CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

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.[1] The Office of the Superintendent of Financial Institutions (**OSFI**) has declared the six largest domestic Canadian banks[2] 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**).[3] 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.[4] 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.

---

[1] *Budget Implementation Act, 2016 No. 1* (Bill C-15).

[2] 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.

[3] Bank Recapitalization (Bail-in) Conversion Regulations: SOR/2018-57; Bank Recapitalization (Bail-in) Issuance Regulations: SOR/2018-58.

[4] 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 National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registration Requirements* (**NI 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 or companies 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 NI 31-103); or (ii) in compliance with the international dealer registration exemption in section 8.18 of NI 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:

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

Eric Thong
Derivatives Market Specialist
British Columbia Securities Commission
(604) 899-6772
EThong@bcsc.bc.ca

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

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

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

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

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

Alexandra Lee
Senior Policy Advisor
Autorité des marchés financiers
(514) 395-0337, extension 4465
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

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

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

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

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

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