

A Terms of Trade Primer - Part 6 (Equity)

August 3, 2011 by Bob Tarantino

With apologies for the delay, this is the sixth installment in our series about the new Terms of Trade applicable to the English-language Canadian private broadcasting industry ([Part 1](#), [Part 2](#), [Part 3](#), [Part 4](#), [Part 5](#)). This installment focuses on Section 7 (Equity) of the [Terms of Trade Agreement](#). This is the sixth of an anticipated ~~nine~~ eight posts which will be posted over the course of the next ~~week~~ little while and which will cover the Terms of Trade in detail. Once all ~~nine~~ eight posts have been published, the archived posts will be available at [this link](#).

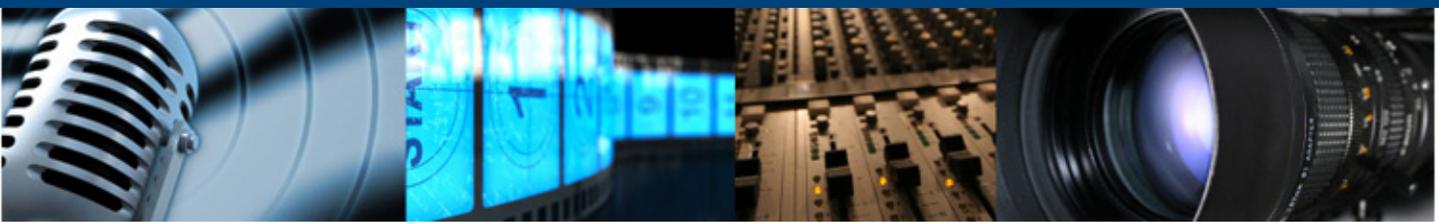
What do the Terms of Trade say about... equity investments?

The provisions in the Terms of Trade Agreement which speak to equity investments are primarily concerned with specifying when an investing broadcaster can recoup its investment. There are no limitations on the *amount* that a broadcaster can or must invest (though, for "programs of national interest", meeting certain dollar thresholds means the recoupment gets handled in a certain way), nor are there any parameters regarding *when* an investment must be made (i.e., the payment schedule for when the broadcaster has to actually advance the funds). The Agreement states that the making of an equity investment is "at Independent Producer's discretion"; it is unclear what effect this phrasing is meant to have, since it clearly is the broadcaster who decides whether it wants to make an equity investment - perhaps the intention is to prohibit broadcasters from making their offers of license fees contingent upon being also allowed to make an equity investment in the program?

The Terms of Trade do not apply to equity investments in feature films. It is only when a broadcaster is making an investment in a television program that the Terms of Trade Agreement will apply.

*Excluding "programs of national interest" (discussed below), if a broadcaster makes an equity investment in a TV program, then, following recoupment of any distribution advance, the broadcaster is entitled to recoup its investment *pari passu* with the producer (with tax credits being recognized as part of the producer's equity investment) and MFN with any other equity investors.* That sets out the basic structure of the Terms of Trade Agreement's treatment of equity investments: for any program other than a "program of national interest", if the broadcaster makes an investment, distribution advances get recouped first, and then all equity investors (which includes the producer's investment of tax credits) participate *pari passu*. (The actual language of the Agreement says it is "pari passu with the [producer] ... and on a most favoured nations basis with other equity investors", which I read to mean that all equity investors recoup on the same tier - since the equity investors must all be MFN with each other and also recoup at the same time as the producer.)

For "programs of national interest" (as [defined by the CRTC](#)) different rules apply if the broadcaster makes an equity investment and has paid a license fee in excess of the CMF threshold license fee for the applicable genre:



- if the equity investment is \$500,000 or more but less than 30% of the budget, the investment is recouped as is currently provided in the CMF Guidelines, being (after recoupment of any distribution advance) pari passu with all other equity investors *including* the producer's provincial tax credit investment but excluding the producer's federal tax credit investment (which must be placed on a subsequent tier of recoupment)
- if the equity investment is \$500,000 or more and constitutes 30% or more of the budget, the recoupment terms are a matter for negotiations between the producer and the broadcaster

Of particular interest is the fact that broadcasters can aggregate their contributions to meet the thresholds noted in the bullet points - in other words, two or more broadcasters could contribute funds which, added together, exceed the \$500,000 threshold or the 30%+ threshold, and take advantage of the treatment identified in the bullet points.

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