

REGULATION TO AMEND THE SECURITIES REGULATION¹

Securities Act

(R.S.Q. c. V-1.1, s. 331.1, pars. (1), (2), (3), (6), (7), (8), (9), (11), (12), (13), (25), (26), (27) and (34); s. 331.2; 2007, c. 15)

1. Section 20 of the Securities Regulation is repealed.
2. Section 24 of the Regulation is repealed.
3. Subparagraph (2) of section 25 of the Regulation is repealed.
4. Title V of the Regulation, including sections 190 to 252.1, is replaced by the following:

"TITLE V

"Securities dealers and advisers and investment fund managers

"CHAPTER I

"Conditions and effects of registration

"**190.** An applicant for registration as a securities dealer or adviser, investment fund manager, chief compliance officer or ultimate designated person shall include with his application for registration the fees prescribed by Chapter II of Title VI.

"**191.** Registration is valid until it is cancelled. It requires the annual payment of fees prescribed by Chapter II of Title VI.

"**192.** Registration as a dealer or as a representative of a dealer is not required for the following:

(1) an issuer that limits its activities as a dealer to the distribution, under a prospectus exemption pursuant to section 41 of the Act, of securities of its own issue, provided that such distributions are only a secondary activity of the issuer;

(2) a bank or an authorized foreign bank listed in Schedules I, II and III to the Bank Act (S. C. 1991, c. 46 [R.S.C. c. B-1.01]), the Caisse centrale Desjardins du Québec established under the Act respecting the Mouvement Desjardins (S.Q. 1989, c. 113), a financial services cooperative within the meaning of the Act respecting financial services cooperatives (chapter C-67.3) or a société d'entraide économique or federation of sociétés d'entraide économique governed by the Act respecting the sociétés d'entraide économique (chapter S-25.1) to the extent that it distributes or sells securities pursuant to paragraphs (1) and (2) of section 41 of the Act;

(3) a bank or an authorized foreign bank listed in Schedules I, II and III to the Bank Act (S. C. 1991, c. 46 [R.S.C. c. B-1.01]), the Caisse centrale Desjardins du Québec established under the Act respecting the Mouvement des caisses Desjardins (S.Q. 1989, c. 113), a financial services cooperative within the meaning of the Act respecting financial services cooperatives (chapter C-67.3) or a trust company licensed under the Act respecting trust companies and savings companies (chapter S-29.01) to the extent that its activities as a dealer are solely to execute on an exchange or on the over-the-counter market, through a registered dealer, orders received without solicitation or advertisement;

¹ The Securities Regulation, enacted by Order-in-Council No. 660-83 dated March 30, 1983 (1983, G.O. 2, 1269), was last amended by the Regulations approved by Ministerial Orders No. 2008-03 dated January 22, 2008 (2008, G.O. 2, 561) and No. 2007-09 dated December 14, 2007 (2007, G.O. 2, 4077). For previous amendments, refer to the "Tableau des modifications et Index sommaire," Éditeur officiel du Québec 2007, updated to September 1, 2007.

(4) a bank or an authorized foreign bank listed in Schedules I, II and III to the Bank Act (S. C. 1991, c. 46 [R.S.C. c. B-1.01]) or a trust company licensed under the Act respecting trust companies and savings companies (chapter S-29.01), to the extent that it transacts bonds on its premises in response to unsolicited orders, by buying or selling and carrying out the order for its own account with a registered dealer.

"**193.** A group savings plan or scholarship plan dealer must, while registered, maintain liability insurance that is consistent with the requirements in section 194. It must also ensure that every representative acting on its behalf without being an employee carries liability insurance that is consistent with the requirements in section 195.

"**194.** The liability insurance contract of a group savings plan or scholarship plan dealer must satisfy the following requirements:

(1) The coverage amount must not be less than \$500,000 per claim and, for each 12-month period, not less than:

- (a) \$1,000,000 for a dealer having 3 representatives or less acting on its behalf;
- (b) \$2,000,000 for a dealer having more than 3 representatives acting on its behalf;

(2) The insurance contract may stipulate a deductible not exceeding:

- (a) \$10,000 for a dealer having 3 representatives or less acting on its behalf;
- (b) \$25,000 for a dealer having more than 3 representatives acting on its behalf;

(3) The insurance contract must also contain provisions to the following effect:

(a) that the coverage shall extend to the liability arising from the fault, errors, negligence, or omissions committed in the pursuit of the dealer's activities and from those committed by its mandataries, its employees or the trainees of its representatives, in the performance of their duties, regardless of whether or not such persons are still so engaged on the date of the claim;

(b) that the coverage provided in respect of the activities of the dealer for the period during which the contract is in effect will continue to apply beyond the insurance period provided for in the contract in respect of the activities contemplated by such coverage for a further term of five years from the time the dealer was struck off or suspended from the roll;

(c) that the time within which an insurer must notify the Authority of its intention not to renew or its intention to cancel the contract is 30 days prior to the date of non-renewal or cancellation;

(d) that the insurer must notify the Authority upon receiving notice of non-renewal or cancellation of an insurance contract;

(e) that the insurer must give notice to the Authority of the receipt of any claim, irrespective of whether or not the insurer decides to honour the claim.

The amount of the deductible stipulated in the insurance contract may nevertheless be greater than the amount set out in subparagraphs (a) and (b) of subparagraph (2) of the first paragraph, provided that the insured maintains at all times

liquid assets at least equal to the amount stipulated in the contract. "Liquid assets" means the total of cash and securities immediately convertible into cash.

"195. The insurance contract covering the professional liability of a representative acting on behalf of, but not employed by, a dealer contemplated in section 194, must provide for the following:

(1) a minimum coverage amount of \$500,000 per claim and \$1,000,000 per year;

(2) any deductible amount stipulated in the contract may not exceed \$10,000;

(3) express stipulations to the effect that:

(a) coverage is provided for liability arising from the fault, errors, negligence, or omissions committed by the representative in pursuing activities as a representative, or arising from the fault, errors, negligence, or omissions committed by the representative's mandataries, employees or trainees in the performance of their duties, regardless of whether or not such persons are still so engaged on the date of the claim;

(b) the coverage provided in respect of the activities of the representative during the period for which the contract is in effect extends beyond the period of insurance provided for therein for a further term of 5 years from the date the representative ceases to pursue activities, irrespective of whether or not he is still alive;

(c) the insurer must advise the Authority of its intention not to renew the contract or to cancel the contract 30 days prior to the date of non-renewal or cancellation;

(d) the insurer must notify the Authority upon receiving notice of non-renewal or cancellation of an insurance contract;

(e) the insurer must notify the Authority upon receiving any claim, regardless of whether the insurer decides to honour the claim.

"196. An investment dealer and, where applicable, an exempt market dealer and a dealer with a restricted practice, must participate in a contingency fund deemed acceptable to the Authority.

"197. To engage in brokerage activities in connection with loans secured by immovable hypothec, a representative of a group savings plan dealer or a scholarship plan dealer must satisfy the conditions in paragraph (1) of section 2 of the Regulation respecting brokerage activities in connection with loans secured by immovable hypothec, adopted May 21, 1999 under resolution No. 99.05.77 and published in the Bulletin of the Bureau des services financiers (BSF) No. 5 dated November 11, 1999.

The representative shall include with his application the fees prescribed by Chapter II of Title VI.

"CHAPTER II

"TRANSACTIONS INTENDED TO FIX OR STABILIZE THE MARKET PRICE OF A SECURITY

"198. Any transaction intended to fix or stabilize the market price of a security is prohibited except where it is made by the firm underwriter from the time of the receipt for the prospectus in its final form to the end of the distribution or by the firm purchaser during a secondary distribution for the sole purpose of facilitating the distribution or the secondary distribution, and in accordance with the following conditions:

(1) the transaction is made at a market price that is not higher than the bid price of the securities being the object of the distribution or of the secondary distribution;

(2) the transaction is made only for the purpose of preventing or delaying a decline in the open market price of a security;

(3) the dealer who effects the transaction does not have priority over another person who wishes to buy at the same price;

(4) the transaction is not made on a security being distributed during a distribution or a secondary distribution made through the facilities of a recognized exchange.

"199. The requirements of section 198 are without application in the case of transactions made on the floor of an exchange recognized by the Authority and in accordance with the operating rules of that exchange by a specialist acting within the scope of his function.

"200. Any transaction intended to fix or stabilize the market price of the securities proposed in exchange is prohibited during a take-over bid by way of exchange.

"CHAPTER III "DERIVATIVES ACTIVITIES

"201. For the purposes of this chapter:

"derivative": means a clearing corporation option, a futures contract, an option on futures, an over-the-counter option, a forward contract or a debt-like security;

"debt-like security": means a security (other than a conventional convertible security or a conventional floating rate debt instrument) which evidences an indebtedness of the issuer where the amount of interest and/or principal to be paid to the holder is linked in whole or in part by formula to the appreciation or depreciation in the market price, value or level of one or more underlying interests on a predetermined date or dates, or where the security provides the holder with a right to convert or exchange the security for the underlying interest or to purchase the underlying interest, provided that, if on the date of initial issue the value of the component which is linked to an underlying interest accounts for less than 20% of the total market value of the security, the security will not be considered to be a debt-like security but instead will be considered to be a debt.

"202. A securities adviser who intends to provide advice on derivatives shall obtain the Authority's approval.

"203. The officer who intends to act as the officer in charge of derivatives for an investment dealer shall comply with the requirements of the self-regulatory organizations of which the dealer is a member.

"204. The officer who intends to act as the officer in charge of derivatives for an adviser shall comply with the following requirements:

(1) have at least three years' experience in the field of derivatives;

(2) have successfully completed the courses required by self-regulatory organizations for a dealer's officer.

"205. An applicant for registration as a representative of an investment dealer or the representative of an investment dealer who wishes to trade derivatives shall have successfully completed the courses required by the self-regulatory organizations of which the dealer is a member.

"206. An applicant for registration as a representative of a securities adviser or a representative of a securities adviser who wishes to act as an adviser in derivatives shall comply with the following requirements:

- (1) have at least two years' pertinent experience in the field of derivatives;
- (2) have successfully completed the courses required by self-regulatory organizations for a dealer's representative.

"207. A person who intends to carry out transactions on options on commodities or currencies exclusively for the account of hedgers, is exempted from registration as a dealer if he fulfills the following conditions:

- (1) he is an approved participant of the Montréal Exchange;
- (2) he is subject to the regulations and the rules of operation of the Montréal Exchange with respect to those options;
- (3) the person responsible for the trading of those options meets the professional training required by the Montréal Exchange.

"Hedger" means a person who normally carries on a professional activity which exposes him to a price risk and who offsets that risk through transactions in markets where options or futures contracts suited to protect him against such risk are traded."

TRANSITIONAL AND FINAL PROVISIONS

5. Notwithstanding section 4, sections 207 to 209 and section 211 shall apply, with the necessary modifications, until *[indicate the date occurring one year after the date of the coming into force of the Regulation]*.

6. Notwithstanding section 4, sections 213 and 214 of the Regulation shall apply, with the necessary modifications, until *[indicate the date occurring 6 months after the date of the coming into force of the Regulation]*.

7. This Regulation comes into force on • , 2009.