NATIONAL ASSEMBLY

SECOND SESSION THIRTY-NINTH LEGISLATURE

Bill 7
(2011, chapter 26)

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

Introduced 4 May 2011
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EXPLANATORY NOTES

This Act amends the Act respecting the Autorité des marchés financiers to provide that persons who report a failure to comply with an Act administered by the AMF will incur no civil liability for doing so, to allow certain formalities between the regulator and the regulated to be completed electronically, and to finetune certain aspects of the receivership process.

The Act respecting the distribution of financial products and services is amended to allow other persons besides the AMF to ask the Bureau de décision et de révision to impose a sanction on a representative, a firm or an independent partnership for a breach of that Act, to give the Bureau new powers to make orders, and to ensure that a decision of the discipline committee of a chamber may be appealed only once the decision imposing the penalty has been rendered. Changes are also made to the provisions that deal with the composition of the board of the Chambre de l'assurance de dommages and of the Chambre de la sécurité financière.

The Derivatives Act is amended to provide for better regulation of qualified persons and facilitate the use of cash collateral.

The Securities Act is amended to allow an insider, that is, a person who has privileged information, to trade in securities if the transactions are necessary in order to fulfill a contractual obligation and to prescribe that fraudulent trading in securities is an offence and that the disclosure of false information to the AMF is likewise an offence.

The Act respecting the caisses d'entraide économique, the Act respecting certain caisses d'entraide économique and the Act respecting the sociétés d'entraide économique, now obsolete, are repealed and technical and consequential amendments are made to a number of other Acts.

Finally, this Act contains technical and transitional provisions.

LEGISLATION AMENDED BY THIS ACT:

– Automobile Insurance Act (R.S.Q., chapter A-25);

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

– Act respecting the distribution of financial products and services (R.S.Q., chapter D-9.2);

– Derivatives Act (R.S.Q., chapter I-14.01);

– Act respecting the Société d'habitation du Québec (R.S.Q., chapter S-8);

– Act respecting the Société nationale du cheval de course (R.S.Q., chapter S-18.2.0.1);

– Act respecting trust companies and savings companies (R.S.Q., chapter S-29.01);

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

– Act to amend the Act respecting the Autorité des marchés financiers and other legislative provisions (2008, chapter 7).

LEGISLATION REPEALED BY THIS ACT:

– Act respecting the caisses d'entraide économique (R.S.Q., chapter C-3);

– Act respecting certain caisses d'entraide économique (R.S.Q., chapter C-3.1);

– Act respecting the sociétés d'entraide économique (R.S.Q., chapter S-25.1).

Bill 7

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

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

AUTOMOBILE INSURANCE ACT

1. Section 159 of the Automobile Insurance Act (R.S.Q., chapter A-25) is amended by replacing the second paragraph by the following paragraph:

"No person may be a director unless the person is a resident of Québec and represents an authorized insurer."

2. Section 160 of the Act is repealed.

ACT RESPECTING THE AUTORITÉ DES MARCHÉS FINANCIERS

3. Section 15.6 of the Act respecting the Autorité des marchés financiers (R.S.Q., chapter A-33.2) is amended by replacing "published" in paragraph 3 by "of the International Organization of Securities Commissions or the Multilateral Memorandum of Understanding on Cooperation and Information Exchange of the International Association of Insurance Supervisors, published" and by replacing "cet organisme" in that paragraph in the French text by "cet organisme de régulation".

4. The Act is amended by inserting the following section after section 17:

"**17.1.** A person of good faith who reports a failure to comply with an Act referred to in section 7 to the Authority is not subject to any civil liability for doing so."

5. Section 19.2 of the Act is amended by inserting ", the Business Corporations Act (chapter S-31.1)" after "the Winding-up Act (chapter L-4)" in paragraph 9.

6. The Act is amended by inserting the following section after section 19.5:

"**19.5.1.** A motion by the Authority for the appointment of a receiver must be served on the defendant at least 10 days prior to its presentation. The motion is heard and decided by preference.

The motion is contested orally on the day of its presentation. The parties may adduce detailed affidavits in evidence to establish all the facts needed to support their allegations. The affidavits and all documents referred to must be served on the other party at least two clear juridical days before the day of presentation of the motion."

7. Section 19.6 of the Act is amended by replacing the first paragraph by the following paragraph:

"**19.6.** At the Authority's request, if it is imperative to do so, the Superior Court shall hear the motion without delay in the defendant's absence. The defendant has 10 days after an order is rendered to file a notice of contestation with the Court."

8. Section 19.14 of the Act is amended by replacing "this chapter" by "section 19.1".

9. The Act is amended by inserting the following sections after section 19.15:

"**19.16.** The receiver may, at any time during the receivership mandate, request the approval of fees and expenses by filing with the Superior Court a summary statement of the fees and expenses, together with a notice to the Authority.

"**19.17.** Only the Authority may oppose the request and must do so by filing a notice of opposition with the Superior Court, together with a notice to the receiver, within 30 days after the notice referred to in section 19.16 is sent.

The receiver shall request the Superior Court, within the 10 days after a notice of opposition is filed, to set a hearing date and shall give the Authority notice of the date.

The Superior Court shall hear the parties' oral arguments on the notice of opposition on the day of the hearing and shall then proceed to the taxation of the fees and expenses."

10. The Act is amended by inserting the following section after section 25.1:

"**25.2.** The Authority may, in cases that are not expressly provided for in this Act or an Act referred to in section 7, require the use of a medium or technology it specifies for completing a formality under one of those Acts. It shall determine such requirements as to the form of documents and the manner in which they are to be sent or received as are necessary to allow the use of that medium or technology.

In the cases described in the first paragraph, signature requirements for technology-based documents sent to the Authority, including what may stand in lieu of a signature, are also determined by the Authority."

11. Section 38.2 of the Act is amended

(1) by replacing "the second paragraph of section 115 and section" in the first paragraph by "sections 115.2 and";

(2) by inserting "paragraph 7 of section 115.9 of the Act respecting the distribution of financial products and services," after "under" in the second paragraph.

12. Section 50 of the Act is amended, in the first paragraph,

(1) by replacing "which may be renewed only once" by ", which may be renewed twice only";

(2) by adding the following sentence at the end: "Their terms must be staggered so as to tend toward not more than a third of them expiring in the same year."

13. The Act is amended by inserting the following section after section 57:

"**57.1.** The Council may, in exercising its functions, require any document or information relating to the administration of the Authority. The officers, employees and mandataries of the Authority must, on request, communicate such documents or information to the Council and facilitate their examination."

14. Section 93 of the Act is amended by inserting the following paragraph after the first paragraph:

"The board shall exercise its discretion in the public interest."

15. Section 115.9 of the Act is amended by replacing the second paragraph by the following paragraph:

"In such a case, the person concerned has 15 days after the decision is rendered to file a notice of contestation with the board."

16. Section 115.12 of the Act is amended by replacing "The board may file an authentic copy of each of its decisions at the office of the clerk of the Superior Court of the district in which the residence or domicile of the person concerned is situated" in the first paragraph by "The board or any interested person may file an authentic copy of a decision of the board with the Superior Court in the district in which the residence or domicile of the person who is the subject of the decision is situated".

17. Schedule 1 to the Act is amended by striking out "An Act respecting the caisses d'entraide économique (chapter C-3)", "An Act respecting certain caisses d'entraide économique (chapter C-3.1)", "An Act respecting the disclosure of the compensation received by the executive officers of certain legal persons (chapter I-8.01)" and "An Act respecting the sociétés d'entraide économique (chapter S-25.1)".

ACT RESPECTING THE CAISSES D'ENTRAIDE ÉCONOMIQUE

18. The Act respecting the caisses d'entraide économique (R.S.Q., chapter C-3) is repealed.

ACT RESPECTING CERTAIN CAISSES D'ENTRAIDE ÉCONOMIQUE

19. The Act respecting certain caisses d'entraide économique (R.S.Q., chapter C-3.1) is repealed.

ACT RESPECTING THE DISTRIBUTION OF FINANCIAL PRODUCTS AND SERVICES

20. Section 115 of the Act respecting the distribution of financial products and services (R.S.Q., chapter D-9.2) and section 115.1 of the Act, enacted by section 76 of chapter 7 of the statutes of 2008, are replaced by the following sections:

"**115.** If it is brought to the knowledge of the Bureau de décision et de révision that a firm, any of its directors or officers, or a representative has, by an act or omission, contravened or aided in the contravention of a provision of this Act or the regulations, or that it is necessary in order to protect the public, the Bureau may, once the facts have been established, cancel, revoke or suspend the firm's or the representative's registration or certificate or subject it to restrictions or conditions. The Bureau may also, in all cases, impose an administrative penalty not exceeding $2,000,000 for each contravention.

For the purposes of the first paragraph, before making a request to the Bureau, an interested person within the meaning of section 93 of the Act respecting the Autorité des marchés financiers (chapter A-33.2) must notify the Authority and obtain confirmation from the Authority that it does not itself intend to make such a request. The Authority must inform the interested person in writing of its decision within 10 days after being notified.

"**115.1.** The Bureau de décision et de révision may prohibit a person from acting as a director or officer of a firm on the grounds set out in article 329 of the Civil Code or when a sanction has been imposed on the person under this Act, the Derivatives Act (chapter I-14.01) or the Securities Act (chapter V-1.1).

The prohibition imposed by the Bureau may not exceed five years.

The Bureau may, at the request of the person concerned, lift the prohibition on such conditions as it considers appropriate.

"**115.2.** If a firm fails to comply with section 81, 82, 83 or 103.1 or to file documents as required under this Act or the regulations, the Authority may suspend the firm's registration, subject it to restrictions or conditions or impose an administrative monetary penalty not exceeding $5,000 for each contravention. The Authority may cancel the registration of a firm that fails to comply with section 82 or, for the second or subsequent time, fails to comply with section 81, 83 or 103.1.

For the purposes of the first paragraph, the Authority may determine, by regulation, the amounts that may be imposed as a penalty for failure to file documents as required under this Act or the regulations, as well as the conditions subject to which a penalty may be imposed.

"**115.3.** The Authority may, for the purposes or in the course of an investigation, request the Bureau de décision et de révision

(1) to order the representative or firm or any other person or entity actually or potentially under investigation not to dispose of funds, securities or other property in their possession;

(2) to order the representative or firm or any other person or entity 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 another person; or

(3) to order any other person or entity not to dispose of funds, securities or other property referred to in subparagraph 2.

An order issued under the first paragraph is effective for a renewable period of 120 days as of the time the party concerned is notified.

The party concerned must be given at least 15 days' notice of any hearing during which the Bureau de décision et de révision is to consider an extension. The Bureau may order the extension if the representative, firm, other person or entity does not request to be heard or fails to establish that the reasons for the initial order have ceased to exist.

"**115.4.** If the person or entity named in an order under subparagraph 3 of the first paragraph of section 115.3 has put a safety deposit box at the disposal of a representative, firm or other person or entity or has allowed the use of a safety deposit box, the person or entity must immediately notify the Authority.

On the Authority's request, the person or entity named in the order must 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 representative, firm, other person or entity under investigation.

"**115.5.** An order issued under section 115.3 that names a bank or a financial institution applies only to the agencies or branches specified.

"**115.6.** An order issued under section 115.3 also applies to funds, securities and other property received after the order becomes effective.

"**115.7.** The representative, the firm and any person or entity directly affected by an order issued under section 115.3, if in doubt as to the application of the order to particular funds, securities or other property, may apply to the Bureau de décision et de révision for clarification.

"**115.8.** An order issued under section 115.3 is admissible for publication in the same register as that in which rights in the funds, securities or other property covered by the order are required to be published or admissible for publication.

Likewise, the order may be published in a register kept outside Québec if such orders are admissible for publication under the Act governing the register.

"**115.9.** Following a failure to comply with an obligation under this Act, the Authority may request the Bureau de décision et de révision to issue one or more of the following orders in order to remedy the situation or deprive a representative, a firm or other person or entity of the profit realized as a result of the non-compliance:

(1) an order requiring a representative or firm or any other person or entity to comply with

(*a*) any provision of this Act;

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

(*c*) any regulation, rule or policy of a self-regulatory organization, or any decision rendered by the self-regulatory organization on the basis of such a regulation, rule or policy;

(2) an order directing a representative or firm or any other person or entity to submit to a review of practices and procedures and institute such changes as may be directed by the Authority;

(3) an order rescinding any insurance- or annuity-related transaction entered into by a representative or firm or any other person or entity, and directing the representative, firm, other person or entity to refund any part of the money paid on entering into the transaction;

(4) an order directing a representative or firm or any other person or entity to produce compliant financial statements or an accounting in such a form as may be determined by the Bureau;

(5) an order directing a legal person to hold a shareholders' meeting;

(6) an order directing a representative or firm or any other person or entity to rectify a register or other record;

(7) an order directing a representative or firm or any other person or entity to disgorge to the Authority amounts obtained as a result of the non-compliance.

"**115.10.** In addition to imposing a measure by order, the Bureau de décision et de révision may require the person or entity named in the order 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."

21. Section 146.1 of the Act is amended by replacing "The first paragraph of section 115 applies" and "The second paragraph of that section" by "Sections 115, 115.1 and 115.3 to 115.9 apply" and "Section 115.2", respectively.

22. Section 230 of the Act is repealed.

23. Section 288 of the Act is amended

(1) by replacing "two of whom shall be appointed by the Minister to represent the general public for a term of three years" in the first paragraph by "including eight from the industry and five who qualify as independent members";

(2) by striking out "to represent the general public" in the second paragraph.

24. Section 289 of the Act is amended by replacing "The board members of the Chambre de la sécurité financière, except those appointed by the Minister, shall be elected by" in the first paragraph by "The members of the board of the Chambre de la sécurité financière who are not appointed by the Minister shall be elected, according to the procedure set out in the Chamber's internal management by-law, by".

25. Section 290 of the Act is replaced by the following sections:

"**290.** The members of the board of the Chambre de l'assurance de dommages who are from the industry shall be elected, according to the procedure set out in the Chamber's internal management by-law, by damage insurance agents, damage insurance brokers and claims adjusters.

The board members who qualify as independent members shall be appointed by the Minister, on a recommendation of the board.

The situations that the board must examine in order to determine whether a board member qualifies as an independent member shall be specified in the Chamber's internal management by-law.

The board shall send the Minister any document required by the Minister for the purpose of appointing an independent member.

"**290.1.** The terms of the members of the board of the Chambre de l'assurance de dommages who are appointed by the Minister shall be determined by the Minister and may not exceed three years. They may be renewed consecutively twice only.

The board members' terms must be staggered so as to tend toward not more than a third of them expiring in the same year.

"**290.2.** Any member of the Chambre de la sécurité financière may, if eligible, run for a seat on the Chamber's board.

In the case of the Chambre de l'assurance de dommages, only an officer of an insurer or of a firm registered for the damage insurance or claims adjustment sector may, if eligible, run for a seat on the Chamber's board.

A member or an officer may run for one seat only.

"**290.3.** The eligibility requirements shall be set out in the Chamber's internal management by-law.

In the case of the Chambre de l'assurance de dommages, the elected board members must include officers of insurers or firms from each of the following groups:

(1) insurers that distribute their products mainly through damage insurance agents;

(2) firms, other than insurers, that are registered for the damage insurance sector and pursue their activities through damage insurance brokers;

(3) insurers that distribute their products mainly through damage insurance brokers; and

(4) firms, other than insurers, that are registered for the claims adjustment sector.

The number of officers of insurers who are elected as board members under subparagraph 1 of the second paragraph by agents referred to in that subparagraph

must be in the same proportion to all elected board members as those agents are to the Chamber's total membership.

The number of officers of firms who are elected as board members under subparagraph 2 of the second paragraph by brokers referred to in that subparagraph must be in the same proportion to all elected board members as those brokers are to the Chamber's total membership. At least one of those board members must be an officer of a firm comprising 15 or fewer brokers.

The number of officers of insurers or firms from those referred to in subparagraphs 3 and 4 of the second paragraph who are elected as board members by claims adjusters must be in the same proportion to all elected board members as claims adjusters are to the Chamber's total membership.

All elected board members must hold a certificate in the damage insurance or claims adjustment sector, except one board member out of those elected under subparagraph 1 of the second paragraph, who may not be an officer holding such a certificate."

26. Section 293 of the Act is replaced by the following section:

"**293.** All the members of a Chamber are entitled to vote."

27. Section 294 of the Act is replaced by the following section:

"**294.** In the case of representatives in insurance of persons and mutual fund dealer representatives, the election shall be held on the basis of regions delimited by the internal management by-law of the Chambre de la sécurité financière.

In all other cases, the election is held in accordance with the rules determined by the internal management by-law of the Chamber concerned."

28. Section 297 of the Act is amended by replacing "candidates elected to" by "members of the board of".

29. Section 299 of the Act is amended

(1) by replacing "of a Chamber" by "of the Chambre de la sécurité financière";

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

"The same holds for the members of the board of the Chambre de l'assurance de dommages who are from the industry."

30. Section 305 of the Act is amended by adding ", unless otherwise provided in its internal management by-law" at the end.

31. Section 312 of the Act is amended by replacing "in the first paragraph of section 290" in the fifth paragraph by "in section 290".

32. Section 379 of the Act is amended by inserting the following paragraph after the first paragraph:

"However, a decision under which a penalty is to be imposed may not be appealed until the penalty has been imposed."

33. Chapter III of Title VII of the Act, comprising sections 403 to 407, is repealed.

DERIVATIVES ACT

34. Section 2 of the Derivatives Act (R.S.Q., chapter I-14.01) is amended by replacing "particularly in" in paragraph 5 by "particularly through rules applicable to derivatives clearing and to".

35. Section 3 of the Act is amended

(1) by inserting "the business of" after "engage in" in the portion before paragraph 1 of the definition of "dealer";

(2) by inserting ", a contract for difference" after "a futures contract" in the definition of "derivative";

(3) by inserting "a trade repository," after "an information processor," in the definition of "regulated entity";

(4) by adding the following definition at the end:

""trade repository" means an entity that centrally collects and maintains over-the-counter derivatives data."

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

"**7.** Titles III and IV of this Act and Chapter III.1 of Title I of the Act respecting the Autorité des marchés financiers (chapter A-33.2) do not apply to activities or transactions in over-the-counter derivatives involving accredited counterparties only or in any other case specified by regulation.

However, Chapter III.1 of Title I of the Act respecting the Autorité des marchés financiers does apply if a derivative is offered or entered into in the circumstances described in section 150, 151 or 153.

Sections 94 to 114 and Division III of Chapter I and Divisions I and II of Chapter II of Title V do not apply to the entities referred to in paragraph 1 or

2 of the definition of "accredited counterparty" in section 3 or to the Business Development Bank of Canada."

37. Section 9 of the Act is amended by adding "or that the derivative otherwise departs from this Act, unless the cause of invalidity is set out in the terms of the derivative" at the end.

38. The Act is amended by inserting the following after section 11:

"**CHAPTER III**

"MARGIN OR SETTLEMENT DEPOSIT

"**11.1.** An instrument under which a person is required to pay an amount of money to a party to a derivative, including as a margin or settlement deposit, and which allows that party, in all circumstances described in the instrument, to extinguish or reduce, by means of a set-off, its obligation to repay that amount to the person is enforceable against third persons without further formality.

Such an instrument is governed by the law expressly designated in it or the designation of which may be inferred with certainty from the terms of the instrument.

"**11.2.** For the purposes of section 11.1, the following are considered to be derivatives:

(1) an exchange, securities lending or securities redemption contract, including any contract governing such a contract; and

(2) a contract between a clearing house and one of its members, and the rules governing their relationship."

39. Section 12 of the Act is amended by inserting ", a trade repository" after "an information processor" in the first paragraph.

40. Section 18 of the Act is amended

(1) by replacing "26" by "25";

(2) by adding "or trade repositories" at the end.

41. Section 22 of the Act is amended by inserting "of an amendment to its operating rules" after "self-certification" in the second paragraph.

42. Section 82 of the Act is amended by replacing "the derivative authorized by the Authority" in the second paragraph by "the marketing of the derivative authorized by the Authority, subject to the conditions prescribed by regulation".

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

"**82.1.** A qualified person must maintain a corporate and organizational structure enabling the person to carry on activities effectively and must have adequate human, financial and technological resources to that end.

"**82.2.** A qualified person must have appropriate business policies and procedures in place and good governance practices, especially as regards the independence of directors and the auditing of financial statements.

"**82.3.** A qualified person must take the necessary measures to ensure the security and reliability of the person's transactions and activities.

"**82.4.** A qualified person must offer derivatives to the public through a dealer, or register with the Authority as a dealer.

"**82.5.** A qualified person must notify the Authority, in accordance with the rules prescribed by regulation, of any change in the information submitted when applying for qualification.

"**82.6.** A qualified person must notify the Authority and the person's counterparties, including those waiting to trade in a derivative, within the time prescribed by regulation, of any change that may affect the trading of a derivative or existing transactions in a derivative.

"**82.7.** A qualified person is responsible for the property entrusted to the person by counterparties, and must segregate the counterparties' property from the person's own property and maintain separate accounting records."

44. Section 83 of the Act is amended

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

"**83.** A qualified person must, before marketing a derivative, obtain the authorization of the Authority. The Authority may refuse to give, or impose restrictions or conditions on, its authorization if it considers it necessary for the protection of the public.";

(2) by replacing "A derivative is authorized" in the second paragraph by "The marketing of a derivative is authorized".

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

"**83.1.** On the request of the Authority or of any interested person, the Board may, if it considers that a qualified person is not in compliance with this

Act, revoke or suspend the rights conferred by qualification or impose restrictions or conditions on the exercise of those rights."

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

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

"(1.1) an accredited counterparty;";

(2) by inserting the following subparagraph after subparagraph 5:

"(5.1) a trade repository;";

(3) by inserting the following subparagraph after subparagraph 7:

"(7.1) a qualified person;".

47. Section 105 of the Act is amended by inserting "15 days'" before "notice" in the first paragraph.

48. Section 115 of the Act is amended by replacing the second paragraph by the following paragraph:

"The Authority may also inspect the affairs of a regulated entity or a qualified person to verify compliance with this Act or with any decision of the Authority, or to verify how the entity or person exercises the functions and powers delegated by the Authority."

49. Section 115.1 of the Act is amended by replacing "or adviser" by ", adviser or qualified person" and by replacing ", at the dealer's or adviser's expense, to conduct" by "to conduct, at their expense,".

50. Section 123 of the Act is amended by replacing "Canadian bank or" by "bank or a".

51. Section 126 of the Act is replaced by the following section:

"**126.** An order issued under section 119 is admissible for publication in the same register as that in which rights in the funds, securities or other property covered by the order are required to be published or admissible for publication.

Likewise, the order may be published in a register kept outside Québec if such orders are admissible for publication under the Act governing the register."

52. Section 134 of the Act is amended

(1) by replacing "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" in the first paragraph

by "that a person has, by an act or omission, contravened or aided in the contravention of" and by replacing both occurrences of "offender" in that paragraph by "person";

(2) by striking out the second paragraph;

(3) by adding "for each contravention" at the end of the third paragraph.

53. The Act is amended by inserting the following section after section 135:

"**135.1.** The Board may prohibit a person from acting as a director or officer of a regulated entity, dealer, adviser or qualified person on the grounds set out in article 329 of the Civil Code or if a penalty has been imposed on the person under this Act, the Act respecting the distribution of financial products and services (chapter D-9.2) or the Securities Act (chapter V-1.1).

The prohibition may not exceed five years.

The Board may, on the request of the person concerned, lift the prohibition on such conditions as it considers appropriate."

54. The Act is amended by inserting the following section after section 146:

"**146.1.** No person shall represent that the person is registered under this Act unless the representation is true.

No registered person shall represent that the person is registered without specifying the category of registration."

55. Section 148 of the Act is amended by adding the following paragraph after paragraph 5:

"(6) to provide false documents or information, or access to false documents or information, to the Authority or a staff member of the Authority in the course of activities governed by this Act."

56. Section 152 of the Act is amended

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

"**152.** A person who, by any means, makes a misrepresentation

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

(2) in the risk information document or in any other information required to be given to the customer under section 70, or

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

is guilty of an offence.";

(2) by striking out "and section 153" in the second paragraph.

57. Section 153 of the Act is repealed.

58. Section 154 of the Act is amended by replacing "qu'une prime" in the French text by "d'une prime".

59. Section 155 of the Act is amended by inserting "or who has not had the derivative authorized as required under section 82 or 83" after "section 82".

60. Section 157 of the Act is amended by inserting "or does not have the derivative authorized as required under section 82 or 83" after "section 82".

61. Section 175 of the Act is amended, in the first paragraph,

(1) in subparagraph 1,

(*a*) by inserting "or prohibiting" after "rules concerning";

(*b*) by replacing "and manipulation" by ", manipulation and conflicts of interest";

(2) by adding "and restrictions relating to the ownership and control of an exchange, a clearing house or an alternative trading system" at the end of subparagraph 9;

(3) by adding ", including derivatives clearing rules" at the end of subparagraph 11;

(4) by replacing "and the public" in subparagraph 12 by ", the public or a trade repository that is not recognized as such";

(5) by inserting the following subparagraph after subparagraph 21:

"(21.1) prescribe the conditions on which the Authority may authorize the marketing of a derivative for the purposes of sections 82 and 83;";

(6) by inserting the following subparagraph after subparagraph 22:

"(22.1) prescribe rules relating to the activities of qualified persons;".

ACT RESPECTING THE SOCIÉTÉ D'HABITATION DU QUÉBEC

62. Section 90.1 of the Act respecting the Société d'habitation du Québec (R.S.Q., chapter S-8) is amended by striking out "the Act respecting the sociétés d'entraide économique (chapter S-25.1),".

ACT RESPECTING THE SOCIÉTÉ NATIONALE DU CHEVAL DE COURSE

63. Section 1 of the Act respecting the Société nationale du cheval de course (R.S.Q., chapter S-18.2.0.1) is amended by replacing the second paragraph by the following paragraph:

"The sole purpose of the Société is to develop the immovable identified in subparagraph 1 of the first paragraph of section 12."

64. Section 2 of the Act is amended by adding the following paragraph at the end:

"On the expiry of their terms, the members of the board of directors remain in office until they are replaced or reappointed."

65. Section 11 of the Act is amended by replacing the first paragraph by the following paragraph:

"**11.** The Société shall send the Minister its financial statements, together with the auditor's report, within 30 days after the end of its fiscal year."

66. Section 13 of the Act is amended

(1) by striking out the second sentence of the first paragraph;

(2) by adding "and the sums required for that purpose shall be taken out of the Consolidated Revenue Fund" at the end of the second paragraph.

ACT RESPECTING THE SOCIÉTÉS D'ENTRAIDE ÉCONOMIQUE

67. The Act respecting the sociétés d'entraide économique (R.S.Q., chapter S-25.1) is repealed.

ACT RESPECTING TRUST COMPANIES AND SAVINGS COMPANIES

68. Section 3 of the Act respecting trust companies and savings companies (R.S.Q., chapter S-29.01) is amended by striking out ", by the Act respecting the sociétés d'entraide économique (chapter S-25.1),".

69. Section 329 of the Act is amended by replacing "section 9" by "section 12".

SECURITIES ACT

70. The Securities Act (R.S.Q., chapter V-1.1) is amended by inserting the following section after section 10.1:

"**10.1.1.** An instrument under which a person is required to pay an amount of money to a securities intermediary within the meaning of the Act respecting the transfer of securities and the establishment of security entitlements (chapter T-11.002) or to a clearing house, including as a margin or settlement deposit, and which allows the intermediary or clearing house, in all circumstances described in the instrument, to extinguish or reduce, by means of a set-off, its obligation to repay that amount to the person is enforceable against third persons without further formality.

Such an instrument is governed by the law expressly designated in it or the designation of which may be inferred with certainty from the terms of the instrument."

71. Section 30 of the Act is amended by replacing "or any amendment thereto" by ", any other document, prescribed by regulation, standing in lieu of a prospectus or any amendment to the prospectus or to such a document."

72. Section 187 of the Act is amended, in the first paragraph,

(1) by replacing "except in the following cases" in the portion before subparagraph 1 by "except if he can prove that", by replacing "avails himself" in subparagraph 2 by "is availing himself" and by adding "or" at the end of that subparagraph;

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

"(3) he is required to do so under a contract the terms of which are set out in writing and which was entered into before he became aware of the information."

73. Section 192.1 of the Act is amended

(1) by striking out "and the person specifies the category of registration";

(2) by adding the following paragraph:

"No registered person shall represent that the person is registered without specifying the category of registration."

74. Section 195 of the Act is amended by adding the following paragraph after paragraph 5:

"(6) to provide false documents or information, or access to false documents or information, to the Authority or a member of the personnel of the Authority in the course of activities governed by this Act."

75. Section 197 of the Act is amended by striking out subparagraph 4 of the first paragraph.

76. The Act is amended by inserting the following section after section 199:

"**199.1.** A person who directly or indirectly engages or participates in any transaction or series of transactions in securities or any trading method relating to a transaction in securities, 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 security; or

(2) perpetrates a fraud on any person."

77. Section 204.1 of the Act is amended by replacing "or 197" by ", 197 or 199.1".

78. Section 214 of the Act is amended by adding the following paragraph at the end:

"For the purposes of this section, a reference to a prospectus includes a document, prescribed by regulation, standing in lieu of a prospectus."

79. Section 253 of the Act is amended by replacing "a bank or an authorized foreign bank listed in Schedule I, II or III to the Bank Act (Statutes of Canada, 1991, chapter 46), a loan and investment society or trust company" by "a financial institution".

80. Section 256 of the Act is replaced by the following section:

"**256.** An order issued under section 239 or 249 is admissible for publication in the same register as that in which rights in the funds, securities or other assets covered by the order are required to be published or admissible for publication.

Likewise, the order may be published in a register kept outside Québec if such orders are admissible for publication under the Act governing the register."

81. Section 273.1 of the Act is amended

(1) by replacing "that a reporting issuer, an issuer having made a distribution pursuant to a prospectus exemption under section 43 or prescribed by regulation, or a person registered pursuant to section 148 or 149, has failed to comply with" in the first paragraph by "that a person has, by an act or omission, contravened, or aided in the contravention of,";

(2) by striking out the second paragraph;

(3) by adding "for each contravention" at the end of the third paragraph.

82. Section 273.3 of the Act is amended by adding ", the Act respecting the distribution of financial products and services (chapter D-9.2) or the Derivatives Act (chapter I-14.01)" at the end of the first paragraph.

83. Section 323.5 of the Act is repealed.

84. Section 331.1 of the Act, amended by section 138 of chapter 58 of the statutes of 2009, is again amended by replacing "on the conditions" in paragraph 14 by "in the circumstances and on the other conditions".

85. Section 338 of the Act is amended by striking out the second paragraph.

ACT TO AMEND THE ACT RESPECTING THE AUTORITÉ DES MARCHÉS FINANCIERS AND OTHER LEGISLATIVE PROVISIONS

86. Section 76 of the Act to amend the Act respecting the Autorité des marchés financiers and other legislative provisions (2008, chapter 7) is repealed.

TRANSITIONAL AND FINAL PROVISIONS

87. The Bureau de décision et de révision may exercise its powers under the following provisions in respect of a contravention or a failure to comply committed before 30 November 2011:

(1) sections 115, 115.1, 115.3 and 115.9 of the Act respecting the distribution of financial products and services (R.S.Q., chapter D-9.2), as enacted by section 20;

(2) sections 134 and 135.1 of the Derivatives Act (R.S.Q., chapter I-14.01), as enacted by sections 52 and 53; and

(3) sections 273.1 and 273.3 of the Securities Act (R.S.Q., chapter V-1.1), as enacted by sections 81 and 82.

88. A member of the board of the Chambre de l'assurance de dommages in office on 30 November 2011 remains in office until the member's replacement by a member appointed by the Minister of Finance or elected by the members of the Chamber.

All board members from the industry must be elected by 30 November 2012. The board must also, by that date, recommend to the Minister of Finance candidates who qualify as independent members.

Any vacancy on the board between 30 November 2011 and the date the board members are replaced, including a vacancy in a seat reserved for a member appointed by the Minister of Finance, is filled by the board.

89. Any person exempted from obtaining qualification under section 82 of the Derivatives Act must, before (*insert the date that occurs 30 days after the date of coming into force of section 42*), file an application for qualification with the Authority.

Despite any stipulation to the contrary, the exemption referred to in the first paragraph terminates on the date on which the Authority makes a decision on the application for qualification.

90. This Act comes into force on 30 November 2011, except section 20 insofar as it enacts the second paragraph of section 115.2 of the Act respecting the distribution of financial products and services, and sections 42 to 44 and 59 to 61, which come into force on the date or dates to be set by the Government.