

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

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

Deposit Insurance Act
(chapter A-26, ss. 40.50 and 43, par. s.2)

An Act respecting financial services cooperatives
(chapter C-67.3, s. 601.1)

CHAPTER I PRESCRIBED DEBTS

1. A negotiable and transferable unsecured debt for the purposes of the second paragraph of section 40.50 of the Deposit Institutions and Deposit Protection Act (chapter A-26) is a debt represented by an instrument issued on or after 31 March 2019 by a deposit institution belonging to a cooperative group that, at the time of issue, belongs to either of the following classes:

(1) debt obligations, other than subordinated debt obligations, that:

(a) are perpetual, have a term to maturity of more than 400 days, have one or more explicit or embedded options that, if exercised by or on behalf of the issuer, would result in a maturity date that is more than 400 days from the date of issue of the debt obligation or have an explicit or embedded option that, if exercised by or on behalf of the holder, would by itself result in a maturity date that is more than 400 days from the maturity date that would apply if the option were not exercised; and

(b) have been assigned a Committee on Uniform Security Identification Procedures (CUSIP) number, International Securities Identification Number (ISIN) or other similar designation that identifies a security in order to facilitate its trading and settlement;

or

(2) subordinated debt obligations, other than a non-viability contingent capital security.

A debt referred to in the first paragraph is, for the purposes of this Regulation, a “prescribed debt”.

2. For the purposes of section 1:

(1) the unsecured portion of a partially secured debt is considered an unsecured debt;

(2) the instrument representing the prescribed debt does not cease to belong to one or the other class referred to in the first paragraph if the prescribed debt is due but unpaid on the date on which the resolution board orders the implementation of resolution operations under section 40.12 of the Deposit Institutions and Deposit Protection Act (chapter A-26) or if it becomes due after that date;

(3) in subparagraph 2, “non-viability contingent capital security” means any subordinated debt obligation that:

(a) expressly mentions that it is a non-viability contingent capital security;

and

(b) contains a feature providing for its conversion into shares of the share capital of the issuer in accordance with its terms upon a public announcement by the Autorité des marchés financiers regarding the issuer’s viability; and

(4) interest on a prescribed debt, including any type of coupon, even if the latter is detached from the instrument representing the principal, forms an integral part of the prescribed debt.

3. The following, including the debts resulting therefrom, are not prescribed debts:

(1) any covered bond, as defined in section 21.5 of the National Housing Act (Revised Statutes of Canada (1985), chapter N-11);

(2) any financial contract determined under section 40.22 of the Deposit Institutions and Deposit Protection Act (chapter A-26);

(3) any structured note; and

(4) any conversion or exchange privilege that is convertible at any time into shares of a deposit institution belonging to a cooperative group, including any option or right to purchase such shares or privileges.

4. For the purposes of subparagraph 3 of section 3, a “structured note” means a debt obligation that:

(1) specifies that the obligation’s stated term to maturity, or a payment to be made by its issuer, is determined in whole or principally by reference to an index or reference point, including:

(a) the performance or value of an entity or asset;

(b) the market price of a security, commodity, investment fund or financial instrument;

- (c) an interest rate; and
 - (d) the exchange rate applicable between two currencies;
- or
- (2) contains any other type of embedded derivative or similar feature.

However, a structured note does not mean:

- (1) a debt obligation in respect of which the stated term to maturity, or a payment to be made by its issuer, is determined in whole or principally by reference to the performance of a security of a deposit institution belonging to the cooperative group; or
- (2) a debt obligation that is payable in cash and that:
 - (a) specifies that the return is determined by a fixed or floating interest rate or a fixed spread above or below a fixed or floating interest rate, regardless of whether the return is subject to a minimum interest rate or whether the interest rate changes between fixed and floating; and
 - (b) has no other terms affecting the stated term to maturity or the return on the debt obligation, with the exception of the right of the issuer to redeem the debt obligation or the right of the holder or issuer to extend its term to maturity.

CHAPTER II

ISSUANCE OF PRESCRIBED DEBTS AND OF SHARES

5. When issuing a prescribed debt, a deposit institution belonging to a cooperative group must expressly specify in the terms governing the debt that:

- (1) the holder of the instrument representing the prescribed debt is bound, in respect of the prescribed debt, by the Deposit Institutions and Deposit Protection Act (chapter A-26), including the provisions dealing with the powers conferred on the Autorité des marchés financiers under the second paragraph of section 40.50 of that Act and its effects on the prescribed debt, and by the other laws applicable in Québec to the application of that Act to the debt;
- (2) the holder of the instrument representing the prescribed debt attorns to the jurisdiction of the courts of Québec and, where applicable, Canada with respect to the application of the Deposit Institutions and Deposit Protection Act and the other laws applicable in Québec; and

(3) the items mentioned in paragraphs 1 and 2 are binding on the holder of the instrument representing the prescribed debt despite any terms of the prescribed debt, any other law governing the debt or any agreement, arrangement or understanding between the parties with respect to the debt.

6. The prospectus, information circular, other offering document or similar document related to a prescribed debt or a share, other than a qualifying share, issued by a deposit institution belonging to a cooperative group must, as applicable:

(1) expressly state that the share issued is subject to the powers of the Authority under the first paragraph of section 40.50 of the Deposit Institutions and Deposit Protection Act (chapter A-26) and set out a description of those powers; or

(2) expressly state that the prescribed debt issued is subject to the powers of the Authority under the second paragraph of that section and set out a description of those powers.

In addition to the information provided for in the first paragraph, such a document must include the following statement, by reproducing it in full or incorporating it by reference:

“Cancellation, Write-off and Conversion Measures

In the event of the resolution of a cooperative group, the Autorité des marchés financiers may exercise several powers, including those conferred upon it under section 40.50 of the Deposit Institutions and Deposit Protection Act (chapter A-26).

The Autorité des marchés financiers is responsible for resolution operations. In accordance with section 40.9 of that Act, the objective of such operations is to ensure the sustainability of a cooperative group's deposit institution activities despite its failure and without recourse to public funds.

Based on the circumstances and the situation, the Autorité des marchés financiers will use its best efforts, when it exercises the powers conferred upon it under section 40.50 of that Act, to ensure fair treatment among the holders of debts and shares referred to in that section. In this regard, measures such as the following may be implemented by the Autorité des marchés financiers, as applicable:

(1) respect the respective ranks of the debts and shares referred to in section 40.50 of the Deposit Institutions and Deposit Protection Act (chapter A-26) that are still in existence, which ranks may be determined as if the cooperative group were the subject of an amalgamation/winding-up in accordance with the provisions of Chapter XIII.1 of the Act respecting financial services cooperatives (chapter C-67.3);

(2) ensure that such debts and shares are treated on a pro rata basis when they are of the same rank;

(3) ensure that an instrument subject to the powers set out in section 40.50 of the Deposit Institutions and Deposit Protection Act (chapter A-26) is treated more advantageously than another instrument subject to those powers that is subordinated to it.”.

7. A deposit institution belonging to a cooperative group must not advertise or otherwise promote a prescribed debt, including in its name, as a deposit or any variation of that term.

CHAPTER III TRANSITIONAL AND FINAL PROVISIONS

8. This Regulation is to be read, for the period from 31 March 2019 to 12 June 2019, by making the following amendments:

(1) in section 1, by replacing, in the text preceding subparagraph 1, “deposit institution” by “registered institution”;

(2) in sections 1, 2 and 3, by replacing “Deposit Institutions and Deposit Protection Act” by “Deposit Insurance Act”;

(3) by replacing, in subparagraph 4 of section 3 and in subparagraph 1 of the second paragraph of section 4, “deposit institution” by “registered institution”;

(4) in section 5:

(a) by replacing, in the text preceding subparagraph 1, “deposit institution” by “registered institution”;

(b) by replacing, in subparagraphs 1 and 2, “Deposit Institutions and Deposit Protection Act” by “Deposit Insurance Act”;

(5) in section 6:

(a) by replacing, in the text preceding subparagraph 1, “deposit institution” by “registered institution”;

(b) by replacing, in subparagraph 1, “Deposit Institutions and Deposit Protection Act” by “Deposit Insurance Act”; and

(c) by replacing the statement set out in the second paragraph by the following:

“Cancellation, Write-off and Conversion Measures

In the event of the resolution of a cooperative group, the Autorité des marchés financiers may exercise several powers, including those conferred on it under section 40.50 of the Deposit Insurance Act (chapter A-26), the title of which will be amended to read Deposit Institutions and Deposit Protection Act (chapter A-26) as of 13 June 2019.

The Autorité des marchés financiers is responsible for resolution operations. In accordance with section 40.9 of that Act, the objective of such operations is to ensure the sustainability of a cooperative group’s deposit institution activities despite its failure and without recourse to public funds.

Based on the circumstances and the situation, the Autorité des marchés financiers will use its best efforts, when it exercises the powers conferred upon it under section 40.50 of that Act, to ensure fair treatment among the holders of debts and shares referred to in that section. In this regard, measures such as the following may be implemented by the Autorité des marchés financiers, as applicable:

(1) respect the respective ranks of the debts and shares referred to in section 40.50 of the Deposit Insurance Act (chapter A-26) that are still in existence, which ranks may be determined as if the cooperative group were the subject of an amalgamation/winding-up in accordance with the provisions of Chapter XIII.1 of the Act respecting financial services cooperatives (chapter C-67.3);

(2) ensure that such debts and shares are treated on a pro rata basis when they are of the same rank;

(3) ensure that an instrument subject to the powers set out in section 40.50 of the Deposit Insurance Act (chapter A-26) is treated more advantageously than another instrument subject to those powers that is subordinated to it.”;

(6) by replacing, in section 7, “deposit institution” by “registered institution”.

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