

Guidance: Section 8(1) of the Schedule to the CDIC Act

Note: This document provides information to assist Member Institutions with amendments to their agreements or arrangements with Nominee Brokers.

It does not constitute legal advice. Member Institutions are solely responsible for ensuring that their agreements or arrangements comply with applicable law, including the *Canada Deposit Insurance Corporation Act* and by-laws.

This document was developed in cooperation with members of the Brokered Deposit Advisory Group (BDAG).

Background:

Upcoming changes to the *CDIC Act* and the CDIC Co-owned and Trust Deposit Disclosure By-law that will take effect on April 30, 2022, require that specific provisions be incorporated into the agreements/arrangements between CDIC member institutions (MIs) and the nominee broker for whom they hold nominee brokered deposits. The requirements are set out in section 8(1) of the amended schedule to the CDIC Act (see Annex A).

CDIC's expectations of MI's concerning section 8(1) of the amended schedule to the CDIC Act are as follows:

- All MI's will have agreements/arrangements in place with those Nominee Brokers with whom they do business where that business concerns Nominee Broker deposits.
- All MI's have a complete understanding of the agreements/arrangements they hold with Nominee Brokers including the form those agreements/arrangements take.
- Agreements/Arrangements between MI's and Nominee Brokers are made in writing, or, where the MI does not have a written agreement/arrangement they are taking steps to record the agreement/arrangement in writing.
- All MIs will reflect the provisions required by section 8(1) of the amended schedule to the CDIC Act in their agreements/arrangements with nominee brokers regardless of the form those agreements/arrangements may take.
- MI's and Nominee Brokers are aware that a failure to incorporate the terms required by section 8(1) of the schedule to the CDIC Act into their agreements/arrangements respecting Nominee Broker deposits renders them non-compliant with the CDIC Act and may adversely impact deposit insurance protection.

Sample Terms for Nominee Broker Arrangements or Agreements:

To assist Member Institutions in implementing the requirements set out in section 8(1) of the Schedule to the *CDIC Act*, the following wording templates/examples have been developed in cooperation with the Brokered Deposit Advisory Group (BDAG). These examples cover three elements: definitions, the responsibilities of nominee brokers, and the effective date. Member

institutions are encouraged to refer to these examples in updating their respective nominee broker arrangement/agreements.

For greater certainty, the decision to use of the sample terms/wording is at the discretion of the Member institution and is provided only by way of example of how the requirements may be met. The member institution remains responsible for ensuring correct and complete adherence to section 8(1) of the amended schedule to the CDIC Act.

(1) Definitions

The following are some examples of defined terms that may be relevant in relation to the requirements in section 8(1) of the amended schedule to the CDIC Act:

CDIC means the Canada Deposit Insurance Corporation;

COTDB means the *Canada Deposit Insurance Corporation Co-owned and Trust Deposit Disclosure By-law* under the *Canada Deposit Insurance Corporation Act*, and including any amendments thereto;

Special Income Arrangement ("SIA") has the meaning set out in the *Canada Deposit Insurance Corporation Co-owned and Trust Deposit Disclosure By-law*;

Unique Client Identifier ("UCI") means the unique alphanumeric code for each client who has a nominee broker deposit under the CDIC Act.

(2) Responsibilities of Nominee Brokers

Terms with respect to the requirements of section 8(1) of the Schedule to the *CDIC Act* may be as follows:

(#) [Legal Name of Nominee Broker/Deposit Broker] will:

- (a)** Provide to CDIC in accordance with the *Canada Deposit Insurance Corporation Act* and *COTDB*, within three business days after the day on which a request is made by CDIC:
 - the UCI for each beneficiary of a deposit, assigned in accordance with the *COTDB*;
 - the current name and address of the beneficiary associated with that code;
 - the type of special income arrangement under which the deposit is held or an indication that the deposit is not held under any special income arrangement; and
 - if the deposit is held under a SIA, the alphanumeric code for each individual for whose benefit the arrangement is established, the type of special income arrangement associate with the code, an indication that the code is assigned for the purpose of identifying the individual for whose benefit the arrangement is established, and the name of the individual .

(b) Provide an initial and updated attestations in accordance with the CDIC Act and COTDB that state whether the [Nominee Broker] is, or is not, capable of fulfilling the obligations set out in subsection [(#)(a)].

(c) Provide and update of any and all contact information required by the [Issuer] in accordance with the CDIC By-laws

(3) In-Force Provision

As the CDIC Act and By-law requirements with respect to the above come in force on April 30, 2022, the parties may wish to include an “effective date” provision as follows:

“This Addendum [or Agreement, as the case may be] is effective as of [April 30, 2022]”

Annex A – Select Sections from the CDIC Act and the COTDB

CDIC Act Schedule:

8 (1) If a member institution enters into an agreement or arrangement respecting nominee broker deposits, the member institution must ensure that the agreement or arrangement includes provisions that require the nominee broker

(a) to provide information to the Corporation in accordance with paragraph 7(1)(b);

(b) to make an initial attestation to the Corporation and updated attestations in accordance with the bylaws that state whether the nominee broker is, or is not, capable of fulfilling the obligations set out in paragraph 7(1)(b); and

(c) to provide and update contact information in accordance with the by-laws to the member institution.

Updates

(2) The member institution must ask the depositor to make an updated attestation under paragraph (1)(b) and to provide updated contact information under paragraph (1)(c) each April.

Notice

(3) If a member institution enters into an agreement or arrangement respecting nominee broker deposits, the member institution must notify the Corporation in accordance with the by-laws.

Notice — end of agreement or arrangement

(4) If a member institution that has entered into an agreement or arrangement respecting nominee broker deposits is no longer a party to that agreement or arrangement, the member institution must notify the Corporation in accordance with the by-laws.

Failure to comply with paragraph 7(1)(a)

(5) If the member institution receives moneys from or holds moneys in a nominee broker deposit and the nominee broker fails to comply with paragraph 7(1)(a), the member institution must, as soon as possible after the failure, provide the nominee broker with the information specified in the by-laws.

COTDB:

9 For the purpose of subparagraph 7(1)(b)(iii) of the schedule to the Act, the nominee broker must provide the following information to the Corporation:

(a) the type of special income arrangement, if any, associated with each alphanumeric code assigned in accordance with subsection 6(1);

(b) each alphanumeric code assigned in accordance with paragraph 6(2)(c), as well as the name of the individual and the type of special income arrangement associated with it.