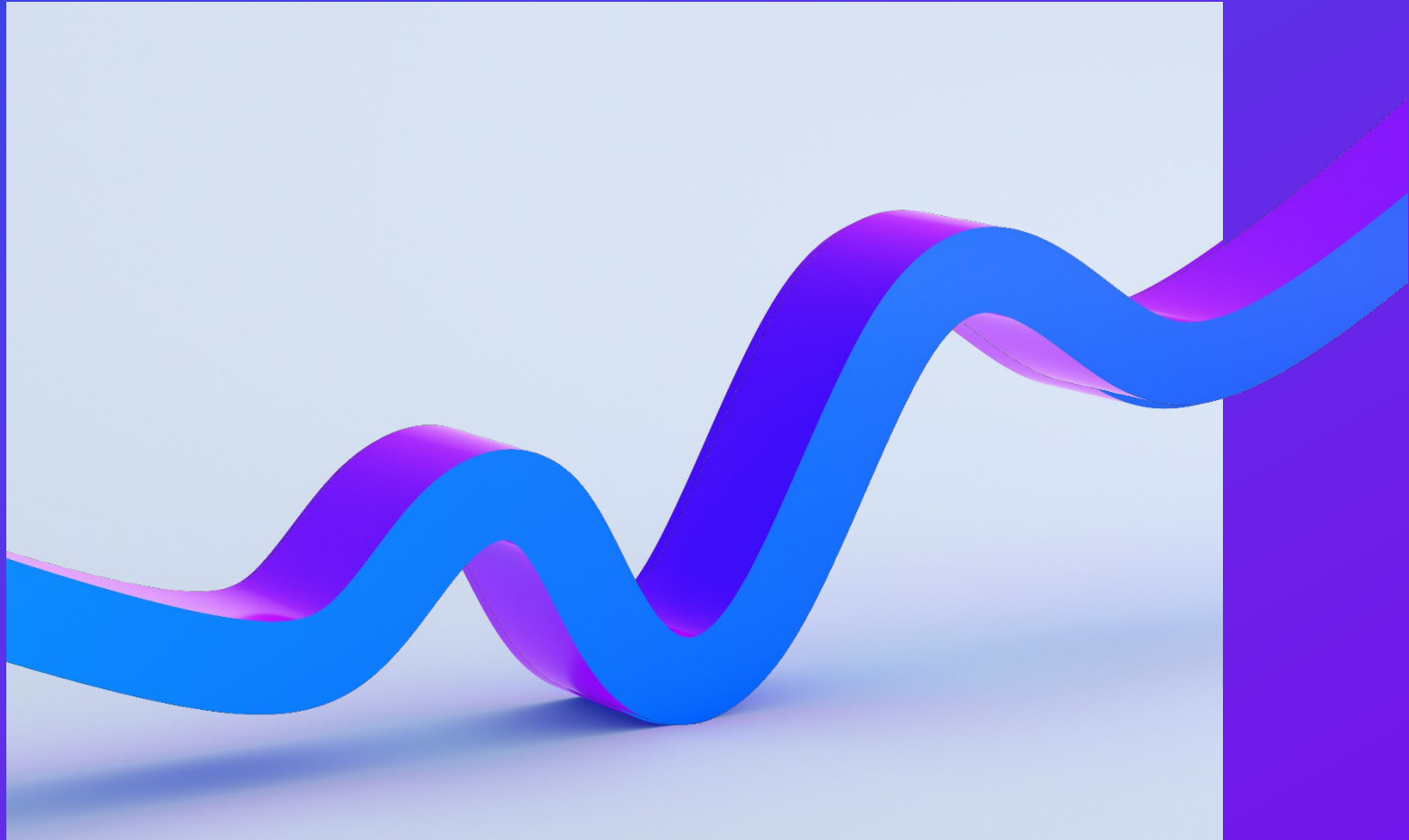




# CPTS EIFEL Update

August 4, 2023 Amendments



# Caveat

This presentation provides a summary of the key changes between the November 4, 2022 draft EIFEL legislation and the August 4, 2023 draft EIFEL legislation. Our presentation does not cover all of the detailed technical aspects of the rules or potential implications to all client situations. Each particular client situation must be considered in light of all relevant facts and circumstances together with a detailed review of the revised draft legislation.

**01**

# **Overview of EIFEL Rules**

# Overview of the EIFEL Rules

- **In line with OECD guidance**

*"...the objective of the EIFEL regime is to address BEPS issues arising from the deductibility of excessive interest and other financing costs, principally in the context of multinational enterprises and cross-border investments"*

- **EIFEL rules restrict the deductibility of interest and financing expenses to a percentage of their "tax-EBITDA" (i.e., "ATI")**

- **Applies to corporations and trusts unless they meet the excluded entity conditions**

- **In effect for taxation years beginning on or after October 1, 2023**

- **Rules have not been enacted (but is effective) and subject to further changes**

# Updated Proposed EIFEL Rules

- Revised draft EIFEL legislation released on August 4, 2023
- Third public consultation was open until September 8, 2023 (\*closed)
- Several changes to the draft legislation, including but not limited to:
  - Updated definitions
  - Clarification on application of the rules to CFAs
  - Uplift to group ratio
  - Optional election available relating to non-capital losses
  - New prescribed form

**02**

# **Changes to Draft Legislation**

# Summary of Key Changes (1)

## August 4, 2023 Revised Draft



### Adjusted Taxable Income

- Clarifies taxable income / non-capital loss for the year is determined before deduction of previously restricted IFE deducted under proposed para 111(1)(a.1)
- Add-back for losses reasonably considered to be related to activities that generate exempt IFE (para k of variable B)  
Add-back for certain investment tax credits or received government assistance that reduce the cost or capital cost of certain properties (para l and m of variable B)



### "Specified Pre-regime Loss"

- Component of ATI
- New election available to ease compliance burden where non-capital loss relates to a taxpayer loss year that ends before February 4, 2022
- Add-back to ATI of 25%



### Exempt IFE

- Extends exempt IFE of Canadian P3 infrastructure projects to **all property** owned or **leased** by the public sector authority (or another public section authority) that entered into the agreement

# Summary of Key Changes (2)

## August 4, 2023 Revised Draft



### Interest and Financing Expenses (“IFE”) Interest and Financing Revenues (“IFR”)

- No reduction of IFE permitted for hedging income where income sheltered by foreign tax credits (other than WHT)
- No inclusion in IFR where revenue is effectively sheltered by foreign tax credits (other than WHT)



### Section 216

- Provides clarity relating to taxpayers that elect under section 216



### “Finance Holding Corporation”

- Replaces the definition of “insurance holding corporation”
- Allows more corporations to qualify to receive cumulative unused excess capacity transferred from financial institution group entities



### New Prescribed Form

- Extended re-assessment period



# Summary of Key Changes (3)

## August 4, 2023 Revised Draft



**“Relevant  
affiliate interest  
and financing  
expenses”  
 (“RAIFE”)**

- New wording provides specific exemption from inclusion in RAIFE for:
  - paragraph 95(2)(a) recharacterized amounts; and,
  - certain amounts deemed nil for FAPI purposes (with respect to Cap D amounts)



**New FAPL  
election**

- New clause 95(2)(f.11)(ii)(E) relieving election
- In effect allows forgoing FAPLs otherwise resulting directly from RAIFE amounts in order to reduce/eliminate the RAIFE inclusion in Canadian taxpayer IFE (paragraph (j) inclusion)

# Summary of Key Changes (4)

August 4, 2023 Revised Draft



## Group Ratio Uplift

- New change: the “group ratio” formula (defined in subsection 18.21(1)) of group interest expense over group EBITDA is boosted automatically by 10% - helper rule



## Group Ratio Election

- Now any “Canadian group member” can make the election on behalf of the group



## Pre-regime Capacity Election

- Now any eligible group entity can make the election on behalf of the group

# Summary of Key Changes (5)

August 4, 2023 Revised Draft



**New subsection  
88(1.11)**

- Clarification that this new continuity rule applies with respect to a winding up commencing in any taxation year



**Debt forgiveness  
rules**

- EIFEL rules are to be disregarded in applying the debt forgiveness rules



**Relevant Inter-  
Affiliate Interest**

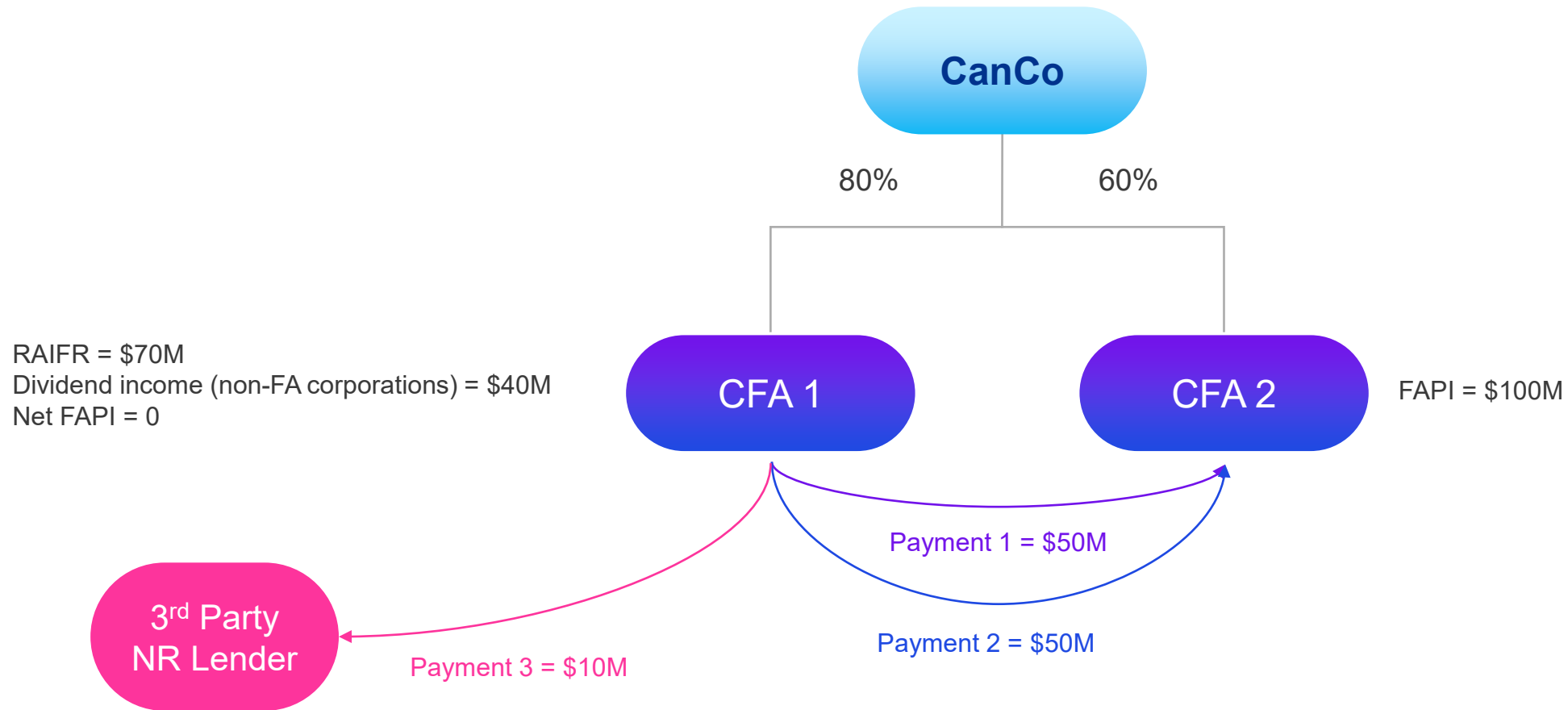
- New subsection 18.2(19) added to address inter affiliate payments

# Relevant Inter Affiliate Interest (RIAI)

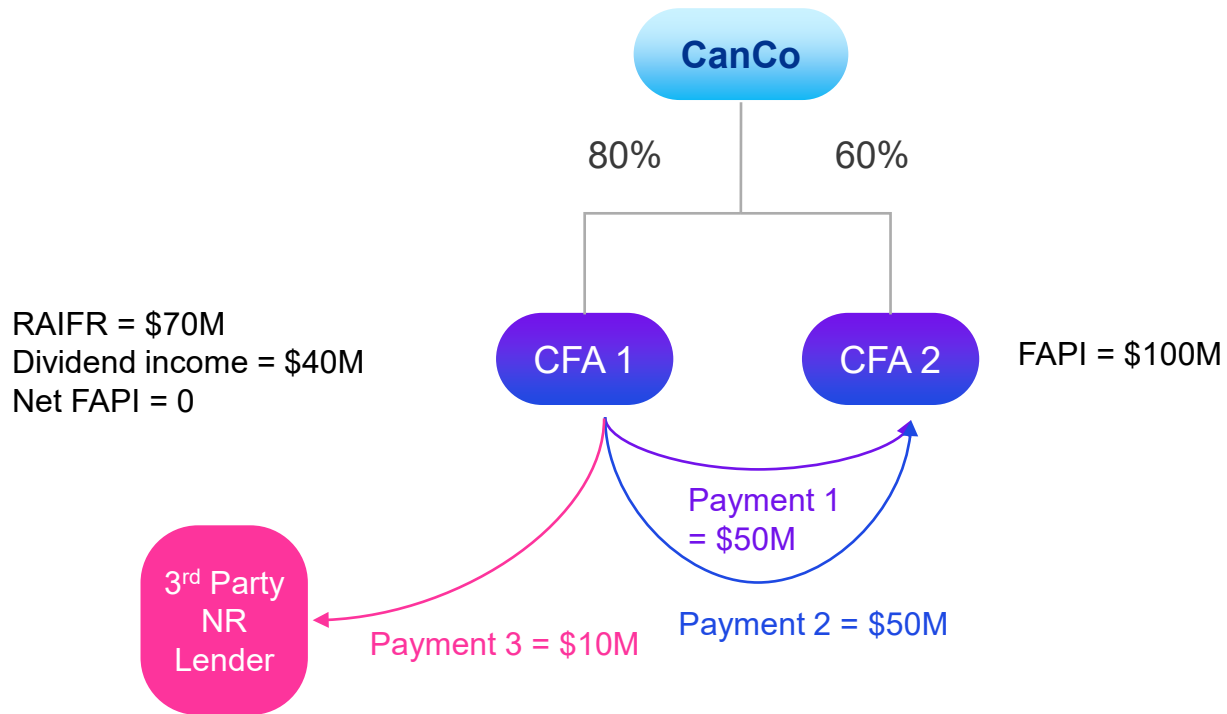
- New subsection 18.2(19) introduces the concept of relevant inter-affiliate interest (“RIAI”) which is relevant for computing RAIFE and RAIFR
- Intended to mimic “excluded interest” concept between domestic entities subject to the EIFEL rules, with certain key differences
  - Subsection 18.2(19) applies automatically
  - Does not provide a full exclusion in all cases
  - Does not necessarily provide for symmetrical treatment in respect of the payer affiliate and the recipient affiliate.
- Relevant Inter-Affiliate Interest payments are excluded from RAIFE except for amounts computed by reference to two formulas:
  - The first (Amount A) applies where the participating % in the payer is greater than in the recipient, and treats the difference as RAIFE.
  - The second (Amount B) applies where inter-affiliate interest shelters RAIFR of the payor affiliate



# Explanatory Notes RIAI Example



# Explanatory Notes RIAI Example



Paragraph 18.2(19)(a): the amount to be included in the payer affiliates RAIFE for the year is the lesser of:

- (i) the relevant inter-affiliate interest: \$100M and
- (ii) the amount determined by the formula A+B

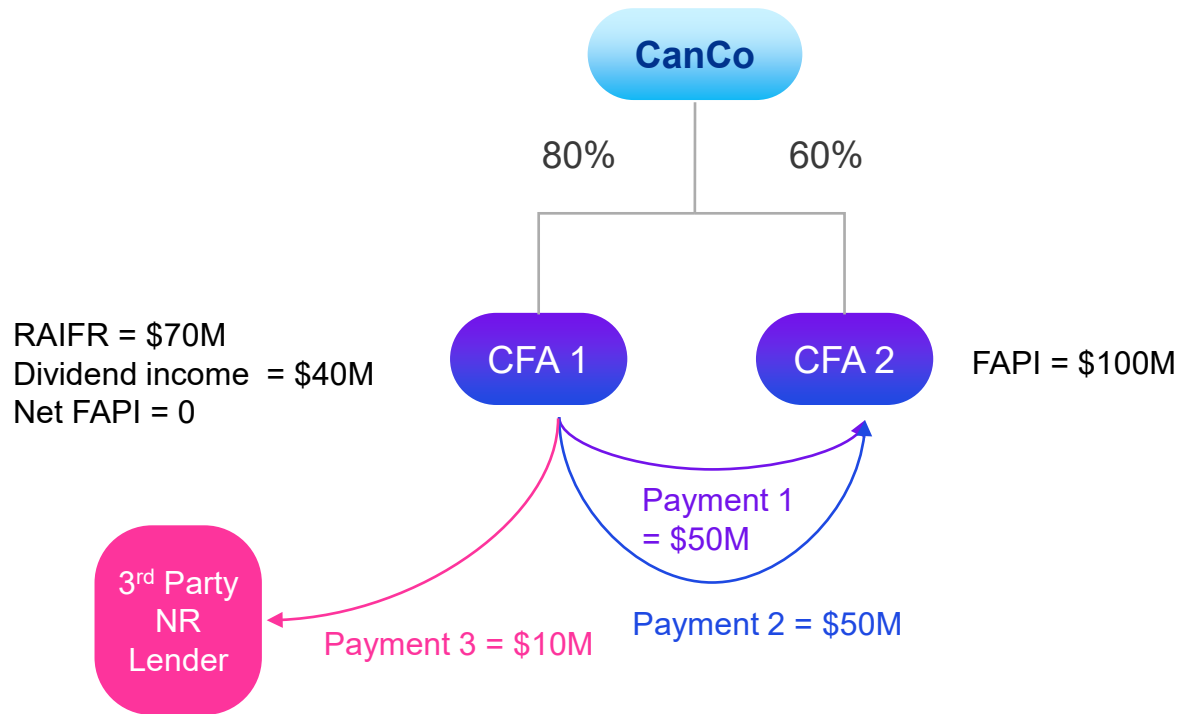
$$A = (C - D) \times E \div C$$

- C = 80% (CanCo's specified participating percentage in respect of CFA 1)
- D = 60% (CanCo's specified participating percentage in respect of CFA 2)
- E = \$50m (Payment 1)

**Amount determined for Variable A is \$12.5M**

**This amount is to be included in CFA 1's RAIFE for purposes of determining CanCo's IFE.**

# Explanatory Notes RIAI Example



$$B = (F - G) \times E \div H$$

- F = \$70M (CFA 1's RAIFR)
- G = \$10M (CFA 1's RAIFE if not relevant inter-affiliate interest)
- E = \$50m (Payment 1)
- H = \$100M (CFA 1's total relevant inter-affiliate interest for the year)

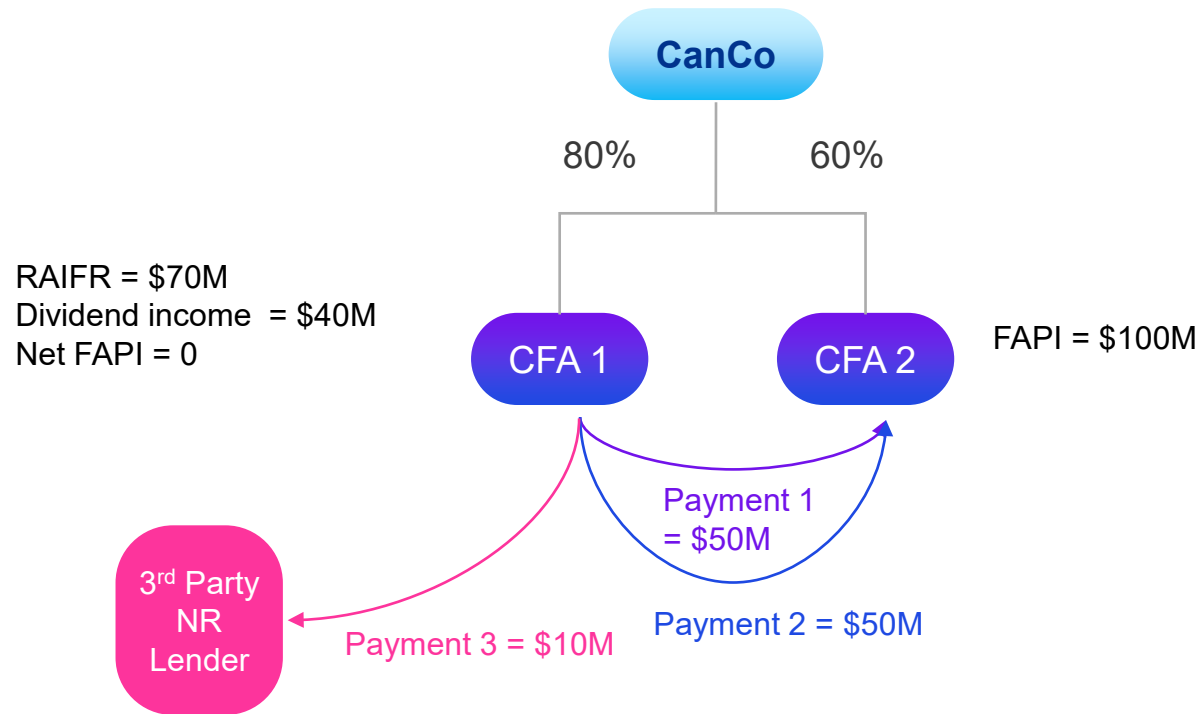
**Amount determined for Variable B is \$30M**

**This amount is to be included in CFA 1's RAIFE for purposes of determining CanCo's IFE.**

**Amount to be included in CFA 1's RAIFE in respect of Payment 1 = \$42.5M**

**Amount to be included in CFA 1's RAIFE in respect of Payment 2 = \$42.5M**

# Explanatory Notes RIAI Example



Paragraph 18.2(19)(b) - Amount to be included in CFA 2's RAIFR

$$B \times C \div D$$

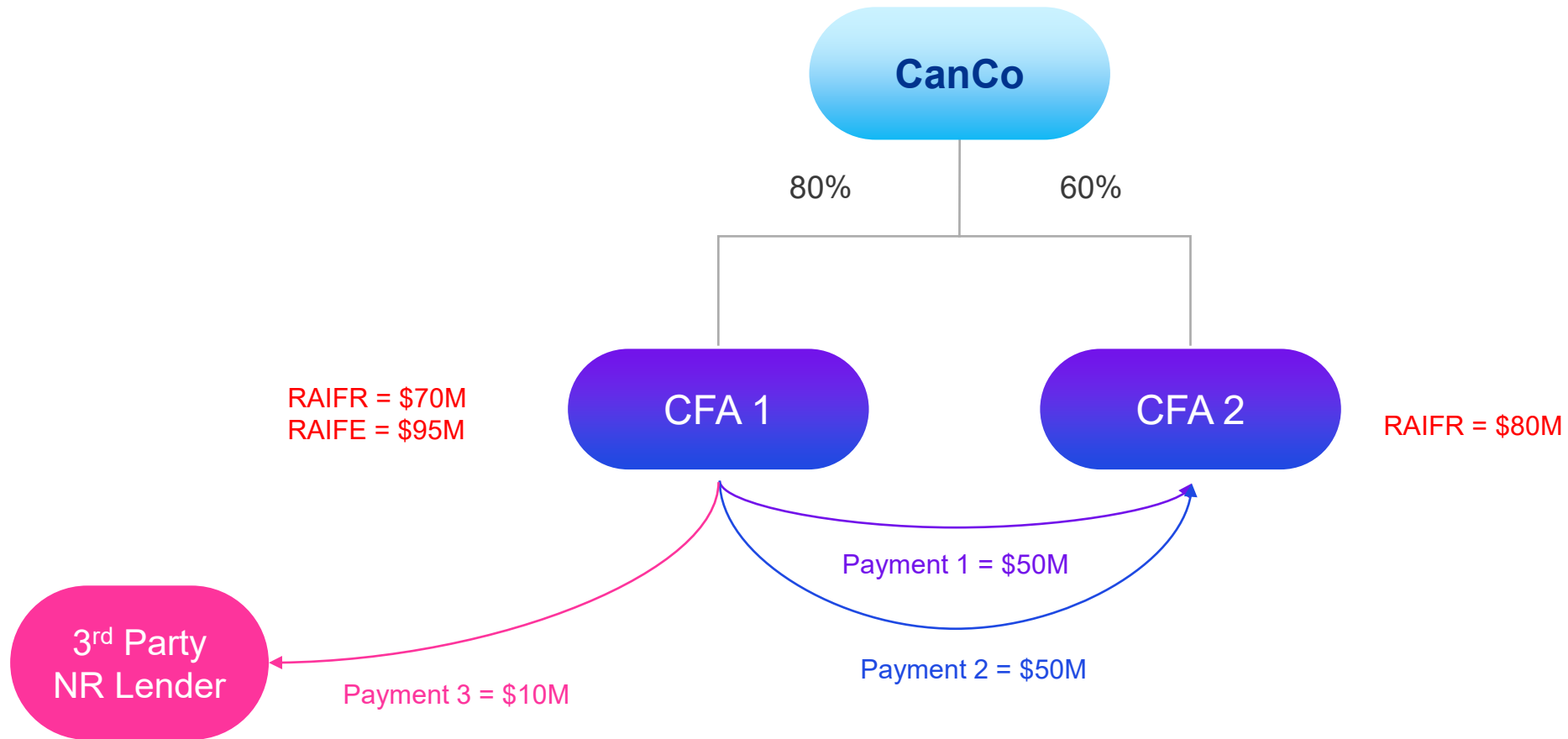
- B = \$30M (amt to be included in CFA 1's RAIFE under variable B in respect of Payment 1)
- C = 80% (CanCo's specified participating percentage in respect of CFA 1)
- D = 60% (CanCo's specified participating percentage in respect of CFA 2)

**CFA 2's RAIFR in respect of Payment 1 = \$40M**

**CFA 2's RAIFR in respect of Payment 2 = \$40M**



# Explanatory Notes RIAI Example



# Presenters

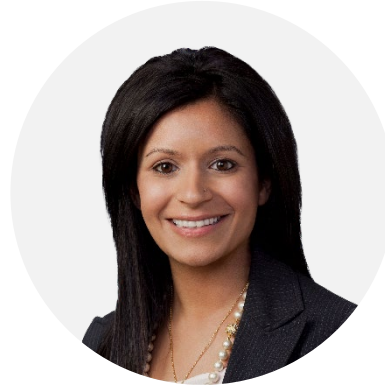


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