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)

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

CHAPTER I
PRESCRIBED DEBTS

1. A prescribed 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 by a deposit institution belonging to a cooperative group that, at the time of issuance, 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 issuance 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; and

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

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, if applicable, 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 immediately before the resolution board’s order to implement the resolution operations is made under section 40.12 of the Deposit Institutions and Deposit Protection Act (chapter A-26) or if it becomes due after that time;

(3) in subparagraph 2, “non-viability contingent capital security” means any subordinated security 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 capital stock 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, 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 in part 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 on the debt obligation 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 instrument representing the debt that:

(1) the holder 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, by 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 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 subparagraphs 1 and 2 are binding on the holder 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:

"Measures for Cancellation, Writing Off and Conversion

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

The Authority 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 Authority will do its best, 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 applied if necessary by the Authority:

(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 the Chapter XIII.1 of the Act respecting financial services cooperatives (chapter C-67.3).

(2) ensure that the 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, between the date it comes into force and 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) in section 4, by replacing, in subparagraph 1 of the second paragraph, “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:

“<u>Measures for Cancellation, Writing Off and Conversion</u>

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 as of 13 June 2019.

The Authority 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 Authority will do its best, 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 applied if necessary by the Authority:

(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 the Chapter XIII.1 of the Act respecting financial services cooperatives (chapter C-67.3).

(2) ensure that the 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.”

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

9. This Regulation comes into force on (*insert here the date of coming into force of the Regulation*).