

## **Notice relating to the application of the Regulation respecting the application of the Deposit Institutions and Deposit Protection Act**

This notice is for authorized deposit institutions<sup>1</sup> and explains how the Autorité des marchés financiers (the “Authority” or the “AMF”) intends to apply certain provisions of the Regulation respecting the application of the Deposit Institutions and Deposit Protection Act (the “Regulation”), CQLR, c. I-13.2.2, r. 1. The Regulation was amended to reflect changes in deposit activities and technology and to provide a Québec deposit protection plan harmonized with the federal plan. With certain exceptions, the amendments made to the Regulation became effective on April 30, 2020.

### **1. Place of an electronic deposit**

The place of deposit is used to determine that a deposit was made or is payable in Québec, which is one of the conditions for deposit protection from the AMF.<sup>2</sup>

Specifically, a deposit of money made by technological means (including through a website, mobile application and automated teller machine) is deemed to be made at the place of business of the institution, branch or agent of the institution that received the funds. The place of business may be:

- the place of business where the depositor has opened an account or regularly transacts business in person;
- the principal establishment of the institution when the relationship with the depositor is conducted exclusively by electronic or other technological means;
- the location where the obligation to repay the depositor is evidenced in the accounting books.

If, for example, an authorized deposit institution has a single establishment in Québec (in Gatineau) and operates an automated teller machine in Ontario (in Ottawa), deposits made via the automated teller machine in Ontario will nonetheless be considered to be made in Québec. If the institution also allows its clients to make deposits via a mobile application, then the place of deposit will be Québec even if the depositor resides and makes the deposit in the United States.

The fact that a deposit is made via an institution’s website operated by a service provider based outside Québec or hosted on technological infrastructure outside Québec does not make it a deposit received at the place of the service provider or technological infrastructure.

### **2. Separate categories of deposits**

Deposits are protected by the AMF up to a maximum of \$100,000 per authorized deposit institution, with separate protection provided for each category of deposits. In addition to personal deposits in non-registered accounts, the categories, effective April 30, 2020, are deposits made in or under the following:

- registered retirement savings plan (“RRSP”), including a locked-in retirement account (“LIRA”)
- registered retirement income fund (“RRIF”), including a life income fund (“LIF”)

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<sup>1</sup> Prior to April 30, 2020, the Regulation was entitled Regulation respecting the application of the Deposit Insurance Act.

<sup>2</sup> Section 33.1, *Deposit Institutions and Deposit Protection Act*, CQLR, c. I-13.2.2.

- tax-free savings account (“TFSA”)
- trust or form of administration of the property of others
- co-ownership, held jointly with the same persons
- amounts set aside for the payment of property taxes

On April 30, 2021, deposits for the payment of property taxes will be removed and the following ones added:

- Registered disability savings plan (“RDSP”)
- Registered education savings plan (“RESP”)

#### Deposits under an RDSP

A person’s deposits in more than one account of the same category are aggregated for the purposes of calculating the protected deposits. For deposits under an RDSP, only one person is the beneficiary of the plan. All of that person’s deposits under the RDSP must therefore be combined and protected for a total of up to \$100,000 for that category. The fact that some of these deposits are held in a trust or administered by others does not qualify them for another separate protection. For example, a person who has three \$50,000 term deposits under an RDSP will be protected up to a maximum of \$100,000 for the RDSP category even if one of the term deposits is administered by others.

#### Deposits under an RESP

For deposits under an RESP, more than one beneficiary (e.g., the children who will be pursuing a post-secondary education) may be designated to receive the amounts under the plan. All deposits under the same RESP are combined and protected for a total of up to \$100,000 per beneficiary. For example, if a mother opened a family RESP for her three children and makes deposits under it totalling \$150,000, each child will be entitled to \$50,000 for their education. AMF protection will therefore amount to \$150,000. If the father also opened an individual RESP for the eldest of the three children and deposits a total of \$60,000, then the \$60,000 will be protected because it is under a different plan.

#### Deposits in a trust or administered by others

The Regulation clarifies that deposits in a trust or administered by others are separate from the other deposits that the trustee or administrator of the property of others may make with the institution on his or her own behalf. More than one beneficiary may be designated to receive the amounts held in the trust or under the form of administration of the property of others. In such a case, all the deposits in the same trust or under the same form of administration are aggregated and protected for a total of up to \$100,000 per beneficiary. For example, if a trust company manages a \$300,000 family trust for three beneficiaries and each beneficiary is entitled to an equal share, the AMF protection will be \$300,000. If one of the three beneficiaries is also a beneficiary of a \$25,000 estate trust managed by the same institution, then the \$25,000 will be protected separately, because the two trusts are separate.

However, forms of administration of the property of others that are not instituted in connection with the operation of an enterprise, except for the administration of trusts or liquidations, do not entitle the person whose property is administered to separate protection. These include management under a power of attorney or a mandate in anticipation of incapacity (protection mandate) and incidental management by a private individual of amounts belonging to others. For example, a person with a \$100,000 personal chequing account who entrusts management of an additional \$50,000 deposit to a relative will be protected for only \$100,000. The mere fact that a person entrusts management of a deposit to someone else does not result in additional protection for that person. For that to happen, management of the

funds must be entrusted to a person who manages an enterprise (e.g., a notary or fund manager) or to a trust or succession. In this example, if the person is also the beneficiary of a succession for an amount of \$25,000, then the amount protected will be \$125,000.

### **3. Records of the institution**

Under the Regulation, the deposit protection and premium calculation are based on information contained in the records of the deposit institution. For the purposes of the Regulation, the AMF considers records to be a compilation of information (on traditional or digital media) in the deposit institution's books, databases or computer systems that is required to carry on its deposit institution activities. To be able to consider the information as information in its records, the institution must have extracted it and compiled it with other similar information.

For example, if an institution obtained a copy of a trust deed when a \$200,000 account was opened, but the beneficiaries were not entered in its systems, then the institution may consider the information to not be in its records. Therefore, the institution may enter an amount of \$100,000 in protected deposits in its declaration of guaranteed deposits as at April 30 and when calculating its premium.

### **4. Obligation to inform depositors about deposit protection**

The AMF recognizes the key role played by deposit institutions in providing depositors with information and advertising on deposit products and AMF deposit protection. In order to make informed decisions, depositors must be given accurate information and be notified that they are protected or not in the event their institution goes bankrupt. Making depositors aware of deposit protection helps to maintain confidence in, and the stability of, the financial sector. For these reasons, among others, the Regulation updates certain obligations for institutions and sets out new ones.

#### Effective of April 30, 2020

The obligation to inform depositors is reinforced by additional provisions clarifying that any disclosure document or advertising must be clear, specific and not misleading. From now on, before a depositor opens an account and purchases a deposit product, the institution must provide him or her with a description of the deposit protection provided by the AMF covering, in particular, the key features of the protection. The institution will determine how to best meet this obligation, but one way it can do this is by providing depositors with the AMF's deposit protection brochure and referring them to the AMF's website.

It is the AMF's view that institutions should inform depositors, including about eligible and non-eligible deposits, the deposit categories entitling depositors to separate protection, and the amounts protected in such cases. In special situations affecting depositors' protection, such as an amalgamation of institutions, the AMF also expects institutions to explain to the affected depositors what the impact is on their protection.

Where a product offered is similar in nature to a deposit or could give rise to confusion, institutions must also clearly inform consumers of this fact by, among other things, indicating that the product is not a deposit of money eligible for the deposit protection provided by the AMF. The institution may use a statement similar to the following: "The funds of which receipt is evidenced by this document do not constitute a deposit of money within the meaning of the *Deposit Institutions and Deposit Protection Act*."

Authorized deposit institutions must display the official logo in a conspicuous place at the entrance to and inside their establishments to let the public know that the institutions are authorized by the AMF and their deposits are protected. The AMF does not expect the official logo to be displayed at the place of business of an agent of the institution if it could cause confusion as to which deposit institution is authorized by the AMF. For example, if an authorized deposit institution offers its deposit products through agents operating in the branches of a bank, then the official AMF logo should not be displayed

in those branches so as to ensure that the public does not mistake the bank for a deposit institution authorized by the AMF.

#### Effective April 30, 2021

In order to reflect depositor habits with respect to new technology, the Regulation introduces new digital display requirements for deposits solicited and received through technological means.

The AMF expects institutions to display the official logo as early as possible in the sequence of actions leading up to the taking of a deposit through technological means. Moreover, the place chosen to display the official logo should not mislead depositors regarding the deposit institution that is authorized and the product that is protected by the AMF.

For example, if a financial group has only one website for all its member institutions and only some members are deposit institutions authorized by the AMF, then the official logo should be displayed on a web page related to the authorized deposit institution, not on the page of the financial group, as it must be clear to the consumer which of the financial group's institutions are authorized deposit institutions.

Authorized deposit institutions have until April 30, 2021 to make the necessary adjustments to their websites, applications and other digital means.

### **5. Federally chartered authorized deposit institutions**

All deposit institutions, except banks, must obtain the AMF's authorization in order to solicit or receive deposits of money from the public in Québec. Federally chartered authorized deposit institutions are also members of the Canada Deposit Insurance Corporation ("CDIC"), which offers a deposit protection plan similar to that of the AMF.

In order to avoid duplication in deposit protection, the agreement reached in 1969 between the Régie de l'assurance-dépôts du Québec<sup>3</sup> (Québec Deposit Insurance Board) and the CDIC requires the CDIC to repay protected deposits made with federally chartered authorized deposit institutions if they fail. As a result, these institutions submit their declarations of guaranteed deposits to both the AMF and the CDIC but only pay premiums to the CDIC (in accordance with CDIC regulations made for this purpose).

Federally chartered authorized deposit institutions must comply with CDIC regulatory obligations, which are equivalent to those of the AMF, and are therefore considered to comply with the Regulation with regard to:

- the requirements to inform depositors about deposit protection (in particular, they are not required to display the official AMF logo)
- the data requirements for deposit repayment purposes (among other things, they are not subject to compliance testing by the AMF.)

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<sup>3</sup> On February 1, 2004, the Régie de l'assurance-dépôts du Québec was integrated into the Autorité des marchés financiers.

## **Additional Information**

Additional information may be obtained by contacting:

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Direction de la résolution et de l'assurance-dépôts  
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**April 30, 2020**