

NATIONAL ASSEMBLY

FIRST SESSION

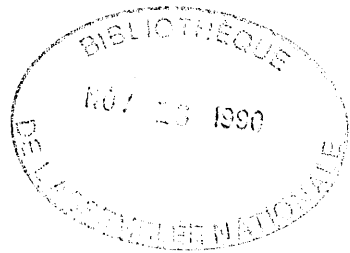
THIRTY-FOURTH LEGISLATURE

Bill 101

An Act to amend the Securities Act

Introduction

**Introduced by
Madam Louise Robic
Minister for Finance**



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EXPLANATORY NOTES

This bill proposes a number of amendments to the Securities Act, mainly in respect of the powers of the Commission des valeurs mobilières, the rules relating to the control of the activities of issuers of securities, and the provisional administration scheme.

It extends the power of the Commission to order corrective measures and introduces a procedure for filing its decisions with the Superior Court for execution purposes. It introduces the power for the Commission to inspect the affairs of registered dealers and advisers and self-regulatory organizations. It allows the Commission to enter into agreements with persons or organizations in Québec or elsewhere to foster application of securities legislation. It also specifies the competence of the Commission with respect to acts performed by registered persons prior to surrender.

As far as controlling the activities of issuers of securities is concerned, the bill introduces amendments that affect, in particular, the forms of investment that are exempt from the application of certain provisions of the Securities Act, exemptions from the requirement to furnish a prospectus for certain types of distribution, continuous disclosure requirements for distributions made in accordance with an offering memorandum, and solicitation of proxies from holders of debt securities. It gives the Government the power to make regulations in respect of the conditions for using the exemption for private distributions, and also introduces rules to prevent conflicts of interest arising from the receipt for a prospectus or in connection with distribution of securities by a dealer or his associates. Finally, it modifies prescription in respect of offences.

The bill amends the provisions of the Securities Act relating to the provisional administration scheme, in particular with respect to powers of inquiry, the right of interested persons to be heard and the mandate and powers of the provisional administrator.

Finally, the bill proposes other amendments intended, in particular, to allow self-regulatory organizations to sub-delegate the

powers delegated to them by the Commission, to allow the Government to exempt guarantee funds in which dealers participate from the Act respecting insurance, and to clarify the scope of a number of technical provisions.

Bill 101

An Act to amend the Securities Act

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Section 3 of the Securities Act (R.S.Q., chapter V-1.1), amended by section 561 of chapter 64 of the statutes of 1988, is again amended

(1) by replacing paragraph 2 by the following paragraph:

“(2) a security issued by a closed company, provided the issue is not contrary to the constituting documents, and provided it is not distributed by way of a public distribution; notwithstanding this exemption, Title IV applies in cases where the acquisition of securities by a closed company is deemed, pursuant to section 114, to be the acquisition of securities of another company that are held by the closed company;”;

(2) by inserting, after paragraph 4, the following paragraphs:

“(4.1) a common or preferred share issued by a confederation of savings and credit unions within the meaning of the Savings and Credit Unions Act (1988, chapter 64) and distributed to the member federations of such a confederation;

“(4.2) a common or preferred share issued by a federation of savings and credit unions within the meaning of the Savings and Credit Unions Act (1988, chapter 64) and distributed to the unions affiliated with such a federation;

“(4.3) a participation deposit issued by a federation of savings and credit unions within the meaning of the Savings and Credit Unions

Act (1988, chapter 64) and distributed to the unions affiliated with such a federation;”;

(3) by replacing paragraph 11 by the following paragraph:

“(11) a share in a mutual fund and the units of an unincorporated mutual fund, provided that the fund is established and administered by a trust company holding a licence in accordance with the Act respecting trust companies and savings companies (R.S.Q., chapter S-29.01), that the securities of the fund are distributed by such a trust company and that the assets of the fund are composed exclusively of unsolicited funds received from tutors to property, subrogated tutors, curators to property, liquidators, syndics, liquidators of a succession, sequestrators, judicial advisors, trustees or administrators of the property of others and commingled with the authorization of the depositor or his agent for the purpose of investment;”;

(4) by striking out paragraph 16.

2. Section 5 of the said Act is amended

(1) by replacing the definition of “privileged information” by the following definition:

““privileged information” means any information that has not been disclosed to the public and that could affect the decision of a reasonable investor;”;

(2) by replacing the definition of “voting security” by the following definition:

““voting security” means any security other than a debt security carrying a voting right that may be exercised either under all circumstances or under some circumstances that have occurred and are continuing.”

3. Section 12 of the said Act is amended by adding, at the end of the second paragraph, the following sentence: “The agreement of the Commission is not required where the issuer satisfies the conditions prescribed by regulation for the purposes of this paragraph; the issuer need only file the information required by regulation with the Commission within 15 days following the beginning of the distribution.”

4. Section 15 of the said Act is amended by inserting, after paragraph 5, the following paragraph:

“(5.1) where the issuer is not a joint-stock company, the structure of the business or venture for which the funds are solicit involves either serious conflicts of interest or an undue concentration of power in the hands of one person, without appropriate measures to counteract the effects thereof;”.

5. Section 25 of the said Act is replaced by the following section:

“25. Where a material change occurs in relation to the information presented in the prospectus, an amendment to the prospectus must be made.”

6. Section 33 of the said Act is replaced by the following section:

“33. The distribution of a security must be completed within 12 months from the date of the receipt for the prospectus.”

7. Section 34 of the said Act is amended

(1) by replacing subparagraph 1 of the first paragraph by the following subparagraph:

“(1) a draft prospectus containing the information and certificates prescribed by regulation and accompanied with the documents prescribed by regulation is submitted not less than 30 days before the lapse of the term specified in section 33;”;

(2) by replacing the third paragraph by the following paragraph:

“Any additional year runs from the date of the receipt for the prospectus.”

8. Section 47 of the said Act is amended by replacing the third paragraph by the following paragraph:

“Exemption under this section applies only if the Commission agrees thereto after receiving an offering memorandum prepared in the form prescribed by regulation which must be transmitted to the prospective purchasers of the securities before the issuer accepts any undertaking from them.”

9. Section 48 of the said Act is amended by striking out the words “non-reporting” in the first line of the first paragraph.

10. Section 48.1 of the said Act is replaced by the following section:

“48.1 Exemption under section 48 applies only if the Commission agrees thereto after receiving an offering memorandum prepared in the form prescribed by regulation which must be transmitted to the prospective purchasers of the securities before the issuer accepts any undertaking from them.”

11. Section 51 of the said Act is amended

(1) by replacing the words and figure “at least \$150 000 per person,” in the third line of the first paragraph by the words “in excess of an amount fixed by regulation”;

(2) by replacing the words “a company” in the second line of the second paragraph by the words “an issuer”.

12. Section 52 of the said Act is amended by replacing subparagraph 2 of the first paragraph by the following subparagraph:

“(2) the distribution of securities by stock-dividend distribution or through dividend re-investment plans;”.

13. The said Act is amended by inserting, after section 53, the following section:

“53.1 Where a material change occurs in relation to the information presented in the offering memorandum referred to in section 47, 48.1 or 53, an amendment to the offering memorandum must be made.

The amendment shall be submitted for approval to the Commission, which must make a decision within two working days after receipt. If approval is refused, the distribution shall cease. If the amendment is approved, the offering memorandum may not be sent unless accompanied with the amendment.”

14. Section 58 of the said Act is amended by replacing the first paragraph by the following paragraph:

“58. No prospectus is required for the alienation of securities of a reporting issuer purchased under an exemption provided for in section 43, 47, 48 or 51, provided the initial purchaser and subsequent purchasers have held the securities for a fixed period immediately preceding the alienation, and, where the seller is an insider of the issuer, provided the reporting issuer has complied with the applicable disclosure requirements during the same period.”

15. Section 68 of the said Act is amended by replacing subparagraph 4 of the first paragraph by the following subparagraph:

“(4) its securities have been distributed within the framework of a combination to which a reporting issuer was a party;”.

16. The said Act is amended by inserting, after section 69, the following section:

“69.1 An issuer that has become a reporting issuer following the filing of a prospectus for which a receipt was obtained from the Commission may, where the distribution in question does not result in the anticipated issue of securities, apply to the Commission to have his status as a reporting issuer revoked.

An issuer that has become a reporting issuer as a result of a take-over bid circular filed with the Commission may, where the take-over bid by way of exchange of securities does not result in the anticipated exchange of securities, apply to the Commission to have his status as a reporting issuer revoked.

In each of the above cases, the Commission may revoke the issuer’s status as a reporting issuer or, on such conditions as it may determine, release the issuer from all or part of the continuous disclosure requirements specified in Chapter II of this Title.”

17. The said Act is amended by inserting, after section 80, the following section:

“80.1 An issuer who has distributed securities under an exemption provided for in section 47 or 48 must, within the time limits specified in sections 75 and 76, file with the Commission and send to every registered holder audited annual financial statements and unaudited quarterly financial statements in the form determined by regulation for financial statements required under sections 75 and 76.”

18. Section 82.1 of the said Act is amended by replacing the second paragraph by the following paragraph:

“The management shall send the circular to all its registered security holders, except holders of debt securities or preferred shares who will not be entitled to vote at the meeting to which the circular refers.”

19. The said Act is amended by inserting, after section 83, the following section:

"83.1 Sections 81 to 83 shall also apply, adapted as required, to the meeting of holders of debt securities, whether it was called by the company or by the trustee."

20. Section 116 of the said Act is repealed.

21. Section 120 of the said Act is replaced by the following section:

"120. The purchase, on a stock exchange recognized by the Commission for the purposes of this section, of securities of a particular class in accordance with the conditions fixed by the rules of that stock exchange for making such purchases without being required to make a take-over bid to all the holders, is exempt from the provisions of Chapters III and IV."

22. Section 138 of the said Act is amended by replacing the words "a new circular" in the fourth line by the words "an update on the original circular".

23. Section 147.20 of the said Act is amended by striking out the figures "119, 121," in the first line.

24. The said Act is amended by inserting, after section 151, the following sections:

"151.1 The Commission has the power to make an inspection of the affairs of a registered dealer or adviser in order to ascertain the extent to which he complies with this Act, the regulations and the general instructions.

"151.2 The inspector shall, on request, justify his quality.

"151.3 In carrying out his inspection, the inspector has the power

(1) to enter the establishment of any dealer or adviser, during normal business hours;

(2) to take a copy of the books, registers or other documents relating to the carrying on of the activity of dealer or adviser;

(3) to require any information relating to the carrying on of the activity of dealer or adviser and the production of any relevant document.

“151.4 The dealer or adviser shall give the inspector access to all books, registers or other documents relating to the carrying on of his activities.”

25. Section 153 of the said Act is amended by adding, at the end, the following paragraph:

“The Commission remains competent in respect of any acts prior to the surrender.”

26. Section 154 of the said Act, amended by section 562 of chapter 64 of the statutes of 1988, is again amended by replacing paragraph 3 by the following paragraph:

“(3) a bank incorporated under the Act respecting banks and banking (R.S.C. 1985, chapter B-1) or a trust company licensed in accordance with the Act respecting trust companies and savings companies (R.S.Q., chapter S-29.01), to the extent that it transacts bonds on its premises in response to unsolicited orders, by buying or selling and carrying out the order for its own account with a registered dealer.”

27. Section 157 of the said Act is replaced by the following section:

“157. Any person doing business as a dealer or adviser exclusively with persons in respect of whom the prospectus exemptions provided for in section 43 apply is exempt from registration.”

28. The said Act is amended by inserting, after section 163, the following section:

“163.1 No dealer may participate in the distribution of the securities of an issuer in the following cases:

(1) where he or one of his associates or affiliates plays the role of promoter of the issuer or the venture, of manager of the venture or of general partner;

(2) where one of his senior executives or senior executive of one of his associates or affiliates is promoter of the issuer or the venture, manager of the venture or general partner;

(3) where a member of his management or a member of the management of one of his associates or affiliates is a member of the management of the promoter of the issuer or the venture, the manager of the venture or the general partner.”

29. The said Act is amended by inserting, after section 168, the following section:

“168.1 A dealer shall participate in a guarantee fund in the cases and on the conditions determined by regulation.

The Government may, by order, exempt any guarantee fund approved by the Commission for this purpose from the application of the Act respecting insurance (R.S.Q., chapter A-32).”

30. The said Act is amended by inserting, after section 170, the following section:

“170.1 The organization may, with the prior approval of the Commission, delegate the powers delegated to it by the Commission to a committee formed by the organization or to a member of its personnel.”

31. The said Act is amended by inserting, after section 180, the following sections:

“180.1 The Commission has the power to make an inspection of the affairs of a self-regulatory organization to ascertain the extent to which it complies with the provisions of this Act, the regulations and the general instructions, and the manner in which it exercises the powers delegated to it.

“180.2 The inspector shall, on request, justify his quality.

“180.3 In carrying out his inspection, the inspector has the power

(1) to enter any establishment of the self-regulatory organization, during normal business hours;

(2) to take a copy of the books, registers or other documents relating to the carrying on of the activity of the self-regulatory organization;

(3) to require any information relating to the carrying on of the activity of the self-regulatory organization and the production of any relevant document.

“180.4 The self-regulatory organization shall give the inspector access to all the books, registers or other documents relating to the carrying on of its activities.”

32. Section 187 of the said Act is amended by replacing paragraph 2 by the following paragraph:

“(2) he avails himself of an automatic dividend reinvestment plan, automatic subscription plan or any other automatic plan established by a reporting issuer according to rules and procedures set down in writing, before he learned the information.”

33. Section 200 of the said Act is replaced by the following section:

“**200.** Every person who, not being registered as a dealer, adviser or representative, gives out information to investors which could influence their investment decisions and derives an advantage therefrom separate from his ordinary remuneration, is guilty of an offence.”

34. Section 211 of the said Act is replaced by the following section:

“**211.** A penal action for an offence under this Act is prescribed by the lapse of five years from the date of the offence.”

35. Section 214 of the said Act is amended by inserting the words “from the promoter of the venture” after the word “prospectus” in the third line of the second paragraph.

36. Section 236 of the said Act is amended by replacing paragraph 1 by the following paragraph:

“(1) three years from the transaction, in the case of actions for damages provided for in sections 214, 215, 226, 227 and 228;”.

37. Section 239 of the said Act is amended by replacing the second paragraph by the following paragraph:

“The Commission may also order an investigation to ascertain whether it would be advisable to recommend that the Minister appoint a provisional administrator.”

38. Section 250 of the said Act is amended by adding, at the end, the following paragraph:

“The person concerned shall be notified not less than 15 days before any hearing during which the Commission is to consider an

extension. The Commission may grant the extension if the person concerned does not indicate his intention to be heard or if he fails to establish that the reasons for the initial order have ceased to exist.”

39. Section 257 of the said Act is amended by adding, at the end, the following paragraph:

“In the case of a company incorporated outside Québec, the recommended mandate of the provisional administrator is to administer the property of that company which is situated in Québec.”

40. Section 258 of the said Act is replaced by the following section:

“258. Before appointing a provisional administrator, the Minister shall give the person concerned an opportunity to assert his rights in writing within seven days from receiving the notice from the Minister.

The Minister may, however, where it is imperative to do so and if the Commission so recommends, make the order first, provided that the person concerned is given an opportunity to assert his rights in writing within the same time limit.”

41. The said Act is amended by inserting, after section 258, the following section:

“258.1 Before making the order, the Minister may make any inquiry he considers useful.

For that purpose, he has the powers and immunity provided for in the first paragraph of section 6 and in sections 9 to 13 and 16 of the Act respecting public inquiry commissions (R.S.Q., chapter C-37).

For the purposes of the inquiry, he has all the powers of a judge of the Superior Court, except the power to order imprisonment.

The powers provided for in this section may be exercised by any person appointed by the Minister.”

42. Section 259 of the said Act is amended by adding the following paragraphs:

“The Minister may grant the provisional administrator the powers and immunity provided for in the first paragraph of section 6 and in sections 9 to 13 and 16 of the Act respecting public inquiry commissions (R.S.Q., chapter C-37) for the purpose of carrying out his mandate.

For the purposes of the inquiry, the provisional administrator has all the powers of a judge of the Superior Court, except the power to order imprisonment.”

43. The said Act is amended by inserting, after section 259, the following sections:

“259.1 The provisional administrator shall, within the period fixed by the Minister, file a provisional report with the Minister and the Commission setting out his findings and recommendations.

The provisional report shall, in particular, indicate whether the financial situation of the person named in the order will permit payment of the costs associated with the provisional administration, and whether the provisional administration may reasonably be expected to benefit holders of securities or, in the case of a registrant, his clients.

“259.2 The Minister may terminate the provisional administration if he considers that the financial situation of the person named in the order will not permit payment of the costs associated with the provisional administration or that the administration cannot reasonably be expected to benefit holders of securities or, in the case of a registrant, his clients.”

44. Section 261 of the said Act is replaced by the following sections:

“261. The Minister may, on the recommendation of the Commission,

- (1) revoke an order;
- (2) dismiss a member of the board of directors or declare him disqualified for such office, and provide for his replacement;
- (3) order the winding-up of the property of the person concerned and appoint a liquidator;
- (4) order the winding-up of the company concerned and appoint a liquidator.

Any member of the board of directors dismissed pursuant to this section is disqualified from holding office as director for a period of five years.

Every order of the Minister for the winding-up of the company concerned has the same effect as an order of a judge of the Superior Court under section 25 of the Winding-up Act (R.S.Q., chapter L-4).

“261.1 The Minister may terminate any winding-up ordered pursuant to section 261 if he considers that its continuation cannot reasonably be expected to benefit holders of securities of the person concerned or, in the case of a registrant, his clients.”

45. Section 262 of the said Act is amended by replacing the second paragraph by the following paragraph:

“The fees and expenses constitute a preferred claim on the movable and immovable property of the person named in the notice, ranking immediately after legal costs. Any preferred claims on an immovable is subject to the formalities of registration of real rights.”

46. The said Act is amended by inserting, after section 272, the following section:

“272.1 The Commission may, of its own initiative or upon application by an interested person, take any steps to ensure compliance with the provisions of this Act.

It may, in particular, require changes to any document established under this Act, prohibit circulation of a document or order circulation of any changes to an existing document or information.”

47. The said Act is amended by inserting, after section 295, the following section:

“295.1 The Commission may, according to law, make an agreement with a person or with an organization from Québec or elsewhere, with a view to fostering the application of this Act or foreign legislation in matters of securities.”

48. Section 297 of the said Act is amended by inserting the words “, inspection reports” after the word “reports” in the first line.

49. Section 320 of the said Act is amended

(1) by striking out the words “, except a decision rendered by a self-regulatory organization and sent by the organization itself” in the second, third and fourth lines;

(2) by adding, at the end, the following paragraph:

“However, a decision rendered by a self-regulatory organization or by a person or committee exercising a power sub-delegated by it shall be sent by the self-regulatory organization.”

50. The said Act is amended by inserting, after section 320, the following section:

“320.1 The Commission may file an authentic copy, at the office of the prothonotary of the Superior Court of the district in which the residence or principal establishment of the person concerned is situated, of a decision rendered following a hearing.

The decision on being filed becomes executory in the same way as a decision of the Superior Court, and has all the effects thereof.”

51. Section 322 of the said Act is amended by adding, at the end, the following paragraph:

“A person directly affected by a decision rendered under a power sub-delegated pursuant to section 170.1 may apply to have the decision reviewed by the self-regulatory organization within 30 days.”

52. Section 323 of the said Act is replaced by the following section:

“323. An application to the Commission or to a self-regulatory organization for a review of a decision does not suspend the execution of the decision contested, unless the Commission or the organization, as the case may be, decides otherwise.”

53. The said Act is amended by inserting, after section 323, the following section:

“323.1 For the purposes of sections 283, 317 to 319 and 321, a person or committee exercising powers sub-delegated pursuant to section 170.1 is considered to be a person exercising delegated powers.”

54. Section 324 of the said Act is amended by striking out the words “, if the testimony has been recorded,” in the second line.

55. Section 330 of the said Act is replaced by the following section:

“330. The final appeal judgment may be appealed to the Court of Appeal with leave of a judge of the latter court.”

56. Section 331 of the said Act is amended

(1) by inserting, after paragraph 19, the following paragraphs:

“(19.1) establish the conditions the issuer must satisfy to be granted a prospectus exemption under section 12 without the agreement of the Commission;

“(19.2) fix, for the purposes of section 51, the minimum amount of subscription or purchase;”;

(2) by inserting, after paragraph 25, the following paragraph:

“(25.1) determine the cases and conditions in which the dealer must participate in a guarantee fund;”.

57. Section 25 shall apply even with respect to a surrender made before it comes into force.

58. This Act will come into force on the date or dates to be fixed by the Government.