

## **Notice relating to the bail-in power set out in the second paragraph of section 40.50 of the *Deposit Insurance Act***

This notice clarifies the intention of the *Autorité des marchés financiers* (the “Authority”) with respect to the application of the second paragraph of section 40.50 of the *Deposit Insurance Act*, CQLR, chapter A-26 (“DIA”)<sup>1</sup> and the provisions of the Regulation respecting the classes of negotiable and transferable unsecured debts and the issuance of such debts and of shares (the “Regulation”).

### **Background**

In June 2013, the Authority designated Desjardins Group as a domestic systematically important financial institution (“D-SIFI”).<sup>2</sup> This designation gives rise to additional capital, liquidity, oversight and disclosure requirements.

*An Act mainly to improve the regulation of the financial sector, the protection of deposits of money and the operation of financial institutions*, S.Q. 2018, c. 23, which was passed on June 13, 2018, strengthens the mechanisms to intervene with a D-SIFI. Among other things, it introduces resolution powers, including a bail-in regime and an indemnification plan applicable to the Groupe coopératif Desjardins.<sup>3</sup>

Three regulations pertaining to resolution will come into force on March 31, 2019.<sup>4</sup> The regulations clarify the application of the bail-in power and indemnification plan.

The bail-in power is one of the powers that may be exercised as part of resolution operations. The actions resulting from the exercise of these powers will be set out in the resolution plan to be adopted by the resolution board (the “Board”).

### **Exercise of the bail-in power as part of resolution operations**

The bail-in power applicable to deposit institutions belonging to the Groupe coopératif Desjardins is set out in section 40.50 of the DIA. Its purpose is to have holders of contributed capital securities and creditors absorb the losses of the Groupe coopératif Desjardins, thereby minimizing taxpayer exposure to those losses.

The bail-in power, like the other resolution powers, would become operative when the Board orders the implementation of resolution operations. The Board’s order will designate the Authority as the receiver for all legal persons belonging to the Groupe coopératif Desjardins.

Outlined below are some of the actions involving the bail-in power that the Authority plans to propose to the Board for approval.

The Authority plans to convert negotiable and transferable unsecured debts (the “prescribed debts”) in accordance with the conversion measures set out in the Regulation and described

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1 As of June 13, 2019, the *Deposit Insurance Act* will become the *Deposit Institutions and Deposit Protection Act*.

2 Notice related to designation of Desjardins Group as a domestic systemically important financial institution. [https://lautorite.qc.ca/fileadmin/lautorite/reglementation/assurances-inst-depot/avis-ifis-d-cg\\_desjardins\\_a.pdf](https://lautorite.qc.ca/fileadmin/lautorite/reglementation/assurances-inst-depot/avis-ifis-d-cg_desjardins_a.pdf).

3 The Groupe coopératif Desjardins consists of all the financial services cooperatives forming a network, the Desjardins security fund and the Fédération des caisses Desjardins du Québec (*Act respecting financial services cooperatives*, CQLR, chapter C-67.3, s. 6.2).

4 These regulations are in addition to a new total loss absorbing capacity guideline.

hereinafter.<sup>5</sup> The conversion of the prescribed debts will give rise to the issuance of new capital shares. The Authority plans to propose that the prescribed debts be converted into capital of the Fédération des caisses Desjardins du Québec.<sup>6</sup>

The Authority would then carry out an amalgamation/continuance operation. The purpose of the operation will be to amalgamate the entities belonging to the Groupe coopératif Desjardins and have them continued as one Québec savings company.<sup>7</sup> This operation will result in the shares issued by the amalgamating entities being converted into common shares of the savings company.

Upon closure of the Board's resolution operations, the Authority will determine whether the persons referred to in the Regulation respecting the indemnification plan applicable pursuant to certain resolution operations are entitled to an indemnity. The purpose of this plan is to protect the persons affected by the resolution operations.

### **Conversion measures**

Based on the circumstances and the situation, the Authority will use its best efforts, when it exercises the powers conferred upon it under section 40.50 of the DIA, to ensure fair treatment among the holders of debts and shares referred to in that section. In this regard, the Authority will apply the following measures, as applicable, in accordance with the provisions of Chapter II of the Regulation:

- (1) respect the respective ranks of the debts and shares referred to in section 40.50 of the DIA 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 the Chapter XIII.1 of the *Act respecting financial cooperatives* (CQLR, c. 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 DIA is treated more advantageously than another instrument subject to those powers that is subordinated to it.

For additional information, please contact:

Nicolas Ricard  
Analyst, Resolution and Deposit Insurance  
Autorité des marchés financiers  
Telephone: (418) 525-0337, ext. 4677  
Toll-free: 1-877-525-0337  
E-mail: [nicolas.ricard@lautorite.qc.ca](mailto:nicolas.ricard@lautorite.qc.ca)

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<sup>5</sup> When the prescribed debts are converted, the non-viability contingent capital securities will have previously been converted in accordance with their terms and conditions.

<sup>6</sup> Under the DIA, the prescribed debts can also be converted into capital of the deposit institution that issued them, another institution belonging to the Groupe coopératif Desjardins or a legal person constituted or resulting from an amalgamation/continuance or other conversion carried out for the purpose of the resolution.

<sup>7</sup> Business corporation subject to the provisions of Title III of the *Trust Companies and Savings Companies Act*, CQLR, chapter S-29.01.