

## CSA Staff Notice 46-309

### *Bail-in Debt*

August 23, 2018

#### Introduction

This notice summarizes the views of Canadian Securities Administrators (CSA) staff related to the distribution or other trading of bail-in debt to investors.

#### Background

On June 22, 2016, federal amendments to the *Bank Act* and the *Canada Deposit Insurance Corporation Act* that implement a bail-in regime for Canada's domestic systemically important banks (D-SIBs) received Royal Assent.<sup>1</sup> The Office of the Superintendent of Financial Institutions (OSFI) has declared the six largest domestic Canadian banks<sup>2</sup> as D-SIBs. If OSFI is of the opinion that a D-SIB has ceased, or is about to cease, to be viable, the Canada Deposit Insurance Corporation may, in certain circumstances, take temporary control of the D-SIB and convert all or a portion of the D-SIB's bail-in debt (**D-SIB Bail-in Debt**) into common shares.

The details of D-SIB Bail-in Debt are set out in regulations under the *Bank Act* and the *Canada Deposit Insurance Corporation Act* that were adopted by the federal government on March 26, 2018, and will come into force on September 23, 2018 (**Regulations**).<sup>3</sup> Under the Regulations, D-SIB Bail-in Debt generally includes all unsubordinated unsecured debt of a D-SIB that is tradeable and transferable with an original term to maturity of over 400 days. Explicit exclusions from the bail-in regime are provided for covered bonds, derivatives and certain structured notes.<sup>4</sup> The Regulations also include certain disclosure and naming requirements in respect of the D-SIB Bail-in Debt.

In 2013, the Autorité des marchés financiers (AMF) designated the Desjardins Group as a domestic systemically important financial institution.

On July 13, 2018, amendments to the *Deposit Insurance Act* (Québec) came into force, which established a bail-in regime that applies to the Desjardins Group. Subject to the upcoming adoption of implementing regulations, the Desjardins Group will be subject to a bail-in regime that is similar to the one applicable to D-SIBs.

---

<sup>1</sup> *Budget Implementation Act, 2016 No. 1* (Bill C-15).

<sup>2</sup> As of the date of this Notice, the D-SIBs are Canadian Imperial Bank of Commerce, Bank of Montreal, National Bank of Canada, The Bank of Nova Scotia, Royal Bank of Canada and The Toronto-Dominion Bank.

<sup>3</sup> Bank Recapitalization (Bail-in) Conversion Regulations: SOR/2018-57; Bank Recapitalization (Bail-in) Issuance Regulations: SOR/2018-58.

<sup>4</sup> The constituents of D-SIB Bail-in Debt are prescribed in the Regulations.

In this notice, D-SIB Bail-in Debt together with securities subject to the bail-in regime under Québec legislation are referred to as “Bail-in Debt”.

### **Regulation of Bail-in Debt**

The introduction of the D-SIB bail-in regime is not retroactive. D-SIB debt issued before the effective date of the Regulations would not be subject to bail-in, unless an instrument issued before September 23, 2018 is amended on or after that day to increase its principal amount or extend its term to maturity. This means that a D-SIB with outstanding unsubordinated debt securities issued both before and after September 23, 2018 would have multiple types of “unsubordinated debt” that would carry different levels of risk of loss.

CSA staff are of the view that:

- there is an important distinction between holding Bail-in Debt compared to non-Bail-in Debt in terms of investment risk;
- compliance with know-your-client (or KYC), know-your-product (or KYP) and suitability requirements under *Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registration Requirements (Regulation 31-103)* is a critical aspect of investor protection; and
- the risks of owning D-SIB Bail-in Debt include the risk that a determination of non-viability of a D-SIB by federal authorities could lead to the conversion of all or a portion of a D-SIB's Bail-in Debt into common shares.

### **CSA staff position**

If CSA staff become aware of any distributions or trades of Bail-in Debt by persons in the business of trading in securities that are being made to investors located in Canada that are not being made either: (i) by or through a registered dealer (in accordance with investor protection requirements applicable to that registered dealer under Regulation 31-103); or (ii) in compliance with the international dealer registration exemption in section 8.18 of Regulation 31-103, CSA staff will consider whether regulatory action is appropriate. This would include seeking a cease-trade order in respect of the Bail-in Debt, where warranted.

### **Questions**

Please refer your questions to any of the following:

Alexandra Lee  
Senior Policy Advisor  
Autorité des marchés financiers  
514 395-0337, extension 4465  
[Alexandra.Lee@lautorite.qc.ca](mailto:Alexandra.Lee@lautorite.qc.ca)

Marc-Olivier St-Jacques  
Senior Policy Advisor  
Autorité des marchés financiers  
514 395-0337, extension 4424  
[marco.st-jacques@lautorite.qc.ca](mailto:marco.st-jacques@lautorite.qc.ca)

Megan Quek  
Senior Legal Counsel  
British Columbia Securities Commission  
604 899-6500  
[MQuek@bcsc.bc.ca](mailto:MQuek@bcsc.bc.ca)

Navdeep Gill  
Manager, Registration  
Alberta Securities Commission  
403 355-9043  
[Navdeep.Gill@asc.ca](mailto:Navdeep.Gill@asc.ca)

Chris Besko  
Director, General Counsel  
The Manitoba Securities Commission  
204 945-2561  
toll free: 1-800-655-5244 (MB only)  
[Chris.Besko@gov.mb.ca](mailto:Chris.Besko@gov.mb.ca)

Michael Tang  
Senior Legal Counsel  
Ontario Securities Commission  
416 593-2330  
[mtang@osc.gov.on.ca](mailto:mtang@osc.gov.on.ca)

Susan W. Powell  
Deputy Director, Policy  
Financial and Consumer Services  
Commission  
(New Brunswick)  
506 643-7697  
[susan.powell@fcnb.ca](mailto:susan.powell@fcnb.ca)

Craig Whalen  
Manager of Licensing, Registration and  
Compliance  
Government of Newfoundland and Labrador  
709 729-5661  
[cwhalen@gov.nl.ca](mailto:cwhalen@gov.nl.ca)

Thomas Hall  
Superintendent of Securities  
Government of Northwest Territories  
867 767-9305  
[securitiesregistry@gov.nt.ca](mailto:securitiesregistry@gov.nt.ca)

Eric Thong  
Derivatives Market Specialist  
British Columbia Securities Commission  
604 899-6772  
[ETHong@bcsc.bc.ca](mailto:ETHong@bcsc.bc.ca)

Sonne Udemgba  
Deputy Director, Legal, Securities Division  
Financial and Consumer Affairs Authority of  
Saskatchewan  
306 787-5879  
[sonne.udemgba@gov.sk.ca](mailto:sonne.udemgba@gov.sk.ca)

Rhonda Horte  
Securities Officer  
Government of Yukon  
887 667-5466  
[rhonda.horte@gov.yk.ca](mailto:rhonda.horte@gov.yk.ca)

Robert F. Kohl  
Senior Legal Counsel  
Ontario Securities Commission  
416 593-8233  
[rkohl@osc.gov.on.ca](mailto:rkohl@osc.gov.on.ca)

H. Jane Anderson,  
Acting Executive Director, Director of Policy  
and Market Regulation and Secretary to the  
Commission  
Nova Scotia Securities Commission  
902 424-0179  
[Jane.Anderson@novascotia.ca](mailto:Jane.Anderson@novascotia.ca)

Jeff Mason  
Superintendent of Securities  
Government of Nunavut  
867 975-6591  
[jmason@gov.nu.ca](mailto:jmason@gov.nu.ca)

Curtis Toombs  
Solicitor  
Government of Prince Edward Island  
902 620-3008  
[catoombs@gov.pe.ca](mailto:catoombs@gov.pe.ca)