



NATIONAL ASSEMBLY

FIRST SESSION

FORTIETH LEGISLATURE

Bill 31

**An Act to amend various legislative
provisions mainly concerning the
financial sector**

Introduction

**Introduced by
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Minister of Finance and the Economy**

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EXPLANATORY NOTES

This bill amends the Act respecting insurance to allow an insurance company that issues participating policies to make transfers from its participating fund to a surplus account or a retained earnings account in accordance with a participating fund surplus management policy approved by its board of directors.

This bill makes a number of amendments to the Act respecting the Autorité des marchés financiers, including in order to clarify certain rules relating to recognized self-regulatory organizations, such as allowing the Authority to make certain modifications to the recognition given to such an organization without publishing the application for modification.

It amends the Real Estate Brokerage Act, among other things to clarify the provisions relating to the concept of brokerage transaction and to the remuneration claimed or received for such transactions. Amendments are also introduced enabling the Organisme d'autoréglementation du courtage immobilier du Québec to act as arbitrator and setting out the procedure applicable to appeals made from the decisions of that Organization.

The bill amends the Act respecting the distribution of financial products and services, mainly to introduce new governance rules applicable to the Chambre de la sécurité financière.

Furthermore, it amends the Money-Services Businesses Act to clarify the collaboration process between the Autorité des marchés financiers, the Sûreté du Québec and other police forces. It makes other amendments that have proved necessary since the implementation of the Act, including one obliging licence holders to display their licence.

The bill also amends the Derivatives Act and the Securities Act in order to introduce provisions regarding the inspection of guarantee funds and the regulation of new market infrastructures, such as settlement systems and central securities depositories. It further amends these Acts to add provisions corresponding to those introduced into the Act respecting the Autorité des marchés financiers regarding recognized self-regulatory organizations.

Lastly, the bill amends the Business Corporations Act to relax the rules regarding the payments made by a reporting issuer to purchase or redeem its shares.

LEGISLATION AMENDED BY THIS BILL:

- Act respecting insurance (chapter A-32);
- Act respecting the Autorité des marchés financiers (chapter A-33.2);
- Real Estate Brokerage Act (chapter C-73.2);
- Act respecting the distribution of financial products and services (chapter D-9.2);
- Money-Services Businesses Act (chapter E-12.000001);
- Derivatives Act (chapter I-14.01);
- Business Corporations Act (chapter S-31.1);
- Securities Act (chapter V-1.1).

Bill 31

AN ACT TO AMEND VARIOUS LEGISLATIVE PROVISIONS MAINLY CONCERNING THE FINANCIAL SECTOR

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

ACT RESPECTING INSURANCE

1. Section 66.1 of the Act respecting insurance (chapter A-32) is amended

(1) by adding the following sentence at the end of the first paragraph: “The policy must be approved by the board of directors.”;

(2) by replacing “its actuary” in the third paragraph by “the actuary designated in accordance with Division III.1 of Chapter IV of Title IV”.

2. The Act is amended by inserting the following sections after section 66.1:

“66.1.1. No insurance company that issues participating policies may make a transfer from its participating fund to a surplus account or a retained earnings account unless it has established a participating fund surplus management policy approved by the board of directors.

The policy must provide a method for calculating the surplus to be maintained in the participating fund, including for the purpose of guaranteeing the performance of the company’s obligations toward participating policy holders.

The policy must be presented to a general meeting.

“66.1.2. A copy of any policy established under section 66.1 or section 66.1.1 must be sent to the Authority.

“66.1.3. Before each and any transfer from the participating fund to a surplus account or a retained earnings account, the actuary designated in accordance with Division III.1 of Chapter IV of Title IV must produce a report certifying that the transfer is in conformity with the participating fund surplus management policy.

The company must send the actuary’s report to the Authority at least 30 days before the date of the transfer.

“66.1.4. The Authority may forbid the transfer, or allow it subject to certain conditions, if the Authority considers it advisable in the interest of the participating policy holders.

“66.1.5. The Authority may require any relevant information or document for the purposes of this division.

“66.1.6. The Authority may, where it considers it advisable, give written instructions to an insurance company that issues participating policies concerning the management of participating fund surpluses.

Before exercising the power set out in the first paragraph, the Authority must notify the company and give it an opportunity to submit observations.”

3. Section 298.17 of the Act is amended by adding “and the Authority” after “to the board of directors” at the end of the third paragraph.

4. Section 298.18 of the Act is amended by adding “and whether the management of participating fund surpluses is in conformity with the policy established under section 66.1.1” after “section 66.1” at the end of the second paragraph.

5. Section 299 of the Act is amended by inserting the following paragraph after paragraph *d*:

“(d.1) a list of the transfers made out of participating fund surpluses;”.

ACT RESPECTING THE AUTORITÉ DES MARCHÉS FINANCIERS

6. Section 66 of the Act respecting the Autorité des marchés financiers (chapter A-33.2) is amended by adding the following paragraph at the end:

“The first paragraph does not apply to an application for the modification of a recognition decision that does not significantly alter the activities exercised by the applicant.”

7. Section 68 of the Act is replaced by the following section:

“68. The Authority shall grant recognition to a legal person, a partnership or an entity if it considers that the legal person, partnership or entity has the administrative structure and the financial resources and other resources necessary to exercise its functions and powers in an objective, fair and efficient manner.

Before granting recognition to a legal person, a partnership or an entity, the Authority must

(1) ascertain that its constituting documents, by-laws and operating rules comply with sections 69 and 70; and

(2) make sure that the provisions applicable to its members or subscribers will ensure its compliance with sections 70.1 and 71.”

8. Section 70 of the Act is amended by striking out the first paragraph.

9. The Act is amended by inserting the following section after section 70:

“70.1. A recognized organization must

(1) allow unrestricted membership for any person who meets the admission criteria;

(2) ensure equal access to the services offered; and

(3) be able to exercise its functions and powers while avoiding and regulating conflicts of interest.”

10. Section 71 of the Act is replaced by the following section:

“71. A recognized organization cannot, by any provision or practice, restrict competition between its members or its participants unless the provision or practice has been authorized by the Authority.

The Authority shall only authorize provisions or practices it considers necessary for the protection of the public. The Authority may subject its authorization to the conditions and restrictions it determines.”

11. Section 73 of the Act is amended by replacing “or other entity” in the first paragraph by “, an entity or a recognized organization”.

12. Section 74 of the Act is amended by adding the following paragraph at the end:

“The same rule applies to any draft amendment pertaining to a practice or provision of a document, other than those referred to in the first paragraph, if the practice or provision was authorized by the Authority under section 71.”

13. Section 77 of the Act is amended by replacing “its constituting documents, by-laws or operating rules” and “such texts consistent”, respectively, by “a provision or practice” and “such provision or practice consistent”.

14. The Act is amended by inserting the following section after section 82:

“82.1. Once the time allotted for applying for a review of a decision by a recognized organization calling for a disciplinary sanction has expired, the decision may be homologated by the Superior Court or the Court of Québec according to their respective jurisdictions.

Once homologated, the decision becomes enforceable as a judgment of that Court.”

15. Section 89 of the Act is amended by replacing “or any other entity” in the second paragraph by “, an entity or a recognized organization”.

REAL ESTATE BROKERAGE ACT

16. Section 1 of the Real Estate Brokerage Act (chapter C-73.2) is amended by replacing “under a single contract, if the enterprise’s property, according to its market value, consists mainly of immovable property” in subparagraph 5 of the first paragraph by “provided that the enterprise’s property includes immovable property or rights related to an immovable, including rights resulting from a lease”.

17. Section 3 of the Act is amended

- (1) by striking out “residential” in paragraph 9;
- (2) by inserting the following paragraph after paragraph 13:

“(13.1) a person who effects a purchase or sale of an enterprise, a promise to purchase or sell an enterprise, or a purchase or sale of such a promise, under a single contract, if the enterprise’s property, according to its market value, does not mainly consist of immovable property or rights related to an immovable, including rights resulting from a lease;”;

- (3) by striking out paragraph 14.

18. Section 4 of the Act is amended, in the fourth paragraph,

(1) by replacing “services rendered” by “the transaction in which the person engaged”;

(2) by adding the following sentence at the end: “Likewise, a broker who engages in a brokerage transaction through the intermediary of a person who is not a licence holder is also precluded from claiming or receiving remuneration for that transaction.”

19. The heading of Division II of Chapter II of the Act is amended by replacing “AND MORTGAGE BROKER AGENCIES” by “OR MORTGAGE AGENCY”.

20. Section 13 of the Act is amended

- (1) by striking out “broker” wherever it appears;
- (2) by adding the following paragraph at the end:

“Anyone who, without holding an agency licence, engages in a brokerage transaction through the intermediary of a natural person is not entitled to claim or receive remuneration for that transaction. Likewise, an agency that engages in a brokerage transaction through the intermediary of a natural person who is not a licence holder is also precluded from claiming or receiving remuneration for that transaction.”

21. Section 27 of the Act is amended

(1) by inserting “or an agency” after “to remunerate a broker” in the first paragraph;

(2) in the second paragraph,

(a) by replacing subparagraph 2 by the following subparagraph:

“(2) the sale, lease or exchange involves a person who was interested in the immovable while the contract was in force or, in the case of a contract with a view to purchasing or leasing an immovable, the client purchased or leased an immovable in which the client became interested through the broker while the contract was in force;”;

(b) by inserting “or another agency” after “another broker” in subparagraph 3.

22. Section 34 of the Act is amended

(1) by replacing “acts” in the first paragraph by “may act”;

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

“The Organization may also arbitrate when reconciliation or mediation fails, if the parties so request.

The Organization may establish an arbitration committee and delegate its functions and powers under the second paragraph to the committee.

The committee’s operating and decision-making rules are to be determined by regulation of the Organization.”

23. Section 37 of the Act is amended by replacing “an offence or act” in paragraph 3 by “an offence or an indictable offence” and by striking out “or act” at the end of that paragraph.

24. Section 38 of the Act is amended by replacing “an offence or act” in paragraph 3 by “an offence or an indictable offence” and by striking out “or act” after “such an offence”.

25. The Act is amended by inserting the following section after section 38:

“38.1. The Organization may require from the applicant or the licence holder any information or document it considers necessary for the purposes of sections 37 and 38. If the applicant or licence holder fails to provide such information or document, the Organization may refuse to examine the application or may suspend the licence, as applicable, until the required document or information has been provided.”

26. Section 43 of the Act is amended by replacing the first paragraph by the following paragraph:

“43. Any appeal from a decision made under section 37, 38 or 38.1 is brought before the Court of Québec, in accordance with subdivision 1 of Division VIII of Chapter IV of the Professional Code (chapter C-26), with the necessary modifications. Any reference to the secretary of the board of directors or of the executive committee in the Professional Code must be understood as a reference to the Organization within the meaning of this Act.

An appeal does not suspend the contested decision, unless a judge of the Court of Québec decides otherwise.”

27. Section 44 of the Act is repealed.

28. Section 46 of the Act is amended by inserting “or an executive officer of an agency” and “or executive officers”, respectively, after “become a broker” and “by prospective brokers” in paragraph 1.

29. Section 49 of the Act is amended by striking out “broker”.

30. The Act is amended by inserting the following section after section 49:

“49.1. The Organization may, by regulation, require that persons it identifies take an oath of discretion, and determine the form of the oath. However, the oath is not to be construed as prohibiting the sharing of information or documents within the Organization for the protection of the public.”

31. Section 54 of the Act is amended by replacing the second paragraph by the following paragraph:

“The internal by-laws are approved by the Minister, with or without amendments, after a 30-day consultation period with the licence holders.”

32. Section 57 of the Act is amended by replacing “11” by “13”.

33. Section 58 of the Act is amended by adding “, which must include rules aimed at insuring equitable geographical representation and equitable representation of the different categories of broker’s licences” at the end of the second paragraph.

34. Section 70 of the Act is amended by replacing “second” in the third paragraph by “first”.

35. The Act is amended by inserting the following section after section 83:

“83.1. The Organization appoints one or more ad hoc syndics on the suggestion of the review committee.

Within the given mandate, an ad hoc syndic has the rights, powers and obligations of a syndic, but does not have authority over an assistant syndic.

The Organization must take steps to preserve the independence of an ad hoc syndic at all times.”

36. Section 84 of the Act is amended by striking out “, following notification by the assistance service” in the first paragraph.

37. Section 88 of the Act is amended

(1) by striking out “of a Canadian court”;

(2) by replacing “a criminal or indictable offence” by “an offence or indictable offence”.

38. Section 89 of the Act is replaced by the following section:

“89. Sections 78 to 80 apply to a syndic, assistant syndic and ad hoc syndic when conducting an investigation.

The syndic, assistant syndics and ad hoc syndics have the powers and immunity of commissioners appointed under the Act respecting public inquiry commissions (chapter C-37), except the power to order imprisonment.”

39. Section 92 of the Act is replaced by the following section:

“92. In its ruling, the review committee must

(1) find that there is no cause to file a complaint with the discipline committee;

(2) suggest that the syndic complete the investigation and subsequently make a new ruling as to whether or not to file a complaint; or

(3) find that there is cause to file a complaint with the discipline committee and suggest that an ad hoc syndic be appointed who, after investigation, if one is necessary, will decide whether or not to file a complaint.

The review committee may also suggest that the syndic refer the case to the inspection committee.

If the review committee suggests that the syndic complete the investigation or finds that there is cause to file a complaint with the discipline committee, the Organization must reimburse any fees charged to the person who requested the investigation.

The review committee must send its ruling to the person who requested the investigation and to the syndic without delay.”

40. Section 98.1 of the Act is amended, in the second paragraph,

(1) by replacing “found guilty” by “concerned”;

(2) by inserting “or, if the decision imposes a provisional measure, the date and nature of the facts underlying the charge” after “nature of the offence,”.

41. Section 101 of the Act is amended by replacing “fifth paragraph of section 98” and “that section” in the third paragraph by, respectively, “first paragraph of section 98.1” and “section 98”.

42. Section 112 of the Act is amended by inserting the following sentence after the first sentence: “Prescription begins to run against the Organization from the day the indemnities are paid.”

43. Section 113 of the Act is amended by striking out “, but at least once every five years”.

44. Section 125 of the Act is amended

(1) by striking out the last sentence in the second paragraph;

(2) by inserting the following sentence at the beginning of the third paragraph: “In determining the amount of a fine, the court considers such factors as the injury suffered as a result of and the benefits derived from the offence.”

45. Section 127 of the Act is amended by replacing “the syndic” in the first paragraph by “the Organization”.

46. Section 129 of the Act is repealed.

47. Section 133 of the Act is amended by replacing “or any assistant syndics” by “, the assistant syndics, an ad hoc syndic”.

48. Section 134 of the Act is amended

(1) in the first paragraph,

(a) by replacing “or mediation” by “, mediation or arbitration”;

(b) by replacing “or made a false statement” by “, made a false statement or produced a false document”;

(2) by adding the following sentence at the end of the second paragraph: “The same applies to conciliators, mediators or arbitrators, as well as to the persons who assist them during the settlement of a dispute, in respect of anything learned by them within that process.”;

(3) by replacing “conciliation or mediation” in the third paragraph by “conciliation, mediation or arbitration”.

49. Section 147 of the Act is amended by striking out “broker” in the second paragraph.

50. Section 148 of the Act is amended by replacing “real estate” by “mortgage”.

51. Section 161 of the Act is amended by striking out the second paragraph.

ACT RESPECTING THE DISTRIBUTION OF FINANCIAL PRODUCTS AND SERVICES

52. Section 196 of the Act respecting the distribution of financial products and services (chapter D-9.2) is amended by adding “, or prescribe the formulations of a standard policy” at the end of the second paragraph.

53. Section 217 of the Act is amended by replacing “115.1” in the second paragraph by “115.2”.

54. Sections 288 and 289 of the Act are replaced by the following sections:

“288. The affairs of each Chamber are administered by a board of directors consisting of 13 members.

Five members of the board must qualify as independent members, whereas the other eight members, in the case of the *Chambre de la sécurité financière*, must be members of that Chamber and, in the case of the *Chambre de l’assurance de dommages*, must be from the industry.

“289. The members of the board of the *Chambre de la sécurité financière* who must be members of that Chamber are elected by the representatives in insurance of persons, group insurance representatives, mutual fund dealer representatives, scholarship plan dealer representatives and financial planners.

The members of the board of the *Chambre de l’assurance de dommages* who must be from the industry are elected by the damage insurance agents, damage insurance brokers and claims adjusters.

A Chamber's internal management by-law must set out the procedure governing the election of the members of its board."

55. Section 290 of the Act is amended

- (1) by striking out the first paragraph;
- (2) by replacing "board members who" in the second paragraph by "board members of a Chamber who";
- (3) by replacing "de la Chambre de l'assurance de dommages" in the third paragraph of the French text by "d'une chambre".

56. Section 290.1 of the Act is amended by replacing "of the Chambre de l'assurance de dommages" in the first paragraph by "of a Chamber".

57. Section 290.3 of the Act is amended

- (1) by inserting the following paragraph after the first paragraph:

"In the case of the Chambre de la sécurité financière, the elected board members must include the following persons:

 - (1) two representatives in insurance of persons;
 - (2) two mutual fund dealer representatives;
 - (3) one group insurance representative;
 - (4) one scholarship plan dealer representative; and
 - (5) one financial planner.";
- (2) by replacing "second paragraph" wherever it appears in the third, fourth and sixth paragraphs by "third paragraph";
- (3) by replacing "of the second paragraph" in the fifth paragraph by "of the third paragraph".

58. Section 291 of the Act is amended by adding the following paragraph at the end:

"However, the elected member of the board of the Chambre de la sécurité financière who is not mentioned in the list set out in the second paragraph of section 290.3 is elected by the general meeting of the Chamber's members."

59. Section 294 of the Act is amended

- (1) by striking out the first paragraph;

(2) by replacing “In all other cases, the election” in the second paragraph by “The election”.

60. Section 296 of the Act is repealed.

61. Section 297 of the Act is replaced by the following section:

“297. The members of the board of a Chamber shall designate a president from among their number, according to the procedure set out in the internal management by-law.

Likewise, the members of the board shall designate from among their number two vice-presidents in the case of the *Chambre de la sécurité financière*, and a single vice-president in the case of the *Chambre de l’assurance de dommages*.”

62. Section 309 of the Act is amended by striking out “, in accordance with the staffing plan and the standards established by regulation of the Chamber. The regulation shall also determine the standards and scales of remuneration, employment benefits and other employment conditions of the personnel members” in the second paragraph.

63. Section 312 of the Act is amended by replacing “in section 290” in the fifth paragraph by “in the second paragraph of that section”.

64. Section 327 of the Act is amended by striking out “, according to the staffing plan and standards determined by regulation of the Chamber,” in the second paragraph.

65. Section 331 of the Act is amended by striking out “according to the staffing plan and standards determined by regulation of the Chamber” in the first paragraph.

66. Section 333 of the Act is amended by striking out the second paragraph.

67. Section 568.1 of the Act is repealed.

MONEY-SERVICES BUSINESSES ACT

68. Section 5 of the Money-Services Businesses Act (chapter E-12.000001) is amended

(1) by replacing “the director, officer or partner of the money-services business who is” in the first paragraph by “a person”;

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

“(0.1) be a director, officer or partner of the money-services business;”;

- (3) by striking out the third paragraph;
- (4) by replacing “such a” in the fourth paragraph by “the”;
- (5) by adding the following paragraph at the end:

“The respondent for a money-services business that is not constituted under the laws of Québec and does not have its head office or an establishment in Québec need not be a director, officer or partner of the business but must be able to properly exercise a respondent’s functions with the Authority.”

69. Section 7 of the Act is amended by replacing “the Sûreté du Québec needs in order to issue a security clearance report” by “obtained so that the notified police forces may make such checks as they consider necessary for the purposes set out in sections 8 and 9”.

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

“The security clearance report must state the grounds on which, if such is the case, a recommendation is made to refuse to issue a licence under paragraph 1 of section 11 that relate to the applicant’s moral character, or under paragraph 4 or 5 of that section or under section 13 or section 16 to the extent that those provisions do not refer to paragraph 6 of section 11 or to paragraph 1 of section 12.”

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

“**9.** Within 30 days after receiving the notice sent by the Authority, a police force may send a notice to the Authority stating the grounds on which it recommends the refusal of a licence under sections 11 to 17. The Authority sends this notice to the Sûreté du Québec.”

72. Section 10 of the Act is repealed.

73. Section 11 of the Act is amended

- (1) by replacing paragraph 4 by the following paragraph:

“(4) has, in the last 10 years, been convicted of an offence under Part II.1, IV, IX, X, XII or XII.2 or any of sections 467.11 to 467.13 of the Criminal Code (R.S.C. 1985, chapter C-46), or an offence under the Controlled Drugs and Substances Act (S.C., 1996, chapter 19), other than an offence under subsection 1 of section 4 of that Act, or an attempt or conspiracy to commit such an offence, or counselling the commission of such an offence, unless a pardon has been obtained;”;

- (2) by striking out “or pleaded guilty” in paragraph 5;

(3) by striking out “or pleaded guilty before a foreign court to” in paragraph 6.

74. Section 12 of the Act is amended

(1) by replacing “or pleaded guilty to an offence under this Act or an offence under any of the Acts listed in Schedule 1 to” in paragraph 1 by “an offence under this Act or an offence under any of the Acts referred to in section 7 of”;

(2) by replacing “has had its right to operate” in paragraph 2 by “has been refused the right to operate or has had its right to operate revoked,”;

(3) by striking out “or pleaded guilty to” in paragraph 3.

75. Section 14 of the Act is amended by replacing “whose right to operate has, in the last three years, been” in paragraph 6 by “which, in the last three years, has been refused the right to operate or whose right to operate has, in the last three years, been”.

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

“16. The Authority may refuse to issue a licence to a money-services business if any of the following persons or mandataries is in a situation described in paragraph 4 or 6 of section 11 or in paragraph 1 of section 12:

(1) employees of the business who work in Québec and whose functions are related to the offer of money services;

(2) mandataries of the business;

(3) officers of a mandatory described in subparagraph 2 who are responsible for money services offered on behalf of the business.

The Authority refuses to issue a licence if a person or a mandatory described in the first paragraph is in any of the situations described in paragraph 1 of section 11.”

77. Section 17 of the Act is amended

(1) by adding “, or if a person or entity described in the first paragraph of section 16 is in any of the situations described in paragraph 1 of section 11” at the end of the first paragraph;

(2) by inserting “established by section 92 of the Act respecting the Autorité des marchés financiers (chapter A-33.2)” after “request the Bureau de décision et de révision” in the second paragraph.

78. The Act is amended by inserting the following section after section 21:

“21.1. A money-services business whose licence was revoked must return the licence, and any copy of it, to the Authority within 15 days of the decision.

A licence holder whose licence to operate automatic teller machines is revoked must remove and destroy the copy of the licence that is displayed on each of the machines it operates.

The Authority may, in cases where the licence is suspended, require that the licence and any copies be returned, or withdrawn from display.”

79. The Act is amended by inserting the following section after section 22:

“22.1. Licence holders must display their licence or a copy of the licence so that it is clearly legible, in a conspicuous place in each establishment in which they offer money services, even through a mandatary and, in the case of licence holders licensed to operate automated teller machines, on each of the automated teller machines they operate.”

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

“27. When informed of a fact likely to affect the validity of a money-services business’s licence or to render any of sections 11 to 17 applicable, the Authority notifies the Sûreté du Québec and the police force of the local municipality in which the business offers money services.

The Sûreté du Québec must then carry out further checks so as to provide the Authority with new security clearance reports stating the grounds on which a licence should be suspended or revoked, if that is the case.

The police force of the local municipality in which the business offers money services may also send a notice to the Authority stating the grounds for which it recommends that a licence be suspended or revoked. The Authority sends this notice to the Sûreté du Québec.”

81. Section 37 of the Act is amended by replacing “entente visée” in the French text by “entente ou accord visé”.

82. Section 49 of the Act is amended by replacing “an establishment governed by this Act to verify whether the money-services business” by “an establishment of a money-services business or of one of its mandataries to verify whether the business”.

83. Section 53 of the Act is amended by replacing “Canadian financial institution” by “bank or financial institution”.

84. Section 58 of the Act is amended

(1) by adding “in which money services are offered” at the end of paragraph 3;

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

“(4) contact information for the establishments of the mandataries through which the money-services business offers its services.”

85. The Act is amended by striking out “or pleaded guilty to” in sections 14, 15 and 68.

DERIVATIVES ACT

86. Section 3 of the Derivatives Act (chapter I-14.01) is amended by inserting “a settlement system, a matching service utility,” after “a clearing house,” in the definition of “regulated entity”.

87. Section 12 of the Act is amended

(1) by replacing “an information processor, a trade repository” in the first paragraph by “a settlement system, an information processor, a trade repository, a matching service utility”;

(2) by striking out “as such” in the second paragraph.

88. Section 16 of the Act is amended by replacing “or a recognized clearing house” by “, a recognized clearing house or a recognized settlement system”.

89. Section 17 of the Act is amended by inserting “, settlement system” after “clearing house” wherever it appears.

90. Section 18 of the Act is amended by replacing “or trade repositories” by “, trade repositories or matching service utilities”.

91. Section 20 of the Act is amended

(1) by replacing “The constituting documents, internal by-laws and operating rules of a recognized regulated entity must” in the first paragraph by “A recognized regulated entity must”;

(2) by replacing “They must also” in the second paragraph by “In addition, the constituting documents, internal by-laws or operating rules of such an entity must”.

92. Section 51 of the Act is amended by replacing “its constituting documents, internal by-laws or operating rules” by “a document or a practice” and by replacing “make them consistent” by “make it compliant”.

93. The Act is amended by inserting the following sections after section 87:

“87.1. The Authority may, in the manner prescribed by regulation, determine the derivatives whose trade must be cleared by a clearing house.

“87.2. The Authority keeps a public register concerning the derivatives which must, under section 87.1, be cleared by a clearing house.

The register must contain the information prescribed by regulation.”

94. Section 90 of the Act is amended, in the first paragraph,

(1) by inserting the following subparagraphs after subparagraph 5.1:

“(5.2) a recognized settlement system or one of its subscribers;

“(5.3) a recognized matching service utility or one of its subscribers;”;

(2) by adding the following subparagraph after subparagraph 9:

“(10) a person to whom a decision made under section 86 applies.”

95. Section 93 of the Act is amended by replacing the second sentence by the following sentences: “For the purposes of those sections, a qualified person and a market participant within the meaning of this Act are respectively considered to be an issuer and a market participant within the meaning of that Act. Likewise, a recognized regulated entity within the meaning of this Act is considered to be a self-regulatory organization within the meaning of that Act or a person referred to in sections 169 and 171 of that Act.”

96. The Act is amended by inserting the following section after section 93:

“93.1. Despite sections 9, 23 and 24 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), documents or information obtained pursuant to this Act from a trade repository or communicated to the Authority pursuant to this Act in the absence of such a repository is accessible only with the authorization of the Authority.”

97. Section 115 of the Act is amended by adding the following paragraph at the end:

“The Authority may also inspect the affairs of a guarantee fund to which dealers, advisors or representatives are required to contribute in order to ascertain compliance with their obligations under this Act.”

98. Section 175 of the Act, amended by section 61 of chapter 26 of the statutes of 2011, is again amended, in the first paragraph,

(1) by replacing “an exchange, a clearing house or an alternative trading system” in subparagraph 9 by “such a regulated entity”;

(2) by replacing “protection fund” in subparagraph 14 by “guarantee fund”;

(3) by inserting the following subparagraphs after subparagraph 23:

“(23.1) establish the manner in which the Authority may determine the derivatives whose trade must be cleared by a clearing house;

“(23.2) prescribe the information that must appear in the register provided for in section 87.2;”.

BUSINESS CORPORATIONS ACT

99. Section 96 of the Business Corporations Act (chapter S-31.1) is replaced by the following section:

“96. A corporation may not make any payment to purchase or redeem shares

(1) if the corporation is not a reporting issuer and the payment would make it unable, in the event of liquidation, to repay shares ranking higher than or equally with the shares so purchased or redeemed, taking into account any waiver of repayment by the higher-or equal-ranking shareholders; or

(2) if the corporation is a reporting issuer and there are reasonable grounds for believing that it is or would, after the payment, be unable to pay, when due, the entire redemption price of its redeemable shares.”

100. Section 414 of the Act is amended by replacing “not insolvent” in the first paragraph by “able to pay its liabilities as they become due”.

SECURITIES ACT

101. Section 5 of the Securities Act (chapter V-1.1) is amended by inserting the following definition after the definition of “issuer”:

““market participant” means a registrant, a recognized person, a designated person or a person exempted from registration, recognition or designation, a self-regulatory organization that is recognized or exempted from recognition, a transfer agent or registrar agent of a reporting issuer or of an exempted issuer, a person acting as depositary, trustee or manager of an investment fund, a subscriber of a non-registered alternative trading system having access to electronic trading, a person having direct electronic access to the markets, or any person designated as such by regulation;”.

102. Section 41 of the Act is amended by striking out paragraph 3.

103. Section 68 of the Act is amended by replacing “exchanged for those of another issuer or those held by security-holders of another issuer” in subparagraph 4 of the second paragraph by “distributed”.

104. Section 151.1.1 of the Act is amended

(1) in the first paragraph,

(a) by replacing “, a person acting as depository, trustee or manager of such a fund or any other market participant determined by regulation” by “or a market participant”;

(b) by adding “or to check how functions and powers delegated by the Authority are being exercised” at the end;

(2) by inserting the following paragraph after the first paragraph:

“In addition, the Authority may inspect the affairs of a contingency fund in which brokers are required to participate under section 168.1 in order to verify compliance with their obligations under this Act or a regulation made under this Act.”;

(3) by striking out “such” in the last paragraph.

105. Section 169 of the Act is amended by inserting “, central securities depository, settlement system” after “clearing house”.

106. Section 169.1 of the Act is amended by adding the following paragraph at the end:

“The second paragraph does not apply to an application for the modification of a recognition decision that does not significantly alter the activities exercised by the applicant.”

107. Section 170 of the Act is amended by replacing “or clearing house” in the fourth paragraph by “, a clearing house, a central securities depository or a settlement system”.

108. Section 171.1 of the Act is amended

(1) in the first paragraph,

(a) by inserting “70 to 71,” after “Sections”;

(b) by replacing “recognized exchanges and clearing houses” by “an exchange, a recognized clearing house, a central securities depository and a recognized settlement system”;

(2) by inserting “78 to” after “Sections” in the second paragraph.

109. Section 171.1.1 of the Act is replaced by the following section:

“171.2. The Authority may, by regulation, establish the rules applicable to persons referred to in section 169 or 171, including rules concerning review

or approval of their operating rules or restrictions relating to ownership of or control over such persons.”

110. Section 237 of the Act is amended, in the first paragraph,

(1) by inserting “recognized” before “regulation services provider” in subparagraph 2.3.1;

(2) by replacing “an authorized” in subparagraph 2.4 by “a recognized”;

(3) by replacing “an authorized” in subparagraph 2.5 by “a recognized”;

(4) by inserting the following subparagraphs after subparagraph 7:

“(8) a recognized settlement system or one of its subscribers;

“(9) a recognized central securities depositary or one of its subscribers;

“(10) a person to whom a decision under section 263 applies.”

111. Section 297.1 of the Act is amended, in the second paragraph,

(1) by inserting “, a person referred to in section 169, 171 or 186.1” after “a self-regulatory organization”;

(2) by inserting “or to a central bank” after “securities regulation or monitoring field”.

112. Section 307.2 of the Act is amended

(1) by striking out “323.12,” in paragraph 1;

(2) by striking out “137,” in paragraph 4.

113. Section 307.6 of the Act is amended by replacing “VI of this Title” in the first paragraph by “III of Title IV of the Act respecting the Autorité des marchés financiers (chapter A-33.2)”.

114. Section 307.8 of the Act is amended by replacing “VI of this Title” in the first paragraph by “III of Title IV of the Act respecting the Autorité des marchés financiers (chapter A-33.2)”.

115. Section 322 of the Act is amended by adding the following paragraph at the end:

“However, a decision under which a penalty is to be imposed cannot be submitted for review until the penalty has been imposed.”

116. Section 323.8.1 of the Act is amended by replacing “insider” by “person concerned” in the first paragraph.

117. Section 331 of the Act is amended by striking out subparagraph 6.1 of the first paragraph.

118. Section 331.1 of the Act is amended

(1) by replacing paragraph 9.1 by the following paragraph:

“(9.1) determine the rules applicable to persons referred to in section 169 or 171, including rules concerning review or approval of their operating rules or restrictions relating to ownership of or control over such persons;”;

(2) by inserting the following paragraph after paragraph 32:

“(32.0.1) make rules concerning securities offers and trades or other securities transactions, and rules concerning market participants who are party to such offers, trades or transactions, including for the purpose of promoting market efficiency and transparency or preventing fraud and manipulation;”;

(3) by inserting the following paragraph after paragraph 32.2:

“(32.3) designate a person as a market participant for the purposes of the definition of “market participant” in section 5;”.

TRANSITIONAL AND FINAL PROVISIONS

119. A clearing house which, on (*insert the date of coming into force of section 87*), is recognized as such by the Autorité des marchés financiers in accordance with the Derivatives Act (chapter I-14.01) or the Securities Act (chapter V-1.1) and which, at that time, operates as a settlement system or a matching service utility may continue to do so without having to obtain a recognition as such or an exemption from that obligation.

The first paragraph also applies to a clearing house which, on (*insert the date of coming into force of section 87*), is exempted from the recognition obligation under section 86 of the Derivatives Act or section 263 of the Securities Act.

120. A member of the board of the Chambre de la sécurité financière in office on (*insert the date preceding the date of coming into force of section 54*) remains in office until replaced.

All members of the board who are not appointed by the Minister must be elected by (*insert the date occurring 18 months after the date of coming into force of section 54*). The board must also, before that date, recommend to the Minister of Finance and the Economy candidates who qualify as independent members.

Any vacancy on the board between (*insert the date of coming into force of section 54*) and the date the board members are replaced, including a vacancy in a seat reserved for a member appointed by the Minister, is filled by the board.

121. This Act comes into force on (*insert the date of assent to this Act*), except

(1) section 33, which comes into force on 1 April 2014; and

(2) sections 78, 79 and 93 and paragraph 3 of section 98, which come into force on the date or dates to be set by the Government.

