



NATIONAL ASSEMBLY

FIFTH SESSION

THIRTY-SECOND LEGISLATURE

Bill 7

An Act to amend the Securities Act

Introduction

**Introduced by
Mr Jacques Parizeau
Minister of Finance**



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EXPLANATORY NOTES

The object of this bill is to amend those provisions of the Securities Act which apply to take-over bids, take-over bids by way of an exchange of securities and issuer bids. The purpose of the amendments is to bring about uniformity among the provinces in the regulation of such matters, according to understandings that have been arrived at between the main securities commissions. At the same time, these amendments are intended to facilitate the execution of such bids and provide better protection to Québec investors .

A further object of this bill is to amend other provisions of the Act in order to simplify the procedure of distribution of securities to the public, give additional protection to investors and more effectively suppress transgressions of the Act.

Bill 7

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 by replacing paragraph 2 by the following paragraph:

“(2) a security issued by a closed company in conformity with its constituting documents, except in the case described in section 114 where a closed company has an interest in a company whose securities are traded on an organized market;”.

2. Section 5 of the said Act is amended

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

““adviser” means any person who advises another person as to the purchase or disposition of securities or to participation in a securities transaction, or who, under a mandate, manages a portfolio of securities, or who solicits persons as part of his activities as adviser or manager;”;

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

““dealer” means any person

(1) carrying on the activities of intermediary in the trading of securities;

(2) trading in securities as principal, whether as his main activity or only as a secondary activity;

(3) distributing a security for his own or another's account;

(4) soliciting persons as part of his activities described in subparagraphs 1 to 3;";

(3) by adding, after the definition of "senior executive", the following definition:

""soliciting" means the activities of a person who regularly seeks to meet persons in their places of residence or work or in public places or who regularly uses the telephone, letters or circulars to propose that they purchase or dispose of securities or participate in a securities transaction, or to offer them services or advice for such purposes;";

(4) by replacing subparagraph 1 in the definition of "associate" by the following definition:

"(1) any company in which the person owns securities assuring him of more than 10% of a class of shares to which are attached voting rights or an unlimited right to a share of the profits and in its assets in case of winding-up;";

(5) by striking out the definition of "person";

(6) by replacing the definition of "distribution" by the following definition:

""distribution" means

(1) the endeavour to obtain, or the obtaining, by an issuer, of subscribers for his securities;

(2) the endeavour to obtain, or the obtaining, by a firm underwriter, of purchasers for securities he has underwritten;

(3) the endeavour to obtain, or the obtaining, by a subscriber or purchaser of securities which he acquired under an exemption provided under sections 43 to 56, of purchasers for such securities;

(4) the endeavour to obtain, or the obtaining, by a subscriber or purchaser of securities which he acquired through a transaction for which no prospectus was prepared as required by law and no exemption was granted, of purchasers for such securities;

(5) the endeavour to obtain, or the obtaining, by a subscriber or purchaser of securities which he acquired outside Québec, of purchasers for such securities in Québec, except on an organized market;

(6) the endeavour to obtain, or the obtaining, by an agent, of subscribers or purchasers of securities on behalf of persons contemplated in subparagraphs 1 to 5;

(7) the endeavour to obtain, or the obtaining, of a purchaser for securities of a formerly closed company that have not previously been the subject of a prospectus;

(8) the giving in guarantee by an issuer of securities issued by him for that purpose;”;

(7) by replacing the definition of “closed company” by the following definition:

““closed company” means a company, other than a mutual fund, whose constituting documents provide for restrictions on the free transfer of shares, prohibit any distribution of securities to the public and limit the number of its shareholders to 50, exclusive of present or former employees of the company or of a subsidiary;”.

3. Sections 6 to 9 of the said Act are replaced by the following sections:

“6. In the case of a patrimonium endowed with a certain degree of autonomy, such as a retirement fund, civil partnership, trust or group without legal personality, this Act applies as if the patrimonium had such personality, but its observance is the responsibility of the persons in charge of the patrimonium, and both civil and penal actions may be brought against them for acts relating to such observance.

“7. In the case of an unincorporated mutual fund, the required disclosure has regard to the fund but, as an instance of the rule of section 6, is the responsibility of the person in charge of management of the fund.

In the case of an investment contract, the required disclosure has regard to the venture and is the responsibility of the promoter of the venture and the persons in charge of it, unless the Commission specially designates a person in virtue of section 66 or 104.

“8. The person owning securities entitling him to elect in all cases a majority of the directors of a company has the control of that company.

“9. A company is the subsidiary of another company when it is controlled by it or by companies controlled by it.

A subsidiary of a company that is itself a subsidiary of another company is deemed to be a subsidiary of that other company.

Two companies are affiliates if one is the subsidiary of the other or if both are subsidiaries of the same company or are controlled by the same person.”

4. Section 10 of the said Act is amended by adding the following paragraph:

“Similarly, in any purchase or disposition, the transfer of ownership is deemed accomplished upon acceptance of the subscription or of the offer of sale or purchase.”

5. Section 11 of the said Act is amended by adding the following paragraph:

“Notwithstanding the foregoing, in the case of a distribution made by a dealer acting as firm underwriter, the issuer is responsible for preparing the prospectus.”

6. Section 18 of the said Act is amended

(1) by striking out the words “or the equivalent requirements imposed by the Act replaced by this Act” in subparagraph 2;

(2) by adding the following paragraph:

“Notwithstanding the foregoing, only an issuer having already prepared a prospectus in the ordinary form may use a simplified prospectus without authorization of the Commission.”

7. The said Act is amended by inserting, after section 18, the following section:

“18.1 In addition to its own content, a simplified prospectus includes, as integral parts, all the documents which, by regulation, are required to be incorporated with it, and any other documents to be incorporated with it under its own terms.”

8. The said Act is amended by inserting, after section 24, the following division:

“DIVISION III.1

“SHELF PROSPECTUS

“24.1 An eligible issuer may prepare a shelf prospectus, a special type of preliminary simplified prospectus. In its final version, the prospectus shall be composed of the shelf prospectus and a supplement, unless it reiterates and supplements the information disclosed in the shelf prospectus, and brings it up to date.

“24.2 The issuers eligible to prepare a shelf prospectus, the information such a document shall contain and the exceptions that may be made to the ordinary rules on the simplified prospectus and the preliminary prospectus are determined by regulation.”

9. Section 27 of the said Act is amended by replacing the second paragraph by the following paragraph:

“The amendments require a receipt from the Commission under the same conditions as the prospectus thereby amended, except where, in the case of the prospectus in its final version, the Commission decides to or refuses to issue a receipt within the next two working days. This period is inoperative in the case of a continuous distribution.”

10. Section 28 of the said Act is replaced by the following section:

“28. The distribution is interrupted from the filing of the amendment to the date of the receipt.

Once a receipt is obtained for the amendment, the prospectus may be sent only if accompanied with the amendment.”

11. The French text of section 40 of the said Act is amended by replacing the words “y tenant lieu” in the fourth line by the words “en tenant lieu”.

12. Section 40.1 of the said Act, enacted by section 44 of chapter 56 of the statutes of 1983, is replaced by the following section:

“40.1 Every prospectus of any type, document authorized by the Commission for use in lieu of a prospectus, offering memorandum contemplated in this Act or the regulations and permanent information record contemplated in Title III, as well as every take-over bid circular, take-over bid, circular of a board of directors and notice of a senior executive contemplated in Title IV, shall be drawn up in French only or in French and English.”

13. Section 47 of the said Act is replaced by the following section:

“47. No prospectus is required of a non-reporting issuer where he distributes his securities to not more than 25 subscribers, if the transaction meets the following conditions:

(1) each subscriber is acting for his account;

(2) the securities are distributed only to persons able to evaluate the prospective investment by virtue of their financial experience or of advice received from an independent registered person, to senior

executives of the issuer or of an affiliated company, or to persons associated with such executives;

(3) each transaction is evidenced in writing and the contract contains the provisions prescribed by regulation;

(4) the distribution is completed within 6 months;

(5) the distribution is made without advertisement and without any distribution or promotional expenses apart from professional fees and the remuneration paid to a registered dealer;

(6) the promoter of the transaction, except a registered dealer, has not taken part in a distribution under this exemption within the previous 12 months;

(7) the promoter has never before availed himself of this exemption.

Similarly, no prospectus is required for a subsequent transfer between persons who subscribed for the securities.

The issuer shall notify the Commission at least ten days before the distribution begins and after its completion, in the form prescribed by regulation.”

14. Section 48 of the said Act is replaced by the following sections:

“**48.** No prospectus is required of a non-reporting issuer where he distributes tax-shelter securities, that is, securities that give entitlement to tax exemptions, to not more than 50 subscribers, if the transaction meets the conditions set forth in subparagraphs 1 to 5 of the first paragraph of section 47.

Similarly, no prospectus is required for a subsequent transfer between persons who subscribed for the securities.

“**48.1** Exemption under section 48 applies only if the Commission agrees thereto or raises no objection within 15 days of receiving the offering memorandum.

The issuer shall prepare an offering memorandum in the form prescribed by regulation, submit it to the Commission for examination under the terms of the first paragraph, and transmit it to the prospective purchasers of the securities before accepting any undertaking from them.

“**48.2** No issuer making a distribution of tax-shelter securities may avail himself of the exemption provided for in section 47.”

15. Section 49 of the said Act is replaced by the following section:

“49. An issuer making a distribution under an exemption by virtue of section 48 shall, within ten days of its completion, notify the Commission in the form prescribed by regulation.”

16. Section 51 of the said Act is replaced by the following section:

“51. No prospectus is required for the distribution of securities without advertisement where the total cost of subscription or purchase is at least \$250 000 per person, provided that each person is acting for his own account. The person making the distribution shall give the notice provided for in section 46.

This exemption is not available in the case of securities distributed to a company established with a view to a distribution under this exemption.”

17. The French text of section 52 of the said Act is amended by replacing paragraph 5 by the following paragraph:

“5° le placement de ses propres titres auprès de ses salariés et dirigeants, ou de ceux d’une société du même groupe, sous réserve que l’acquisition des titres ne soit pas une condition d’embauche ou de maintien dans l’emploi.”

18. The said Act is amended by inserting, after section 56, the following section:

“56.1 The exemptions provided for in this division are not available for the distribution of securities by an issuer in an irregular situation in relation to this Act or the regulations.

The same rule applies to the distribution by a person of securities subscribed or purchased as part of an irregular distribution.”

19. Section 57 of the said Act is replaced by the following section:

“57. The expression “gilt-edged security” means any of the following securities:

- (1) a debt instrument secured by one of the following:
 - (a) a hypothec ranking first on an immovable;
 - (b) the pledge of equipment, in the case of a company having regularly ensured its debt service in the last five fiscal years;
 - (c) the pledge of gilt-edged securities;

(2) a debt instrument issued or guaranteed by a company whose common or preferred shares constitute gilt-edged securities;

(3) fully paid preferred shares issued by

(a) a company incorporated in Canada which made a sufficient profit in the last five fiscal years to allow it to distribute the stipulated dividend or

(b) a company whose common shares constitute gilt-edged securities;

(4) common shares listed on a stock exchange recognized for such purpose by the Commission and issued by a company which made a sufficient profit in four of its last five fiscal years to allow it, after deducting preferred dividends, to distribute a dividend equal to not less than 4% of the amount appearing on the balance sheet as the value of common shares.”

20. Section 58 of the said Act is amended

(1) by replacing subparagraph 2 of the second paragraph by the following subparagraph:

“(2) 12 months in the case of other securities.”;

(2) by striking out subparagraph 3 of the second paragraph.

21. The said Act is amended by inserting, after section 59, the following section:

“**59.1** The Commission may require any person invoking the benefit of an exemption in virtue of section 58 or 59 to prove that the securities were held for the required period.”

22. Section 65 of the said Act is repealed.

23. Section 68 of the said Act is amended

(1) by replacing subparagraph 2 of the second paragraph by the following subparagraph:

“(2) its securities, offered as consideration in a take-over bid by way of an exchange of securities, have been described in a circular filed with the Commission;”;

(2) by replacing subparagraph 4 of the second paragraph by the following subparagraph:

“(4) its existence is the result of a reorganization to which a reporting issuer was a party;”;

(3) by replacing subparagraph 6 of the second paragraph by the following subparagraph:

“(6) it is contemplated in section 68.1 or 338.”

24. The said Act is amended by inserting, after section 68, the following section:

“68.1 An issuer subject to equivalent continuous disclosure requirements established by another legislative authority may apply to the Commission to become a reporting issuer and to have the period for which it has fulfilled the requirements taken into account.

The issuer shall attach to its application the continuous disclosure documents already filed in the other province and a certificate from the competent authorities establishing that it is subject to the continuous disclosure requirements and the number of years for which it has fulfilled the requirements.

Upon approval of the application, holders of securities of the issuer may avail themselves of the exemptions in virtue of sections 58 to 61. If the issuer has already filed a prospectus in the regular form in another province of Canada, and has been meeting the continuous disclosure requirements of that province for one year, the Commission may authorize it to prepare a simplified prospectus, provided the additional information required by the Commission is included therein.”

25. Section 69 of the said Act is amended by adding the following paragraph:

“The Commission may require the issuer to provide a statement attesting that the securities registered in the name of a dealer do not belong to holders resident in Québec.”

26. Section 80 of the said Act is replaced by the following section:

“80. The financial statements provided for in this Act or the regulations must be drawn up in accordance with the relevant provisions of this Act and the regulations, with generally accepted accounting principles and with any additional requirements prescribed by the policy statements.

The auditor’s report must be drawn up in accordance with any relevant provision of the regulations, with generally accepted accounting principles and with any additional requirements prescribed by the policy statements.”

27. Section 82 of the said Act is amended by striking out the third paragraph.

28. The said Act is amended by inserting, after section 82, the following section:

“82.1 The management of the reporting issuer must send the circular described in section 82 in all cases, even when, pursuant to a prohibition imposed by the law of the place of its incorporation, it does not solicit proxies.

The management shall send the circular to all its registered security holders other than holders of debt securities.”

29. Section 85 of the said Act is amended by replacing paragraph 1 by the following paragraph:

“(1) the annual information form containing the information prescribed by regulation;”.

30. Section 89 of the said Act is amended by replacing paragraph 2 by the following paragraph:

“(2) any person who exercises control over more than 10% of a class of shares of a reporting issuer to which are attached voting rights or an unlimited right to a share of the profits and in its assets in case of winding-up, other than securities that were the object of a firm underwriting and are in the course of distribution;”.

31. The said Act is amended by repealing section 93.

32. The said Act is amended by replacing sections 99 and 100 by the following sections:

“99. A report under sections 96 and 97 is not required where the facts to be reported have already been disclosed in a report under section 147.17 or 147.18.

“100. The senior executives of a mutual fund or of an unincorporated mutual fund are exempt from any disclosure requirements to which they would be subject under sections 96 and 97 by reason only of their capacity as such.”

33. The said Act is amended by repealing section 101.

34. The said Act is amended by inserting in Title III, after the heading of Chapter V, the following section:

“103.1 An issuer established under the law of a state other than Canada or a province of Canada and that is a reporting issuer only because one of its securities is listed on a recognized stock exchange as a self-regulatory organization is eligible for a lighter continuous disclosure scheme defined by the Commission in a policy statement. The Commission shall determine the classes of issuers eligible for the lighter scheme.”

35. Section 108 of the said Act is amended by adding, at the end, the following sentence: “In all other respects, the permanent information record is subject to the general scheme set forth in sections 84 to 88.”

36. Title IV of the said Act is replaced by the following title:

“TITLE IV

“TAKE-OVER BIDS AND ISSUER BIDS

“CHAPTER I

“GENERAL PROVISIONS

“110. A person proposing to make a purchase for cash of securities of a company whereby he would obtain or increase an interest of over 20% of a class of voting securities shall proceed by way of a take-over bid.

“111. A person’s interest is determined as the sum of the securities owned or controlled by the person and by joint actors of the person, including, in particular, securities controlled by virtue of the power to exercise the voting rights attaching to them.

Companies affiliated with and persons associated or acting in concert with a person are deemed to be joint actors of the person.

A person who, pursuant to an agreement with the offeror or one of his joint actors, acquires securities of the class offered or who intends to exercise the voting rights attaching to the securities in concert with the offeror or one of his joint actors is deemed to act in concert with the offeror.

“112. In calculating a person’s interest, any security or right permitting the person to acquire a security of a particular class within 60 days by a single transaction or a series of linked transactions is also deemed to be a security of the particular class.

Securities and rights described in the first paragraph are added to the securities of the person and to the securities of the particular class.

“113. A take-over bid is subject to this title if the offeror intends to acquire securities of the class which is the subject of the bid from at least one security holder having a connection with Québec by his address, as shown on the records of the company contemplated, by his residence or by his presence in the territory at any time during the bid.

“114. Where a person acquires securities issued by a company which are not traded on an organized market and as a consequence obtains an interest securing his control over the company, which itself has an interest in another company whose securities are traded on an organized market, the person is deemed to acquire from the vendor securities of the second company up to the percentage of the securities acquired by the person in the first company, and for a fraction of the consideration equal to the ratio between the securities of the second company and the assets of the first company.

“115. Shares without voting rights to which is attached an unlimited right to a share of the profits and in the assets in case of winding-up, must, in the same circumstances as voting shares, be the subject of a take-over bid if the securities are traded on an organized market.

“116. The Commission may, of its own initiative or at the request of an interested person, take any appropriate measure to ensure compliance with the requirements of this title.

The Commission may, in particular, require that changes be made in information documents being distributed, prohibit the distribution of a document or order that a change be distributed.

“117. The requirements of this title apply to securities grouped in series as if they were classes.

“118. A person proposing to acquire securities of the offeree company by way of an exchange of securities, with the result described in section 110, shall proceed by way of a take-over bid of that type.

A take-over bid under the first paragraph is subject to the requirements of a take-over bid, *mutatis mutandis*.

“CHAPTER II

“EXEMPTIONS

“119. An offeror who makes a take-over bid to all security holders through a stock exchange recognized by the Commission for the purpose of this section and in accordance with the rules of that exchange is exempt from the requirements of Chapters III and IV.

“120. The purchase, on a stock exchange recognized by the Commission for the purposes of this section, of not more than 5% of the securities of a class over a period of 90 days by a person and his associates is exempt from Chapters III and IV.

If, however, the purchaser intends to avail himself of the exemption more than once over a period of 12 months, he shall report the fact each time, five working days before he acquires securities in excess of 5%, to the Commission, to the issuer and to the stock exchanges on which the security is listed. The report is made in the form prescribed by regulation.

Every stock exchange recognized as a self-regulatory organization may modify the rules regarding exemption under this section. New rules apply only from their approval by the Commission, after a public hearing.

“121. The offeror who makes a take-over bid in accordance with the rules established by another legislative authority that are deemed equivalent by the Commission is exempt from the requirements of Chapters III and IV, to the extent that the following conditions are met:

(1) there are fewer than 25 holders resident in Québec according to the addresses entered in the records of the offeree company or in the records of dealers or brokers acting as nominee;

(2) the holders resident in Québec own less than 2% of the securities of that class;

(3) the offeror has sent to the holders resident in Québec and has filed with the Commission all the documents prescribed under the applicable legislation;

(4) the offeror has made the offer to the holders resident in Québec on the same conditions as to other holders.

The offeror has an obligation to ascertain the address of each beneficial owner of the securities from the dealers and the dealers have an obligation to make the required information available to the offeror.

“122. The acquisition of securities issued by a company that is not a reporting issuer and which are not traded on an organized market is exempt from Chapters III and IV provided that there are not more than 25 security holders resident in Québec according to the addresses entered in the records of the company, excluding holders who are or have been employees of the company or of an affiliate of the company.

“123. The purchase, without a general offer to all the holders, of securities from not more than five holders by way of block purchase at a price limited to a margin of variation of 15% in relation to the average market price is exempt from Chapters III and IV.

The price paid includes brokerage fees and commissions. The average market price is obtained by averaging the closing prices for the 20 days of market activity preceding the date of the transaction, or, if the market only gives the highest and the lowest prices, the weighted average of the daily prices over the same period, the daily prices being defined as the average between the highest and lowest prices.

Where it is impossible to obtain a reliable average market price, the proposed average market price and the method used to obtain it require the approval of the Commission.

“124. In the case of securities acquired within the preceding two years for resale under the exemption provided in section 123, the vendors from whom the securities were acquired are counted as so many holders.

“125. A purchaser who intends to avail himself of the exemption provided for in section 123 shall require the holders to declare under oath or by solemn affirmation the particulars by which he can evaluate his position with regard to the number of holders. The declaration must disclose every agreement to use a nominee in connection with the securities in question, each principal being then counted as a holder.

“126. A person who acquires not more than 5% of the securities of the class is exempt from Chapters III and IV, provided that neither he nor his joint actors, within any twelve-month period, acquire under this exemption or an exemption under section 120 or 123, more than 5% of the securities of the class that are outstanding at the beginning of the period.

In the case of securities traded on an organized market, the exemption does not apply if the securities are acquired at a price higher than the price on that market on the day of the transaction.

“CHAPTER III

“INFORMATION TO SECURITY HOLDERS

“DIVISION I

“SENDING OF TAKE-OVER BID AND CIRCULAR

“127. A take-over bid is binding on the offeror in respect of all the holders of securities of the class sought by the bid and in respect

of holders of securities carrying the right to purchase, during the offer, securities of that class, if they are resident in Québec according to the addresses entered in the records of the offeree company or are resident there in fact.

“128. The offeror shall send the take-over bid, with a take-over bid circular prepared in the form prescribed by regulation, to security holders resident in Québec according to the addresses entered in the records of the offeree company, and to those who are resident in Québec in fact and who make a request therefor.

He shall file the documents referred to in the first paragraph with the Commission and send them to the offeree company not later than the day they are sent to the security holders.

“129. The contents of the documents referred to in section 128 and the distribution thereof must be authorized by the offeror in the manner prescribed by regulation.

“130. Where the initial terms of a take-over bid are varied and where a change has occurred, either during the bid or after the offer is closed, but before the expiry of the period allotted for withdrawal of the securities, in the facts on which the circular is based and the change is such that it may affect the holders' decision to accept or refuse the offer, the offeror is bound to notify the holders of securities that have not been deposited or taken up, the Commission, and the offeree company.

“131. The notice provided for in section 130 shall be drawn up in the form prescribed by regulation. It shall, in particular, inform the holders that they have a right of withdrawal pursuant to paragraph 2 of section 147.5.

“132. Notwithstanding the foregoing, in the case of a take-over bid by way of an exchange of securities, a change not resulting from an act of the offeror or of an affiliate gives rise to the notice provided for in section 130 only if it constitutes a material change that is likely to affect the value or the market price of the securities offered in exchange.

“133. A take-over bid and the related documents mentioned in this title must be sent by mail, by personal delivery or in any other manner approved by the Commission.

A take-over bid and the related documents become effective on the day they are sent.

"DIVISION II

"CIRCULARS OF THE BOARD OF DIRECTORS AND
SENIOR EXECUTIVES

"134. The board of directors of the offeree company shall cause a circular prepared in the form prescribed by regulation to be sent not later than ten days from the date the take-over bid is made, to the holders to whom the offer must be made.

The circular may contain a substantiated notice recommending that the security holders accept or reject the offer they have received. If, however, the board decides not to make a recommendation, the absence of any recommendation must be explained.

"135. The circular of the board of directors shall contain a summary of the reports or opinions it has seen fit to mention, having regard to the professional credibility of the author of the opinion.

"136. Where the board of directors of an offeree company is considering making a recommendation after the sending of the circular provided for in section 134, it shall mention that fact in the circular. It may then recommend that the security holders not tender their securities until further communication is received from the board.

Where the board recommends that holders await further communication, it shall, not later than seven days before the bid expires, communicate to them its substantiated recommendation or, if it decides not to make a recommendation, its reasons therefor.

"137. Any senior executive of an offeree company may include with the circular of the board of directors, with any amendment to the circular or with the communication provided for in section 136 a separate notice prepared in the form prescribed by regulation, in which he may recommend the acceptance or rejection of the take-over bid or indicate his disagreement with the documents prepared by the board.

"138. Where the offeror, in accordance with section 130, notifies the holders of a variation in the terms of the take-over bid or of a change in the facts, the board of directors of the offeree company shall send a new circular within five days after the notice.

"139. The board of directors or the senior executive is bound to notify the security holders and the Commission of any change that has occurred, either during the take-over bid or after the closing of the offer but before the expiry of the time allotted for withdrawal of the securities, in the facts on which the circular is based and which are likely to affect the holders' decision to accept or reject the offer.

“140. The board of directors and senior executives shall file with the Commission the documents provided for in sections 134 to 139 and send them to the offeror as soon as they are sent to the security holders.

“CHAPTER IV

“PROCEDURE OF TAKE-OVER BIDS

“DIVISION I

“RELATED TRANSACTIONS OF THE OFFEROR

“141. From the opening of the take-over bid until its expiry, the offeror and his joint actors are prohibited from acquiring securities of the class sought by the bid otherwise than according to the terms of the bid; they are also prohibited from accepting undertakings that would enable them to acquire securities on conditions other than those of the bid.

“142. An offeror having declared in the take-over bid circular that he intends to acquire securities under the exemption provided for in section 120 may do so from the third working day following the opening of the bid, subject to a ceiling of 5% for purchases so effected by the offeror and his joint actors.

The offeror shall declare the purchases effected by him or his joint actors each day, when the market closes, by way of a press release in the form prescribed by regulation. The release is filed forthwith with the Commission and transmitted to the stock exchanges on which the security is listed.

“143. Neither the offeror nor his joint actors may, during the bid, sell securities of the class sought by the bid or accept undertakings that would enable them to sell the securities, but the joint actors may deposit securities in response to the offer.

“144. Within 20 working days following the expiry of the take-over bid, neither the offeror nor his joint actors, nor the holder of an interest that exceeds 20% in the class that was sought by the bid, nor any associate or affiliate of any of them may acquire securities of the same class by way of a block purchase effected under the exemption provided for in section 120 or 123.

"DIVISION II

"OBLIGATIONS OF THE OFFEROR

"145. The offeror and his joint actors shall offer the same conditions to all the holders of securities of the class that is the subject of a take-over bid. Both the offeror and his joint actors are prohibited from making any agreement that would have the effect of creating disparity among the holders.

"146. Where there is an increase in price, the offeror shall pay the increased price even for securities already paid for.

"147. The offeror shall make adequate arrangements to ensure that the required funds are available to effect payment for all securities that are the subject of the take-over bid. The Commission may require the offeror to furnish a performance bond.

"147.1 Securities purchased by the offeror during a take-over bid but not as a result of the bid are taken into account in determining whether or not the minimum number of securities has been tendered under the bid, except where the number of securities deposited in response to the bid exceeds the number that the offeror is bound or willing to take up.

"147.2 If the number of securities deposited in response to the bid is greater than the number the offeror is bound or willing to take up, he shall reduce the number of securities deposited by each holder *pro rata*, taking into account necessary adjustments.

"DIVISION III

"TIME LIMITS

"147.3 The period of time during which holders of securities may deposit them pursuant to a bid shall not be less than twenty-one days from the date thereof.

"147.4 For 21 days from the date of the bid, the offeror is prohibited from purchasing securities deposited in response to the bid.

"147.5 Securities deposited in response to a take-over bid may be withdrawn by giving notice in writing to the depository within the following time limits:

(1) for all securities, before the expiry of 21 days from the date of the bid;

(2) for securities not taken up by the offeror, before the expiry of 10 days from the notice provided for in section 130, and after 45 days from the date of the bid.

“147.6 The offeror is bound, if the terms of the bid are met, to take up and pay for the securities within 10 days from the expiry of the bid.

The offeror shall, nevertheless, pay within 10 days for any security taken up before the expiry of the bid.

“147.7 Once the offeror has begun taking up securities, he shall take up and pay for all securities deposited thereafter, within 10 days of their deposit.

“147.8 Where the terms of a bid are varied, the bid must not expire less than 10 days after the notice, except in the case of an increase in price, or in the case of waiver of a condition to a take-over bid.

“147.9 An offeror who wishes to extend the duration of a bid for which all the terms have been met shall first take up all the securities deposited.

“147.10 Within 20 days of the expiry of the bid, the offeror shall file with the Commission a notice indicating the result of the bid and, if it was favourably received, the number of securities acquired.

“CHAPTER V

“VARIOUS REPORTS

“147.11 A person whose interest in a class of voting securities increases to 10% or more shall, upon completing the transaction, issue a press release giving an accurate account of its interest and file the release with the Commission.

Within two working days, the person shall send to the Commission, the issuer of the securities and, as the case may be, the stock exchanges on which the security is listed, a report of the information prescribed by regulation.

“147.12 Any material change in the information furnished in the report must be filed as an amendment to the report and be transmitted to the same persons and within the same time limit as in section 147.11.

More particularly, a person whose interest as declared under section 147.11 increases to any additional multiple of 5%, or more, is bound to file an amendment to the initial report.

“**147.13** An acquirer is bound by the requirements of sections 147.11 and 147.12 only if, after the transaction, his interest in the class of securities is less than 20%.

“**147.14** From the event giving rise to a disclosure or to an amendment, neither the person interested nor any of his joint actors may acquire or offer to acquire securities of the class before the day after the next working day following the completion of the formalities prescribed in sections 147.11 and 147.12.

“**147.15** Every person other than the offeror who, during a take-over bid, acquires, alone or jointly with his joint actors, securities giving him an interest of at least 5% in the class that is the subject of the offer, shall issue a press release in the form prescribed by regulation, file it with the Commission and send it to the stock exchanges on which the security is listed, before 10 o'clock in the morning of the next working day after the transaction.

“**147.16** A person issuing a press release under section 147.15 shall issue and file with the Commission, within the time limit prescribed in that section, a new press release each time that, through new acquisitions made by him or by his joint actors during the bid, the previously reported interest is increased by 2.5%.

He shall also send a new press release to the stock exchanges on which the security is listed.

“**147.17** Every person who acquires, under an exemption other than the exemption provided in section 119, securities which, added to those that he already owns, give him an interest greater than 20% in a class of voting securities of a reporting issuer shall file a report with the Commission, on the next working day after the transaction, in the form prescribed by regulation.

Every person who acquires securities giving him an interest equal to 20% shall also file a report under the first paragraph.

“**147.18** Every person who owns an interest equal to 20% or more in a class of voting securities of a reporting issuer shall file a report with the Commission, within the time limit prescribed in section 147.17, and in the form prescribed by regulation, each time he acquires securities that cause his interest to increase to an additional multiple of 5%, or more.

“CHAPTER VI

“ISSUER BIDS

“**147.19** An issuer who intends to acquire securities issued by him, except debt securities not convertible into securities representing an interest in his share capital, shall proceed by way of an issuer bid.

“**147.20** Sections 111 to 113, 115 to 119, 121, 122, 127 to 133, 141 and 145 to 147.18 apply to an issuer bid, *mutatis mutandis*.

“**147.21** An issuer who intends to acquire securities issued by him is exempt from the requirements under this title where

(1) the securities are acquired in accordance with conditions in writing at the time of issue or determined subsequently in accordance with the constituting Act;

(2) the issuer, following the publication of a notice of intention in the form prescribed by regulation, acquires, over a twelve-month period, less than 5% of the class of securities in question outstanding at the commencement of the period.

“**147.22** Every senior executive of an issuer may include with an issuer bid a notice similar to the notice provided for in section 137.

“**147.23** From the opening of the bid to its expiry, the issuer, his associates and every holder having an interest of over 20% of the class that is the subject of the bid are prohibited from acquiring securities of the same class otherwise than according to the terms of the bid; they are also prohibited from accepting undertakings that would enable them to acquire the securities on terms other than those of the bid. However, the issuer may redeem securities pursuant to the exemption provided for in paragraph 1 of section 147.21.”

37. Section 151 of the said Act is amended by replacing paragraph 2 by the following paragraph:

“(2) the candidate is financially solvent and, in the case of a legal person, has adequate financial resources to ensure the viability of his business.”

38. Section 153 of the said Act is amended by replacing the first paragraph by the following paragraph:

“**153.** A registrant wishing to cease carrying on business shall apply to the Commission to surrender his registration.”

39. Section 154 of the said Act is amended by replacing, at the end of paragraph 1, the words “to the extent that its part in securities transactions is merely to forward unsolicited orders to a dealer” by the following words: “to the extent that its intervention is merely to execute on an organized exchange, through a registered dealer, orders received without solicitation or advertisement other than the announcement, in their establishments, of the service offered;”.

40. The said Act is amended by inserting, after section 155, the following sections:

“155.1 A person who limits his activities as dealer to the distribution of a security through a registered dealer is exempt from registration.

“155.2 A person who limits his activities as dealer to the distribution of securities acquired under an exemption provided for in sections 47, 48, 50, 51 and 52 is exempt from registration provided that he effects such distributions only as a secondary activity.

Notwithstanding the foregoing, the person shall observe the requirements imposed by sections 160 to 163 and 166.

“155.3 Every person who, having a mandate which includes the sale of property of other persons, is required to sell securities at a judicial sale, a bankruptcy, or a winding-up, is exempt from registration as a dealer.”

41. Section 187 of the said Act is amended by striking out the words “a security of” in the first line.

42. Section 188 of the said Act is amended by replacing paragraph 2 by the following paragraph:

“(2) he must disclose the information in the course of business, having no ground to believe it will be used or disclosed contrary to section 187, 189 or 189.1 or to this section.”

43. Section 189 of the said Act is amended

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

“(3) the person responsible for the management of a mutual fund or an unincorporated mutual fund, for giving it advice on financial matters or for distributing its shares or units, and any person who is an insider of such a person;”;

(2) by replacing paragraph 4 by the following paragraph:

“(4) every person who has acquired privileged information in the course of his relations with or of working for the reporting issuer, as a result of that person’s functions or of his engaging in business or professional activities;”;

(3) by inserting, after paragraph 5, the following paragraphs:

“(6) every person who has acquired privileged information that he knows to be such concerning a reporting issuer;

“(7) every person who is an associate of the reporting issuer, of an insider of the latter or of a person contemplated in this section.”

44. The said Act is amended by inserting, after section 189, the following section:

“**189.1** No person prohibited from trading in securities of a reporting issuer by the effect of section 187 or 189 may use the privileged information in any other manner unless he is justified in believing that the information is generally known to the public. Thus, no such person may trade in options concerning the securities of the issuer. Nor may the person trade in the securities of another issuer, in options or in contracts concerning an index, once their market prices are likely to be influenced by the price fluctuations of the issuer’s securities.”

45. The said Act is amended by inserting, after section 195, the following section:

“**195.1** Every registered dealer or adviser who employs as his representative a person who is not registered with the Commission as a representative of that dealer or adviser is guilty of an offence.”

46. The French text of the heading of Title VIII of the said Act is replaced by the following heading:

“SANCTIONS CIVILES”.

47. Section 221 of the said Act is amended

(1) by replacing, in the French text, the words “recours établis” by the words “sanctions établies”;

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

“(2) the offering memorandum provided for in Title II or prescribed by regulation;”.

48. Section 222 of the said Act is amended by adding, at the end of the first paragraph, the following: “, whether the circular is prepared in application of this Act or in accordance with the exemption in virtue of section 119.”

49. Section 225 of the said Act is amended by replacing the words and figures “sections 121 to 123” in the second line by the words and figures “sections 134 to 139”.

50. Section 226 of the said Act is replaced by the following section:

“226. Every person who carries out a transaction contrary to section 187, 189, 189.1 or 190 is responsible for the harm suffered by the other party to the transaction.”

51. Section 228 of the said Act is replaced by the following section:

“228. Every person using privileged information contrary to section 187, 189, 189.1 or 190 is also accountable for the benefit accruing to him from the prohibited transactions, after repairing the harm caused, to the following persons:

(1) the issuer of the securities concerned, in the case of an offence under section 187, 189 or 189.1;

(2) the mutual fund or the client for whom the portfolio is managed, in the case of an offence under section 190.”

52. The French text of section 233 of the said Act is amended by replacing the word “recours” by the word “droits”.

53. The said Act is amended by inserting, after section 233, the following chapter:

“CHAPTER III.1

“IRREGULAR TAKE-OVER BIDS OR ISSUER BIDS

“233.1 The offeree company, the offeror, their senior executives and persons holding their securities at the time of the transaction or action may move that the court make any order of such a nature as to rectify the consequences of a contravention of the Act or the regulations regarding a take-over bid or issuer bid.

They may in particular move that the court cancel a transaction or an issue, order a party to dispose of securities purchased during a bid or prohibit a holder from exercising voting rights attached to securities purchased during a bid.”

54. Section 237 of the said Act is amended by replacing the last paragraph by the following paragraph:

“In the case of members of a self-regulatory organization, of their senior executives and of their representatives subject to registration, the Commission may, on the conditions it determines, delegate its powers under this section and section 238 to the self-regulatory organization.”

55. Section 247 of the said Act is replaced by the following section:

“**247.** The Commission shall designate a member of its personnel to carry out the investigation.

The Commission may also appoint a person who is not a member of its personnel to carry out the investigation. The appointed person must be sworn before a judge of the Provincial Court or before a member of the Commission in the manner provided in section 2 of the Act respecting public inquiry commissions (R.S.Q., chapter C-37), *mutatis mutandis*.”

56. The said Act is amended by inserting, after section 269, the following section:

“**269.1** The Commission has an interest to bring, in the name and on behalf of the interested security holders, any action seeking to rectify the consequences of a contravention of this Act or the regulations.”

57. Section 283 of the said Act is replaced by the following section:

“**283.** Neither a member of the Commission or of its personnel, its appointed agent nor any person exercising a delegated power may be prosecuted for official acts done in good faith in the exercise of his functions.”

58. Section 326 of the said Act is amended by replacing the second paragraph by the following paragraph:

“The secretary shall send four copies of the decision appealed from to the office.”

59. The French text of section 328 of the said Act is amended by replacing the word “pratique” in the first line by the word “procédure”.

60. Section 331 of the said Act is amended

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

“(1) prescribe the form of the documents and attestations provided for in this Act or the regulations as to both content and presentation;”;

(2) by striking out paragraph 4;

(3) by replacing paragraph 15 by the following paragraph:

“(15) prescribe the issuers who may prepare a shelf prospectus and the exceptions to the regular scheme for the simplified prospectus and the preliminary prospectus;”;

(4) by replacing the word and figure “section 119” in paragraph 22 by the word and figure “section 129”.

61. Section 335 of the said Act is replaced by the following section:

“335. The Government shall publish draft regulations in the *Gazette officielle du Québec*, with a notice that they may be adopted, with or without amendment, on the expiry of 45 days from the publication. The draft regulations shall also be published in the *Bulletin* of the Commission.

The regulations come into force fifteen days after their publication in the *Gazette officielle du Québec* or on any later date fixed therein.”

62. The said Act is amended by inserting, after section 338, the following section:

“339. In the case of distributions made before 6 April 1983 without observing the formalities prescribed by the Act applicable at the time of the transaction, the Commission may regularize the situation of the securities so distributed if it deems that

(1) the irregularity was not committed in bad faith;

(2) the Commission would have issued a receipt for the prospectus if it had been submitted or would have granted a prospectus exemption if it had been applied for.”

63. Section 351 of the said Act is amended by replacing the word and roman numeral “Title VII” by the word and roman numeral “Title VI”.

64. The period for which securities must be held and for complying with the disclosure requirements referred to in section 58 of the Securities Act enacted by section 20 apply even to securities acquired before 1 February 1985.

65. This Act shall operate notwithstanding the provisions of sections 2 and 7 to 15 of the Constitution Act, 1982 (Schedule B of the Canada Act, chapter 11 in the 1982 volume of the Acts of the Parliament of the United Kingdom).

66. This Act comes into force on 1 February 1985, except sections 13 to 16, 32, 33, 36 and 38, which will come into force on the dates fixed by proclamation of the Government.