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April 26, 2021

Securities and Exchange Commission  
Division of Corporation Finance  
Office of International Corporate Finance  
100 F Street NE  
Washington, D.C. 20549

Re: Fédération des caisses Desjardins du Québec Request for Rule 144A Interpretive Guidance

Ladies and Gentlemen:

We are writing on behalf of our client, Fédération des caisses Desjardins du Québec (the “Federation”), to seek interpretive guidance regarding the ability of holders of securities issued and to be issued by the Federation that may seek to resell securities issued by the Federation in reliance upon the exemption provided by Rule 144A under the Securities Act of 1933, as amended (the “Securities Act”) if the Federation were to make available to investors and prospective investors combined financial information of the type described in Rule 144A(d)(4)(i) of the Desjardins Group (as defined below) rather than consolidated financial information of the Federation and its consolidated subsidiaries.

On April 23, 2021, the Federation received exemptive relief from the Canadian *Autorité des marchés financiers (Québec)* (the “AMF”), as Canadian securities principal regulator of Federation, and other Canadian securities regulators to allow the Federation to satisfy its reporting and similar obligations under Canadian laws and regulations with Desjardins Group financial information. This interpretive request is being made concurrently with the filing of with a request to the Central Bank of Ireland to allow the Federation to satisfy its reporting obligations in respect of the Federation’s €7,000,000,000 Global Medium Term Note Programme and C\$26,000,000,000 Global Covered Bond Programme with Desjardins Group financial information.

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## **I. Background**

### **The Federation**

The Federation is a federation of financial services cooperatives amalgamated under the *Act respecting financial services cooperatives (Québec)* (the “Cooperatives Act”) with its head office located at 100, des Commandeurs street, Lévis, Québec, Canada G6V 7N5.

The Federation is a reporting issuer in all of the provinces of Canada and is not in default of securities legislation in any of those jurisdictions. Continuous disclosure documents of the Federation (including its predecessors, such as Caisse centrale Desjardins) have been available on SEDAR since SEDAR’s inception on January 1, 1997.

The Federation does not have any publicly-held equity securities nor does it have any debt or other securities listed on a U.S. national securities exchange. The Federation is thus not subject to Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and does not rely on the exemption from reporting pursuant to Rule 12g3-2(b) under the Exchange Act. The Federation is a “foreign private issuer” within the meaning of Rule 3b-4 under the Exchange Act. The Federation has issued, and expects to continue to issue, debt securities and covered bonds in the United States pursuant to applicable exemptions from the registration requirements of the Securities Act.

The mission of the Federation is, among other things, to (i) protect the interests of the Desjardins credit unions (the “Desjardins Caisses”), which are financial services cooperatives that are the foundation of the Desjardins Group, (ii) act as a control and supervisory body over the Desjardins Caisses, (iii) see to the orderly development of the financial services cooperatives’ network, (iv) define common objectives for, and look after the risk management of, the Desjardins Group and coordinate its activities, and (v) see to the financial health of the Groupe coopératif Desjardins (as defined below) and its sustainability. The Federation also provides the Desjardins Caisses with a variety of services, including certain technical, financial and administrative services. As at December 31, 2020, there were 219 member Desjardins Caisses.

The Federation’s outstanding share capital is composed of various classes of capital shares, all of which are owned or controlled by members, including auxiliary members, of the Federation (i.e., Desjardins Caisses) or members and auxiliary members of the Desjardins Caisses.

### **Desjardins Group**

The financial group to which the Federation belongs is called the “Desjardins Group.” The Desjardins Group is comprised of the Federation and its subsidiaries, the Desjardins Caisses in Québec, the Fonds de sécurité Desjardins and the Caisse Desjardins Ontario Credit Union Inc. (the “Ontario Caisse”). The Desjardins Group is not a single legal entity nor a reporting issuer.

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Founded in 1900, the Desjardins Group is the largest financial cooperative group in Canada, with assets of C\$362.0 billion as at December 31, 2020 (as opposed to the Federation's assets of C\$195.1 billion as at that same date). For the year ended December 31, 2020, Desjardins Group had a total income of C\$21.5 billion and surplus earnings before member dividends of C\$2.42 billion (as opposed to the Federation's total income of \$18.3 billion and surplus earnings before dividends to member Caisses of C\$1.01 billion for the same period). The Desjardins Group employs nearly 49,000 employees.

In June 2013, the AMF determined that the Desjardins Group met the criteria to be designated a domestic systemically important financial institution, which subjects the Desjardins Group to higher capital requirements and enhanced disclosure requirements, among other things, as instructed by the AMF.

### **The Groupe coopératif Desjardins and the Ontario Caisse**

The cooperative group to which the Federation belongs, including for purposes of the *Act respecting financial services cooperatives (Québec)* (the "Cooperatives Act"), is called the "Groupe coopératif Desjardins." The Groupe coopératif Desjardins is comprised of the Federation and its subsidiaries, the Desjardins Caisses in Québec and the Fonds de sécurité Desjardins. The Groupe coopératif Desjardins is not a single legal entity nor a reporting issuer. The Groupe coopératif Desjardins is the cooperative group of the Desjardins network in the province of Québec. While the Ontario Caisse is not part of Groupe coopératif Desjardins, it is a "Federation participating auxiliary member" within the Desjardins Group. As a "Federation participating auxiliary member," the Ontario Caisse is required to implement, and has implemented, all necessary actions to benefit from the same rights and comply with the same obligations as the Desjardins Caisses in Quebec. Among other things, the Ontario Caisse has entered into various contractual agreements with the Federation, including the Entente complémentaire au protocole d'affiliation, pursuant to which in the event that the Federation determines that the Ontario Caisse is in default of its commitments, the Federation may, among other things, by written instructions, restrict the liquidity of the Ontario Caisse and/or the capital support provided by the Federation.

### **The Fonds de sécurité Desjardins**

The Fonds de sécurité Desjardins is part of the Desjardins Group and the Groupe coopératif Desjardins. It was created in 1980 by the Desjardins Group to reinforce the financial security of the Desjardins Caisses. It is an independent entity whose reserves are collectively owned by all of the Desjardins Caisses in Québec, and it plays an essential role in the financial solidarity mechanisms of the Desjardins Group and the Groupe coopératif Desjardins. It is not a reporting issuer.

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The mission of the Fonds de sécurité Desjardins, as set forth in the Cooperatives Act, is to, among other things, (i) assist in the payment of losses sustained by the members of a Desjardins Caisse in Québec in the event of a winding-up, (ii) establish and administer a fund for the benefit of the Desjardins Caisses in Québec, (iii) take part in the funding and capitalization operations of the network of Desjardins Caisses in Québec, and (iv) avoid or reduce disbursements by the AMF with respect to the *Deposit Institutions and Deposit Protection Act* (Québec) (the “Deposit Institutions Act”).

The Fonds de sécurité Desjardins plays an essential role in the Desjardins Group, as it (i) ensures that the distribution of capital and other assets between the legal persons belonging to the Groupe coopératif Desjardins (including the Federation and the Desjardins Caisses in Québec) allows each such legal person to perform its obligations to its depositors and other creditors in full, correctly and without delay, and (ii) intervenes with regard to a member of the Groupe coopératif Desjardins each time it appears necessary to do so in order to protect such member’s creditors.

Subject to exceptional circumstances, the Fonds de sécurité Desjardins intervenes only after a Desjardins Caisse in Québec has taken action to rectify a problematic situation and following the interventions of the Federation, in accordance with the Federation’s support and intervention process and the framework for evaluating the Desjardins Caisses in Québec’s financial performance. In any event, the Fonds de sécurité Desjardins is required to intervene with regards to a financial services cooperative that is part of the Groupe coopératif Desjardins each time it appears necessary to do so in order to allow satisfaction of the group’s obligations and for the protection of the group’s creditors.

### **Financial Reporting**

As a reporting issuer under Canadian securities law, the Federation currently prepares consolidated financial statements (i.e., financial statements of the Federation and its consolidated subsidiaries) in accordance with the International Financial Reporting Standards (“IFRS”) issued by the International Accounting Standards Board (“IASB”), and the accounting requirements of the AMF in Québec, which do not differ from IFRS (collectively, the “Federation Financial Statements”).

The Desjardins Group is not a reporting issuer under applicable Canadian securities laws. However, it has established internal controls and procedures consistent with Canadian securities regulations to, among other things, demonstrate its willingness to comply with best practices in financial governance. The Desjardins Group currently prepares combined financial statements in accordance with IFRS issued by IASB, and the accounting requirements of the AMF in Québec, which do not differ from IFRS (collectively, the “Group Financial Statements”). The Group Financial Statements have been incorporated in offering materials and filed with securities regulatory authorities (including on SEDAR) in connection with offerings of debt securities completed by the Federation and other entities comprising the Desjardins Group since 2002. In

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practice, the Group Financial Statements have been for several years considered by market participants and rating agencies as the most relevant source of financial information in respect of the Federation.

The Desjardins Group is an integrated financial services group, which in and of itself is a complete, distinct economic entity. The Desjardins Group prepares combined financial statements to present the financial position, the financial performance and the cash flows of the Desjardins Group as an economic entity. The Group Financial Statements are a combination of the accounts of the Federation and its subsidiaries, the Desjardins Caisses in Québec, the Ontario Caisse and the Fonds de sécurité Desjardins. The capital stock of the Desjardins Group represents the aggregate of the capital stock issued by the Federation, the Desjardins Caisses in Québec and the Ontario Caisse.

### **Financial Solidarity Mechanisms**

In 2018, Québec adopted *An Act mainly to improve the regulation of the financial sector, the protection of deposits of money and the operation of financial institutions* (“Bill 141”). Bill 141 abrogated *An Act respecting the Mouvement Desjardins* and amended the Cooperatives Act to add a new, fulsome chapter (Chapter XIII.1) governing the Groupe coopératif Desjardins. As described below, such chapter provides for, among other things, the recognition of various financial solidarity mechanisms among the various entities of the Groupe coopératif Desjardins, and the establishment of a universal liquidation mechanism applicable to the Groupe coopératif Desjardins. However, such chapter does not provide, nor are there any other arrangements in place, under which any members of the Desjardins Group generally guaranty or are otherwise generally liable for, the obligations of the Federation under any securities which it issues nor do any members of the Desjardins Group generally provide for “keepwell” or other similar arrangements for the benefit of the holders of the Federation’s securities.<sup>1</sup>

#### *Principle of Assessments*

The Desjardins Caisses (including the Ontario Caisse) are required to fund the Federation, mostly through basic annual assessments for each fiscal year. Assessments may also increase the general and stabilization reserves of the Federation, to the extent deemed necessary to maintain a sound financial profile. The by-laws of the Federation contain the terms and conditions for the establishment and payment of basic assessments.

In addition to the basic assessments which the Desjardins Caisses (including the Ontario Caisse) are bound to pay and that are fixed in the Federation’s by-laws, the Federation may

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<sup>1</sup> In connection with the issuance of “covered bonds” by the Federation, CCDQ Covered Bond (Legislative) Guarantor Limited Partnership (the “Guarantor”), a special purpose limited partnership affiliated with the Federation, provides guarantees of the covered bonds secured by, among other things, portfolios of real estate loans sold to the Guarantor by the Federation. These guarantees are specific to the covered bonds and are not general guarantees of the Federation’s other obligations.

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establish, pursuant to the terms of the Cooperatives Act and by resolution of its board of directors, any such assessment it considers necessary for the pursuit of its missions, including, in particular, to see to the financial health of the Groupe coopératif Desjardins and its sustainability. Under the Cooperatives Act, the Desjardins Caisses in Québec are bound to pay these assessments.

The Fonds de sécurité Desjardins also levies and collects assessments from the Desjardins Caisses in Québec annually in the normal course, and may pool the cost of its interventions between financial services cooperatives that are part of the Groupe coopératif Desjardins. In addition, the Fonds de sécurité Desjardins may take (and the Federation may request the Fonds de sécurité Desjardins to take) any special intervention measures granted to it under the Cooperatives Act, including the right for the Fonds de sécurité Desjardins to determine and collect assessments from the Desjardins Caisses in Québec. Such caisses are again bound by the Cooperatives Act to pay such assessments. The Fonds de sécurité Desjardins is required to intervene with regards to a financial services cooperative that is part of the Groupe coopératif Desjardins (including the Federation and the Desjardins Caisses in Québec) each time it appears necessary to do so in order to allow satisfaction of the Groupe coopératif Desjardins' obligations and for the protection of the group's creditors.

Furthermore, if the Fonds de sécurité Desjardins finds (or is informed by the Federation) that a Desjardins Caisse in Québec is not practicing sound and prudent management, the Fonds de sécurité Desjardins may fix and require from such caisse a special assessment. It may also fix and require from any financial services cooperative which is a member of the Groupe coopératif Desjardins a special assessment for each of the fiscal years determined by the Fonds de sécurité Desjardins, to intervene in respect of certain members of the Groupe coopératif Desjardins (including the Federation and the Desjardins Caisses in Québec).

The above system of assessments (the "Assessments"), together with the universal liquidation mechanism described immediately below, form the basis of the financial solidary mechanism that is the foundation of the Desjardins Group (and the Groupe coopératif Desjardins). Both the Federation and the Fonds de sécurité Desjardins may, by virtue of the Assessments, shuffle capital between the various entities of the Groupe coopératif Desjardins in circumstances where the protection of creditors, among other things, so warrants. Notwithstanding where the capital is located in the Groupe coopératif Desjardins, the Federation and the Fonds de sécurité Desjardins may direct and use that capital to fund, capitalize or otherwise intervene in respect of another entity of the Groupe coopératif Desjardins.

#### *Universal Liquidation Mechanism*

The Cooperatives Act further provides that the Federation, the Fonds de sécurité Desjardins and the Desjardins Caisses in Québec may only be wound up by amalgamating all such entities into a single legal person to be wound-up. The Cooperatives Act expressly provides that the Federation, the Fonds de sécurité Desjardins and the Desjardins Caisses in Québec may

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not be wound up other than in accordance with the Cooperatives Act. Consequently, in a liquidation scenario, the capital and patrimony of the Groupe coopératif Desjardins as a whole (and, indirectly, of the Desjardins Group), as opposed to the capital and patrimony of the Federation only, is available to satisfy the Federation's obligations to creditors. As such, creditors would not look to the Federation Financial Statements in considering insolvency risks and would instead look to the Group Financial Statements which would be representative of the combined capital and patrimony that would result from an amalgamation pursuant to the Cooperatives Act in the event of liquidation. Similarly, as further described herein, such creditors would not look to Federation Financial Statements in considering the related risk of recapitalization of Bail-in Instruments (as defined below) or the risk of conversion of non-viability contingent capital instruments.

#### *Capital Call Arrangement*

The Cooperatives Act provides that:

*“[t]he by-laws of the [Groupe coopératif Desjardins], in addition to the provisions they may contain under this Act, must contain provisions to ensure the [Groupe coopératif Desjardins]’ cohesion and operation [...]”<sup>2</sup> (emphasis added)*

and that:

*“the by-laws of the [Groupe coopératif Desjardins] apply to all the financial services cooperatives belonging to it [...]”<sup>3</sup> (emphasis added)*

The *Règlement intérieur du Groupe coopératif Desjardins* provides, in its Section 3.3 (“*Undertakings of the Desjardins Caisses*”), that to promote the achievement of the Federation's mission, the Desjardins Caisses are committed, in particular, to:

*“participate in a capital call in the form of capital shares, authorized by the general meeting, or, if applicable, in accordance with a by-law of the Federation, subscribe and pay for the capital shares which are allocated to it on that occasion, and authorize the Federation to debit the caisse accordingly”*

Such mechanism could be used by the Federation, provided certain conditions are met, to require the Desjardins Caisses to answer any capital call made by the Federation in the form of

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<sup>2</sup> Section 547.2 of the Cooperatives Act.

<sup>3</sup> Section 547.3 of the Cooperatives Act.

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capital shares of the Federation to, among other things, maintain the Federation's capital base at certain desired levels (the "Capital Call Arrangement").

*Recapitalization regime applicable to the Groupe coopératif Desjardins (bail-in)*

Pursuant to Bill 141, the AMF is responsible for resolution operations of the Groupe coopératif Desjardins. In accordance with section 40.9 of the Deposit Institutions Act, the objective of such operations is to ensure the sustainability of the Groupe coopératif Desjardins' deposit institution activities despite its failure and without recourse to public funds.

In the event of the resolution of the Federation, the AMF may exercise several powers, including those conferred upon it under section 40.50 of the Deposit Institutions Act in respect of debt securities of the Federation that are bail-in instruments (the "Bail-in Powers") (as prescribed by the *Regulation respecting the classes of negotiable and transferable unsecured debts and the issuance of such debts and of shares* (Québec)) (the "Bail-in Instruments"). The Bail-in Powers include the power, in the event of the resolution of the Federation, for the AMF to write off Bail-in Instruments or to convert them into contributed capital securities of the Federation, of a deposit-taking institution that is part of the Groupe coopératif Desjardins or of a legal person constituted or resulting from an amalgamation/continuance or other conversion carried out for the purposes of the resolution of the Federation.

In the event of the winding-up, insolvency, bankruptcy, liquidation or dissolution of the Federation in accordance with applicable law, the Bail-in Instruments rank equally in right of payment with all deposit liabilities and other unsecured and unsubordinated liabilities of entities of the Groupe coopératif Desjardins, except as may be provided by law and subject to the exercise by the AMF of, among others, its Bail-in Powers. The deposit liabilities and other unsecured and unsubordinated liabilities of the Groupe coopératif Desjardins, other than the Federation, as well as its assets and capital, are reflected solely in the Group Financial Statements.

On March 21, 2019, the AMF released its *Notice relating to the bail-in power set out in the second paragraph of section 40.50 of the Deposit Insurance Act*, in which it indicates that in the event of the resolution of the Federation, it intends to use its Bail-in Powers to convert the Federation's Bail-in Instruments into capital shares of the Federation and subsequently carry out an amalgamation/continuance operation, the purpose of which would be to amalgamate all entities belonging to the Groupe coopératif Desjardins, and have them continued as one Québec savings company. The foregoing is in line with the principles underlying the universal liquidation mechanism described under "Background – Financial Solidarity Mechanisms – Universal Liquidation Mechanism" above.

*Non-viability contingent capital instruments*



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The Federation is subject to the capital adequacy guidelines of the AMF (in its capacity as regulator of certain financial services cooperatives) (the “AMF Guidelines”), consistent with the Third Basel Accord (Basel III). The AMF Guidelines, which prescribe the regulatory capital requirements of the Federation and the Groupe coopératif Desjardins, require that certain subordinated debt securities of the Federation be convertible into capital shares of the Federation pursuant to an automatic mechanism which is linked to specified trigger events listed in the AMF Guidelines and reflected in the terms and conditions of the specified securities. Such mechanism is designed to increase the Federation’s loss-absorption capacity, and the specified trigger events are limited to: (i) the AMF publicly announcing that the Federation’s “entity” has been advised, in writing, that the AMF is of the opinion that such “entity” has ceased, or is about to cease, to be viable and that, after the conversion of the applicable securities and other contingent instruments issued by the “entity,” the viability of the “entity” could be restored or maintained; and (ii) a federal or provincial government in Canada publicly announcing that the Federation’s “entity” has accepted or agreed to accept a capital injection, or equivalent support from the federal government or any provincial government or political subdivision or agent or agency thereof without which the “entity” would have been determined by the AMF to be non-viable as a result of the “entity’s” risk-based capital ratios.

The AMF Guidelines indicate that:

*“For purposes of computing regulatory capital, ‘entity’ includes: (i) the cooperative group, (ii) any financial entity that carries on activities similar to those of a cooperative of financial services, securities activities and any other institutional activities (regulated or unregulated) on which a federation or financial services cooperative exercises control as defined under [Canadian GAAP], (iii) any interest in similar financial entities over which a federation or a financial services cooperative exercises joint control in accordance with Canadian accounting principles, and (iv) any legal person constituted at the request of a federation and whose mission is to administer a security, liquidity or mutual assistance fund for the benefit of caisses that are members of the fund and to participate in the capitalization operations of a network [of financial services cooperatives]<sup>4</sup>” (our translation and emphasis)*

and that:

*“For purposes of computing regulatory capital, the [AMF Guidelines] apply to a financial group on a consolidated basis by combining the caisses that are members of the federation and by consolidating the federation, the security fund being part of the cooperative group as well as any other legal person or*

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<sup>4</sup> See Section 1.1 of the *Ligne directrice sur les normes relatives à la suffisance du capital de base – Coopératives de services financiers (Janvier 2020)*.

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*company controlled individually or jointly by the constituent entities of the financial group.*<sup>5</sup> (our translation and emphasis added)

In short, for purposes of computing regulatory capital in accordance with the AMF Guidelines, and, for purposes of determining whether the Federation’s “entity” is viable, the AMF looks to the Desjardins Group as a whole, using the Group Financial Statements, as opposed to the Federation Financial Statements, as the Group Financial Statements combine the accounts of, *inter alios*, the Desjardins Caisses in Québec and the Ontario Caisse (i.e., the “*caisses that are members of the Federation*”), the Federation and its subsidiaries, and the Fonds de sécurité Desjardins (i.e., the “*security fund being part of the cooperative group*”), as required by the AMF Guidelines.

### **Group Capital Requirements**

#### *Requirements under the Cooperatives Act*

The Cooperatives Act and the requirements of the AMF do not provide for capital requirements for the Federation or the Desjardins Caisses in Québec on a stand-alone basis. Rather, they provide that the Federation shall ensure that the Groupe coopératif Desjardins maintains adequate capital to ensure its sustainability, and that it shall adopt standards applicable to the Desjardins Caisses respecting the adequacy of its capital. It further provides that the sound and prudent management practices that the financial services cooperatives belonging to the Desjardins Group must adhere to must provide for the maintenance of adequate capital to ensure the Groupe coopératif Desjardins’ sustainability (as opposed to the Federation’s).

Furthermore, the Cooperatives Act provides that AMF may require the Federation to adopt, to the AMF’s satisfaction, a compliance program, where the AMF considers that the capital of the Groupe coopératif Desjardins is not adequate to ensure its sustainability.

#### *Decision N° 2020-SOLV-0004 of the AMF*

In 2016, the AMF adopted Decision N° 2016-PDF-0174 (the “2016 Decision”), which prescribed the minimum capital requirements for the Federation. Thereafter, the AMF Guidelines were adopted in their current forms, and the Cooperatives Act was amended through Bill 141 as described above.

In 2020, the Federation sought a decision from the AMF to use the Desjardins Group to calculate the different ratios prescribed under the 2016 Decision and the AMF Guidelines. The AMF, in its Decision N° 2020-SOLV-0004 (the “2020 Decision”), issued the decision requested by the Federation, and modified the 2016 Decision to provide that the Federation shall calculate its minimum capital requirements using the “resolution entity” as a basis, such “resolution

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<sup>5</sup> *Id.*

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entity” being composed of the Federation and its subsidiaries, the Desjardins Caisses and the Fonds de sécurité Desjardins.

In accordance with the terms of the 2020 Decision, as of the third quarter of the Federation’s 2020 fiscal year, the Federation Financial Statements and corresponding Management’s Discussion & Analysis (“MD&A”) will disclose capital ratios calculated based on the Desjardins Group’s capital (as opposed to the Federation’s consolidated capital only), whereas the rest of the disclosure in the Federation Financial Statements and corresponding MD&A will be based solely on the Federation (on a consolidated basis).

## **II. Request for Interpretation**

The Federation believes for the reasons discussed below, that the Group Financial Statements satisfy the requirements of Rule 144A(d)(4)(i) and that holders of securities issued and to be issued by the Federation should be able to resell securities issued by the Federation in reliance upon the exemption provided by Rule 144A under the Securities Act if the Federation were to make available to investors and prospective investors Group Financial Statements rather than consolidated financial information of the Federation and its consolidated subsidiaries.

## **III. Discussion**

Rule 144A requires that, to qualify for the exemption provided by Rule 144A, an offer or sale must meet a number of conditions, including the condition set forth Rule 144A(d)(4)(i). Rule 144A(d)(4)(i) provides that (i) in the case of securities of an issuer that is neither subject to Section 13 or 15(d) of the Exchange Act, nor exempt from reporting pursuant to Rule 12g3-2(b) under the Exchange Act, the holder and a prospective purchaser designated by the holder have the right to obtain from the issuer, upon request of the holder: a very brief statement of the nature of the business of the issuer and the products and services it offers; and the issuer’s most recent balance sheet and profit and loss and retained earnings statements, and similar financial statements for such part of the two preceding fiscal years as the issuer has been in operation (the financial statements should be audited to the extent reasonably available).

As initially proposed, Rule 144A, would not have required the provision of any information about the issuer of the securities to be resold under the Rule. In response to commenters’ concerns regarding the lack of available information about some issuers, the repropounded and final Rule 144A requires what the Commission characterized as “basic financial information.”<sup>6</sup> In fact, Rule 144A(d)(4)(i) does not require full financial statements (but rather just the most recent balance sheet and profit and loss and retained earnings statements) and further does not require that the financial information be audited (i.e., the financial statements should be audited to the extent audited financial statements are reasonably available).

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<sup>6</sup> SEC Release 33-6862 (April 23, 1990)

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Read literally, Rule 144A(d)(4)(i) requires the Federation, as the issuer, to provide consolidated financial information of the Federation and its consolidated subsidiaries (e.g., the Federation Financial Statements). However, the Federation believes that the Federation Financial Statements do not provide investors and prospective investors with an accurate and adequate picture of the financial condition, performance and cash flows of the relevant economic entity with which they engage.

As discussed above under “I. Background — Financial Solidarity Mechanisms,” the Cooperatives Act provides for various financial solidarity mechanisms among entities that are part of the Desjardins Group, and a liquidation mechanism that is unique to the Groupe coopératif Desjardins that provides that each entity within the Groupe coopératif Desjardins may not be wound-up unless the group as a whole is wound-up. As a result thereof, investors and prospective investors of the Desjardins Group are directly or indirectly protected by all of the capital of the Desjardins Group and its components (including the Groupe coopératif Desjardins), and financial information, particularly on the individual capitalization of each of the entities within the Desjardins Group (including that of the Federation), does not provide investors and prospective investors with an adequate picture of the capital available to protect their deposits and investments.

Indeed, the financial information most relevant and useful to investors and prospective investors in the Federation is that of the Desjardins Group, as it (i) presents the financial information of the Federation combined with that of the other entities comprised in the Desjardins Group (including the Desjardins Caisses) which are required to participate in the Assessments, the Capital Call Arrangement and other financial solidarity mechanisms described above, and (ii) faithfully represents the risks to which such persons are exposed, including as a result of the financial solidary mechanisms applicable to the Desjardins Group and the universal liquidation mechanism applicable to the Groupe coopératif Desjardins. Furthermore, the AMF itself looks to, and is, in certain instances, required to look to, directly or implicitly, the Group Financial Statements, as opposed to the Federation Financial Statements, for a number of reasons (detailed under “*Recapitalization regime applicable to the Groupe coopératif Desjardins (bail-in)*,” “*on-viability contingent capital instruments*” and “*Group Capital Requirements*”<sup>7</sup> above). Therefore, the Federation submits that it is more appropriate for its financial condition, resiliency and solvency to be evaluated on the basis of all of the entities that are part of the Desjardins Group rather than on a “stand alone” basis.

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<sup>7</sup> Among other things, the AMF Guidelines provide that for purposes of computing the Federation's regulatory capital, and, implicitly, for purposes of determining whether the Federation's "entity" is viable, the Group Financial Statements should be used. Furthermore, the Cooperatives Act recognizes that the adequacy of the Federation's capital must be evaluated on the basis of the Groupe coopératif Desjardins' capital, which is solely reflected in the Group Financial Statements. In addition, the 2020 Decision provide that the Federation's capital requirements should be evaluated at the Desjardins Group level, and the 2020 Decision also further provides that the minimum capital requirements of the Federation should be calculated at the Desjardins Group level.

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To summarize the various arguments made hereinabove, the Federation submits that from the perspective of securityholders of the Federation, requiring the Federation to file and certify separate Federation Financial Statements provides no additional benefit. In fact, the Federation believes that having the Federation Financial Statements constituting the primary financial statements of the Federation for purposes of compliance with Rule 144A(d)(4)(i) results in ongoing confusion and in an enhanced disclosure and market education burden that puts it at a disadvantage to peer financial institutions in that the Federation would publish two sets of financial statements (i.e., the Federation Financial Statements and the Group Financial Statements) and have to explain to the differences.

Since, as noted above, the financial information requirements of Rule 144A(d)(4)(i) are intended to merely provide investors and prospective investors with “basic financial information,” we believe the provision of Group Financial Information more than meets that standard.

As noted above, the Federation has received exemptive relief from the AMF, as Canadian securities principal regulator of Federation, and other Canadian securities regulators. The AMF reviewed the Federation’s application for exemptive relief in its securities regulator capacity (and not in its capacity as prudential oversight authority) and, under AMF policy, the granting of the requested relief “must be supported by sufficient justification whereby the granting of the requested exemption would not be detrimental to the protection of securities investors . . . .” Following the granting of such exemptive relief, the Federation intends to cease publishing “stand alone” financial statements. In light of the granting of such exemptive relief and the fact that the Federation is permitted to file Group Financial Statements in satisfaction of its Canadian reporting obligations, confirmation by the Staff of the Federation’s views sought herein would also be consistent with other disclosure requirements applicable to foreign private issuers as well as the principles underlying the Commission’s multi-jurisdictional disclosure system applicable to certain Canadian companies.

First, the informational requirements of Rule 144A(d)(4)(i) would not, by its terms, apply if the Federation were exempt from reporting pursuant to Rule 12g3-2(b) under the Exchange Act. Rule 12g3-2(b) under the Exchange Act does not have any specific financial information requirements but merely requires an issuer relying on the exemption to publish information the issuer has “made public or been required to make public pursuant to the laws of the country or its incorporation.” Since the Federation could satisfy the informational requirements of Rule 12g3-2(b) by publishing on its website its home country securities reports (which would contain Group Financial Statements), it would be consistent to allow the Federation to also satisfy the informational requirements of Rule 144A with the same information (i.e., Group Financial Statements).

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Furthermore, under the Commission’s multi-jurisdictional disclosure system adopted in 1991<sup>8</sup>, the Commission permits Canadian issuers to satisfy Securities Act registration requirements and ongoing disclosure obligations in the United States through the use of home country (i.e., Canadian) disclosures, supplemented as necessary by disclosures mandated by the Sarbanes-Oxley Act and Dodd-Frank Wall Street Reform and Consumer Protection Act (and the equivalent regulations in Canada, where applicable). Thus, the Federation would be able to register its offering of debt securities under the Securities Act on a Form F-10 (rather than rely on Rule 144A) and satisfy its ongoing reporting obligations under the Exchange Act, each of which impose higher disclosure obligations than Rule 144A, by filing Group Financial Statements. Therefore, it would be consistent to allow the Federation to use Group Financial Statements to meet the requirements of Rule 144A(d)(4)(i).

Finally, we note Rule 144A is applicable only to resales to “qualified institutional buyers” who the Commission has noted on several occasions are investors that, by virtue of their financial sophistication are fully capable of protecting their own interests. In deciding whether to invest in securities issued by the Federation, qualified institutional buyers are fully capable to evaluate on their own whether Group Financial Statements provide sufficient and appropriate financial disclosure regarding the Federation.

#### **IV. Conclusion**

The Federation will be the issuer of securities in the Rule 144A offering and, therefore, the text of Rule 144A(d)(4)(i) requires that Federation provide the Federation Financial Statements. However, for all of the reasons explained above, we believe that it would not be inconsistent with Rule 144A to instead provide the Group Financial Information to investors, which would provide investors with a more accurate picture of the financial condition, performance and cash flows of the issuer.

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<sup>8</sup> SEC Release 33-6902 (July 1, 1991).

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If the Division has any questions concerning this request or requires any additional information, please contact the undersigned at (312) 701-7100. Further, if your conclusions should differ from our own, we would appreciate if you would contact us prior to any written response to this letter so that we may be given the opportunity to clarify our views. Thank you for your attention to this matter.

Yours sincerely



Edward S. Best

ESB:

cc: Philippe Tommei  
Senior Legal Counsel  
Fédération des caisses Desjardins du Québec