

BILL 7 - SECTION 115 OF THE ACT RESPECTING THE DISTRIBUTION OF FINANCIAL PRODUCTS AND SERVICES

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On May 4, 2011, an important Bill was presented by the Minister for Finance, Mr. Alain Paquet.

The effect of Bill 7, entitled *An Act to amend various legislative provisions concerning the financial sector*, is, among other things, to amend section 115 of the *Act respecting the distribution of financial products and services* (“ARDFPS”) and to add sections 115.1 to 115.9 ARDFPS.

The Bill amends the ARDFPS to specifically allow other persons besides the Autorité des marchés financiers (the “AMF”) to apply to the Bureau de décision et de révision (the “Bureau”) to impose a sanction on a representative, firm or independent partnership for a breach of the ARDFPS.

The new section 115 would read as follows:

“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. [emphasis added]

No date has yet been set for sanctioning Bill 7. According to parliamentary debates held on May 4, 2011, it will be submitted to specific consultations in order to allow parliamentarians to obtain adequate information on the issues addressed by the Bill.

If the Bill is adopted in its current form, a firm, dealer or representative may become the subject of proceedings instituted directly before the Bureau de décision et de révision by a client or another firm, dealer or representative who can demonstrate an interest, in the event that the AMF decides not to institute such proceedings.

This provision has significant consequences for firms, dealers and representatives because it expands the range of legal or regulatory risks which a registered person must manage in order to avoid jeopardizing his registration or certificate.

Under the proposed amendment, the “interested person” instituting disciplinary proceedings would also retain the right to institute civil proceedings before the civil courts.

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