
Regulations and other Acts

Gouvernement du Québec

O.C. 1017-2009, 23 September 2009

An Act respecting the Autorité des marchés financiers
(R.S.Q., c. A-33.2)

Autorité des marchés financiers — Approval of a delegation of functions and powers to the Investment Industry Regulatory Organization of Canada

Approval of a delegation of functions and powers of the Autorité des marchés financiers to the Investment Industry Regulatory Organization of Canada

WHEREAS section 59 of the Act respecting the Autorité des marchés financiers (R.S.Q., c. A-33.2) provides that a legal person, a partnership or any other entity whose objectives are related to the mission of the Autorité des marchés financiers may, on the conditions determined by the latter, be recognized as a self-regulatory organization responsible for supervising an activity governed by an Act referred to in Schedule 1 to the Act;

WHEREAS the first paragraph of section 61 of the Act provides that, subject to the applicable legislative provisions, the Autorité des marchés financiers may, on the conditions it determines, delegate to a recognized organization the exercise of all or part of the functions and powers conferred on it by law;

WHEREAS the second paragraph of section 61 of the Act provides that such a delegation of functions and powers is subject to the approval of the Government, except where it concerns the carrying on of securities exchange or clearing activities and is made to a legal person, a partnership or any other entity referred to in the second paragraph of section 170 of the Securities Act (R.S.Q., c. V-1.1) that carries on securities exchange or clearing activities;

WHEREAS the Autorité des marchés financiers recognized the Investment Industry Regulatory Organization of Canada as a self-regulatory organization by decision No. 2008-PDG-0126 dated 2 May 2008;

WHEREAS, by Order in Council 526-2008 dated 28 May 2008, the Government approved the delegation to the Investment Industry Regulatory Organization of Canada of functions and powers of the Autorité des marchés financiers listed in decision No. 2008-PDG-0127 dated 2 May 2008;

WHEREAS, by decision No. 2009-PDG-0100 dated 19 August 2009, the Autorité des marchés financiers made a new delegation of part of its functions and powers to the Investment Industry Regulatory Organization of Canada that replaces the delegation of 2 May 2008;

WHEREAS it is expedient to approve that delegation;

IT IS ORDERED, therefore, on the recommendation of the Minister of Finance:

THAT the delegation to the Investment Industry Regulatory Organization of Canada of the functions and powers of the Autorité des marchés financiers listed in decision No. 2009-PDG-0100 dated 19 August 2009, attached to this Order in Council, be approved;

THAT this Order in Council take effect as of 28 September 2009.

GÉRARD BIBEAU,
Clerk of the Conseil exécutif

**Delegation of functions and powers
to the Investment Industry Regulatory Organization of Canada**

WHEREAS on May 2, 2008, the *Autorité des marchés financiers* (the “Authority”) rendered decision No. 2008-PDG-0126 recognizing the Investment Industry Regulatory Organization of Canada (“IIROC”) as a self-regulatory organization, pursuant to Title III of the *Act respecting the Autorité des marchés financiers*, R.S.Q., c. A-33.2 (the “AMF Act”);

WHEREAS on May 2, 2008, the Authority rendered decision No. 2008-PDG-0127 delegating to IIROC functions and powers provided for under the *Securities Act*, R.S.Q., c. V-1.1 (the “SA”), the AMF Act and the *Securities Regulation*, R.R.Q., c. V-1.1, r.1 (the “SR”), as well as the power to exempt an applicant for registration from the requirements prescribed under certain sections of *Policy Statement Q-9, Dealers, Advisers and Representatives* (“Q-9”), to the extent that they relate to dealers who are members of IIROC, their officers and their registered representatives (“Decision No. 2008-PDG-0127”);

WHEREAS on May 28, 2008, the Government of Québec approved such a delegation of functions and powers under the second paragraph of section 61 of the AMF Act, as it appears from Order-in-Council 526-2008 issued on May 28, 2008 and published at (2008) 24 G.O. II, 2079;

WHEREAS on February 1, 2009, most of the provisions of the *Derivatives Act*, S.Q., c. 24 (the “DA”), as well as the *Derivatives Regulation* (the “DR”) came into force;

WHEREAS on June 17, 2009, the provisions of the *Act to amend the Securities Act and other legislative provisions*, S.Q. 2009, c. 25 (the “Act to amend the SA”), came into force, with the exception of sections 1 to 3, 5, 6, 8 to 32, 34 to 46, 48 to 58, 60, 62, 63, 65 to 75, 77, 79 to 113 and 115 to 135, which will come into force on the date or dates set by the Government;

WHEREAS *Regulation 31-103* respecting Registration Requirements and Exemptions (“Regulation 31-103”), the *Regulation to amend the Securities Regulation* (“Regulation to amend the SR”) as well as the *Regulation to repeal Policy Statement Q-9, Dealers, Advisers and Representatives* (“Regulation to repeal Q-9”) will come into force upon their publication in the *Gazette officielle du Québec* or on another date specified therein;

WHEREAS the *Regulation to amend the Derivatives Regulation* (“Regulation to amend the DR”) will come into force upon its publication in the *Gazette officielle du Québec* or on another date specified therein;

IN CONSIDERATION OF the application by IIROC to modify the delegated functions and powers in view of the coming into force of the Act to amend the SA, Regulation 31-103, the Regulation to amend the SR, the Regulation to repeal Q-9 and the Regulation to amend the DR;

WHEREAS pursuant to section 66 of the AMF Act, the Authority has published a notice of the application in its Bulletin (B.A.M.F., 2009-07-31, Vol. 6, No. 30, 282) and has invited interested parties to submit comments in writing;

WHEREAS under the first paragraph of section 61 of the AMF Act, the Authority may delegate to a recognized organization the exercise of all or part of the functions and powers conferred on it by law;

WHEREAS section 65 of the AMF Act sets out, in respect of an application for the modification of a delegation of functions or powers, the same requirements as in respect of an application for a delegation of functions or powers;

WHEREAS under the second paragraph of section 61 of the AMF Act, such modification of a delegation of functions and powers is subject to the approval of the Government;

WHEREAS under section 9 of the AMF Act, the Authority may delegate all or part of its inspection functions and powers to a self-regulatory organization;

WHEREAS the Authority deems it appropriate that functions and powers be delegated to IIROC;

WHEREAS pursuant to section 81 of the AMF Act, the recognized organization must, before rendering a decision unfavourably affecting the rights of a person, partnership or entity, give the person, partnership or entity an opportunity to present observations;

WHEREAS pursuant to section 85 of the AMF Act, a person, partnership or other entity directly affected by a decision rendered by a recognized organization may apply for a review of the decision by the Authority within 30 days;

IN CONSIDERATION OF the representations made to the Authority by IIROC;

THEREFORE, the Authority:

MODIFIES the delegation to IIROC of the functions and powers provided for under the SA, the AMF Act and the SR as well as the power to exempt a candidate for registration from the requirements set out in certain sections of Q-9, to the extent that they relate to dealers who are members of IIROC, their officers and their registered representatives;

REVOKES decision No. 2008-PDG-0127;

DELEGATES to IIROC the modified powers and functions set out hereunder:

The following functions and powers under the SA, the DA and the AMF Act, to the extent that they relate to a dealer member under IIROC rules as well as the representative, the ultimate designated

person or the chief compliance officer (the "registered individual") acting on behalf of such dealer member:

| SECTION | PURPOSE |
|----------------|---|
| 149 SA | Receive the individual's application for registration as a representative; Receive the individual's application for registration as chief compliance officer; Receive the individual's application for registration as ultimate designated person; |
| 151 SA | After verifying that the candidate meets the conditions fixed by regulation, grant registration where, in the opinion of IIROC: (1) the candidate has the competence and integrity to ensure the protection of investors; (2) the candidate is solvent; Impose any restriction or condition on the registration of a candidate, including limiting its duration; |
| 151.0.1 SA | Revoke, suspend or impose restrictions or conditions on a registration if the registered individual: (1) has made an assignment of property or been placed under a receiving order; (2) has been convicted by a court inside or outside Canada of an act or offence which, in its opinion, is related to his activity or has pleaded guilty to such an act or offence; (3) has been assigned a tutor, curator or adviser; (4) has had his registration revoked or suspended, or restrictions or conditions have been imposed on the registration, by the bodies stipulated in the SA; |

- 151.1 SA Make an inspection of the affairs of a dealer member in order to ascertain the extent to which he complies with the SA, the regulations and the policy statements;
- 153 SA Receive the registered individual's application for surrender of registration;
- Suspend the registration of the registered individual or impose conditions or restrictions on the registration during examination of the application for surrender;
- Accept the surrender of the registration where, in its opinion, the interests of clients and investors are sufficiently protected;
- Impose conditions on the surrender;
- 159 SA Receive from the registered individual the notice of change in the information furnished at the time of registration;
- Approve any change in the information furnished at the time of registration in accordance with the SA;
- Object to the notice of change;
- If it objects, prescribe what is to be done;
- 56 DA Receive the individual's application for registration as a representative;
- Receive the individual's application for registration as chief compliance officer;
- Receive the individual's application for registration as ultimate designated person;
- 59 DA After verifying that the applicant meets the conditions set by regulation, grant registration if IIROC considers that:
- (1) the applicant exhibits the requisite competence and integrity to ensure the protection of clients;
- (2) the applicant is solvent;
- Impose any restriction or condition on the registration of an applicant, including limiting its duration;

- 78 DA Receive the notice of change in the information provided at the time of registration;
- Approve any change in the information provided at the time of registration in accordance with the DA;
- Object to the notice of change;
- If it objects, prescribe a course of conduct;
- 80 DA Receive the registered individual's application for surrender of registration;
- Suspend, modify or impose conditions or restrictions on the registration during examination of the application for surrender;
- Accept the surrender of the registration if it considers that the interests of clients and of the public are sufficiently protected;
- Impose conditions on the surrender;
- 80.1 DA Revoke, suspend or impose restrictions or conditions on a registration if the registered individual:
- (1) has made an assignment of property or been placed under a receiving order;
- (2) has been convicted by a court inside or outside Canada of an act or offence which, in its opinion, is related to his activity or has pleaded guilty to such an act or offence;
- (3) has been assigned a tutor, curator or adviser;
- (4) has had his registration revoked or suspended, or restrictions or conditions have been imposed on the registration, by a body stipulated in the DA;
- 115 DA Inspect the affairs of a dealer member in order to verify compliance with the DA;
- 9 AMF Act Designate any person who is a staff member to carry out an inspection in accordance with sections 9, 10 and 11 of the AMF Act;

The present decision is subject to the controls as well as the functions and powers of the AMF set out in the AMF Act, the SA and the DA, as well as the following conditions:

- Notwithstanding the delegation to IIROC by the Authority of the powers to carry out an inspection under sections 151.1 of the SA and 115 of the DA and the power to designate any person who is a staff member to carry out an inspection under section 9 of the AMF Act, the Authority may continue to exercise such powers in respect of which it renders the present decision;
- The exchange of information between the Authority and IIROC in connection with the present delegation of powers to IIROC must be conducted in accordance with the provisions of the *Act respecting access to documents held by public bodies and the protection of personal information* (R.S.Q., c. A-2.1) and in particular sections 296, 297 and 297.1 to 297.4 and 297.6 of the SA;
- The Authority shall have access at all times to all the documentation held by IIROC in the exercise of the functions and powers delegated to IIROC pursuant to this decision;
- IIROC shall send to the Authority, upon receipt, the fees payable relating to the exercise of the functions and powers delegated under this decision and prescribed under the SR and the DR;
- IIROC shall ensure that the applicant fulfills the conditions set out in the Regulations under the SA and the Regulations under the DA by confirming the information provided in the forms prescribed by such regulations;
- IIROC shall exercise its delegated powers with regard to the registration of representatives through the National Registration Database (the “NRD”);
- IIROC shall immediately refer to the Authority any application for exemption from a requirement under the SA, the DA, the Regulations under the SA or the Regulations under the DA, along with the related fees;
- The Authority shall assist IIROC to ensure that the applicant has the necessary integrity to ensure the protection of investors;
- IIROC shall send to the Records Manager of the Authority the decisions made in exercising a power delegated in accordance with this decision within ten business days of the date the decision was made and according to the terms and conditions determined by the Authority, unless the Authority notifies it in writing that it waives its right to receive such decisions;
- The decisions made in exercising a delegated power shall comply with the provisions of the *Charter of the French language*, R.S.Q., c. C-11;
- The functions and powers delegated by the Authority hereunder shall be exercised in accordance with the provisions of *An Act respecting administrative justice*, R.S.Q., c. J-3;

- IIROC shall keep a record of complaints it receives in respect of dealer members and the registered individuals acting on their behalf as well as a file for each complaint that will contain information on the nature of the complaint, the findings and the measures taken;
- IIROC shall ensure the constant updating of the Authority's computer database with respect to the information collected by IIROC in connection with the exercise by the latter of the functions and powers conferred upon it by this decision within ten business days of the date on which the decisions are made or the information is received by IIROC in accordance with the terms and conditions determined by the Authority, unless the Authority notifies it in writing to cease ensuring such updating; and
- IIROC may waive the delegation in whole or in part by giving at least six months' prior notice to the Authority, and the Authority acknowledges that such a notice is sufficient to protect registrants and investors and undertakes to authorize such a waiver on this condition or on any other condition that it deems necessary.

The Vice-President, Québec of IIROC and the Director, SRO Oversight of the Authority shall be responsible for the implementation of this decision.

This decision regarding the delegation of functions and powers will come into force when it is approved by the Government or on any other date the Government may determine.

Executed on August 19, 2009.

JEAN ST-GELAIS,
President and Chief Executive Officer

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