

New Requirements for Deposit Type Instruments and Registered Products

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On November 1, 2011, amendments to the *Bank Act*, the *Cooperative Credit Associations Act*, and the *Trust and Loan*

Companies Act, (the Acts)¹ and new regulations² under the Acts will come into force. The changes are designed to regulate certain deposit type instruments and registered products provided by federally regulated deposit-taking institutions (institutions). The primary effect of the amendments and new regulations will be to increase the disclosure obligations of institutions in connection with “deposit type instruments” and “registered products”.

The following products are addressed by the amendments and new regulations:

- “Deposit type instruments”. These are products issued by an institution in Canada that are related to a deposit and that specify fixed investment periods with either a fixed rate of interest or a variable rate of interest that is tied to the institution’s prime rate or banker's acceptance rate. An example is a guaranteed investment certificate (GIC).
- “Registered products”. These are registered education savings plans (RESPs), registered retirement savings plans (RRSPs) and registered disability savings plans³ that are provided by an institution to a natural person.
- “Principal protected notes”. These are financial instruments that (a) provide for payments to be made by the issuing institution that are determined by reference to an index or reference point; and (b) in respect of which the principal amount invested is guaranteed by the institution. Principal protected notes are already regulated under the existing *Principal Protected Notes Regulations* made under the Acts, but there are additional references to these products in the amendments to the Acts.

Manner of Providing Disclosures

The government has signalled that one of the desired outcomes is to ensure buyers of these products receive all the necessary information regardless of the sales channel used. In this regard, both the *Deposit Type Instruments Regulations* and the *Registered Products Regulations* require that the specified disclosures be made both orally and in writing before or at the time of entering into the agreement or opening the account in connection with the instrument or product.

For accounts opened and agreements made by telephone, the oral disclosures would be made during the call and the written disclosures must be provided “without delay” after opening the account or entering into the agreement.

For accounts opened and agreements made by electronic means or by mail, oral disclosures are not required. However, before opening the account or entering into the agreement, the institution

must provide to the applicant the telephone number of a person who is knowledgeable about the terms and conditions of the product or instrument.

The new regulations also require the disclosures to be made in language, and presented in a manner, that is clear, simple, and not misleading.

Content of Disclosures

For deposit type instruments, the required disclosures include:

- the annual interest rate, or information regarding how a variable interest rate is calculated and may be obtained during the investment period;
- information regarding charges;
- whether the instrument may be redeemed prior to maturity and if so, the effect on the interest payable; and
- disclosure if the instrument is not eligible for Canada Deposit Insurance Corporation (CDIC) deposit insurance coverage.

For registered products (accounts and products or services that are or form part of a registered product), the required disclosures include:

- information regarding charges;
- how the customer will be notified of increases to charges and of any new charges; and
- information about the institution's complaints procedures in connection with the application of charges to the registered products.

In connection with deposit type instruments, there are also disclosure requirements in connection with requests for information by the customer regarding the value of the instrument and in connection with early redemptions.

There are also requirements for disclosures in connection with amendments to the terms and conditions of deposit type instruments and registered products.

The new disclosure requirements are in addition to existing requirements that apply to products and services provided by institutions, such as the requirement to provide information on how to contact the Financial Consumer Agency of Canada (FCAC) to each person who requests or receives a product or service from the institution.

Charges Only by Express Agreement or Court Order

Institutions will be prohibited from charging any amount, directly or indirectly, for providing deposit type instruments or principal protected notes unless the charge is made by "express agreement" between the institution and the customer, or by order of a court.

List of Charges

Institutions will be required to maintain a list of charges applicable to registered products at each of their branches, points of service, and websites where registered products are offered in Canada.

Cancellation Right for Automatic Renewals

If an agreement for a deposit type instrument provides for automatic renewal after maturity, the institution will be required to allow the customer to cancel subsequent instruments provided under the automatic renewal within at least 10 days after their issuance.

Practical Implications for Institutions

- To comply with the new requirements, institutions will likely have to revise their customer disclosures and agreements in connection with deposit type instruments, registered products, and principal protected notes, as well as their websites and branch notices. The amendments and new regulations may also require changes to systems and staff training. These changes must be in place by November 1, 2011.
- Under the Deposit Type Instruments Regulations, if the instrument relates to a deposit that is not eligible for CDIC coverage, the institution is required to disclose that fact. In this regard, institutions that are not members of CDIC should consider whether this disclosure requires anything in addition to the notices of uninsured deposits that they already provide. Institutions that are members of CDIC should consider whether this disclosure requires anything in addition to the existing disclosure required under the *Canada Deposit Insurance Corporation Deposit Insurance Information By-law*.
- Under the new regulations, institutions that provide deposit type instruments and registered products electronically or by mail, must, before entering into the agreement or opening the account, provide the telephone number of a person who is knowledgeable about the terms and conditions of the product or instrument. This disclosure requirement suggests that institutions must designate one or more employees or other individuals to be available to answer telephone calls from potential customers regarding the terms and conditions of such products. This may require institutions to make staffing and training changes in advance of November 1, 2011.
- An “express agreement” between the institution and the customer will be required for the institution to impose any charges for providing deposit type instruments and principal protected notes. The legislation does not specify what must be done to satisfy the “express agreement” requirement. This requirement should be considered in the drafting of terms and conditions for these products.

For registered products, institutions will be required to provide customers with information about the institution’s complaints procedures in connection with the application of charges to the registered products. The legislation does not specify any required contents of such procedures, nor does it limit the charges that may be imposed (provided charges are made by “express agreement” and properly disclosed). Institutions should consider how to address this requirement in light of their existing complaints procedures