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COOPERATIVE CREDIT ASSOCIATIONS ACT BANK ACT TRUST AND LOAN COMPANIES ACT

Deposit Type Instruments Regulations

P.C. 2011-508 March 25, 2011

His Excellency the Governor General in Council, on the recommendation of the Minister of Finance, pursuant to sections 458.3 ([see footnote a](#)), 459.4 ([see footnote b](#)), 575.1 ([see footnote c](#)) and 576.2 ([see footnote d](#)) of the *Bank Act* ([see footnote e](#)), sections 385.252 ([see footnote f](#)) and 385.28 ([see footnote g](#)) of the *Cooperative Credit Associations Act* ([see footnote h](#)) and sections 443.2 ([see footnote i](#)) and 444.3 ([see footnote j](#)) of the *Trust and Loan Companies Act* ([see footnote k](#)), hereby makes the annexed *Deposit Type Instruments Regulations*.

DEPOSIT TYPE INSTRUMENTS REGULATIONS

INTERPRETATION

Definitions

1. The following definitions apply in these Regulations.

“business day” « *jour ouvrable* »

“business day” means a day other than Saturday or a holiday.

“deposit type instrument” « *instrument de type dépôt* »

“deposit type instrument” means a product that is issued in Canada by an institution, that is related to a deposit and that specifies a fixed investment period and

(a) a fixed rate of interest; or

(b) a variable rate of interest that is calculated on the basis of the institution’s prime lending rate or bankers’ acceptance rate.

“institution” « *institution* »

“institution” means

(a) a bank, as defined in section 2 of the *Bank Act*;

(b) an authorized foreign bank, as defined in section 2 of the *Bank Act*;

(c) a retail association, as defined in section 2 of the *Cooperative Credit Associations Act*;
or

(d) a company, as defined in section 2 of the *Trust and Loan Companies Act*.

“interest” « *intérêt* »

“interest”, in relation to a deposit type instrument, includes any return payable under the instrument by an institution in respect of the deposit.

MANNER OF DISCLOSURE

Clear and simple language

2. Any disclosure that is required to be made by an institution under these Regulations must be made in language, and presented in a manner, that is clear, simple and not misleading.

DISCLOSURE IN RESPECT OF THE ISSUANCE OF A DEPOSIT TYPE INSTRUMENT

Information to be disclosed

3. (1) At or before the time an institution enters into an agreement with a person for the issuance of a deposit type instrument, the institution must disclose the following information to the person, orally and in writing:

(a) the annual rate of interest in respect of the instrument, if the rate of interest is fixed;

(b) if the rate of interest is variable,

(i) how the rate of interest is determined,

(ii) the prime lending rate or the bankers' acceptance rate, as the case may be, that is used for the calculation of the rate of interest,

(iii) the prime lending rate or the banker's acceptance rate in effect when the information is disclosed, and

(iv) how the person may obtain the rate of interest from the institution during the investment period;

(c) any charges in respect of the instrument;

(d) when interest is calculated and paid under the instrument;

(e) the dates on which the investment period specified in the instrument begins and ends;

(f) whether the instrument may be redeemed prior to maturity and, if so, the effect of early redemption on the interest payable;

(g) if the agreement provides that the issuance of the instrument may be cancelled within a specified period, the duration of the period;

(h) if the agreement provides that after the maturity of the instrument a new instrument may be issued to the person without a further agreement being entered into, the fact that a new instrument may be issued without a further agreement, the conditions under which

a new instrument may be issued without a further agreement and

(i) whether its rate of interest is fixed or variable, and the rate or method for determining the rate,

(ii) its investment period, and

(iii) any charges related to its issuance or the cancellation of its issuance; and

(j) if the instrument relates to a deposit that is not eligible for deposit insurance coverage by the Canada Deposit Insurance Corporation, the fact that it is not eligible.

Exception: agreements entered into by telephone

(2) In the case of an agreement for the issuance of a deposit type instrument that is entered into by telephone, the institution is not required to provide the disclosure referred to in subsection (1) in writing on or before entering into the agreement. However, the institution must provide the written disclosure without delay after entering into the agreement.

Exception: agreements entered into by electronic means or by mail

(3) In the case of an agreement for the issuance of a deposit type instrument that is entered into by electronic means or by mail, the institution is not required to provide the disclosure referred to in subsection (1) orally. However, before entering into the agreement the institution must disclose, in addition to the written disclosure referred to in subsection (1), the telephone number of a person who is knowledgeable about the terms and conditions of the instrument.

New instruments issued without further agreement

(4) If a new instrument is issued to a person pursuant to an agreement referred to in paragraph (1)(h), the institution must disclose in writing the information concerning the instrument referred to in subsection (1) to the person without delay after the instrument is issued.

Calculation of time — disclosure by mail

4. An institution that provides the written disclosure referred to in section 3 by mail is considered to have provided the disclosure five business days after the postmark date.

SUBSEQUENT DISCLOSURE

Information — amendments

5. Before making an amendment to any terms or conditions of a deposit type instrument, the institution must disclose the amendment, and its potential impact on the interest payable, in writing to the person to whom the instrument was issued.

Information — current value

6. An institution that issues a deposit type instrument must, if requested by the person to whom it is issued, disclose to the person without delay the amount of the principal and accrued interest on the day the request was made.

Information — redemption before maturity

7. An institution that redeems a deposit type instrument before the end of the investment period

must, before redeeming the instrument, disclose to the person to whom the instrument was issued the amount of the principal and accrued interest, any penalty or charge for the redemption and the net amount payable by the institution on redemption.

ADVERTISEMENTS

Required content — all advertisements

8. (1) In each of its advertisements for deposit type instruments, an institution must disclose how the public may obtain information about the instruments.

Required content — advertisements referring to an instrument's features or interest payable

(2) In each of its advertisements for deposit type instruments that refer to features of deposit type instruments or the interest payable under them, an institution must also disclose

(a) the manner in which interest is to be accrued and any limitations in respect of the interest payable; and

(b) if the instruments relate to deposits that are not eligible for deposit insurance coverage by the Canada Deposit Insurance Corporation, the fact that they are not eligible.

Exception

(3) Paragraph (2)(b) does not apply to an institution to which subsection 413.1(2) or 545(5) of the *Bank Act*, subsection 378.2(2) of the *Cooperative Credit Associations Act* or subsection 413.1(2) of the *Trust and Loan Companies Act* applies.

CANCELLATION PERIODS FOR CERTAIN INSTRUMENTS

New instruments issued without further agreement

9. An institution must allow a person to whom a new instrument is issued pursuant to an agreement referred to in paragraph 3(1)(h) to cancel the issuance of the instrument within at least 10 business days after the day of its issuance.

CONSEQUENTIAL AMENDMENT

10. The definition “principal protected note” in section 1 of the *Principal Protected Notes Regulations* ([see footnote 1](#)) is amended by adding the following after paragraph (b):

A principal protected note does not include a financial instrument that specifies that the interest or return on the instrument is solely determined on the basis of a fixed rate of interest or return or a variable rate of interest or return that is calculated from the institution's prime lending rate or bankers' acceptance rate.

COMING INTO FORCE

November 1, 2011

11. These Regulations come into force on November 1, 2011.

REGULATORY IMPACT ANALYSIS STATEMENT

(This statement is not part of the regulations.)

Issue and objectives

The Government of Canada is responsible for ensuring that the regulatory framework governing the financial services sector in Canada allows participants to operate as efficiently and effectively as possible in serving consumers and businesses, while maintaining the safety and soundness of the sector. The financial institutions statutes are subject to a regular five-year review, which represents an important tool in meeting these responsibilities.

In June 2006, the Government issued a policy paper entitled *2006 Financial Institutions Legislation Review: Proposals for an Effective and Efficient Financial Services Framework*. Following consultations on this paper, legislation was introduced on November 27, 2006. On March 29, 2007, Bill C-37, *An Act to amend the law governing financial institutions and to provide for related and consequential matters* (the Act) received Royal Assent.

On April 20, 2007, provisions of the Act that did not require regulations came into force. The implementation of the remaining provisions of the Act requires regulations. This is one of several packages of regulations that are being brought forward to implement the policy intent of the Act.

Description and rationale

All of the regulations, discussed below, are consistent with the Government's policy to enhance the interests of consumers, increase legislative and regulatory efficiency, and adapt the framework to new developments.

Deposit Type Instrument Regulations

There are a number of disclosure requirements that federally regulated financial institutions must follow when a customer opens an account. These requirements can be found in a number of regulations including the *Disclosure of Charges Regulations* and the *Disclosure of Interest Regulations*. However, while deposit accounts (e.g. savings or chequing accounts) and deposit type instruments (e.g. guaranteed investment certificates [GICs] and term deposits) do share some basic characteristics such as generating savings from a rate of interest; there are several important differences that are not currently addressed under the disclosure regime related to deposit accounts or that render several existing disclosure requirements irrelevant or inappropriate. For example, unlike deposit accounts, GICs may be subject to variable interest rates and invested for a definite period of time.

The *Deposit Type Instrument Regulations* ensure that consumers receive appropriate disclosure, which is specific to the type of product they are purchasing (i.e. deposit type instruments).

The Regulations define deposit type instruments to be a product with a fixed investment period and a fixed rate of interest or a variable rate of interest that is based on a financial institution's prime lending rate or bankers' acceptance rate. The Regulations also specify the content, manner and timing of disclosure that federally regulated deposit-taking institutions are required to provide at the point of sale for various sales channels (e.g. in-person, by telephone, by mail and on-line). For example, the Regulations describe the information that must be disclosed to customers, such as the interest rate and the fees, before buying the GIC or the term deposit; specify that institutions make available, and provide on request, information to aid consumers in monitoring their investment; and set out requirements for advertising these products (e.g. disclose how to obtain more information and the manner in which interest is to be accrued).

The Regulations set out a more outcome-based direction in incorporating a mix of principles and specific requirements. For example, one of the desired outcomes is to ensure that buyers of GICs and term deposits receive all the necessary information when buying these fixed-income investments regardless of the sales channels. The Regulations provide institutions with flexibility to tailor their disclosures to the sales channel while providing consumers with the information they need to understand specific products.

Registered Products Regulations

Federally regulated deposit-taking institutions must disclose all charges applicable to a deposit account and provide notice of increases in these charges. This provides customers with essential information to assist them in managing their deposit accounts. In some cases, financial institutions charge fees related to registered plans (e.g. Registered Retirement Savings Plans [RRSPs] and Registered Education Savings Plans [RESPs]). While some financial institutions have argued that these fees do not need to be disclosed because they are applicable to registered plans and not to deposit accounts, it is important that customers be provided the same level of transparency for registered plans as for deposit accounts.

The Act amended the financial institutions statutes to require the disclosure of fees in respect of registered plans offered by federally regulated deposit-taking institutions. The *Registered Products Regulations* define the type of registered products covered (e.g. registered retirement savings plans, registered education savings plans and tax free savings accounts) and specify that disclosed information must be provided in a language and manner that is clear and simple, and not misleading. The Regulations also specify the timing of disclosure in relation to various sales channels (e.g. in-person, by telephone, by mail and on-line). For example, the Regulations indicate that, for accounts opened over the telephone, information provided orally must be provided in writing without delay. The disclosure requirements in the Regulations do not apply to investments within the registered product as separate disclosure requirements apply to these investment products. Therefore, should a GIC be added to an existing registered retirement savings plan, the disclosure requirements in relation to the GIC would be triggered by other regulations such as those found under the *Deposit Type Instrument Regulations*.

In addition, the Regulations set out disclosure requirements when making changes to registered products (e.g. amendments must be disclosed in advance). They also require that a list of fees applicable to these products be publicly available. To clarify the requirements and avoid duplication, the Regulations outline the circumstances under which disclosure does not need to be provided. For example, when adding a GIC to an existing registered retirement savings plan, disclosure about the plan does not need to be provided again if it has already been provided.

Prescribed Products Regulations

The Regulations are technical in nature and define “prescribed products” for the purposes of the financial institution statutes. Prescribed products are considered to be either deposit type instruments, as defined in the *Deposit Type Instrument Regulations* (i.e. a product with a fixed investment period and a fixed rate of interest or a variable rate of interest that is based on a financial institution’s prime lending rate or bankers’ acceptance rate); or principal protected notes, as defined in the *Principal Protected Notes Regulations* (i.e. a financial instrument that provides for payments to be made by the institution that is determined by reference to an index or reference point and provides that the principal amount that the institution is obligated to repay at or before the note’s maturity is equal to or more than the total paid by the investor for the note).

Consultation

In response to the consultation process leading to the development of the Act, the Government received comments from about thirty stakeholders — industry associations, consumer groups, individual Canadians and other groups — on the implementation of the proposed framework.

Overall, the comments were supportive of the proposals.

After pre-publication of these Regulations on June 12, 2010, in the *Canada Gazette*, Part I, comments related to 24 issues were received from stakeholders of the financial industry. No comments were received on the *Prescribed Products Regulations*. The majority of comments received on the other two Regulations sought clarification of the policy intent and have been addressed through revisions to the wording of the Regulations. For example, section 3 of the *Deposit Type Instruments Regulations* has been amended to clarify that financial institutions may enter into agreements by mail. Section 9 of the same Regulations has been modified to provide a consistent 10 business day cancellation period subsequent to an automatic renewal of deposit type instruments, meaning consumers will have up to 10 business days after the renewal date to decide if they want to cancel the instrument.

In addition, the language of sections 2 and 3 of the *Registered Products Regulations* has been clarified. In section 2, changes have been introduced to clarify that financial institutions may enter into agreements by mail. Section 3 has been amended to reflect current business practices (e.g. trustees do not always function as distributors of registered products) and clarify that financial institutions are not required to provide disclosures on charges when acting solely as trustees of registered plans, as these institutions do not interact directly with consumers.

Some technical changes were also requested to better facilitate the implementation of certain measures in the Regulations. As such, technical changes have been introduced in sections 6 and 7 of the *Deposit Type Instruments Regulations* to ensure greater precision (e.g. using “amount” rather than “value”). Furthermore, a technical change has been made under section 5 of the *Registered Products Regulations* to ensure that the language describing the manner in which financial institutions are required to provide the public with a list of charges is consistent with other financial consumer regulatory requirements, such as the *Disclosure of Charges Regulations*.

Some comments have not been reflected in this final version of the Regulations as the stakeholders had requested changes that were inconsistent with the policy intent of the Regulations. For example, comments on the *Registered Products Regulations* suggested restricting the definition of registered products to current tax-deferred savings vehicles, which would have made it more difficult to ensure that new innovative savings products are subject to the Regulations.

Implementation, enforcement and service standards

Industry representatives asked that the regulations come into force in 10 to 12 months. The industry highlighted technical challenges (e.g. impact on systems and procedures) related to the implementation of the measures. To allow sufficient time, the regulations are set to come into force on November 1, 2011.

The regulations do not require any new mechanisms to ensure compliance and enforcement. The Financial Consumer Agency of Canada already administers the consumer provisions in the federal financial institutions’ statutes. Therefore, the Agency will ensure compliance with the new requirements using its existing compliance tools, including compliance agreements and administrative monetary penalties.

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[Footnote a](#)

S.C. 2009, c. 2, s. 271

[Footnote b](#)

S.C. 2007, c. 6, s. 37

[Footnote c](#)

S.C. 2009, c. 2, s. 274

[Footnote d](#)

S.C. 2007, c. 6, s. 93

[Footnote e](#)

S.C. 1991, c. 46

[Footnote f](#)

S.C. 2009, c. 2, s. 278

[Footnote g](#)

S.C. 2007, c. 6, s. 170

[Footnote h](#)

S.C. 1991, c. 48

[Footnote i](#)

S.C. 2009, c. 2, s. 291

[Footnote j](#)

S.C. 2007, c. 6, s. 368

[Footnote k](#)

S.C. 1991, c. 45

[Footnote 1](#)

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NOTICE:

The format of the electronic version of this issue of the *Canada Gazette* was modified in order to be compatible with extensible hypertext markup language (XHTML 1.0 Strict).

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