

Bill 107 Restructuring the regulation of Québec's financial sector¹



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The Agence nationale d'encadrement du secteur financier

The Act respecting the Agence nationale d'encadrement du secteur financier was enacted by the National Assembly on December 11, 2002. This Act, known as "Bill 107", establishes a new regulatory structure for the Québec financial sector. Bill 107 implements most of the recommendations of the December 2001 *Report of the Task Force on Financial Regulation in the Québec Financial Sector*, which based its proposal of a single regulatory body on its analysis of the recently proposed amendments to the regulatory structures of the financial sectors in Ontario, France and the U.K.

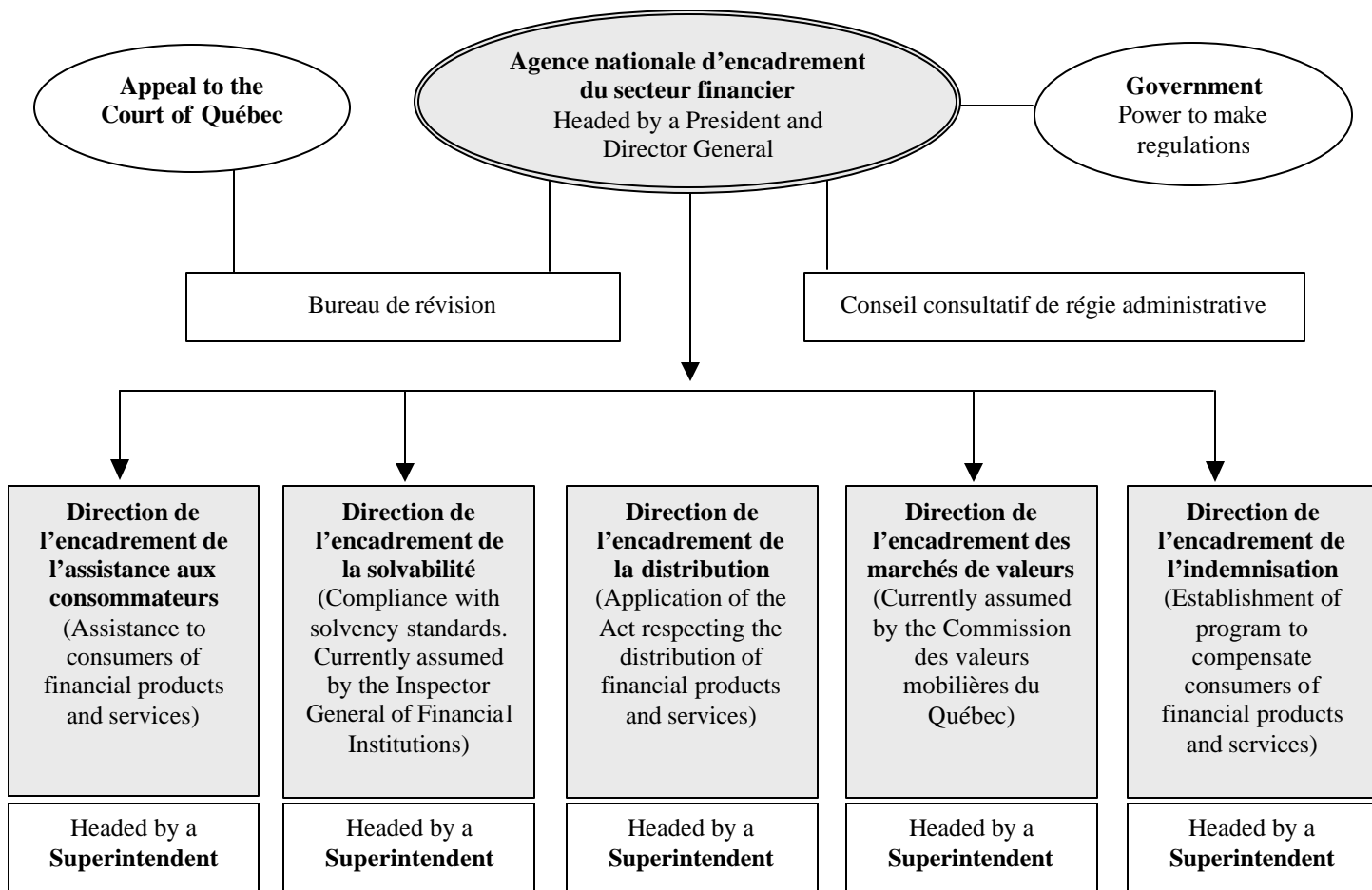
The Agence nationale d'encadrement du secteur financier (the "Agency") is intended to assist consumers by replacing a wide array of existing regulatory bodies, namely the *Bureau des services financiers*, the *Fonds d'indemnisation des services financiers*, the *Commission des valeurs mobilières du Québec*, and the *Régie de l'assurance-dépôts du Québec*, with a "single window".

The Agency will be administered by one person, the President and Director General. The President and Director General will delegate powers to between three and five Superintendents who will be responsible for the following

divisions within the Agency: the *Direction de l'encadrement de l'assistance aux consommateurs*, the *Direction de l'encadrement de la distribution*, the *Direction de l'encadrement des marchés de valeurs*, and the *Direction de l'encadrement de l'indemnisation*. A securities review office (the "*Bureau de décision et de révision en valeurs mobilières*") will review decisions made by the Agency or any self-regulatory organization recognized as such under the *Securities Act* (Québec). Finally, an advisory council, the "*Conseil consultatif de régie administrative*" will advise the Agency on the consistency of its actions with its mission, on the corporate governance of the Agency, and on the appointment of the Agency's Superintendents.

Bill 107 grants the Agency the power to authorize any entity to carry on securities trading or clearing activities in Québec. Stock exchanges, securities clearing-houses and professional associations currently recognized as Self-Regulatory Organizations ("SROs") under the Act are expressly authorized to continue carrying on their activities in Québec, as are any of the above entities that have previously received an exemption from the Commission des valeurs mobilières du Québec (such as the Toronto Stock Exchange and the TSX Venture Exchange). The Mutual Fund Dealers Association and the Investment Dealers Association, which are not currently recognized as SROs, have been granted six months from the coming

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into force of the article of Bill 107 that repeals current article 351 of the Act to either seek recognition or an exemption.

Bill 107 creates a transition office (the "*Bureau de transition*") to establish the Agency and facilitate the implementation of the new regulatory framework. The Agency is intended to be operational by the end of 2003.

Amendments to the *Securities Act* (Québec)

Bill 107 also makes a number of amendments to the *Securities Act* (Québec) (the "Act"), which came into force on December 11, 2002.

Greater Power to Inspect

The Agency is granted the power to inspect the affairs of:

- a mutual fund;
- a depository of a mutual fund;
- a trustee or manager of mutual fund;
- any other market participant determined by the regulator.

Extension of Insider Reporting Requirements

The proposed amendments to the Act extend insider reporting requirements to insiders acquiring or disposing of derivative financial instruments.

Foreign Banks

Bill 107 adds authorized foreign banks to the list of sophisticated purchasers contained in section 44 of the Act in order to reflect recent changes to the *Bank Act* relating to foreign ownership of banks. Furthermore, the adviser exemption contained in section 156 of the Act is also amended to enable authorized foreign banks to benefit therefrom.

Internal Procedure of Resolution of Complaints

Bill 107 requires that every securities dealer or adviser provides equitable resolution of complaints filed with the dealer or adviser; consequently every dealer or adviser must establish a policy dealing with:

- the examination of complaints and claims filed by persons having an interest in a product or service it has provided;
- the resolution of disputes pertaining to a product or service it has provided.

In addition, every dealer or adviser must submit to the Agency an annual report outlining the policy established as well as the number and nature of the complaints filed under such policy.

New Offences

Bill 107 creates the following two new offences:

- hindering a representative of the Agency who is carrying out an investigation;
- influencing or attempting to influence the market price or value of securities by means of unfair, improper or fraudulent practices.

New Penalty

All offences contained in the Act are now punishable by up to five years' imprisonment. Administrative penalties may also now be imposed on senior executives or insiders for acts that contravene or assist a person in contravening a provision of the Act or a regulation thereunder.

New Prescription Provisions

The amendments to the Act extend prescription periods applicable to actions for rescission, revision of price or damages from one year to three years. In the case of actions for damages, the prescription periods now begin within five years of the transaction date or the filing of the information document with the Commission des valeurs mobilières du Québec rather than three.

Should further analysis or explanation of the subject matter be required, please contact the attorneys listed below or the attorney whom you normally consult.

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