting as joint owner with another must, before the determination date, disclose the following information for inclusion in the records of the member institution:

2. The portion of section 4 of the By-law before paragraph (a) is replaced by the following:

4. For the purposes of subsections 3(1) and (2) of the schedule, a depositor that is acting as trustee for a beneficiary must, before the determination date, disclose the following information for inclusion in the records of the member institution:

3. Section 5 of the By-law is replaced by the following:

5. Subject to subsection 7(1), for the purposes of subsection 3(2) of the schedule, a depositor that is acting as trustee for a beneficiary must, before the determination date, disclose the name and address of the beneficiary for inclusion in the records of the member institution.

4. (1) The portion of subsection 6(1) of the By-law before paragraph (a) is replaced by the following:

6. (1) For the purposes of subsection 3(3) of the schedule, a depositor that is acting as trustee for two or more beneficiaries must disclose the following information for inclusion in the records of the member institution:

(2) Subsection 6(2) of the By-law is replaced by the following:

(2) A depositor may remedy a failure to disclose the information referred to in paragraph (1)(b) in respect of a particular year within the time required by that paragraph by disclosing, at any time before the determination date, the required information as of April 30 preceding the day on which it is disclosed.

5. The Bylaw is amended by adding the following after section 6:

6.1 (1) During the month of April in each year, every member institution must notify in writing all of its depositors that have disclosed the information referred to in subparagraph 6(1)(a)(i) that they are also required to disclose the information referred to in paragraph 6(1)(b) within the time required by that paragraph and must indicate where that information is to be sent.

¹ SOR/95-279



FOR PUBLIC CONSULTATION

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2010-03-03 (13:59)

(2) The notification referred to in subsection (1) must be sent by the member institution by regular or electronic mail to the address of the depositor, as set out in the records of the member institution.

6. (1) The portion of subsection 7(1) of the By-law before paragraph (a) is replaced by the following:

7. (1) The information referred to in section 5 and subparagraph 6(1)(a)(ii) is not required to be disclosed for inclusion in the records of the member institution if the information described in subsection (2) is disclosed in its place and the deposit is held in trust by

(2) Subsection 7(1) of the By-law is amended by striking out “or” at the end of paragraph (d) and by replacing paragraph (e) with the following:

(e) a person who is acting as a trustee of moneys for others in the course of business and is subject to the rules of a securities commission, stock exchange or other regulatory or self-regulating organization that audits compliance with those rules; or

(f) a regulated federal or provincial trust company acting in the capacity of a depositor.

7. The By-law is amended by adding the following after section 8:

8.1 A depositor who has disclosed the information referred to in any of sections 3 to 6 must, if the information has changed since it was disclosed, provide the Corporation with an update of that information within 20 days after the determination date.

COMING INTO FORCE

8. This By-law comes into force on January 1, 2011.



APPENDIX B

EXTRACT OF PROPOSALS IN APRIL 2009 CONSULTATION PAPER

DISCLOSURE / RECORDS

1 CDIC proposes:

- To require that information provided to member institutions by joint owners or trustees to satisfy their disclosure requirements under the CDIC Act and Disclosure By-law be incorporated into the systems of the institution such that the information is readily accessible.

JOINT OWNERSHIP

2 CDIC proposes:

- To require members to collect and record the information - the name and address of each joint owner - at the time they are made aware of a joint interest.
- To require that in addition to the name and address of each joint owner either the birth date or SIN also be recorded to facilitate the authentication of individual depositors.

TRUST DEPOSITS

(a) A valid trust must exist and be disclosed on the records of the institution

3 CDIC proposes

- To require member institutions to systematically identify accounts as trust accounts, and distinguish single beneficiary trust accounts from multi-beneficiary accounts.

(b) The name and address of the trustee(s) and of each beneficiary must be disclosed

4 CDIC proposes:

- To obligate member institutions to request as well as to record the information when a trust arrangement is disclosed.
- To require that either the birth date or SIN for individuals be recorded in addition to the name and address.

CDIC seeks views on the following:

- Should the list of "qualified" trustees be expanded? Are there readily identifiable groups of trustees that have not been included as eligible to use the alpha-numeric or other identifier method of disclosure?



(c) Annual disclosure of percentage interest of each beneficiary in a multi-beneficiary trust

5 CDIC's proposes:

- To obligate members to annually remind trustees of multiple beneficiary trusts that they must meet the Disclosure By-law's disclosure requirements.

CDIC seeks views:

- Is the April 30th date still optimal for disclosure of percentage interests? Would another date be more effective?
- Should trustees be permitted to correct lack of disclosure at any time or continue with the current process that lack of disclosure can only be corrected within 30 days following April 30th?

TRANSITION / TIMING

6 CDIC seeks views on the following:

- How much time, at a minimum, would be needed to change systems and processes within your institution to accommodate the proposed requirements?



Appendix C

Extract from the CDIC Act

14. (1) As soon as possible after the Corporation is obliged to make payment in respect of a deposit insured by deposit insurance, it shall make available to the person that in its opinion appears to be entitled to be paid in respect of the deposit an amount of money equal to so much of the person's deposit as is insured by the Corporation.

Extracts from the CDIC Act, Schedule

3. (1) Where a member institution is obligated to repay moneys to a depositor who is acting as trustee for another or as joint owner with another, if the trusteeship or joint interest is disclosed on the records of the institution, the deposit of the depositor acting as trustee or as joint owner with another shall be deemed for the purposes of deposit insurance with the Corporation to be a deposit separate from any deposit of the depositor acting in his own right or acting in another joint or trust capacity with the institution.

(1.1) For greater certainty, where two or more persons are joint owners of two or more deposits, the aggregate of those deposits shall be insured to a maximum of one hundred thousand dollars.

(2) Where a member institution is obligated to repay moneys to a depositor who is acting as trustee for a beneficiary, if the trusteeship is disclosed on the records of the institution, the interest of the beneficiary in the deposit shall be deemed for the purposes of deposit insurance with the Corporation to be a deposit separate from any deposit of the beneficiary made with the institution in his own right for his own use and separate from any interest of the beneficiary in respect of any other trust deposit of which he is a beneficiary.

(3) Where a member institution is obligated to repay moneys to a depositor who is acting as trustee for two or more beneficiaries, if the interest of each beneficiary in the deposit is disclosed on the records of the member institution, the interest of each beneficiary in the deposit shall be deemed for the purposes of deposit insurance with the corporation to be a separate deposit.

(3.01) A deposit held by a member institution for a depositor who is acting as trustee under a trust is deemed not to be a separate deposit if, in the opinion of the Corporation, the trust exists primarily for the purpose of obtaining or increasing deposit insurance under this Act.

(3.1) For the purposes of subsections (1) to (3), the Board of Directors may make by-laws prescribing the time by which and the form and manner in which a joint interest, a trusteeship or the interest of a beneficiary in a deposit is to be disclosed on the records of a member institution.



Appendix D

Joint and Trust Account Disclosure By-law

BY-LAW RESPECTING THE DISCLOSURE OF JOINT INTERESTS, TRUSTEESHIPS AND INTERESTS OF BENEFICIARIES IN DEPOSITS FOR THE PURPOSES OF SUBSECTIONS 3(1) TO (3) OF THE SCHEDULE TO THE CANADA DEPOSIT INSURANCE CORPORATION ACT.

Short Title

1. This By-law may be cited as the *Canada Deposit Insurance Corporation Joint and Trust Account Disclosure By-Law*.

Interpretation

2. In this By-law,

"Act" means the *Canada Deposit Insurance Corporation Act*; (Loi)

"determination date" means, in respect of a member institution,

- a. where a winding-up order is made in respect of the institution before the day on which the Corporation makes payment in respect of the majority in number or value of the deposits with the institution that are insured by deposit insurance, the day on which the petition or other originating process was filed in respect of the winding-up, or
- b. where a winding-up order is not made in respect of the institution before the day on which the Corporation makes payment in respect of the majority in number or value of the deposits with the institution that are insured by deposit insurance, the day on which any of the circumstances described in subsection 14(2.1) of the Act first occurred in respect of the institution; (*date-repère*)

"schedule" means the schedule to the Act. (*annexe*)

Disclosure

3. For the purposes of subsection 3(1) of the schedule, where a depositor is acting as joint owner with another, the following information is to be disclosed by the depositor on the records of a member institution before the determination date:

- a. a statement that the deposit is owned jointly by the joint owners; and



- b. the name and address of each of the joint owners.
4. For the purposes of subsections 3(1) and (2) of the schedule, where a depositor is acting as trustee for a beneficiary, the following information is to be disclosed by the depositor on the records of a member institution before the determination date:
 - a. a statement that the deposit is held in trust by the trustee or co-trustees; and
 - b. the name and address of the trustee, or of each of the co-trustees.
5. For the purposes of subsection 3(2) of the schedule, where a depositor is acting as trustee for a beneficiary, the information to be disclosed, subject to subsection 7(1), by the depositor on the records of the member institution before the determination date is the name and address of the beneficiary.
6. (1) For the purposes of subsection 3(3) of the schedule, where a depositor is acting as trustee for two or more beneficiaries, the following information is to be disclosed by the depositor on the records of the member institution:
 - a. before the determination date,
 - i. a statement that the deposit is the subject of a trust under which there are multiple beneficiaries, and
 - ii. subject to subsection 7(1), the names and addresses of each beneficiary; and
 - b. within 30 days after April 30 of each year, particulars of the amount or percentage of each beneficial interest as of April 30 of the year.
- (2) A depositor may remedy a failure to disclose the information referred to in paragraph 6(1)(b) in respect of a particular year within the time required by that paragraph by disclosing, within 30 days after April 30 of any year following that year but before the determination date, the required information as of April 30 of the year in which it is disclosed.
7. (1) The information referred to in section 5 and subparagraph 6(1) (a) (ii) is not required to be disclosed on the records of a member institution if the information described in subsection (2) is disclosed on the records of the institution in lieu thereof and the deposit is held in trust by
 - a. the public trustee of a province or a similar public official whose duties involve holding moneys in trust for others;
 - b. a federal, provincial or municipal government, or a department or agency thereof;



- c. a solicitor or partnership of solicitors, a law corporation, or a notary or partnership of notaries in the province of Quebec, when they act in that capacity as a trustee of moneys for others;
- d. a person who is acting as a trustee of moneys for others in the course of business and is required by or under a statute to hold the deposit in trust; or
- e. a person who is acting as a trustee of moneys for others in the course of business and is required to hold the deposit in trust by the rules of a securities commission, stock exchange or other regulatory or self-regulating organization that audits compliance with those rules.

(2) For the purposes of subsection (1), the information that is to be disclosed on the records of a member institution is a separate alphanumeric code or other identifier, in respect of each beneficiary, that can be found in records kept by the depositor that contain an up-to-date list of

- a. the name and address of each beneficiary; and
- b. particulars of the amount or percentage of each beneficial interest.

Supplementary Information

8. For the purposes of section 14 of the Act, the Corporation may, in respect of a deposit, require a depositor who has disclosed on the records of a member institution that the person was acting as trustee for another or as joint owner with another to provide the Corporation, within 10 days or such greater period as it allows, with additional information, or with access to records, concerning the trusteeship, the interest of any beneficiary or the joint ownership.

Transitional

9. This By-law has effect with respect to deposits for which the applicable determination date is after December 31, 1996.