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Terms of Canadian Lenders Assurance Facility

Department of Finance Canada/Ministere des Finances Canada

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Archived - Terms of Canadian Lenders Assurance Facility

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Note: On November 13, 2008, this term sheet was revised to correct errors in the credit ratings used to calculate guarantee fees. In the Rating Methodology, Moody's rating was changed to A3 from A1, and Moody's rating was changed to Aa from AA in footnote 4. On February 27, 2009, the term sheet was revised to reflect the change in the date until which the Guarantee Certificates will be accepted and was modified to reflect changes in the guarantee fee calculation.

Purpose

The Canadian Lenders Assurance Facility (the "Facility") is a component of Canada's implementation of the G7 Plan of Action to stabilize financial markets, restore the flow of credit and support global economic growth. The purpose of the Facility is to ensure that Canadian financial institutions are not put at a competitive disadvantage when raising funds in wholesale markets.

Overview

Before a debt instrument (see "Eligible Instruments") is guaranteed under the Facility, the issuing Eligible Institution (see "Eligible Institutions") must:

- Submit a satisfactory application to participate in the Facility. This application will set out the provisional dollar value of the institution's overall issuance limit under the Facility (see "Limits");
- If the application is approved by the Minister of Finance, sign the CLAF Participation Agreement and an indemnity agreement (see "Documentation and Reporting" below). The CLAF Participation Agreement sets the terms and conditions of the Facility; and
- Submit a satisfactory application for a certificate (a "Guarantee Certificate") confirming that a specified maximum value of a specific instrument will be guaranteed under the Facility when issued (see section on "Operations").

It is up to each institution to decide whether or not to apply to participate in the program. Once an institution has submitted an acceptable application, it may decide whether and when to apply for Guarantee Certificates (see "Issuance Period").

The Bank of Canada will act as Administrative Agent for the Government of Canada and be responsible for daily operational activities.

Eligible Institutions

The following institutions ("Eligible Institutions") are eligible to participate in the Facility:

- Deposit-taking financial institutions incorporated, amalgamated or continued under the federal Bank Act or Trust and Loan Companies Act, as well as associations and central cooperative credit societies regulated under the federal Cooperative Credit Associations Act[1].
- On the approval of the Minister of Finance, provincially regulated central cooperative credit societies, specifically, Caisse centrale Desjardins, Credit Union Central of New Brunswick and Credit Union Central of Prince Edward Island.

Within a group of related entities[2], only a single entity which is an Eligible Institution may participate, unless an exception is granted by the Minister of Finance.

Guarantee

- The guarantee is for the payment of principal and interest or discount on Eligible Instruments issued by Eligible Institutions and is unconditional and irrevocable.

Maximum Participation Limit

- The maximum dollar amount of instruments issued by the Eligible Institution that can be guaranteed (its "Participation Limit") will be either 125% of the contractual maturities of on-balance sheet wholesale debt instruments that have an International Securities Identification Number (ISIN) and have been issued by the Eligible Institution, maturing during the six-month period beginning November 1, 2008, *or* 20% of its Canadian deposits[3] as of the end of the most recent quarter up to and including October 31, 2008, at the option of the Eligible Institution. The Participation Limit should be calculated using the Maximum Participation Worksheet attached to the participation application.
- In calculating the Participation Limit, the Bank of Canada noon exchange rate prevailing on October 31, 2008 will be used for outstanding debt instruments or deposits denominated in foreign currencies.
- Each individual Eligible Institution wishing to participate in the Facility must submit an application with the Minister of Finance, stating the maximum Participation Limit sought under the Facility. Within 30 calendar days of the day on which an Eligible Institution submits an application, the Eligible Institution must send the Minister a written statement from the institution’s external auditor that the maximum amount sought in the application is within the Participation Limit calculated as outlined above. Until the auditor’s written statement is received and the application approved, the Eligible Institution may seek guarantees for a total amount up to 50 per cent of the Participation Limit sought. The Minister of Finance will notify the Eligible Institution of the percentage of the Participation Limit that applies to the Eligible Institution during the 30 day period. If the auditor’s statement is not provided within this 30 day period, the Eligible Institution’s participation in the Facility will be terminated.

Issuance Period

- Applications for Guarantee Certificates will be accepted for a period ending December 31, 2009, unless the Minister of Finance terminates the Facility earlier on 30 days' notice.

Duration of the Guarantee

- Where the term to maturity of the Eligible Instrument is greater than three years, the guarantee only applies for the first three years from the date of issuance.
- The guarantee will apply to defaults in payment of principal and accrued and unpaid interest or discount that occur during the first three years of the term of the Eligible Instrument, and if on default, payment of principal and accrued interest or discount is accelerated in that period, that guarantee will cover the accelerated amounts of both principal and accrued and unpaid interest or discount.

Eligible Instruments

- Instruments ("Eligible Instruments") issued by an Eligible Institution to be guaranteed are: newly issued commercial paper, bearer notes and senior unsecured bonds and notes, and Bankers Acceptances in which the underlying debt has been issued by a related entity of the Eligible Institution. Other new senior unsecured marketable wholesale instruments will be eligible subject to the approval of the Minister of Finance. Instruments must bear standard market terms and not be complex in the opinion of the Administrative Agent. At the discretion of the Administrative Agent, instruments may contain a right of redemption at the option of the issuer. Where approval is granted to include a right of redemption, the issuer must notify the Administrative Agent when the right of redemption is exercised.
- Instruments must have a minimum term to maturity of 3 months from the date of issuance.
- Instruments must have an ISIN.
- Instruments may only be denominated in Canadian dollars, US dollars, Euros, Sterling and Yen.
- A minimum issuance size is required for the instrument to be eligible. For issuance denominated in Canadian dollars, the minimum issuance size is:
    - $10 million for Eligible Institutions that have an approved maximum amount of at least $10 billion;
    - $5 million for Eligible Institutions that have an approved maximum amount of less than $10 billion but at least $5 billion;
    - $1 million for all other Eligible Institutions.

- Eligible Instruments denominated in currencies other than Canadian dollars must have a minimum issuance size of $10 million using the Bank of Canada noon exchange rate prevailing on the day before the application for a Guarantee Certificate was filed.
- For Eligible Instruments issued in Canadian dollars, the full principal amount for an interest bearing instrument and the face amount for an instrument issued on a discount basis will count against an Eligible Institution's approved maximum amount.
- For Eligible Instruments issued in currencies other than Canadian dollars, 1.25 times the Canadian dollar equivalent of the full principal amount for an interest bearing instrument and the face amount for an instrument issued on a discount basis (using the Bank of Canada noon exchange rate prevailing on the day before the application for a Guarantee Certificate was filed) will count against an Eligible Institution's approved Participation Limit.

Guarantee Fee

- A fee for the guaranteed amount sought will be calculated and charged to the applicant for each Guarantee Certificate when the related guaranteed instrument is issued. This fee will be applied to the gross proceeds of the guaranteed instrument for the duration of the Guarantee Certificate.
- Fees must be paid in full within 5 business days upon receipt of the invoice issued by the Administrative Agent following the issuance of each guaranteed instrument.
- Fees are non-refundable once the guaranteed instrument has been issued.
- The fee will be calculated as follows for Eligible Instruments issued in Canadian dollars:
    - For Eligible Institutions whose senior unsecured medium-term debt obligations have the required minimum credit rating (see "Rating Methodology") from at least two rating agencies (see Rating Methodology), the product of: (i) a base fee of 110 basis points; (ii) the term of the guarantee expressed in years or fractions thereof (up to a maximum of three years); and (iii) the gross proceeds of the guaranteed instrument.
    - For Eligible Institutions whose senior unsecured medium-term debt obligations do not have the required minimum credit rating from least two credit rating agencies (see Rating Methodology), the product of: (i) a base fee of 110 basis points plus a surcharge of 25 basis points; (ii) the term of the guarantee expressed in years or fractions thereof (up to a maximum of three years); and (iii) the gross proceeds of the guaranteed instrument.
- Fees for foreign currency issuance will be calculated and payable in Canadian dollars using the Bank of Canada noon exchange rate prevailing on the date of issuance.
- The fee for Eligible Instruments issued in currencies other than Canadian dollars will be calculated on the same basis as Canadian dollar issuance but subject to an additional surcharge of 20 basis points.

Rating Methodology

- Required minimum credit rating for the purpose of calculating guarantee fees is:

DBRS	Moody’s	Standard & Poor’s	Fitch
A low	A3	A-	A-

- Ratings for senior unsecured medium-term debt issued by Eligible Institutions will be determined from at least two of the four following rating agencies: Moody’s Investors Service, Inc, Standard & Poor’s Ratings Services, Fitch Ratings Ltd and DBRS Limited. When there are two or more ratings for an entity, the lower of the higher two ratings[4] will be used to determine the pricing of the guarantee fee.
- Stand-alone ratings for Eligible Institutions will be used, with no assumption for government support for the institution. For Standard & Poor’s and Fitch, the ratings for the senior unsecured medium term debt issued by the Eligible Institution will be used. For DBRS Limited, and Moody’s Investors Service, Inc, measures of the Eligible Institution’s stand-alone financial strength will be used. For DBRS Limited this is referred to as the institution’s "Intrinsic Assessment" equivalent (IA), while for Moody’s Investors, Inc it is referred to as the institution’s "Bank Financial Strength Rating" (BFSR).

Operations

- An Eligible Institution that wishes to issue an Eligible Instrument that will be guaranteed under the Facility must first submit an application for a Guarantee Certificate. The application must specify the instrument that the institution seeks to issue and the maximum amount that will be issued.
- Eligible Institutions may submit up to three applications per day for Guarantee Certificates, each covering one instrument. Applications must be received by 10:00 a.m. Ottawa time for consideration that day. Applications will be reviewed on a reasonable efforts basis for next day turnaround.
- Eligible Instruments must be issued within 30 calendar days from the date when a Guarantee Certificate for the instrument has been granted; otherwise the Guarantee Certificate will be automatically cancelled.
- On the date of issue of the guaranteed instrument, the issuer shall provide to the Bank of Canada written confirmation, in the form specified in the CLAF Participation Agreement, that the issuance is in full compliance with the description of the instrument attached to the Guarantee Certificate granted for the instrument.

Documentation and Reporting

- A standard form of Participation Agreement (the "Canadian Lenders Assurance Facility Participation Agreement") will be prepared by the Department of Finance and executed by each Eligible Institution using the Facility. The Administrative Agent may terminate this agreement on the occurrence of certain "Termination Events" that resemble standard loan agreement events of default, such as insolvency or regulatory action. Documentation will be maintained by the Department of Finance.

- Before any Guarantee Certificates are issued, each Eligible Institution must also sign an Indemnity Agreement in which the institution agrees to reimburse the Government of Canada for any amounts paid out under the guarantee. Standard legal opinions as to the enforceability of the agreements and instruments against the Eligible Institution will also be required.
- Eligible Institutions will be required to report as necessary the ISINs of guaranteed debt issued, the maturity date of the instruments and the amounts issued.
- The Bank of Canada will maintain a public register of guaranteed Eligible Instruments with their ISINs and guarantee expiry dates, and make the list available on its web site.
- The Minister of Finance may amend, supplement or restate the Participation Agreement or Guarantee at any time in his sole discretion upon giving notice of such amendment to each Issuer; provided that no such amendment, supplement or restatement may prejudice the interests of any eligible institution.

Annex 1

Related Entities

Two persons are related if one is controlled by the other or if both are controlled by the same person.

A person controls an entity that is a corporation if:

a. securities of the corporation to which are attached more than 50 per cent of the votes that may be cast to elect directors of the corporation are beneficially owned by that person and the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the corporation;

a. the aggregate of (i) any securities of the corporation that are beneficially owned by that person and (ii) any securities of the corporation that are beneficially owned by any entity controlled by that person is such that, if that person and all of the entities controlled by it that beneficially own securities of the corporation were one person, that person would control the corporation; or

a. that person controls an entity that controls the corporation.

A person controls an unincorporated entity that is a limited partnership if:

a. that person is a general partner of the limited partnership; or

a. that person controls an entity that controls the limited partnership.

A person controls an unincorporated entity, other than a limited partnership, if:

a. more than 50 per cent of the ownership interests, however designated, into which the entity is divided are beneficially owned by that person and that person is able to direct the business and affairs of the entity; or

a. that person controls an entity that controls the unincorporated entity.

A person controls any entity if that person has any direct or indirect controlling influence over the management and policies of the entity whether alone or in combination with one or more other persons and whether through the beneficial ownership of securities, through one or more other persons or otherwise.

For the purposes of this definition a "person" means a natural person, an entity or a personal representative.

Annex 2

Calculation of Deposits-Based Maximum Participation Limit for CLAF

The CLAF Maximum Participation Limit is calculated using two methods, one based on the amount of maturing wholesale debt for the eligible institution and the other based on the amount of Canadian deposit liabilities. These two measures address different potential funding needs.

Accordingly, with respect to the deposits-based limit, Eligible Institutions are required to subtract out items that are in foreign currencies and also those items identified as wholesale debt-related deposits.

A) Banks, Trusts and Loan Companies, as well as Retail Associations

Eligible Institutions are required to identify deposit liabilities.

In order to minimize administrative burden, the deposit calculation will be based on the Monthly Consolidated Balance Sheet (M4) Return filed with OSFI. The calculation for the deposits-based Participation Limit will be based on data for the most recent quarter up to and including October 31, 2008.

Canadian deposits are calculated as follows based on Section II – Liabilities of the M4 Return for 2008:

+ Total Demand Deposits, 1
+ Total Notice Deposits, 2
+ Total Fixed-term Deposits, 3
- Foreign currency items of Demand Deposits
- Foreign currency items of Notice Deposits
- Foreign currency items of Fixed-term Deposits
- Canadian dollar component of 1(c), Demand Deposits: DTIs
- Canadian dollar component of 2(a)(iii) and 2(b)(iii), Notice Deposits, Chequable and Non-chequable: DTIs
- Canadian dollar component of 3(c), Fixed-term Deposits: DTIs - Canadian dollar component of 3(e), Fixed-term Deposits: Others

= Canadian Deposits for CLAF Maximum Participation Limit

Deposits-based CLAF Maximum Participation Limit = 20% x Canadian Deposits for CLAF Maximum Participation Limit

B) Credit Union Centrals

Eligible Institutions are required to identify deposit liabilities.

In order to minimize administrative burden, the deposit calculation will be based on the Annual Return-68 filed with OSFI. The calculation for the deposits based Participation Limit will be based on data for the most recent quarter up to and including October 31, 2008.

The Canadian deposits are calculated as follows from Page 18 – Deposit Liabilities Report of OSFI-68:

+ Mandatory Liquidity Deposits from Credit Unions, 1
+ Excess Liquidity Deposits from Credit Unions, 2
+ Other Member Deposits, 3

= Canadian Deposits for CLAF Maximum Participation Limit

Deposit based CLAF Maximum Participation Limit = 20% x Canadian Deposits for CLAF Maximum Participation Limit

Note: credit union centrals should provide a calculation that consolidates federally regulated subsidiaries.

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[1] Includes: domestic banks including foreign bank subsidiaries, trust and loan companies that accept deposits, Credit Union Central of Canada, Concentra Financial Services Association (retail association) and provincial centrals subject to the CCAA.
Does not include: Foreign bank branches and non-deposit-taking trust and loan companies. [Return]

[2] See Annex 1 for definition of related entity. [Return]

[3] See Annex 2 for definition and calculation. [Return]

[4] In cases where two or more ratings are the same, for example, Moody's is Aa, S&P is AA, DBRS is AA- and Fitch Ratings is AA-, the rating would be AA (not AA-). [Return]

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