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# MORE THAN MAPLE SYRUP: FOREIGN BANK OPPORTUNITIES IN CANADA

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## ELI MONAS

Eli's practice focuses on corporate law and regulatory issues relating to financial institutions, advising both Canadian and international financial institution clients. With industry experience including a six-month secondment to the Legislation and Approvals Division at the Office of the Superintendent of Financial Institutions in 2017-18, Eli brings particular knowledge of bank and insurance regulation, consumer protection and payments to his counsel.





## MATTHEW BISANZ

Matt Bisanz is a bank regulatory partner in Mayer Brown's Washington, DC office. He advises financial institutions on all major aspects of the operations of an insured depository institution, its affiliates, and its partners. He also advises clients on Dodd-Frank Act compliance issues, including the Volcker Rule, capital and liquidity requirements, Reg YY enhanced prudential standards, and Title VII compliance. He also has experience counseling clients on various insolvency and anti-money laundering regulatory issues and is a certified public accountant.



## INTRODUCTION

- Canada has a vibrant economy and abundant natural resources that present opportunities for global corporates and financial institutions.
- It is one of the United States's largest trading partners, with over \$2.5 billion in goods and services crossing the border each day.
- Over \$110 billion in assets sit in the Canadian bank subsidiaries and branches of US banks.
- US and other foreign banks have been permitted to own banking subsidiaries in Canada since the 1980s and there are no restrictions on foreign ownership of shares in domestic Canadian banks.
- Today, Canada's bank regulatory requirements apply equally to all banks in Canada regardless of their ownership structure or whether the bank is owned by Canadians or non-Canadians.
- However, there remains a perception that foreign banks are not welcome in Canada.



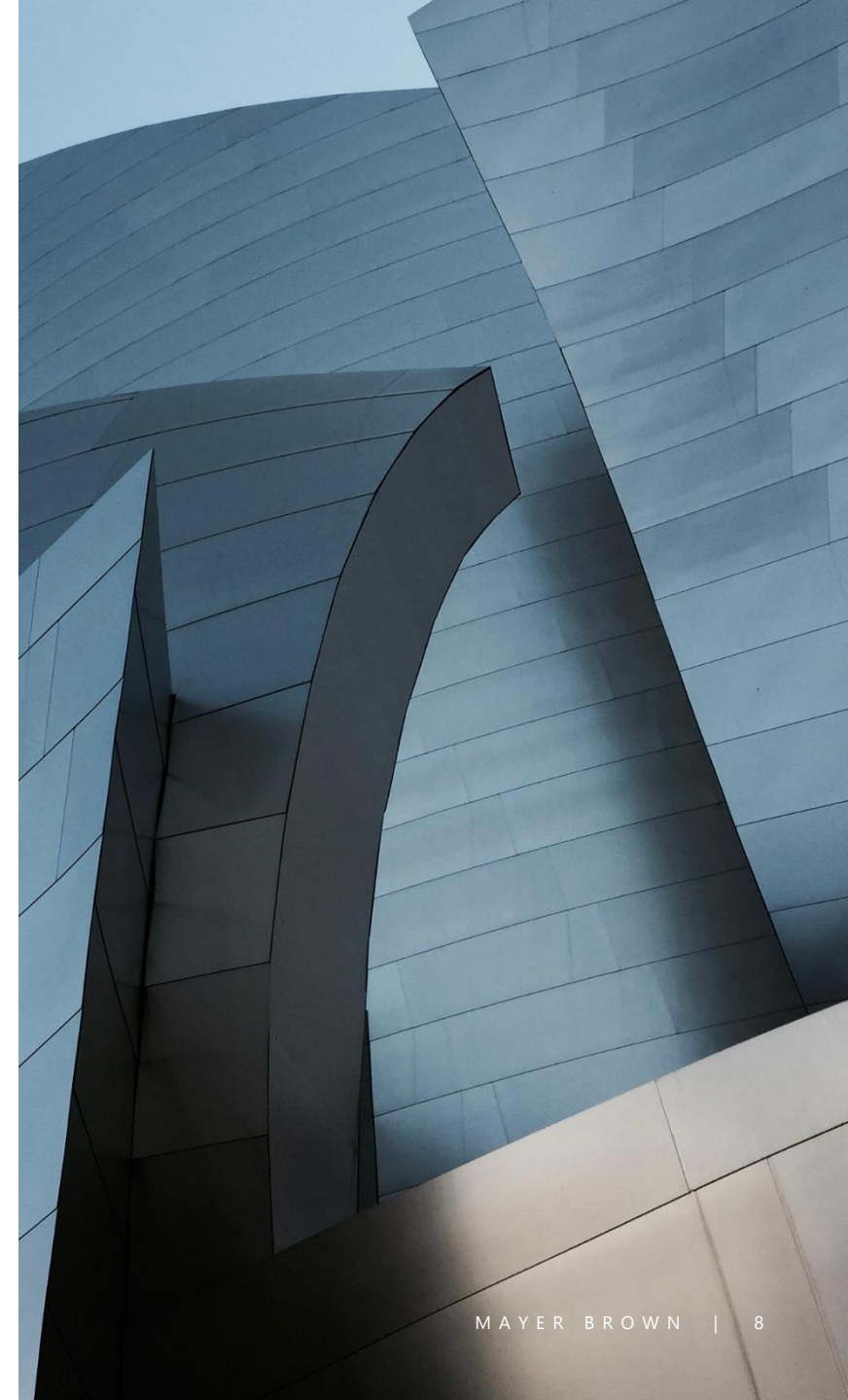
## WHAT YOU NEED TO KNOW

- Foreign banks have been permitted to incorporate banking subsidiaries in Canada since the 1980s with the same powers as domestic Canadian banks.
- Historically, Canada did impose restrictions on the foreign ownership of shares in domestic Canadian banks, but the US was the first country to be exempted from these restrictions in the 1989 Canada-US Free Trade Agreement.
- Although US banks are not placed at a competitive disadvantage in Canada, they have not participated in recent Canadian bank acquisitions.
- Canada's bank regulatory requirements apply equally to all banks in Canada regardless of their ownership structure or whether the bank is owned by Canadians or non-Canadians.



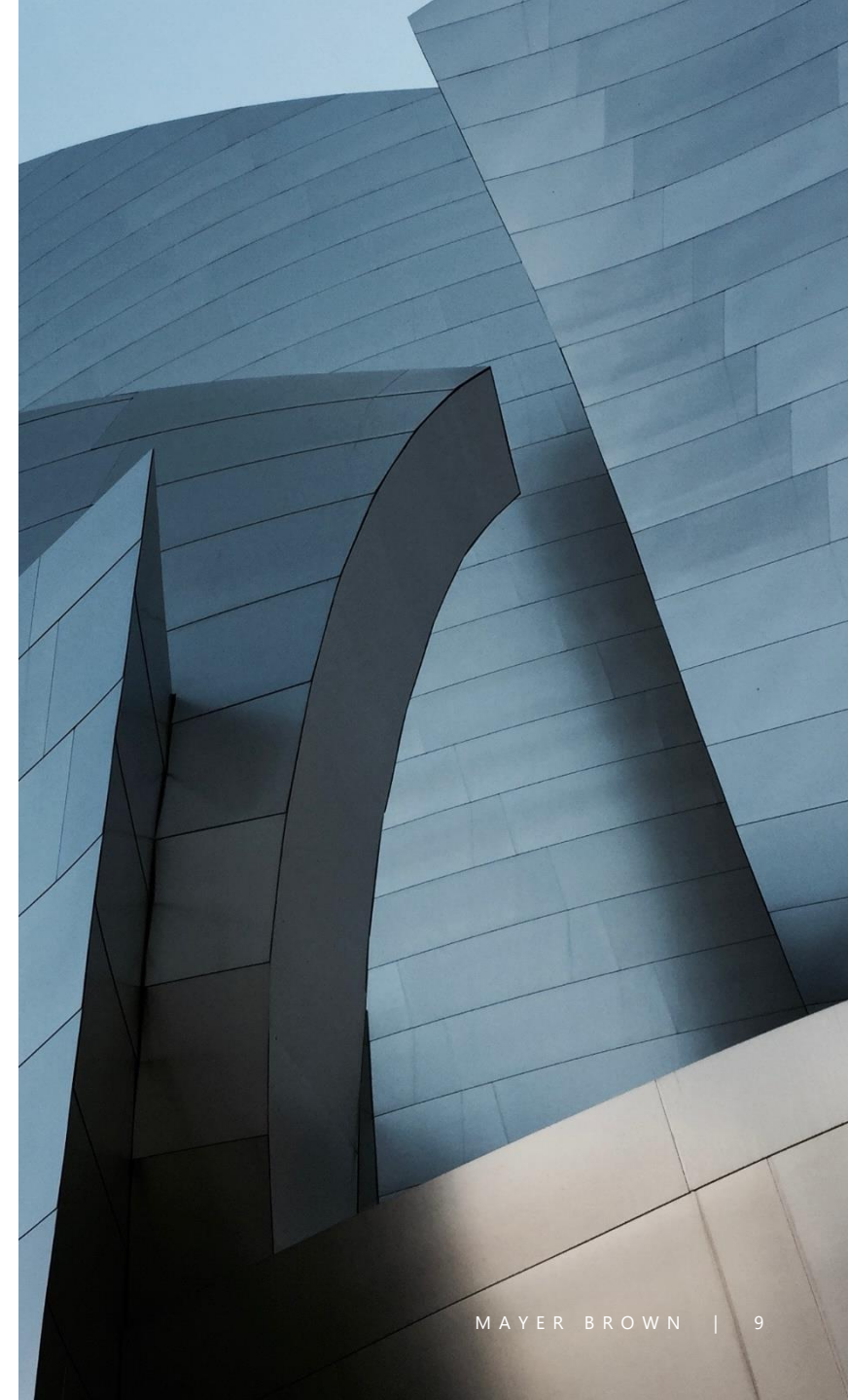
## US BANKS CAN (AND DO) OPERATE IN CANADA

- Since the 1980 amendments to the Bank Act (Canada) (the BA), foreign banks have been permitted to incorporate Schedule II banks under the BA, which have all of the same powers as a domestic Canadian bank listed in Schedule I of the BA, including the ability to take retail deposits and to be granted automatic membership in the Canada Deposit Insurance Corporation (CDIC).
- A common misperception is that a Schedule I banking license is more attractive/advantageous than a Schedule II license.
- There is, in fact, no difference between Schedule I and II banks except that Schedule II of the BA lists banks that are subsidiaries of foreign banks and Schedule I of the BA lists banks other than banks that are subsidiaries of foreign banks.



## US BANKS CAN (AND DO) OPERATE IN CANADA (CONT.)

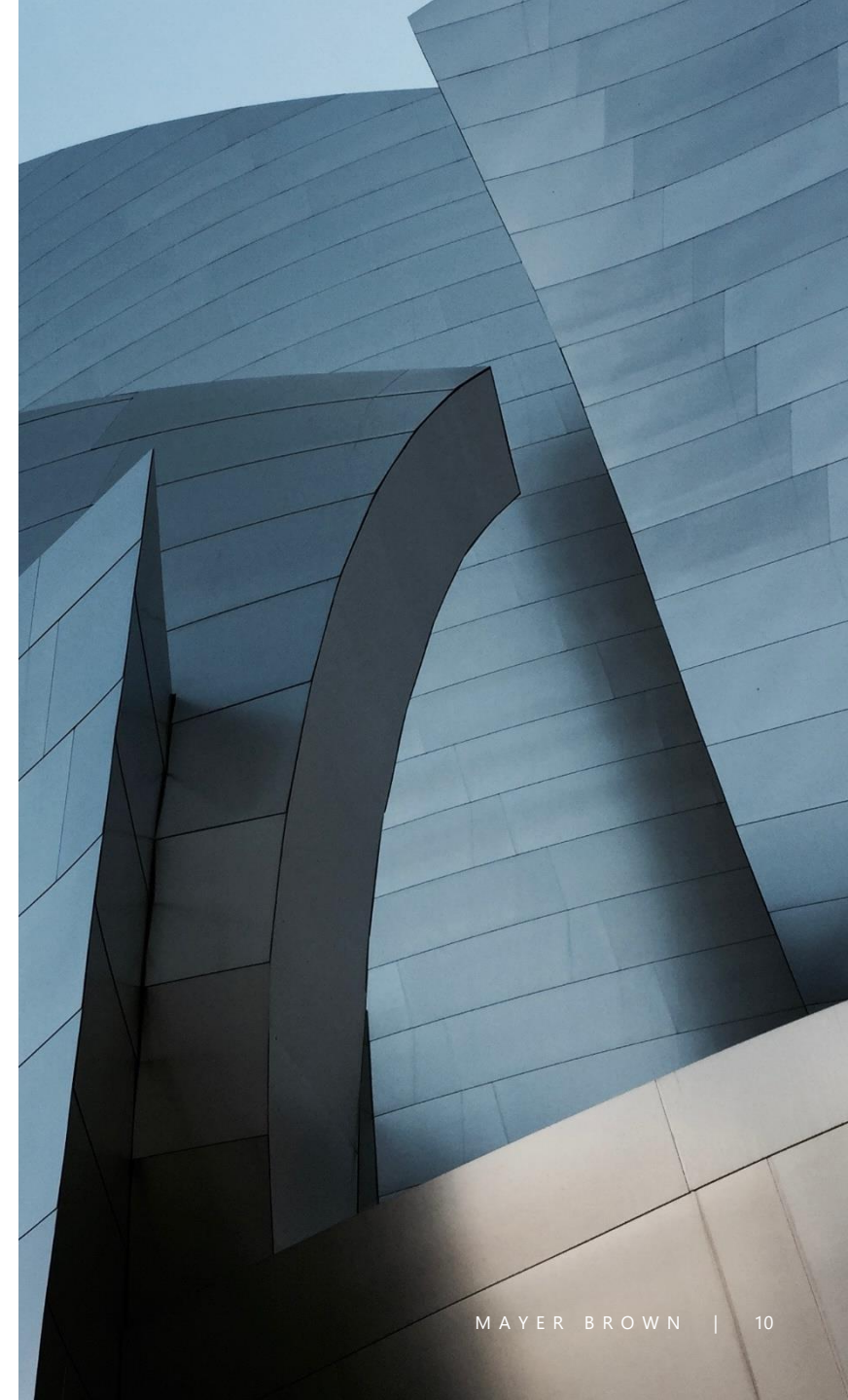
- Canada has since 1999 permitted foreign banks (including US banks) to establish branches (Schedule III banks) in Canada with regulatory approval.
- Foreign bank branches can carry on all the same business as Schedule I and II banks, except that they are prohibited from taking retail deposits and cannot become a member of CDIC.
- In fact, there are currently 16 US-based bank subsidiaries and branches (with around \$113 billion in assets) operating in Canada and specializing in a range of financial services, and US banks make up half of all foreign bank assets in Canada.





## THERE ARE NO FOREIGN OWNERSHIP RESTRICTIONS ON CANADIAN BANKS

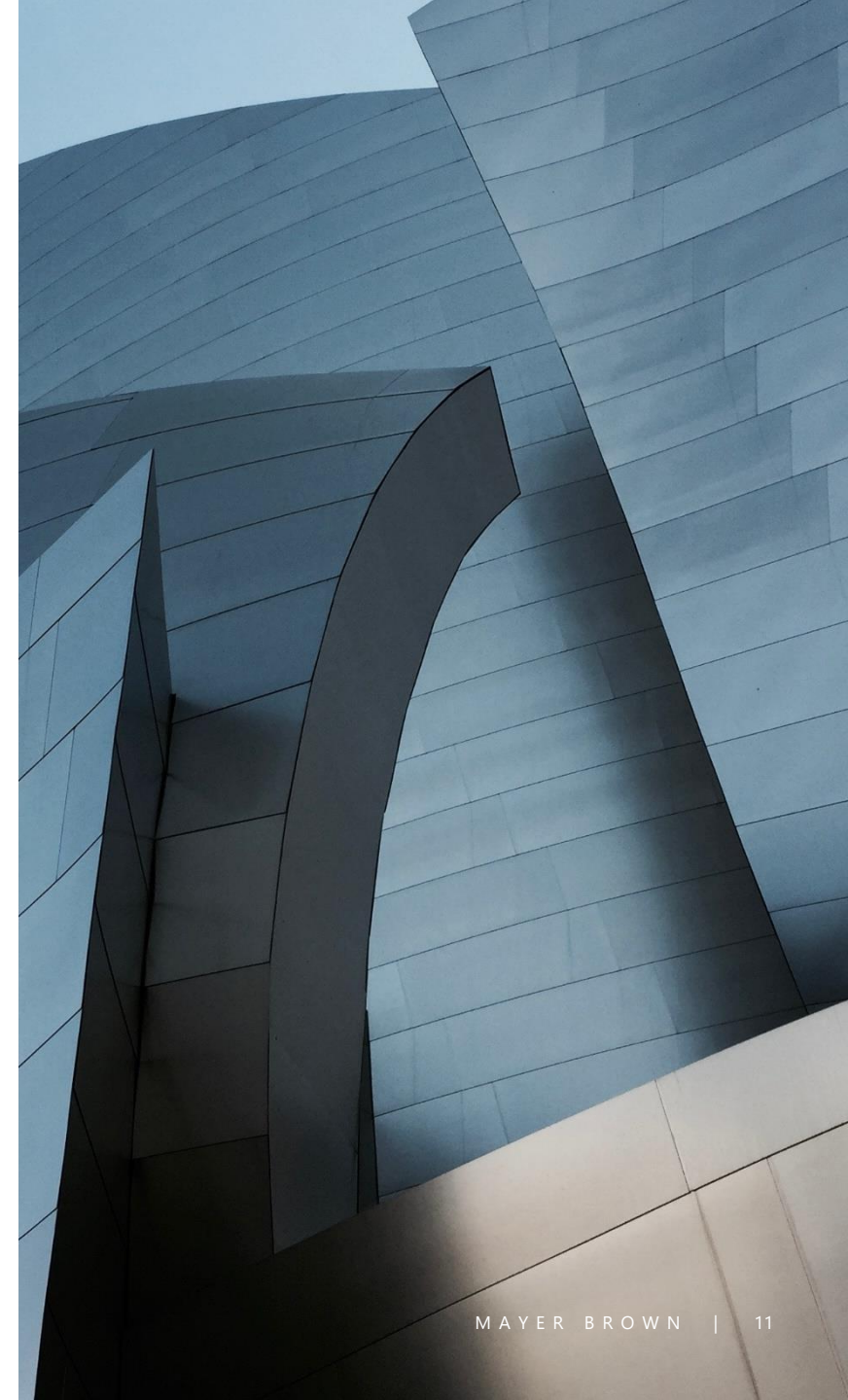
- A published comment in the Article states that there are “restrictions on foreign ownership” of Canadian banks.
  - This is not the case.
- The amendments to the BA in 1967 prohibited any person (or associated group) from acquiring more than 10% of the shares of any bank in Canada and prohibited non-Canadian shareholders in the aggregate from owning more than 25% of a such a bank.
- However, the US was the first country to be exempted from the foreign ownership restrictions in the 1989 Canada-US Free Trade Agreement.
- The restrictions were subsequently removed for other jurisdictions which are members of the World Trade Organization in other trade agreements.





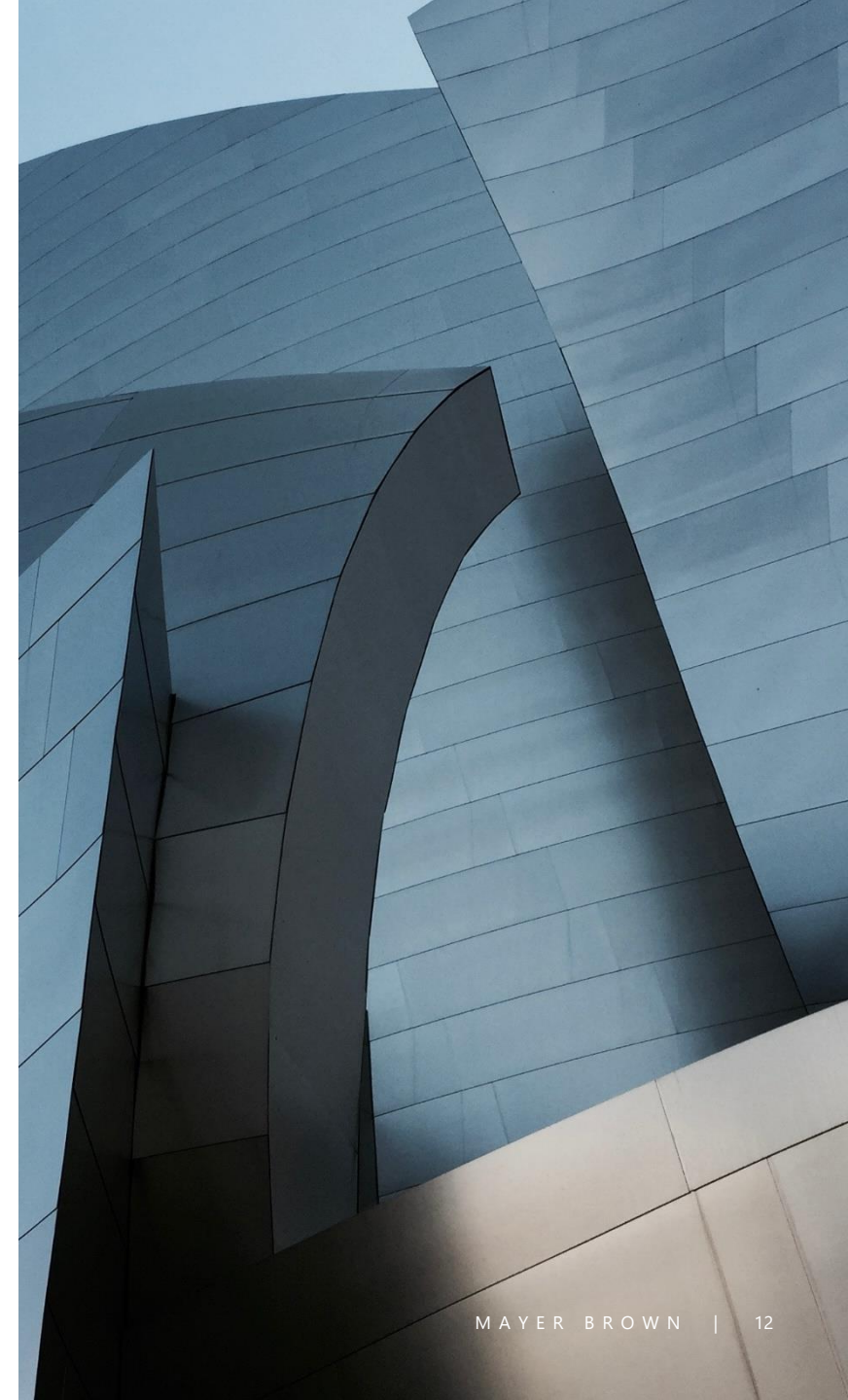
## THERE ARE NO FOREIGN OWNERSHIP RESTRICTIONS ON CANADIAN BANKS (CONT.)

- The current bank ownership requirements set out in the BA apply to both Canadian and foreign shareholders.
- Specifically, the BA prohibits any person from controlling a bank with equity greater than \$12 billion (including each of the six Canadian banks designated by the Office of the Superintendent of Financial Institutions (OSFI) as domestic systemically important banks (D-SIBs)).
- Also requires that banks exceeding this size must be widely-held (meaning that no person or group of persons acting in concert may own more than 20 percent of the issued and outstanding voting shares, or 30 percent of the issued and outstanding non-voting shares, of the bank).
- There is also a Minister of Finance approval required for any person (or associated group) to acquire more than 10% of the shares of any class of a bank, regardless of size.



## THERE ARE NO FOREIGN OWNERSHIP RESTRICTIONS ON CANADIAN BANKS (CONT.)

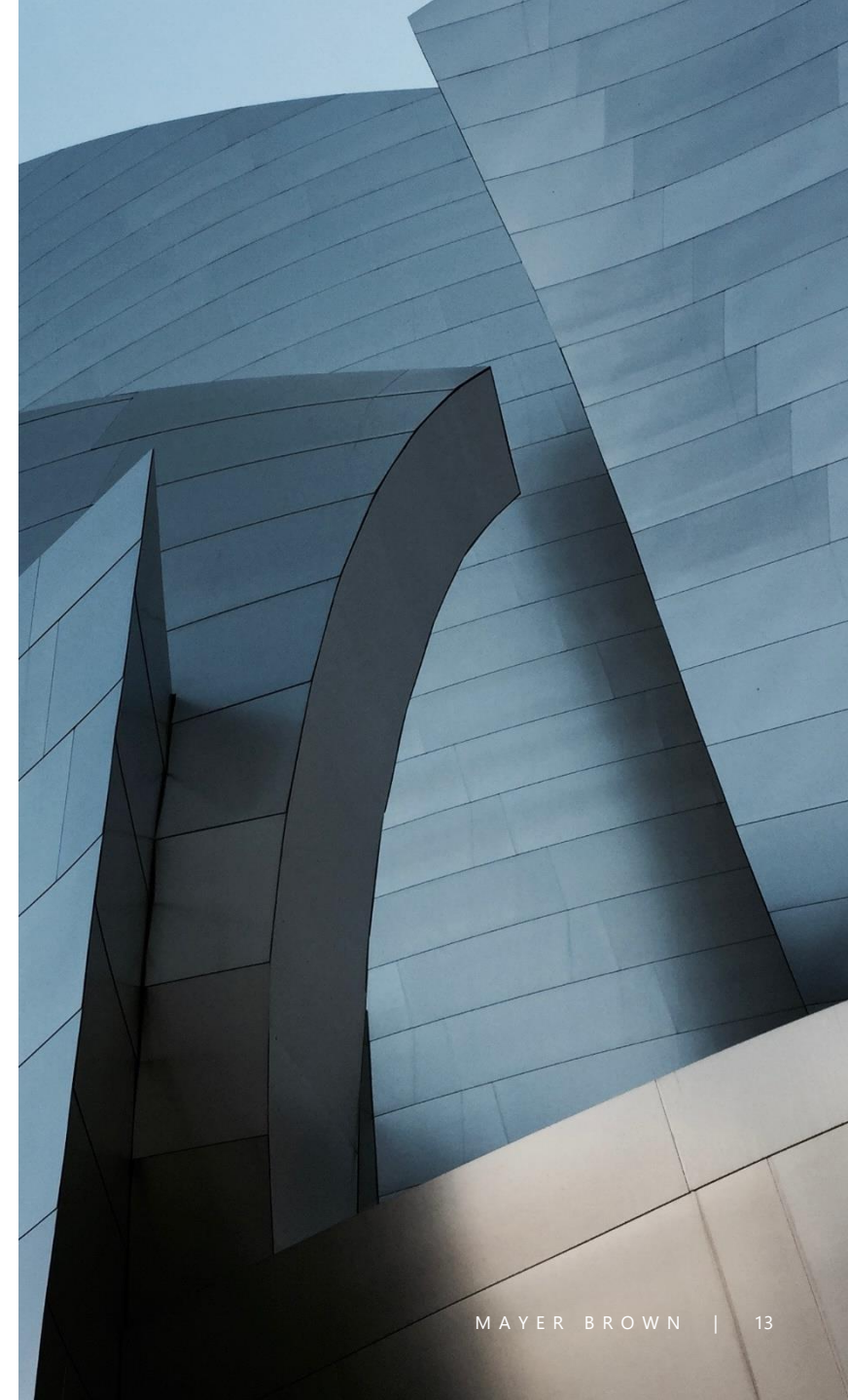
- In general, any person (regardless of where they are domiciled) can own 10% or less of the shares of any Canadian bank (including the D-SIBs) without any regulatory approval.
- There are also no foreign ownership restrictions on the D-SIBs—  
theoretically, all the shares of a D-SIB could be owned by non-residents of Canada if it continued to be widely-held and provided that no one person (or associated group) could own more than 10% of the shares without the prior approval of the Minister.





## THERE ARE NO FOREIGN OWNERSHIP RESTRICTIONS ON CANADIAN BANKS (CONT.)

- There are some limited exceptions to the control restriction where a bank that is already controlled by a shareholder crosses the \$12 billion threshold, including where the shareholder itself is a widely-held Canadian bank.
- Interestingly, there is also an exception available to a shareholder that is a “foreign institution”, which would include a US bank—but there is no similar requirement that such US bank be widely-held.
- In other words, the bank ownership regime in Canada may actually be more favourable to US banks than Canadian shareholders.



## RECENT OPPORTUNITIES TO ACQUIRE CANADIAN BANKS

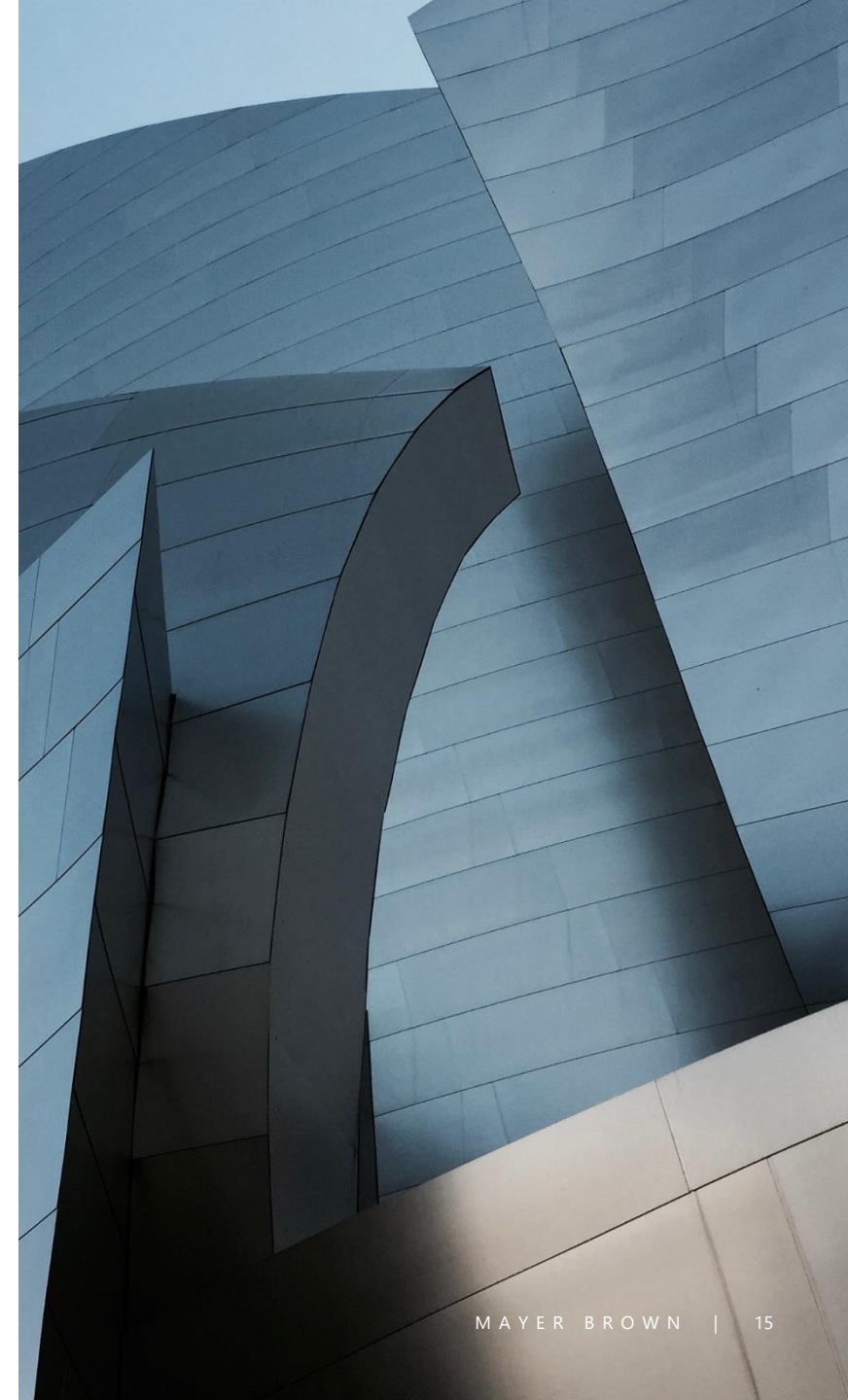
- There were reportedly no serious foreign bidders in the auction for the sale of HSBC Bank Canada, Canada's 7th largest bank at the time, which the Royal Bank of Canada successfully acquired in March 2024.
- There were no foreign bidders in the sale of Canadian Western Bank (CWB), Canada's 8th largest bank, to National Bank of Canada in February 2025.
- A US investment bank served as investment advisor to both HSBC and the board of directors of CWB in connection with their transactions, meaning it was aware of and involved in both transactions.
- Additionally, as noted above, if a US or other foreign bank had acquired either of HSBC Bank Canada or CWB and their equity grew past the \$12 billion threshold, those foreign banks could have continued to own the Canadian bank indefinitely.





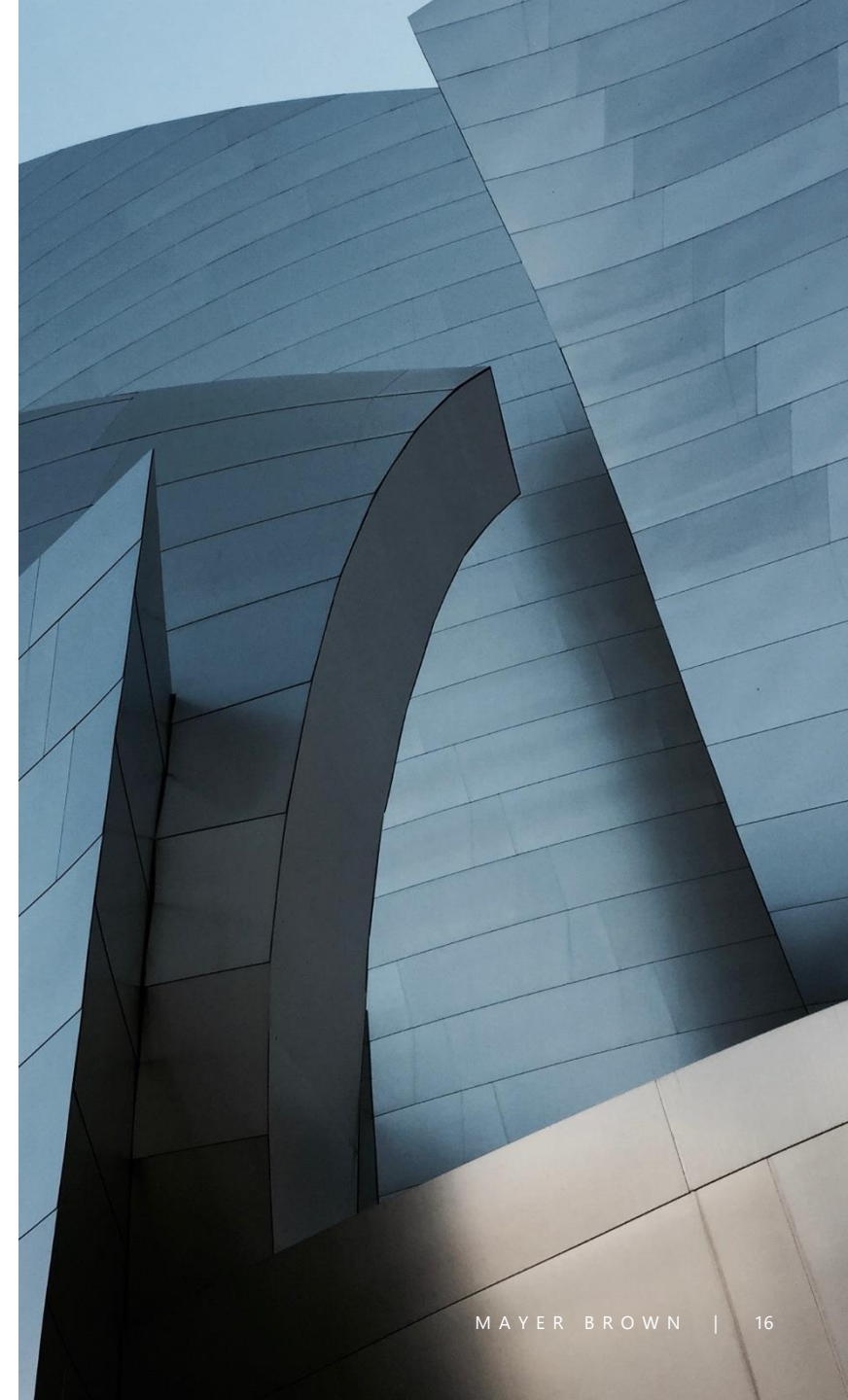
## SUMMARY CONCLUSION

- As a general matter, Canada's bank regulatory requirements apply equally to all banks in Canada regardless of their ownership structure or whether the bank is owned by Canadians or non-Canadians; there is no more onerous regime that applies separately to banks owned by non-Canadians.
- There is no competitive disadvantage for a US bank operating in Canada and, in fact, there may be disadvantages for internationally active Canadian banks because of those more onerous requirements (although stringent banking rules should likely be seen as a plus for investors).



## FOREIGN BANKS WITH CANADIAN BANK SUBSIDIARIES

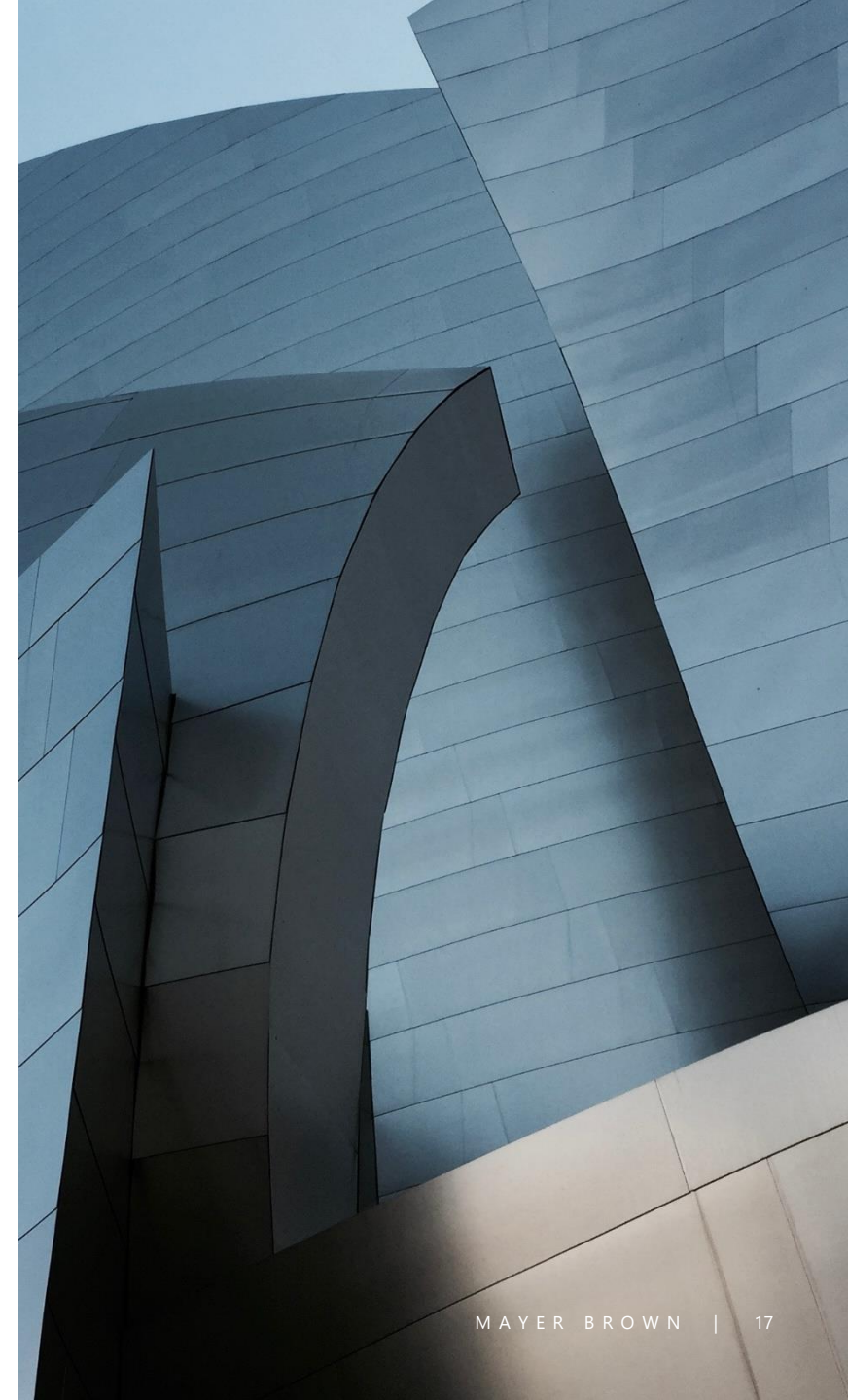
- Amex Bank of Canada
- Bank of China (Canada)
- CTBC Bank Corp. (Canada)
- Cidel Bank Canada
- Citco Bank Canada
- Citibank Canada
- Habib Canadian Bank
- ICICI Bank Canada
- Industrial and Commercial Bank of China (Canada)
- J.P. Morgan Bank Canada
- KEB Hana Bank Canada
- SBI Canada Bank
- Santander Consumer Bank
- Shinhan Bank Canada
- UBS Bank (Canada)





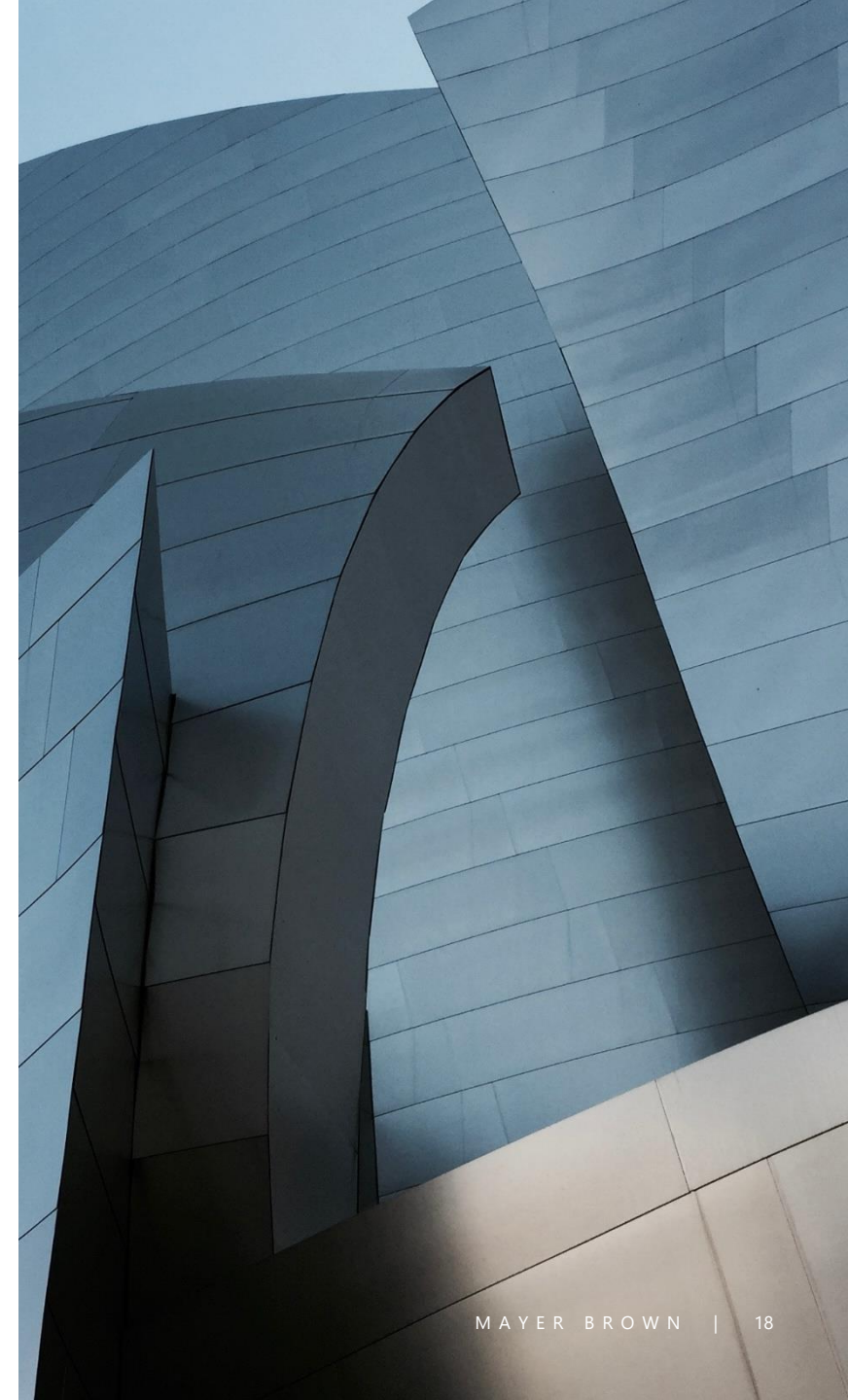
## FOREIGN BANKS WITH CANADIAN BRANCHES

- BNP Paribas
- Bank of America, National Association
- Bank of China Limited
- BNY Mellon
- Barclays Bank PLC
- Capital One, National Association
- China Construction Bank
- Citibank, N.A.
- Comerica Bank
- Coöperatieve Rabobank U.A.
- Deutsche Bank AG
- Fifth Third Bank, National Association
- First Commercial Bank
- JPMorgan Chase Bank, National Association
- M&T Bank
- MUFG Bank, Ltd.
- Maple Bank GmbH
- Mega International Commercial Bank Co., Ltd.
- Mizuho Bank, Ltd.
- Northern Trust Company
- PNC Bank, National Association
- Société Générale S.A.
- State Street Bank and Trust Company
- Sumitomo Mitsui Banking Corporation
- U.S. Bank National Association
- United Overseas Bank Limited
- Wells Fargo Bank, National Association
- Crédit Agricole Corporate and Investment Bank
- Natixis



## FOREIGN BANKS WITH CANADIAN REP OFFICES

- Agricultural Bank of China Limited
- Attijariwafa bank
- Banco Base, S.A., Institución de Banca Múltiple
- Bank of Communications Co., Ltd.
- Banque Centrale Populaire du Maroc
- Banque Degroof Petercam Luxembourg S.A.
- Banque Marocaine du Commerce Extérieur S.A.
- Banque Transatlantique S.A.
- Caixa Economica Montepio Geral
- Caixa Geral de Depósitos, S.A.
- CaixaBank, S.A.
- Crédit Industriel et Commercial S.A.
- JN Bank Limited
- Landesbank Baden-Württemberg
- Natixis
- Pathward, National Association





# CANADIAN BANKS IN THE UNITED STATES

- Bank of Montreal
- Bank of Nova Scotia
- Canadian Imperial Bank of Commerce
- Fédération des caisses Desjardins du Québec
- Banque Nationale du Canada
- Royal Bank of Canada
- Toronto-Dominion Bank
- VersaBank

