

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)

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 trades on an options or a futures exchange or market or on any other regulated market;

(2) a derivative 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 securities intermediary within the meaning of section 8 of the Act respecting the transfer of securities and the establishment of security entitlements (chapter T-11.002);

(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, a “derivative” means a derivative within the meaning of the Derivatives Act (chapter I-14.01).

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; and

(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;

(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’s order to implement the 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;

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) the bringing of any proceedings 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:

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

(b) 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

(c) as a remedy for a failure described in subparagraph 1.

For the purposes of subparagraph 3 of the first paragraph, a measure in respect of a financial guarantee includes:

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

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

5. Except for a reason referred to in the second or third subparagraph, 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, other than a measure set out in subparagraph 3 of the first paragraph of section 4.

Except as otherwise provided in this Regulation, a measure referred to in the first paragraph may be taken only for one or more of the following reasons:

(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 the 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 this 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; or

(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 shall 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.

In addition, for any such measure to be taken in respect of such protected financial contract, for the reasons referred to in subparagraph 2 of the first paragraph of section 40.17 of the Deposit Institutions and Deposit Protection Act, the time limit of 60 days stipulated therein shall start to run again for the same period as of the time the contract is assumed or the time the eligible legal person or the eligible acquirer becomes a party to the contract, as the case may be.

6. The Autorité des marchés financiers shall, 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 of the resolution board's order to implement the 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 not 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 financial contract, the Authority must also transfer all the protected financial contracts entered into with the same counterparty to the same eligible acquirer or the same eligible legal person.

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

CHAPTER III TRANSITIONAL AND FINAL PROVISIONS

12. 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) "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 third 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 the 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 (*insert here the date of coming into force of the Regulation*).