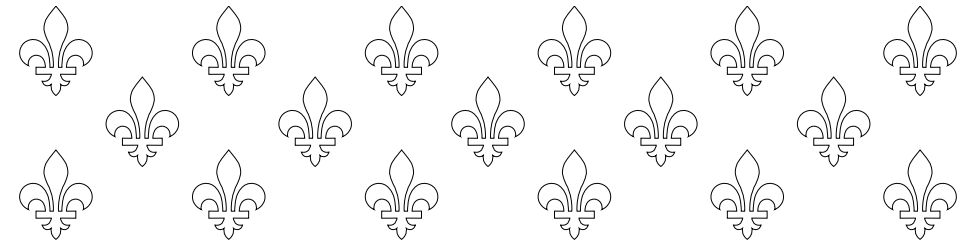

NATIONAL ASSEMBLY

FIRST SESSION THIRTY-EIGHTH LEGISLATURE

Bill 77

(2008, chapter 24)

Derivatives Act

Introduced 9 April 2008
Passed in principle 8 May 2008
Passed 19 June 2008
Assented to 20 June 2008

Québec Official Publisher
2008

EXPLANATORY NOTES

The purpose of this Act is to establish a legislative framework specifically for derivatives, certain of which are currently governed by the Securities Act.

This Act therefore requires that entities be recognized by the Autorité des marchés financiers before they may offer derivatives to the public. It specifies the obligations they must comply with, in particular, as regards their operating rules, activities and governance and the information to be disclosed or communicated. It also includes provisions on the oversight and monitoring of regulated entities by the Authority itself or by the Bureau de décision et de révision en valeurs mobilières.

The Act furthermore provides that derivatives dealers and advisers must be registered, and specifies the requirements applicable to them as regards the management of their business, their conduct and the conduct of their officers, representatives and employees.

The Act gives the Authority special powers for the purposes of the new legislation, including inspection and investigation powers and the power to apply conservatory measures. It prescribes offences and contains penal provisions.

Lastly, the Act contains transitional provisions to ensure that persons registered or entities recognized under the Securities Act that now come under the Derivatives Act continue to be validly registered or recognized and that the obligations and requirements set out in the new legislation apply to them.

LEGISLATION AMENDED BY THIS ACT:

– Act respecting insurance (R.S.Q., chapter A-32);

– Act respecting the Autorité des marchés financiers (R.S.Q., chapter A-33.2);

– Consumer Protection Act (R.S.Q., chapter P-40.1);

– Securities Act (R.S.Q., chapter V-1.1);

– Act respecting the transfer of securities and the establishment of security entitlements (2008, chapter 20).

Bill 77

DERIVATIVES ACT

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

TITLE I
GENERAL PROVISIONS

CHAPTER I
PURPOSES

1. This Act seeks to foster honest, fair, efficient and transparent derivatives markets and to protect the public from unfair, improper or fraudulent practices and market manipulation.

It also seeks to ensure that the public, and more particularly, market participants and their clients, have access to adequate, true and clear information, tailored to the level of financial knowledge and experience of those for whom it is intended.

2. The purposes of this Act are, more specifically,

(1) to govern derivatives offering and trading and related activities;

(2) to provide for oversight of the activities of derivatives market professionals so as to ensure that their conduct is honest, fair and responsible;

(3) to provide for the monitoring of regulated entities and, more specifically, of their activities, their exercise of delegated powers, the adequacy of their resources, the accessibility of their services, and the transactions carried out via the facilities or systems they operate;

(4) to regulate market participants and regulated entities so as to ensure compliance with the principles set out in this Act and with the obligations deriving from those principles;

(5) to facilitate the control of systemic risk in derivatives trading, particularly in clearing house operations; and

(6) to provide for the implementation and administration of programs to deal with client complaints and protect clients in derivatives-related matters.

CHAPTER II

SCOPE AND INTERPRETATION

3. For the purposes of this Act, unless the context indicates otherwise,

"accredited counterparty" means

(1) a government, government department or public body or a wholly owned enterprise or entity of a government;

(2) a municipality, public board or commission or other similar municipal administration, a metropolitan community, a school board, the Comité de gestion de la taxe scolaire de l'Île de Montréal or an intermunicipal management board in Québec;

(3) a financial institution, including the Business Development Bank of Canada established under the Business Development Bank of Canada Act (Statutes of Canada, 1995, chapter 28), or a subsidiary of such a financial institution to the extent that the financial institution holds all the subsidiary's voting shares, other than the voting shares held by directors of the subsidiary or its employees;

(4) a dealer or adviser registered under this Act, a dealer or adviser registered under the Securities Act (R.S.Q., chapter V-1.1) or a person authorized to act as such or to exercise similar functions under equivalent legislation applicable outside Québec;

(5) a registered representative of a person described in paragraph 4 or a representative who has ceased to be so registered within the last three years;

(6) a pension fund regulated by the Office of the Superintendent of Financial Institutions established by the Office of the Superintendent of Financial Institutions Act (Revised Statutes of Canada, 1985, chapter 18, 3rd Supplement), the Régie des rentes du Québec or a pension commission or similar regulatory authority in Canada whose investment policy provides for or authorizes the use of derivatives, or an entity that is analogous in form and function established under legislation applicable outside Québec;

(7) a person who establishes in a conclusive and verifiable manner

(*a*) that the person has the requisite knowledge and experience to evaluate the information provided to the person about derivatives, the appropriateness to the person's needs of proposed derivatives strategies, and the characteristics of the derivatives to be traded on the person's behalf;

(*b*) that the person has assets equal to or in excess of the minimum assets specified by regulation; and

(*c*) that the person has at the person's disposal net assets in the amount specified by regulation and sufficient to fulfill the person's delivery or payment obligations under the terms of derivatives to which the person is party, in light of the positions held in the person's account and the orders the person is seeking to have executed;

(8) an investment fund whose investment policy includes or authorizes the use of derivatives, that distributes or has distributed its securities under a prospectus for which the Autorité des marchés financiers ("the Authority") or another authority empowered to issue receipts under the securities legislation of another province or a territory of Canada has issued a receipt, or that distributes or has distributed its securities exclusively to

(*a*) a person who is or was an accredited investor within the meaning of the Securities Act at the time of the distribution;

(*b*) a person who acquires or has acquired securities of the fund in order to make a minimum amount investment or an additional investment under the conditions prescribed by the Securities Act; or

(*c*) a person described in subparagraph *a* or *b* who acquires or has acquired securities of the fund in order to reinvest in the fund, in the circumstances set out in the Securities Act;

(9) an investment fund that is advised by an adviser described in paragraph 4;

(10) a charity registered under the Income Tax Act (Revised Statutes of Canada, 1985, chapter 1, 5th Supplement) or the Taxation Act (R.S.Q., chapter I-3) that, in regard to the trade in question, has used the services of an adviser registered under this Act or of a person authorized to act as such or to exercise similar functions under the equivalent legislation of another province or a territory of Canada;

(11) a person all of whose interest holders, except the holders of voting securities required by law to be held by directors, are accredited investors within the meaning of the Securities Act;

(12) a hedger, that is, a person who, because of the person's activities,

(*a*) is exposed to one or more risks attendant upon those activities, including supply, credit, exchange and environmental risks and the risk related to fluctuations in the price of an underlying interest; and

(*b*) seeks to hedge that risk by engaging in a derivatives transaction, or a series of derivatives transactions, where the underlying interest is the underlying interest directly associated with that risk or a related underlying interest; or

(13) a person specified by regulation or designated by the Authority as an accredited counterparty under section 87;

"adviser" means a person who engages or purports to engage in the business of advising others as to derivatives or the buying or selling of derivatives, or in the business of managing derivatives portfolios;

"clearing house" means a person who maintains a system for netting derivatives trades on a multilateral basis and who acts as central counterparty to that end;

"dealer" means a person who engages or purports to engage in

(1) derivatives trading on the person's own behalf or on behalf of others; or

(2) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of an activity described in paragraph 1;

"derivative" means an option, a swap, a futures contract or any other contract or instrument whose market price, value, or delivery or payment obligations are derived from, referenced to or based on an underlying interest, or any other contract or instrument designated by regulation or considered equivalent to a derivative on the basis of criteria determined by regulation;

"director" means a member of the board of directors of a legal person, or a natural person acting in a similar capacity for another person;

"hedging" means the entering into of a derivatives transaction or a series of derivatives transactions, and the maintaining of the position or positions resulting from the transaction or series of transactions if

(1) the intended effect of the transaction or series of transactions is

(*a*) to offset or reduce the risk related to fluctuations in the value of an underlying interest or a position, or of a group of underlying interests or positions; or

(*b*) to substitute a risk to one currency for a risk to another currency, provided the aggregate amount of currency risk to which the hedger is exposed is not increased by the substitution;

(2) the transaction or series of transactions results in a high degree of negative correlation between changes in the value of the underlying interest or position or group of underlying interests or positions being hedged and changes in the value of the derivatives with which the value of the underlying interests or positions is hedged; and

(3) there are reasonable grounds to believe that the transaction or series of transactions no more than offsets the effect of price changes in the underlying interest or position, or group of underlying interests or positions, being hedged;

"hybrid product" means an instrument, contract or security that combines elements of derivatives and securities;

"market participant" or "participant" means a dealer, adviser or representative, an accredited counterparty with direct access to trading on a published market, a subscriber of an alternative trading system, or any other person designated as such by regulation;

"officer" means the chair or vice-chair of the board of directors, the chief executive officer, the chief operating officer, the chief financial officer, the president, the vice-president, the secretary, the assistant secretary, the treasurer, the assistant treasurer or the general manager of a person, or a natural person designated as such by a person or acting in a similar capacity for another person;

"over-the-counter derivative" means any derivative other than a standardized derivative;

"person" means a natural person or a legal person, and also includes a partnership, a trust, a fund, an association, a syndicate, a body, an entity or any other group of persons that is not constituted as a legal person and any person acting as trustee, liquidator, executor or legal representative;

"published market" means an exchange, an alternative trading system or any other derivatives market that

(1) constitutes or maintains a system for bringing together buyers and sellers of standardized derivatives;

(2) brings together the orders of multiple derivatives buyers and sellers; and

(3) uses non-discretionary methods under which the orders interact with each other and the derivatives buyers and sellers entering the orders agree to the terms of a trade;

"regulated entity" means an exchange, an alternative trading system not registered as a dealer, or another published market, a clearing house, an information processor, a self-regulatory organization or any person the Authority, where it considers it necessary for the proper operation of the market, designates as a regulated entity in accordance with the rules prescribed by regulation;

"standardized derivative" means a derivative that is traded on a published market, whose intrinsic characteristics are determined by that market and whose trade is cleared and settled by a clearing house.

4. A hybrid product is subject to this Act unless its terms, the terms of any collateral agreement governing it and the circumstances of its offering, issue or entering into show that it is predominantly a security within the meaning of the Securities Act, in which case it is considered to be a security and is governed by that Act.

A hybrid product is presumed to be predominantly a security if

(1) the offeror receives payment of the purchase price on the delivery of the hybrid product;

(2) the purchaser is under no obligation to make any additional payment beyond the purchase price as a margin deposit, margin, settlement or other such amount during the life of the hybrid product or at maturity; and

(3) the terms of the hybrid product do not include margin requirements based on a market value of its underlying interest.

5. A patrimony endowed with a certain degree of autonomy, such as a pension fund, partnership, trust or group without legal personality, is subject to this Act as if it had legal personality, but the responsibility for compliance with this Act rests with its administrators, and both civil and penal proceedings under this Act may be brought against them for acts or omissions relating to the patrimony.

In the case of a partnership, such proceedings may be brought against the partnership or against the partners, except the special partners.

6. This Act does not apply to the following instruments:

(1) a warrant or subscription right;

(2) an investment contract within the meaning of the second paragraph of section 1 of the Securities Act;

(3) an insurance or annuity contract issued by an insurer holding a licence under the Act respecting insurance (R.S.Q., chapter A-32) or under other insurance legislation in Canada;

(4) an option or other non-traded derivative whose value is derived from, referenced to or based on the value or market price of a security, granted as compensation or as payment for a good or service; and

(5) any other instrument specified by regulation.

7. The provisions of Titles III and IV, sections 94 to 114, Division III of Chapter I and Divisions I and II of Chapter II of Title V of this Act and Chapter III.1 of Title I of the Act respecting the Autorité des marchés financiers (R.S.Q., chapter A-33.2) do not apply in the case of over-the-counter derivatives activities or transactions involving accredited counterparties only or in any other case specified by regulation.

However, the provisions referred to in the first paragraph, except those of Titles III and IV, apply if a derivative is offered or entered into in the circumstances described in section 150, 151 or 153.

8. A dealer or adviser who trades on a client's behalf under a mandate granting the dealer or adviser full discretion in executing the mandate is considered to be acting on behalf of an accredited counterparty.

Title III applies to such a dealer or adviser, subject to section 70.

9. A derivative cannot be invalidated for the sole reason that a counterparty is not an accredited counterparty within the meaning of this Act.

10. A standardized derivative must be designed so as to ensure a high degree of protection against manipulation.

11. A document required to be communicated to a client under this Act must be drawn up in French only or in French and English.

TITLE II

REGULATED ENTITIES

CHAPTER I

RECOGNITION OF REGULATED ENTITIES

12. No regulated entity may carry on derivatives activities in Québec unless it is recognized by the Authority as an exchange, a published market, a clearing house, an information processor or a self-regulatory organization.

No regulation services provider may carry on activities in Québec unless it is recognized as such by the Authority on the conditions the Authority determines.

13. Subject to section 31, a regulation services provider may assume all or part of the obligations set out in this Title on behalf of a recognized regulated entity, in accordance with the terms of its recognition decision. The regulation services provider is then considered to be a recognized regulated entity for the purposes of this Act.

14. An application for recognition or for the modification of a recognition decision must be filed with the documents and information required by the Authority.

The Authority publishes a notice of the application in its Bulletin and invites interested persons to make representations in writing.

15. The Authority may recognize a regulated entity on the conditions it determines.

16. Despite section 60 of the Act respecting the Autorité des marchés financiers, a recognized exchange or other recognized published market or a recognized clearing house may oversee or regulate the conduct of its participants or members and their representatives without being recognized as a self-regulatory organization.

17. The Authority may require that an exchange, clearing house or regulation services provider obtain recognition as a self-regulatory organization under Title III of the Act respecting the Autorité des marchés financiers in order to carry on its activities. On being recognized, the exchange, clearing house or regulation services provider is subject to the provisions of this Act that are applicable to self-regulatory organizations.

18. Sections 19 to 26 and 32 to 35 do not apply to information processors.

CHAPTER II

OBLIGATIONS OF RECOGNIZED REGULATED ENTITIES

DIVISION I

GENERAL OBLIGATIONS

§1. — *Constituting documents, internal by-laws, rules and procedures*

19. A recognized regulated entity must make operating rules to govern its activities and the activities of its members or of market participants.

It must also, in its internal by-laws, include appropriate procedures for making and amending those rules.

20. The constituting documents, internal by-laws and operating rules of a recognized regulated entity must allow unrestricted membership for any person who meets the admission criteria and equal access by members or market participants to the services offered, on the basis of transparent criteria providing for fair and equitable competition.

They must also provide for the imposition of disciplinary measures for any contravention of the law or violation of the internal by-laws or operating rules.

21. The operating rules of a recognized regulated entity must include a complaint examination procedure that allows for timely, fair and equitable resolution of disputes involving the entity.

In establishing its rules, the entity must consider the costs to its members and to market participants that may result from their application.

22. To make an amendment to its operating rules, a recognized regulated entity must complete the self-certification process established by regulation and file a notice with the Authority confirming that the amendment was made in accordance with the regulation.

If the entity shows that self-certification poses serious difficulties, it must submit a draft amendment to the Authority for approval.

This section applies to recognized self-regulatory organizations despite section 74 of the Act respecting the Autorité des marchés financiers.

23. A recognized regulated entity must enforce its operating rules.

24. A draft amendment to the constituting documents or internal by-laws of a recognized regulated entity requires the approval of the Authority.

25. The amendment is deemed to be approved on the expiry of a period of 30 days or any other period agreed with the recognized regulated entity concerned, unless the Authority has invited the entity to make representations on its merits.

§2. — *Governance*

26. The governance practices of a recognized regulated entity must be clear and transparent. They must serve the interests of its members or of market participants while also serving the public interest.

In addition, they must include an accurate and informative system for reporting information to directors and officers.

§3. — *Controls*

27. A recognized regulated entity must use information processing systems of sufficient capacity to enable it to carry out operations safely and reliably.

28. A recognized regulated entity must implement appropriate risk management procedures for the transactions carried out via its facilities or systems by the entity, by its members or by market participants, so as to ensure the security, performance and continuous accessibility of those facilities or systems.

§4. — *Activities*

29. A recognized regulated entity must organize and control its activities diligently and effectively.

30. A recognized regulated entity must at all times have adequate financial and human resources to carry on its activities effectively and exercise any powers delegated to it by the Authority.

31. A recognized regulated entity retains full responsibility under this Act for any outsourced activities.

§5. — *Decisions*

32. Before making a decision that adversely affects the rights of a person, a recognized regulated entity must give the person an opportunity to make representations.

However, the entity may, without prior notice, make a provisional decision or order, valid for a period of not more than 15 days, if it is of the opinion that there is an emergency or that any time given to the person to make representations may be prejudicial.

A decision or order must include reasons and becomes effective on its service on the person. The person may make representations to the entity within six days after receiving the decision or order.

The entity may revoke a decision or order made under this section.

33. In the interest of good morals or public order, a recognized regulated entity may, on its own initiative or on request, close a sitting to the public or prohibit the publication or release of specified information or documents.

34. Decisions of a recognized regulated entity on the admission of a member or a market participant or on a disciplinary matter must be communicated to the Authority as soon as possible.

§6. — *Disclosure*

35. A recognized regulated entity must make its rules, and the instruments for the application and interpretation of those rules, accessible to its members and to market participants, as it must any other pertinent information regarding their rights and obligations.

36. A recognized regulated entity must provide the Authority with periodic, timely and other disclosure of information, to the extent and in accordance with the conditions set out in its recognition decision.

37. A recognized regulated entity must communicate to the Authority any information relating to its activities that may be useful to the Authority in exercising its functions and powers and that the Authority might reasonably expect to receive.

38. Within 90 days after the end of its fiscal year, a recognized regulated entity must file its financial statements, an audit report and any other information with the Authority, according to the requirements set by the Authority.

DIVISION II

SPECIAL OBLIGATIONS

§1. — *Recognized exchanges and other published markets*

39. A dealer who engages in over-the-counter trading of a standardized derivative is deemed to operate a published market for the purposes of this subdivision, unless such trading is compliant with the operating rules of the published market.

40. A published market may not be structured to operate in a manner that unfairly favours certain market participants over others.

Any differences in treatment among categories of market participants must be clearly identified and disclosed.

41. The operating rules of a published market must, to ensure its proper operation, include measures prohibiting and aimed at countering market abuse and manipulation, fraud and deceptive trading.

The published market must ensure that the measures are effective.

42. A published market must ensure that participants are able to fulfill their obligation to their clients to achieve best execution of their orders.

43. A published market must put in place monitoring and investigative mechanisms and disciplinary procedures conducive to sufficient pre- and post-trade transparency.

44. The operating rules of a published market must allow it to suspend trading or modify trading conditions in order to ensure its orderly operation.

45. The Authority may require that a published market provide information, including data on its activities, such as its order book, and trade-related or trade-matching information or data, in the manner determined by the Authority.

§2. — *Clearing houses*

46. A clearing house must apply sound internal management practices in order to ensure its proper operation. To that end, it must put in place

(1) an appropriate risk management process for derivatives clearing that integrates prudent risk limits;

(2) sound information systems and risk measurement procedures;

(3) comprehensive internal controls and audit procedures;

(4) continuous monitoring, and frequent monitoring reporting to its senior management; and

(5) appropriate oversight by its directors.

For the purposes of subparagraph 1 of the first paragraph, "derivatives clearing" includes all arrangements through which a clearing house, in accordance with its rules,

(1) matches positions between market participants or parties to derivatives;

(2) receives margin deposits or margins, and mutualizes or transfers the credit risk arising from a derivative among its members or clearing agents;

(3) substitutes the credit of the clearing house for that of the parties to a derivative; and

(4) nets those transactions on a multilateral basis, and settles them or, failing settlement, liquidates or cancels the relevant positions.

47. A clearing house must use the necessary means to offer fair and secure clearing and settlement services.

§3. — *Recognized self-regulatory organizations*

48. A self-regulatory organization must set standards governing the integrity, fitness and admission of its members or market participants.

CHAPTER III

MONITORING AND ENFORCEMENT OF RECOGNIZED REGULATED ENTITIES

49. The Bureau de décision et de révision en valeurs mobilières ("the Board"), established by section 92 of the Act respecting the Autorité des marchés financiers, may prescribe a course of conduct to a recognized regulated entity if it considers that it is necessary for the proper operation of the entity or for the protection of the public.

However, in the case of a self-regulatory organization that is not recognized as an exchange, clearing house or regulation services provider, the course of conduct may be prescribed by the Authority.

50. The Authority, in the manner it considers appropriate, may suspend the application of all or part of the internal by-laws or of a rule of a recognized regulated entity.

51. The Authority may order a recognized regulated entity to amend its constituting documents, internal by-laws or operating rules if it considers that it is necessary in order to make them consistent with this Act.

52. The Authority may modify, suspend or withdraw all or part of the recognition granted to a regulated entity if it considers that

(1) the entity has failed to comply with undertakings given to the Authority; or

(2) the interests of the entity's members or of market participants or the public interest would so be better served.

In addition, the Authority may, on the same grounds, modify, suspend or withdraw an exemption granted to an entity in relation to the application of this Title.

53. A recognized regulated entity that wishes to terminate its activities must request authorization from the Authority.

If it considers that the interests of the entity's members or market participants and the public interest are sufficiently protected, the Authority grants the authorization on the conditions it determines.

TITLE III

DEALERS AND ADVISERS

CHAPTER I

REGISTRATION

54. No person may carry on business as a dealer or adviser unless registered as such with the Authority.

55. The Authority may require that an applicant for registration or category of applicants it determines carry on their derivatives activities through a subsidiary.

56. Every natural person carrying on business as a dealer or adviser on behalf of a person subject to registration under section 54 must be registered with the Authority as a representative of that person.

With the exception of such remunerated activities as are permitted by a government regulation under this Act, the representative of a dealer may not concurrently carry on activities as such and hold employment with a financial institution.

57. A dealer, adviser or representative registered in accordance with section 148 or 149 of the Securities Act who meets the conditions imposed by this Act for registration to carry on business in derivatives and pays the related fees required under this Act is deemed to be registered under this Act for as long as the dealer, adviser or representative remains registered under the Securities Act.

58. The categories of registration, the conditions to be met by applicants, the duration of registration and the rules governing the business of dealers, advisers and representatives are determined by regulation.

59. After verifying that an applicant meets the conditions set by regulation, the Authority grants registration if it considers that

(1) the applicant or, in the case of a legal person, its officers and directors, exhibit the requisite competence and integrity to ensure the protection of clients; and

(2) the applicant is solvent and, in the case of a legal person, has the financial footing needed to ensure the viability of its business.

The Authority may impose any restriction or condition on the registration of an applicant, including limiting its duration.

60. The Authority may recognize an alternative trading system as an exchange or register it as a dealer.

Sections 39 to 45 apply to an alternative trading system even if it is registered as a dealer.

CHAPTER II

OBLIGATIONS OF REGISTRANTS

DIVISION I

MANAGEMENT OF BUSINESS

61. Dealers and advisers must organize and control their affairs diligently and effectively. To that end, they must put in place procedures to facilitate compliance with this Act and ensure that their books, registers and records are kept in such a manner that they may be audited.

62. Dealers and advisers must have adequate financial resources to honour their business commitments at all times and deal with the risks to which their business is exposed.

DIVISION II

CONDUCT

63. Dealers and advisers must see that their officers, representatives and employees act in compliance with this Act.

64. Dealers, advisers and representatives must at all times meet the accepted standards of integrity and fairness in the derivatives industry.

Representatives must furthermore meet the standards of diligence and competence that govern their conduct and, to that end, maintain an appropriate level of knowledge relating to derivatives.

65. In dealing with clients and executing the mandates clients entrust to them, dealers, advisers and representatives must act with honesty and loyalty, and exercise all the care that may be expected of a knowledgeable professional in the same circumstances.

To that end, dealers, advisers and representatives must take the necessary means to obtain or confirm such information about a client as will enable them to

(1) properly determine the client's identity;

(2) assess the client's needs;

(3) recommend a derivatives product or a related service that suits those needs; and

(4) determine whether the trade they are being asked to carry out is in keeping with the rules and principles governing their business.

66. Dealers, advisers and representatives must refuse to act on behalf of a client if they have reasonable grounds to believe that the trade in question is unlawful or is likely to bring the derivatives market into disrepute.

67. In determining a course of conduct, dealers, advisers and representatives must place the client's interests above their own and refrain from taking advantage of a client's trust in them.

68. Dealers and advisers must make reasonable efforts to achieve best execution of the orders received from a client.

The obligation set out in the first paragraph does not apply to an alternative trading system registered as a dealer, subject to the conditions prescribed by regulation.

69. Dealers and advisers may not carry out a derivatives trade on behalf of a client or recommend a derivatives trade to a client unless they have made sure that the client has

(1) the information the client ordinarily needs for the purposes of their business relationship;

(2) the information required to make an informed decision and give clear trade instructions; and

(3) information on the margin requirements to which the trade is subject and on the consequences of the client failing to meet those requirements when called on to do so.

70. Dealers must, before the first trade on behalf of a client, give the client the risk information document prescribed by regulation.

If trades on behalf of a client are in a derivative created and marketed by a qualified person, dealers must also give the client the qualification information submitted to the Authority by that person.

Dealers who trade on behalf of a client who is not an accredited counterparty under a mandate granting them full discretion in executing the mandate are exempted from the application of this section.

71. Dealers, advisers and representatives must avoid placing themselves in situations of conflict of interest such that their ability to serve their client impartially is affected.

If a conflict of interest cannot be avoided, before carrying out a trade on behalf of the client, they must

(1) inform the client of the conflict of interest; and

(2) take measures consistent with the principles of loyalty, fairness and transparency to ensure that the client's interests are not affected by the situation.

72. Dealers, advisers and representatives are responsible for the property entrusted to them by a client. Unless the law, a regulation or the rules governing them stipulate otherwise, they must segregate the client's property from their own property and maintain separate accounting records.

73. Dealers must supervise the conduct of accredited counterparties to whom they provide direct trading access to a published market.

They must inform the published market or the appropriate regulation services provider of any conduct of an accredited counterparty that seems contrary to the rules governing the counterparty's participation in the published market.

74. Dealers and advisers must provide equitable resolution of complaints filed with them. To that end, they must each adopt a policy dealing with

(1) the examination of complaints and claims filed by persons having an interest in a product or service they have provided; and

(2) the settlement of disputes regarding such products or services.

The Government may frame the policy or elements of the policy by regulation.

75. Dealers and advisers must inform each complainant, in writing and without delay, that, if dissatisfied with the examination of the complaint or its outcome, the complainant may request that a copy of the complaint record be sent to the Authority.

On the complainant's request, the dealer or adviser must send a copy of the complaint record to the Authority.

The Authority examines the complaint record and may, if it considers it appropriate and the parties agree, act as a mediator. It may also enter into an agreement for that purpose in accordance with section 33.1 of the Act respecting the Autorité des marchés financiers.

76. Despite sections 9 and 83 of the Act respecting Access to documents held by public bodies and the Protection of personal information (R.S.Q., chapter A-2.1), the Authority may not communicate a complaint record without the authorization of the dealer or adviser concerned.

77. A mediator may not be compelled to disclose anything revealed to or learned by the mediator in the exercise of mediation functions or to produce, before a court of justice or a person or body of the administrative branch exercising adjudicative functions, a document prepared or obtained in the course of those functions.

Despite section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information, no person has a right of access to a document contained in the mediation record.

DIVISION III

DISCLOSURE

78. Dealers, advisers and representatives must, in the cases and within the time determined by regulation, notify the Authority of any change in the information provided at the time of registration.

If the regulation so provides, no change may be made unless the Authority approves it within the time and in the manner specified or the specified time limit for objecting expires without the Authority objecting to the change. If the Authority objects to the change, it may prescribe a course of conduct.

79. Dealers and advisers must, on any date that the Authority may specify, submit a report to the Authority as at that date concerning their complaint examination policy.

The report must include the number of complaints filed and a description of the nature of the complaints.

CHAPTER III

SURRENDER AND SUSPENSION OF REGISTRATION

80. Dealers, advisers or representatives who wish to surrender their registration must first file an application for surrender with the Authority.

The Authority may, on the conditions it determines, suspend, modify, or impose conditions or restrictions on, the registration during examination of the application for surrender.

The Authority may impose such conditions as it may determine on the surrender and accepts the surrender if it considers that the interests of clients and of the public are sufficiently protected.

The Authority retains jurisdiction with regard to acts performed by a dealer, adviser or representative prior to the surrender.

81. On the request of the Authority or of any interested person, the Board may revoke or suspend the rights granted by registration, or impose restrictions or conditions on the exercise of those rights, if the Board considers that a dealer, adviser or representative is not in compliance with this Act or if it is necessary for the protection of the public.

TITLE IV

QUALIFIED PERSONS

82. A person, other than a recognized regulated entity, who creates or markets a derivative must be qualified by the Authority, as prescribed by regulation, before the derivative is offered to the public.

The person must also have the derivative authorized by the Authority.

The Authority may refuse to qualify a person if it considers it necessary for the protection of the public.

83. A person referred to in section 82 who creates or markets a derivative that has not been authorized by the Authority in accordance with that section must have the derivative authorized by the Authority before it is offered to the public.

A derivative is authorized when the Authority gives its authorization or when the time limit specified by regulation expires without the Authority objecting to the derivative being offered to the public.

84. A qualified person who wishes to cease marketing a derivative must give prior notice of not less than 30 days to the Authority.

In such a case, the Authority may impose such conditions as it considers necessary for the protection of the public.

85. A qualified person must, every year within the time determined by regulation, file the information prescribed by regulation with the Authority.

TITLE V

ADMINISTRATION OF THIS ACT

CHAPTER I

FUNCTIONS AND POWERS OF THE AUTHORITY

DIVISION I

GENERAL PROVISIONS

86. The Authority may, on its own initiative or on application by an interested person, exempt a derivative, a person, a group of persons, an offer or a trade from any or all of the requirements or obligations under this Act if it considers that the exemption is not prejudicial to the public interest.

The Authority's decision is final.

87. The Authority may, in accordance with the rules prescribed by regulation, designate a person as an accredited counterparty if the person's business, level of financial knowledge and experience, and asset level are equivalent to those of an accredited counterparty.

88. The Authority may refuse the filing of documents part or all of which was prepared or signed by a person who, in the five years preceding the date of the filing, was convicted of a disciplinary, penal or indictable offence relating to derivatives trading for which the person has not obtained a pardon.

89. The Authority may accept as a substitute for a document or certificate required under this Act a document or certificate required under any other legislation or any other document containing information that it considers to be equivalent.

90. The Authority or its appointed agent may require that any information or document considered useful for the pursuit of its mission be communicated to it by

(1) a dealer, adviser or representative;

(2) a recognized exchange or one of its participants;

(3) a recognized clearing house or a person holding an account with it;

(4) a person who operates an alternative trading system that is recognized as an exchange or registered as a dealer, or one of its subscribers;

(5) a recognized information processor or one of its users;

(6) a self-regulatory organization or one of its members;

(7) a regulation services provider;

(8) a person filing an application or a document required under this Act or the regulations with the Authority; or

(9) a market participant.

In addition, the Authority or its appointed agent may require a person to confirm, in a sworn statement, the authenticity of the document or the veracity of the information.

91. The Authority or its appointed agent may require a person referred to in section 90 or the officers, directors, mandataries or other representatives of such a person to submit to examination under oath.

92. A certificate issued by the Authority regarding the registration of a person, the filing of a document, the time when facts having given rise to proceedings came to the knowledge of the Authority and any other matter relating to the administration of this Act is proof of its content in any proceeding without further proof of the signature or authority of the signatory.

93. Sections 296 to 297.4 of the Securities Act apply for the purposes of this Act, with the necessary modifications. For the purposes of those sections, a qualified person, a recognized regulated entity and a market participant within the meaning of this Act are respectively considered to be an issuer, a self-regulatory organization and a market participant under that Act.

94. The Authority may, on its own initiative and without notice, intervene in any proceeding relating to a provision of this Act or the regulations.

95. The Authority may appoint any expert whose assistance it considers useful in the pursuit of its mission under this Act.

96. The Authority may make policy statements relating to the carrying out of this Act.

The policy statements set out how the Authority intends to exercise its discretionary powers for the purposes of the administration of this Act.

97. The Authority may, on its own initiative or on application by an interested person, take any steps to ensure compliance with an undertaking given to the Authority and with this Act.

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

98. The Authority may, within the scope of its powers, participate in the decision making of any other derivatives market regulator.

99. The Authority may, in the manner and on the conditions it determines, make a decision that is general or particular in its application and relates specifically to any matter within its jurisdiction under this Act.

However, in exercising delegated or subdelegated functions or powers, a delegate of the Authority may not make a decision that is general in its application.

100. The Authority must exercise its discretion in the public interest.

101. The Authority may, in the cases and on the conditions prescribed by regulation, impose an administrative monetary penalty, up to the amounts prescribed by regulation, for an act or omission in contravention of a provision of this Act.

102. A staff member or a delegate of the Authority who has examined a matter prior to the opening of an investigation under section 116 must refrain from participating in any decision pertaining to the matter, unless the parties consent.

103. The Authority may suspend making a decision on an application until the applicant undertakes to assume all or part of the cost of the research work the Authority considers necessary in order to make the decision.

Moreover, the Authority may require the applicant to pay for the representation of a client or, if required in the public interest, it may assume such cost itself.

104. Before making a decision that adversely affects the rights of a person, the Authority or a delegate of the Authority must give the person 15 days' prior notice of the proposed decision and of the grounds on which it is based, and give the person an opportunity to make representations or produce documents.

However, the Authority or the delegate may, without prior notice, make a provisional decision, valid for a period of not more than 15 days, if the Authority or the delegate is of the opinion that there is an emergency or that any time given to the person to make representations or produce documents may be prejudicial.

A decision must include reasons and becomes effective as of the time the Authority gives notice of it to the person concerned. The person may, within six days after receiving the notice, make representations to the Authority or the delegate or produce documents.

The Authority or the delegate may revoke a decision made under this section.

105. Before making a decision or issuing an order under any of sections 49 to 52, the Authority must give the recognized regulated entity prior notice of the proposed decision or order, of the grounds on which it is based and of its effective date, and give the entity an opportunity to make representations or produce documents.

However, the Authority may, without prior notice, make a provisional decision or issue a provisional order, valid for a period of not more than 15 days, if it is of the opinion that there is an emergency or that any time given to the entity to make representations or produce documents may be prejudicial.

A decision or order must include reasons and becomes effective on its service on the entity. The entity may, within six days after receiving the decision, make representations to the Authority or produce documents.

The Authority may revoke a decision or order made under any of those sections.

106. Any delegate of the Authority examining a matter may refer it back to the Authority.

107. The Authority may call before it any matter that is before a delegate of the Authority and decide the matter in the delegate's stead.

108. For the purposes of making a decision, the Authority may, within the scope of a consultation mechanism established by regulation or of an agreement under the second paragraph of section 33 of the Act respecting the Autorité des marchés financiers, consider a factual analysis prepared by the staff of an organization pursuing similar objects.

109. A decision made by the Authority or a delegate of the Authority is communicated to the person concerned by the Authority.

However, a decision made by a recognized regulated entity or a person exercising a power subdelegated by such an entity is communicated to the person concerned by the entity.

110. A decision made by the Authority may be rectified on the record by the Authority in order to correct any clerical or typographical error or error in calculation.

111. Subject to section 113, the Authority may review its decisions at any time, except for error of law.

A delegate of the Authority may review a decision made by the delegate when a new fact warrants doing so.

112. Subject to section 113, the Authority may, on its own initiative, review any decision made by a delegate of the Authority or a recognized regulated entity, after having given the delegate or entity an opportunity to make representations or produce documents within the time allowed under section 104.

113. A person directly affected by a decision of the Authority, of a delegate of the Authority or of a recognized regulated entity may, within 30 days, apply to the Board for a review of the decision.

114. On the expiry of the time for applying to the Board for a review, a decision of the Authority or of a delegate of the Authority may, on the Authority's request, be homologated by the Superior Court or the Court of Québec, according to their respective jurisdiction. A homologated decision becomes enforceable under the authority of the court that has homologated it.

DIVISION II

INSPECTIONS AND INVESTIGATIONS

115. The Authority may, in accordance with Chapter III of Title I of the Act respecting the Autorité des marchés financiers, inspect the affairs of a dealer, adviser or market participant in order to verify compliance with this Act.

The Authority may also inspect the affairs of a recognized regulated entity to verify compliance with this Act, with the conditions specified in its recognition decision or with any other decision of the Authority, or to verify the manner in which the entity exercises the functions and powers delegated to it by the Authority.

116. In addition to its investigation powers under Chapter III of Title I of the Act respecting the Autorité des marchés financiers, the Authority may, on its own initiative or on request, order an investigation

(1) with a view to countering offences under the derivatives legislation of another legislative authority;

(2) within the scope of an agreement; or

(3) with a view to requesting the Superior Court to order the appointment of a receiver in accordance with section 19.1 of that Act.

117. No person called on to testify in the course of an investigation or being examined under oath may refuse to answer or refuse to produce a document on the grounds that the person might, by doing so, be incriminated or exposed to a penalty or to civil proceedings, subject to the Canada Evidence Act (Revised Statutes of Canada, 1985, chapter C-5).

118. The Authority may require the communication or delivery of any document that is relevant to an investigation. It may return documents to those who provided them or otherwise decide how documents are to be disposed of.

A person who has provided documents to the Authority may inspect them or copy them at the person's own expense, by arrangement with the Authority.

DIVISION III

CONSERVATORY MEASURES

§1. — *Freeze orders*

119. The Authority may, for the purposes or in the course of an investigation, request the Board

(1) to order the person actually or potentially under investigation not to dispose of funds, securities or other property in the person's possession;

(2) to order the person actually or potentially under investigation to refrain from withdrawing funds, securities or other property on deposit with or under the control or in the safekeeping of any other person;

(3) to order any other person not to dispose of funds, securities or other property referred to in paragraph 2; or

(4) to order a person who is party to or has control over a contract to liquidate the contract and retain the proceeds of liquidation until the Board, in writing, revokes the order or agrees to exclude a particular amount from its application, or until a court orders otherwise.

120. A freeze order is effective from the time the person concerned is notified of it, for a renewable period of 120 days.

The person must be given at least 15 days' notice of the hearing during which the Board is to consider extending the order. The Board may grant the extension if the person does not wish to be heard or fails to establish, to the satisfaction of the Board, that the grounds on which the order was initially based have ceased to exist.

121. If the other person named in a freeze order under paragraph 3 of section 119 has leased a safety deposit box to the person actually or potentially under investigation or put such a box at that person's disposal, that other person must immediately notify the Authority.

On the Authority's request, that other person must break open the safety deposit box in the presence of an agent of the Authority, draw up an inventory of the contents in triplicate, and give one copy to the Authority and another to the person actually or potentially under investigation.

122. A freeze order does not apply to funds or securities deposited with a clearing house or a transfer agent unless it specifically names those funds or securities.

123. A freeze order under paragraph 3 of section 119 that names a Canadian bank or financial institution applies only to the branch or agency specified.

124. A freeze order also applies to funds, securities and other property received after the order becomes effective.

125. A person directly affected by a freeze order may apply to the Board for a determination of the specific funds, securities or other property to which the order applies.

126. The Authority may register or publish its decision to order an investigation under section 116 or an order issued under section 119 at the registry office or with any agency of the Gouvernement du Québec or the Government of Canada where such a decision or order may be registered or published.

Once registered or published, the decision or order is enforceable against any person whose right is registered or published subsequently.

§2. — *Remedial measures*

127. Following a failure to comply with an obligation under this Act, the Authority may request the Board to issue one or more of the following orders against any person in order to remedy the situation or deprive a person of the profit realized as a result of the non-compliance:

(1) an order requiring the person to comply with

(*a*) a provision of this Act;

(*b*) a decision of the Authority under this Act; or

(*c*) a rule of a recognized regulated entity, or a decision or order made on the basis of such a rule;

(2) an order directing a market participant to submit to a review of practices and procedures and institute such changes as may be directed by the Authority;

(3) an order rescinding a derivatives transaction entered into by the person, and directing the person to repay to another person any part of the money paid by that other person for derivatives;

(4) an order directing the person to offer, purchase, dispose of, cancel or liquidate any derivative or position in derivatives and dispose of the proceeds or loss from the liquidation in a specified manner;

(5) an order directing the person to produce to a court or an interested person financial statements or reports in a form consistent with the accounting principles applicable to derivatives or in such other form as may be determined by the Board;

(6) an order directing a person to rectify a register or other records;

(7) an order directing the person to disgorge to the Authority amounts obtained as a result of the non-compliance.

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

The motion for an injunction is a proceeding in itself.

The procedure prescribed in the Code of Civil Procedure (R.S.Q., chapter C-25) applies, except that the Authority cannot be required to give security.

129. If it considers it to be warranted in the public interest, the Authority may, by motion, apply to the court for a declaration that a person has failed to comply with an obligation under this Act and an order directing the person to pay damages up to the amount of the injury caused to any other person.

The court may also impose punitive damages, or order the person to repay to another person the profits realized as a result of the non-compliance.

The motion is filed in the district in which the residence or principal establishment of the person concerned is situated or, if the person has no residence or establishment in Québec, in the district of Montréal.

CHAPTER II

BUREAU DE DÉCISION ET DE RÉVISION EN VALEURS MOBILIÈRES

DIVISION I

POWERS

130. The Board may deny an exemption under this Act if it considers it to be required in the public interest.

In particular, the Board may deny an exemption to any person who has

(1) made improper use of such an exemption;

(2) contravened this Act;

(3) contravened any other provision relating to derivatives; or

(4) contravened the rules of a recognized exchange.

131. The Board may order a person or group of persons to cease all activities for the purpose of trading in a particular derivative.

As well, the Board may order a person or group of persons to cease all activities related to the offering or trading of a particular derivative.

132. The Board may order a person or group of persons to cease carrying on business as an adviser.

133. An order under section 131 or 132 is effective from the time the person concerned is notified or becomes aware of it.

If the order is against a group of persons, its publication in the Authority's Bulletin or through any other medium normally available to the persons concerned in the exercise of their functions is valid as notification under the first paragraph.

134. If it is brought to the Board's knowledge that a dealer, an adviser, a representative, a market participant, a recognized regulated entity, a qualified person or a person granted an exemption under this Act has failed to comply

with a provision of this Act, the Board may, once the facts have been established, reprimand the offender or impose an administrative penalty on the offender to be collected by the Authority.

If it is brought to the Board's knowledge that a market participant, a dealer, an adviser, a representative or any other person acting on their behalf has, by an act or omission, contravened or aided a person in contravening a provision of this Act, the Board may, once the facts have been established, impose an administrative penalty on the offender.

The amount of the penalty may in no case exceed $1,000,000.

135. In addition to imposing a measure under section 134, the Board may require the offender to repay to the Authority the costs incurred in connection with the inspection or investigation that established non-compliance with a provision of this Act, according to the tariff set by regulation.

136. Sections 323 to 323.11 of the Securities Act apply, with the necessary modifications, to the procedure and decisions of the Board under this Act.

137. The Board may, on its own initiative or on application by an interested person, review its decisions at any time, except for error of law.

138. An application to the Board for a review of a decision does not suspend the decision, unless the Board decides otherwise.

DIVISION II

APPEALS

139. Any person directly interested in a final decision of the Board may appeal the decision to the Court of Québec.

140. Sections 325 to 330 of the Securities Act apply, with the necessary modifications, to appeals.

CHAPTER III

INTERJURISDICTIONAL COOPERATION

141. Chapter II of Title X of the Securities Act, which deals with interjurisdictional cooperation, applies for the purposes of this Act.

TITLE VI

FINANCIAL PROVISIONS

142. The costs incurred and determined each year by the Government for the carrying out of this Act are borne by the Authority.

143. The costs incurred by the Authority for the administration of Title II in connection with activities governed by this Act are borne by the recognized regulated entities that carry on such activities.

Those costs are determined by the Authority at the end of its fiscal year for each entity and consist of a minimum contribution set by the Authority and the amount, if any, by which actual costs exceed that contribution. The actual costs are determined on the basis of the tariff set by regulation.

The amount to be paid by each entity is set out in a certificate issued by the Authority.

TITLE VII

PROHIBITIONS, SPECIFIC OFFENCES AND PENAL PROVISIONS

CHAPTER I

MISCELLANEOUS PROHIBITIONS

144. No person who has access to information on the investment program established by an investment fund or by an adviser who is a portfolio manager may use the information for the person's own benefit in trading in derivatives included in the program.

145. The following persons, in addition to the adviser, are deemed to have access to information on the investment program of an adviser who is a portfolio manager if they participate in formulating the adviser's investment decisions or recommendations to the client for whom the portfolio is managed or have knowledge of them before they are implemented:

(1) a partner of the adviser;

(2) an affiliate of the adviser;

(3) an officer or director of the adviser or of an affiliate of the adviser; and

(4) a member of the staff of the adviser or of an affiliate of the adviser.

146. No person may make any representation that the Authority has given a favourable opinion on the merits of a derivative or on the financial situation, competence or conduct of a dealer, an adviser, a representative or a person qualified under section 82.

147. Dealers and advisers may not engage in multiple transactions on a client's behalf for the sole purpose of increasing their remuneration.

CHAPTER II

SPECIFIC OFFENCES

148. It is an offence

(1) to contravene a decision of the Authority or the Board;

(2) to breach an undertaking given to the Authority or the Board;

(3) to fail to provide information or a document required under this Act within the prescribed time;

(4) in the course of an investigation, to fail to appear after summons, refuse to testify or refuse to communicate or deliver a document or a thing required by the Authority or its investigator; or

(5) to attempt, in any manner, to hinder a representative of the Authority in the exercise of the representative's functions in the course or for the purposes of an inspection or an investigation.

149. It is an offence for a registered dealer or adviser to employ a natural person who is not registered with the Authority as a representative or to employ a natural person to carry on a remunerated activity specified by regulation.

150. It is an offence to influence or attempt to influence the market price or the value of a derivative or of the underlying interest of a derivative by means of unfair, improper or fraudulent practices.

151. A person who directly or indirectly engages or participates in any transaction, series of transactions or trading method relating to a trade in or the purchase of a derivative or underlying interest, or in any act, practice or course of conduct is guilty of an offence if the person knows, or ought reasonably to know, that the transaction, series of transactions, trading method, act, practice or course of conduct

(1) creates or contributes to a misleading appearance of trading activity in, or an artificial price for, a derivative or underlying interest; or

(2) perpetrates a fraud on any person.

152. A person who makes a misrepresentation in

(1) the risk information document or the qualification information submitted to the Authority and given to the client in accordance with section 70, or

(2) the information required to be filed with the Authority every year under section 85 in connection with the person's qualification,

is guilty of an offence.

For the purposes of this section and section 153, a misrepresentation is any misleading information on a fact that is likely to influence a client's or reasonable investor's decision, or any pure and simple omission of such a fact.

153. A person who otherwise makes a misrepresentation

(1) about the offering or trading of a derivative,

(2) in any document or information filed with the Authority or one of its agents for the purposes of the administration of this Act, or

(3) in any document sent or register kept under this Act,

is guilty of an offence.

154. A dealer, adviser or representative who, at the time of a derivatives offer or trade or another derivatives transaction, makes a claim to a client that all or part of a margin deposit or a premium paid will be reimbursed is guilty of an offence.

155. A dealer, adviser or representative who offers a derivative created or marketed by a person who has not obtained qualification under section 82, trades in such a derivative or engages in any transaction involving such a derivative is guilty of an offence.

156. A person other than a registered derivatives dealer, adviser or representative who discloses information to the public that could influence the use of derivatives by another person and who so derives an advantage other than the person's ordinary remuneration is guilty of an offence.

157. A person who creates or markets a derivative and does not obtain qualification under section 82 before the derivative is offered to the public is guilty of an offence.

158. An adviser who is a portfolio manager and who, in executing a mandate, knowingly participates in

(1) the making of a loan or provision of a guarantee to a person an officer or director of which is a person described in section 145 or an associate of that person, except with a written authorization given, with full knowledge of the facts, by the client for whom the portfolio is managed,

(2) the purchase of derivatives having as their underlying interest the securities of a person referred to in paragraph 1, except with a written authorization given, with full knowledge of the facts, by the client for whom the portfolio is managed,

(3) a derivatives offer or trade or another derivatives transaction with a person described in section 145 or an associate of such a person, or

(4) the making of a loan or provision of a guarantee to a person described in section 145 or an associate of such a person,

is guilty of an offence.

For the purposes of this section, an "associate" of a person means any company in which the person owns securities representing more than 10% of a class of shares to which are attached voting rights or an unlimited right to participate in earnings and in the assets on winding-up, any partner of the person, any trust or succession in which the person has a substantial ownership interest or in relation to which the person acts as trustee or liquidator or in a similar capacity, the persons's spouse, any child of the person or any relative of the person or of the person's spouse, if that relative shares the person's residence.

159. A person who hinders the Authority or a person it has authorized in the exercise of a power under section 115 or 116 is guilty of an offence.

CHAPTER III

PENAL PROVISIONS

160. Unless otherwise specified, any person who contravenes this Act is guilty of an offence and is liable to a minimum fine of $2,000 in the case of a natural person and $3,000 in the case of any other person, or of double the profit realized, whichever is greater. The maximum fine is $150,000 for a natural person and $200,000 for any other person, or four times the profit realized, whichever is greater.

In determining the amount of a fine, the court considers such factors as the benefits derived from the offence and the injury caused.

161. Any contravention of a regulation made under this Act is an offence that is subject to the same provisions as offences under this Act.

162. In the case of an offence under section 150 or 151 and in the case of a transaction carried out without the risk information document or qualification information being given to the client as required under section 70, the minimum fine is $5,000, double the profit realized, or double the amounts invested in the transaction or series of transactions, whichever is greatest. The maximum amount of the fine is $5,000,000, four times the profit realized, or four times the amounts invested in the transaction or series of transactions, whichever is greatest.

163. An officer, director or employee of the principal offender, including a person remunerated on commission, who authorizes or permits an offence under this Act is liable to the same penalties as the principal offender.

164. Conspiracy to commit an offence under this Act is an offence punishable by the penalties set out in section 160 or 162, according to the offence.

165. A person who, by act or omission, aids another person in the commission of an offence is guilty of the offence as if the person had committed it. The person is liable to the penalties set out in section 160 or 162, according to the offence.

The same applies to a person who, by encouragement or advice or by an order, induces another person to commit an offence.

166. Despite articles 231 and 348 of the Code of Penal Procedure (R.S.Q., chapter C-25.1), a person who engages in a derivatives offer or trade or another derivatives transaction in contravention of section 82 or contravenes any of sections 150, 151 and 163 to 165 is liable, in addition to the fine set out in the applicable penal provision, to imprisonment for a period not exceeding five years less one day.

167. Penal proceedings for an offence under this Act may be instituted by the Authority.

168. When the Authority takes charge of the prosecution, the fine imposed by the court belongs to the Authority.

169. Penal proceedings for an offence under any of sections 54, 56, 61 to 65, 67 to 74, 78, 80, 82, 84, 144 and 146 to 158 are prescribed five years from the date on which the investigation record relating to the offence was opened.

A certificate of the secretary of the Authority stating the date on which the investigation record was opened constitutes conclusive proof of that date in the absence of any evidence to the contrary.

170. The Authority may recover its investigation costs from any person found guilty of an offence under this Act or under the derivatives legislation of another legislative authority, according to the tariff set by regulation.

The Authority prepares a statement of costs and presents it to a judge of the Court of Québec after giving the interested parties five days' prior notice of the date of presentation.

The judge taxes the costs, and the judge's decision may be appealed with leave of a judge of the Court of Appeal.

171. A judge of the Court of Québec may, on satisfactory proof of signature, endorse a warrant of arrest issued by a judge of another province or of a territory of Canada against any person on a charge of contravening the derivatives legislation of that province or territory.

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

TITLE VIII

DELEGATION AND IMMUNITY

172. Subject to Title VII, the Authority's power to review its decisions, institute court proceedings in its name or make a decision under Title II may only be delegated to a superintendent or to another officer reporting directly to the president and director general of the Authority.

173. In addition to applying to the Authority itself, section 34.1 of the Act respecting the Autorité des marchés financiers applies to an officer of the Authority, a member of the Authority's staff, an agent appointed by the Authority and a delegate of the Authority exercising a function or power of the Authority.

TITLE IX

REGULATIONS

174. The Authority may, by regulation,

(1) determine the procedure to be followed in any matter relating to the carrying out of this Act;

(2) determine, for the purposes of section 72, exceptions to the obligations of dealers, advisers or representatives relating to the segregation of their clients' property or the maintenance of separate accounting records;

(3) set the tariffs referred to in sections 135, 143 and 170;

(4) determine the provisions of Title III whose contravention may be sanctioned by an administrative monetary penalty, and the amount of and the conditions for imposing such a penalty; and

(5) prescribe the fees payable for any formality required by this Act or for services rendered by the Authority, and the terms of payment.

A regulation under this section must be submitted to the Government, which may approve it with or without amendments.

The Government may make or amend a regulation under this section if the Authority does not do so within the time specified by the Government.

A draft regulation or regulation under this section must be published in the Authority's Bulletin.

175. The Authority may, by regulation,

(1) make rules concerning derivatives offers or trades or other derivatives transactions, in particular for the purpose of preventing fraud and manipulation or preventing offers or trades that are prejudicial to clients and investors;

(2) determine the form and content of the documents, declarations and certificates required under this Act;

(3) set time limits and periods for the purposes of this Act;

(4) specify the amount of a person's minimum assets and net assets for the purposes of paragraph 7 of the definition of "accredited counterparty" in section 3;

(5) determine rules relating to the designation of a person as a regulated entity for the purposes of the definition of "regulated entity" in section 3;

(6) designate a person as a market participant for the purposes of the definition of "market participant" in section 3;

(7) specify, for the purposes of section 6, the other instruments to which this Act does not apply;

(8) specify the cases in which the provisions referred to in section 7 do not apply;

(9) make any rule to be applicable to a recognized regulated entity or a market participant, including market operation rules;

(10) establish a process whereby a recognized regulated entity may make a new rule or a rule amendment enforceable through self-certification of the rule or amendment;

(11) make rules concerning derivatives transactions;

(12) prescribe the information about derivatives or derivatives trading that must be communicated to the Authority, recognized regulated entities, market participants, clients and the public;

(13) establish the management rules that dealers, advisers and representatives must comply with in order to safeguard their clients' interests;

(14) prescribe requirements applicable to market participants or to dealers, advisers and representatives, concerning such matters as becoming a member or market participant of a self-regulatory organization and contributing, as a dealer, adviser and representative, to a protection fund;

(15) determine the conditions subject to which persons resident outside Québec may apply for registration;

(16) determine categories of registration, the conditions to be met by applicants for registration, the duration of registration and the rules governing the activities of dealers and advisers and their representatives;

(17) prescribe the conditions on which an alternative trading system registered as a dealer is exempted from the obligation set out in section 68;

(18) prescribe the information to be given under section 70;

(19) prohibit, or impose conditions on, any transaction designed to set, influence or manipulate the market price of a derivative;

(20) determine, for the purposes of section 78, the changes that must be notified to the Authority and those that must be approved by the Authority;

(21) prescribe the conditions on which the Authority may qualify a person for the purposes of section 82;

(22) prescribe the information that a qualified person must file with the Authority every year;

(23) prescribe, for the purposes of section 87, the rules relating to the designation of persons as accredited counterparties;

(24) specify the activities that are remunerated activities for the purposes of section 149;

(25) allow, prohibit or regulate a person's use of documents, including advertising materials, in connection with derivatives offers or trades or other derivatives transactions;

(26) determine how, when and in what form a document required under this Act must be sent or received;

(27) determine, from among the documents required under this Act, those that must be filed or sent in a specified medium or by means of a specified technology;

(28) establish a mechanism for consulting with an organization pursuing similar objects on matters within the scope of this Act and of legislation enacted by the legislative authority having jurisdiction over the organization; and

(29) conditionally or unconditionally exempt a group of persons, derivatives or transactions from any or all of the obligations or requirements under this Act.

A regulation under this section must be submitted to the Minister, who may approve it with or without amendments.

The Minister may make or amend a regulation under this section if the Authority does not do so within the time specified by the Minister.

A draft regulation under this section must be published in the Authority's Bulletin with the notice required under section 10 of the Regulations Act (R.S.Q., chapter R-18.1).

A draft regulation under this section may not be submitted for approval or adopted before 30 days have elapsed since its publication.

A regulation under this section comes into force on the date of its publication in the *Gazette officielle du Québec* or on any later date specified in the regulation. It must also be published in the Authority's Bulletin.

Sections 4 to 8, 11 and 17 to 19 of the Regulations Act do not apply to a regulation under this section.

176. The Government may, by regulation,

(1) determine other types of derivatives that are subject to this Act or determine criteria on the basis of which a contract, security or other financial instrument is considered equivalent to a derivative;

(2) determine the remunerated activities referred to in section 56; and

(3) frame the policy that dealers and advisers must adopt in accordance with section 74 or elements of that policy.

177. In exercising their regulatory powers, the Government, the Minister and the Authority may establish various categories of persons, derivatives and transactions and prescribe appropriate rules for each category.

178. A regulation under this Act may confer a discretionary power on the Authority.

179. The Authority must, not later than 31 July, submit an annual report to the Minister on its regulation activities under this Act for the period ending at the end of its last fiscal year.

The report must describe regulatory amendments and their impact on derivatives markets and on investors, and contain any other information required by the Minister.

The Minister tables the report in the National Assembly within 30 days of its receipt or, if the Assembly is not sitting, within 30 days of resumption.

The competent parliamentary committee of the National Assembly may hear the Authority at least once a year to discuss the report and the Authority's regulation activities.

TITLE X

AMENDING PROVISIONS

ACT RESPECTING INSURANCE

180. The Act respecting insurance (R.S.Q., chapter A-32) is amended by inserting the following section before section 391:

"**390.1.** The provisions of this chapter apply, with the necessary modifications, to the winding-up of an insurance company within the scope of a receivership ordered under Chapter III.1 of Title I of the Act respecting the Autorité des marchés financiers (chapter A-33.2), to the extent that they are not inconsistent with that chapter."

181. Section 391.1 of the Act, enacted by section 45 of chapter 7 of the statutes of 2008, is repealed.

ACT RESPECTING THE AUTORITÉ DES MARCHÉS FINANCIERS

182. Section 4 of the Act respecting the Autorité des marchés financiers (R.S.Q., chapter A-33.2) is amended by inserting the following paragraph after paragraph 4:

"(4.1) supervise derivatives markets, including derivatives exchanges and clearing houses and ensure that regulated entities and other derivatives market practitioners comply with the obligations imposed by law; and".

183. Section 15.1 of the Act, enacted by section 3 of chapter 7 of the statutes of 2008, is amended by inserting "section 116 of the Derivatives Act (2008, chapter 24)," after "Act respecting insurance (chapter A-32),".

184. Section 17 of the Act is amended by striking out "as well as the other persons concerned by the request" at the end of the second paragraph.

185. Section 19.1 of the Act, enacted by section 5 of chapter 7 of the statutes of 2008, is amended by inserting "section 116 of the Derivatives Act (2008, chapter 24) or" after "under" in subparagraph 4 of the first paragraph.

186. Section 23 of the Act is amended by adding the following sentence at the end of the third paragraph: "Documents intended for the Authority are served on the secretary."

187. Section 32 of the Act is amended by striking out "a superintendent, the secretary" in the first paragraph.

188. Section 38.2 of the Act, enacted by section 8 of chapter 7 of the statutes of 2008, is amended by inserting "paragraph 7 of section 127 of the Derivatives Act (2008, chapter 24) or" after "the sums collected under" in the second paragraph.

189. Section 65 of the Act is replaced by the following section:

"**65.** An application for recognition or for a delegation of functions or powers, or an application for the modification of a recognition decision or a delegation of functions or powers, must be filed with the documents and information required by the Authority."

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

191. Section 91 of the Act is amended by adding the following paragraph at the end:

"The amount to be paid by each organization is set out in a certificate issued by the Authority."

192. Section 93 of the Act is replaced by the following section:

"**93.** On the request of the Authority or of any interested person, the board shall exercise the functions and powers assigned to it under the Derivatives Act (2008, chapter 24) and the Securities Act (chapter V-1.1).

The board may not, when assessing the facts or the law for the purposes of those Acts, substitute its assessment of the public interest for that made by the Authority in making a decision."

193. Section 94 of the Act is amended by replacing "compliance with the provisions of the Securities Act (chapter V-1.1)" by "compliance with an undertaking given under the Derivatives Act (2008, chapter 24) or the Securities Act (chapter V-1.1) or compliance with those Acts".

194. Schedule 1 to the Act is amended by inserting "DERIVATIVES ACT (2008, chapter 24)" in alphabetical order.

CONSUMER PROTECTION ACT

195. Section 6 of the Consumer Protection Act (R.S.Q., chapter P-40.1) is amended by inserting "the Derivatives Act (2008, chapter 24) or" after "by" in paragraph *a*.

SECURITIES ACT

196. Section 1 of the Securities Act (R.S.Q., chapter V-1.1) is amended, in the first paragraph,

(1) by replacing "option to purchase" in subparagraph 1 by "warrant";

(2) by striking out subparagraphs 4, 5 and 8;

(3) by inserting the following subparagraph after subparagraph 8:

"(8.1) an option or other non-traded derivative whose value is derived from, referenced to or based on the value or market price of a security, granted as compensation or as payment for a good or service;".

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

"**2.1.** This Act does not apply to derivatives within the meaning of the Derivatives Act (2008, chapter 24)."

198. Section 67 of the Act is repealed.

199. Section 92 of the Act, amended by section 37 of chapter 50 of the statutes of 2006, is again amended by adding the following sentence at the end of the first paragraph: "The same applies to an insider of a reporting issuer who purchases or disposes of a derivative within the meaning of the Derivatives Act (2008, chapter 24) whose underlying interest is a security of the reporting issuer."

200. Section 148.1 of the Act is amended by replacing "a candidate or a class of candidates it determines pursue their activities through a subsidiary as regards the field of securities for which registration is sought" by "the securities activities of a candidate or class of candidates be pursued through a subsidiary".

201. Section 167 of the Act is repealed.

202. Section 169 of the Act is replaced by the following section:

"**169.** No exchange, clearing house, information processor, matching service utility or regulation services provider may carry on securities activities in Québec unless it is recognized by the Authority."

203. The Act is amended by inserting the following section after section 169:

"**169.1.** An application for recognition or for the modification of a recognition decision must be filed with the documents and information required by the Authority.

The Authority shall publish a notice of the application in its Bulletin and invite interested persons to make representations in writing."

204. Section 170 of the Act is amended

(1) by replacing "The Authority may authorize the carrying on of an activity mentioned in section 169 on" in the first paragraph by "The Authority may recognize a person referred to in section 169 on";

(2) by replacing "determine that a person that carries on such an activity or any other activity governed by this Act is to be recognized as a self-regulatory organization under Title III of the Act respecting the Autorité des marchés financiers (chapter A-33.2)" in the second paragraph by "require that the person be recognized as a self-regulatory organization under Title III of the Act respecting the Autorité des marchés financiers (chapter A-33.2) in order to carry on the person's activities";

(3) by replacing "a person authorized to carry on securities exchange or clearing activities" in the fourth paragraph by "a person recognized as an exchange or clearing house".

205. Section 171 of the Act is replaced by the following section:

"**171.** The Authority may recognize an alternative trading system as an exchange or register it as a dealer."

206. Section 171.1 of the Act is amended

(1) by replacing "apply, with the necessary modifications, to legal persons, partnerships and other entities referred to in sections 169 to 171" in the first paragraph by "apply, with the necessary modifications, to recognized exchanges and clearing houses";

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

"Sections 80, 87 and 89 of the Act respecting the Autorité des marchés financiers apply to information processors and matching service utilities."

207. Section 171.1.1 of the Act is amended by replacing "electronic securities trading systems, securities information processors or matching service utilities" by "alternative trading systems, information processors, matching service utilities or regulation services providers".

208. Section 172 of the Act is amended by replacing "authorized to carry on securities exchange or clearing activities in Québec" by "recognized".

209. Section 189.1 of the Act, amended by section 58 of chapter 50 of the statutes of 2006, is again amended by inserting "or in other derivatives within the meaning of the Derivatives Act (2008, chapter 24)" after "in options" wherever it appears.

210. Section 196 of the Act is amended by striking out paragraph 4.

211. Section 204 of the Act, amended by section 149 of chapter 7 of the statutes of 2008, is again amended by replacing "derivatives trading" wherever it appears in the first paragraph by "trading in a related financial instrument or in derivatives".

212. Section 237 of the Act, amended by section 156 of chapter 7 of the statutes of 2008, is again amended by replacing subparagraphs 2.1 to 2.3 of the first paragraph by the following subparagraphs:

"(2.1) a recognized stock exchange or one of its participants;

"(2.2) a recognized clearing house or a person who has an account with such a clearing house;

"(2.3) a person who operates an alternative trading system that is recognized as a stock exchange or registered as a dealer, or one of its subscribers;

"(2.3.1) a regulation services provider;".

213. Section 250 of the Act is amended by replacing "90" in the first paragraph by "120".

214. Section 272.1 of the Act is amended by inserting "with an undertaking given to the Authority and" after "compliance" in the first paragraph.

215. Section 274 of the Act is replaced by the following section:

"**274.** The Authority may make policy statements relating to the carrying out of this Act.

The policy statements set out how the Authority intends to exercise its discretionary powers for the purposes of the administration of this Act."

216. Section 305.1 of the Act is amended, in the definition of "Québec securities law" in the first paragraph,

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

"(2.1) the Derivatives Act (2008, chapter 24);";

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

"(3) regulations under any of the Acts referred to in paragraphs 1 to 2.1;".

217. Section 307.2 of the Act is amended by adding the following paragraph after paragraph 3:

"(4) the powers and functions provided for under sections 110 to 112, 137, 174 and 185 of the Derivatives Act (2008, chapter 24)."

218. Section 308.2.1 of the Act is amended by replacing "authorized to carry on an activity under Title VI or a regulation" and "authorized" in paragraph 3 by "recognized in accordance with Title VI or a regulation" and "recognized" respectively.

219. Section 310 of the Act is amended

(1) by replacing "The Authority" and "authorized" in the first paragraph by "Subject to section 322, the Authority" and "recognized", respectively;

(2) by inserting "or produce documents to complete the person's record" after "present observations" in the second paragraph.

220. Section 320 of the Act is amended by replacing the first paragraph by the following paragraph:

"**320.** A decision made by the Authority or a person exercising a delegated power shall be sent by the Authority to the person concerned."

221. Section 321 of the Act is amended by replacing "The Authority" in the first paragraph by "Subject to section 322, the Authority".

222. Section 322 of the Act is amended

(1) by replacing "authorized under" in the first paragraph by "referred to in";

(2) by striking out the second paragraph.

223. Section 323.8.1 of the Act, enacted by section 167 of chapter 7 of the statutes of 2008, is amended

(1) by replacing "Despite sections 323 to 323.8" by "Despite sections 323 to 323.4 and 323.6 to 323.8";

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

"If it is imperative to do so, the decision may be made in the absence of the person concerned. In such a case, the Bureau must give the person the opportunity to be heard within 15 days in regard to one of the facts referred to in the first paragraph."

224. Section 330.9 of the Act is amended by replacing the third paragraph by the following paragraph:

"The amount to be paid by each self-regulatory organization is set out in a certificate issued by the Authority."

225. Section 331.1 of the Act is amended

(1) by replacing "securities clearing houses, electronic securities trading systems, securities information processors and matching service utilities" in paragraph 9.1 by "clearing houses, alternative trading systems, information processors, matching service utilities and regulation services providers";

(2) by replacing "authorized" in paragraph 28 by "recognized";

(3) by replacing "authorized to carry on an activity for the purposes of Québec securities laws, including when the person or class of persons is authorized to carry on the activity" in paragraph 33.7 by "recognized to carry on an activity for the purposes of Québec securities laws, including when the person or class of persons is recognized".

ACT RESPECTING THE TRANSFER OF SECURITIES AND THE ESTABLISHMENT OF SECURITY ENTITLEMENTS

226. Section 4 of the Act respecting the transfer of securities and the establishment of security entitlements (2008, chapter 20) is amended,

(1) in the second paragraph,

(*a*) by inserting "the Derivatives Act (2008, chapter 24)," after "within the meaning of";

(*b*) by replacing "is authorized to carry on such activities" by "is recognized";

(2) by replacing "without being authorized by the Autorité des marchés financiers to carry on activities of a clearing agency or clearing house" in the third paragraph by "without being recognized as a clearing agency or clearing house by the Autorité des marchés financiers".

TITLE XI

TRANSITIONAL AND FINAL PROVISIONS

227. Sections 1.1 to 1.6, 71 to 72 and 192.1 and subparagraph *e* of paragraph 3 of section 224 of the Securities Regulation, enacted by Order in Council 660-83 dated 30 March 1983 (1983, G.O. 2, 1269), are repealed.

228. A dealer, adviser or representative registered before (*insert the date of coming into force of sections 54 and 56*) in accordance with section 148 or 149 of the Securities Act (R.S.Q., chapter V-1.1) who meets the conditions imposed by this Act for registration to carry on business in derivatives only is entitled, on application, to be registered under this Act.

229. When a person referred to in section 228 registers under this Act for the first time, the Authority reduces the fees payable under this Act by an amount calculated on a per-month basis to compensate for the fees that the

person has already paid for any period subsequent to the effective date of registration under this Act.

230. An exchange or a clearing house authorized under Title VI of the Securities Act, a self-regulatory organization recognized under Title III of the Act respecting the Autorité des marchés financiers (R.S.Q., chapter A-33.2), or an exchange, clearing house or self-regulatory organization granted an exemption by the Authority under section 263 of the Securities Act or section 73 of the Act respecting the Autorité des marchés financiers before (*insert the date of coming into force of section 12*) that carries on activities relating to transactions to which this Act applies is authorized to continue to carry on those activities in Québec in accordance with the conditions prescribed by the Authority under those Acts or, as of the date the Authority may determine, in accordance with the new conditions prescribed by the Authority under this Act.

231. Derivatives made available by a person qualified under section 67 of the Securities Act before (*insert the date of coming into force of sections 12 and 82*) are deemed to have been self-certified under this Act.

232. A regulation under the Securities Act in force on (*insert the date of coming into force of sections 174 to 176*) applies to a person governed by this Act, to the extent that this Act provides for the relevant regulation-making powers, until a regulation on the same matter is made and brought into force in accordance with this Act.

233. An inspection or investigation opened by the Authority before (*insert the date of coming into force of sections 115 and 116*) regarding a matter to which this Act applies is governed by the legislation in force on the date on which it was opened.

234. A complaint, disciplinary process or proceeding or any other recourse submitted to, instituted by or exercised before the Authority before (*insert the date of coming into force of section 97*) regarding a matter to which this Act applies is continued in accordance with the legislation in force on the date on which it was submitted, instituted or exercised.

235. A proceeding pending before the Board before (*insert the date of coming into force of section 136*) regarding a matter to which this Act applies is continued in accordance with the legislation in force on the date on which the proceeding was commenced.

236. The Government may, by a regulation made within 12 months after the date of coming into force of this section, enact any transitional measure conducive to the carrying out of this Act.

A regulation under the first paragraph is not subject to the publication requirement set out in section 8 of the Regulations Act (R.S.Q., chapter R-18.1) and comes into force on the date of its publication in the

Gazette officielle du Québec or at any later date specified in the regulation. The regulation may also, if it so provides, apply from any date not prior to 20 June 2008.

237. The Authority is responsible for the administration of this Act.

238. The Minister of Finance is responsible for the carrying out of this Act.

239. Not later than (*insert the date that is five years after the coming into force of section 238*) and subsequently every five years, the Minister must report to the Government on the carrying out of this Act and on the advisability of maintaining or amending this Act.

The report is tabled in the National Assembly within the next 15 days or submitted to the President of the National Assembly if the Assembly is not sitting.

Within one year from the date on which the report is tabled or submitted, the President of the National Assembly convenes a standing committee of the Assembly to examine the advisability of maintaining or amending this Act and to hear the representations of interested individuals and organizations.

240. The provisions of this Act come into force on the date or dates to be set by the Government, except sections 180, 181 and 223, which come into force on 20 June 2008.

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