

THIRD SESSION

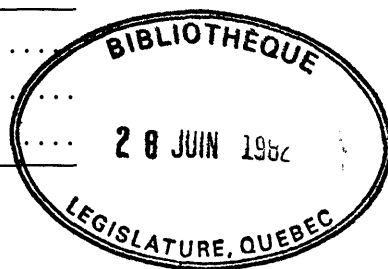
THIRTY-SECOND LEGISLATURE

NATIONAL ASSEMBLY OF QUÉBEC

Bill 85

Securities Act

First reading
Second reading
Third reading



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EXPLANATORY NOTES

This bill proposes a full reform of the Securities Act. The bill replaces the existing legislation which for the most part is basically the same as since 1955 when the first legislation dealing with securities was adopted in Québec. The amendments made to this day, the most extensive dating back to 1973, have not been sufficient to keep up with the development of legislation in the field of securities.

The objects of the bill are to promote efficiency in the securities market, protect investors against unfair, improper or fraudulent business practices, regulate the information that must be disclosed to security holders and to the public on persons engaged in distribution of securities and on the securities issued by these persons and define a framework for the professional activities of persons dealing in securities, their associations and their self-regulatory organizations.

Title I establishes the scope of the Act and provides rules of interpretation.

Title II enacts that a prospectus approved by the Commission des valeurs mobilières du Québec (the securities commission) is required of any person who intends to make a distribution of securities. A short form prospectus for issuers who maintain a permanent information record and an abridged prospectus for investment in stocks pertaining to small and medium sized businesses are provided for. Provisions are made to allow for a different prospectus or information document in the cases of unincorporated mutual funds, options, securities futures contracts or special forms of investment. Title II also provides for prospectus exemptions.

Title III provides for a scheme of disclosure requirements on securities distributed by reporting issuers. Disclosures must be made on a permanent basis to the public and to security holders by way of quarterly and yearly reports, and proxy solicitation entails the sending of a circular intended to inform security holders. In addition to permanent disclosure, the bill provides for continuous disclosure requirements whereby the issuer discloses material changes that are likely to affect the value of the quoted price of securities. Moreover, the insiders of a reporting issuer are bound by certain specific disclosure requirements. The bill also provides for a

system of distribution of documents designed to promote access to information.

Title IV prescribes rules governing take-over bids and issuer bids and provides that a circular must be sent to the holders of securities of the firm concerned. The existing rules are changed by limiting exemptions on bids by way of a separate agreement to the cases where the price does not exceed the margin of variation established by regulation.

Title V provides rules requiring securities brokers and advisers and their representatives to register with the Commission. Exemptions regarding registration and the obligations of registrants towards their clients are provided, particularly, in the case of an issuer who retains the services of a broker for the distribution of his securities.

Title VI introduces new provisions regarding self-regulatory organizations. The organizations must be recognized by the Commission, which may delegate to them all or part of the application of Title V and the regulations under it. The objective contemplated is to give the professionals a greater responsibility in respect of the operation of the market and the activities of the members of their organizations. However, that increased freedom does not exclude the Commission's right of supervision. The constating documents and the operating rules of the organizations will require the approval of the Commission which will also be empowered to review the decisions of the regulatory organizations either on its own initiative or at the request of an interested person.

Title VII strictly prohibits the unlawful use of privileged information; thus, any person who has access to any information that is unknown to the public is prevented from taking advantage of his position at the expense of investors. It defines various offences, particularly, offences pertaining to false or misleading information, and provides for penalties which, in that respect, are considerably increased and are designed to curb unfair and fraudulent practices and to increase the confidence of investors.

Title VIII provides for civil recourses against distributions effected without a prospectus or with a prospectus containing false or misleading information or the unlawful use of privileged information. Given the difficulty concerning evidence in the matter, Title VIII contains provisions putting the burden of proof on the defendant, thereby giving the wronged investor a better chance to vindicate his rights and obtain damages for his losses. These recourses are in addition to existing recourses.

Title IX substantially repeats the provisions of the existing legislation with respect to investigations, freeze orders, appointments of provisional administrators, prohibitions by the Commission and the other powers necessary for the proper administration of the Act.

Title X concerns the Commission itself and introduces certain measures to facilitate its work such as the power to sit anywhere and to conduct proceedings by telephone. It also provides a procedure for the delegation of its powers and for review of and appeal from its decisions.

Title XI contains the provisions concerning the regulatory powers of the Government as well as transitional and final provisions.

Bill 85

Securities Act

HER MAJESTY, with the advice and consent of the National Assembly of Québec, enacts as follows:

TITLE I

SCOPE AND INTERPRETATION

CHAPTER I

SCOPE

1. This Act applies to the following forms of investment:

(1) any security recognized as such in the trade, namely, a stock, bond, capital share of an incorporated entity, subscription right or option to purchase;

(2) an instrument, other than a bond, evidencing a loan of money;

(3) a deposit of money, whether or not evidenced by a certificate except a deposit received by the Gouvernement du Québec, the Government of Canada, or one of their departments or agencies;

(4) an option or a negotiable futures contract pertaining to securities, or a Treasury bond futures contract;

(5) an option on a commodity futures contract or financial instrument futures contract;

(6) a share in an investment club;

(7) an investment contract;

(8) any option negotiable on a recognized stock exchange in accordance with section 167;

(9) any other form of investment determined by regulation.

An investment contract is a contract whereby a person, having been led to expect profits, undertakes to participate in the risk of a venture by a contribution or loan of capital, without having the required knowledge to carry on the venture or without obtaining the right to participate directly in decisions concerning the carrying on of the venture.

2. The scheme of securities regulation established by this Act and the regulations applies, *mutatis mutandis*, to the other forms of investment listed in section 1, subject to any express exemption.

3. The following forms of investment are exempt from Titles II to VIII, except that mentioned in paragraph 11, which is exempt only from Title II:

(1) a debt security issued by the Gouvernement du Québec, the Government of Canada or a Canadian province;

(2) a security issued by a closed company in conformity with its constating instruments and by-laws;

(3) a security issued by a non-profit artificial person, provided that its distribution entails no remuneration;

(4) a share in a limited partnership having fewer than 25 partners;

(5) a share or a debt security issued by a savings and credit union, including a share or a loan certificate of a federation within the meaning of the Savings and Credit Unions Act (R.S.Q., chapter C-4), provided that the subscription was neither solicited nor received by a remunerated salesman or canvasser, and that the share was fully paid at the time of subscription;

(6) a common or preferred share in a cooperative association, including a share in a federation, within the meaning of the Cooperative Associations Act (R.S.Q., chapter A-24) issued to a member or a person wishing to become a member, provided that the subscription was neither solicited nor received by a remunerated salesman or canvasser, and that the share was fully paid at the time of subscription;

(7) a common or preferred share in a cooperative agricultural association, including a share in the Coopérative Fédérée du Québec governed by the Act respecting cooperative agricultural associations (R.S.Q., chapter S-24) issued to a member or a person wishing to become a member, provided that the subscription was neither solicited nor received by a remunerated salesman or canvasser, and that the share was fully paid at the time of subscription;

(8) a debt security issued in payment of a credit sale or conditional sale, as long as it is not transferred to a natural person;

(9) a debt security, including a bond, as long as the issue and transfer thereof remain, both for the issuer and for the subscriber, as well as for any subsequent purchaser, isolated operations;

(10) a deposit of money within the meaning of the Deposit Insurance Act (R.S.Q., chapter A-26) and the regulations thereunder, provided that it is received by a person duly registered under the said Act or by a bank governed by the Act respecting banks and banking (S.C., 1980-81-82, chapter 40) or by the Quebec Savings Banks Act (R.S.C., 1970, chapter B-4);

(11) a credit balance referred to in section 168;

(12) a share in a mutual fund or a unit of an unincorporated mutual fund administered by a trust company registered under the Trust Companies Act (R.S.Q., chapter C-41) having either of the following characteristics:

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

(13) a share of an investment club where the following conditions are met:

(a) the club does not have over 50 members;

(b) the club does not issue debt securities;

(c) the club does not pay any remuneration to securities advisers or brokers, except normal brokerage fees;

(d) all of the club's members are required to make contributions in proportion to their shares for the financing of its operations;

(14) an insurance or annuity contract issued by an insurer holding a licence under the Act respecting insurance (R.S.Q., chapter A-32), except an individual mutual contract that is not an individual mutual life rent or that does not guarantee payment at maturity of a benefit equal to at least 75% of the premiums paid before 75 years of age.

4. Every agency of the Gouvernement du Québec, of the Government of Canada or of the government of any Canadian province, or a fund established or administered by any of such governments

which controls more than 10% of the outstanding voting securities of a reporting issuer shall declare such control to the Commission within 10 days of the end of the month in which the acquisition was made.

The agency shall similarly declare any change in its control greater than 1% of the outstanding voting securities within 10 days of the end of the month in which the change occurred, and any other change, within 60 days after the end of the year.

CHAPTER II

INTERPRETATION

5. In this Act, unless the context indicates otherwise,

“adviser” means any person who advises another person as to the subscription, purchase or disposition of securities, or who, under a mandate, manages portfolio securities;

“artificial person” means any entity having legal personality, including a commercial partnership;

“associate”, where used to indicate a relationship with a person, means

(1) any company in which the person owns voting securities carrying more than 10% of all the issued voting securities;

(2) any partner of that person;

(3) any trust or estate in which the person has a substantial ownership interest or to which he serves as trustee or testamentary executor or in a similar capacity;

(4) the spouse of that person, his children, his relatives and his spouse’s relatives, if they share his residence;

“closed company” means a company whose constating instruments prescribe restrictions on the free transfer of shares, prohibit any public invitation to subscribe to its securities and limit the number of its shareholders to 50, exclusive of present or former employees of the company or of a subsidiary;

“distribution” means

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

(2) the endeavor to obtain, or the obtaining, by a subscriber or purchaser of securities he acquired under an exemption provided under sections 44 to 56;

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

(4) an issuer's giving as guarantee securities issued by him for that purpose;

"issuer" means any person who has outstanding securities, or issues or proposes to issue securities;

"misrepresentation" means any misleading information on a material fact as well as any pure and simple omission of a material fact;

"mutual fund" means a company issuing shares which must, on request of the holder, redeem them at their winding-up value;

"person" means any natural person, association, civil partnership, government, or artificial person;

"privileged information" means any information concerning a material fact not yet known to the public that could affect the value or the quoted price of securities of an issuer;

"reporting issuer" means an issuer contemplated in section 68;

"securities broker" means any person

(1) carrying on business in the securities trade, whether as an intermediary or as a principal for his own account;

(2) distributing a security without the benefit of a prospectus exemption and without retaining the services of a registered broker;

(3) soliciting purchasers for securities;

"senior executive" means any person exercising the function of director, or of president, vice-president, secretary, treasurer, controller or general manager, or a similar function;

"unincorporated mutual fund" means a fund consisting of sums commingled under a collective investment contract managed on behalf of holders by a person who, on request, redeems the units at their winding-up value;

"voting security" means any security, other than a debt security, carrying a voting right that may be exercised at any time.

6. An unincorporated mutual fund is considered to be the issuer of the units; consequently, disclosure in respect of the fund takes the place of disclosure in respect of the issuer.

However, the requirements imposed on the issuer or, as the case may be, on the reporting issuer, are the responsibility of the person in charge of the management of the fund.

7. In the case of an investment contract, the venture is considered to be the issuer of the contracts; consequently, disclosure in respect of the venture takes the place of disclosure in respect of the issuer.

However, the requirements imposed on the issuer or on the reporting issuer are the responsibility of the persons designated by the Commission under section 66 or 104. Failing a decision by the Commission, they are the responsibility of the promoter of the venture and the persons in charge of its management.

8. The person holding securities entitling him to elect in all cases a majority of the directors of an artificial person has the control of that artificial person.

9. A controlled artificial person is the subsidiary of the artificial person controlling it.

10. Any artificial person and its subsidiary, or any two artificial persons controlled by the same person, are affiliates.

TITLE II

DISTRIBUTION OF SECURITIES TO THE PUBLIC

CHAPTER I

DISTRIBUTION OF SECURITIES

DIVISION I

PROSPECTUS

11. Every person intending to make a distribution of securities shall prepare a prospectus and obtain a receipt therefor from the Commission. The application for a receipt must be accompanied with the documents prescribed by regulation.

12. Every person intending to make, from Québec, a distribution of securities to persons established outside Québec shall prepare a prospectus and obtain a receipt therefor from the Commission.

No prospectus is required, however, where the Commission agrees or does not object within 15 days after receiving the information required by regulation.

13. A prospectus must contain the information and attestations prescribed by regulation.

It must disclose all the material facts relating to the securities to be distributed and to the issuer.

14. The Commission shall issue a receipt except in the cases prescribed in section 15 or in the regulations.

The Commission may subject the issue of a receipt to the fulfilment of an undertaking or to any other condition.

15. The Commission shall not issue a receipt if it believes it should not do so for one of the following reasons:

(1) the application is not accompanied with the documents prescribed by regulation;

(2) the prospectus does not conform with this Act or the regulations;

(3) the issuer is in contravention of this Act or a regulation thereunder;

(4) the senior executives of the issuer, the persons whose holdings in the venture are sufficient to give them a determining influence over its affairs or the promoter of the venture affords or afford reasonable grounds for belief that the business of the issuer will not be conducted with integrity and in the best interests of its security holders;

(5) the issuer does not appear to have adequate financial resources to ensure the viability of the venture;

(6) to do so would be contrary to the best interest of investors.

16. Only the following documents may be used in the course of a distribution:

(1) a prospectus for which a receipt has been issued;

(2) a document filed with the prospectus and mentioned therein;

(3) an advertisement not prohibited by regulation, provided it adequately conveys the information presented in the documents contemplated in paragraphs 1 and 2, neither distorting it by selective presentation nor adding statements that might be misleading.

17. The document mentioned in paragraph 3 of section 16 must refer to the prospectus in the manner prescribed by regulation and give the conditions under which the prospectus is to be made available to the public.

DIVISION II

SHORT FORM PROSPECTUS

18. Securities may be distributed by way of a short form prospectus if the reporting issuer meets the following two conditions:

(1) he has filed the permanent information record provided for in section 84;

(2) he has, for one year, satisfied the disclosure requirements defined in Title III or the equivalent requirements imposed by the Act replaced by this Act.

19. The rules governing the prospectus apply, *mutatis mutandis*, to the short form prospectus.

The short form prospectus must refer to the permanent information record in the manner prescribed by regulation and give the conditions under which it is to be made available to the public.

DIVISION III

PRELIMINARY PROSPECTUS

20. A preliminary prospectus may be filed before the prospectus contemplated in section 11 or in section 18.

The preliminary prospectus must contain the information that is to be set forth in the final version of the prospectus except such information as may be omitted under the regulations.

The Commission shall issue a receipt upon the filing of a preliminary prospectus.

21. From the time receipt for a preliminary prospectus is obtained, and until a receipt for the prospectus in its final version is obtained, it is permissible, notwithstanding sections 11, 12 and 16,

(1) to forward a preliminary prospectus to any person;

(2) to publish an advertisement not prohibited by regulation, provided it adequately conveys the information presented in the documents contemplated in the preliminary prospectus, neither distorting it by selective presentation nor adding statements that might be misleading;

(3) to solicit prospective subscribers or purchasers without accepting any undertaking on their part.

22. The document mentioned in paragraph 2 of section 21 must refer to the preliminary prospectus in the manner prescribed

by regulation and give the conditions under which the preliminary prospectus is to be made available to the public.

23. The securities broker soliciting prospective subscribers or purchasers during the period contemplated in section 21 shall send a copy of the preliminary prospectus to every person who requests it.

24. The broker shall keep a record of the names and addresses of the persons to whom he sends the preliminary prospectus.

DIVISION IV

AMENDMENT TO THE PROSPECTUS

25. Where a material change occurs that is likely to affect the value or the quoted price of securities being distributed or where the number of securities being distributed is increased, an amendment to the prospectus must be made.

26. In the case of a preliminary prospectus, the filing of an amendment is required only for a material change occurring during the period contemplated in section 21 that is likely to have an adverse influence on the value or the quoted price of the securities being distributed.

Furthermore, a copy of the amendment must be sent to every person whose name appears in the record provided for in section 24.

27. The amendments provided for in sections 25 and 26 must be filed with the Commission as soon as practicable and in any event within ten days after the change occurs.

Only an amendment relating to an increase in the number of securities being distributed requires a receipt from the Commission.

28. Once the amendment is filed and, as the case may be, a receipt therefor is obtained, the prospectus may be sent only if accompanied with the amendment.

DIVISION V

SENDING OF PROSPECTUS AND RIGHT OF RESCISSION

29. A securities broker who receives an order to subscribe for or purchase a security offered in a distribution under this chapter shall send to the applicant a copy of the prospectus, and any amendment thereto, not later than the second working day after the subscription or purchase.

However, a broker acting solely as agent for his client and who receives no remuneration, even indirectly, from the issuer or the vendor is not bound by the first paragraph.

30. A person who, without having received a preliminary prospectus, subscribes for or purchases securities offered in a distribution may unilaterally rescind the subscription or the contract by giving notice of his intention to the broker within two days after receipt of the prospectus. The rescission is operative of right from receipt of the notice.

31. Section 30 has no effect if the subscriber or purchaser is himself a broker or if he disposes of the securities during the time for rescission.

32. The addressee is presumed to have received, in the ordinary course of mail, the copy of the prospectus or the notice of rescission mailed to him.

DIVISION VI

DISTRIBUTION PROCEDURE

33. The distribution of a security must be terminated within 12 months from the date of the receipt for the prospectus, or for the preliminary prospectus, where such is the case.

34. A distribution may be extended for a further 12 months if

(1) a prospectus containing the information and attestations prescribed by regulation and accompanied with the documents prescribed by regulation is filed at least 30 days before the lapse of the term specified in section 33;

(2) a prospectus accompanied with the documents prescribed by regulation is filed within ten days after the lapse of the term specified in section 33;

(3) a receipt for the prospectus is obtained from the Commission within 20 days after the lapse of the term specified in section 33.

The distribution may be continued, notwithstanding section 33, until the decision of the Commission as to the new receipt, provided that the time limits prescribed in subparagraphs 1 and 2 of this section are observed.

However, any additional year runs from the lapse of the term specified in section 33.

35. The Commission may extend a time limit provided in section 34 on such conditions as it may determine.

36. A person who subscribes or purchases securities being distributed in contravention of this division may unilaterally rescind the subscription or purchase.

All that is required is that the person transmit a notice of rescission to the broker within 30 days of his first knowledge of the contravention. The rescission has effect by operation of law upon receipt of the notice.

37. In case of doubt whether a distribution has ceased or is in progress, the Commission shall decide.

No appeal lies from the decision.

38. The Commission may order that a distribution cease

(1) if the prospectus or preliminary prospectus does not conform with this Act or the regulations;

(2) if the amendment required by section 25 or 26 has not been made within the prescribed time;

(3) if the Commission considers it in the best interest of investors.

The distribution may be resumed only with the authorization of the Commission.

39. The Commission may require that the content of the order made under section 38 be communicated under such conditions as it may determine to all the persons to whom the prospectus has been sent.

40. Where a third person proposes to make a distribution of the securities of an issuer, the Commission may order the issuer to provide the documents and information necessary to prepare the prospectus or any other document in lieu thereof.

CHAPTER II

EXEMPTIONS

DIVISION I

EXEMPTIONS DUE TO THE NATURE OF THE SECURITIES

41. No prospectus is required for the distribution of the following securities:

(1) a debt security guaranteed by the Gouvernement du Québec, the Government of Canada or the government of a Canadian province;

(2) a debt security issued or guaranteed by

(a) a municipal corporation, an urban community or regional community, a school corporation or the School Council of the Island of Montréal;

(b) a transit commission established under an Act of Québec;

(c) a hospital centre within the meaning of the Act respecting health services and social services (R.S.Q., chapter S-5);

(d) a Québec university;

(e) a general and vocational college;

(f) a fabrique constituted under the Act respecting fabriques (R.S.Q., chapter F-1);

(3) a promissory note payable in one year or less and evidencing, if distributed to a natural person, a debt for a sum of \$50 000 or more.

42. The exemption provided for in paragraph 2 of section 41 presupposes one of the following conditions:

(1) the person concerned has the power to levy a tax on real estate located in a Canadian province;

(2) the person concerned may issue a debt security only under the supervision of a department or public body established pursuant to an Act of the Government of Canada or of the government of a Canadian province;

(3) the National Assembly of Québec votes annual appropriations for repayment of the loan and payment of the interest.

DIVISION II

EXEMPTIONS DUE TO THE NATURE OF THE DISTRIBUTION

43. No prospectus is required where a distribution of securities is made to a sophisticated purchaser and the offer is not accompanied with any advertisement.

Similarly, no prospectus is required where a distribution of securities is made to the Gouvernement du Québec, the Government of Canada or the government of a Canadian province, or to any of their departments or agencies.

44. Each of the following persons is a sophisticated purchaser to the extent that he subscribes to or purchases securities for his own account:

(1) a company in which all the voting securities belong to the Gouvernement du Québec, the Government of Canada or the government of a Canadian province, or to one of their departments or agencies;

(2) a bank governed by the Act respecting banks and banking (S.C., 1980-81-82, chapter 40) or by the Quebec Savings Banks Act (R.S.C., 1970, chapter B-4);

(3) a loan and investment society incorporated under a statute of Québec or registered in accordance with the Loan and Investment Societies Act (R.S.Q., chapter S-30);

(4) a federation of savings and credit unions within the meaning of the Savings and Credit Unions Act (R.S.Q., chapter C-4);

(5) the Caisse centrale Desjardins du Québec established under the Act respecting the Confédération des caisses populaires et d'économie Desjardins du Québec (1971, chapter 80);

(6) a trust company registered under the Trust Companies Act (R.S.Q., chapter C-41);

(7) an insurance company licensed under the Act respecting insurance (R.S.Q., chapter A-32);

(8) a municipal corporation, an urban community or regional community, a school corporation, the School Council of the Island of Montréal or a public agency or body established pursuant to an Act of the Government of Canada or the government of a Canadian province;

(9) a broker or an adviser registered in conformity with section 148;

(10) a pension fund with assets of over \$100 000 000 and governed by the Act respecting supplemental pension plans (R.S.Q., chapter R-17) or the Pension Benefits Standards Act (R.S.C., 1970, chapter P-8);

(11) the subsidiary of a person mentioned in paragraph 2, 6 or 7, to the extent that such person holds all the voting securities;

(12) a person designated in an order of the Commission on such conditions as it may determine.

45. A trust company registered under the Trust Companies Act (R.S.Q., chapter C-41), an insurance company holding a licence under the Act respecting insurance (R.S.Q., chapter A-32) or a securities broker or securities adviser registered in conformity with

section 148 is also a sophisticated purchaser when purchasing or subscribing for securities for the portfolio of a third person managed solely by that company, broker or adviser.

46. An issuer who makes a distribution of securities to a sophisticated purchaser shall, within ten days, file a notice with the Commission accompanied with the information prescribed by regulation.

47. Except in the case of a reporting issuer, no prospectus is required where a person distributes his securities to not more than 25 subscribers or, in the case of tax-shelter securities, 50 subscribers if the transaction meets the following conditions:

- (1) each subscriber is acting as principal;
- (2) each transaction is evidenced by a written contract containing the provisions prescribed by regulation;
- (3) the distribution is completed within 6 months;
- (4) the distribution is made without advertisement;
- (5) the promoter of the distribution, except a registered broker, has not taken part in a distribution under this exemption within the previous 12 months.

Nor is a prospectus required for a subsequent transfer between original subscribers.

Tax-shelter securities are securities that give entitlement to tax exemptions and are designated as such by the Commission.

48. No issuer may avail himself more than once of the exemption provided for in section 47.

49. An issuer making a distribution under the conditions prescribed in section 47 shall, before the distribution begins and within ten days of its completion, notify the Commission in the form prescribed by regulation.

50. No prospectus is required for the exchange of securities for the purpose of a merger or a reorganization of capital, if the Commission agrees thereto or does not raise any objection within 15 days of receiving the information required by regulation.

51. No prospectus is required for the distribution of gilt-edged securities within the meaning of section 57 or of non-voting debt securities not convertible into voting securities where the total cost of subscription or purchase is at least \$100 000 per person.

In such a case, the person making the distribution shall give the notice provided for in section 46.

52. No prospectus is required for the distribution by an issuer

(1) to holders of its securities of a right to exchange, convert or subscribe for its securities, or of the securities issued on the exercise of that right;

(2) of securities through a dividend re-investment plan;

(3) of securities to its shareholders through subscription plans;

(4) of portfolio securities issued by a reporting issuer to permit the exercise of a right to exchange, convert or subscribe previously granted by the issuer;

(5) of securities of its own issue with its employees and senior officers or those of an affiliate who are not induced to purchase by expectation of employment or continued employment.

53. The exemptions provided for in section 52 apply only where the Commission agrees thereto or does not raise any objection within 15 days of receiving the information required by regulation.

In the cases provided for in paragraphs 1, 3 and 5 of section 52, the issuer must prepare an offering memorandum in the form prescribed by regulation subject to examination by the Commission on the conditions prescribed in the first paragraph and send it to the persons contemplated by the distribution, before accepting any undertaking on their part.

54. No prospectus is required for the distribution of a voting security where the number of holders of voting securities after the distribution is not greater than five, provided that there is no advertisement.

Each undivided joint owner of one security is counted as one security holder.

55. No prospectus is required for the distribution of securities by way of a firm underwriting by a broker registered in Québec.

56. No prospectus is required where an issuer gives as collateral securities issued by him for that purpose.

DIVISION III

FINAL EXEMPTIONS

57. The expression “gilt-edged security” means a security contemplated in paragraph *d, h* or *i* of article 9810 of the Civil Code.

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

The period provided for in the preceding paragraph is

- (1) 6 months in the case of a gilt-edged security;
- (2) 12 months in the case of securities merely listed on a recognized stock exchange;
- (3) 18 months in the case of other securities.

59. The exemption provided for in section 58 applies also to debt securities not issued by a reporting issuer but guaranteed by a reporting issuer having a security listed on a recognized stock exchange.

The prescribed period is then 12 months.

60. No prospectus is required for the alienation of securities purchased under an exemption provided for in section 50 if the issuer or one of the parties to the amalgamation or merger or to the reorganization of the capital is a reporting issuer and has complied with the applicable requirements for 12 months.

61. No prospectus is required for the alienation of securities purchased under an exemption provided for in section 52 if the issuer is a reporting issuer and has complied with the applicable requirements for more than 12 months.

62. The exemptions provided for in sections 58 to 61 apply only if no effort is made to prepare the market or to create a demand for the securities being distributed.

63. No prospectus is required for a take-over bid by way of an exchange of securities made in conformity with Title IV.

CHAPTER III

SPECIAL REGULATORY SCHEMES

64. Mutual funds, unincorporated mutual funds and any other issuer of a category of admissible issuers determined by regulation may, if they have filed the permanent information record provided

for in section 108, prepare a short form prospectus in the special manner prescribed by regulation.

The short form prospectus must be transmitted together with the latest financial statement drawn up in the form prescribed by regulation.

65. In the cases prescribed by regulation, an abridged prospectus may be prepared in the form prescribed by regulation, subject in other respects to the ordinary rules on the prospectus.

66. In the case of an investment contract, the Commission may designate the persons who are to be liable for the obligations imposed on the issuer.

67. In the cases of options on securities or options referred to in paragraph 8 of section 1, the issuing agency must, instead of preparing a prospectus, be qualified by the Commission in accordance with the procedure prescribed by regulation.

TITLE III

DISCLOSURE REQUIREMENTS

CHAPTER I

REPORTING ISSUER

68. A reporting issuer is an issuer that, having made a distribution of securities, is subject to the continuous disclosure requirements specified in Chapter II of this title.

An issuer is deemed to have made a distribution where

(1) it has filed a prospectus in respect of a security and obtained a receipt therefor from the Commission;

(2) it has filed a circular with the Commission in respect of a take-over bid by way of an exchange of securities;

(3) any of its securities has been listed on a stock exchange in Québec at any time from (*insert here the date of the coming into force of this section*);

(4) its existence is the result of an amalgamation or reorganization to which a reporting issuer was a party;

(5) its existence is the result of the continuance of an issuer contemplated in paragraphs 1 to 4;

(6) it is contemplated in section 339.

69. Upon the application of a reporting issuer that has fewer than 15 security holders whose latest addresses as shown in the records of the reporting issuer are in Québec, 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 defined in Chapter II of this title.

70. The Commission shall keep a public register of reporting issuers.

71. Upon the application of any interested person, the Commission shall issue a certificate which is proof of its content in respect of the standing of a reporting issuer.

72. No person who knows or reasonably ought to know that a reporting issuer is not in good standing may adduce a certificate as proof in his defence.

CHAPTER II

CONTINUOUS DISCLOSURE

DIVISION I

TIMELY DISCLOSURE

73. Where a material change occurs that is likely to affect the value or the quoted price of the securities of a reporting issuer and is not generally known, the issuer shall immediately prepare and issue a press release disclosing the substance of the change.

A copy of the press release must be filed immediately with the Commission.

74. A reporting issuer is not required to prepare a press release if senior management has reasonable ground to believe that disclosure would be seriously prejudicial to the interests of the issuer and that no transaction in the securities of the issuer has been or will be carried out on the basis of knowledge of the material change.

Where the circumstances that justify non-disclosure have ceased to exist, the issuer shall immediately comply with section 73.

DIVISION II

PERIODICAL DISCLOSURE

75. Within 90 days from the end of its financial year, every reporting issuer shall file with the Commission annual financial statements and an auditor's report in the form determined by regulation.

76. Within 45 days from the end of each of the first three quarters of its financial year, every reporting issuer shall file with the Commission quarterly financial statements in the form determined by regulation.

However, in the case of a reporting issuer's first financial year, the Commission determines, after consultation with the issuer, which financial statements must be filed.

77. Within 140 days from the end of its financial year, every reporting issuer shall send to every registered holder of its securities, other than holders of debt securities, and to the Commission, an annual report containing the financial statements and the auditor's report provided for in section 75, together with the other information required by regulation.

78. Within 45 days after the end of each of the first three quarters of its financial year, every reporting issuer shall send to every registered holder of its securities, other than holders of debt securities, the financial statements provided for in section 76.

79. Upon the application of a reporting issuer, the Commission, on such conditions as it may determine, may exempt a reporting issuer from reporting in its financial statements any information that should normally appear, if the issuer proves that it would be seriously prejudicial to it.

80. The financial statements provided for by this Act or the regulations must be drawn up in accordance with generally recognized accounting principles and with any relevant provision of the Act or the regulations, except where the regulations permit otherwise.

DIVISION III

PROXY SOLICITATION

81. When the management of a reporting issuer gives notice of a meeting to holders of voting securities, it shall concurrently

send a form of proxy prepared in the form prescribed by regulation, except where the incorporating Act prohibits the soliciting of proxies.

82. Every person who solicits proxies in view of a meeting of holders of voting securities of a reporting issuer shall send to the persons solicited and to the Commission a circular prepared in the form prescribed by regulation.

This rule also applies to any form of solicitation of security holders to execute, withhold or revoke a proxy and to the sending of forms under section 81.

Even where the Act under which it is incorporated prohibits the soliciting of proxies, a reporting issuer must send the circular contemplated in this section to all its registered holders other than holders of debt securities.

83. The circular provided for in section 82 is not required for a solicitation made by a person unconnected with the management of the reporting issuer, to not more than 15 security holders, each undivided joint owner being counted as one security holder.

CHAPTER III

PERMANENT INFORMATION RECORD

84. A reporting issuer who proposes to prepare a short form prospectus under the conditions provided for in section 18 or 64 shall file a permanent information record with the Commission.

85. The permanent information record must contain

(1) the information prescribed by regulation concerning the reporting issuer;

(2) the documents filed by a reporting issuer in accordance with Chapter II of this title, namely the latest annual report and all other documents filed since the close of the financial year covered by the report.

86. The reporting issuer shall bring the information provided for in paragraph 1 of section 85 up to date within 140 days of the end of its financial year.

87. Every reporting issuer shall, on request, send a copy of its permanent information record to holders of its securities or to any other persons. It may exact a fee, except from a holder of its securities, and except where making a distribution of its securities by means of a short form prospectus.

88. A reporting issuer that decides to cease filing the information provided for in paragraph 1 of section 85 shall so inform the Commission.

CHAPTER IV

INSIDER REPORTS

89. The insiders of a reporting issuer that are subject to the disclosure requirements established in this chapter are

(1) the issuer itself, its subsidiaries, its senior executives and the senior executives of its subsidiaries;

(2) any person who exercises control over more than 10% of the voting rights attached to the outstanding securities of a reporting issuer, other than securities that were the object of a firm underwriting during a distribution;

(3) the senior executives of a person contemplated in paragraph 2.

90. The person who is the owner of securities or has direction over them is the person who controls them.

91. Every person who may exercise as he sees fit voting rights attaching to securities he does not own is deemed to exercise control over those securities.

92. An insider of a reporting issuer who acquires or disposes of a transferable option in respect of a security of that issuer is deemed to effect a change in his control of the security.

93. For the purpose of making the necessary reports, ownership is deemed to pass at the time a subscription or an offer to buy or sell is accepted.

94. When an issuer becomes an insider of a reporting issuer, a senior executive of the former issuer is deemed to have been a senior executive of the reporting issuer for the previous 6 months or for such shorter period as he has been a senior executive of the former issuer.

If the former issuer is a reporting issuer, the senior executives of the latter issuer are also deemed to be insiders of the former issuer, and the same conditions apply.

95. The amalgamation of issuers or the purchase by an issuer of all or substantially all of the assets of another issuer or of a subsid-

iary thereof, gives rise, in respect of senior executives, to the presumptions set forth in section 94.

96. A person who becomes an insider of a reporting issuer shall, where such is the case, file a report within ten days, disclosing his control over the securities of the issuer, in the form prescribed by regulation.

97. An insider of a reporting issuer shall file a report disclosing any change in his control over the securities of the issuer.

The report must be filed

(1) within ten days where the change in control resulting from one or several transactions is greater than 1%;

(2) within ten days after the end of the month, for other changes.

98. A senior executive deemed to be an insider under section 94 or 95 shall, within the first ten days of the month following the month in which he is so deemed, file the report that sections 96 and 97 would have required for the period contemplated by the presumption.

99. A person who becomes the owner of securities carrying 20% or more of the voting rights attached to the outstanding voting securities of a reporting issuer shall, within three days, file a report prepared in the form prescribed by regulation.

100. A person who is the owner of securities carrying 20% or more of the voting rights attached to the outstanding securities of a reporting issuer shall, each time he purchases securities carrying an additional 5% of the voting rights, file a report as in section 99 within three days.

101. Sections 99 and 100 do not apply to a purchase made as part of a take-over bid or issuer bid accompanied with a take-over bid or issuer bid circular provided for in section 118.

102. An insider of a reporting issuer who transfers or causes to be transferred any securities of that issuer to a nominee shall file a report prepared in the form prescribed by regulation, except in the case of giving collateral for a *bona fide* debt.

103. Where an insider fails to file the report provided for in section 102, the third person shall file the report himself on becoming aware of the failure.

CHAPTER V

SPECIAL REGULATORY SCHEMES

104. In the case of an investment contract, the Commission may designate the persons responsible for discharging the obligations imposed on the reporting issuer.

105. Sections 75 and 77 apply to every mutual fund incorporated under the statutes of Québec even if it is not a reporting issuer.

106. Sections 76 and 78 apply to every mutual fund that is a reporting issuer and to every mutual fund incorporated under the statutes of Québec, but only the semi-annual report needs to be filed and sent.

107. Every unincorporated mutual fund is also subject to the requirements of sections 105 and 106 in respect of a mutual fund.

108. Every mutual fund, unincorporated mutual fund or other issuer belonging to any of the admissible categories fixed by regulation must, if it wishes to prepare a short form prospectus referred to in section 64, file with the Commission a permanent information record in a special form determined by regulation.

109. The disclosure scheme provided for under this title does not apply in the case of an option or a futures contract pertaining to securities, a Treasury bonds futures contract, an option on a commodity futures contract or financial instruments futures contract, or an option contemplated in paragraph 8 of section 1.

TITLE IV

TAKE-OVER BIDS AND ISSUER BIDS

CHAPTER I

DEFINITIONS AND SCOPE

110. A take-over bid is an operation by which a person, called the offeror, makes an offer to purchase, as principal, all or part of the securities of an issuer, called the offeree issuer, to the holders of the securities, for the purpose of obtaining or securing a dominant position in the offeree issuer.

A person is said to have a dominant position when he holds more than 20% of the voting securities of the offeree issuer. The

securities held by a person's associate must be included in computing the percentage of the person's holdings.

111. In estimating a dominant position, any security or interest which enables the holder to acquire a voting security at the given time by a single transaction or several linked transactions is also considered to be a voting security.

112. A take-over bid is subject to this title if it is made to at least one security holder whose address is in Québec according to the records of the offeree issuer.

113. An invitation to make an offer to sell, or the acceptance of an unsolicited offer, if done for the purpose of obtaining the result described in section 112, is deemed to be a take-over bid.

114. A take-over bid by way of an exchange of securities, whereby the offeror, to obtain the result described in section 110, offers to holders of the offeree issuer securities to exchange them for other securities, is subject to the same regulatory scheme as a take-over bid, *mutatis mutandis*.

115. Where two or more persons make one or more take-over bids jointly or in concert, or intend to exercise jointly or in concert any voting rights attaching to the security subject to such a bid, each of them is deemed to hold the percentage of the securities held by them in aggregate.

If a take-over bid is made by two or more persons, each is deemed to be an offeror.

116. An offeror who makes a take-over bid is exempt from the requirements of this title where

(1) the bid is made through the facilities of a stock exchange recognized by the Commission for the purposes of this section and conforms with the Stock Exchange;

(2) the purchases of securities are made on a recognized stock exchange and do not in a 30 day period exceed 5% of the voting securities, nor in a 180 day period exceed 10% of the securities;

(3) the offer is not made to the holders in general and is intended to acquire voting securities by way of separate agreements with not over 14 holders at a cost not higher than the margin of variation established by regulation and subject, in the case of securities acquired within the preceding two years for resale under this exemption, to counting as so many holders the vendors from whom the securities offered in response to the bid were acquired;

(4) the bid involves not more than 5% of the voting securities, provided that the offeror, his affiliates and his associates do not, within any twelve-month period, under the exemptions in paragraphs 1, 2 and 4, purchase more than a total of 5% of the voting securities of the offeree issuer that are outstanding at the beginning of the period.

The offeror must require the holders to declare under oath or by solemn affirmation the particulars by which he can evaluate his position from the standpoint of subparagraph 3. The declaration must disclose every agreement to use a prête-nom in connection with the securities in question, each principal being then counted as a holder. The offeror is not required to ascertain the truthfulness of any such declaration.

In the case of securities listed in an organized exchange, the exemption provided in subparagraph 4 does not apply if the securities are acquired at a price higher than their quoted price on that exchange on the day they are acquired.

CHAPTER II

REQUIRED DOCUMENTS

DIVISION I

SENDING OF TAKE-OVER BID AND CIRCULAR

117. The offeror must send the take-over bid to every holder of the class or series of securities that is the subject of the bid and of securities convertible into securities of that class or series, whose address in the records of the offeree issuer is in Québec and, in the cases provided by regulation, elsewhere in Canada.

118. The offeror must include a take-over bid circular prepared in the form prescribed by regulation with the take-over bid sent to security holders.

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

119. The contents of the documents referred to in section 118 must be approved and the delivery thereof authorized by the offeree issuer in the manner prescribed by regulation.

120. 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 have effect from the day they are sent.

DIVISION II

CIRCULARS OF THE BOARD OF DIRECTORS OR OF INDIVIDUAL SENIOR EXECUTIVES

121. The board of directors of an offeree issuer shall cause a circular prepared in the form prescribed by regulation to be sent not later than ten days from the effective date of the take-over bid to every security holder whose address according to its records is in Québec. The circular may include a substantiated recommendation to the security holders to accept or reject the bid.

122. Where the board of directors of an offeree issuer is considering making a recommendation after the sending of the circular provided for in section 121, it shall mention that fact in the circular; it may then advise the security holders not to tender their securities until further communication is received from the board.

Where the board advises holders to await further communication it must send a communication to them of its recommendation or of its decision not to make a recommendation, at least seven days prior to the expiry of the take-over bid.

123. Any senior executive of an offeree issuer may include with the directors' circular or the communication provided for in section 122 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.

124. Where the facts on which a circular is based change appreciably during the offer, the board of directors or the senior executive of the offeree issuer must so advise the security holders contemplated in section 121.

125. The board of directors and senior executives shall file with the Commission a copy of the documents provided for in sections 121 to 123 as soon as they are sent to the security holders.

CHAPTER III

TAKE-OVER BID PROCEDURE

DIVISION I

OBLIGATIONS OF THE OFFEROR

126. An offeror may reserve the right to withdraw a take-over bid only for one of the following reasons:

(1) the minimum number of securities sought in the bid is not tendered;

(2) an unforeseen and material change that could affect the value or quoted price of the securities of the offeree issuer occurs, but not as a result of any action taken by the offeror;

(3) the required approval of a governmental regulatory authority is not obtained prior to the expiry of the bid;

(4) at the time the offeror is to take delivery of the securities or effect payment for them, he is prevented from doing so by the effect of a general law.

127. 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.

128. 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.

129. The offeror shall not, during a take-over bid, sell any securities of the class or series that is the subject of the take-over bid.

130. The offeror shall offer the same price to all the holders of securities of the class or series that is the subject of the take-over bid. Any other agreement creating disparity among the holders is prohibited.

131. If, during a take-over bid, an offeror purchases securities for a higher price than that offered in the take-over bid he is bound to increase the latter accordingly.

132. Where a take-over bid has been varied by changing any of its initial terms or a significant change has occurred during the bid

in the information contained in the circular, the offeror must give notice to those security holders whose securities have not been paid for and to the Commission.

133. However, 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 is deemed to be significant only to such extent as it constitutes a material change that is likely to affect the value or the price of the securities proposed in exchange.

134. Except where a variation is solely an increase in price, the amended bid has effect from the date of the notice provided for in section 132.

The notice must advise the security holders of their right to withdraw as provided in section 137.

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

DIVISION II

TIME LIMITS

136. A take-over bid must have a duration of at least twenty-one days for holders to deposit their securities pursuant to the bid.

137. Securities deposited pursuant to a take-over bid may be withdrawn by giving notice in writing to the depositary, who must receive it within ten days from the date of the bid or of the amended bid referred to in section 132.

138. Where a take-over bid is made for all of a class or series of securities, the offeror shall not, for ten days from the date of the bid, take up and pay for the securities tendered.

At the expiration of thirty-five days from the date of the bid, the offeror shall take up and pay for the securities tendered, if the conditions of the offer have been fulfilled. If they have not, he may nevertheless take up and pay for the securities tendered.

139. Where a take-over bid is made for less than all of a class or series of securities, the offeror shall not, for twenty-one days from the date of the bid, take up and pay for the securities tendered.

The time for deposit of securities under the take-over bid must then not exceed thirty-five days.

140. An offeror referred to in section 139 shall, if the terms of the bid not waived by him have been complied with, take up and pay

for all the deposited securities within fourteen days after the expiry of the bid.

If the number of securities deposited pursuant to the bid is greater than the offeror is bound or willing to take up, he shall reduce the number of securities deposited by each holder *pro rata*, disregarding fractions, before taking up and paying for them.

141. Where a take-over bid is subject to approval by a governmental authority, the offeror may extend the time prescribed by sections 138 and 140 for taking up and paying for the securities by not over 90 days.

142. The Commission may grant exceptions to the time limits prescribed in this Title in the case of bids subject to different time limits imposed by another Canadian legislative authority.

DIVISION III

REPORT ON PURCHASE OF A BLOCK OF SECURITIES

143. Every person other than the offeror who, during a take-over bid, acquires at least 5% of the securities of the class or series being bid for shall within the three following days file a report with the Commission in the form prescribed by regulation. The report provided for in section 99 or 100 takes the place of the report provided for in this section.

CHAPTER IV

ISSUER BIDS

144. An issuer bid is a bid made to security holders by an issuer to acquire securities issued by it that represent an interest in its share capital or that are convertible into such securities.

145. Sections 113, 114, 117 to 120 and 126 to 143 apply to an issuer bid, *mutatis mutandis*, if the bid is made to at least one security holder whose address according to the issuer's records is in Québec.

146. Every senior executive of an issuer may include with an issuer bid a notice similar to the notice provided for in section 123.

147. An issuer that makes an issuer bid is exempt from the requirements under this Part where

(1) the securities are acquired in accordance with the written terms of issue;

(2) the bid is made through the facilities of a stock exchange recognized by the Commission for the purposes of this section and in accordance with the rules of the stock exchange;

(3) the issuer, following the publication of a notice of intention, acquires, over a twelve-month period, less than five per cent of the class or series of securities in question outstanding at the commencement of the period.

TITLE V

SECURITIES BROKERS AND ADVISERS

CHAPTER I

REGISTRATION

148. No securities broker or adviser may carry on business unless he is registered as such with the Commission.

149. Every natural person carrying on business as a securities broker or adviser on behalf of a person subject to registration under section 148 must register with the Commission as the representative of that person.

150. The Government shall, by regulation, fix the classes of registration, the conditions to be met by candidates, the duration of registration, and the rules governing the activities of registrants.

151. The Commission, after verifying that the candidate meets the conditions fixed by regulation, shall grant registration where, in its opinion,

(1) the applicant or, in the case of an artificial person, its senior executives have the competence and integrity to ensure the protection of investors;

(2) the applicant has adequate financial resources to ensure the viability of the venture.

152. The Commission may revoke or suspend the rights granted by registration, or impose restrictions or conditions on their exercise where, in its opinion, a registered person no longer meets the conditions set forth in section 151 or is not observing the regulations provided for in section 150.

153. A broker or adviser wishing to cease carrying on business shall apply to the Commission to surrender his registration.

The Commission may impose such conditions as it may fix on the surrender, and shall accept it where, in its opinion, the interests of clients and investors are sufficiently safeguarded.

CHAPTER II

EXEMPTION FROM REGISTRATION

154. Each of the following is exempt from registration as a broker or as a representative of a broker:

(1) a bank incorporated under the Act respecting banks and banking (S.C., 1980-81-82, chapter 40) or the Québec Savings Banks Act (R.S.C., 1970, chapter B-4), the Caisse centrale Desjardins du Québec, established under the Act respecting La Confédération des caisses populaires et d'économie Desjardins du Québec (1971, chapter 80), a savings and credit union or a federation within the meaning of the Savings and Credit Unions Act (R.S.Q., chapter C-4) or a trust company registered under the Trust Companies Act (R.S.Q., chapter C-41), to the extent that its part in securities transactions is merely to forward unsolicited orders to a broker;

(2) a bank incorporated under the Act respecting banks and banking (S.C., 1980-81-82, chapter 40) or the Québec Savings Banks Act (R.S.C., 1970 chapter B-4), the Caisse centrale Desjardins du Québec established under the Act respecting La Confédération des caisses populaires et d'économie Desjardins du Québec (1971, chapter 80), a savings and credit union or a federation governed by the Savings and Credit Unions Act (R.S.Q., chapter C-4), or a société d'entraide économique or a federation of sociétés d'entraide économique governed by the Act respecting the sociétés d'entraide économique and amending various legislation (1981, chapter 31), to the extent that it distributes or sells securities designated in paragraph 2 of section 41 of this Act, or debt securities issued or guaranteed by the Gouvernement du Québec, the Government of Canada or the government of a Canadian province;

(3) a bank incorporated under the Act respecting banks and banking (S.C., 1980-81-82, chapter 40) or a trust company registered in accordance with the Trust Companies Act (R.S.Q., chapter C-41), to the extent that in their establishments it merely transacts in securities of an unincorporated mutual fund or mutual fund that it administers, provided it does not charge purchase or selling fees.

155. However, notwithstanding the exemption provided in paragraph 2 or 3 of section 154, persons referred to therein must observe the requirements imposed by sections 160 to 163 and 166 of Chapter IV of this Title.

156. Each of the following persons is exempt from registration as an adviser or the representative of an adviser provided he gives advice solely as an ancillary activity and derives no remuneration therefrom separate from what he ordinarily receives in carrying on his profession:

(1) a person practising the profession of advocate, notary or chartered accountant, or any other profession determined by regulation, so long as he does not recommend to his clients an undertaking in which he or an associate has an interest;

(2) a broker or his representative;

(3) a person who advises the public through the media, provided he does not own securities in the company concerned;

(4) a bank governed by the Act respecting banks and banking (S.C., 1980-81-82, chapter 40) or the Quebec Savings Banks Act (R.S.Q., 1970, chapter B-4);

(5) a loan and investment society incorporated under a statute of Québec or registered in accordance with the Loan and Investment Societies Act (R.S.Q., chapter S-30);

(6) a savings and credit union or a federation within the meaning of the Savings and Credit Unions Act (R.S.Q., chapter C-4);

(7) a trust company registered under the Trust Companies Act (R.S.Q., chapter C-41);

(8) an insurance company holding the licence prescribed under the Act respecting insurance (R.S.Q., chapter A-32);

(9) a société d'entraide économique or the Fédération des sociétés d'entraide économique du Québec governed by the Act respecting the sociétés d'entraide économique and amending various legislation (1981, chapter 31).

157. A securities broker or adviser who deals only with persons likely to be sophisticated purchasers within the meaning of section 44 of this Act is exempt from registration.

CHAPTER III

OBLIGATIONS OF REGISTRANTS

158. Every broker or adviser shall keep the books, records and other documents required by regulation.

Within 90 days after the end of his financial year, he shall submit to the Commission the financial statements, the auditor's report, and any other information, in accordance with the requirements fixed by the general instructions of the Commission.

159. In the cases determined by regulation, the registrant shall notify the Commission within ten days of any change in the information supplied at the time of registration.

In the cases determined by regulation, no change may be made unless the Commission approves or does not object within 30 days of receiving notice of the proposed change. If the Commission objects, it may prescribe what is to be done.

CHAPTER IV

OBLIGATIONS TOWARDS CLIENTS

160. The Government may, by regulation, determine the information that registrants must furnish to their clients in respect of transactions carried out for their account, and establish rules of management they must observe to protect the interests of their clients.

161. Before making a recommendation, a registrant must satisfy himself that it corresponds to the investment goals and financial position described to him by his client.

162. On carrying out an order, a broker shall immediately send to his client a confirmation slip in the form prescribed by regulation.

In addition, he shall send to him a periodic statement of account in the form and at the times prescribed by regulation.

163. A broker proposing to trade in a security for his own account with a person other than a broker must state that fact in every document and communication intended to promote trading in the security.

The statement does not, however, prevent the broker from trading in the security as agent.

164. No broker may vote securities registered in his name but not owned by him.

A broker shall carry out the written instructions of the owner as to the voting of securities or as to the giving of a proxy to vote.

165. A broker in whose name securities referred to in section 164 are registered shall forward to the owner of the securities all the documents received concerning them, if the owner has agreed to pay the costs.

At the request of the broker, the sender of the documents shall immediately and at his own expense send the number of copies required by the broker to discharge his obligation.

166. In every document containing recommendations in respect of securities of a company, the registrant must, in accordance with the regulations, state every interest that he or any of his senior executives has in the securities.

167. A broker negotiating options on securities or options contemplated in paragraph 8 of section 1 for the account of his client must, before transacting any business in any particular market, remit a circular drawn up in the form determined by regulation, describing how the market operates and, where applicable, the different kinds of contracts.

In the case of an option on a commodities or financial securities futures contract, a securities futures contract or a Treasury bonds futures contract, the Commission may require the broker to remit a circular to his client in such form as it determines.

168. Credit balances appearing in the accounts of clients and not standing as guarantees are funds payable on demand; in no case may a broker use them except to finance his working fund on the conditions prescribed by regulation.

TITLE VI

SELF-REGULATORY ORGANIZATIONS

CHAPTER I

REGISTRATION

169. To exercise its activities in Québec, a stock exchange or a securities clearing-house must be registered with the Commission as a self-regulatory organization.

In no case may a professional association regulate trading in securities by its members unless it is registered with the Commission as a self-regulatory organization.

170. The Commission, on such terms and conditions as it may fix, may delegate to a registered organization the application of the whole or part of Title V and the regulations thereunder.

Similarly, the Commission may delegate to a registered organization the application of the regulations under paragraph 26 of section 331.

171. To be released from delegated duties, an organization must obtain prior approval from the Commission, which may fix such conditions of release as it deems necessary for the protection of members and investors.

172. To register, an organization shall file an application with the Commission, together with such documents and information as the Commission may require.

173. The Commission shall publish notice of the application in the Bulletin provided for in section 298 and invite interested persons to make representations at a public hearing.

174. Registration of self-regulation organizations is at the discretion of the Commission.

When the Commission has established that the constating instruments, by-laws and operating rules of an organization are in conformity with sections 175 and 176, it shall register the organization if it considers that its financial resources and administrative structure are adequate to its objects.

175. The constating instruments, by-laws and operating rules of an organization must provide for

(1) unrestricted membership for every person who fulfils the conditions of admission;

(2) equal access to services for every member;

(3) the disciplining of members or their representatives for breach of the by-laws or operating rules of the organization or contravention of this Act or the regulations.

176. Every provision of the constating instruments, by-laws or operating rules of a self-regulatory organization that would in effect limit competition must be submitted to the Commission, which shall authorize the provision only to the extent that it considers it necessary in the best interest of investors.

Any such provision has effect only after it has been authorized by the Commission.

CHAPTER II

SUPERVISORY POWERS OF THE COMMISSION

177. Every draft amendment to the constating instruments, by-laws or operating rules of a registered organization must be submitted for the approval of the Commission.

178. A submitted amendment is deemed approved at the expiry of 30 days or any period agreed on with the organization concerned, unless the Commission informs it that a public hearing is being called to hear representations on the merits of the proposed amendment.

179. The Commission may at any time suspend the application of a by-law or operating rule of a registered organization, on such conditions as it sees fit.

180. The Commission may order a registered organization to amend its constating instruments, by-laws or operating rules where that appears necessary to make them conform with this Act or the regulations.

181. The Commission may prescribe a course of action to a registered organization if it considers it necessary for the proper operation of the organization or the protection of investors.

182. Before rendering any decision that unfavourably affects the rights of any person, the Commission shall give to him an opportunity to be heard.

However, for an imperative cause, it may render a decision described in the first paragraph without a prior hearing, provided that it gives to the person concerned an opportunity to be heard within fifteen days.

183. A registered organization shall inform the Commission as soon as possible of every decision rendered under delegated powers, concerning the admission of a new member, or regarding discipline.

184. Every registered organization shall, within 90 days from the end of its financial year, file an annual report containing the financial statements, auditor's report, and any other information, in accordance with the regulations.

185. Every registered organization shall keep such books, records and other documents as the Commission may prescribe.

186. A registered organization wishing to cease its activities shall apply to the Commission for authorization.

The Commission shall grant the authorization if it considers that there are adequate safeguards for members and investors.

TITLE VII

PROHIBITIONS AND PENALTIES

CHAPTER I

USE OF PRIVILEGED INFORMATION AND MISCELLANEOUS PROHIBITIONS

187. No person having privileged information on a security of a reporting issuer of which he is an insider within the meaning of section 89 may trade in securities of the issuer except in the following cases:

(1) he is justified in believing that the information is generally known or known to the other party;

(2) he avails himself of a plan for the acquisition of securities established before he learned the information.

188. No person referred to in section 187 may disclose information referred to therein except in the following cases:

(1) he is justified in believing that the information is generally known or known to the other party;

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

189. The prohibitions set out in sections 187 and 188 also apply to the following persons:

(1) the senior executives referred to in sections 94 or 95;

(2) companies owned by an affiliate of the reporting issuer;

(3) the management company and the distribution company of a mutual fund, or unincorporated mutual fund, their senior executives and any person who is an insider of any of them under section 89, 94 or 95;

(4) every person who has acquired privileged information in the course of engaging in business or professional activities with the reporting issuer;

(5) every person having privileged information that, to his knowledge, was disclosed by an insider or a person referred to in this section.

190. No person having access to information concerning the investment program established by a mutual fund or an unincorporated mutual fund or by an adviser who is a portfolio manager may use the information for his own benefit in trading in securities included in the program.

191. In addition to the adviser, the following persons are deemed to have knowledge of the investment program of an adviser who is a portfolio manager, if they participate in formulating his investment decisions and his recommendations to the client for whom he manages the portfolio, or learn of them before they are implemented:

- (1) every partner of the adviser;
- (2) every artificial person that is an affiliate of the adviser;
- (3) every senior executive of the adviser or of an artificial person that is an affiliate of the adviser;
- (4) every member of the personnel of the adviser or of an artificial person that is an affiliate of the adviser.

192. No person may make any representation that the Commission has passed upon the merits of any security or upon the financial standing, fitness or conduct of any registrant.

193. No person may multiply transactions on behalf of a client solely to increase his remuneration.

194. No person may sell a security short without previously notifying the broker responsible for carrying out the transaction.

CHAPTER II

OFFENCES

195. It is an offence

- (1) to contravene a decision of the Commission;
- (2) to fail to fulfil an undertaking with the Commission;

(3) to fail to furnish, within the prescribed time, information or a document required by this Act or the regulations;

(4) to fail to appear after summons, to refuse to testify or to refuse to send or hand over any document or thing required by the Commission in the course of an investigation.

196. Every person is guilty of an offence who makes a misrepresentation that is apt to affect the value or the quoted price of a security in any of the following documents:

(1) the prospectus or offering memorandum provided for in Title II;

(2) the permanent information record provided for in Title III where complemented by a short form prospectus;

(3) the information in respect of a reporting issuer provided for in paragraph 1 of section 85;

(4) the circular provided for in section 167;

(5) the annual, semi-annual or quarterly financial statements provided for in Title III;

(6) the press release provided for in Title III;

(7) the circular prepared to solicit proxies under Title III;

(8) the take-over bid circular provided for in Title IV.

197. Every person is guilty of an offence who in any manner not specified in section 196 makes a misrepresentation

(1) in respect of a transaction in a security;

(2) in the course of soliciting proxies or sending a circular to security holders;

(3) in the course of a take-over bid, a take-over bid by way of an exchange of securities or an issuer bid;

(4) in any document or information filed with the Commission or one of its agents;

(5) in any document forwarded or record kept by any person pursuant to this Act.

198. A person accused of an offence provided for in section 196 or 197 is acquitted if he proves that he acted with reasonable diligence.

199. It is an offence, in effecting a transaction in a security,

(1) to represent that it will be resold or repurchased, except where it carries such a right;

(2) to represent that all or part of the purchase price will be refunded, except where the security carries such a right;

(3) to give an undertaking relating to the future value or price of the security, except so far as that value is guaranteed on the security itself;

(4) to declare that the security will be listed on a stock exchange or that an application therefor has been or will be made, except with the explicit authorization of the Commission;

However, a person may, in the case of a transaction for more than 50 000 dollars, undertake, by a written document, to resell, repurchase or repay securities.

200. Every person who, not being registered as an adviser, gives out information to investors intended to influence their investment decisions and derives an advantage therefrom separate from his ordinary remuneration is guilty of an offence.

201. An adviser who is a portfolio manager is guilty of an offence if, in carrying out his mandate, he knowingly participates in any of the following transactions:

(1) the making of a loan or a guarantee to an issuer in which a person referred to in section 191 or an associate of that person is a senior executive, except with the written authorization of the holder given with full knowledge of the facts;

(2) the purchase of securities from an issuer referred to in paragraph 1 except with the written authorization of the holder given with full knowledge of the facts;

(3) a securities transaction with a person referred to in section 191 or an associate of that person;

(4) the making of a loan or a guarantee to a person referred to in section 191 or an associate of that person.

CHAPTER III

PENAL PROVISIONS

202. Every person who contravenes this Act is guilty of an offence.

Every person guilty of an offence under this Act is liable, in addition to costs, to the following penalties:

(1) in the case of a natural person, a fine of 500 to 10 000 dollars and imprisonment for one month to two years, or only one of these penalties;

(2) in other cases, a fine of 500 to 25 000 dollars.

However, in the case of a natural person, failure to pay the fine and costs entails imprisonment for one month to two years.

In determining the penalty, the court shall take particular account of the harm done to the investors and advantage derived from the offence.

203. Every contravention of a regulation under this Act is an offence subject to the penalties provided for offences under this Act.

204. Every person guilty of an offence under sections 187 to 190 or section 196 or 197 is liable, in addition to costs, to a fine of 5 000 to 250 000 dollars and to imprisonment for one month to two years or to only one of these two penalties.

205. Every senior executive or employee, including a person remunerated on commission, who authorizes or acquiesces in an offence under this Act is liable to the same penalties as the principal offender.

A person accused of having permitted an offence is acquitted if he proves that he acted with reasonable diligence.

206. In default of payment of the fine and costs by a company found guilty of an offence, the court, after summoning the senior executives of the company to appear, may condemn them jointly and severally to pay the sum, and adjudicate the share of each in the judgment.

On failure to pay, the senior executives are liable to imprisonment for one month to two years.

207. Every conspiracy to commit an offence under this Act is an offence punishable by the penalties provided in section 202 or 204.

208. Complicity in an offence under this Act, including omission, and abetting anyone to commit such an offence, is punishable by the penalties under section 202 or 204.

209. Proceedings under section 202 to 208 are brought in accordance with the Summary Convictions Act (R.S.Q., chapter P-15).

210. No proceedings may be brought under this Act except by the Commission or the Attorney General.

211. A penal action for an offence under this Act is prescribed by two years from the date the Commission first has knowledge of

212. The Commission may recover the costs of an investigation from any person found guilty of an offence under this Act or under the securities legislation of another legislative authority.

The Commission shall prepare a bill of the costs and present it to a judge of the Provincial Court after giving the interested parties five days' advance notice of the presentation.

The judge shall tax the costs, and his decision may be appealed with leave of a judge of the Appeal Court.

213. A judge of the Sessions or a judge of the Provincial Court may, upon satisfactory proof of the authenticity of the signature thereon, endorse a warrant of arrest issued by a judge of another province against any person on a charge of contravening the securities legislation of that province.

The warrant so endorsed is sufficient authority to the bearer or any peace officer of Québec to execute it and take the person arrested to the place indicated in the warrant.

TITLE VIII

CIVIL ACTIONS

CHAPTER I

TRANSACTIONS EFFECTED WITHOUT A PROSPECTUS OR CIRCULAR

214. Every person who has subscribed for or purchased securities in a distribution effected without the prospectus required under Title II may apply to have the transaction rescinded or the price revised, at his option, without prejudice to his claim for damages.

The plaintiff may claim damages from the issuer or the holder, as the case may be, whose securities were distributed without a prospectus, from the senior executives of the issuer, or from the broker who effected the distribution.

215. Every person who has sold securities in response to a take-over bid effected without the circular required under Title IV may apply to have the sale rescinded or the price revised, at his option.

In addition to his right of action under this section, the plaintiff may claim damages from the senior executive of the offeror.

216. The defendant in an action under section 214 or 215 is responsible for damages unless it is proved that the absence of a prospectus was not imputable to any act on his part.

CHAPTER II

TRANSACTIONS EFFECTED WITH A PROSPECTUS OR CIRCULAR CONTAINING A MISREPRESENTATION

217. A person who has subscribed for, or acquired securities in a distribution effected with a prospectus containing a misrepresentation may apply to have the contract rescinded or the price revised, without prejudice to his claim for damages.

The defendant may counter the application only if it is proved that the plaintiff knew, at the time of the transaction, of the alleged misrepresentation.

218. The plaintiff may claim damages from the issuer or the holder, as the case may be, whose securities were distributed, from their senior executives, or from the broker who effected the distribution.

219. The plaintiff may also claim damages from the expert whose opinion containing a misrepresentation appeared, with his consent, in the prospectus.

220. The defendant in an action provided for in sections 218 and 219 is responsible for damages unless it is proved that

(1) the plaintiff knew, at the time of the transaction, of the alleged misrepresentation;

(2) he acted with reasonable diligence, except in an action brought against the issuer or the holder whose securities were distributed.

221. Rights of action established under sections 217 to 220 may also be exercised if a misrepresentation is contained in

(1) the permanent information record where complemented by a short form prospectus;

(2) the offering memorandum provided for in section 53;

(3) any other document authorized by the Commission for use in lieu of a prospectus.

222. A person who has sold securities in response to a take-over bid effected with a circular containing a misrepresentation may apply to have the sale rescinded or the price revised.

The defendant may counter the application only if proof is made that, at the time of the sale, the plaintiff knew of the alleged misrepresentation.

223. The plaintiff may also claim damages from the offerer and his senior executives and from the expert whose opinion containing a misrepresentation appeared, with his consent, in the circular.

224. The defendant in an action provided for in section 223 is responsible for damages unless it is proved that

- (1) the plaintiff knew, at the time of the sale, of the alleged misrepresentation;
- (2) he acted with reasonable diligence, except in the case of the offeror.

225. Any misrepresentation contained in any of the documents prescribed by sections 121 to 123 prepared by the board of directors or any of the senior executives of the company contemplated gives rise to a right of action in damages, in favour of all the holders of securities of the company contemplated at the time of the offer, against the signatory or signatories of the document.

The defendant is responsible for damages subject to the grounds for defence set forth in section 224.

CHAPTER III

USE OF PRIVILEGED INFORMATION

226. Every person who carries out a transaction contrary to section 187, 189 or 190 is responsible for damages to the other party to the transaction.

227. Every person who discloses privileged information in contravention of section 188 or 189 is responsible for damages to a third person as a result of a transaction effected with the person who used the information so disclosed.

228. Every person using privileged information contrary to section 187 or 190 is also accountable for the net profit accruing to him from the prohibited transaction, after repairing the harm caused, to the following persons:

- (1) the issuer of the securities concerned, in the case of an infringement of section 187;
- (2) the mutual fund or the client for whom the portfolio is managed, in the case of an infringement of section 190.

229. With the authorization of the court, obtained on a motion served on the issuer or the mutual fund or unincorporated mutual fund, the rights of action for recovery under section 228 may be exercised, in the name of and on behalf of the security holders, by a person who was at the time of the prohibited transaction or is at the time of the motion a holder of outstanding securities of the issuer, the mutual fund or the unincorporated mutual fund.

230. Every security holder who satisfies the conditions set forth in section 229 may also intervene in an action instituted under section 228 or 229.

231. To obtain authorization pursuant to section 228, it must be established that the senior executives of the issuer, of the mutual fund or of the unincorporated mutual fund have failed to institute the action, or have failed to prosecute it diligently.

232. The court may make any necessary order to facilitate the exercise of a holder's right to institute or intervene in an action. In particular, it may charge the holder's costs to the issuer.

233. The Commission has an interest to bring an action under section 229 or 230 in the same manner as a holder.

CHAPTER IV

PRESCRIPTION

234. Any right of action for rescission or for revision of the price under this Title is prescribed by one year from the date of the transaction.

235. Any right of action for damages under this Title is prescribed by two years from knowledge of the facts giving rise to the action, except on proof that tardy knowledge is imputable to the negligence of the plaintiff.

236. The prescriptive periods under section 235 are subordinate to the following periods:

(1) five years from the transaction, in the case of actions under the second paragraph of sections 214 and 215 and under sections 226, 227 and 228;

(2) five years from the filing of the prospectus, short form prospectus or circular with the Commission, in the case of actions under sections 218, 219, 221, 223 and 225.

TITLE IX

ENFORCEMENT

CHAPTER I

POWERS OF INVESTIGATION

237. The Commission or its appointed agent may require any document or information it considers expedient for the discharge of its functions to be submitted to it by any of the following persons:

- (1) a registrant;
- (2) a self-regulatory organization or one of its members;
- (3) a reporting issuer;
- (4) the depositary of the assets of a mutual fund or of an unincorporated mutual fund;
- (5) a person submitting an application to the Commission, or filing with it documents required by the Act or the regulations, and the issuer mentioned in the application or the documents.

In addition, the Commission or its appointed agent may require the person to verify by affidavit or solemn affirmation the authenticity or veracity of submitted documents or information.

In the case of a member of a self-regulatory body, the Commission may, on the conditions it determines, delegate its powers under this section and section 238 to the self-regulatory body.

238. The Commission or its agent may require any person referred to in section 237 or any senior executive or employee thereof to submit to examination under oath.

239. The Commission may order an investigation to aid it in the due administration of the Act or to repress contraventions of the Act or the regulations, or the securities legislation of another legislative authority.

The Commission may also order an investigation to ascertain, following a complaint, whether it would be advisable to recommend that the Minister appoint an administrator.

240. The first paragraph of section 6, and sections 9, 10, 11, 12, 13 and 16 of the Act respecting public inquiry commissions (R.S.Q., chapter C-37) apply, *mutatis mutandis*, to investigations under this chapter.

The Commission has, for the purposes of an investigation, all the powers of a judge of the Superior Court, except to order imprisonment.

241. No person called upon to testify in the course of an investigation may refuse to answer or to produce any document on the ground that he might thereby be incriminated or exposed to a penalty or civil proceedings, subject to the Canada Evidence Act (R.S.C., 1970, chapter E-10).

242. The Commission may require the submission or delivery of any document related to the object of the investigation. The Commission has the power to return the documents remitted to it or to determine whether or not it is advisable to do so.

243. A person who has remitted documents pursuant to section 242 may inspect them or copy them at his own expense, by arrangement with the Commission.

244. Investigations made under section 239 are held *in camera*.

245. The Commission may forbid a person to disclose any information relating to an investigation to anyone but his advocate.

246. A person called on to testify at an investigation may be assisted by the advocate of his choice.

247. The Commission may, without relinquishing charge of an investigation, appoint a person to carry it out.

The appointed investigator 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*.

248. The investigator must prove his appointment on request.

For the purposes of the investigation, the investigator has all the powers of the Commission, except to cite for contempt of court.

The investigator shall report to the Commission, and place the transcript of testimony and the documents relating to the investigation at its disposal.

CHAPTER II

CONSERVATORY MEASURES

DIVISION I

FREEZE ORDERS

249. The Commission may, in view of or in the course of an investigation,

(1) order the person who is or is about to be under investigation to hold the funds, securities or other assets in his possession;

(2) order the person who is or is about to be under investigation to refrain from withdrawing funds, securities or other assets from any other person having them on deposit, under control or for safekeeping;

(3) order any other person to hold the funds, securities or other assets referred to in paragraph 2.

250. Every order made under section 249 is effective for a renewable period of 90 days from the date the person concerned is notified.

251. If the person named in an order under paragraph 3 of section 249 has leased a safety deposit box to the person under investigation or put it at his disposal, he must immediately notify the Commission.

At the request of the Commission, the person shall break open the safety deposit box in the presence of an agent of the Commission, draw up an inventory of the contents in triplicate, and give one copy to the Commission and one copy to the person under investigation.

252. No order made under section 249 applies to funds or securities in a stock exchange clearing house or with a transfer agent, unless it so states.

253. Where an order made under paragraph 3 of section 249 concerns a bank, loan and investment company or trust company, it applies only to the branches or agencies mentioned therein.

254. An order made under section 249 applies also to funds, securities and other assets received after the effective date of the order.

255. Every person directly affected by an order made under section 249, if in doubt as to the application of the order to particular funds, securities or other assets, may apply to the Commission for clarification.

256. The Commission may notify the registry office or the Ministère de l'Énergie et des Ressources of any order made under section 239 or 249, for registration.

An order registered under this section may be set up against any person whose right is registered subsequently.

DIVISION II

PROVISIONAL ADMINISTRATION AND WINDING-UP

257. The Commission may recommend that the Minister appoint by order a provisional administrator to administer the property of a person or the affairs of a company in the place of the board of directors in any of the following cases:

(1) where an investigation is being made in respect of the person;

(2) where the senior executives of the person are suspected of malversation, breach of trust or any other offence;

(3) where the senior executives are resorting to unorthodox management practices that tend to depreciate the securities issued by the person;

(4) where the Commission deems it imperative that the clients of a registrant or the holders of securities be protected.

258. Before appointing a provisional administrator, the Minister shall give the person concerned an opportunity to be heard.

The Minister may, however, if the Commission so recommends, make the order first, provided that the person concerned is given an opportunity to be heard within 15 days.

259. Subject to the terms of his mandate under the order, the provisional administrator shall take possession of the property belonging to the person named in the order or held by him for any other person.

260. At the request of the Minister or the Commission, the provisional administrator shall report his findings and the execution of his mandate to both of them.

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

- (1) rescind or prolong 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.

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).

262. The fees and expenses of the provisional administrator and the liquidator for the execution of their mandates are taken out of the total assets administered, after approval by the Minister.

If the assets are insufficient or in case of insolvency, the fees and expenses are borne by the Government, which is subrogated in the rights of the provisional administrator or the liquidator.

CHAPTER III

OTHER POWERS OF THE COMMISSION

263. The Commission may, on such conditions as it may determine, exempt a person or a group of persons from any or all of the requirements under Titles II to VI or the regulations where it considers the exemption not to be detrimental to the best interests of investors.

The decision is without appeal.

264. The Commission may deny the benefit of an exemption contained in this Act or the regulations where it considers it necessary to do so to protect investors.

In particular, the Commission may deny the benefit of an exemption to any person who has

- (1) made improper use of such an exemption;
- (2) contravened this Act or the regulations;
- (3) contravened any other legislation regarding securities;
- (4) contravened the rules of a registered stock exchange.

265. The Commission may order a person to cease any activity in respect of a transaction in securities.

The Commission may also order a person to cease carrying on business as a securities adviser.

The Commission may, furthermore, order any person or category of persons to cease any activity in respect of a transaction in a particular security.

266. Every order made under section 265 has effect from the time the person concerned is notified or becomes aware of it.

Publication of the order in the Bulletin or its circulation by any other medium ordinarily available to the person concerned in the practice of his profession is valid as notification under the first paragraph.

267. The Commission may, when, in its opinion, the best interest of investors requires it, order any person to cease to have business dealings with a particular registrant or reporting issuer.

268. The Commission may, by a motion, apply to a judge of the Superior Court for an injunction in respect of any matter relating to this Act or the regulations.

The motion for an injunction is an action.

The procedure prescribed in the Code of Civil Procedure applies, except that the Commission is not required to give security.

269. The Commission may, *ex officio* and without notice, intervene in any civil action relating to any provision of this Act to participate in the proof and hearing.

270. The Commission may prohibit or place restrictions on canvassing in view of a transaction in a particular security.

271. The Commission may order a registrant to submit any advertising copy to it before using it.

The Commission may prohibit the use of the advertising copy or require it to be changed.

272. The Commission may refuse the filing of documents part or all of which were prepared or signed by a person

(1) who has been found guilty in a penal action or disciplined in a matter pertaining to securities or has been convicted of an indictable offence;

(2) against whom a penal action or disciplinary proceedings in a matter pertaining to securities are being taken or who is under

investigation by the Commission or is being prosecuted for an indictable offence.

273. The Commission may reprimand a registrant or a self-regulatory organization.

The Commission must give the person concerned prior opportunity to be heard.

274. The Commission may draw up general instructions defining the requirements following from the application of section 276, within its discretionary powers.

275. The Commission may recommend to the Minister of Finance that a refund be made of all or part of any fees collected.

TITLE X

ADMINISTRATION OF THE ACT

CHAPTER I

THE COMMISSION DES VALEURS MOBILIÈRES DU QUÉBEC

276. The Commission des valeurs mobilières du Québec established under the Securities Act (R.S.Q., chapter V-1) is continued; the Commission is responsible for the administration of this Act and has the duties provided for therein.

The function of the Commission is

- (1) to promote efficiency in the securities market;
- (2) to protect investors against unfair, improper or fraudulent business practices;
- (3) to regulate the information that must be disclosed to security holders and to the public on persons engaged in the distribution of securities and on the securities issued by these persons;
- (4) to define a framework for the professional activities of persons dealing in securities, for associations of such persons and for bodies entrusted with supervising the securities market.

277. The Commission is composed of not over seven members, including a chairman and two vice-chairmen, appointed by the Government for a term not exceeding five years.

The chairman and the two vice-chairmen hold office on a full time basis; the other members hold office on a part time basis.

278. The Government shall fix the remuneration, social benefits and other conditions of employment of the members of the Commission. Their remuneration, once fixed, cannot be reduced.

279. If the chairman is absent or temporarily unable to act, the Minister shall designate the vice-chairman who is to act as chairman in the interim.

280. A member of the Commission remains in office at the expiry of his term until he is reappointed or replaced, unless the Government decides otherwise.

A member of the Commission who has been replaced continues to have jurisdiction in the cases before him.

281. No member of the Commission may, under pain of forfeiture of office, have any interest in an undertaking that might put his personal interest in conflict with his duties of office.

However, forfeiture is not incurred if he acquires an interest by succession or gift, provided that he renounces or disposes of it with diligence.

282. The Government may dismiss a member of the Commission, where the Court of Appeal, after making an inquiry at the request of the Minister, so recommends.

283. Neither a member of the Commission nor its appointed agent may be prosecuted for official acts done in good faith in the exercise of his functions.

284. No extraordinary recourse provided for in articles 834 to 850 of the Code of Civil Procedure may be exercised nor any injunction granted against the Commission or its members or agents acting in their official capacity.

285. Article 33 of the Code of Civil Procedure does not apply to the Commission nor to the persons contemplated in section 284.

286. A judge of the Court of Appeal, upon motion, may annul summarily any decision rendered contrary to section 284 or 285.

287. The Commission has its head office in the city of Montréal.

288. The Commission may hold sittings anywhere, even outside Québec.

289. Proceedings conducted by the members of the Commission by way of a conference telephone call are valid.

290. Two members are a quorum of the Commission. In case of a tie-vote, the chairman has a casting vote.

291. In case of a tie-vote in the absence of the chairman, the matter is referred to him.

292. The Commission may appoint any expert whose assistance it deems expedient for the execution of its mandate.

293. The minutes of the sittings of the Commission are authentic if signed by the chairman, the secretary or a member of the Commission.

The same holds true of a document emanating from the Commission or forming part of its records, and of any copy of such a document, if certified by the chairman, the secretary or a person designated by the Commission.

294. Documents intended for the Commission are served on the secretary.

295. Any statement issued by the Commission respecting the registration of a person, the filing of a document, the date that the facts upon which proceedings may be brought came to the knowledge of the Commission and any other matter pertaining to the administration of this Act is proof of its content in any civil or penal proceedings without other proof of the signature or office of the person certifying.

296. All documents required to be filed under this Act or the regulations are open to public inspection at the head office of the Commission; they may also be reproduced or circulated in whole or in part.

However, the Commission may, if it deems it advisable, hold certain documents to be confidential.

297. Investigation reports and supporting evidence may be inspected only with the authorization of the Commission.

298. The Commission must publish a bulletin periodically to inform financial circles of its activities. The Bulletin may, in particular, contain applications received, decisions rendered, general instructions and information filed.

299. The members of the personnel of the Commission are appointed and remunerated in accordance with the Civil Service Act (R.S.Q., chapter F-3.1).

The chairman is a chief executive officer of an agency within the meaning of the Civil Service Act.

300. The Government shall, by regulation, determine rules of ethics and penalties applicable to members of the Commission and the procedure to be followed in imposing such penalties.

301. The Government shall, by regulation, determine special rules of ethics applicable to the members of the personnel of the Commission, and corresponding penalties.

An appeal may be made on the conditions set forth in section 97 of the Civil Service Act.

302. Every year, before the end of June, the Commission shall remit to the Minister a report of its activities for the preceding fiscal year.

The report of activities must be tabled before the National Assembly of Québec within thirty days of receiving it if the Assembly is in session or, if it is not sitting, within thirty days of the opening of the next session, or of resumption.

303. The chairman shall furnish to the Minister any information and any report that he may require on the activities of the Commission.

304. The fiscal year of the Commission ends on 31 March.

305. The books and accounts of the Commission are audited every year by the Auditor General and also whenever required by the Government.

CHAPTER II

DELEGATION OF POWERS

306. The Government may, according to law, enter into an agreement with another government for the delegation of powers conferred on the Commission by this Act or conferred on a similar body by an Act of another legislative authority.

307. The Commission may, subject to section 308, delegate to one of its members or a member of its personnel any power resulting from this Act or the regulations or an agreement referred to in section 306. Every decision to delegate power must be published in the *Gazette officielle du Québec*.

308. The Commission has sole authority to review its decisions, order an investigation, to institute proceedings under this Act, render a decision in accordance with Title VI, make a freeze

order under Title IX or recommend to the Minister the appointment of a provisional administrator, the liquidation of the property of a person or the liquidation of a company.

CHAPTER III

CONTROL EXERCISED BY THE COMMISSION

309. The Commission may call before it any matter that is before a person exercising a delegated power and decide it in his stead.

310. The Commission may, *ex officio*, review any decision rendered by a person exercising a delegated power or by a self-regulatory organization.

The self-regulatory organization is entitled to be heard at the times prescribed under sections 317 and 318.

311. Any person hearing a matter pursuant to a delegation of power may refer it to the Commission.

CHAPTER IV

HEARINGS

312. The Commission may hold hearings in conjunction with and consult with any other authority empowered to supervise trading in securities.

313. The Commission shall determine the rules of procedure applicable to its hearings.

314. Sections 240 to 246 apply to any hearing of the Commission, *mutatis mutandis*.

315. Any person appearing before the Commission may request that the testimony be recorded, at his own expense. If the Commission causes the testimony to be recorded, the person is required, at the request of the Commission, to provide it with a copy of the transcript.

CHAPTER V

DECISIONS

316. The Commission shall exercise the discretion conferred on it in accordance with the public interest.

317. The Commission or a person exercising delegated powers, before rendering a decision that adversely affects the rights of a person, must give the person an opportunity to be heard.

318. However, a decision adversely affecting the rights of a person may for an imperative cause be rendered without a prior hearing.

In such a case, the person rendering the decision must give the person concerned the opportunity to be heard within 15 days.

319. The Commission or the person exercising delegated powers must substantiate every decision that adversely affects the rights of a person.

320. The Commission shall send to the person concerned the decision rendered by it or by a person exercising delegated powers, except a decision rendered by a self-regulatory organization and sent by the organization itself.

321. The Commission may review its decisions at any time.

A person having rendered a decision under delegated powers may review it if justified by a new fact.

322. A person directly affected by a decision rendered under delegated powers or by a self-regulatory organization may within 30 days apply for a review of the decision by the Commission.

323. The application for review does not suspend the execution of the decision contested, unless the Commission decides otherwise.

CHAPTER VI

APPEALS

324. Any person directly affected by a decision of the Commission may, if the testimony has been recorded, appeal therefrom to three judges of the Provincial Court.

325. The appeal is made by filing a notice to that effect with the secretary of the Commission within 30 days from the date of the decision appealed from.

Filing of the notice is in lieu of service on the Commission.

326. The secretary shall immediately send the notice to the office of the Provincial Court at Montréal or Québec, at the option of the appellant.

The secretary shall send to the office, in four copies, in lieu of the joint record, the decision appealed from, the transcript of the recording and every other pertinent document.

327. The appeal is governed by articles 491 to 524 of the Code of Civil Procedure, *mutatis mutandis*. However, the parties are required to file only four copies of the factum of their pretensions.

328. The rules of practice of the Court of Appeal in civil matters also apply, except that the secretary of the Commission is substituted for the prothonotary of the Superior Court.

329. An appeal does not suspend the execution of the decision appealed from, unless the Commission or a judge of the Provincial Court decides otherwise.

330. The decision of the three judges of the Provincial Court is final.

TITLE XI

REGULATIONS, TRANSITIONAL AND FINAL PROVISIONS

CHAPTER I

REGULATIONS

331. In addition to the regulatory powers provided elsewhere in this Act, the Government may, by regulation,

(1) prescribe the form and content of the documents and attestations provided for by this Act or the regulations;

(2) make the issue of a receipt of the Commission in respect of a prospectus subordinate to certain conditions or a written undertaking;

(3) prescribe that information not specifically provided for by the Act be furnished to the Commission, to security holders and to investors;

(4) prescribe the cases where the abridged prospectus provided for in section 65 of this Act may be established;

(5) establish rules respecting the furnishing of information to the public or to the Commission relating to securities or trades in securities;

(6) define requirements governing the keeping of accounts and records and other documents of issuers, securities brokers and advisers and self-regulatory organizations, and the preparation and audit of their financial statements;

(7) permit the replacement of certain documents or attestations required under this Act by documents required under an Act of another legislative authority, provided that they contain equivalent information;

(8) give to the rules or standards established by a self-regulatory or a professional organization the force of a regulation made under this Act, as amended;

(9) exempt, with or without conditions, a category of persons, securities or transactions from all or part of the requirements under this Act or the regulations;

(10) prescribe the procedure applicable to any matter respecting the application of this Act;

(11) establish commissions and other sales charges pertaining to a contractual plan for the acquisition of securities;

(12) establish the requirements of a registrant or a self-regulatory organization following a transaction in counterfeit, lost or stolen securities;

(13) prohibit or subordinate to certain conditions any activity designed to fix or stabilize the price of a security;

(14) determine the conditions on which a person residing outside Québec may apply for registration or hold an interest in the capital of a registrant;

(15) determine the variation margin provided for in section 116 of this Act;

(16) determine the other forms of investment that are subject to this Act;

(17) prohibit the use of advertising copy in connection with a distribution;

(18) prescribe the cases where the Commission may refuse to issue a receipt in respect of a prospectus provided for in Title II;

(19) prescribe the categories of issuers who may prepare a short form prospectus or a permanent information record of a special form;

(20) prescribe the conditions on which an agency may qualify under section 67 of this Act;

(21) prescribe the clauses that must be contained in the contract provided for in section 47;

(22) establish, for the purposes of section 119, the offeree issuer's mode of authorization;

(23) define, in view of the application of section 159, the changes that must be notified to the Commission and those that the Commission may approve;

(24) determine the professions which may avail themselves of the exemption provided for in paragraph 1 of section 156 of this Act;

(25) define the conditions of the use by brokers of credit balances not allocated as security;

(26) establish rules governing the over-the-counter market;

(27) prescribe the fees exigible for any formality provided for by the Act or regulations and for services rendered by the Commission and the terms and conditions of payment.

332. In respect of mutual funds and unincorporated mutual funds, the Government may, by regulation,

(1) establish operating rules pertaining to the management, safekeeping and composition of its assets;

(2) prohibit or make subject to conditions transactions in securities with and loans made to persons who are not entirely independent of the mutual fund or unincorporated mutual fund.

333. In exercising its regulatory powers, the Government may establish various categories of persons, securities and transactions and prescribe the rules applicable to each category.

334. The Government may, by regulation under this Act, grant a discretionary power to the Commission.

335. The regulatory powers defined in this Act include that of enacting any accessory provision not specifically mentioned therein and considered necessary by the Government, in order to ensure their full effect.

336. The Government must publish its draft regulations in the *Gazette officielle du Québec*, with a notice stating that they are to be adopted at the expiry of a period of 30 days.

A regulation comes into force on the day of publication in the *Gazette officielle du Québec* of a notice of its approval by the Government or, where amended by the latter, of its final text, or on a later date fixed in the notice or in the final text.

However, in the case of draft regulation tabled in the National Assembly of Québec before the adoption of this Act, the regulation comes into force on the date of its publication in the *Gazette officielle du Québec*.

CHAPTER II

TRANSITIONAL AND FINAL PROVISIONS

337. This Act replaces the Securities Act (R.S.Q., chapter V-1) and the Act to amend the Securities Act in its applicability to the contract of concession or of franchising (1979, chapter 79).

However, section 27 of the Act to amend the Securities Act (1973, chapter 67) remains in force notwithstanding any inconsistent provision.

338. Every registration made and permission granted to distribute securities or a prospectus under the Securities Act (R.S.Q., chapter V-1) continues to have full effect notwithstanding the replacement of that Act by this Act.

The first paragraph also applies to other decisions rendered under the said Act that have the effect of granting rights or imposing obligations.

Every proceeding for an offence against the Securities Act (R.S.Q., chapter V-1) is brought or continued in accordance with the said Act.

339. For the application of section 68, every issuer is deemed to have made a distribution of its securities

(1) that was authorized by the Commission, at any time from 1 May 1955 to the coming into force of this Act, to make a distribution of voting securities under a prospectus filed with the Commission;

(2) that has filed a securities exchange take-over bid circular with the Commission, at any time from 6 July 1973 to the coming into force of this Act.

340. Section 19 of the Cooperative Associations Act (R.S.Q., chapter A-24) is amended by replacing paragraph *l* by the following paragraph:

“(l) issue bonds and, to secure the payment thereof, hypothecate, mortgage or pledge its moveable and immoveable property, present or future, and convey and transfer the same to a trustee, in accordance with Division VII of the Special Corporate Powers Act (R.S.Q., chapter P-16);”.

341. Section 965.1 of the Taxation Act (R.S.Q., chapter I-3) is amended by replacing the first paragraph by the following paragraph:

“965.1 For the purposes of this title, a stock savings plan is an arrangement made between an individual, other than a trust, and a securities broker within the meaning of section 5 of the Securities Act (1982, chapter *insert here the chapter number of Bill 85*) having an establishment in Québec and registered with the Commission des valeurs mobilières du Québec, under which that individual entrusts to that broker the custody of such of his shares as he may indicate that are not included in any other plan of any kind for the purposes of this Act and in respect of which he elects that the rules provided in this title be made to apply.”

342. Section 965.2 of the said Act is amended

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

“(f) purchased within the framework of a distribution of such a share or of a right to subscribe for such a share made in accordance with a receipt from the Commission des valeurs mobilières or exemption from filing a prospectus granted pursuant to sections 47, 50, 52, and 263 of the Securities Act (1982, chapter *insert here the chapter number of Bill 85*) or in accordance with an authorization of the Régie de l’électricité et du gaz granted after 27 March 1979 and before 22 June 1979;”;

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

“(g) the certificate for which is remitted directly to the securities broker contemplated in section 965.1 either by the issuer of the certificate or by another broker, within the meaning of section 5 of the Securities Act (1982, chapter *insert here the chapter number of Bill 85*), who certifies to him that the share was held, without interruption from its issue, by such a broker acting as intermediary or as firm underwriter;”.

343. Section 965.3 of the said Act is amended

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

“(a) having not fewer than five full-time employees other than insiders within the meaning of section 88 of the Securities Act (1982, chapter *insert here the chapter number of Bill 85*);”;

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

“(b) having common voting shares that, from 6 July 1973, are registered with a stock exchange in Québec or shares that were the objects of a distribution under conditions provided for in paragraph 1 of section 68 or in paragraph 1 of section 339 of the Securities Act (1982, chapter *insert here the chapter number of Bill 85*) or were distributed in accordance with an authorization granted before 22 June 1979 by the Régie de l’électricité et du gaz; and”.

344. Section 965.6 of the said Act is amended by replacing paragraph *f* by following paragraph:

“(f) the certificate for which is remitted directly to the securities broker or to the federation contemplated in section 965.1 by the person issuing the certificate, by another broker within the meaning of section 5 of the Securities Act (1982, chapter *insert here the chapter number of Bill 85*), or by another federation contemplated in section 965.1, which certifies to him that it has been held without interruption from its issuance, by such a broker or federation.”

345. Division VII of the Licenses Act (R.S.Q., chapter L-3), comprising sections 89 to 96, is repealed.

346. The Companies Information Act (R.S.Q., chapter R-22) is amended

(1) by striking out paragraph *c* of section 1;

(2) by replacing paragraph *b* of subsection 1 of section 2 by the following paragraph:

“(b) Upon commencing any business in Québec, and”;

(3) by striking out paragraph *d* of subsection 1 of section 2;

(4) by replacing subsection 2 of section 2 by the following subsection:

“(2) A company which has already complied, for the current year, with the provisions of section 4 and which comes within one of the circumstances contemplated in any one of subparagraphs *a*, *b* or *c* of the preceding subsection 1 shall not be obliged to again give the information required by the said section 4.”;

(5) by replacing subsection 3 of section 2 by the following subsection:

“(3) This section shall not apply to a trust company or to an insurance company.”

347. Section 9 of the Act respecting cooperative agricultural associations (R.S.Q., chapter S-24) is amended by replacing paragraph *k* by the following paragraph:

“(k) issue bonds and, to secure payment thereof, hypothecate, mortgage or pledge its moveable and immoveable property, present or future, and convey and transfer the same to a trustee, in accordance with Division VII of the Special Corporate Powers Act (R.S.Q., chapter P-16);”.

348. The minister appointed by the Government is responsible for the application of this Act.

[[**349.** The appropriations voted for the application of the Securities Act (R.S.Q., chapter V-1) are transferred to permit the application of this Act.

Supplementary appropriations for the application of this Act voted for the fiscal period 1982-1983 are taken out of the consolidated revenue fund.

For subsequent periods, the moneys are taken out of the moneys granted annually by the Legislature.]]

[[**350.** The duties exigible and the fines imposed for offences against this Act are collected by the Commission; all the sums thus collected are paid into the consolidated revenue fund.]]

351. At the coming into force of this Act, the self-regulatory organizations may continue to carry on their activities even if they do not meet the conditions prescribed in Title VII, until the Commission decides to grant or deny them recognition.

352. The Minister shall, on or before (*insert here the date occurring five years after the date of the coming into force of this Act*), and every five years thereafter, make a report to the Government on the implementation of this Act and on the advisability of continuing to apply it and, as the case may be, of amending it.

The report must, within the following fifteen days, be tabled before the National Assembly of Québec if it is sitting or, if it is not, be filed with the President of the Assembly.

The President shall, within one year from the tabling or filing of the report, convene such committee of the Assembly as he shall designate to examine the advisability of continuing to apply this Act or, as the case may be, of amending it, and to hear the opinions of interested individuals and organizations.

353. This Act shall operate notwithstanding the provisions of sections 2 and 7 to 15 of the Constitution Act, 1982 (*insert here the reference to the chapter number of the Canada Act in the compilation of the Acts of the Parliament of the United Kingdom for 1982*).

354. This Act comes into force on the date to be fixed by proclamation of the Government except the provisions excluded by such proclamation which will come into force on any later date fixed by proclamation of the Government.

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