

20. The review decision must be written in clear and concise terms, set out the reasons for the decision and be notified to the eligible person who applied for the review. It must also:

(1) state the amount that the assessor deems to correspond to the indemnity to which the eligible person is entitled; and

(2) state that the Authority is required to pay the indemnity within 90 days of the date of the review decision, except if the amount of the indemnity continues to be contested.

The assessor must provide the Authority with a copy of any decision sent pursuant to the first paragraph.

21. The Authority must pay to the eligible person the indemnity to which they are entitled within the following period of time:

(1) where the notice set out in section 12 is sent to an eligible person, within 90 days of the date of the notice; and

(2) in all other cases, within 135 days of the date on which the summary referred to in section 14 is published in the Bulletin of the Authority.

However, where a person applies for a review of a decision of the Authority in respect of the amount of the indemnity, the indemnity must not be paid until the amount ceases to be contested.

CHAPTER VI TRANSITIONAL AND FINAL PROVISIONS

22. This Regulation is to be read, between the date it comes into force and 12 June 2019, by replacing:

(1) “Deposit Institutions and Deposit Protection Act” wherever it appears by “Deposit Insurance Act”; and

(2) “authorized deposit institution” and “authorized deposit institutions” wherever they appear by, respectively, “registered institution” and “registered institutions”.

23. This Regulation comes into force on 31 March 2019.

103852

M.O., 2019-02

Order number A-26-2019-02 of the Minister of Finance, March 7, 2019

Deposit Insurance Act
(chapter A-26)

CONCERNING Regulation respecting the application of sections 40.15 to 40.17 of the Deposit Institutions and Deposit Protection Act to protected financial contracts and their transfer

WHEREAS that section 40.22 of the Deposit Insurance Act (chapter A-26) provide that a regulation of the *Autorité des marchés financiers* is to specify how sections 40.15 to 40.18 are to apply to the financial contracts the *Autorité des marchés financiers* determines by regulation;

WHEREAS subparagraphs *s.1* and *u* of section 43 of such Act provide that the *Autorité des marchés financiers* may make regulations concerning the matters referred to in those subparagraphs;

WHEREAS that the first paragraph of section 45 of such Act provide that a regulation made by the *Autorité des marchés financiers* is subject to the approval, with or without amendment, of the Minister of Finance;

WHEREAS that the third paragraph of this section stipulate that a draft regulation may not be submitted for approval or be made before 30 days have elapsed since the publication of the draft in the *Bulletin de l’Autorité des marchés financiers*, that it enters into force on the date of its publication in the *Gazette officielle du Québec* or on any later date specified therein and that sections 4, 8, 11 and 17 to 19 of the Regulations Act (chapter R-18.1) do not apply to the regulation;

WHEREAS the draft Regulation respecting the application of sections 40.15 to 40.17 of the Deposit Institutions and Deposit Protection Act to protected financial contracts and their transfer was published in the *Bulletin de l’Autorité des marchés financiers*, volume 15, no. 42 of October 25, 2018;

WHEREAS on February 12, 2019, by the decision no. 2019-PDG-0014, the *Autorité des marchés financiers* made Regulation respecting the application of sections 40.15 to 40.17 of the Deposit Institutions and Deposit Protection Act to protected financial contracts and their transfer;

WHEREAS there is cause to approve this regulation without amendment;

CONSEQUENTLY, the Minister of Finance approves without amendment Regulation respecting the application of sections 40.15 to 40.17 of the Deposit Institutions and Deposit Protection Act to protected financial contracts and their transfer appended hereto.

March 7, 2019

ERIC GIRARD,
Minister of Finance

Regulation respecting the application of sections 40.15 to 40.17 of the Deposit Institutions and Deposit Protection Act to protected financial contracts and their transfer

Deposit Insurance Act
(chapter A-26, ss. 40.22 and 43, pars. s.1 and u)

CHAPTER I FINANCIAL GUARANTEES AND PROTECTED FINANCIAL CONTRACTS

1. For the purposes of this Regulation, a “financial guarantee” means any of the following, when it is charged with a security interest securing payment of an amount or performance of an obligation in respect of a protected financial contract or when it is subject to a title transfer credit support agreement:

- (1) a monetary claim within the meaning of the second paragraph of article 2713.1 of the Civil Code, cash or a cash equivalent, including a negotiable instrument and a demand deposit;
- (2) a security, a securities account, a securities entitlement or a right to acquire securities;
- (3) a futures contract or a futures account; or
- (4) a right to payment or delivery against a clearing house within the meaning of section 2 of the Payment Clearing and Settlement Act (Statutes of Canada, 1996, chapter 6).

For the purposes of the first paragraph, a title transfer credit support agreement means an agreement under which title to property has been provided for the purpose of securing payment of an amount or performance of an obligation in respect of a protected financial contract.

2. The following are protected financial contracts:

- (1) a derivative that is settled by payment or delivery and that trades on an options or a futures exchange or market or on any other regulated market;
- (2) a derivative that is settled by payment or delivery and that is the subject of recurrent dealings in the derivatives markets or in the over-the-counter securities or commodities markets;
- (3) an agreement to borrow or lend securities or commodities, including an agreement to transfer securities or commodities under which the borrower may repay the loan with other securities or commodities or with cash or cash equivalents;
- (4) an agreement to clear or settle securities, futures, options or derivatives transactions;
- (5) an agreement to act as a depository for securities;
- (6) a securities or commodities repurchase, reverse repurchase or buy-sellback agreement;
- (7) a margin loan insofar as it is in respect of a securities account or futures account maintained by a financial intermediary;
- (8) any combination of agreements referred to in any of subparagraphs 1 to 7;
- (9) a master agreement governing an agreement referred to in any of subparagraphs 1 to 8 and any other agreement governing such a master agreement;
- (10) an agreement relating to a guarantee of, or an indemnity or reimbursement obligation with respect to, the obligations under an agreement referred to in any of subparagraphs 1 to 9; and
- (11) an agreement relating to a financial guarantee with respect to an agreement referred to in any of subparagraphs 1 to 10.

For the purposes of the first paragraph:

- (1) a “derivative” means a derivative within the meaning of the Derivatives Act (chapter I-14.01) or a spot; and
- (2) a “financial intermediary” means, in addition to a clearing house, a dealer, a bank, a financial services cooperative, a trust company, a savings company or another person that, in the ordinary course of its business, maintains securities accounts or futures accounts for others when acting in that capacity.

CHAPTER II**APPLICATION OF SECTIONS 40.15 TO 40.17 OF
THE DEPOSIT INSTITUTIONS AND DEPOSIT
PROTECTION ACT TO PROTECTED
FINANCIAL CONTRACTS****3.** For the purposes of this Chapter:

“eligible acquirer” means an acquirer referred to in section 40.46 of the Deposit Institutions and Deposit Protection Act (chapter A-26), other than an eligible legal person, for which the Autorité des marchés financiers certifies in writing that:

(1) it maintains all material authorizations and registrations that are required for the continued operation of its business and, if applicable, that it is in good standing in respect of those authorizations and registrations;

(2) it has, on its balance sheet, assets that exceed its liabilities;

(3) it is able to discharge its obligations in respect of the protected financial contracts transferred to it as they become due; and

(4) its creditworthiness, taking into account any credit support or guarantee in respect of its obligations under the protected financial contracts transferred to it, is at least as good as the creditworthiness of the legal person belonging to the cooperative group that is a party to the contracts was immediately before the resolution board orders the implementation of resolution operations, taking into account any credit support or guarantee in respect of the legal person’s obligations under those contracts;

“eligible legal person” means a legal person constituted or resulting from an amalgamation/continuance or other conversion carried out for the purposes of the resolution, other than an asset management company within the meaning of the second paragraph of section 40.37 of the Deposit Institutions and Deposit Protection Act;

“measure in respect of the financial guarantee” includes, in particular:

(1) the sale or the surrender of the financial guarantee; and

(2) the netting, setting off or compensation of the financial guarantee or the application of the proceeds or value of the financial guarantee.

4. Nothing in sections 40.15 and 40.16 of the Deposit Institutions and Deposit Protection Act (chapter A-26) prevents, in accordance with the terms of a protected financial contract:

(1) any proceedings from being brought or any measures to be taken prior to the exercise of a right or power from being taken for a failure to satisfy an obligation under or in connection with the financial contract, including the payment of an amount payable, or the delivery of property, under or in connection with the financial contract;

(2) the netting, setting off or compensation of an amount payable under or in connection with the financial contract;

(3) any measure in respect of the financial guarantee.

5. Except for a reason referred to in the second or third paragraph, nothing in section 40.17 of the Deposit Institutions and Deposit Protection Act (chapter A-26) prevents, in accordance with the terms of a protected financial contract:

(1) its resiliation or amendment;

(2) the forfeiture of the term stipulated therein; or

(3) any measure in respect of the financial guarantee.

Except as otherwise provided in this Regulation, no measure referred to in the first paragraph may be taken only by reason of one or more of the following:

(1) the insolvency or deteriorated financial condition of any legal person belonging to the cooperative group, of the cooperative group or of any of the legal person’s providers of credit support or guarantors;

(2) the resolution board’s order to implement resolution operations;

(3) a resolution operation other than one that satisfies the following conditions:

(a) it is carried out under sections 40.40 to 40.46 of the Deposit Institutions and Deposit Protection Act;

(b) it involves a matter other than merely the transfer of the financial contract to an eligible legal person or an eligible acquirer;

(4) the conversion of any securities or liabilities of a legal person belonging to the cooperative group in accordance with their terms.

In addition to the reasons referred to in the second paragraph, no measure referred to in subparagraph 1 or 2 of the first paragraph may be taken in respect of a protected financial contract by reason of any resolution operation when the contract has been assumed by an eligible legal person or a third party or when an eligible legal person or an eligible acquirer has become a party to the contract.

The second paragraph does not apply to any measure in respect of a financial guarantee:

(1) to satisfy an amount payable, or the delivery of property, under or in connection with the financial contract; or

(2) for the purpose of calculating an amount payable under or in connection with the financial contract by way of netting, setting off or compensation of the financial guarantee or application of the proceeds or value of the financial guarantee; or

(3) as a remedy for a failure described in subparagraph 1 of section 4.

6. The Autorité des marchés financiers must, if it is necessary in its judgment for all or substantially all the assets of the legal persons belonging to the cooperative group to be transferred to one or more acquirers and for certain protected financial contracts not to be transferred, send a notice to the parties to the contracts.

Notwithstanding section 5, as of the date and time at which the notice is given, any measure referred to in the first paragraph of said section may be taken for a reason indicated in subparagraph 1 or 2 of its second paragraph in respect of such a protected financial contract.

7. Notwithstanding section 5, as of 5:00 p.m. on the second business day after the date on which the resolution board orders the implementation of resolution operations, any measure referred to in the first paragraph of said section may be taken for one of the reasons referred to in subparagraph 1 or 2 of its second paragraph in respect of a protected financial contract for which the Autorité des marchés financiers has not undertaken, before that time, for an eligible legal person to be a party thereto.

For the purposes of the first paragraph, “business day” means a day other than a Saturday or a statutory holiday in Québec.

8. A party to a protected financial contract referred to in both sections 6 and 7 may avail itself of the provisions thereof at the earlier of the times set out therein.

9. The reasons referred to in subparagraph 1 of the second paragraph of section 5 may be invoked under sections 6 and 7 only if the insolvency or deterioration referred to in that subparagraph exists at the time the reasons are invoked.

10. The second paragraph of section 5 applies to a protected financial contract between a clearing house and a legal person belonging to the cooperative group only insofar as the Autorité des marchés financiers has given an undertaking to provide the financial assistance that the legal person needs in order to discharge its obligations under the contract as they become due.

For the purposes of the first paragraph, “clearing house” means a clearing house designated as such under Part I of the Payment Clearing and Settlement Act (Statutes of Canada, 1996, chapter 6) as well as a securities and derivatives clearing house within the meaning of that Act.

11. The Autorité des marchés financiers may transfer a protected financial contract to which a legal person belonging to a cooperative group is a party only to an eligible acquirer or an eligible legal person.

If it transfers a protected financial contract entered into between a legal person belonging to a cooperative group and a counterparty, the Authority must also transfer to the acquirer of the contract all other protected financial contracts entered into between the legal person and the counterparty.

When it transfers a protected financial contract entered into by a legal person belonging to a cooperative group, the Authority must transfer to the acquirer:

(1) all the legal person’s obligations arising under the contract;

(2) all the rights securing the performance of the legal person’s obligations under the contract.

For the purposes of the second paragraph, protected financial contracts entered into with the same counterparty include any protected financial contracts entered into with any group affiliated with that counterparty.

CHAPTER III TRANSITIONAL AND FINAL PROVISIONS

12. This Regulation is to be read, for the period from 31 March 2019 to 12 June 2019, by replacing:

(1) “Deposit Institutions and Deposit Protection Act” wherever it appears by “Deposit Insurance Act”; and

(2) “legal person belonging to the cooperative group”, “legal persons belonging to the cooperative group” and “legal person belonging to a cooperative group” wherever they appear by, respectively, “institution belonging to the cooperative group”, “institutions belonging to the cooperative group” and “institution belonging to a cooperative group”.

In addition, during that same period, the provisions of the fourth paragraph of section 11 are to be read as if sections 1.4 to 1.14 of the Deposit Insurance Act (chapter A-26), introduced by section 350 of An Act mainly to improve the regulation of the financial sector, the protection of deposits of money and the operation of financial institutions (2018, chapter 23), were in force.

13. This Regulation comes into force on 31 March 2019.

103853

M.O., 2019-03

Order number A-26-2019-03 of the Minister of Finance, March 7, 2019

Deposit Insurance Act
(chapter A-26)

An Act respecting financial services cooperatives
(chapter C-67.3)

CONCERNING Regulation respecting the classes of negotiable and transferable unsecured debts and the issuance of such debts and of shares

WHEREAS that the second paragraph of section 40.50 of the Deposit Insurance Act (chapter A-26) provide that the *Autorité des marchés financiers* may write off any part of the negotiable and transferable unsecured debts that belong, at the time of issue, to a class prescribed by regulation of the *Autorité des marchés financiers* and it may also convert them into contributed capital securities of a legal person constituted or resulting from an amalgamation-continuance or other conversion carried out for the purposes of the resolution;

WHEREAS subparagraph s.2 of section 43 of such Act provide that the *Autorité des marchés financiers* may make regulations concerning the matters referred to in these subparagraph;

WHEREAS that section 601.1 of the Act respecting financial services cooperatives (chapter C-67.3) provide that the *Autorité des marchés financiers* may, by regulation, determine the standards applicable to financial services cooperatives in relation to their business and management practices;

WHEREAS that the first paragraph of section 45 of the Deposit Insurance Act and the first paragraph of section 601.2 of the Act respecting financial services cooperatives provide that a regulation made by the *Autorité des marchés financiers* is subject to the approval, with or without amendment, of the Minister of Finance;

WHEREAS that the third paragraph of section 45 of the Deposit Insurance Act and the fourth, fifth and sixth paragraphs of section 601.2 of the Act respecting financial services cooperatives stipulate that a draft regulation may not be submitted for approval or be made before 30 days have elapsed since the publication of the draft in the *Bulletin de l’Autorité des marchés financiers*, that it enters into force on the date of its publication in the *Gazette officielle du Québec* or on any later date specified therein and that sections 4, 8, 11 and 17 to 19 of the Regulations Act (chapter R-18.1) do not apply to the regulation;

WHEREAS the draft Regulation respecting the classes of negotiable and transferable unsecured debts and the issuance of such debts and of shares was published in the *Bulletin de l’Autorité des marchés financiers*, volume 15, no. 42 of October 25, 2018;

WHEREAS on February 12, 2019, by the decision no. 2019-PDG-0015, the *Autorité des marchés financiers* made Regulation respecting the classes of negotiable and transferable unsecured debts and the issuance of such debts and of shares;

WHEREAS there is cause to approve this regulation without amendment;

CONSEQUENTLY, the Minister of Finance approves without amendment Regulation respecting the classes of negotiable and transferable unsecured debts and the issuance of such debts and of shares appended hereto.

March 7, 2019

ERIC GIRARD,
Minister of Finance