



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-THIRD LEGISLATURE

Draft Bill

An Act to amend the Securities Act

Introduction

June 15, 1989

**Introduced by
Mr Pierre Fortier
Minister for Finance and Privatization**

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EXPLANATORY NOTES

This draft bill proposes amendments to the Securities Act with regard to certain provisions applicable to trust companies, self-regulatory organizations and the Commission des valeurs mobilières du Québec.

The draft bill also proposes to subject unincorporated mutual funds established by trust companies whose securities are offered to the public to the authority of the Securities Act.

The draft bill proposes to permit a self-regulatory organization to sub-delegate powers which have been delegated to it by the Commission.

In addition it creates the position of director general of the Commission and confers on the Minister the power to give directives to the Commission with respect to its aims and objectives in the performance of the functions conferred on it by law.

Finally, the draft bill provides that any discretion exercised by the Commission and any resulting general instruction must be consistent with the Act, the regulations and the directives.

Draft Bill

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) is amended

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

“(11) a share in a mutual fund, provided that such mutual fund is established and administered by a trust company holding a permit in accordance with the Act respecting trust companies and savings companies (1987, chapter 95), that such share is distributed by such a company and has either of the following characteristics:

(a) it consists solely of pooled funds from retirement savings plans, home ownership plans or other similar plans, registered under the Taxation Act (R.S.Q., chapter I-3) or the Income Tax Act (R.S.C., 1970, chapter I-5);

(b) it consists of unsolicited funds received from curators, trustees, testamentary executors or tutors which are commingled with the authorization of the depositor or his agent for the purpose of investment;”;

(2) by adding, after paragraph 11, the following paragraph:

“(11.1) the units of an unincorporated mutual fund established and administered pursuant to section 187 of the Act respecting trust companies and savings companies by a trust company holding a permit in accordance with the said Act, provided that such units relate to sums received without solicitation and within the scope of a management mandate;”;

(3) by replacing paragraph 16 by the following paragraph:

“(16) a share in a mutual fund or a unit of an unincorporated mutual fund, provided that such fund is established and that its securities are distributed by a bank governed by the Act respecting banks and banking (R.S.C., 1985, chapter B-1) or by the Quebec Savings Banks Act (R.S.C., 1970, chapter B-4) or by a savings and credit union or a federation governed by the Savings and Credit Unions Act (R.S.Q., chapter C-4), that the management of the fund is entrusted to a trust company holding a permit in accordance with the Act respecting trust companies and savings companies, and that, according to the case, every share in the mutual fund has the characteristics set out in paragraph 11 and every unit of the unincorporated mutual fund has the characteristics set out in paragraph 11.1.”

2. The said Act is amended by inserting, after section 171, the following section:

“**171.1** The organization may, in turn, delegate to one of its members or to a member of its personnel powers delegated to it by the Commission.”

3. The said Act is amended by inserting, after section 182, the following sections:

“**182.1** The organization may review its decisions whenever a new fact so justifies.

It may also, at all times, review the decisions rendered by the person to whom it delegated powers.

“**182.2** Any person directly affected by a decision rendered in the exercise of a power delegated under section 171.1 may, within thirty days, apply for a review by the organization which delegated the power.

“**182.3** The application for review does not suspend the execution of the decision contested, unless the organization seized with such application decides otherwise.”

4. The said Act is amended by inserting, after section 280, the following sections:

“**280.1** The Government shall appoint the director general of the Commission, after consulting with the Commission. It shall fix the remuneration, social benefits and other conditions of employment of the director general.

“280.2 The director general shall be responsible for the administration of the daily business of the Commission.

“280.3 If the position of director general is vacant or if the director general is absent or unable to act, his functions shall be exercised by such member of the personnel of the Commission as the Commission may designate.

“280.4 The director general shall exercise the powers devolved upon the Commission under the Act, the regulations or any agreement under section 306, to the extent that the powers have been delegated to him by the Commission. However, no power under sections 308 to 310 and 322 may be delegated to him.

The delegation of a power to the director general cannot be revoked except for reasonable cause and after he has been heard. The revocation of a delegation entails revocation of a sub-delegation under section 307, if any.

Every decision rendered under this section shall be published in the *Gazette officielle du Québec*.”

5. Section 290 of the said Act is replaced by the following section:

“290. Two members are a quorum of the Commission, except for a decision under section 280.3 or 280.4, where the quorum is a majority of the members.

In case of a tie the chairman has a casting vote.”

6. Section 293 of the said Act is replaced by the following section:

“293. The minutes of the sittings of the Commission are authentic if they are approved by the Commission and signed by the chairman, the director general, the secretary or a member of the Commission.

The same applies to a document emanating from the Commission or forming part of its records, and to any copy of such a document, if certified by the chairman, the director general, the secretary or a person designated by the Commission.”

7. Section 299 of the said Act is replaced by the following section:

“299. The members of the personnel of the Commission, except the director general, are appointed and remunerated in accordance with the Public Service Act (R.S.Q., chapter F-3.1.1).”

8. The said Act is amended by inserting, after section 299, the following section:

“299.1 The minister responsible for the administration of this Act may, within the scope of his responsibilities and the powers conferred upon him, give the Commission directives concerning its aims and objectives in the carrying out of the functions entrusted to it by the Act. The directives must be approved by the Government and shall take effect on the date of their publication in the *Gazette officielle du Québec*.

Every directive given under this section is binding upon the Commission. Directives must be tabled in the National Assembly within 15 days of their approval if the Assembly is in session or, if it is not sitting, within 15 days of the opening of the next session, or of resumption.

Moreover, every person or self-regulatory organization exercising a delegated power is bound by the directives to the extent that they concern the exercise of a delegated power.”

9. Section 307 of the said Act is replaced by the following section:

“307. The director general may delegate to a member of the personnel of the Commission a power delegated to him by the Commission. Every decision to delegate power must be published in the *Gazette officielle du Québec*.”

10. Section 316 of the said Act is amended by adding the following, after the first sentence: “However, such exercise of discretion and any general instruction resulting therefrom must be consistent with this Act, the regulations and the directives under section 299.1.”

11. Section 320 of the said Act is replaced by the following section:

“320. The Commission shall send to the person concerned the decision rendered by it or by a person exercising powers delegated by it.

However, a decision rendered by a self-regulatory organization or by a person exercising a power delegated thereby shall be sent by the organization itself."

12. Section 322 of the said Act is replaced by the following section:

"322. A person directly affected by a decision rendered by a person exercising a delegated power or by a self-regulatory organization, may within thirty days, apply to the Commission for a review of the decision."

13. The powers delegated to a member of the personnel of the Commission pursuant to a delegation of powers having effect on 1 October 1988 and any other power delegated to a member of the personnel of the Commission on or after that date are deemed to be delegated to the director general by the Commission in accordance with section 280.4.

14. This Act comes into force on (*insert here the date of assent to this Act*).