

**Consolidated
Cooperative Credit Associations Act**

2001

PREPARED BY:

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BARRISTERS & SOLICITORS**

JUNE 2001

WARNING NOTE

This office consolidation has been updated in accordance with all amendments to the legislation up to and including those contained in S.C. 2001, c. 9 as it received Royal Assent in June, 2001. This office consolidation is prepared for Credit Union Central of Canada. Any person using this office consolidation is reminded that it is prepared for convenience of reference only and that the actual statute should be referred to when providing legal advice.

The “Legislative History” commentary refers to S.C. 1991, c. 48, as it was amended by S.C. 1992, c. 51; S.C. 1994, c. 47; S.C. 1996, c. 6; S.C. 1997, c. 15; and S.C. 1999, c. 28 and c. 30.

COOPERATIVE CREDIT ASSOCIATIONS ACT

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COOPERATIVE CREDIT ASSOCIATIONS ACT, S.C. 1991, c. 48

SHORT TITLE

Short title

1. This Act may be cited as the Cooperative Credit Associations Act.

PART I

INTERPRETATION AND APPLICATION

DEFINITIONS

Definitions

2. In this Act,

"**affairs**", with respect to an association, means the relationships among the association and its affiliates and the members, shareholders, directors and officers of the association and its affiliates, but does not include the business of the association or any of its affiliates; « affaires internes »

"**affiliate**" means an entity that is affiliated with another entity within the meaning of section 6; « groupe »

"**Agency**" means the Financial Consumer Agency of Canada established under section 3 of the *Financial Consumer Agency of Canada Act*;

Legislative History – This definition was added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such definition previously existed in this Act.

"**annual statement**" means the annual financial statement of an association within the meaning of paragraph 292(1)(a); « rapport annuel »

"**association**" means a body corporate referred to in section 14; « association »

"**auditor**" includes a firm of accountants; « vérificateur »

"**bearer**", in relation to a security, means the person in possession of a security payable to bearer or endorsed in blank; « porteur »

"**bearer form**", in respect of a security, means a security in bearer form as determined in accordance with subsection 90(2); « titre au porteur »

"**beneficial ownership**" includes ownership through one or more trustees, legal representatives, agents or other intermediaries; « véritable propriétaire » et « propriété effective »

"body corporate" means an incorporated body wherever or however incorporated; « personne morale »

"branch", in respect of an association, means an agency, the head office and any other office of the association;

Legislative History – This definition was added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such definition previously existed in this Act.

"Canadian financial institution" means a financial institution that is incorporated or formed by or under an Act of Parliament or of the legislature of a province; « institution financière canadienne »

"central cooperative credit society" means a cooperative credit society incorporated by or under an Act of the legislature of a province, one of whose principal purposes is to provide liquidity support to local cooperative credit societies, and

(a) whose membership consists wholly or primarily of local cooperative credit societies, or

(b) whose directors are wholly or primarily persons elected or appointed by local cooperative credit societies,

but does not include a deposit protection agency; « coopérative de crédit centrale » ou « centrale »

"central securities register" or "securities register" means the register referred to in section 245; « registre central des valeurs mobilières » ou « registre des valeurs mobilières »

"Commissioner" means the Commissioner of the Financial Consumer Agency of Canada appointed under section 4 of the *Financial Consumer Agency of Canada Act*;

Legislative History – This definition was added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such definition previously existed in this Act.

"complainant", in relation to an association or any matter concerning an association, means

(a) a member or former member of an association,

(b) a registered holder or beneficial owner, and a former registered holder or beneficial owner, of a security of an association or any of its affiliates,

(c) a director or an officer, or a former director or officer, of an association or any of its affiliates, or

(d) any other person who, in the discretion of a court, is a proper person to make an application under section 318, 322 or 469; « plaignant »

"consumer provision" means a provision referred to in paragraph (b) of the definition "consumer provision" in section 2 of the *Financial Consumer Agency of Canada Act*;

Legislative History – This definition was added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such definition previously existed in this Act.

"cooperative credit society" means a cooperative corporation one of whose principal purposes is to provide financial services to its members; « coopérative de crédit »

"cooperative corporation" means a body corporate organized and operated on cooperative principles; « coopérative »

"court" means

(a) in the Province of Ontario, the Superior Court of Justice,

(b) in the Province of Quebec, the Superior Court of the Province,

(c) in the Provinces of Nova Scotia and British Columbia, the Supreme Court of the Province,

(d) in the Provinces of New Brunswick, Manitoba, Saskatchewan and Alberta, the Court of Queen's Bench for the Province,

(e) in the Provinces of Prince Edward Island and Newfoundland, the trial division of the Supreme Court of the Province, and

(f) in the Yukon Territory, the Northwest Territories and Nunavut, the Supreme Court thereof; « tribunal »

"court of appeal" means the court to which an appeal lies from a decision or order of a court; « cour d'appel »

"debt obligation" means a bond, debenture, note or other evidence of indebtedness of an entity, whether secured or unsecured; « titre de créance »

"delegate" means a natural person appointed or elected to represent a member of an association at a meeting of members; « délégué »

"deposit protection agency" means an entity established

(a) to provide or administer a stabilization or mutual aid fund for local cooperative credit societies,

(b) to assist in the payment of any losses incurred by the members of a local cooperative credit society in the liquidation of the society, or

(c) to provide deposit insurance for members of local cooperative credit societies; « agence d'assurance-dépôts »

"director" means a natural person occupying the position of director, by whatever name called, of a body corporate, and "board of directors" or "directors" refers to the directors of a body corporate as a body; « administrateur », « conseil d'administration » ou « conseil »

"entity" means a body corporate, trust, partnership, fund, an unincorporated organization, Her Majesty in right of Canada or of a province, an agency of Her Majesty in either of such rights and the government of a foreign country or any political subdivision thereof and any agency thereof; « entité »

"fiduciary" means any person acting in a fiduciary capacity, and includes a personal representative of a deceased person; « représentant »

"financial institution" means

(a) an association,

(b) a bank or an authorized foreign bank within the meaning of section 2 of the *Bank Act*,

(c) a body corporate to which the *Trust and Loan Companies Act* applies,

(d) an insurance company or a fraternal benefit society incorporated or formed under the *Insurance Companies Act*;

Legislative History – Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June 2001, this paragraph read as follows:

(d) an insurance company or a fraternal benefit society incorporated or formed under the *Insurance Companies Act* applies,

(e) a trust, loan or insurance corporation incorporated by or under an Act of the legislature of a province,

(f) a cooperative credit society incorporated and regulated by or under an Act of the legislature of a province,

(g) an entity that is incorporated or formed by or under an Act of Parliament or of the legislature of a province and that is primarily engaged in dealing in securities, including portfolio management and investment counselling, and

(h) a foreign institution; « institution financière »

"foreign institution" means an entity that is

(a) engaged in the business of banking, the trust, loan or insurance business, the business of a cooperative credit society or the business of dealing in securities or is otherwise engaged primarily in the business of providing financial services, and

(b) incorporated or formed otherwise than by or under an Act of Parliament or of the legislature of a province; « institution étrangère »

"former Act" means the Cooperative Credit Associations Act, chapter C-41 of the Revised Statutes of Canada, 1985; « loi antérieure »

"former-Act association" means the Canadian Co-operative Credit Society Limited, a corporation incorporated by chapter 58 of the Statutes of Canada, 1952-53; « association antérieure »

"form of proxy" means a written or printed form that, when completed and executed by or on behalf of a shareholder, constitutes a proxy; « formulaire de procuration »

"guarantee" includes a letter of credit; « garantie »

"head office" means the office required to be maintained by an association pursuant to section 234; « siège »

"holder" means

(a) in respect of a security certificate, the person in possession of the certificate issued or endorsed to that person or to bearer or in blank,

(b) in respect of the ownership of a membership share, the person referred to in section 7, and

(c) in respect of the ownership of a share, the shareholder of the share within the meaning of section 8; « détenteur »

"holding body corporate" means a holding body corporate within the meaning of section 4; « société mère »

"incorporated", when used with reference to a body corporate that is incorporated by or under an Act of Parliament or of the legislature of a province, also refers to a body corporate that is continued by or under any such Act; « constitué en personne morale » ou « constitué »

"incorporating instrument" means the special Act, letters patent, instrument of continuance or other constating instrument by which a body corporate was incorporated or continued and includes any amendment to or restatement of the constating instrument; « acte constitutif »

"incorporator", in relation to an association, means a person who applied for letters patent to incorporate the association; « fondateur »

"issuer", in respect of a security, means the entity that issues or issued the security; « émetteur »

Legislative History – This definition was added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such definition previously existed in this Act.

"league" means a cooperative corporation incorporated by or under an Act of the legislature of a province whose membership consists wholly or primarily of local cooperative credit societies and whose principal purpose is the provision of administrative, technical, research and consultative services, and goods related to those services, to any cooperative credit society or to persons intending to organize or operate such a society;

"letters patent", in respect of an instrument authorized to be issued under this Act, means letters patent in a form approved by the Superintendent; « lettres patentes »

"local cooperative credit society" means a cooperative credit society incorporated by or under an Act of the legislature of a province

(a) whose members consist substantially of individuals, and

(b) whose principal purpose is to receive deposits from, and make loans to, its members;
« coopérative de crédit locale » ou « coopérative locale »

"member" Version anglaise seulement

"member", in respect of an association, means a person who is a member of the association;

"members register" means the register referred to in section 49; « registre des associés »

"membership share" means an interest in the equity of an association that confers the rights referred to in subsection 67(2); « parts sociales »

"Minister" means the Minister of Finance; " « ministre »

"officer" means

(a) in relation to a body corporate, a chief executive officer, president, vice-president, secretary, controller, treasurer and any other natural person designated as an officer of the body corporate by by-law or by resolution of the directors of the body corporate, and

(b) in relation to any other entity, any natural person designated as an officer of the entity by by-law, by resolution of the members thereof or otherwise; « dirigeant »

"order form", in respect of a security, means a security in order form as determined in accordance with subsection 90(3); « titre à ordre »

"ordinary resolution" means a resolution passed by a majority of the votes cast by or on behalf of the members who voted in respect of the resolution; « résolution ordinaire »

"patronage allocation" means an amount that an association allocates among and credits or pays to its members or to its member and non-member patrons based on the business done by them with or through the association, and includes

(a) a patronage refund, and

(b) an allocation in proportion to borrowing; « ristourne »

"person" means a natural person, an entity or a personal representative « personne »;

"personal representative" means a person who stands in place of and represents another person and, without limiting the generality of the foregoing, includes, as the circumstances require, a trustee, an executor, an administrator, a committee, a guardian, a tutor, a curator, an assignee, a receiver, an agent or an attorney of any person, but does not include a delegate; « représentant personnel »

"prescribed" Version anglaise seulement

"prescribed" means prescribed by regulation;

"proxy" means a completed and executed form of proxy by means of which a shareholder appoints a proxyholder to attend and act on the shareholder's behalf at a meeting of shareholders; « procuration »

"proxyholder" means the person appointed by proxy to attend and act on behalf of a shareholder at a meeting of shareholders; « fondé de pouvoir »

"real property" includes a leasehold interest in real property; « biens immeubles »

"recorded address" means

(a) in relation to a member of an association, the latest postal address of the member according to the members register of the association, and

(b) in relation to a shareholder of an association, the latest postal address of the person according to the central securities register of the association; « adresse enregistrée »

"registered form", in respect of a security, means a security in registered form as determined in accordance with subsection 90(4); « titre nominatif »

"regulatory capital", in respect of an association, has the meaning given to that expression by the regulations; « capital réglementaire »

"resident Canadian" means a natural person who is

(a) a Canadian citizen ordinarily resident in Canada,

(b) a Canadian citizen not ordinarily resident in Canada who is a member of a prescribed class of persons, or

(c) a permanent resident within the meaning of the Immigration Act and ordinarily resident in Canada, except a permanent resident who has been ordinarily resident in Canada for more than one year after the time at which the individual first became eligible to apply for Canadian citizenship; « résident canadien »

"residential property" means real property consisting of buildings that are used, or are to be used, to the extent of at least one half of the floor space thereof, as one or more private dwellings; « immeuble résidentiel »

"retail association", for the purpose of any particular provision of this Act, means an association as defined in the regulations;

Legislative History – This definition was added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such definition previously existed in this Act.

"securities underwriter" means a person who, as principal, agrees to purchase securities with a view to the distribution of the securities or who, as agent for a body corporate or other person, offers for sale or sells securities in connection with a distribution of the securities, and includes a person who participates, directly or indirectly, in a distribution of securities, other than a person whose interest in the distribution of securities is limited to receiving a distributor's or seller's commission payable by a securities underwriter; « souscripteur à forfait »

"security" means

(a) in relation to a body corporate, a share of any class of shares of the body corporate or a debt obligation of the body corporate, and includes a warrant of the body corporate, but does not include a deposit with a financial institution or any instrument evidencing such a deposit or, for greater certainty, a membership share, and

(b) in relation to any other entity, any ownership interest in or debt obligation of the entity; « titre » ou « valeur mobilière »

"security interest" means an interest in or charge on property by way of mortgage, lien, pledge or otherwise taken by a creditor or guarantor to secure the payment or performance of an obligation; « sûreté »

"send" includes deliver; « envoyer »

"series", in respect of shares, means a division of a class of shares; « série »

"share" Version anglaise seulement

"**share**" does not include a membership share;

"**significant interest**" means a significant interest determined in accordance with section 9; « intérêt substantiel »

"**special resolution**" means a resolution passed by a majority of not less than two thirds of the votes cast by or on behalf of the persons who voted in respect of that resolution; « résolution extraordinaire »

"**subordinated indebtedness**" means an instrument evidencing an indebtedness of an association that by its terms provides that the indebtedness will, in the event of the insolvency or winding-up of the association, be subordinate in right of payment to all deposit liabilities of the association and all other liabilities of the association except those that, by their terms, rank equally with or are subordinate to such indebtedness; « titre secondaire »

"**subsidiary**" means an entity that is a subsidiary of another entity within the meaning of section 5;

Legislative History – Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this definition read as follows:

"**subsidiary**" means a body corporate that is a subsidiary of another body corporate within the meaning of section 5; « filiale »

"**substantial investment**" means a substantial investment determined in accordance with section 12; « intérêt de groupe financier »

"**Superintendent**" means the Superintendent of Financial Institutions appointed pursuant to the *Office of the Superintendent of Financial Institutions Act*; « surintendant »

"**trade**", in respect of securities, means any sale or disposition of securities for valuable consideration; « opération »

"**transfer**", in respect of securities, includes a transmission by operation of law; « transfert »

"**voting share**" means a share of any class of shares of a body corporate carrying voting rights under all circumstances or by reason of an event that has occurred and is continuing or by reason of a condition that has been fulfilled. « action avec droit de vote »

1991, c. 48, ss. 2, 496, 497; 1992, c. 51, s. 31; 1999, c.28, s. 115; 1999, c.30, s. 15(e); 2001, c.8, s. 248

INTERPRETATION

Control

3. (1) For the purposes of this Act,

(a) a person controls a body corporate if securities of the body corporate to which are attached more than 50 per cent of the votes that may be cast to elect directors of the body

corporate are beneficially owned by the person and the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the body corporate;

(b) a person controls an unincorporated entity, other than a limited partnership, if more than 50 per cent of the ownership interests, however designated, into which the entity is divided are beneficially owned by that person and the person is able to direct the business and affairs of the entity;

(c) the general partner of a limited partnership controls the limited partnership;

(d) a person controls a cooperative corporation if the person has the right to exercise more than 50 per cent of the votes that may be cast at an annual meeting or to appoint or elect the majority of the directors of the corporation; and

(e) a person controls an entity if the person has any direct or indirect influence that, if exercised, would result in control in fact of the entity.

Deemed control

(2) A person who controls an entity is deemed to control any entity that is controlled, or deemed to be controlled, by the entity.

Idem

(3) A person is deemed to control, within the meaning of paragraph (1)(a), (b), or (d), an entity if the aggregate of

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, the portion of this section prior to paragraph (a) read as follows:

(3) A person is deemed to control an entity where the aggregate of

(a) any securities of the entity that are beneficially owned by that person, and

(b) any securities of the entity that are beneficially owned by any entity controlled by that person

is such that, if that person and all of the entities referred to in paragraph (b) that beneficially own securities of the entity were one person, that person would control the entity.

(4) The Minister may, for any purpose of any provision of this Act that refers to control within the meaning of paragraph (1)(e), make guidelines respecting what constitutes such control, including guidelines describing the policy objectives that the guidelines and the relevant provisions of the Act are intended to achieve and, if any such guidelines are made, the reference to paragraph 1(e) in that provision shall be interpreted in accordance with the guidelines.

Legislative History – This section was added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such section previously existed in this Act.

1991, c. 48, s. 3; 2001, c. 9, s. 249

Holding body corporate

4. A body corporate is the holding body corporate of any entity that is its subsidiary.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

4. A body corporate is the holding body corporate of any body corporate that is its subsidiary.

Subsidiary

5. An entity is a subsidiary of another entity if it is controlled by the other entity.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

5. A body corporate is a subsidiary of another body corporate if it is controlled, determined without regard to paragraph 3(1)(e), by the other body corporate.

1991, c. 48, s. 5, 6; 2001, c. 9, s. 250

Affiliated entities

6. (1) One entity is affiliated with another entity if one of them is controlled by the other or both are controlled by the same person.

Idem

(2) Repealed [2001, c. 9, s. 251]

Legislative History – This subsection was repealed by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. The subsection previously read:

(2) Notwithstanding subsection (1), for the purposes of section 37, one entity is affiliated with another entity if one of them is controlled, determined without regard to paragraph 3(1)(e), by the other or both are controlled, determined without regard to paragraph 3(1)(e), by the same person.

Member

7. (1) For the purposes of this Act, a person is a holder of a membership share of an association when, according to the members register of the association, the person is the owner of the membership share or is entitled to be entered in the members register or like record of the association as the owner of the membership share.

Holder of a membership share

(2) A reference in this Act to the holding of a membership share by or in the name of a person is a reference to the fact that the person is registered or is entitled to be registered in the members register or like record of the association as the holder of that share.

Shareholder

8. (1) For the purposes of this Act, a person is a shareholder of a body corporate when, according to the securities register of the body corporate, the person is the owner of one or more shares of the body corporate or is entitled to be entered in the securities register or like record of the body corporate as the owner of the share or shares.

Holder of a share

(2) A reference in this Act to the holding of a share by or in the name of any person is a reference to the fact that the person is registered or is entitled to be registered in the securities register or like record of the body corporate as the holder of that share.

Significant interest

9. (1) A person has a significant interest in a class of shares of an association where the aggregate of

(a) any shares of that class beneficially owned by the person, and

(b) any shares of that class beneficially owned by entities controlled by the person

exceeds 10 per cent of all of the outstanding shares of that class of shares of the association.

Increasing significant interest

(2) A person who has a significant interest in a class of shares of an association increases that significant interest in the class of shares where the person or any entity controlled by the person

(a) acquires beneficial ownership of additional shares of that class, or

(b) acquires control of any entity that beneficially owns shares of that class,

in such number as to increase the percentage of shares of that class that are beneficially owned by the person and by any entities controlled by the person.

Acting in concert - members' rights to vote

10. (1) For the purposes of section 52, where two or more members have agreed, pursuant to any agreement, commitment or understanding, whether formal or informal, verbal or written, to act jointly or in concert in respect of the exercise of any right to vote at a meeting of members, those members shall be deemed to be a single member.

Exception

(2) For the purposes of this section, members shall be presumed not to have agreed to act jointly or in concert solely by reason of the fact that

- (a) their membership voting rights are vested in the same delegate or delegates; or
- (b) they exercise their membership voting rights in the same manner.

Designation

(3) Where in the opinion of the Superintendent it is reasonable to conclude that an agreement, commitment or understanding referred to in subsection (1) exists by or among two or more members, the Superintendent may designate those members as members who have agreed to act jointly or in concert.

Acting in concert-shares

11. (1) For the purposes of Part VIII, where two or more persons have agreed, pursuant to any agreement, commitment or understanding, whether formal or informal, verbal or written, to act jointly or in concert in respect of

- (a) shares of an association that they beneficially own,
- (b) shares or ownership interests that they beneficially own of any entity that beneficially owns shares of an association, or
- (c) shares or ownership interests that they beneficially own of any entity that controls any entity that beneficially owns shares of an association,

those persons shall be deemed to be a single person who is acquiring beneficial ownership of the aggregate number of shares of the association or shares or ownership interests of the entity that are beneficially owned by them.

Idem

(2) Without limiting the generality of subsection (1), any agreement, commitment or understanding by or between two or more persons who beneficially own shares of an association or shares or ownership interests of any entity referred to in paragraph (1)(b) or (c),

- (a) whereby any of them or their nominees may veto any proposal put before the board of directors of the association, or
- (b) pursuant to which no proposal put before the board of directors of the association may be approved except with the consent of any of them or their nominees,

shall be deemed to be an agreement, commitment or understanding referred to in subsection (1).

Exceptions

(3) For the purposes of this section, persons shall be presumed not to have agreed to act jointly or in concert solely by reason of the fact that

(a) one is the proxyholder of one or more of the others in respect of shares or ownership interests referred to in subsection (1); or

(b) they vote the voting rights attached to shares or ownership interests referred to in subsection (1) in the same manner.

Designation

(4) Where in the opinion of the Superintendent it is reasonable to conclude that an agreement, commitment or understanding referred to in subsections (1) and (2) exists by or among two or more persons, the Superintendent may designate those persons as persons who have agreed to act jointly or in concert.

Substantial investment in body corporate

12. (1) A person has a substantial investment in a body corporate where

(a) the voting rights attached to the aggregate of any voting shares of the body corporate beneficially owned by the person and by any entities controlled by the person exceed 10 per cent of the voting rights attached to all of the outstanding voting shares of the body corporate or, in the case of a cooperative corporation, the person, together with any entities controlled by the person, has the right to exercise more than 10 per cent of the votes that may be cast at an annual meeting; or

(b) the aggregate of any shares of the body corporate beneficially owned by the person and by any entities controlled by the person represents ownership of greater than 25 per cent of the equity of the body corporate.

Increasing substantial investment in body corporate

(2) A person who has a substantial investment in a body corporate pursuant to paragraph (1)(a) increases that substantial investment when the person or any entity controlled by the person

(a) acquires beneficial ownership of additional voting shares of the body corporate in such number as to increase the percentage of voting rights attached to the aggregate of the voting shares of the body corporate beneficially owned by the person and by any entities controlled by the person or, in the case of a cooperative corporation, obtains the right to exercise more than 10 per cent of the votes that may be cast at an annual meeting; or

(b) acquires, as the case may be,

(i) control of any entity that beneficially owns any voting shares of the body corporate in such number as to increase the percentage of voting rights attached to the aggregate of the voting shares of the body corporate beneficially owned by the person and by any entities controlled by the person, or

(ii) where the body corporate is a cooperative corporation, control of any entity that has the right to exercise one or more votes that may be cast at an annual meeting of the cooperative corporation.

Idem

(3) A person who has a substantial investment in a body corporate pursuant to paragraph (1)(b) increases that substantial investment when the person or any entity controlled by the person

(a) acquires beneficial ownership of additional shares of the body corporate in such number as to increase the percentage of the equity of the body corporate represented by the aggregate of the shares of the body corporate beneficially owned by the person and by any entities controlled by the person; or

(b) acquires control of any entity that beneficially owns any shares of the body corporate in such number as to increase the percentage of the equity of the body corporate represented by the aggregate of the shares of the body corporate beneficially owned by the person and by any entities controlled by the person.

New substantial investment

(4) For greater certainty,

(a) where a person has a substantial investment in a body corporate pursuant to paragraph (1)(a) and the person, or any entity controlled by the person,

(i) purchases or otherwise acquires beneficial ownership of shares of the body corporate, or

(ii) acquires control of any entity that beneficially owns shares of the body corporate

in such number as to cause the equity of the body corporate represented by the aggregate of the shares of the body corporate beneficially owned by the person and by any entities controlled by the person to exceed 25 per cent of the equity of the body corporate, or

(b) where a person has a substantial investment in a body corporate pursuant to paragraph (1)(b) and the person or any entity controlled by the person

(i) purchases or otherwise acquires beneficial ownership of voting shares of the body corporate or, where the body corporate is a cooperative corporation, purchases or otherwise acquires beneficial ownership of membership shares of the cooperative corporation, or

(ii) acquires control of any entity that beneficially owns voting shares of the body corporate or, where the body corporate is a cooperative corporation, acquires control of any entity that beneficially owns membership shares of the cooperative corporation,

in such number as to cause the voting rights attached to the aggregate of the voting shares beneficially owned by the person and by any entities controlled by the person to exceed 10 per cent of the voting rights attached to all the outstanding voting shares of the body corporate or, where the body corporate is a cooperative corporation, in such number that the person, together with any entities controlled by the person, has the right to exercise more than 10 per cent of the votes that may be cast at an annual meeting of the cooperative corporation, the acquisition is deemed to cause the person to increase a substantial investment in the body corporate.

Substantial investment in unincorporated entity

(5) A person has a substantial investment in an unincorporated entity where the aggregate of any ownership interests, however designated, into which the entity is divided, beneficially owned by the person and by any entities controlled by the person exceeds 25 per cent of all of the ownership interests into which the entity is divided.

Increasing substantial investment in unincorporated entities

(6) A person who has a substantial investment in an unincorporated entity increases that substantial investment when the person or any entity controlled by the person

(a) acquires beneficial ownership of additional ownership interests in the unincorporated entity in such number as to increase the percentage of ownership interests in the unincorporated entity beneficially owned by the person and by any entities controlled by the person; or

(b) acquires control of any entity that beneficially owns ownership interests in the unincorporated entity in such number as to increase the percentage of ownership interests beneficially owned by the person and by any entities controlled by the person.

Distribution to the public

13. (1) Subject to subsection (2), for the purposes of this Act, a security of a body corporate

(a) is part of a distribution to the public where, in respect of the security, there has been a filing of a prospectus, statement of material facts, registration statement, securities

exchange take-over bid circular or similar document under the laws of Canada, a province or a jurisdiction outside Canada; or

(b) is deemed to be part of a distribution to the public where the security has been issued and a filing referred to in paragraph (a) would be required if the security were being issued currently.

Exemption

(2) On application therefor by an association, the Superintendent may determine that a security of the association is not or was not part of a distribution to the public if the Superintendent is satisfied that the determination would not prejudice any security holder of the association.

Securities deemed part of distribution

(3) For the purposes of this Act, securities of an association

(a) issued on the conversion of other securities, or

(b) issued in exchange for other securities

are deemed to be securities that are part of a distribution to the public if those other securities were part of a distribution to the public.

References in other Acts

13.1 A reference in any other Act of Parliament to “an association to which the *Cooperative Credit Associations Act* applies” is to be construed as not including a central cooperative credit society for which an order has been made under subsection 473(1).

Legislative History – This section was added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such section previously existed in this Act.

2001, c. 9, s. 252

APPLICATION

Application of Act

14. This Act applies to the former-Act association, and to every body corporate incorporated or formed by or under this Act, so long as it is not discontinued under this Act.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

14. This Act applies to the former-Act association, and to every body corporate incorporated under this Act, so long as it is not discontinued under this Act.

1991, c. 48, s. 14; 2001, c.8, s. 253

Conflicting provisions

15. Where there is a conflict or inconsistency between a provision of this Act and a provision of the incorporating instrument of the former-Act association, the provision of this Act prevails.

PART II

STATUS AND POWERS

Corporate powers

16. (1) An association has the capacity of a natural person and, subject to this Act, the rights, powers and privileges of a natural person.

Powers restricted

(2) An association shall not carry on any business or exercise any power that it is restricted by this Act from carrying on or exercising, or exercise any of its powers in a manner contrary to this Act.

Business in Canada

(3) An association may carry on business throughout Canada.

Powers outside Canada

(4) Subject to this Act, an association has the capacity to carry on its business, conduct its affairs and exercise its powers in any jurisdiction outside Canada to the extent and in the manner that the laws of that jurisdiction permit.

No invalidity

17. No act of an association, including any transfer of property to or by an association, is invalid by reason only that the act or transfer is contrary to the association's incorporating instrument or this Act.

By-law not necessary

18. It is not necessary for an association to pass a by-law in order to confer any particular power on the association or its directors.

No personal liability

19. The members and shareholders of an association are not, by reason only of holding membership shares or shares of the association, liable for any liability, act or default of the association except as otherwise provided by this Act.

No constructive notice

20. No person is affected by or is deemed to have notice or knowledge of the contents of a document concerning an association by reason only that the document has been filed with the Superintendent or the Minister or is available for inspection at an office of the association.

Authority of directors and officers

21. An association or a guarantor of an obligation of an association may not assert against a person dealing with the association or with any person who has acquired rights from the association that

(a) the association's incorporating instrument or any by-laws of the association have not been complied with,

(b) the persons named as directors of the association in the most recent return sent to the Superintendent under section 432 are not the directors of the association,

(c) the place named in the incorporating instrument or the by-laws of the association is not the head office of the association,

(d) a person held out by the association as a director, an officer or a representative of the association has not been duly appointed or has no authority to exercise the powers and perform the duties that are customary in the business of the association or usual for such director, officer or representative, or

(e) a document issued by any director, officer or representative of the association with actual or usual authority to issue the document is not valid or not genuine, except where the person has or ought to have by virtue of the person's position with or relationship to the association knowledge to that effect.

Duration of business

22. (1) Subject to subsection (2), associations shall not carry on business after the day that is five years after this section comes into force, except that if Parliament dissolves on that day or at any time within the three-month period before that day, associations may continue to carry on business until the day that is one hundred and eighty days after the first day of the first session of the next Parliament.

Extension

(2) The Governor in Council may, by order, extend by up to six months the time during which associations may continue to carry on business. No more than one order may be made under this subsection.

Legislative History – This section originally read as follows:

22. (1) Unless the rights of an association are terminated pursuant to this Act, the right of an association to carry on its business is limited in the following manner, namely,

(a) If Parliament sits on at least twenty days during the month of March in the year that is five years after the year in which this section comes into force, an association shall not carry on its business after March 31 of that year; and

(b) If Parliament does not sit on at least twenty days during the month of March in the year that is five years after the year in which this section comes into force, an association shall not carry on its business after the sixtieth sitting day of Parliament next following March 31 of that year.

(2) For the purposes of this section, Parliament is deemed to sit on each day that either House of Parliament sits.

The section was amended by 1997, c. 15, s. 116 as follows:

Sunset provision

22. Associations shall not carry on business after March 31, 2002, except that if Parliament dissolves after December 31, 2001 and before April 1, 2002, associations may continue to carry on business until the day that is one hundred and eighty days after the first day of the first session of the next Parliament.

This amendment was never proclaimed into force.

1991, c. 48, s. 22; 1997, c. 15, s. 116; 2001, c. 9, s. 254.

PART III

INCORPORATION, CONTINUANCE AND DISCONTINUANCE

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this heading read as follows:

INCORPORATION AND DISCONTINUANCE

FORMALITIES OF INCORPORATION

Incorporation of association

23. On the application of one or more persons made in accordance with this Act, the Minister may, subject to this Part, issue letters patent incorporating an association.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

23. On the application of two or more persons made in accordance with this Act, the Minister may, subject to this Part, issue letters patent incorporating an association.

Restrictions on incorporation

24. An application for incorporation of an association may only be made by

(a) an association; or

(b) persons who are entitled to be members of an association under Part IV that include at least

(i) two central cooperative credit societies not all of which are incorporated under the laws of one province,

(ii) ten local cooperative credit societies not all of which are incorporated under the laws of one province, or

(iii) two or more leagues not all of which are incorporated under the laws of one province.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

24. No application for incorporation of an association may be made under section 23 unless the applicants are persons who are entitled to be members of an association pursuant to Part IV and include at least

(a) two central cooperative credit societies not all of which are incorporated pursuant to the laws of one province;
or

(b) ten local cooperative credit societies not all of which are incorporated pursuant to the laws of one province.

1991, c. 48, ss. 23, 24; 2001, c. 9, s. 256

Application for incorporation

25. (1) An application for letters patent to incorporate an association setting out the names of the first directors of the association shall be filed with the Superintendent, together with such other information, material and evidence as the Superintendent may require.

Publishing notice of intent

(2) Before filing an application referred to in subsection (1), one of the applicants shall, at least once a week for a period of four consecutive weeks, publish, in a form satisfactory to the Superintendent, a notice of intention to make the application in the Canada Gazette and in a newspaper in general circulation at or near the place where the head office of the association is to be situated.

Objections to incorporation

26. (1) Any person who objects to the proposed incorporation of an association may, within thirty days after the date of the last publication under subsection 25(2) in respect of the proposed association, submit the objection in writing to the Superintendent.

Minister to be informed

(2) On receipt of an objection under subsection (1), the Superintendent shall inform the Minister of the objection.

Inquiry into objection and report

(3) On receipt of an objection under subsection (1), and if the application for the issuance of the letters patent to which the objection relates has been received, the Superintendent shall, if satisfied that it is necessary and in the public interest to do so, hold or cause to be held a public inquiry into the objection as it relates to the application and, on completion of the inquiry, the Superintendent shall report the findings of the inquiry to the Minister.

Report to be made available

(4) Within thirty days after receiving a report under subsection (3), the Minister shall make the report available to the public.

Rules governing proceedings

(5) Subject to the approval of the Governor in Council, the Superintendent may make rules governing the proceedings at public inquiries held under this section.

Factors to be considered by Minister

27. Before issuing letters patent to incorporate an association, the Minister shall take into account all matters that the Minister considers relevant to the application, including

- (a) the nature and sufficiency of the financial resources of the applicant or applicants as a source of continuing financial support for the association;
- (b) the soundness and feasibility of the plans of the applicant or applicants for the future conduct and development of the business of the association;
- (c) the business record and experience of the applicant or applicants;
- (d) the character and integrity of the applicant or applicants or, if the applicant or any of the applicants is a body corporate, its reputation for being operated in a manner that is consistent with the standards of good character and integrity;
- (e) whether the association will be operated responsibly by persons with the competence and experience suitable for involvement in the operation of a financial institution;
- (f) the impact of any integration of the businesses and operations of the applicant or applicants with those of the association on the conduct of those businesses and operations;
- (g) whether the association is to be operated in accordance with cooperative principles; and
- (h) the best interests of the financial system in Canada and, in particular, the cooperative financial system in Canada.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

27. Before issuing letters patent to incorporate an association, the Minister shall take into account all matters that the Minister considers relevant to the application and, without limiting the generality of the foregoing, the Minister shall have particular regard to

- (a) the nature and sufficiency of the financial resources of the applicants as a source of continuing financial support for the association;
- (b) the soundness and feasibility of plans of the applicants for the future conduct and development of the business of the association;
- (c) the business record and experience of the applicants;
- (d) whether the association will be operated responsibly by persons who are fit as to the character, competence and experience suitable for involvement in the operation of a financial institution;
- (e) whether the association is to be operated in accordance with cooperative principles; and
- (f) the best interests of the financial system in Canada, and in particular, the cooperative financial system in Canada

1991, c. 48, s. 27; 2001, c. 9, s. 257.

Contents of letters patent

28. (1) There shall be set out in the letters patent incorporating an association

- (a) the name of the association;
- (b) the place in Canada where the head office of the association is to be situated; and
- (c) the date that the association came, or is to come, into existence.

Provisions in letters patent

(2) The Minister may set out in the letters patent incorporating an association any provision not contrary to this Act that the Minister considers advisable in order to take into account the particular circumstances of the proposed association.

Terms and conditions

(3) The Minister may impose such terms and conditions in respect of the issuance of letters patent incorporating an association as the Minister considers necessary or appropriate.

Notice of issue of letters patent

29. The Superintendent shall cause to be published in the Canada Gazette a notice of the issuance of letters patent incorporating an association.

First directors

30. The first directors of an association are the directors named in the application for letters patent to incorporate the association.

Effect of letters patent

31. An association comes into existence on the date provided therefor in its letters patent.

CONTINUANCE

Federal corporations

31.1 (1) A body corporate incorporated under the *Canada Business Corporations Act* or any other Act of Parliament may apply to the Minister for letters patent continuing the body corporate as an association.

Other corporations

(2) A body corporate incorporated otherwise than by or under an Act of Parliament may, if so authorized by the laws of the jurisdiction where it is incorporated, apply to the Minister for letters patent continuing the body corporate as an association.

Continuance for the purpose of amalgamation

(3) A body corporate incorporated or continued otherwise than under this Act may apply to the Minister for letters patent continuing the body corporate as an association if the body corporate proposes to be continued under this Act for the purpose of amalgamating with another body corporate in compliance with this Act.

Application for continuance

31.2 (1) When a body corporate applies for letters patent under section 31.1, sections 24 to 27 apply in respect of the application, with any modifications that the circumstances require.

Special resolution approval

(2) When a body corporate applies for letters patent under section 31.1, the application must be duly authorized by a special resolution.

Copy of special resolution

(3) A copy of the special resolution must be filed with the application.

Power to issue letters patent

31.3 (1) On the application of a body corporate under subsection 31.1(1) or (2), the Minister may, subject to this Part, issue letters patent continuing the body corporate as an association if the body corporate

- (a) satisfies the requirements for incorporation as an association or will, immediately after the letters patent are issued, satisfy those requirements;
- (b) is organized and operated and carries on its business on a cooperative basis or will, immediately after the letters patent are issued, be organized and operated and carry on its business on a cooperative basis; and
- (c) has a capital and corporate structure that, if set out in the letters patent and by-laws, would meet the requirements of this Act.

Power to issue letters patent

(2) On the application of a body corporate under subsection 31.1(3), the Minister may, subject to this Part, issue letters patent continuing the body corporate as an association only if the Minister is of the opinion that the association that results from the amalgamation will

- (a) satisfy the requirements for incorporation as an association;
- (b) be organized and operated and carry on its business on a cooperative basis; and
- (c) have a capital and corporate structure that meets the requirements of this Act.

Issue of letters patent

(3) If letters patent are issued to a body corporate under subsection (1) or (2), section 27 applies in respect of the issue of letters patent, with any modifications that the circumstances require.

Effect of letters patent

31.4 On the day set out in the letters patent continuing a body corporate as an association under section 31.3,

- (a) the body corporate becomes an association as if it had been incorporated under this Act; and
- (b) the letters patent are deemed to be the incorporating instrument of the continued company.

Copy of letters patent

31.5 (1) When a body corporate is continued as an association under section 31.3, the Superintendent shall without delay send a copy of the letters patent to the appropriate official or public body in the jurisdiction in which the body corporate was incorporated.

Notice of issuance of letter patent

(2) The Superintendent shall cause to be published in the Canada Gazette a notice of the issuance of letters patent continuing a body corporate as an association.

Effects of continuance

31.6 Where a body corporate is continued as an association,

- (a) the property of the body corporate continues to be the property of the association;

- (b) the association continues to be liable for the obligations of the body corporate;
- (c) an existing cause of action or claim by or against the body corporate or any liability of the body corporate to prosecution is unaffected;
- (d) a civil, criminal or administrative action or proceeding pending by or against the body corporate may continue to be prosecuted by or against the association;
- (e) a conviction against, or any ruling, order or judgment in favour of or against the body corporate may be enforced by or against the association;
- (f) a person who, on the day the body corporate becomes an association, was the holder of a security issued by the body corporate is not deprived of any right or privilege available to the person at that time in respect of the security or relieved of any liability in respect of the security, but any such right or privilege may be exercised only in accordance with this Act; and
- (g) the by-laws of the body corporate, except those that are in conflict with this Act, continue as the by-laws of the association.

Transitional

31.7 (1) Despite any other provision of this Act or the regulations, the Minister may, on the recommendation of the Superintendent, by order, grant to an association in respect of which letters patent were issued under section 31.3 permission to

- (a) engage in a business activity specified in the order that an association is not otherwise permitted by this Act to engage in and that the body corporate continued as the association was engaging in at the time the application for the letters patent was made;
- (b) continue to have issued and outstanding debt obligations the issue of which is not authorized by this Act if the debt obligations were outstanding at the time the application for the letters patent was made;
- (c) hold assets that an association is not otherwise permitted by this Act to hold if the assets were held by the body corporate continued as the association at the time the application for the letters patent was made;
- (d) acquire and hold assets that an association is not otherwise permitted by this Act to acquire or hold if the body corporate continued as the association was obliged, at the time the application for the letters patent was made, to acquire those assets; and
- (e) maintain outside Canada any records or registers required by this Act to be maintained in Canada and maintain and process outside Canada information and data relating to the preparation and maintenance of those records or registers.

Duration

(2) The permission shall be expressed to be granted for a period specified in the order not exceeding

(a) with respect to any activity described in paragraph (1)(a), thirty days after the date of issue of the letters patent or, if the activity is conducted under an agreement existing on the date of issue of the letters patent, the expiration of the agreement;

(b) with respect to any matter described in paragraph (1)(b), ten years; and

(c) with respect to any matter described in any of paragraphs (1)(c) to (e), two years.

Renewal

(3) Subject to subsection (4), the Minister may, on the recommendation of the Superintendent, by order, renew a permission with respect to any matter described in paragraphs (1)(b) to (d) for any further period or periods that the Minister considers necessary.

Limitation

(4) The Minister shall not grant to an association a permission

(a) with respect to matters described in paragraph (1)(b), that purports to be effective more than ten years after the date of the approval for the association to commence and carry on business, unless the Minister is satisfied on the basis of evidence on oath provided by an officer of the association that the association will not be able at law to redeem at the end of the ten years the outstanding debt obligations to which the permission relates; and

(b) with respect to matters referred to in paragraphs (1)(c) and (d), that purports to be effective more than ten years after the date of the approval for the association to commence and carry on business.

Legislative History – Sections 31.1 through 31.7, inclusive were added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such sections 31.1 through 31.7, inclusive, previously existed in this Act.

2001, c. 9, s. 258.

DISCONTINUANCE

Transferring to other federal Acts

32.(1) An association may

(a) apply for letters patent continuing the association as a company under subsection 33(1) of the *Trust and Loan Companies Act* or amalgamating and continuing the association as a company under section 228 and subsection 234(1) of that Act;

(b) apply for letters patent continuing the association as a bank under subsection 35(1) of the *Bank Act* or amalgamating and continuing the association as a bank under section 223 and subsection 229(1) of the Act;

(c) apply for letters patent continuing the association as a bank holding company under subsection 684(1) of the *Bank Act* or amalgamating and continuing the association as a bank holding company under section 803 and subsection 809(1) of that Act;

(d) with the approval of the Minister, apply for a certificate of continuance under section 187 of the *Canada Business Corporations Act*; or

(e) with the approval of the Minister, apply for a certificate of continuance, or a certificate of continuance and a certificate of amalgamation, under section 285 of the *Canada Cooperatives Act*.

Conditions for approval

(2) No approval referred to in paragraph (1)(d) or (e) may be given to an association unless the Minister is satisfied that

(a) the application has been authorized by a special resolution of the members; and

(b) the association holds no deposits that are insured under the Canada Deposit Insurance Corporation Act.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Transferring to Canada Cooperatives Act

32. (1) An association may, with the approval in writing of the Minister, apply for a certificate of continuance under subsection 285 (1) of the *Canada Cooperatives Act*.

Conditions for approval

(2) No approval referred to in subsection (1) may be given to an association unless the Minister is satisfied that the application of the association for a certificate of continuance under the *Canada Cooperatives Act* has been authorized by a special resolution of the members.

Effect of letters patent or certificate

33. On the day specified in the letters patent or certificate of continuance referred to in any of paragraphs 32(1)(a) to (e), the Act referred to in the relevant paragraph applies and this Act ceases to apply to the body corporate continued under that Act.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Effect of certificate

33. On the day specified in the certificate referred to in subsection 32(1), the *Canada Cooperatives Act* applies and this Act ceases to apply to the body corporate continued under that Act.

Withdrawing application

34. If a special resolution authorizing the application for letters patent or a certificate of continuance referred to in any of paragraphs 32(1)(a) to (e) so states, the directors of an association may, without further approval of the members, withdraw the application before it is acted on.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Withdrawing application

34. Where a special resolution authorizing the application for a certificate referred to in subsection 32(1) so states, the directors of an association may, without further approval of the members, withdraw the application before it is acted on.

1991, c. 48, ss. 32-34 inclusive; 2001, c. 9, c. 259

CORPORATE NAME

Prohibited names

35. (1) An association may not be incorporated under this Act with a name

- (a) that is prohibited by an Act of Parliament;
- (b) that is, in the opinion of the Superintendent, deceptively misdescriptive;
- (c) that is the same as or, in the opinion of the Superintendent, substantially the same as or confusingly similar to, any existing
 - (i) trade-mark or trade name, or
 - (ii) corporate name of a body corporate,

except where the trade-mark or trade name is being changed or the body corporate is being dissolved or is changing its corporate name and consent to the use of the trade-mark, trade name or corporate name is signified to the Superintendent in such manner as the Superintendent may require;

(d) that is the same as or, in the opinion of the Superintendent, substantially the same as or confusingly similar to, the known name under or by which any entity carries on business or is identified; or

(e) that is reserved under section 39 for another association or a proposed association.

Use of "cooperative"

(2) Notwithstanding the *Canada Cooperatives Act*, an association may use the word "Cooperative" or "Cooperative", or any abbreviation of that word, in its name.

1991, c. 48, s. 35; 1996, c. 6, s. 49; 1997, c. 15, s. 117.

Name

36. The name of an association shall include

- (a) the word “cooperative” or “coopérative”, along with another word or expression indicating the financial nature of the association,
- (b) the phrase “central credit union”, “credit union central” or “fédération de caisses populaires”, or
- (c) any word or phrase specified by the Minister

or any combination or derivative thereof.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Name

36. The name of an association shall include

- (a) the word "cooperative" or "coopérative", along with another word or expression indicating the financial nature of the association, or
- (b) the phrase "central credit union", "credit union central" or "fédération de caisses populaires"

or any combination or derivative thereof.

1991, c. 48, 2. 36; 2001, c. 9, s. 260

Affiliated entity

37. Despite section 35, an association that is affiliated with another entity may, with the consent of that entity and the approval of the Superintendent, be incorporated with, or change its name to, substantially the same name as that of the affiliated entity.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Affiliated entity

37. Notwithstanding section 35, an association that is affiliated, within the meaning of subsection 6(2), with another entity may, with the consent of that entity and the approval in writing of the Superintendent, be incorporated with, or change its name to, substantially the same name as that of the affiliated entity.

1991, c. 48, s. 37; 1996, c. 6, s. 50; 2001, c. 9, s. 261.

English or French form of name

38. (1) The name of an association may be set out in its letters patent in an English form, a French form, an English form and a French form or in a combined English and French form, and the association may use and be legally designated by any such form.

Alternate name

(2) An association may identify itself outside Canada by its name in any language and the association may use and be legally designated by any such form of its name outside Canada.

Other name

(3) Subject to subsection (4) and section 250, an association may carry on business under or identify itself by a name other than its corporate name.

Directions

(4) Where an association is carrying on business under or identifying itself by a name other than its corporate name, the Superintendent may, by order, direct the association not to use that other name if the Superintendent is of the opinion that that other name is a name referred to in any of paragraphs 35(1)(a) to (e).

1991, c. 48, s. 38; 1996, c. 6, s. 51.

Reserved name

39. The Superintendent may, on request, reserve for ninety days a name for a proposed association or for an association that intends to change its name.

Directing change of name

40. (1) If through inadvertence or otherwise an association

(a) comes into existence or is continued with a name, or

(b) on an application to change its name, is granted a name

that is prohibited by section 35, the Superintendent may, by order, direct the association to change its name and the association shall comply with that direction.

Revoking name

(2) If an association has been directed under subsection (1) to change its name and has not, within sixty days after the service of the direction, changed its name to a name that is not prohibited by

this Act, the Superintendent may revoke the name of the association and assign to it a name and, until changed in accordance with section 219 or 221, the name of the association is thereafter the name so assigned.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Revoking name

(2) Where an association has been directed under subsection (1) to change its name and has not, within sixty days after the service of the direction, changed its name to a name that is not prohibited by this Act, the Superintendent may revoke the name of the association and assign to it a name and, until changed in accordance with subsection 219(1), the name of the association is thereafter the name so assigned.

1991, c. 48, s. 40; 1996, c. 6, s. 52; 2001, c. 9, s. 262.

PART IV

MEMBERSHIP

ADMITTANCE

Members

41. (1) Only a person that is an association, a central cooperative credit society, a local cooperative credit society, a cooperative corporation, a league, a deposit protection agency or an unincorporated organization consisting wholly of any of those entities may be admitted to membership in an association.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this subsection read as follows:

Members

41. (1) No person other than

- (a) an association
- (b) a central cooperative credit society,
- (c) a local cooperative credit society,
- (d) a cooperative corporation,
- (e) a deposit protection agency, and
- (f) an unincorporated organization consisting only of entities described in any of paragraphs (a) to (e) may be admitted to membership in an association

1991, c. 48, s. 41(1); 2001 c. 9, s. 263

Condition for membership

(2) No person shall be admitted to membership in an association until the person's application for membership has been approved by the directors and the person has complied fully with any by-law governing admission of members.

(2) Repealed, [2001, c. 9, s. 264.]

Legislative History – This subsection was repealed by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. The subsection previously read:

Superintendent's approval

(3) No local cooperative credit society or unincorporated organization that includes a local cooperative credit society shall be admitted to membership in an association without the prior written approval of the Superintendent.

(4) [Repealed, 1994, c. 47, s. 50]

Membership not transferable

(5) No transfer of a membership is valid for any purpose.

1991, c. 48, s. 41; 1994, c. 47, s. 50; 2001, c. 9, s. 264.

Right to vote

42. (1) Subject to subsection (2) and the by-laws, each member of an association shall have one vote on all matters to be decided by the members.

Delegates

(2) The members of an association may, by by-law, provide that the voting rights of a member shall be vested in one or more delegates to be elected or appointed by the member in such manner as may be provided for in the by-laws, and the delegates so elected or appointed may exercise all or any of those rights.

References

(3) Where, in this Act, reference is made to a meeting of members of an association and the association has passed a by-law under subsection (2), a reference in this Act to a meeting of members shall be construed as a reference to a meeting of delegates.

Classes of members

43. The members of an association may, by by-law, establish one or more classes of members, and such a by-law may provide for such matters as are necessary, including

- (a) the qualifications for and the terms and conditions applying to membership in each such class;
- (b) the number of delegates to represent each class and the manner of electing or appointing such delegates; and
- (c) the election, appointment or removal of its directors by the members or delegates of particular classes.

Transfer of membership shares

44. No transfer of membership shares in an association is valid unless the transfer is approved by resolution of the directors.

By-laws binding

45. Subject to this Act, every by-law of an association binds the association and its members to the same extent as if

(a) each member had duly approved the by-law; and

(b) there were in the by-law a covenant under seal on the part of each member, and the successors and assigns of the member, to conform thereto.

WITHDRAWAL AND EXPULSION

Notice of withdrawal

46. A member may withdraw from membership in an association by giving six months notice of its intention to the directors or such shorter notice as the directors may fix.

Expulsion

47. (1) A member may be expelled from membership in an association by special resolution passed by the directors at a meeting called for that purpose.

Conditions for resolution

(2) A special resolution passed under subsection (1) is not valid unless prior written notice is given to the member setting forth the grounds on which the association is seeking to expel it and an opportunity is given to the member to appear, by an agent or counsel, to make submissions at the meeting of the directors called to consider the resolution to expel it.

Effective date

(3) A special resolution passed under subsection (1) takes effect on the date on which the member is notified of the resolution or, if later, the date specified in the resolution.

Where withdrawal or expulsion

48. Where a member withdraws or is expelled pursuant to section 46 or 47, the association shall permit the withdrawal of the member's deposits with the association and shall, in accordance with any by-law passed pursuant to subsection 67(4), redeem the membership shares held by the member, unless

(a) there are reasonable grounds for believing that the association is, or the payment to redeem the membership shares would cause the association to be, in contravention of any regulation referred to in 409(1) and (2) or any direction referred to in 409(3); or

(b) subject to paragraph 79(1)(b), the redemption of the membership shares has not been approved by the Superintendent.

MEMBERS REGISTER

Members register

49. (1) An association shall maintain a members register in which it shall record

(a) the names, alphabetically arranged, and latest known addresses of the members and former members of the association;

(b) the number of membership shares held by each member; and

(c) the date and particulars of the issue and transfer of each membership share.

Former-Act and amalgamated associations

(2) For the purposes of subsection (1), "members register" includes similar registers required by law to be maintained by the former-Act association, or by a body corporate amalgamated and continued as an association under this Act, before the coming into force of this section or the amalgamation, as the case may be.

Application of certain provisions

(3) Subsection 236(4) and sections 240 to 242 and 246 to 249 apply, with such modifications as the circumstances require, in respect of a members register.

GENERAL PROVISIONS

Minimum membership

50. (1) The membership in an association must include at least

(a) an association;

(b) two central cooperative credit societies not all of which are incorporated under the laws of one province;

(c) ten local cooperative credit societies not all of which are incorporated under the laws of one province, or

(d) two or more leagues not all of which are incorporated under the laws of one province.

Where minimum not attained

(1) If, at any time, the membership in an association is not in accordance with subsection (1), the association shall without delay take the steps that are necessary to

(a) apply for a certificate of continuation or letters patent referred to in subsection 32(1); or

(b) liquidate and dissolve the association under Part VII.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Where minimum not attained

50. If, at any time, the membership in an association does not include at least two central cooperative credit societies or ten local cooperative credit societies as described in section 24, the association shall forthwith take such steps as are necessary to

(a) apply for a certificate of continuance under subsection 285 (1) of the *Canada Cooperatives Act*, or

(b) liquidate and dissolve the association under Part VII.

Lien

51. Unless the by-laws otherwise provide, where a member is indebted to an association, the association has a lien to the extent of the debt on the membership shares and deposits recorded in the name of, and any dividends payable to, the member.

No Control

52. No person other than an association may control an association.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

No control

52. No person shall control an association.

1991, c. 48, s. 52; 2001, c. 9, s. 266

PART V**ORGANIZATION AND COMMENCEMENT****ORGANIZATION MEETINGS****First directors' meeting**

53. (1) After letters patent incorporating an association are issued, a meeting of the directors of the association shall be held at which the directors may, subject to this Part,

- (a) adopt forms of certificates for membership shares and shares and of corporate records;
- (b) authorize the issue of membership shares of the association;
- (c) admit persons to membership in the association;
- (d) appoint officers;
- (e) make banking arrangements; and
- (f) deal with any other matters necessary to organize the association.

Calling directors' meeting

(2) An incorporator or a director named in the application for letters patent may call the meeting referred to in subsection (1) by giving, subject to subsection 186(2), no fewer than five days notice of the purpose, time and place of the meeting to each director of the association.

Calling members' meeting

54. (1) After the meeting referred to in subsection 53(1), the directors of the association shall forthwith call a meeting of the members of the association.

Meeting of members

(2) The members of an association shall, at the meeting called pursuant to subsection (1),

- (a) make by-laws;
- (b) elect or appoint directors to hold office for a term expiring not later than the close of the third annual meeting of the association following the election; and

(c) appoint an auditor to hold office until the close of the first annual meeting of the association.

Term of first directors

55. A director named in the application for letters patent to incorporate an association holds office until the close of the meeting called pursuant to subsection 54(1).

COMMENCEMENT AND CARRYING ON OF BUSINESS

Order to commence and carry on business

56. (1) An association shall not carry on any business until the Superintendent has, by order, approved the commencement and carrying on of business by the association.

Former-Act association

(2) A certificate or any other authorization that was given to the former-Act association and that is in effect immediately before the coming into force of this Part is deemed to be an order of the Superintendent under subsection (1).

Amalgamated association

(3) Where letters patent amalgamating and continuing two or more bodies corporate as an association under this Act are issued, the Superintendent shall make an order approving the commencement and carrying on of business by the association.

Subsection 57(2) and section 60 do not apply

(4) For greater certainty, subsection 57(2) and section 60 do not apply in respect of an association referred to in subsection (3).

Authority to make order

57. (1) On application by an association, the Superintendent may make an order approving the commencement and carrying on of business by the association.

Statement of payments

(2) An application by an association for an order under subsection (1) must contain a statement setting out the amounts paid or to be paid by the association in connection with its incorporation and organization.

No payments before order

58. Until an order approving the commencement and carrying on of business is made for an association, the association shall not make any payment on account of incorporation or organization expenses out of the paid-in capital of the association and interest thereon, except reasonable sums

- (a) for the remuneration of not more than two officers;
- (b) for the payment of costs related to the issue of membership shares and shares of the association; and
- (c) for the payment of clerical assistance, legal services, accounting services, office accommodation at one location, office expenses, advertising, stationery, postage and travel expenses.

Deposits and investments before order

59. Where an association comes into existence but no order approving the commencement and carrying on of business is made for the association, the association may only

- (a) deposit, in Canada, paid-in capital of the association in another deposit-taking Canadian financial institution; or
- (b) invest paid-in capital of the association in unencumbered securities of the Government of Canada or the government of any province.

Conditions for order

60. (1) The Superintendent shall not make an order approving the commencement and carrying on of business by an association until it has been shown to the satisfaction of the Superintendent that

- (a) the meeting of members of the association referred to in subsection 54(1) has been duly held;
- (b) the association has paid-in capital of at least five million dollars or such greater amount as the Minister may specify;

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this paragraph read as follows:

(b) the association has paid-in capital of at least ten million dollars or such greater amount as the Minister may specify;

- (c) the expenses of incorporation and organization to be borne by the association are reasonable; and
- (d) all other relevant requirements of this Act have been complied with.

1991, c. 48, s. 60(1); 2001, c. 9, s. 267

Time limit

(2) The Superintendent shall not make an order approving the commencement and carrying on of business by an association more than one year after the day on which the association comes into existence.

Conditions of order

61. An order approving the commencement and carrying on of business by an association may contain any conditions or limitations that the Superintendent considers appropriate.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Conditions of order

61. An order approving the commencement and carrying on of business by an association may contain such conditions or limitations that are consistent with this Act and relate to the business of the association as the Superintendent deems expedient and necessary.

1991, c. 48, s. 61; 2001, c. 9, s. 268

Variations

62. (1) In respect of the order approving the commencement and carrying on of business by an association, the Superintendent may at any time, by further order,

(a) make the order subject to such conditions or limitations that are consistent with this Act and that relate to the business of the association as the Superintendent deems expedient and necessary, or

(b) amend or revoke any authorization contained in the order or any condition or limitation to which the order is subject,

but before making any such further order the Superintendent shall provide the association with an opportunity to make representations regarding that further order.

(2) to (6) [Repealed, 1996, c. 6, s. 53]

1991, c. 48, s. 62; 1996, c. 6, s. 53.

Public notice

63. (1) On the making of an order approving the commencement and carrying on of business by an association, the association shall publish a notice of the making of the order in a newspaper in general circulation at or near the place where the head office of the association is located.

Notice in *Canada Gazette*

(2) The Superintendent shall cause to be published in the *Canada Gazette* a notice of the making of an order approving the commencement and carrying on of business by an association.

Cessation of existence

64. Except for the sole purpose of winding up the association's affairs, an association ceases to exist one year after the day on which its incorporating instrument became effective if it does not obtain an order approving the commencement and carrying on of business within that year.

Allowed disbursements

65. (1) Where an order approving the commencement and carrying on of business is not made for an association, no part of the moneys of the association shall be used for the payment of incorporation and organization expenses, other than remuneration and costs referred to in section 58, unless the payment has been approved by a special resolution.

Application to court to settle disbursements

(2) If the amount allowed by a special resolution for the payment of any incorporation and organization expenses referred to in subsection (1) is considered insufficient by the directors or if no special resolution for the payment of such expenses is passed, the directors may apply to any court having jurisdiction in the place where the head office of the association is situated to settle and determine the amounts to be paid out of any moneys of the association.

Notice of application to court

(3) The directors shall, at least twenty-one days prior to the date fixed for the hearing of the application referred to in subsection (2), send to the members or incorporators, as the case may be, a notice of the application, which notice shall contain a statement of the amounts that are proposed to be settled and determined by the court.

Ratio payable

(4) In order that the amounts paid and payable under this section may be equitably borne by the members or incorporators, as the case may be, the directors shall, after the amounts of the payments have been approved by special resolution or settled and determined by a court, fix the proportionate part thereof chargeable to each member or incorporator as the ratio of the amount paid in by the member or incorporator to the aggregate of all the amounts paid in by the members or incorporators.

Return of excess

(5) After the amounts referred to in this section have been paid, the directors shall pay, with any interest earned thereon, to the members or incorporators, the respective balances of the moneys paid in by them, less the amount chargeable to each member or incorporator under subsection (4).

PART VI

CAPITAL STRUCTURE

SHARE CAPITAL

Power to issue membership shares and shares

66. (1) Subject to this Act and the incorporating instrument and by-laws of the association,

(a) membership shares of an association may be issued at such times and to such members and for such consideration as the directors of the association may determine; and

(b) shares of an association may be issued at such times and to such persons and for such consideration as the directors of the association may determine.

Form

(2) Shares of an association shall be in registered form and membership shares and shares shall be without nominal or par value.

Holding membership shares

67. (1) Members shall hold the minimum number of membership shares prescribed by the by-laws.

Rights

(2) The membership shares of an association confer on the holders thereof equal rights, including equal rights to

(a) receive dividends declared on the shares; and

(b) receive the remaining property of the association on dissolution.

Designation of shares

(3) No association shall designate a class of its shares as "membership shares" or any variation thereof.

Redemption

(4) The by-laws of an association shall set the terms and conditions under which membership shares may be redeemed, including the manner and time of payment for the redeemed membership shares.

Certificates not mandatory

(5) The by-laws of an association may provide that no membership share certificates need be issued but if this is the case, the association shall issue to each member who so requests, a statement of the number of membership shares held by the member.

Certificates

(6) If an association issues membership share certificates, there shall be stated on the face of each certificate for a membership share issued by the association after the coming into force of this section

- (a) the name of the association;
- (b) a statement that the association is subject to the Cooperative Credit Associations Act;
- (c) the name of the person to whom it is issued;
- (d) a statement that the certificate represents membership shares in the association, and the number of such membership shares;
- (e) a statement that the certificate is not transferable without the approval of the Board of Directors of the association; and
- (f) that there may be a lien on the membership shares represented by the certificate in favour of the association for indebtedness to the association.

No automatic rights

68. (1) Subject to subsection (2), an association shall not issue any share that confers on the holder thereof the right

- (a) to vote at meetings of the association otherwise than in accordance with this Act; or
- (b) to receive any of the remaining property of the association on dissolution.

Right to vote

(2) An association may issue a share that confers on the holder thereof the right to vote at an election of directors by reason of an event that has occurred and is continuing or by a reason of a condition that has been fulfilled.

Effect of contravening provision

(3) Any provision in a by-law that purports to confer a right referred to in subsection (1) is of no force and effect.

Shares of former-Act association

69. (1) Membership shares and shares with nominal or par value of the former-Act association are deemed to be shares without nominal or par value.

Deemed share conditions

(2) Where any right of a holder of a membership share or share with nominal or par value of the former-Act association was stated or expressed in terms of the nominal or par value of the share immediately before the coming into force of this Part, that right is thereafter deemed to be the same right stated or expressed without reference to the nominal or par value of the share.

Classes of shares

70. (1) The members of an association may, by by-law, provide for one or more classes of shares and, if they so provide, shall set out

(a) the rights, privileges, restrictions and conditions attaching to the shares of each class; and

(b) the maximum number, if any, of shares of any class that the association is authorized to issue.

Approval required

(2) A by-law referred to in subsection (1) must be approved by special resolution.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this sub-section read as follows:

Effective date

(2) A by-law referred to in subsection (1) is not effective until it is approved by the Superintendent in writing.

1991, c. 48, s. 70; 2001, c. 9, s. 269

Shares in series

71. (1) The by-laws of an association made pursuant to section 70 may authorize the issue of any class of shares in one or more series and may authorize the directors of the association to fix the maximum number, if any, of shares in each series and to determine the designation, rights, privileges, restrictions and conditions attaching to the shares of each series, subject to the limitations set out in the by-laws.

Series participation

(2) If any cumulative dividend or amounts payable on return of capital in respect of a series of shares are not paid in full, the shares of all series of the same class participate rateably in respect of accumulated dividends and return of capital.

Voting rights

(3) Where voting rights are attached to any series of a class of shares, the shares of every other series of that class shall have the same voting rights.

Restriction on series

(4) No rights, privileges, restrictions or conditions attached to a series of shares authorized under this section confer on the series a priority in respect of dividends or return of capital over any other series of shares of the same class that are then outstanding.

Material to Superintendent

(5) Before the issue of shares authorized under this section, the directors shall send to the Superintendent a copy of any by-law authorizing the directors to fix the rights, privileges, restrictions and conditions of those shares and shall provide the Superintendent with particulars of the proposed shares.

One share, one vote

72. Where voting rights are attached to a share of an association issued pursuant to a by-law passed under section 70, the by-law may confer only one vote in respect of that share.

Membership shares and shares non-assessable

73. Membership shares and shares issued by an association after the coming into force of this section are non-assessable and the members and shareholders are not liable to the association or to its creditors in respect thereof.

Consideration

74. (1) No membership share and no share of any class of shares of an association shall be issued until it is fully paid for in money or, with the approval of the Superintendent, in property.

Other currencies

(2) When issuing membership shares or shares, an association may provide that any aspect of the membership shares or shares relating to money or involving the payment of or the liability to pay money be in a currency other than the currency of Canada.

When approval not necessary

(3) The by-laws of an association may, with the approval of the Superintendent, provide for a formula or procedure for valuing a member of the association or any of its assets or liabilities when the member, or the asset or liability, is proposed to be acquired by the association in exchange for membership shares or shares of the association. The approval of the Superintendent under subsection (1) is not necessary when such shares are issued in accordance with such a by-law.

Legislative History – This sub-section was added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such sub-section previously existed in this Act.

1991, c. 48, s. 74; 2001, c. 9, s. 270.

Stated capital account

75. (1) An association shall maintain a separate stated capital account for the membership shares and for each class and series of shares it issues.

Addition to stated capital account

(2) An association shall record in the appropriate stated capital account the full amount of any consideration it receives for any membership shares or shares it issues.

Exception

(2.1) Despite subsection (2), an association may, subject to subsection (2.2), record in the appropriate stated capital account part of the amount of any consideration it receives for shares it issues

(a) in exchange for

(i) property of a person who immediately before the exchange did not deal with the association at arm's length within the meaning of that expression in the *Income Tax Act* or property of any other prescribed person, or

(ii) shares of, or another interest in, a body corporate that immediately before the exchange, or because of the exchange, did not deal with the association at arm's length within the meaning of that expression in the *Income Tax Act* or shares of or another interest in any prescribed entity; or

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this portion of the sub-section before paragraph (b) read as follows:

Exception

(2.1) Notwithstanding subsection (2), an association may record in the appropriate stated capital account part of the amount of any consideration it receives for shares it issues

(a) in exchange for

(i) property of a person who immediately before the exchange did not deal with the association at arm's length within the meaning of the *Income Tax Act*, or

(ii) shares of a body corporate that immediately before the exchange, or because of the exchange, did not deal with the association at arm's length within the meaning of the *Income Tax Act*; or

(b) under an agreement referred to in subsection 227(1) to shareholders of an amalgamating body corporate who receive the shares in addition to or instead of securities of the amalgamated association.

1997, c. 15, s. 118; 2001, c. 9, s. 271.

Limit on addition to a stated capital account

(2.2) On the issuance of a share, an association shall not add to the stated capital account in respect of the share an amount greater than the amount of the consideration it receives for the share.

Constraint on addition to a stated capital account

(2.3) Where an association that has issued any outstanding shares of more than one class or series proposes to add to a stated capital account that it maintains in respect of a class or series of shares an amount that was not received by the association as consideration for the issue of shares, the addition must be approved by special resolution unless all the issued and outstanding shares are of not more than two classes of convertible shares referred to in subsection 84(4).

Stated capital of former-Act association

(3) On the coming into force of this Part, the former-Act association shall record in the stated capital account maintained for membership shares then outstanding an amount that is equal to the aggregate of

(a) the aggregate amount paid up on the membership shares immediately before the coming into force of this Part, and

(b) the amount of the contributed surplus of the association that is attributable to those membership shares.

Contributed surplus entry

(4) The amount of any contributed surplus recorded in the stated capital account pursuant to paragraph (3)(b) shall be deducted from the contributed surplus account of the association.

Share issued before coming into force

(5) Any amount unpaid in respect of a membership share issued by the former-Act association before the coming into force of this Part and paid after the coming into force of this Part shall be recorded in the stated capital account maintained by the association for the membership shares.

1991, c. 48, s. 75; 1997, c. 15, s. 118.

Pre-emptive right: shareholders

76. (1) Where the by-laws of an association so provide, no shares of any class shall be issued unless the shares have first been offered to the persons holding shares of that class, and those persons have a pre-emptive right to acquire the offered shares in proportion to their holdings of the shares of that class, at such price and on such terms as those shares are to be offered to others.

Exception

(2) Notwithstanding the existence of a pre-emptive right, a shareholder of an association has no pre-emptive right in respect of shares that are to be issued

(a) for a consideration other than money;

(b) as a share dividend; or

(c) pursuant to the exercise of conversion privileges, options or rights previously granted by the association.

Idem

(3) Notwithstanding the existence of a pre-emptive right, a shareholder of an association has no pre-emptive right in respect of shares to be issued

(a) where the issue of shares to the shareholder is prohibited by this Act; or

(b) where, to the knowledge of the directors of the association, the offer of shares to a shareholder whose recorded address is in a country other than Canada ought not to be made unless the appropriate authority in that country is provided with information in addition to that submitted to the members at the last annual meeting.

Conversion privileges

77. (1) An association may issue conversion privileges, options or rights to acquire securities of the association, and shall set out the conditions thereof

- (a) in the documents that evidence the conversion privileges, options or rights; or
- (b) in the securities to which the conversion privileges, options or rights are attached.

Transferable rights

(2) Conversion privileges, options and rights to acquire securities of an association may be made transferable or non-transferable, and options and rights to acquire such securities may be made separable or inseparable from any securities to which they are attached.

Reserved shares

(3) Where an association has granted privileges to convert any securities issued by the association into shares, or into shares of another class or series, or has issued or granted options or rights to acquire shares, if the by-laws limit the number of authorized shares, the association shall reserve and continue to reserve sufficient authorized shares to meet the exercise of such conversion privileges, options and rights.

Holding of own shares

78. Except as provided in sections 79 to 81, or unless permitted by the regulations, an association shall not

- (a) hold membership shares or shares of the association; or
- (b) permit any of its subsidiaries to hold membership shares greater than the minimum number of membership shares of the association prescribed by a by-law made under subsection 67(1) or any shares of the association.

Purchase and redemption of membership shares and shares

79. (1) Subject to subsection (2) and to its by-laws, an association may,

- (a) with the consent of the Superintendent, purchase, for the purpose of cancellation, any membership shares or shares issued by it, or redeem any redeemable shares issued by it at a price not exceeding the redemption price thereof calculated according to a formula stated in its by-laws or, in the case of shares, according to the conditions attaching to the shares; and
- (b) purchase in any calendar year, for the purpose of cancellation, not more than one per cent of the membership shares outstanding at the beginning of the year, at a price not

exceeding the redemption price of the membership shares calculated according to a formula stated in its by-laws.

Restrictions on purchase and redemption

(2) An association shall not make any payment to purchase or redeem any membership shares or shares issued by it if there are reasonable grounds for believing that the association is, or the payment would cause the association to be, in contravention of any regulation referred to in subsection 409(1) or (2) or any direction made pursuant to subsection 409(3).

Donations

(3) An association may accept any membership share or share of the association surrendered to it as a gift, but may not extinguish or reduce a liability in respect of an amount unpaid on any such share except in accordance with section 82.

Holding as personal representative

80. (1) An association may, and may permit its subsidiaries to, hold, in the capacity of a personal representative, membership shares and shares of the association, but only where the association or the subsidiary does not have a beneficial interest in the shares.

Security interest

(2) Subject to section 51, an association may, and may permit its subsidiaries to, hold membership shares and shares of the association by way of a security interest where the security interest is nominal or immaterial when measured by criteria established by the association that have been approved in writing by the Superintendent.

Saving

(3) Nothing in subsection (2) precludes the former-Act association or any of its subsidiaries from holding any security interest held immediately prior to the coming into force of this Part.

Cancellation of membership shares and shares

81. (1) Subject to subsection (2), where an association purchases membership shares, or shares of the association or fractions thereof, or redeems or otherwise acquires membership shares or shares of the association, the association shall cancel those membership shares or shares.

Sale of shares

(2) Where an association or any of its subsidiaries, through the realization of security, acquires any membership shares or shares of the association, the association may, or may cause its subsidiary to, as the case may be, within six months after the day of the realization, sell or otherwise dispose of the membership shares or shares.

Reduction of capital

82. (1) The stated capital of an association may be reduced by special resolution.

Limitation

(2) An association shall not reduce its stated capital by special resolution if there are reasonable grounds for believing that the association is, or the reduction would cause the association to be, in contravention of any regulation referred to in subsection 409(1) or (2) or any direction made pursuant to subsection 409(3).

Contents of special resolution

(3) A special resolution to reduce the stated capital of an association shall specify the stated capital account or accounts from which the reduction of stated capital effected by the special resolution will be deducted.

Approval by Superintendent

(4) A special resolution to reduce the stated capital of an association has no effect until it is approved in writing by the Superintendent.

Conditions for approval

(5) No approval to reduce the stated capital of an association may be given by the Superintendent unless application therefor is made within three months after the time of the passing of the special resolution and a copy of the special resolution, together with a notice of intention to apply for approval, has been published in the *Canada Gazette*.

Statements to be submitted

(6) In addition to evidence of the passing of a special resolution to reduce the stated capital of an association and of the publication thereof, statements showing

- (a) the number of the association's membership shares and shares issued and outstanding,
- (b) the results of the voting by members of the association or by class of shares,
- (c) the association's assets and liabilities, and
- (d) the reason why the association seeks the reduction of capital

shall be submitted to the Superintendent at the time of the application for approval of the special resolution.

Recovery by action

83. (1) Where any money or property was paid or distributed to a member, shareholder or other person as a consequence of a reduction of capital made contrary to section 82, a creditor of the association may apply to a court for an order compelling the member, shareholder or other person to pay the money or deliver the property to the association.

Shares held by personal representative

(2) No person holding membership shares or shares in the capacity of a personal representative and registered on the records of the association as a member or shareholder and therein described as the personal representative of a named person is personally liable under subsection (1), but the named person is subject to all the liabilities imposed by that subsection.

Limitation

(3) An action to enforce a liability imposed by subsection (1) may not be commenced more than two years after the date of the act complained of.

Remedy preserved

(4) This section does not affect any liability that arises under section 211.

Adjustment of stated capital account

84. (1) On a purchase, redemption or other acquisition by an association of membership shares, or shares, or fractions thereof issued by it, other than membership shares or shares acquired pursuant to section 80 or acquired through the realization of security and sold pursuant to subsection 81(2), the association shall deduct from the stated capital account maintained for the membership shares, or for the class or series of shares, so purchased, redeemed or otherwise acquired an amount equal to the result obtained by multiplying the stated capital in respect of the membership shares or the shares of that class or series by the number of membership shares or shares of that class or series so purchased, redeemed or otherwise acquired and dividing by the number of membership shares or shares of that class or series outstanding immediately before the purchase, redemption or other acquisition.

Idem

(2) An association shall adjust its stated capital account or accounts in accordance with any special resolution referred to in section 82.

Shares converted to another class

(3) On a conversion of outstanding shares of an association into shares of another class or series, or on a change of outstanding shares of the association into shares of another class or series, the association shall

(a) deduct from the stated capital account maintained for the class or series of shares converted or changed an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares of that class or series converted or changed, and dividing by the number of outstanding shares of that class or series immediately before the conversion or change; and

(b) record the result obtained under paragraph (a) and any additional consideration received pursuant to the conversion or change in the stated capital account maintained or to be maintained for the class or series of shares into which the shares have been converted or changed.

Stated capital of convertible shares

(4) For the purposes of subsection (3) and subject to the association's by-laws, where an association issues two classes of shares and there is attached to each class a right to convert a share of one class into a share of the other class and a share is so converted, the amount of stated capital attributable to a share in either class is the aggregate of the stated capital of both classes divided by the number of outstanding shares of both classes immediately before the conversion.

Conversion or change of shares

(5) Shares issued by an association and converted into shares of another class or series, or changed under subsection 221(1) into shares of another class or series, become issued shares of the class or series of shares into which the shares have been converted or changed.

Addition to stated capital account

85. On a conversion of any debt obligation of an association into membership shares, or into shares of a class or series of shares, the association shall

(a) deduct from the liabilities of the association the nominal value of the debt obligation being converted; and

(b) record the result obtained under paragraph (a) and any additional consideration received for the conversion in the stated capital account maintained or to be maintained for the membership shares or for the class or series of shares into which the debt obligation has been converted.

Declaration of dividend

86. (1) The directors of an association may declare and an association may pay a dividend by issuing fully paid membership shares or options or rights to acquire membership shares to members or fully paid shares or options or rights to acquire fully paid shares to members or shareholders and, subject to subsections (4) and (5), the directors of an association may declare and an association

may pay a dividend in money or property, and if a dividend is to be paid in money, the dividend may be paid in a currency other than the currency of Canada.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this sub-section read as follows:

Declaration of dividend

86. (1) The directors of an association may declare and an association may pay a dividend by issuing fully paid membership shares or options or rights to acquire membership shares to members or fully paid shares or options or rights to acquire fully paid shares to members or shareholders and, subject to subsection (4), the directors of an association may declare and an association may pay a dividend in money or property, and where a dividend is to be paid in money, the dividend may be paid in a currency other than the currency of Canada.

Notice to Superintendent

(2) The directors of an association shall notify the Superintendent of the declaration of a dividend at least ten days prior to the day fixed for its payment.

Dividend

(3) If membership shares or shares of an association are issued in payment of a dividend, the association shall record in the stated capital account maintained or to be maintained for the membership shares or shares of the class or series issued in payment of the dividend the declared amount of the dividend stated as an amount of money.

When dividend not to be declared

(4) The directors of an association shall not declare and an association shall not pay a dividend if there are reasonable grounds for believing that the association is, or the payment would cause the association to be, in contravention of any regulation referred to in subsection 409(1) or (2) or any direction made pursuant to subsection 409(3).

When dividend not to be declared

(5) The directors of an association shall not declare and an association shall not pay a dividend in any financial year without the approval of the Superintendent if, on the day the dividend is declared, the total of all dividends declared by the association in that year would exceed the aggregate of the association's net income up to that day in that year and its retained net income for the preceding two financial years.

Legislative History – This sub-section was added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such sub-section previously existed in this Act.

SUBORDINATED INDEBTEDNESS

Restriction on subordinated indebtedness

87. (1) An association shall not issue subordinated indebtedness unless the subordinated indebtedness is fully paid for in money or, with the approval of the Superintendent, in property.

References to subordinated indebtedness

(2) A person shall not in any prospectus, advertisement, correspondence or literature relating to any subordinated indebtedness issued or to be issued by an association refer to the subordinated indebtedness otherwise than as subordinated indebtedness.

Deemed not to be a deposit

(3) Subordinated indebtedness issued by an association is deemed not to be a deposit.

Other currencies

(4) When issuing subordinated indebtedness, an association may provide that any aspect of the subordinated indebtedness relating to money or involving the payment of or the liability to pay money in relation thereto be in a currency other than that of Canada including, without restricting the generality of the foregoing, the payment of any interest thereon.

SECURITY CERTIFICATES AND TRANSFERS

Definitions

88. In this section and sections 89 to 142,

"adverse claim" « opposition »

"adverse claim" includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in a security;

"bona fide purchaser" « acheteur de bonne foi »

"bona fide purchaser" means a purchaser for value in good faith and without notice of any adverse claim who takes delivery of a security in bearer form or order form or of a security in registered form issued to the purchaser or endorsed to the purchaser or endorsed in blank;

"clearing agency" « agence de compensation et de dépôt »

"clearing agency" means a person designated as a recognized clearing agency by the Superintendent;

"delivery" « livraison » ou « remise »

"delivery" means voluntary transfer of possession;

"fungible" « fungibles »

"fungible", in respect of securities, means securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit;

"genuine" « authentique »

"genuine" means free of forgery or counterfeit;

"good faith" « bonne foi »

"good faith" means honesty in fact in the conduct of the transaction concerned;

"over-issue" « émission excédentaire »

"over-issue" means the issue of securities in excess of any maximum number of securities that the issuer is authorized to issue;

"purchaser" « acquéreur »

"purchaser" means a person who takes an interest in a security by sale, mortgage, pledge, issue, reissue, gift or any other voluntary transaction;

"securities broker" « courtier »

"securities broker" means a person who is engaged for all or part of the person's time in the business of buying and selling securities and who, in the transaction concerned, acts for, or buys a security from, or sells a security to, a customer;

"security" or "security certificate" « valeur mobilière », « titre » ou « certificat de valeur mobilière »

"security" or "security certificate" means an instrument issued by an association that is

- (a) in bearer, order or registered form,
- (b) of a type commonly dealt in on securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment,
- (c) one of a class or series or by its terms divisible into a class or series of instruments, and
- (d) evidence of a share, participation or other interest in or obligation of an association,

but does not include an instrument evidencing a deposit or a membership share;

"trust indenture" « acte de fiducie »

"trust indenture" has the meaning given that expression by section 278;

"unauthorized" « non autorisé »

"unauthorized", in relation to a signature or an endorsement, means a signature or an endorsement made without actual, implied or apparent authority, and includes a forgery;

"uncertificated security" « valeur mobilière sans certificat »

"uncertificated security" means a security, not evidenced by a security certificate, the issue and any transfer of which is registered or recorded in records maintained for that purpose by or on behalf of an association;

"valid" « valide »

"valid" means issued in accordance with the applicable law or validated under section 104.

Provisions governing transfers of securities

89. The transfer of a security is governed by sections 90 to 142.

Security a negotiable instrument

90. (1) A security is a negotiable instrument but, in the case of any inconsistency between the provisions of the *Bills of Exchange Act* and this Act, this Act prevails to the extent of the inconsistency.

Bearer form

(2) A security is in bearer form if it is payable to bearer according to its terms and not by reason of any endorsement.

Order form

(3) A security is in order form where the security is not a share and, by its terms, it is payable to the order or assigns of any person therein specified with reasonable certainty or to the person or the person's order.

Registered form

(4) A security is in registered form if

- (a) it specifies a person entitled to the security or to the rights it evidences, and its transfer is capable of being recorded in a securities register; or

(b) it bears a statement that it is in registered form.

Status of guarantor

91. A guarantor for an issuer of a security is deemed to be an issuer to the extent of the guarantee, whether or not the guarantor's obligation is noted on the security.

Rights of holder

92. (1) Subject to Part VIII, every security holder is entitled at the holder's option to a security certificate that complies with this Act or to a non-transferable written acknowledgement of the holder's right to obtain a security certificate that complies with this Act from an association in respect of the securities of that association held by the security holder.

Fee for security certificate

(2) An association may charge a fee, not exceeding a prescribed amount, for a security certificate issued in respect of a transfer.

1999, c. 31, s. 54

Joint holders

(3) An association is not required to issue more than one security certificate in respect of securities held jointly by several persons, and delivery of a security certificate to one of several joint holders is sufficient delivery to all joint holders of the security.

Signatures on security certificate

93. (1) A security certificate shall be signed manually

(a) by at least one director or officer of the association,

(b) by or on behalf of a registrar, transfer agent or branch transfer agent of the association,
or

(c) by a trustee who certifies it in accordance with a trust indenture, and any additional signatures required on a security certificate may be printed or otherwise mechanically produced thereon.

No manual signature required

(2) Notwithstanding subsection (1), a manual signature is not required on a security certificate representing a fractional share, on an option or a right to acquire a security or on a scrip certificate.

Continuation of signature

(3) Where a security certificate contains a printed or mechanically reproduced signature of a person, the association may issue the security certificate, notwithstanding that the person has ceased to be a director or an officer of the association, and the security certificate is as valid as if the person were a director or an officer at the date of its issue.

Contents of share certificate

94. There shall be stated on the face of each share certificate issued by an association after the coming into force of this section

- (a) the name of the association;
- (b) a statement that the association is subject to the Canadian Cooperative Credit Associations Act;
- (c) the name of the person to whom the share certificate is issued; and
- (d) the number and class of shares and the designation of any series that the certificate represents.

Restrictions and constraints

95. (1) If a security certificate issued by an association is or becomes subject to

- (a) a restriction on its transfer other than a constraint under Part VIII, or
- (b) a lien in favour of the association,

the restriction or lien is ineffective against a transferee of the security who has no actual knowledge of it, unless the restriction or lien or a reference to it is noted conspicuously on the security certificate.

Limit on restriction

(2) Where any of the issued shares of an association are or were part of a distribution to the public and remain outstanding and are held by more than one person, the association shall not have a restriction on the issue, transfer or ownership of its shares of any class or series except by way of a constraint under Part VIII.

Particulars of class

96. (1) There shall be stated legibly on a share certificate issued after the coming into force of this section by an association that is authorized to issue shares of more than one class or series

(a) the rights, privileges, restrictions and conditions attached to the shares of each class and series existing when the share certificate is issued; or

(b) that the class or series of shares that the certificate represents has rights, privileges, restrictions or conditions attached thereto and that the association will furnish a shareholder, on demand and without charge, with a full copy of

(i) the text of the rights, privileges, restrictions and conditions attached to each class authorized to be issued and to each series in so far as those rights, privileges, restrictions and conditions have been fixed by the directors, and

(ii) the text of the authority of the directors, if the directors are so authorized, to fix the rights, privileges, restrictions and conditions of subsequent series of shares.

Duty

(2) Where a share certificate issued by an association contains the statement mentioned in paragraph (1)(b), the association shall provide a shareholder, on demand and without charge, with a full copy of the texts referred to in subparagraphs (1)(b)(i) and (ii).

Fractional share

97. An association may issue a certificate for a fractional share or may issue in place thereof a scrip certificate in bearer form that entitles the holder to receive a certificate for a full share by exchanging scrip certificates aggregating a full share.

Scrip certificates

98. The directors of an association may attach conditions to any scrip certificate issued by the association, including conditions that

(a) the scrip certificate becomes void if not exchanged for a share certificate representing a full share before a specified date; and

(b) any shares for which the scrip certificate is exchangeable may, notwithstanding any pre-emptive right, be issued by the association to any person and the proceeds thereof may be distributed rateably to the holders of all the scrip certificates.

Holders of fractional shares

99. (1) A holder of a fractional share issued by an association is not entitled to exercise voting rights or to receive a dividend in respect of the fractional share.

Holders of scrip certificates

(2) A holder of a scrip certificate is not entitled to exercise voting rights or to receive a dividend in respect of the scrip certificate.

Dealings with registered holder

100. (1) An association or a trustee within the meaning of section 278 may, subject to sections 146 to 149 and 154, treat the registered owner of a security as the person exclusively entitled to vote, to receive notices, to receive any interest, dividend or other payment in respect of the security and to exercise all of the rights and powers of an owner of the security.

Constructive registered holder

(2) Notwithstanding subsection (1), an association may treat a person as a registered security holder entitled to exercise all of the rights of the security holder that the person represents, if that person provides the association with evidence as described in subsection 134(4) that the person is

- (a) the heir or personal representative of a deceased security holder or the personal representative of the heirs of the deceased security holder;
- (b) the personal representative of a registered security holder who is an infant, an incompetent person or a missing person; or
- (c) a liquidator of, or a trustee in bankruptcy for, a registered security holder.

Permissible registered holder

(3) If a person on whom the ownership of a security of an association devolves by operation of law, other than a person described in subsection (2), provides proof of that person's authority to exercise rights or privileges in respect of a security of the association that is not registered in the person's name, the association shall, subject to this Act, treat that person as entitled to exercise those rights or privileges.

Immunity of association

(4) An association is not required to inquire into the existence of, or see to the performance or observance of, any duty owed to a third person by a registered holder of any of its securities or by anyone whom it treats, as permitted or required by this Part, as the owner or registered holder thereof.

Infant owner

101. If an infant exercises any rights of ownership in the securities of an association, no subsequent repudiation or avoidance is effective against the association.

Joint shareholders

102. An association may treat as owners of a security the survivors of persons to whom the security was issued as joint holders, if the association receives proof satisfactory to it of the death of any of the joint holders.

Transmission of securities

103. (1) Subject to the provisions of Part VIII and any applicable law relating to the collection of taxes, a person referred to in paragraph 100(2)(a) is entitled to become registered as the owner of a security, or to designate another person to be registered as the owner of a security, if the person referred to in paragraph 100(2)(a) delivers to the association or its transfer agent

(a) the original grant of probate or of letters of administration, or a copy thereof certified to be a true copy by

(i) the court that granted the probate or letters of administration,

(ii) a trust company incorporated under the *Trust and Loan Companies Act* or under the laws of a province, or

(iii) a lawyer or notary acting on behalf of the person referred to in paragraph 100(2)(a), or

(b) in the case of transmission by notarial will in the Province of Quebec, a copy thereof authenticated pursuant to the laws of that Province, together with

(c) an affidavit or declaration of transmission made by the person referred to in paragraph 100(2)(a) that states the particulars of the transmission, and

(d) the security certificate that was owned by the deceased holder

(i) in the case of a transfer to the person referred to in paragraph 100(2)(a), with or without the endorsement of that person, and

(ii) in the case of a transfer to any other person, endorsed in accordance with section 118,

and accompanied by any assurance the association may require under section 134.

Excepted transmissions

(2) Notwithstanding subsection (1), if the laws of the jurisdiction governing the transmission of a security of a deceased holder do not require a grant of probate or of letters of administration in respect of the transmission, a personal representative of the deceased holder is entitled, subject to

Part VIII and any applicable law relating to the collection of taxes, to become registered as the owner or to designate a person to be registered as the owner, if the personal representative delivers to the association or its transfer agent the following documents, namely,

- (a) the security certificate that was owned by the deceased holder; and
- (b) reasonable proof of the governing laws, of the deceased holder's interest in the security and of the right of the personal representative or the designated person to become the registered shareholder.

Right of association to treat as owner

(3) Subject to Part VIII, delivery of the documents referred to in this section empowers an association or its transfer agent to record in a securities register the transmission of a security from the deceased holder to a person referred to in paragraph 100(2)(a) or to such person as the person referred to in that paragraph may designate and, thereafter, to treat the person who becomes so registered as the owner of that security.

1991, c. 48, ss. 103, 496.

Over-issue

104. (1) The provisions of this Part that validate a security or compel its issue or reissue do not apply to the extent that a validation, issue or reissue would result in over-issue, but

- (a) if a valid security similar in all respects to the security involved in the over-issue is reasonably available for purchase, the person entitled to the validation or issue may compel the issuer to purchase and deliver such a security to that person against surrender of the security that the person holds; or
- (b) if a valid security similar in all respects to the security involved in the over-issue is not reasonably available for purchase, the person entitled to the validation or issue may recover from the issuer an amount equal to the price the last purchaser for value paid for the invalid security.

Retroactive validation

(2) Where an issuer is subsequently authorized to issue securities of a number equal to or exceeding the number of securities previously authorized plus the amount of the securities over-issued, the securities so over-issued are valid from the date of their issue.

Payment not a purchase or redemption

(3) A purchase or payment by an issuer under subsection (1) is not a purchase or payment in respect of which section 79 or 84 applies.

Burden of proof

105. In any action on a security,

- (a) unless specifically denied in the pleadings, each signature on the security or in a necessary endorsement is admitted;
- (b) a signature on the security is presumed to be genuine and authorized but, if the effectiveness of the signature is put in issue, the burden of establishing that it is genuine and authorized is on the party claiming under the signature;
- (c) if a signature is admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defence or a defect going to the validity of the security; and
- (d) if the defendant establishes that a defence or defect exists, the plaintiff has the burden of establishing that the defence or defect is ineffective against the plaintiff or any person under whom the plaintiff claims.

Securities fungible

106. Unless otherwise agreed, and subject to any applicable law, regulation or stock exchange rule, a person required to deliver securities may deliver any security of the specified issue in bearer form or registered in the name of the transferee or endorsed to the transferee or in blank.

Notice of defect

107. (1) Even against a purchaser for value and without notice of a defect going to the validity of a security, the terms of the security include those stated on the security and those incorporated therein by reference to another instrument, statute, rule, regulation or order to the extent that the terms so referred to do not conflict with the stated terms, but such a reference is not of itself notice to a purchaser for value of a defect going to the validity of the security, notwithstanding that the security expressly states that a person accepting it admits the notice.

Purchaser for value

(2) A security is valid in the hands of a purchaser for value without notice of any defect going to its validity.

Lack of genuineness

(3) Except as provided in section 108, the fact that a security is not genuine is a complete defence even against a purchaser for value and without notice.

Ineffective defences

(4) All defences of an issuer, including non-delivery and conditional delivery of a security but not including lack of genuineness, are ineffective against a purchaser for value without notice of the particular defence.

Staleness as defect notice

(5) After an event that creates a right to immediate performance of the principal obligation evidenced by a security, or that sets a date on or after which a security is to be presented or surrendered for redemption or exchange, a purchaser is deemed to have notice of any defect in its issue or of any defence of the issuer

(a) if the event requires the payment of money or the delivery of securities, or both, on presentation or surrender of the security, and the funds or securities are available on the date set for payment or exchange, and the purchaser takes the security more than one year after that date; or

(b) if the purchaser takes the security more than two years after the date set for presentation or surrender or the date on which the performance became due.

Unauthorized signature

108. An unauthorized signature on a security before or in the course of issue is ineffective, except that the signature is effective in favour of a purchaser for value and without notice of the lack of authority, if the signing has been done by

(a) an authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with the signing of the security, or of similar securities, or their immediate preparation for signing; or

(b) an employee of the issuer or of a person referred to in paragraph (a) who, in the ordinary course of the employee's duties, handles the security.

Completion or alteration

109. (1) Where a security contains the signatures necessary to its issue or transfer but is incomplete in any other respect,

(a) any person may complete it by filling in the blanks in accordance with the person's authority; and

(b) notwithstanding that the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of the incorrectness.

Enforceability

(2) A completed security that has been improperly altered, even if fraudulently altered, remains enforceable, but only according to its original terms.

Warranties of agents

110. (1) A person signing a security, as authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with the signing of the security, warrants to a purchaser for value without notice that

(a) the security is genuine;

(b) the person's acts in connection with the issue of the security are within the person's authority; and

(c) the person has reasonable grounds for believing that the security is in the form and within the amount the issuer is authorized to issue.

Limitation of liability

(2) Unless otherwise agreed, a person referred to in subsection (1) does not assume any further liability for the validity of a security.

Title of purchaser

111. (1) Subject to Part VIII, on delivery of a security the purchaser acquires the rights in the security that the purchaser's transferor had or had authority to convey, except that the position of a purchaser who has been a party to any fraud or illegality affecting the security or who as a prior holder had notice of an adverse claim is not improved by taking from a later bona fide purchaser.

Title of bona fide purchaser

(2) A bona fide purchaser, in addition to acquiring the rights of a purchaser, also acquires the security free from any adverse claim.

Limited interest purchaser

(3) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

Deemed notice of adverse claim

112. A purchaser of a security, or any securities broker for a seller or purchaser, is deemed to have notice of an adverse claim if

(a) the security, whether in bearer form or registered form, has been endorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

(b) the security is in bearer form and has on it a statement that it is the property of a person other than the transferor, except that the mere writing of a name on a security is not such a statement.

Notice of fiduciary duty

113. Notwithstanding that a purchaser, or any securities broker for a seller or purchaser, has notice that a security is held for a third person by, or is registered in the name of or endorsed by, a fiduciary, neither the purchaser nor the securities broker has any duty to inquire into the rightfulness of the transfer or any notice of an adverse claim, except that if the purchaser or securities broker for the seller or purchaser knows that the consideration is to be used for, or that the transaction is for, the personal benefit of the fiduciary or is otherwise in breach of the fiduciary's duty, the purchaser or securities broker is deemed to have notice of an adverse claim.

Staleness as notice

114. An event that creates a right to immediate performance of the principal obligation evidenced by a security or that sets a date on or after which the security is to be presented or surrendered for redemption or exchange is not of itself notice of an adverse claim, except in the case of a purchase

(a) made more than one year after any date set for such a presentation or surrender; or

(b) made more than six months after any date set for payment of money against such a presentation or surrender if funds are available for payment on that date.

Warranties to issuer

115. (1) A person who presents a security for registration of transfer or for payment or exchange warrants to the issuer that the person is entitled to the registration, payment or exchange, except that a purchaser for value without notice of an adverse claim who receives a new, reissued or re-registered security on registration of transfer warrants only that the purchaser has no knowledge of any unauthorized signature in a necessary endorsement.

Warranties to purchaser

(2) A person by transferring a security to a purchaser for value warrants only that

(a) the transfer is effective and rightful;

(b) the security is genuine and has not been materially altered; and

(c) the person knows of nothing that might impair the validity of the security.

Warranties of intermediary

(3) Where a security is delivered by an intermediary known by the purchaser to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim to be collected against that delivery, the intermediary by that delivery warrants only the intermediary's own good faith and authority even if the intermediary has purchased or made advances against the draft or other claim to be collected against the delivery.

Warranties of pledgee

(4) A pledgee or other holder for purposes of security who redelivers a security received, or after payment and on order of the debtor delivers that security to a third person, gives only the warranties of an intermediary under subsection (3).

Warranties of securities broker

(5) A securities broker gives to the broker's customer, to the issuer and to a purchaser, as the case may be, the warranties provided in subsections (1) to (4) and has the rights and privileges of a purchaser under those subsections, and those warranties of and in favour of the broker acting as an agent are in addition to warranties given by the broker's customer and warranties given in favour of the broker's customer.

Right to compel endorsement

116. Where a security in registered form is delivered to a purchaser without a necessary endorsement, the purchaser may become a bona fide purchaser only as of the time the endorsement is supplied, but against the transferor the transfer is complete on delivery and the purchaser has a specifically enforceable right to have any necessary endorsement supplied.

Definition of "appropriate person"

117. (1) In this section, section 118, subsections 125(1), 128(4) and 133(1) and section 137, "appropriate person" means

- (a) the person specified by the security or by special endorsement to be entitled to the security;
- (b) if a person described in paragraph (a) is described as a fiduciary but is no longer serving in the described capacity, either that person or that person's successor;
- (c) if the security or endorsement mentioned in paragraph (a) specifies more than one person as fiduciaries and one or more of those persons are no longer serving in the described capacity, the remaining fiduciary or fiduciaries, whether or not a successor has been appointed;

(d) if a person described in paragraph (a) is a natural person and is without capacity to act by reason of death, incompetence, minority or other reason, the person's fiduciary;

(e) if the security or endorsement mentioned in paragraph (a) specifies more than one person with right of survivorship and by reason of death not all of the persons can sign, the survivor or survivors;

(f) a person having power to sign under any applicable law or a power of attorney; or

(g) to the extent that a person described in any of paragraphs (a) to (f) may act through an agent, the person's authorized agent.

Determining an "appropriate person"

(2) Whether the person signing is an appropriate person is determined as of the time of signing, and an endorsement by such a person does not become unauthorized for the purposes of this Part by reason of any subsequent change of circumstances.

Endorsement

118. (1) An endorsement of a security in registered form is made when an appropriate person signs, either on the security or on a separate document, an assignment or transfer of the security or a power to assign or transfer it, or when the signature of an appropriate person is written without more on the back of the security.

Special or blank

(2) An endorsement may be special or in blank.

Blank endorsement

(3) An endorsement in blank includes an endorsement to bearer.

Special endorsement

(4) A special endorsement specifies the person to whom the security is to be transferred, or who has power to transfer it.

Right of holder

(5) A holder may convert an endorsement in blank into a special endorsement.

Immunity of endorser

119. Unless otherwise agreed, the endorser by the endorsement assumes no obligation that the security will be honoured by the issuer.

Partial endorsement

120. An endorsement purporting to be an endorsement of only part of a security representing units intended by the issuer to be separately transferable is effective to the extent of the endorsement.

Effect of failure by fiduciary to comply

121. Failure of a fiduciary to comply with a controlling instrument or with the law of the jurisdiction governing the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of a transfer, does not render the fiduciary's endorsement unauthorized for the purposes of this Part.

Effect of endorsement without delivery

122. An endorsement of a security, whether special or in blank, does not constitute a transfer until delivery of the security on which it appears or, if the endorsement is on a separate document, until delivery of both the security and that document.

Endorsement in bearer form

123. An endorsement of a security in bearer form may give notice of an adverse claim under section 112 but does not otherwise affect any of the holder's rights.

Effect of unauthorized endorsement

124. (1) The owner of a security may assert the ineffectiveness of an endorsement against the issuer or any purchaser, other than a purchaser for value and without notice of an adverse claim, who has in good faith received a new, reissued or re-registered security on registration of transfer, unless the owner

(a) has ratified an unauthorized endorsement of the security; or

(b) is otherwise precluded from impugning the effectiveness of an unauthorized endorsement.

Liability of issuer

(2) An issuer who registers the transfer of a security on an unauthorized endorsement is liable for improper registration.

Warranties of guarantor of signature

125. (1) A person who guarantees the signature of an endorser of a security warrants that, at the time of signing,

- (a) the signature was genuine;
- (b) the signer was an appropriate person to endorse; and
- (c) the signer had legal capacity to sign.

Limitation of liability

(2) A person who guarantees the signature of an endorser does not otherwise warrant the rightfulness of the transfer to which the signature relates.

Warranties of guarantor of endorsement

(3) A person who guarantees the endorsement of a security warrants both the signature and the rightfulness, in all respects, of the transfer to which the signature relates, but an issuer may not require a guarantee of endorsement as a condition to registration of transfer.

Extent of warrantor's liability

(4) The warranties referred to in subsections (1) to (3) are made to any person who, relying on the guarantee, takes or deals with the security, and the guarantor is liable to such a person for any loss resulting from breach of warranty.

Constructive delivery of a security

126. Delivery to a purchaser occurs when

- (a) the purchaser or a person designated by the purchaser acquires possession of a security;
- (b) the purchaser's securities broker acquires possession of a security specially endorsed to or issued in the name of the purchaser;
- (c) the purchaser's securities broker sends the purchaser confirmation of the purchase and the broker in the broker's records identifies a specific security as belonging to the purchaser;
or
- (d) in respect of an identified security to be delivered while still in the possession of a third person, that person acknowledges that it is held for the purchaser.

Constructive ownership of security

127. (1) A purchaser is the owner of a security held for the purchaser by a securities broker, but a purchaser is not a holder except in the cases referred to in paragraphs 126(b) and (c).

Ownership of part of fungible bulk

(2) If a security is part of a fungible bulk, a purchaser of the security is the owner of the proportionate interest in the fungible bulk.

Notice to securities broker of adverse claim

(3) Notice of an adverse claim received by a securities broker or by a purchaser after the broker takes delivery as a holder for value is not effective against the broker or the purchaser, except that, as between the broker and the purchaser, the purchaser may demand delivery of an equivalent security in respect of which no notice of an adverse claim has been received.

Delivery of security

128. (1) Unless otherwise agreed, if a sale of a security is made on a stock exchange or otherwise through securities brokers,

(a) the selling customer fulfils the customer's duty to deliver when the customer delivers the security to the selling securities broker or to a person designated by the selling securities broker or causes an acknowledgement to be made to the selling securities broker that it is held for the selling securities broker; and

(b) the selling securities broker, including a correspondent broker, acting for a selling customer fulfils the securities broker's duty to deliver by delivering the security or a like security to the buying securities broker or to a person designated by the buying securities broker or by effecting clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

Duty to deliver

(2) Except as otherwise provided in this section and unless otherwise agreed, a transferor's duty to deliver a security under a contract of purchase is not fulfilled until the transferor delivers the security in negotiable form to the purchaser or to a person designated by the purchaser, or causes an acknowledgement to be made to the purchaser that the security is held for the purchaser.

Delivery to securities broker

(3) A sale to a securities broker purchasing for the securities broker's own account is subject to subsection (2) and not subsection (1), unless the sale is made on a stock exchange.

Transfer through clearing agency

(4) If a security shown in the records of a clearing agency is evidenced by

(a) a security certificate in the custody of the clearing agency or a custodian, or a nominee of either, subject to the instructions of the clearing agency, and is in bearer form or endorsed in blank by an appropriate person or registered in the name of the clearing agency or a custodian, or of a nominee of either, or

(b) an uncertificated security registered or recorded in records maintained by or on behalf of the association in the name of the clearing agency or a custodian, or of a nominee of either, subject to the instructions of the clearing agency,

then, in addition to other methods, a transfer or pledge of the security or any interest therein may be effected by the making of an appropriate entry in the records of the clearing agency.

Interest in fungible bulk

(5) Under subsections (4) to (10), entries may be in respect of like securities or interests therein as part of a fungible bulk and may refer merely to a quantity of a particular security without reference to the name of the registered owner, certificate or bond number or the like and, in appropriate cases, may be on a net basis taking into account other transfers or pledges of the same security.

Constructive endorsement and delivery

(6) A transfer or pledge under subsections (4) to (10) has the effect of a delivery of a security in bearer form or duly endorsed in blank representing the amount of the obligation or the number of shares or rights transferred or pledged.

Idem

(7) If a pledge or the creation of a security interest is intended, the making of entries has the effect of a taking of delivery by the pledgee or a secured party and the pledgee or secured party shall be deemed to have taken possession for all purposes.

Holder

(8) A person depositing a security certificate or an uncertificated security with a clearing agency, or a transferee or pledgee of a security under subsections (4) to (10), is a holder of the security and shall be deemed to have possession of the security so deposited, transferred or pledged, as the case may be, for all purposes.

Not registration

(9) A transfer or pledge under subsections (4) to (10) does not constitute a registration of transfer under sections 133 to 140.

Error in records

(10) That entries made in the records of the clearing agency as provided in subsection (4) are not appropriate does not affect the validity or effect of the entries nor the liabilities or obligations of the clearing agency to any person adversely affected thereby.

Right to reclaim possession

129. (1) A person against whom the transfer of a security is wrongful for any reason, including the person's incapacity, may, against anyone except a bona fide purchaser,

(a) reclaim possession of the security or obtain possession of any new security evidencing all or part of the same rights; or

(b) claim damages.

Recovery where unauthorized endorsement

(2) If the transfer of a security is wrongful by reason of an unauthorized endorsement, the owner may reclaim possession of the security or a new security even from a bona fide purchaser if the ineffectiveness of the purported endorsement is asserted against the purchaser under section 124.

Remedies

(3) The right to reclaim possession of a security may be specially enforced, its transfer may be restrained and the security may be impounded pending litigation.

Right to requisites for registration

130. (1) Unless otherwise agreed, a transferor shall, on demand, supply a purchaser with proof of the transferor's authority to transfer a security or with any other requisite that is necessary to obtain registration of the transfer of a security, but if the transfer is not for value, it is not necessary for a transferor to prove authority to transfer unless the purchaser pays the reasonable and necessary costs of the proof and transfer.

Rescission of transfer

(2) If a transferor fails to comply with a demand under subsection (1) within a reasonable time, the purchaser may reject or rescind the transfer.

Seizure of security

131. No seizure of a security or other interest evidenced thereby is effective until the person making the seizure obtains possession of the security.

No conversion if good faith delivery

132. An agent or bailee who in good faith, including observance of reasonable commercial standards if the agent or bailee is in the business of buying, selling or otherwise dealing with securities of an association, has received securities and sold, pledged or delivered them according to the instructions of the agent's or bailee's principal is not liable for conversion or for participation in breach of fiduciary duty even though the principal has no right to dispose of the securities.

Duty to register transfer

133. (1) Subject to Part VIII, where a security in registered form is presented for transfer, the issuer shall register the transfer if

- (a) the security is endorsed by an appropriate person;
- (b) reasonable assurance is given that the endorsement is genuine and effective;
- (c) the issuer has no duty to inquire into adverse claims or has discharged any such duty;
- (d) all applicable laws relating to the collection of taxes have been complied with;
- (e) transfer is rightful or is to a bona fide purchaser; and
- (f) the fee, if any, referred to in subsection 92(2) has been paid.

Liability for delay

(2) Where an issuer has a duty to register a transfer of a security, the issuer is liable to the person presenting it for registration for any loss resulting from any unreasonable delay in registration or from the failure or refusal to register the transfer.

Assurance of endorsements

134. (1) An issuer may require an assurance that each necessary endorsement on a security is genuine and effective by requiring a guarantee of the signature of the person endorsing the security and by requiring

- (a) if the endorsement is by an agent, reasonable assurance of authority to sign;
- (b) if the endorsement is by a fiduciary, evidence of appointment or incumbency;
- (c) if there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and
- (d) in any other case, assurance that corresponds as closely as practicable to the foregoing.

Definition of "guarantee of the signature"

(2) For the purposes of subsection (1), "guarantee of the signature" means a guarantee signed by or on behalf of a person whom the issuer believes, on reasonable grounds, to be a responsible person.

Standards

(3) An issuer may adopt reasonable standards to determine responsible persons for the purposes of subsection (2).

Definition of "evidence of appointment or incumbency"

(4) For the purposes of paragraph (1)(b), "evidence of appointment or incumbency" means

(a) in the case of a fiduciary appointed by a court and referred to in subsection 103(1), a copy of the certified court order referred to in subsection 103(1) and dated not earlier than sixty days before the day a security is presented for transfer; or

(b) in the case of any other fiduciary, a copy of a document showing the appointment or other evidence believed by the issuer to be appropriate.

Standards

(5) An issuer may adopt reasonable standards with respect to evidence referred to in paragraph (4)(b).

No notice to issuer

(6) An issuer is deemed not to have notice of the contents of any document referred to in subsection (4) that is obtained by the issuer except to the extent that the contents relate directly to appointment or incumbency.

Notice from additional documentation

135. If an issuer, in relation to a transfer, demands assurance other than an assurance specified in subsection 134(1) and obtains a copy of a will, trust or partnership agreement or a by-law or similar document, the issuer is deemed to have notice of all matters contained therein affecting the transfer.

Limited duty of inquiry

136. (1) An issuer to whom a security is presented for registration has a duty to inquire into adverse claims if

(a) the issuer receives written notice of an adverse claim at a time and in a manner that provides the issuer with a reasonable opportunity to act on it before the issue of a new,

reissued or re-registered security and the notice discloses the name and address of the claimant, the registered owner and the issue of which the security is a part; or

(b) the issuer is deemed to have notice of an adverse claim from a document that it obtained under section 135.

Discharge of duty

(2) An issuer may discharge a duty of inquiry by any reasonable means, including notifying an adverse claimant by registered mail sent to the address provided by the adverse claimant or, if no such address has been provided, to the adverse claimant's residence or regular place of business, that a security has been presented for registration of transfer by a named person and that the transfer will be registered unless, within thirty days after the date of mailing of the notice, either

(a) the issuer is served with a restraining order or other order of a court, or

(b) the issuer is provided with an indemnity bond sufficient in the issuer's judgment to protect the issuer and any registrar, transfer agent or other agent of the issuer from any loss that may be incurred by any of them as a result of complying with the adverse claim.

Inquiry into adverse claims

137. Unless an issuer is deemed to have notice of an adverse claim from a document that it obtained under section 135 or has received notice of an adverse claim under subsection 136(1), if a security presented for registration is endorsed by the appropriate person, the issuer has no duty to inquire into adverse claims and, in particular,

(a) an issuer registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent or correct description of the fiduciary relationship and thereafter the issuer may assume without inquiry that the newly registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no longer acting as such with respect to the particular security;

(b) an issuer registering a transfer on an endorsement by a fiduciary has no duty to inquire into whether the transfer is made in compliance with the document or with the law of the jurisdiction governing the fiduciary relationship; and

(c) an issuer is deemed not to have notice of the contents of any court record or any registered document even if the record or document is in the issuer's possession and even if the transfer is made on the endorsement of a fiduciary to the fiduciary specifically or to the fiduciary's nominee.

Duration of notice of adverse claim

138. A written notice of adverse claim received by an issuer is effective for twelve months after the day it was received unless the notice is renewed in writing.

Limitation on issuer's liability

139. (1) Except as otherwise provided in any applicable law relating to the collection of taxes, an issuer is not liable to the owner or any other person who incurs a loss as a result of the registration of a transfer of a security if

- (a) the necessary endorsements were on or with the security; and
- (b) the issuer had no duty to inquire into adverse claims or had discharged any such duty.

Duty of issuer on default

(2) If an issuer has registered a transfer of a security to a person not entitled to it, the issuer shall on demand deliver a like security to the owner unless

- (a) the issuer is not liable by virtue of subsection (1);
- (b) the owner is precluded by subsection 140(1) from asserting any claim; or
- (c) the delivery would result in over-issue in respect of which section 104 applies.

Lost or stolen security

140. (1) Where a security has been lost, apparently destroyed or wrongfully taken, and the owner fails to notify the issuer of that fact by giving the issuer written notice of the owner's adverse claim within a reasonable time after the owner knows of the loss, destruction or taking, then, if the issuer has registered a transfer of the security before receiving the notice, the owner is precluded from asserting against the issuer any claim to a new security.

Duty to issue new security

(2) Where the owner of a security claims that the security has been lost, destroyed or wrongfully taken, the issuer shall issue a new security in place of the original security if the owner

- (a) so requests before the issuer has notice that the security has been acquired by a bona fide purchaser;
- (b) provides the issuer with a sufficient indemnity bond; and
- (c) satisfies any other reasonable requirements imposed by the issuer.

Duty to register transfer

(3) If, after the issue of a new security under subsection (2), a bona fide purchaser of the original security presents the original security for registration of transfer, the issuer shall register the transfer unless registration would result in over-issue in respect of which section 104 applies.

Right of issuer to recover

(4) In addition to the rights that an issuer has by reason of an indemnity bond, the issuer may recover the new security issued under subsection (2) from the person to whom it was issued or any person taking under that person other than a bona fide purchaser.

Authenticating agent's duty

141. An authenticating trustee, registrar, transfer agent or other agent of an issuer has, in respect of the issue, registration of transfer and cancellation of a security of the issuer,

(a) a duty to the issuer to exercise good faith and reasonable diligence; and

(b) the same obligations to the holder or owner of a security and the same rights, privileges and immunities as the issuer.

Notice to agent

142. Notice to an authenticating trustee, registrar, transfer agent or other agent of an issuer is notice to the issuer in respect of the functions performed by the agent.

PART VII

CORPORATE GOVERNANCE

MEMBERS AND SHAREHOLDERS

Place of meetings

143. Meetings of members or shareholders of the association shall be held at the place within Canada provided for in the by-laws of the association or, in the absence of any such provision, at the place within Canada that the directors determine.

Calling meetings

144. The directors of an association

(a) shall, after the meeting called pursuant to subsection 54(1), call the first annual meeting of the association, which meeting must be held not later than six months after the end of the first financial year of the association, and subsequently call an annual meeting, which meeting must be held not later than six months after the end of each financial year; and

(b) may at any time call a special meeting of members or shareholders of the association.

Fixing record date

145. (1) For the purpose of determining shareholders

(a) entitled to receive payment of a dividend, or

(b) for any other purpose except the right to receive notice of, or to vote at, a meeting,

the directors may fix in advance a date as the record date for the determination of shareholders, but the record date so fixed shall not precede by more than fifty days the particular action to be taken.

Record date for meetings

(2) For the purpose of determining shareholders entitled to receive notice of a meeting, the directors may fix in advance a date as the record date for the determination of shareholders, but the record date so fixed shall not precede by more than fifty days or by less than twenty-one days the date on which the meeting is to be held.

No record date fixed

(3) If no record date is fixed pursuant to subsection (1) or (2),

(a) the record date for the determination of shareholders for any purpose, other than to establish a shareholder's right to receive notice of a meeting or to vote, is the day on which the directors pass the resolution relating to the particular purpose; and

(b) the record date for the determination of shareholders entitled to receive notice of, or to vote at, a meeting is

(i) the day immediately preceding the day on which the notice is given, or

(ii) if no notice is given, the day on which the meeting is held.

When record date fixed

(4) When a record date is fixed for an association, unless notice of the record date is waived in writing by every holder of a share of the class or series affected whose name is set out in the central securities register at the close of business on the date the directors fix the record date, notice thereof shall, not less than seven days before the record date, be given

(a) by advertisement in a newspaper in general circulation in the place where the head office of the association is situated and in each place in Canada where the association has a transfer agent or where a transfer of the association's shares may be recorded; and

(b) by written notice to each stock exchange, if any, in Canada on which the shares of the association are listed for trading.

Notice of meeting

146. (1) Notice of the time and place of a meeting of members or shareholders of an association shall be sent not less than twenty one days or more than fifty days before the meeting

(a) to each member of the association;

(b) to each shareholder of the association entitled to vote at the meeting;

(c) to each director of the association; and

(d) to the auditor of the association.

Publication in newspaper

(2) In addition to the notice required under subsection (1), where any class of shares of an association is publicly traded on a recognized stock exchange in Canada, notice of the time and place of a meeting of shareholders shall be published once a week for at least four consecutive weeks before the date of the meeting in a newspaper in general circulation in the place where the

head office of the association is situated and in each place in Canada where the association has a transfer agent or where a transfer of the association's shares may be recorded.

When notice not required

147. (1) A notice of a meeting of shareholders is not required to be sent to shareholders who were not registered on the records of the association or its transfer agent on the record date fixed or determined under subsection 145(2) or (3).

Effect of default

(2) Failure to receive a notice of a meeting does not deprive a member or shareholder of the right to vote at the meeting.

Notice of adjourned meeting

148. (1) If a meeting is adjourned for less than thirty days, it is not necessary, unless the by-laws otherwise provide, to give notice of the adjourned meeting, other than by announcement at the earliest meeting that is adjourned.

Notice of meeting continued after adjournment

(2) If a meeting is adjourned by one or more adjournments for a total of thirty days or more, notice of the continuation of the meeting shall be given as for an original meeting but, unless the meeting is adjourned by one or more adjournments for a total of more than ninety days, subsection 166.04(1) does not apply.

1991, c. 48, s. 148; 1997, c. 15, s. 119.

Special business

149. (1) All matters dealt with at a special meeting of members or shareholders and all matters dealt with at an annual meeting, except consideration of the financial statements, auditor's report, election of directors, remuneration of directors and reappointment of the incumbent auditor, are deemed to be special business.

Notice of special business

(2) Notice of a meeting of members or shareholders at which special business is to be transacted must

- (a) state the nature of the special business in sufficient detail to permit a member or shareholder to form a reasoned judgment thereon; and
- (b) contain the text of any special resolution to be submitted to the meeting.

Nominations for directors

150. (1) Where shareholders of an association are entitled to elect one or more directors of an association, a notice of a meeting of shareholders must include any nomination made by a shareholder for the election of a director.

Exception

(2) An association is not required to comply with subsection (1) if the nomination is not submitted to the association at least ninety days before the anniversary date of the previous annual meeting.

Waiver of notice

151. (1) A member, a shareholder and any other person entitled to attend a meeting may in any manner waive notice of the meeting.

Idem

(2) Attendance at a meeting of members or shareholders is a waiver of notice of the meeting, except when a person attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

Proposals

152. (1) At an annual meeting of an association, any member may

(a) submit to the association notice of any matter that the member proposes to raise at the meeting; and

(b) discuss at the meeting any matter in respect of which the member would have been entitled to submit a proposal.

Notice of proposal

(2) Any proposal of a member submitted for consideration at a meeting must be attached to the notice of the meeting, and, if so requested by the member, a statement by the member of not more than two hundred words in support of the proposal and the name and address of the member must also be so attached.

Conditions precedent for proposals

(3) An association is not required to comply with subsection (2) if

(a) the proposal is not submitted to the association at least ninety days before the anniversary date of the previous annual meeting;

(b) it clearly appears that the proposal is submitted primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the association or its directors, officers, members or security holders, or primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes;

(c) the association, at the member's request, attached to the notice of a meeting a proposal relating to a meeting held within two years preceding the receipt of the request, and the member failed to present the proposal at the meeting;

(d) substantially the same proposal was submitted to members in a notice of a meeting relating to a meeting held within two years preceding the receipt of the member's request and the proposal was defeated; or

(e) the rights conferred by subsections (1) and (2) are being abused to secure publicity.

Immunity for proposal and statement

(4) No association or person acting on behalf of an association incurs any liability by reason only of circulating a proposal or statement in compliance with section 152.

Refusal of proposal

153. (1) If an association refuses to include a proposal in a notice of a meeting referred to in paragraph 146(1)(a), the association shall, within ten days after receiving the proposal, notify the member submitting the proposal of its intention to omit the proposal from the notice and send to the member a statement of the reasons for the refusal.

Appeal to court

(2) On the application of a member claiming to be aggrieved by an association's refusal under subsection (1), a court may restrain the holding of the meeting at which the proposal is sought to be presented and make any further order it thinks fit.

Idem

(3) An association or any person claiming to be aggrieved by a proposal may apply to a court for an order permitting the association to omit the proposal from a notice of a meeting, and the court, if it is satisfied that subsection 152(3) applies, may make such order as it thinks fit.

Notice to Superintendent

(4) An applicant under subsection (2) or (3) shall give the Superintendent written notice of the application and the Superintendent may appear and be heard at the hearing of the application in person or by counsel.

Member list

154. (1) An association shall prepare a list, which may be in electronic form, of its members entitled to receive notice of a meeting under paragraph 146(1)(a), arranged in alphabetical order, which list must be prepared at the close of business on the day immediately preceding the day on which notice is given.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this sub-section read as follows:

Member list

154. (1) An association shall prepare a list of its members entitled to receive notice of a meeting under paragraph 146(1)(a), arranged in alphabetical order, which list must be prepared at the close of business on the day immediately preceding the day on which notice is given.

Shareholder list

(2) An association shall prepare a list, which may be in electronic form, of its shareholders entitled to receive notice of a meeting under paragraph 146(1)(b), arranged in alphabetical order and showing the number of shares held by each shareholder, which list must be prepared

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, the portion of the sub-section before paragraph (a) read as follows:

Shareholder list

(2) An association shall prepare a list of its shareholders entitled to receive notice of a meeting under paragraph 146(1)(b), arranged in alphabetical order and showing the number of shares held by each shareholder, which list must be prepared

(a) if a record date is fixed under subsection 145(2), not later than ten days after that date; or

(b) if no record date is fixed,

(i) at the close of business on the day immediately preceding the day on which the notice is given, or

(ii) where no notice is given, on the day on which the meeting is held.

Effect of shareholder list

(3) Where an association fixes a record date under subsection 145(2), a person named in the list prepared under paragraph (2)(a) is, subject to this Act, entitled to vote the shares shown opposite that person's name at the meeting to which the list relates, except to the extent that

(a) the person has transferred the ownership of any of those shares after the record date, and

(b) the transferee of those shares

- (i) produces properly endorsed share certificates, or
- (ii) otherwise establishes that the transferee owns the shares,

and demands, not later than ten days before the meeting or such shorter period before the meeting as the by-laws of the association provide, that the transferee's name be included in the list before the meeting, in which case the transferee may vote those transferred shares at the meeting.

Idem

(4) Where an association does not fix a record date under subsection 145(2), a person named in the list prepared under paragraph (2)(b) is, subject to this Act, entitled to vote the shares shown opposite that person's name at the meeting to which the list relates, except to the extent that

- (a) the person has transferred the ownership of any of those shares after the date on which a list was prepared under subparagraph (2)(b)(i), and
- (b) the transferee of those shares
 - (i) produces properly endorsed share certificates, or
 - (ii) otherwise establishes that the transferee owns the shares,

and demands, not later than ten days before the meeting or such shorter period before the meeting as the by-laws of the association provide, that the transferee's name be included in the list before the meeting, in which case the transferee may vote those transferred shares at the meeting.

Examination of list

(5) A member or shareholder of an association may examine a list referred to in subsection (1) or (2),

- (a) during usual business hours at the head office of the association or at the place where its members register is maintained; and
- (b) at the meeting for which the list was prepared.

1991, c. 48, s. 154; 2001, c. 9, s. 274

Quorum - members

155. (1) Unless the by-laws otherwise provide, a quorum is present at a meeting of members if members holding a majority of the voting rights that may be exercised at the meeting are represented by a personal representative or delegate.

Quorum - shareholders

(2) Unless the by-laws otherwise provide, a quorum of shareholders is present at a meeting of shareholders if the holders of a majority of the shares who are entitled to vote at the meeting are present in person or represented by proxyholders.

Quorum

(3) If a quorum is present at the opening of a meeting of members or shareholders, the members or shareholders present may, unless the by-laws otherwise provide, proceed with the business of the meeting, notwithstanding that a quorum is not present throughout the meeting.

Idem

(4) If a quorum is not present at the opening of a meeting of members or shareholders, the members or shareholders present may adjourn the meeting to a fixed time and place but may not transact any other business.

One shareholder meeting

156. If an association has only one shareholder, or only one holder of any class or series of shares, the shareholder present in person or represented by a proxyholder constitutes a meeting of shareholders or a meeting of shareholders of that class or series.

One share - one vote

157. Where a share of an association entitles the holder thereof to vote at a meeting, that share entitles the shareholder to one vote at the meeting.

Representative shareholder

158. (1) Subject to subsection 42(2), if an entity is a member or shareholder of an association, the association shall recognize any natural person authorized by a resolution of the directors or governing body or similar authority of the entity to represent it at meetings of members or shareholders.

Idem

(2) A natural person authorized under subsection (1) to represent an entity may exercise on behalf of the entity all the powers the entity could exercise if it were a natural person, as well as a member or a shareholder.

Joint shareholders

159. Unless the by-laws otherwise provide, if two or more persons hold shares jointly, one of those holders present at a meeting may in the absence of the others vote the shares, but if two or more of those persons who are present in person or represented by proxyholder vote, they shall vote as one on the shares jointly held by them.

Voting by hands or ballot

160. (1) Unless the by-laws otherwise provide, voting at a meeting of members or shareholders shall take place by show of hands except when a ballot is demanded by a person entitled to vote at the meeting.

Ballot

(2) A person entitled to vote may demand a ballot either before or after any vote by show of hands.

Resolution in lieu of meeting

161. (1) Except where a written statement is submitted by a director under section 181 or by an auditor under subsection 305(1),

(a) a resolution in writing signed by all the persons entitled to vote on that resolution at a meeting of members or shareholders is as valid as if it had been passed at such a meeting; and

(b) a resolution in writing dealing with all matters required by this Act to be dealt with at a meeting of members or shareholders, and signed by all the persons entitled to vote at that meeting, satisfies all the requirements of this Act relating to meetings.

Filing resolution

(2) A copy of every resolution referred to in subsection (1) shall be kept with the minutes of the meetings.

Requisitioned meeting

162. (1) Two or more members of an association who together hold not less than 5 per cent of the voting rights that members of the association have by virtue of membership in the association, may requisition the directors to call a meeting of the members of the association for the purposes stated in the requisition.

Idem

(2) Two or more shareholders who together hold not less than 5 per cent of the issued and outstanding shares of an association that carry the right to vote at a meeting sought to be held may requisition the directors to call a meeting of shareholders of the association for the purposes stated in the requisition.

Form

(3) A requisition referred to in subsection (1) or (2)

(a) must state the business to be transacted at the meeting and must be sent to each director and to the head office of the association; and

(b) may consist of several documents of like form, each signed by one or more members or shareholders.

Directors calling meeting

(4) On receipt of a requisition referred to in subsection (1) or (2), the directors shall call a meeting to transact the business stated in the requisition, unless

(a) a record date has been fixed under subsection 145(2) and notice thereof has been given under subsection 145(4);

(b) the directors have called a meeting and have given notice thereof under section 146; or

(c) the business of the meeting as stated in the requisition includes matters described in paragraphs 152(3)(b) to (e).

Members or shareholders calling meeting

(5) If the directors do not call a meeting within twenty-one days after receiving the requisition referred to in subsection (1) or (2), any member or shareholder who signed the requisition may call the meeting.

Procedure

(6) A meeting called under this section shall be called as nearly as possible in the manner in which meetings are to be called pursuant to the by-laws and this Act.

Reimbursement

(7) Unless the members or shareholders otherwise resolve at a meeting called under subsection (5), the association shall reimburse the members or shareholders for any expenses reasonably incurred by them in requisitioning, calling and holding the meeting.

Meeting called by court

163. (1) Where it is impracticable

(a) to call a meeting of members or shareholders in the manner in which meetings are to be called, or

(b) to conduct the meeting in the manner required by the by-laws and this Act,

or where a court thinks fit to do so for any other reason, the court, on the application of a director or a person entitled to vote at the meeting, may order a meeting to be called, held and conducted in such manner as the court directs.

Varying quorum

(2) Without restricting the generality of subsection (1), a court may order that the quorum required by the by-laws or this Act be varied or dispensed with at a meeting called, held and conducted pursuant to this section.

Valid meeting

(3) A meeting called, held and conducted pursuant to this section is for all purposes a meeting duly called, held and conducted.

Court review of election

164. (1) An association or a member, shareholder or director of an association may apply to a court to resolve any dispute in respect of the election or appointment of a director or an auditor of the association.

Powers of court

(2) On an application under subsection (1), a court may make any order it thinks fit including, without limiting the generality of the foregoing,

(a) an order restraining a director or auditor whose election or appointment is challenged from acting pending determination of the dispute;

(b) an order declaring the result of the disputed election or appointment;

(c) an order requiring a new election or appointment, and including in the order directions for the management of the business and affairs of the association until a new election is held or the new appointment is made;

(d) an order determining the voting rights of members and persons claiming to be members; and

(e) an order determining the voting rights of shareholders and of persons claiming to own shares.

Notice to Superintendent

165. (1) A person who makes an application under subsection 163(1) or 164(1) shall give notice of the application to the Superintendent before the hearing and shall deliver a copy of the order of the court, if any, to the Superintendent.

Superintendent representation

(2) The Superintendent may appear and be heard in person or by counsel at the hearing of an application referred to in subsection (1).

Pooling agreement

166. A written agreement between two or more shareholders may provide that in exercising voting rights the shares held by them will be voted as provided in the agreement.

PROXIES

Definitions

166.01 The definitions in this section apply in this section and in sections 166.02 to 166.08.

"registrant" « courtier agréé »

"registrant" means a securities broker or dealer required to be registered to trade or deal in securities under the laws of any jurisdiction.

"solicit" or "solicitation" « sollicitation »

"solicit" or "solicitation" includes

- (a) a request for a proxy, whether or not accompanied by or included in a form of proxy,
- (b) a request to execute or not to execute a form of proxy or to revoke a proxy,

- (c) the sending of a form of proxy or other communication to a shareholder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy, and
- (d) the sending of a form of proxy to a shareholder under section 166.04, but does not include
- (e) the sending of a form of proxy in response to an unsolicited request made by or on behalf of a shareholder,
- (f) the performance of administrative acts or professional services on behalf of a person soliciting a proxy,
- (g) the sending by a registrant of the documents referred to in section 166.07, or
- (h) a solicitation by a person in respect of shares of which that person is the beneficial owner.

**"solicitation by or on behalf of the management of an association"
« sollicitation effectuée par la direction d'une association ou pour son compte »**

"solicitation by or on behalf of the management of an association" means a solicitation by any person pursuant to a resolution or instruction of, or with the acquiescence of, the directors or a committee of the directors of the association.

1997, c. 15, s. 120.

Appointing proxyholder

166.02 (1) A shareholder who is entitled to vote at a meeting of shareholders may, by executing a form of proxy, appoint a proxyholder or one or more alternate proxyholders, who are not required to be shareholders, to attend and act at the meeting in the manner and to the extent authorized by the proxy and with the authority conferred by the proxy.

Execution of proxy

(2) A form of proxy shall be executed by a shareholder or by a shareholder's attorney authorized in writing to do so.

Limit on authority

(3) No appointment of a proxyholder provides authority for the proxyholder to act in respect of the appointment of an auditor or the election of a director unless a nominee proposed in good faith for the appointment or election is named in the form of proxy, a management proxy circular, a dissident's proxy circular or a proposal under subsection 152(1).

Required information

(4) A form of proxy must indicate, in bold-face type, that the shareholder by whom or on whose behalf it is executed may appoint a proxyholder, other than a person designated in the form of proxy, to attend and act on the shareholder's behalf at a meeting to which the proxy relates, and must contain instructions as to the manner in which the shareholder may do so.

Validity of proxy

(5) A proxy is valid only at the meeting in respect of which it is given or at a continuation of the meeting after an adjournment.

Revocation of proxy

(6) A shareholder may revoke a proxy

(a) by depositing an instrument in writing executed by the shareholder or by the shareholder's attorney authorized in writing to do so

(i) at the head office of the association at any time up to and including the last business day before the day of a meeting, or a continuation of the meeting after an adjournment, at which the proxy is to be used, or

(ii) with the chairperson of the meeting on the day of the meeting or a continuation of the meeting after an adjournment; or

(b) in any other manner permitted by law.

1997, c. 15, s. 120.

Deposit of proxies

166.03 The directors may specify, in a notice calling a meeting of shareholders or a continuation of a meeting of shareholders after an adjournment, a time before which executed forms of proxy to be used at the meeting or the continued meeting must be deposited with the association or its transfer agent. The time specified may not be more than forty-eight hours, excluding Saturdays and holidays, before the meeting or the continued meeting.

1997, c. 15, s. 120.

Mandatory solicitation

166.04 (1) Subject to subsection 148(2) and subsection (2), the management of an association shall, concurrently with giving notice of a meeting of shareholders, send a form of proxy in prescribed form to each shareholder entitled to receive notice of the meeting.

Exception

(2) If an association has fewer than fifteen shareholders, the management of the association is not required to send a form of proxy to the shareholders under subsection (1). For the purpose of this subsection, two or more joint shareholders are counted as one shareholder.

1997, c. 15, s. 120.

Soliciting proxies

166.05 (1) A person shall not solicit proxies unless

(a) in the case of solicitation by or on behalf of the management of an association, a management proxy circular in prescribed form, either as an appendix to, or as a separate document accompanying, the notice of the meeting is sent to the auditor of the association and to each shareholder whose proxy is solicited; and

(b) in the case of any other solicitation, a dissident's proxy circular in prescribed form stating the purposes of the solicitation is sent to the auditor of the association, to each shareholder whose proxy is solicited and to the association.

Copy to Superintendent

(2) A person who sends a management proxy circular or dissident's proxy circular shall at the same time file with the Superintendent

(a) in the case of a management proxy circular, a copy of it together with a copy of the notice of meeting, form of proxy and any other documents for use in connection with the meeting; and

(b) in the case of a dissident's proxy circular, a copy of it together with a copy of the form of proxy and any other documents for use in connection with the meeting.

Exemption by Superintendent

(3) On the application of an interested person, the Superintendent may, on any terms that the Superintendent thinks fit, exempt the person from any of the requirements of subsection (1) and section 166.04, and the exemption may be given retroactive effect.

Reporting exemptions

(4) The Superintendent shall set out in a periodical available to the public the particulars of each exemption granted under subsection (3) together with the reasons for the exemption.

1997, c. 15, s. 120.

Attendance at meeting

166.06 (1) A person who solicits a proxy and is appointed proxyholder shall attend in person or cause an alternate proxyholder to attend every meeting in respect of which the proxy is valid, and the proxyholder or alternate proxyholder shall comply with the directions of the shareholder who executed the form of proxy.

Rights of proxyholder

(2) A proxyholder or an alternate proxyholder has the same rights as the appointing shareholder to speak at a meeting of shareholders in respect of any matter, to vote by way of ballot at the meeting and, except where a proxyholder or an alternate proxyholder has conflicting instructions from more than one shareholder, to vote at the meeting in respect of any matter by way of a show of hands.

Vote by show of hands

(3) Where the chairperson of a meeting of shareholders declares to the meeting that, if a ballot were conducted, the total number of votes represented at the meeting by proxy required to be voted against what, to the knowledge of the chairperson, would be the decision of the meeting in relation to any matter or group of matters is less than five per cent of all the votes that might be cast at the meeting on the ballot, unless a shareholder or proxyholder demands a ballot,

(a) the chairperson may conduct the vote in respect of that matter or group of matters by way of a show of hands; and

(b) a proxyholder or alternate proxyholder may vote in respect of that matter or group of matters by way of a show of hands.

1997, c. 15, s. 120.

Duty of registrant

166.07 (1) Shares of an association that are registered in the name of a registrant or registrant's nominee and that are not beneficially owned by the registrant shall not be voted unless the registrant sends to the beneficial owner

(a) a copy of the notice of the meeting, annual statement, management proxy circular, dissident's proxy circular and any other documents, other than the form of proxy, that were sent to shareholders by or on behalf of any person for use in connection with the meeting; and

(b) a written request for voting instructions, except where the registrant has already received written voting instructions from the beneficial owner.

When documents to be sent

(2) The documents to be sent to the beneficial owner under subsection (1) shall be sent by the registrant without delay after the registrant receives the documents referred to in paragraph (1)(a).

Where registrant not to vote shares

(3) A registrant shall not vote or appoint a proxyholder to vote shares of an association registered in the registrant's name or in the name of the registrant's nominee that the registrant does not beneficially own unless the registrant receives voting instructions from the beneficial owner.

Copies

(4) A person by or on behalf of whom a solicitation is made shall, at the request of a registrant, without delay provide the registrant, at that person's expense, with the necessary number of copies of the documents referred to in paragraph (1)(a).

Instructions to registrant

(5) A registrant shall vote or appoint a proxyholder to vote any shares referred to in subsection (1) in accordance with any written voting instructions received from the beneficial owner.

Beneficial owner as proxyholder

(6) If requested by a beneficial owner, a registrant shall appoint the beneficial owner or a nominee of the beneficial owner as proxyholder.

Default of registrant - effect

(7) The failure of a registrant to comply with any of subsections (1) to (6) does not render void any meeting of shareholders or any action taken at the meeting.

Right of registrant limited

(8) Nothing in this Part gives a registrant the right to vote shares that the registrant is otherwise prohibited from voting.

1997, c. 15, s. 120.

Restraining order

166.08 (1) If a form of proxy, management proxy circular or dissident's proxy circular contains an untrue statement of a material fact or omits to state a material fact that is required to be contained in it or that is necessary to make a statement contained in it not misleading in light of the

circumstances in which the statement is made, an interested person or the Superintendent may apply to a court and the court may make any order it thinks fit including,

- (a) an order restraining the solicitation or the holding of the meeting, or restraining any person from implementing or acting on a resolution passed at the meeting, to which the form of proxy, management proxy circular or dissident's proxy circular relates;
- (b) an order requiring correction of any form of proxy or proxy circular and a further solicitation; and
- (c) an order adjourning the meeting.

Notice of application

(2) Where a person other than the Superintendent is an applicant under subsection (1), the applicant shall give notice of the application to the Superintendent and the Superintendent is entitled to appear and to be heard in person or by counsel.

1997, c. 15, s. 120.

DIRECTORS AND OFFICERS DUTIES

Duties

Duty to manage

167. (1) Subject to this Act, the directors of an association shall manage or supervise the management of the business and affairs of the association.

Specific duties

- (2) Without limiting the generality of subsection (1), the directors of an association shall
- (a) establish an audit committee to perform the duties referred to in subsections 199(3) and (4);
 - (b) establish a conduct review committee to perform the duties referred to in subsection 200(3);
 - (c) establish procedures to resolve conflicts of interest, including techniques for the identification of potential conflict situations and for restricting the use of confidential information;
 - (d) designate a committee of the board of directors to monitor the procedures referred to in paragraph (c);

(e) establish investment and lending policies, standards and procedures in accordance with section 387;

(f) in the case of a retail association, establish procedures to provide disclosure of information to customers of the association that is required to be disclosed by this Act and for dealing with complaints as required by section 385.22; and

(g) designate a committee of the board of directors to monitor the procedures referred to in paragraph (f) and satisfy itself that they are being adhered to by the retail association.

Legislative History – The sub-sections (f) and (g) were added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such sub-sections (f) and (g) previously existed in this Act.

1991, c. 48, s. 167; 2001, c. 9, s. 275

Duty of care

168. (1) Every director and officer of an association in exercising any of the powers of a director or an officer and discharging any of the duties of a director or an officer shall

(a) act honestly and in good faith with a view to the best interests of the association; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Duty to comply

(2) Every director, officer and employee of an association shall comply with this Act, the regulations, the association's incorporating instrument and the by-laws of the association.

No exculpation

(3) No provision in any contract, in any resolution or in the by-laws of an association relieves any director, officer or employee of the association from the duty to act in accordance with this Act and the regulations or relieves a director, officer or employee from liability for a breach thereof.

QUALIFICATION AND NUMBER - DIRECTORS

Minimum number of directors

169. (1) An association shall have at least seven directors.

Residency requirement

(2) At least two thirds of the directors of an association must be, at the time of each director's election or appointment, resident Canadians.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this sub-section read as follows:

Residency requirement

(2) At least three quarters of the directors of an association must be, at the time of each director's election or appointment, resident Canadians.

1991, c. 48, s. 169; 2001, c. 9, s. 276

Disqualified persons

170. The following persons are disqualified from being directors of an association:

- (a) a person who is less than eighteen years of age;
- (b) a person who is of unsound mind and has been so found by a court in Canada or elsewhere;
- (c) a person who has the status of a bankrupt;
- (d) a person who is not a natural person;
- (e) and (f) [Repealed, 1994, c. 47, s. 51]
- (g) a minister of Her Majesty in right of Canada or in right of a province; and
- (h) a person who is an agent or employee of the government of a foreign country or any political subdivision thereof.

1991, c. 48, s. 170; 1994, c. 47, s. 51.

Limit on directors

171. No more than 15 per cent of the directors of an association may, at each director's election or appointment, be employees of the association or a subsidiary of the association.

ELECTION AND TENURE - DIRECTORS

Number of directors

172. (1) Subject to subsection 169(1), the members of an association shall, by by-law, determine the number of directors or the minimum and maximum number of directors.

Content of by-law

(2) A by-law made pursuant to subsection (1) shall set out the manner in which directors are nominated, appointed or elected, but no by-law that decreases the number of directors shortens the term of an incumbent director.

Election at annual meeting

(3) A by-law made pursuant to subsection (1) that provides for a minimum and maximum number of directors may provide that the number of directors to be appointed or elected at any annual meeting be such number as is fixed by the directors prior to the annual meeting.

Voting by shareholders

173. Where shareholders of an association are entitled to elect one or more directors of an association, no more than one third of the directors may be elected by the shareholders.

Term of directors

174. (1) An association may, by by-law, provide that the directors be appointed or elected for terms of one, two or three years.

Term of one, two or three years

(2) A director appointed or elected for a term of one, two or three years holds office until the close of the first, second or third annual meeting following the appointment or election of the director.

No stated term

(3) A director who is not appointed or elected for an expressly stated term of office ceases to hold office at the close of the next annual meeting following the appointment or election of the director.

Tenure of office

(4) It is not necessary that all directors appointed or elected at a meeting hold office for the same term.

Idem

(5) If a by-law of an association provides that the directors be appointed or elected for a term of two or three years, it may also provide that the term of office of each director be for the whole of that term, or that, as nearly as may be, one half of the directors retire each year if the term is two years, and that one third of the directors retire each year if the term is three years.

Composition requirements

(6) Where a director of an association is appointed or elected for a term of more than one year, the association shall comply with subsection 169(2) and section 171 at each annual meeting during the director's term of office as if that director were appointed or elected on that date.

Determining election of directors

175. (1) The persons, to the number authorized to be elected, who receive the greatest number of votes at an election of directors of an association shall be directors thereof.

Idem

(2) If, at any election of directors referred to in subsection (1), two or more persons receive an equal number of votes and there are not sufficient vacancies remaining to enable all the persons receiving an equal number of votes to be elected, the directors who receive a greater number of votes or the majority of them shall, in order to complete the full number of directors to be elected, determine which of the persons so receiving an equal number of votes are to be elected.

Re-appointment or re-election of directors

176. A director who has completed a term of office is, if otherwise qualified, eligible for re-appointment or re-election.

DIRECTOR VACANCIES

Void election or appointment

177. (1) If, immediately after the time of any purported election or appointment of directors, the board of directors would fail to comply with subsection 169(2) or section 171, the purported election or appointment of all persons purported to be elected or appointed at that time is void unless the directors, within forty-five days after the discovery of the non-compliance, develop a plan, approved by the Superintendent, to rectify the non-compliance.

Failure to appoint or elect minimum

(2) Where, at the close of a meeting of members or shareholders of an association, the members or shareholders have failed to appoint or elect the number or minimum number of directors required by this Act or the by-laws of the association, the purported appointment or election of directors at the meeting

(a) is valid if the directors purported to be appointed or elected and those incumbent directors, if any, whose terms did not expire at the close of the meeting, together constitute a quorum; or

(b) is void if the directors purported to be appointed or elected and those incumbent directors, if any, whose terms did not expire at the close of the meeting, together do not constitute a quorum.

Directors where appointment or elections incomplete or void

178. (1) Notwithstanding subsections 174(2) and (3) and paragraph 179(1)(a), if section 177 applies at the close of any meeting of members or shareholders of an association, the board of directors shall, until such time as their successors are appointed or elected, consist solely of

(a) where paragraph 177(2)(a) applies, the directors referred to in that paragraph; or

(b) where subsection 177(1) or paragraph 177(2)(b) applies, those persons who were the incumbent directors immediately before the meeting.

Where there is no approved rectification plan

(1.1) Notwithstanding subsections 174(2) and (3) and paragraph 179(1)(a), where a plan to rectify the non-compliance referred to in subsection 177(1) has not been approved by the Superintendent by the end of the forty-five day period referred to in that subsection, the board of directors shall, until their successors are elected or appointed, consist solely of the persons who were the incumbent directors immediately before the meeting at which the purported election or appointment referred to in that subsection occurred.

Directors to call meeting

(2) Where subsection (1) or (1.1) applies, the board of directors referred to in that subsection shall without delay call a special meeting of members or shareholders to fill the vacancies, where paragraph 177(2)(a) applies, or elect a new board of directors, where subsection 177(1) or paragraph 177(2)(b) applies.

Calling meeting

(3) Where the directors fail to call a special meeting required by subsection (2), the meeting may be called by any person entitled to vote at that meeting.

1991, c. 48, s. 178; 1997, c. 15, s. 122.

Ceasing to hold office

179. (1) A director ceases to hold office

(a) at the close of the annual meeting at which the director's term of office expires;

(b) when the director dies or resigns;

(c) when the director becomes disqualified under section 170 or ineligible to hold office pursuant to subsection 207(2);

(d) when the director is removed under section 180; or

(e) when the director is removed from the office under section 441.2.

Legislative History – The sub-section (e) was added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such sub-section (e) previously existed in this Act.

Date of resignation

(2) The resignation of a director of an association becomes effective at the time a written resignation is sent to the association by the director or at the time specified in the resignation, whichever is later.

1991, c. 48, s. 179; 2001, c. 9, s. 277.

Removal of director

180. (1) Subject to subsections (2) and (3), the members of an association may, by special resolution at a special meeting of members, remove any or all directors from office.

Exception

(2) Where members of an association have the exclusive right to appoint or elect one or more directors, a director so appointed or elected may be removed only by those members.

Idem

(3) Where the holders of any class or series of shares of an association have the exclusive right to elect one or more directors, a director so elected may be removed only by a special resolution at a meeting of the shareholders of that class or series.

Vacancy by removal

(4) A vacancy created by the removal of a director may be filled at the meeting of the members or shareholders at which the director is removed.

Statement of director

181. (1) A director who

(a) resigns,

(b) receives a notice or otherwise learns of a meeting called for the purpose of removing the director from office, or

(c) receives a notice or otherwise learns of a meeting of directors, members or shareholders at which another person is to be appointed or elected to fill the office of director, whether

because of the director's resignation or removal or because the director's term of office has expired or is about to expire,

is entitled to submit to the association a written statement giving the reasons for the resignation or the reasons why the director opposes any proposed action or resolution.

Statement re disagreement

(2) Where a director resigns as a result of a disagreement with the other directors or the officers of an association, the director shall submit to the association and the Superintendent a written statement setting out the nature of the disagreement.

Circulation of statement

182. (1) Forthwith on receipt of a director's statement referred to in subsection 181(1) relating to a matter referred to in paragraph 181(1)(b) or (c), or a director's statement referred to in subsection 181(2), an association shall send a copy thereof to the Superintendent, to each member and, if the director was elected by the holders of shares of a class, to those shareholders.

Exception

(2) An association is not required to comply with subsection (1) in respect of shareholders if the statement is included in or attached to a management proxy circular required by paragraph 166.05(1)(a).

Immunity for statement

(3) No association or person acting on its behalf incurs any liability by reason only of circulating a director's statement in compliance with subsection (1).

1991, c. 48, s. 182; 1997, c. 15, s. 123.

Filling vacancy

183. (1) Subject to the by-laws of an association, a vacancy among the directors of the association is to be filled by an appointment or election by members only or by an appointment or election by persons having an exclusive right to appoint or elect one or more directors if the vacancy occurs among the directors appointed or elected by those persons.

Where composition fails

(2) Notwithstanding section 188, where by reason of a vacancy the number of directors or the composition of the board of directors fails to meet any of the requirements of sections 169 and 171, the directors who, pursuant to the by-laws, are empowered to fill that vacancy shall do so forthwith.

Class vacancy

(3) Notwithstanding section 188, the by-laws of an association may provide that, where a class of persons has an exclusive right to appoint or elect one or more directors and a vacancy occurs among those directors,

(a) the remaining directors appointed or elected by those persons may fill the vacancy except a vacancy resulting from an increase in the number or minimum number of directors who are to be appointed or elected by that class or from a failure to appoint or elect the number or minimum number of directors who are to be appointed or elected by that class;

(b) if there are no such remaining directors and, by reason of the vacancy, the number of directors or the composition of the board of directors fails to meet any of the requirements of sections 169 and 171, the other directors may fill that vacancy; and

(c) if there are no such remaining directors and paragraph (b) does not apply, any person of that class of persons may call a meeting of the class for the purpose of filling the vacancy.

Unexpired term

184. Unless the by-laws otherwise provide, a director appointed or elected to fill a vacancy holds office for the unexpired term of the director's predecessor in office.

MEETINGS OF THE BOARD**Meetings required**

185. (1) The directors shall meet at least four times during each financial year.

Notice of meeting

186. (1) A notice of a meeting of directors shall specify each matter referred to in section 202 that is to be dealt with at the meeting but, unless the by-laws otherwise provide, need not otherwise specify the purpose of or the business to be transacted at the meeting.

Waiver of notice

(2) A director may in any manner waive notice of a meeting of directors and the attendance of a director at a meeting of directors is a waiver of notice of that meeting except where the director attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

Adjourned meeting

(3) Notice of an adjourned meeting of directors is not required to be given if the time and place of the adjourned meeting was announced at the original meeting.

Quorum

187. (1) Subject to section 188, the number of directors referred to in subsection (2) constitutes a quorum at any meeting of directors or a committee of directors and, notwithstanding any vacancy among the directors, a quorum of directors may exercise all the powers of the directors.

Idem

(2) The number of directors constituting a quorum at any meeting of directors or a committee of directors shall be

- (a) a majority of the minimum number of directors required by this Act for the board of directors or a committee of directors; or
- (b) such greater number of directors than the number calculated pursuant to paragraph (a) as may be established by the by-laws of the association.

Director continues to be present

(3) Any director present at a meeting of directors who is not present at any particular time during the meeting for the purposes of subsection 207(1) shall be considered as being present for the purposes of this section.

Resident Canadian majority

188. (1) The directors of an association shall not transact business at a meeting of directors or of a committee of directors unless a majority of the directors present are resident Canadians.

Exception

(2) Notwithstanding subsection (1), the directors of an association may transact business at a meeting of directors or of a committee of directors without the required proportion of directors who are resident Canadians if

- (a) a director who is a resident Canadian unable to be present approves, in writing or by telephonic, electronic or other communications facilities, the business transacted at the meeting; and
- (b) there would have been present the required proportion of directors who are resident Canadians had that director been present at the meeting.

Electronic meeting

189. (1) Subject to the by-laws of an association, a meeting of directors or of a committee of directors may be held by means of such telephonic, electronic or other communications facilities as permit all persons participating in the meeting to communicate adequately with each other during the meeting.

Deemed present

(2) A director participating in a meeting by any means referred to in subsection is deemed for the purposes of this Act to be present at that meeting.

Resolution outside board meeting

189.1 (1) A resolution in writing signed by all the directors entitled to vote on that resolution at a meeting of directors is as valid as if it had been passed at a meeting of directors.

Filing directors' resolution

(2) A copy of the resolution referred to in subsection (1) shall be kept with the minutes of the proceedings of the directors.

Resolution outside committee meeting

(3) A resolution in writing signed by all the directors entitled to vote on that resolution at a meeting of a committee of directors, other than a resolution of the audit committee in carrying out its duties under subsection 199(3) or a resolution of the conduct review committee in carrying out its duties under subsection 200(3), is as valid as if it had been passed at a meeting of that committee.

Filing committee resolution

(4) A copy of the resolution referred to in subsection (3) shall be kept with the minutes of the proceedings of that committee.

Dissent of director

190. (1) A director of an association who is present at a meeting of directors or a committee of directors is deemed to have consented to any resolution passed or action taken at that meeting unless

(a) the director requests that the director's dissent be entered or the director's dissent is entered in the minutes of the meeting;

(b) the director sends a written dissent to the secretary of the meeting before the meeting is adjourned; or

(c) the director sends the director's dissent by registered mail or delivers it to the head office of the association immediately after the meeting is adjourned.

Loss of right to dissent

(2) A director of an association who votes for or consents to a resolution is not entitled to dissent under subsection (1).

Dissent of absent director

(3) A director of an association who is not present at a meeting at which a resolution is passed or action taken is deemed to have consented thereto unless, within seven days after the director becomes aware of the resolution, the director

(a) causes the director's dissent to be placed with the minutes of the meeting; or

(b) sends the director's dissent by registered mail or delivers it to the head office of the association.

Meeting required by Superintendent

191. (1) Where in the opinion of the Superintendent it is necessary, the Superintendent may, by notice in writing, require an association to hold a meeting of directors of the association to consider the matters set out in the notice.

Attendance of Superintendent

(2) The Superintendent may attend and be heard at a meeting referred to in subsection (1).

BY-LAWS

By-laws - members

192. (1) The members of an association may by special resolution make, amend or repeal any by-law that regulates the business or affairs of the association.

By-laws - directors

(2) Unless this Act otherwise provides, the directors of an association may by special resolution make a by-law or amend a by-law of the association but only if the by-law or amendment is not contrary to any by-law made by the members.

Approval

(3) The directors shall submit a by-law, or an amendment to a by-law, that is made under subsection (2) to the members at the next meeting of members, and the members may, by special resolution, confirm or amend the by-law or amendment.

Where by-law not confirmed

(4) Where a by-law made by the directors pursuant to subsection (2) is not confirmed, with or without amendments, pursuant to subsection (3), the by-law is repealed.

Proposal of by-law

193. A member may, in accordance with section 152, make a proposal to make, amend or repeal a by-law.

Effective date of by-law

194. (1) Unless this Act otherwise provides, a by-law, or an amendment to or a repeal of a by-law, made by the members, is effective from the later of the date of the resolution made under subsection 192(1) and the date specified in the by-law.

Idem

(2) Unless this Act otherwise provides, a by-law, or an amendment to a by-law, made by the directors is effective from the later of the date that the by-law is made or amended by the directors and the date specified in the by-law, until it is confirmed, confirmed as amended under subsection 192(3) or repealed under subsection 192(4) and, where the by-law is confirmed, or confirmed as amended, it continues in effect in the form in which it was so confirmed.

Where by-law not approved

(3) Where a by-law, or an amendment to a by-law, made by the directors pursuant to 192(2) is not submitted by the directors at a meeting as required under subsection 192(3), the by-law or amendment ceases to be effective from the date of that meeting.

New resolution by directors

(4) Where a by-law, or an amendment to a by-law, made by the directors pursuant to subsection 192(2) is repealed pursuant to subsection 192(4), or ceases to be effective pursuant to subsection (3), no subsequent resolution of directors to make or amend a by-law having substantially the same purpose or effect is effective until it is confirmed, or confirmed as amended, by the members.

By-laws of former-Act association

195. Subject to section 196, where a by-law of the former-Act association is in effect on the coming into force of this section, the by-law continues in effect until amended or repealed, unless it is contrary to a provision of this Act.

By-laws re remuneration

196. (1) A by-law of an association respecting the remuneration of the directors of the association, as directors, that is in effect on the coming into force of this Part ceases to have effect on the day on which the first annual meeting of the association is held following the coming into force of this Part.

Existing resolutions

(2) Where the remuneration of directors of the former-Act association was, immediately prior to the coming into force of this Part, fixed by a resolution of the directors, that resolution continues to have effect, unless it is contrary to the provisions of this Act, until the first meeting of the members following the coming into force of this Part.

Application of subsections 192(3) and (4) and section 194

(3) Subsections 192(3) and (4) and section 194 apply in respect of a by-law referred to in this section as if it were a by-law made under section 192.

Deemed by-laws

197. (1) Any matter provided for in the incorporating instrument of the former-Act association on the coming into force of this Part that, under this Act, would be provided for in the by-laws of an association is deemed to be provided for in the by-laws of the association.

By-law prevails

(2) Where a by-law of the association made in accordance with sections 192 and 194 amends or repeals any matter referred to in subsection (1), the by-law prevails.

COMMITTEES OF THE BOARD**Committees**

198. The directors of an association may appoint from their number, in addition to the committees referred to in subsection 167(2), such other committees as they deem necessary and, subject to section 202, delegate to those committees such powers of the directors, and assign to those committees such duties, as the directors consider appropriate.

Audit committee

199. (1) The audit committee of an association shall consist of at least three directors.

Membership

(2) None of the members of the audit committee may be

(a) employees of the association or of a subsidiary of the association; or

(b) officers of the association or of a subsidiary of the association who are involved in the day-to-day operation of the association or subsidiary.

Duties of audit committee

(3) The audit committee of an association shall

(a) review the annual statement of the association before the annual statement is approved by the directors;

(b) review such returns of the association as the Superintendent may specify;

(c) require the management of the association to implement and maintain appropriate internal control procedures;

(c.1) review, evaluate and approve those procedures;

(d) review such investments and transactions that could adversely affect the well-being of the association as the auditor or any officer of the association may bring to the attention of the committee;

(e) meet with the auditor to discuss the annual statement and the returns and transactions referred to in this subsection; and

(f) meet with the chief internal auditor of the association, or the officer or employee of the association acting in a similar capacity, and with management of the association, to discuss the effectiveness of the internal control procedures established for the association.

Report

(4) In the case of the annual statement and returns of an association that under this Act must be approved by the directors of the association, the audit committee of the association shall report thereon to the directors before the approval is given.

Required meeting of directors

(5) The audit committee of an association may call a meeting of the directors of the association to consider any matter of concern to the committee.

1991, c. 48, s. 199; 1997, c. 15, s. 126.

Conduct review committee

200. (1) The conduct review committee of an association shall consist of at least three directors.

Membership

(2) None of the members of the conduct review committee may be

(a) employees of the association or of a subsidiary of the association; or

(b) officers of the association or of a subsidiary of the association who are involved in the day-to-day operation of the association or subsidiary.

Duties of conduct review committee

(3) The conduct review committee of an association shall

(a) require the management of the association to establish procedures for complying with Part XII;

(b) review those procedures and their effectiveness in ensuring that the association is complying with Part XII; and

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this paragraph read as follows:

(b) review those procedures; and

(c) review the practices of the association to ensure that any transactions with related parties of the association that may have a material effect on the stability or solvency of the association are identified.

Association report to Superintendent

(4) An association shall report to the Superintendent on the mandate and responsibilities of the conduct review committee and the procedures referred to in paragraph (3)(a).

Committee report to directors

(5) After each meeting of the conduct review committee of an association, the committee shall report to the directors of the association on matters reviewed by the committee.

Directors report to Superintendent

(6) Within ninety days after the end of each financial year, the directors of an association shall report to the Superintendent on what the conduct review committee did during the year in carrying out its responsibilities under subsection (3).

1991, c. 48, s. 200; 1997, c. 15, s. 127; 2001, c. 9, s. 278.

DIRECTORS AND OFFICERS - AUTHORITY

Appointment of officers

201. (1) The directors of an association may, subject to the by-laws, designate the offices of the association, appoint officers thereto, specify the duties of those officers and delegate to them powers, subject to section 202, to manage the business and affairs of the association.

Directors as officers

(2) Subject to section 171, a director of an association may be appointed to any office of the association.

Two or more offices

(3) Two or more offices of an association may be held by the same person.

Limits on power to delegate

202. The directors of an association may not delegate any of the following powers, namely, the power to

(a) submit to the members or shareholders a question or matter requiring their approval;

(b) admit members;

(c) fill a vacancy among the directors or a committee of directors or in the office of auditor;

(d) issue or cause to be issued securities except in the manner and on terms authorized by the directors;

- (e) declare a dividend on membership shares or shares, a payment of a bonus on any deposit or a patronage allocation;
- (f) authorize the redemption or other acquisition by the association pursuant to section 79 of membership shares or shares issued by the association;
- (g) authorize the payment of a commission on a share issue;
- (h) approve a management proxy circular;
- (i) except as provided in this Act, approve the annual statement of the association and any other financial statements issued by the association;
- (j) expel members; or
- (k) adopt or amend by-laws.

1991, c. 48, s. 202; 1997, c. 15, s. 128.

Remuneration of directors, officers and employees

203. (1) Subject to this section and the by-laws, the directors of an association may fix the remuneration of the directors, officers and employees of the association.

By-law required

(2) No remuneration shall be paid to a director as director until a by-law fixing the aggregate of all amounts that may be paid to all directors in respect of directors' remuneration during a fixed period of time has been confirmed by special resolution of the members.

1991, c. 48, s. 203; 1994, c. 26, s. 26.

Validity of acts

204. (1) An act of a director or an officer of an association is valid notwithstanding a defect in the director's qualification or an irregularity in the director's election or in the appointment of the director or officer.

Idem

(2) An act of the board of directors of an association is valid notwithstanding a defect in the composition of the board or an irregularity in the election of the board or in the appointment of a member of the board.

Right to attend meetings

205. A director of an association is entitled to attend and to be heard at every meeting of members or shareholders of the association.

CONFLICTS OF INTEREST

Disclosure of interest

206. (1) A director or an officer of an association who

- (a) is a party to a material contract or proposed material contract with the association,
- (b) is a director or an officer of any entity, other than a member, that is a party to a material contract or proposed material contract with the association, or
- (c) has a material interest in any person who is a party to a material contract or proposed material contract with the association

shall disclose in writing to the association or request to have entered in the minutes of the meetings of directors the nature and extent of that interest.

Time of disclosure for director

(2) The disclosure required by subsection (1) shall be made, in the case of a director,

- (a) at the meeting of directors at which a proposed contract is first considered;
- (b) if the director was not then interested in a proposed contract, at the first meeting after the director becomes so interested;
- (c) if the director becomes interested after a contract is made, at the first meeting after the director becomes so interested; or
- (d) if a person who is interested in a contract later becomes a director, at the first meeting after that person becomes a director.

Time of disclosure for officer

(3) The disclosure required by subsection (1) shall be made, in the case of an officer who is not a director,

- (a) forthwith after the officer becomes aware that a proposed contract is to be considered or a contract has been considered at a meeting of directors;

(b) if the officer becomes interested after a contract is made, forthwith after the officer becomes so interested; or

(c) if a person who is interested in a contract later becomes an officer, forthwith after the person becomes an officer.

Time of disclosure for director or officer

(4) If a material contract or proposed material contract is one that, in the ordinary course of business of the association, would not require approval by the directors or members, a director or an officer referred to in subsection (1) shall disclose in writing to the association or request to have entered in the minutes of meetings of directors the nature and extent of the director's or officer's interest forthwith after the director or officer becomes aware of the contract or proposed contract.

Where director must abstain

207. (1) Where subsection 206(1) applies to a director in respect of a contract, the director shall not be present at any meeting of directors while the contract is being considered at the meeting or vote on any resolution to approve the contract unless the contract is

(a) an arrangement by way of security for money lent to or obligations undertaken by the director for the benefit of the association or a subsidiary of the association;

(b) a contract relating primarily to the director's remuneration as a director or an officer, employee or agent of the association or a subsidiary of the association or an entity controlled by the association or an entity in which the association has a substantial investment;

(c) a contract for indemnity under section 216 or for insurance under section 217; or

(d) a contract with a subsidiary of the association.

Ineligibility

(2) Any director who knowingly contravenes subsection (1) ceases to hold office as director and is not eligible, for a period of five years after the date on which the contravention occurred, for election or appointment as a director of any financial institution that is incorporated or formed by or under an Act of Parliament.

Validity of acts

(3) An act of the board of directors of an association or of a committee of the board of directors is not invalid because a person acting as a director had ceased under subsection (2) to hold office as a director.

Continuing disclosure

208. For the purposes of subsection 206(1), a general notice to the directors by a director or an officer declaring that the director or officer is a director or officer of an entity, or has a material interest in a person, and is to be regarded as interested in any contract made with that entity or person, is a sufficient declaration of interest in relation to any contract so made.

Avoidance standards

209. Where a material contract is entered into between an association and one or more of its directors or officers, or between an association and another entity of which a director or an officer of the association is a director or an officer or between an association and a person in which the director or officer has a material interest and disclosure is required by subsection 206(1), the contract is neither void nor voidable

(a) by reason only of that relationship, or

(b) by reason only that a director with an interest in the contract is present at or is counted to determine the presence of a quorum at the meeting of directors or the committee of directors that authorized the contract,

if the director or officer disclosed the interest in accordance with subsection 206(2), (3) or (4) or section 208 and the contract was approved by the directors or the members and it was reasonable and fair to the association at the time it was approved.

Application to court

210. Where a director or an officer of an association fails to disclose an interest in a material contract in accordance with sections 206 and 208, a court may, on the application of the association or a member of the association, set aside the contract on such terms as the court thinks fit.

LIABILITY, EXCULPATION AND INDEMNIFICATION**Directors' liability**

211. (1) The directors of an association who vote for or consent to a resolution of the directors authorizing the issue of a membership share or share contrary to subsection 74(1) or the issue of subordinated indebtedness contrary to section 87 for a consideration other than money are jointly and severally liable to the association to make good any amount by which the consideration received is less than the fair equivalent of the money that the association would have received if the membership share, share or subordinated indebtedness had been issued for money on the date of the resolution.

Further liabilities

(2) The directors of an association who vote for or consent to a resolution of the directors authorizing

- (a) a redemption or purchase of membership shares or shares contrary to section 79,
- (b) a reduction of capital contrary to section 82,
- (c) a payment of a dividend contrary to section 86,
- (d) a payment of an indemnity contrary to section 216, or
- (e) any transaction contrary to Part XII

are jointly and severally liable to restore to the association any amounts so distributed or paid and not otherwise recovered by the association and any amounts in relation to any loss suffered by the association.

Contribution

212. (1) A director who has satisfied a judgment in relation to the director's liability under section 211 is entitled to contribution from the other directors who voted for or consented to the unlawful act on which the judgment was founded.

Recovery

(2) A director who is liable under section 211 is entitled to apply to a court for an order compelling a member, shareholder or other person to pay or deliver to the director

- (a) any money or property that was paid or distributed to the member, shareholder or other person contrary to section 79, 82, 86 or 216; or
- (b) an amount equal to the value of the loss suffered by the association as a result of any transaction contrary to Part XII.

Court order

(3) Where an application is made to a court under subsection (2), the court may, where it is satisfied that it is equitable to do so,

- (a) order a member, shareholder or other person to pay or deliver to a director any money or property that was paid or distributed to the member, shareholder or other person contrary to section 79, 82, 86 or 216 or any amount referred to in paragraph (2)(b);

(b) order an association to return or issue membership shares or shares to a member or shareholder from whom the association has purchased, redeemed or otherwise acquired membership shares or shares; or

(c) make any further order it thinks fit.

Limitation

213. An action to enforce a liability imposed by section 211 may not be commenced after two years from the date of the resolution authorizing the action complained of.

Liability for wages

214. (1) Subject to subsections (2) and (3), the directors of an association are jointly and severally liable to each employee of the association for all debts not exceeding six months wages payable to the employee for services performed for the association while they are directors.

Conditions precedent

(2) A director is not liable under subsection (1) unless

(a) the association has been sued for the debt within six months after it has become due and execution has been returned unsatisfied in whole or in part;

(b) the association has commenced liquidation and dissolution proceedings or has been dissolved and a claim for the debt has been proven within six months after the earlier of the date of commencement of the liquidation and dissolution proceedings and the date of dissolution; or

(c) a winding-up order has been issued in respect of the association under the *Winding-up and Restructuring Act* and a claim for the debt has been allowed or proven within six months after the issue of the winding-up order.

Limitations

(3) A director is not liable under subsection (1) unless the director is sued for a debt referred to in that subsection while a director or within two years after the director has ceased to be a director.

Amount due after execution

(4) Where execution referred to in paragraph (2)(a) has issued, the amount recoverable from a director is the amount remaining unsatisfied after execution.

Subrogation of director

(5) Where a director of an association pays a debt referred to in subsection (1) that is proven in liquidation and dissolution or winding-up proceedings, the director is entitled to any preference that the employee would have been entitled to and, where a judgment has been obtained, the director is entitled to an assignment of the judgment.

Contribution entitlement

(6) A director of an association who has satisfied a claim under this section is entitled to a contribution from the other directors of the association who are liable for the claim.

1991, c. 48, s. 214; 1996, c. 6, s. 167.

Reliance on statement

215. A director, an officer or an employee of an association is not liable under subsection 168(1) or (2) or section 211 or 214 or subsection 430(1) if the director, officer or employee relies in good faith on

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, the portion before paragraph (a) read as follows:

Reliance on statement

215. A director, an officer or an employee of an association is not liable under subsection 168(1) or (2) or section 211 or 214 if the director, officer or employee relies in good faith on

(a) financial statements of the association represented to the director, officer or employee by an officer of the association or in a written report of the auditor of the association fairly to reflect the financial condition of the association; or

(b) a report of an accountant, lawyer, notary or other professional person whose profession lends credibility to a statement made by the professional person.

1991, c. 48, s. 215; 2001 c. 9, s. 279

Indemnification of directors and officers

216. (1) Except in respect of an action by or on behalf of the association to procure a judgment in its favour, an association may indemnify

(a) a director or an officer of the association,

(b) a former director or officer of the association, or

(c) any person who acts or acted at the association's request as a director or an officer of an entity of which the association is or was a member, shareholder or creditor against all costs,

charges and expenses, including an amount paid to settle an action or satisfy a judgment reasonably incurred by the person in respect of any civil, criminal or administrative action or proceeding to which the person is made a party by reason of being or having been a person referred to in any of paragraphs (a) to (c), if

(d) the director, officer or person acted honestly and in good faith with a view to the best interests of the association, and

(e) in the case of a criminal or administrative action or proceeding enforced by a monetary penalty, the director, officer or person had reasonable grounds for believing that the impugned conduct was lawful.

Indemnification in derivative action

(2) An association may, with the approval of a court, indemnify a person referred to in subsection (1), in respect of an action by or on behalf of the association or entity to procure a judgment in its favour to which the person is made a party by reason of being or having been a director or an officer of the association or entity, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the person in connection with that action if the person fulfils the conditions set out in paragraphs (1)(d) and (e).

Right to indemnity

(3) Notwithstanding anything in this section, a person referred to in subsection (1) is entitled to indemnity from the association in respect of all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the person in connection with the defence of any civil, criminal or administrative action or proceeding to which the person is made a party by reason of being or having been a director or an officer of the association or an entity, if the person seeking indemnity

(a) was substantially successful on the merits in the defence of the action or proceedings; and

(b) fulfils the conditions set out in paragraphs (1)(d) and (e).

Heirs

(4) An association may, to the extent referred to in subsections (1) to (3) in respect of the person, indemnify the heirs or personal representatives of any person the association may indemnify pursuant to subsections (1) to (3).

Directors' and officers' insurance

217. An association may purchase and maintain insurance for the benefit of any person referred to in section 216 against any liability incurred by the person

(a) in the capacity of a director or an officer of the association, except where the liability relates to a failure to act honestly and in good faith with a view to the best interests of the association; or

(b) in the capacity of a director or an officer of another entity where the person acts or acted in that capacity at the association's request, except where the liability relates to a failure to act honestly and in good faith with a view to the best interests of the entity.

Application to court for indemnification

218. (1) An association or a person referred to in section 216 may apply to a court for an order approving an indemnity under that section and the court may so order and make any further order it thinks fit.

Notice to Superintendent

(2) An applicant under subsection (1) shall give the Superintendent written notice of the application and the Superintendent is entitled to appear and to be heard at the hearing of the application in person or by counsel.

Other notice

(3) On an application under subsection (1), the court may order notice to be given to any interested person and that person is entitled to appear and to be heard in person or by counsel at the hearing of the application.

FUNDAMENTAL CHANGES

Amendments

Incorporating instrument

219. On the application of an association duly authorized by special resolution of the members, the Minister may approve a proposal to add, change or remove any provision that is permitted by this Act to be set out in the association's incorporating instrument.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Incorporating instrument

219. (1) On the application of an association duly authorized by special resolution of the members, the Minister may approve a proposal to

(a) change the name of the association; or

(b) add, change or remove any provision that is permitted by this Act to be set out in the association's incorporating instrument.

Notice of intention

(2) Before an application is made to the Minister pursuant to subsection (1) to change the name of an association, a notice of intention to make the application must be published by the applicant at least once a week for a period of four consecutive weeks in the Canada Gazette and in a newspaper in general circulation at or near the place where the head office of the association is situated.

1991, c. 48, s. 219; 2001, c. 9, s. 281.

Letters patent to amend

220. (1) On receipt of an application referred to in section 219, the Minister may issue letters patent to effect the proposal.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this sub-section read as follows:

Letters patent to amend

220. (1) On receipt of an application referred to in section 219(1), the Minister may issue letters patent to effect the proposal.

Effect of letters patent

(2) Letters patent issued pursuant to subsection (1) become effective on the day stated in the letters patent.

1991, c. 48, s. 220; 2001, c. 9, s. 282.

By-laws

221. (1) The members of an association may, by special resolution, make, amend or repeal any by-laws, in the manner set out in subsection (2) and sections 222 to 225, to

- (a) change the maximum number, if any, of shares of any class that the association is authorized to issue;
- (b) create new classes of shares;
- (c) change the designation of any or all of the association's shares, and add, change or remove any rights, privileges, restrictions and conditions, including rights to accrued dividends, in respect of any or all of the association's shares, whether issued or unissued;
- (d) change the shares of any class or series, whether issued or unissued, into a different number of shares of the same class or series or into the same or a different number of shares of other classes or series;
- (e) divide a class of shares, whether issued or unissued, into series and fix the maximum number of shares, if any, in each series and the rights, privileges, restrictions and conditions attached thereto;

(f) authorize the directors to divide any class of unissued shares into series and fix the maximum number of shares, if any, in each series and the rights, privileges, restrictions and conditions attached thereto;

(g) authorize the directors to change the rights, privileges, restrictions and conditions attached to unissued shares of any series;

(a) revoke, diminish or enlarge any authority conferred under paragraphs (f) and (g);

(i) increase or decrease the number of directors or the minimum or maximum number of directors, subject to subsection 169(1);

(i.1) change the name of the association; or

Legislative History – This paragraph (i.1) was added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such sub-section previously existed in this Act.

(j) change the place in Canada where the head office of the association is to be situated.

Effective date of by-law

(2) A by-law, or an amendment to or a repeal of a by-law, made under paragraph (1)(i.1) is not effective until it is approved by the Superintendent.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this sub-section read as follows:

Effective date of by-law

(2) A by-law, or an amendment to or a repeal of a by-law, made under any of paragraphs (1)(a) to (h) is not effective until it is approved by the Superintendent in writing.

1991, c. 48, s. 221; 2001, c. 9, s. 283.

Class vote

222. (1) The holders of shares of a class or, subject to subsection (2), of a series are, unless the by-laws otherwise provide in the case of an amendment to the by-laws referred to in paragraph (a), (b) or (e), entitled to vote separately as a class or series on a proposal to amend the by-laws to

(a) increase or decrease any maximum number of authorized shares of that class, or increase any maximum number of authorized shares of a class having rights or privileges equal or superior to the shares of that class;

(b) effect an exchange, reclassification or cancellation of all or part of the shares of a class;

(c) add, change or remove the rights, privileges, restrictions or conditions attached to the shares of a class and, without limiting the generality of the foregoing,

- (i) remove or change prejudicially rights to accrued dividends or rights to cumulative dividends,
 - (ii) add, remove or change prejudicially redemption rights,
 - (iii) reduce or remove a dividend preference or a liquidation preference, or
 - (iv) add, remove or change prejudicially conversion privileges, options, voting, transfer or pre-emptive rights, or rights to acquire securities of the association, or sinking fund provisions;
- (d) increase the rights or privileges of any class of shares having rights or privileges equal or superior to the shares of that class;
- (e) create a new class of shares equal or superior to the shares of that class;
- (f) make any class of shares having rights or privileges inferior to the shares of that class equal or superior to the shares of that class; or
- (g) effect an exchange or create a right of exchange of all or part of the shares of another class into the shares of that class.

Right limited

(2) The holders of a series of shares of a class are entitled to vote separately as a series under subsection (1) if that series is affected by an addition or amendment to the by-laws in a manner different from other shares of the same class.

Right to vote

(3) Subsections (1) and (2) apply whether or not the shares of a class otherwise carry the right to vote.

Separate resolutions

223. A proposed addition or amendment to the by-laws referred to in subsection 222(1) is adopted when the holders of the shares of each class or series entitled to vote separately thereon as a class or series have approved the addition or amendment by a special resolution.

Proposal to amend

224. (1) Subject to subsection (2), a member may, in accordance with sections 152 and 153, make a proposal to make an application referred to in section 219 or to make, amend or repeal the by-laws referred to in subsection 221(1) of the association.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this sub-section read as follows:

Proposal to amend

224. (1) Subject to subsection (2), a member may, in accordance with sections 152 and 153, make a proposal to make an application referred to in subsection 219(1) or to make, amend or repeal the by-laws referred to in subsection 221(1) of the association.

Notice of amendment

(2) Notice of a meeting at which a proposal to amend the incorporating instrument or to make, amend or repeal the by-laws of an association is to be considered must set out the proposal.

1991, c. 48, s. 224; 2001, c. 9, s. 284

Rights preserved

225. No amendment to the incorporating instrument or by-laws of an association affects an existing cause of action or claim or liability to prosecution in favour of or against the association or its directors or officers, or any civil, criminal or administrative action or proceeding to which the association or any of its directors or officers are a party.

*Amalgamation***Application to amalgamate**

226. On the joint application of two or more bodies corporate incorporated by or under an Act of Parliament, including associations, the Minister may issue letters patent amalgamating and continuing the applicants as one association if the proposed capital and corporate structure of the amalgamated association meets the requirements for an association to be incorporated under this Act.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this sub-section read as follows:

Application to amalgamate

226. On the joint application of

(a) two or more associations, or

(b) an association and one or more bodies corporate that are incorporated by or under an Act of Parliament and are wholly-owned subsidiaries of the association,

the Minister may issue letters patent amalgamating and continuing the applicants as one association.

1991, c. 48, s. 226; 2001, c. 9, s. 285.

Amalgamation agreement

227. (1) Each applicant proposing to amalgamate shall enter into an amalgamation agreement.

Contents of agreement

(2) Every amalgamation agreement shall set out the terms and means of effecting the amalgamation and, in particular,

- (a) the name of the amalgamated association and the place in Canada where its head office is to be situated;
- (b) the name and place of ordinary residence of each proposed director of the amalgamated association;
- (c) the manner in which the membership shares of each association are to be converted into membership shares in the amalgamated association;
- (d) the manner in which the shares of each applicant are to be converted into shares or other securities of the amalgamated association;
- (e) if any membership shares of an applicant are not to be converted into membership shares of the amalgamated association the amount of money or securities that the members are to receive in addition to or in lieu of membership shares of the amalgamated association;
- (f) if any shares of an applicant are not to be converted into shares or other securities of the amalgamated association, the amount of money or securities that the holders of those shares are to receive in addition to or in lieu of shares or other securities of the amalgamated association;
- (g) the manner of payment of money in lieu of the issue of fractional shares of the amalgamated association or of any other body corporate that are to be issued in the amalgamation;
- (h) the proposed by-laws of the amalgamated association;
- (i) details of any other matter necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamated association; and
- (j) the proposed effective date of the amalgamation.

Cross ownership of shares

(3) If membership shares or shares of one of the applicants are held by or on behalf of another of the applicants, other than membership shares or shares held in the capacity of a personal representative or by way of security, the amalgamation agreement must provide for the cancellation of those membership shares or shares when the amalgamation becomes effective without any repayment of capital in respect thereof, and no provision shall be made in the agreement for the

conversion of those membership shares or shares into membership shares or shares of the amalgamated association.

Approval of agreement by Minister

228. An amalgamation agreement shall be submitted to the Minister for approval and any approval of such an agreement pursuant to subsection 229(4) by the members and the holders of any class or series of shares of an applicant is invalid unless, prior to the date of the approval, the Minister has approved the agreement in writing.

Approval

229. (1) The directors of each applicant shall submit an amalgamation agreement for approval to a meeting of the members or shareholders of the applicant association or subsidiary of which they are directors and, subject to subsection (3), to the holders of each class or series of such shares.

Right to vote

(2) Each share of an applicant carries the right to vote in respect of an amalgamation whether or not the share otherwise carries the right to vote.

Class vote

(3) The holders of shares of a class or series of shares of an applicant are entitled to vote separately as a class or series in respect of an amalgamation if the amalgamation agreement contains a provision that, if contained in a proposed amendment to the by-laws or incorporating instrument of the applicant, would entitle those holders to vote separately as a class or series.

Special resolution

(4) Subject to subsection (3), an amalgamation agreement is approved when the members or shareholders of each applicant association or subsidiary have approved the amalgamation by special resolution.

Termination

(5) An amalgamation agreement may provide that, at any time before the issue of letters patent of amalgamation, the agreement may be terminated by the directors of an applicant notwithstanding that the agreement has been approved by the members or shareholders of all or any of the applicant associations or subsidiaries.

Vertical short-form amalgamation

230. (1) An association may, without complying with sections 227 to 229, amalgamate with one or more bodies corporate that are incorporated by or under an Act of Parliament if the body or bodies corporate, as the case may be, are wholly-owned subsidiaries of the association and

(a) the amalgamation is approved by a resolution of the directors of the association and of each amalgamating subsidiary; and

(b) the resolutions provide that

(i) the shares of each amalgamating subsidiary will be cancelled without any repayment of capital in respect thereof,

(ii) the letters patent of amalgamation and the by-laws of the amalgamated association will be the same as the incorporating instrument and the by-laws of the amalgamating association that is the holding body corporate, and

(iii) no securities will be issued by the amalgamated association in connection with the amalgamation.

Horizontal short-form amalgamation

(2) Two or more bodies corporate incorporated by or under an Act of Parliament may amalgamate and continue as an association without complying with sections 227 to 229 if

(a) at least one of the applicants is an association;

(b) the applicants are all wholly-owned subsidiaries of the same holding body corporate;

(c) the amalgamation is approved by a resolution of the directors of each of the applicants; and

(d) the resolutions provide that

(i) the shares of all applicants, except those of one of the applicants that is an association, will be cancelled without any repayment of capital in respect of those shares,

(ii) the letters patent of amalgamation and the by-laws of the amalgamated association will be the same as the incorporating instrument and the by-laws of the amalgamating association whose shares are not cancelled, and

(iii) the stated capital of the amalgamating association and bodies corporate whose shares are cancelled will be added to the stated capital of the amalgamating association whose shares are not cancelled.

Legislative History – This sub-section (2) was added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such sub-section previously existed in this Act.

1991, c. 48, s. 230; 2001, c. 9, s. 286.

Joint application to Minister

231. (1) Subject to subsection (2), unless an amalgamation agreement is terminated in accordance with subsection 229(5), the applicants shall, within three months after the approval of the agreement in accordance with subsection 229(4) or the approval of the directors in accordance with section 230, jointly apply to the Minister for letters patent of amalgamation continuing the applicants as one association.

Conditions precedent to application

(2) No application for the issue of letters patent under subsection (1) may be made unless

(a) notice of intention to make such an application has been published at least once a week for a period of four consecutive weeks in the Canada Gazette and in a newspaper in general circulation at or near the place where the head office of each applicant is situated; and

(b) the application is supported by satisfactory evidence that the applicants have complied with the requirements of this Part relating to amalgamations.

Application of sections 24 to 26

(1) If two or more bodies corporate, none of which is an association, apply for letters patent under subsection (1), sections 24 to 26 apply in respect of the application with any modifications that the circumstances require.

Matters for consideration

(2) Before issuing letters patent of amalgamation continuing the applicants as one association, the Minister shall take into account all matters that the Minister considers relevant to the application, including

(a) the sources of continuing financial support for the amalgamated association;

(b) the soundness and feasibility of the plans of the applicants for the future conduct and development of the business of the amalgamated association;

(c) the business record and experience of the applicants;

(d) the reputation of the applicants for being operated in a manner that is consistent with the standards of good character and integrity;

(e) whether the amalgamated association will be operated responsibly by persons with the competence and experience suitable for involvement in the operation of a financial institution;

(f) the impact of any integration of the operations and businesses of the applicants on the conduct of those operations and businesses;

(g) whether the association is to be operated in accordance with cooperative principles; and

(h) the best interests of the financial system in Canada and, in particular, the cooperative financial system in Canada.

Legislative History – Sub-sections (3) and (4) were added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such sub-sections previously existed in this Act.

1991, c. 48, s. 231; 2001, c. 9, s. 286.

Issue of letters patent

232. (1) Where an application has been made to the Minister in accordance with section 231, the Minister may issue letters patent of amalgamation continuing the applicants as one association.

Letters patent

(2) Where letters patent are issued pursuant to this section, section 28 applies with such modifications as the circumstances require in respect of the issue of the letters patent.

Publication of notice

(3) The Superintendent shall cause to be published in the Canada Gazette notice of the issuance of letters patent pursuant to subsection (1).

Court enforcement

232.1 (1) If an association or any director, officer, employee or agent of an association is contravening or has failed to comply with any term or condition made in respect of the issuance of letters patent of amalgamation, the Minister may, in addition to any other action that may be taken under this Act, apply to a court for an order directing the association or the director, officer, employee or agent to comply with the term or condition, cease the contravention or do any thing that is required to be done, and on the application the court may so order and make any other order it thinks fit.

Appeal

(2) An appeal from an order of a court under this section lies in the same manner as, and to the same court to which, an appeal may be taken from any other order of the court.

Legislative History – This section was added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such section previously existed in this Act.

2001, c. 9, s. 288

Effect of letters patent

233. (1) On the day provided for in the letters patent issued under section 232,

- (a) the amalgamation of the applicants and their continuance as one association becomes effective;
- (b) the property of each applicant continues to be the property of the amalgamated association;
- (c) the amalgamated association continues to be liable for the obligations of each applicant;
- (d) any existing cause of action, claim or liability to prosecution is unaffected;
- (e) any civil, criminal or administrative action or proceeding pending by or against an applicant may be continued to be prosecuted by or against the amalgamated association;
- (f) any conviction against, or ruling, order or judgment in favour of or against, an applicant may be enforced by or against the amalgamated association;
- (g) if any director or officer of an applicant continues as a director or officer of the amalgamated association, any disclosure by that director or officer of a material interest in any contract made to the applicant shall be deemed to be disclosure to the amalgamated association; and
- (h) the letters patent of amalgamation are the incorporating instrument of the amalgamated association.

Minutes

(2) Any deemed disclosure under paragraph (1)(g) shall be recorded in the minutes of the first meeting of directors of the amalgamated association.

Transitional

(3) Notwithstanding anything in this Act or the regulations, the Governor in Council may, by order, on the recommendation of the Minister, grant to an association in respect of which the letters patent were issued pursuant to subsection 232(1) permission to

- (a) engage in a business activity specified in the order that an association is not otherwise permitted by this Act to engage in and that one or more of the amalgamating bodies corporate was engaging in at the time application for the letters patent was made;
- (b) continue to have issued and outstanding debt obligations the issue of which is not authorized by this Act if the debt obligations were outstanding at the time the application for the letters patent was made;

(c) [Repealed, 1994, c. 47, s. 52]

(d) hold assets that an association is not otherwise permitted by this Act to hold if the assets were held by one or more of the amalgamating bodies corporate at the time the application for the letters patent was made;

(e) acquire and hold assets that an association is not otherwise permitted by this Act to acquire or hold if one or more of the amalgamating bodies corporate were obliged, at the time the application for the letters patent was made, to acquire those assets; and

(f) maintain outside Canada any records or registers required by this Act to be maintained in Canada and maintain and process, outside Canada, information and data relating to the preparation and maintenance of such records or registers.

Duration of exceptions

(4) The permission granted under any of paragraphs (3)(a) to (f) shall be expressed to be granted for a period specified in the order not exceeding

(a) with respect to any matter described in paragraph (3)(a), thirty days after the date of issue of the letters patent or, where the activity is conducted pursuant to an agreement existing on the date of issue of the letters patent, the expiration of the agreement;

(b) with respect to any matter described in paragraph (3)(b), ten years; and

(c) with respect to any matter described in any of paragraphs (3)(d) to (f), two years.

Renewal

(5) Subject to subsection (6), the Governor in Council may, by order, renew a permission granted by order under subsection (3) with respect to any matter described in any of paragraphs (3)(b) to (e) for such further period or periods as the Governor in Council deems necessary.

Limitation

(6) The Governor in Council shall not grant to an association any permission

(a) with respect to matters described in paragraph (3)(b) that purports to be effective more than ten years after the date of the approval for the association to commence and carry on business unless the Governor in Council is satisfied on the basis of evidence on oath provided by an officer of the association that the association will not be able at law to redeem at the end of the ten years the outstanding debt obligations to which the permission relates; and

(b) with respect to matters described in paragraphs (3)(d) and (e) that purports to be effective more than ten years after the date of issue of the letters patent.

TRANSFER OF BUSINESS

Sale by association

233.1 (1) An association may sell all or substantially all of its assets to a financial institution incorporated by or under an Act of Parliament, a central cooperative credit society for which an order has been made under subsection 473(1), a bank holding company or an authorized foreign bank in respect of its business in Canada if the purchasing financial institution, central cooperative credit society, bank holding company or authorized foreign bank assumes all or substantially all of the liabilities of the association.

Sale agreement

(2) An agreement of purchase and sale (in subsection (3), section 233.2, subsections 233.3(1) and (4) and section 233.5 referred to as a "sale agreement") must set out the terms of, and means of effecting, the sale of assets referred to in subsection (1).

Consideration

(3) Despite anything in this Act, the consideration for a sale referred to in subsection (1) may be cash or fully paid securities of the purchasing financial institution, central cooperative credit society for which an order has been made under subsection 473(1), bank holding company or authorized foreign bank or in part cash and in part fully paid securities of the purchasing financial institution, central cooperative credit society, bank holding company or authorized foreign bank or any other consideration that is provided for in the sale agreement.

Meaning of "authorized foreign bank" and "bank holding company"

(4) In this section, "authorized foreign bank" and "bank holding company" have the meaning assigned to those expressions by section 2 of the *Bank Act*.

Agreement to Minister

233.2 A sale agreement must be submitted to the Minister before the sending of the sale agreement to members and shareholders of the selling association under subsection 233.3(1).

Approval

233.3 (1) The directors of a selling association shall submit a sale agreement for approval to a meeting of the members, and to a meeting of shareholders, of the association and, subject to subsection (3), to the holders of each class or series of shares of the association.

Right to vote

(2) Each share of a selling association carries the right to vote in respect of a sale referred to in subsection 233.1(1) whether or not the share otherwise carries the right to vote.

Class vote

(3) The holders of shares of a class or series of shares of a selling association are entitled to vote separately as a class or series in respect of a sale referred to in subsection 233.1(1) only if the shares of the class or series are affected by the sale in a manner different from the shares of another class or series.

Special resolution

(4) A sale agreement is approved when the members and shareholders, and the holders of each class or series of shares entitled to vote separately as a class or series under subsection (3), of the selling association have approved the sale by special resolution.

Abandoning sale

233.4 If a special resolution approving a sale under subsection 233.3(4) so states, the directors of a selling association may, subject to the rights of third parties, abandon the sale without further approval of the members and shareholders.

Application to Minister

233.5 (1) Subject to subsection (2), unless a sale agreement is abandoned in accordance with section 233.4, the selling association shall, within three months after the approval of the sale agreement in accordance with subsection 233.3(4), apply to the Minister for approval of the sale agreement.

Conditions precedent to application

(2) No application for approval under subsection (1) may be made unless

- (a) a notice of intention to make the application has been published at least once a week for a period of four consecutive weeks in the *Canada Gazette* and in a newspaper in general circulation at or near the place where the head office of the selling association is situated; and
- (b) the application is supported by satisfactory evidence that the selling association has complied with the requirements of sections 233.1 to 233.4 and this section.

Approval by Minister

(3) A sale agreement has no force or effect until it has been approved by the Minister.

Approval by Minister

(4) If an application has been made to the Minister in accordance with subsections (1) and (2), the Minister may approve the sale agreement to which the application relates.

Legislative History – These sections 233.1 to 233.5, inclusive, were added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such sections previously existed in this Act.

1991, c. 48, s. 233; 1994, c. 47, s. 52; 2001, c. 9, s. 289.

CORPORATE RECORDS*Head Office and Corporate Records***Head office**

234. (1) An association shall at all times have a head office in the place within Canada specified in its incorporating instrument or by-laws.

Change of head office

(2) The directors of an association may change the address of the head office within the place specified in the incorporating instrument or by-laws.

Notice of change of address

(3) An association shall send to the Superintendent, within fifteen days after any change of address of its head office, a notice of the change of address.

Records

235. (1) An association shall prepare and maintain records containing

- (a) its incorporating instrument and the by-laws of the association and all amendments thereto;
- (b) minutes of meetings and resolutions of members and shareholders;
- (c) the information referred to in paragraphs 432(1)(a) and (c) to (g) contained in all returns provided to the Superintendent pursuant to section 432;

(d) particulars of any authorizations, conditions and limitations established by the Superintendent pursuant to section 61 or subsection 62(1) or that are from time to time applicable to the association; and

(e) written approvals of the Minister and the Superintendent relating to special resolutions of members and shareholders and changes in the by-laws of the association.

Additional records

(2) In addition to the records described in subsection (1), an association shall prepare and maintain adequate

(a) corporate accounting records;

(b) records containing minutes of meetings and resolutions of the directors and any committee thereof; and

(c) records showing, for each member and customer of the association, on a daily basis, particulars of the transactions between the association and that member and customer and the balance owing to or by the association in respect of that member or customer.

Amalgamated and former-Act associations

(3) For the purposes of paragraph (1)(b) and subsection (2),

(a) in the case of a body corporate amalgamated and continued as an association under this Act, "records" includes similar records required by law to be maintained by the body corporate before it was so amalgamated; and

(b) in the case of the former-Act association, "records" includes similar records required by law to be maintained by the association before the coming into force of this section.

Place of records

236. (1) The records described in section 235 shall be kept at the head office of the association or at such other place in Canada as the directors think fit.

Notice of place of records

(2) Where any of the records described in section 235 are not kept at the head office of an association, the association shall notify the Superintendent of the place where the records are kept.

Inspection

(3) The records described in section 235, other than those described in paragraph 235(2)(c), shall at all reasonable times be open to inspection by the directors.

Access to association records

(4) Members, shareholders and creditors of an association and their personal representatives may examine the records referred to in subsection 235(1) during the usual business hours of the association, and may take extracts therefrom, free of charge, or have copies made thereof on payment of a reasonable fee and, where the association is a distributing association within the meaning of subsection 260(1), any other person may, on payment of a reasonable fee, examine such records and take extracts therefrom or copies thereof.

Electronic access

(4.1) An association may make the information contained in records referred to in subsection 235(1) available to persons by any system of mechanical or electronic data processing or any other information storage device that is capable of reproducing the records in intelligible written form within a reasonable time.

Legislative History – This sub-section (4.1) was added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such sub-section previously existed in this Act.

Copies of by-laws

(5) Every member and every shareholder of an association is entitled, on request made not more frequently than once in each calendar year, to receive, free of charge, one copy of the by-laws of the association.

1991, c. 48, s. 236; 2001, c. 9, s. 290.

Lists

237. (1) A person who is entitled to a basic list of members or shareholders of an association (in this section referred to as the "applicant") may request the association to furnish the applicant with a basic list within ten days after receipt by the association of the affidavit referred to in subsection (2) and, on payment of a reasonable fee by the applicant, the association shall comply with the request.

Affidavit and contents

(2) A request under subsection (1) must be accompanied by an affidavit containing

- (a) the name and address of the applicant,
- (b) the name and address for service of the entity, if the applicant is an entity, and
- (c) an undertaking that the basic list and any supplemental lists obtained pursuant to subsections (5) and (6) will not be used except as permitted under section 239,

and, if the applicant is an entity, the affidavit shall be made by a director or an officer of the entity, or any person acting in a similar capacity.

Entitlement

(3) Every member, shareholder or creditor of an association or the personal representative of a member, shareholder or creditor of an association is entitled to a basic list of members or shareholders of the association, but, if the association is a distributing association within the meaning of subsection 260(1), any person is entitled to a basic list of members or shareholders of the association on request therefor.

Basic list

(4) A basic list of members or shareholders of an association consists of a list of members or shareholders that is made up to a date not more than ten days before the receipt of the affidavit referred to in subsection (2) and that sets out

(a) the names of the members or shareholders of the association;

(b) the voting rights of each member or the number of shares owned by each shareholder;
and

(c) the address of each member or shareholder as shown in the records of the association.

Supplemental lists

(5) A person requiring an association to supply a basic list of members or shareholders may, if the person states in the accompanying affidavit that supplemental lists are required, request the association or its agent, on payment of a reasonable fee, to provide supplemental lists of members or shareholders setting out any changes from the basic list in the names and addresses of the members or shareholders and the voting rights of each member or the number of shares owned by each shareholder for each business day following the date to which the basic list is made up.

When supplemental lists to be furnished

(6) An association or its agent shall provide a supplemental list of members or shareholders required under subsection (5)

(a) within ten days following the date the basic list is provided, where the information relates to changes that took place prior to that date; and

(b) within ten days following the day to which the supplemental list relates, where the information relates to changes that took place on or after the date the basic list was provided.

Option holders

238. A person requiring an association to supply a basic list or a supplemental list of members or shareholders may also require the association to include in that list the name and address of any known holder of an option or right to acquire membership shares or shares of the association.

Use of list

239. A list of members or shareholders obtained under section 237 shall not be used by any person except in connection with

- (a) an effort to influence the voting of members or shareholders of the association;
- (b) an offer to acquire shares of the association; or
- (c) any other matter relating to the affairs of the association.

Form of records

240. (1) A register or other record required or authorized by this Act to be prepared and maintained by an association

- (a) may be in a bound or loose-leaf form or in a photographic film form; or
- (b) may be entered or recorded by any system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable time.

Conversion of records

(2) Registers and records maintained in one form may be converted to any other form.

Destruction of converted records

(3) Notwithstanding section 243, an association may destroy any register or other record referred to in subsection (1) at any time after the register or other record has been converted to another form.

Protection of records

241. An association and its agents shall take reasonable precautions to

- (a) prevent loss or destruction of,
- (b) prevent falsification of entries in,

(c) facilitate detection and correction of inaccuracies in, and

(d) ensure that unauthorized persons do not have access to or use of information in the registers and records required or authorized by this Act to be prepared and maintained.

Location and processing of information

242. (1) Subject to subsection (3), an association shall maintain and process in Canada any information or data relating to the preparation and maintenance of the records referred to in section 235 unless the Superintendent has, subject to any terms and conditions that the Superintendent considers appropriate, exempted the association from the application of this section.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this subsection read as follows:

Location and processing of information

242. (1) An association shall maintain and process in Canada any information or data relating to the preparation and maintenance of the records referred to in section 235 unless the Superintendent has, by order, and subject to such terms and conditions as the Superintendent considers appropriate, exempted the association from the application of this section.

Copies

(2) Subject to subsections (3) and (4), an association may maintain copies of the records referred to in subsection (1) outside Canada and may further process outside Canada any information or data relating to those copies.

Information for Superintendent

(3) Where an association, in accordance with subsection (2), maintains outside Canada copies of any records referred to in subsection (1) or further processes information or data relating to those copies outside Canada, the association shall so inform the Superintendent and provide the Superintendent with a list of those copies maintained outside Canada and a description of the further processing of information or data relating to those copies outside Canada and such other information as the Superintendent may require from time to time.

Processing information in Canada

(4) If the Superintendent is at any time of the opinion that the maintenance outside Canada of any copies referred to in subsection (3), or the further processing of information or data relating to any such copies outside Canada, is incompatible with the fulfillment of the Superintendent's responsibilities under this Act or the Superintendent is advised by the Minister that, in the opinion of the Minister, such maintenance or further processing is not in the national interest, the Superintendent shall direct the association to maintain those copies, or to further process information or data relating to those copies, in Canada.

Association to comply

(5) An association shall forthwith comply with any direction issued under subsection (4).

Guidelines

(6) The Superintendent shall issue guidelines respecting the circumstances under which an exemption referred to in subsection (1) may be available.

1991, c. 48, s. 242; 2001, c. 9, s. 291.

Retention of records

243. An association shall retain

- (a) the members register;
- (b) the records of the association referred to in subsection 235(1);
- (c) any record of the association referred to in paragraph 235(2)(a) or (b); and
- (d) the central securities register.

Regulations

244. The Governor in Council may make regulations respecting the records, papers and documents to be retained by an association and the length of time those records, papers and documents are to be retained.

Securities Registers

Central securities register

245. (1) An association shall maintain a central securities register in which it shall record the securities, within the meaning of section 88, issued by it in registered form, showing in respect of each class or series of securities

- (a) the names, alphabetically arranged, and latest known addresses of the persons who are security holders, and the names and latest known addresses of the persons who have been security holders;
- (b) the number of securities held by each security holder; and
- (c) the date and particulars of the issue and transfer of each security.

Former-Act and amalgamated associations

(2) For the purposes of subsection (1), "central securities register" includes similar registers required by law to be maintained by the former-Act association, or by a body corporate

amalgamated and continued as an association under this Act, before the coming into force of this section or the amalgamation, as the case may be.

Application of certain provisions

(3) Subsections 236(4) and (4.1) and sections 237 and 239 to 242 apply, with any modifications that the circumstances require, in respect of a central securities register.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this sub-section read as follows:

Application of certain provisions

(3) Subsection 236(4) and sections 240 to 242 apply, with such modifications as the circumstances require, in respect of a central securities register.

1991, c. 48, s. 245; 2001, c. 9, s. 292.

Agents

246. An association may appoint an agent to maintain its central securities register.

Location of central securities register

247. The central securities register of an association shall be maintained by the association at its head office or at any other place in Canada designated by the directors of the association.

Effect of registration

248. Registration of the issue or transfer of a security in the central securities register is complete and valid registration for all purposes.

Destruction of certificates

249. An association, its agent or a trustee within the meaning of section 278 is not required to produce

(a) a cancelled security certificate in registered form or an instrument referred to in subsection 77(1) that is cancelled or a like cancelled instrument in registered form after six years from the date of its cancellation;

(b) a cancelled security certificate in bearer form or an instrument referred to in subsection 77(1) that is cancelled or a like cancelled instrument in bearer form after the date of its cancellation; or

(c) an instrument referred to in subsection 77(1) or a like instrument, irrespective of its form, after the date of its expiration.

Corporate Name and Seal

Publication of name

250. An association shall set out its name in legible characters in all contracts, invoices, negotiable instruments and other documents evidencing rights or obligations with respect to other parties that are issued or made by or on behalf of the association.

Corporate seal

251. An instrument or agreement executed on behalf of an association by a director, an officer or an agent of the association is not invalid merely because a corporate seal is not affixed thereto.

Proxies

252. to 259. [Repealed, 1997, c. 15, s. 130]

INSIDERS

Interpretation

Definitions

260. (1) In this section and sections 261 to 267,

"business combination" « regroupement d'entreprises »

"business combination" means an acquisition of all or substantially all the assets of one body corporate by another body corporate or an amalgamation of two or more bodies corporate;

"call" « option d'achat »

"call" means an option, transferable by delivery, to demand delivery of a specified number or amount of shares at a fixed price within a specified time but does not include an option or right to acquire shares of the body corporate that granted the option or right to acquire;

"distributing association" « association ayant fait appel au public »

"distributing association" means an association, any of the issued securities of which are or were part of a distribution to the public and remain outstanding and are held by more than one person;

"insider" « initié »

"insider" means, except in section 266 and subsection 267(1),

- (a) a director or an officer of a distributing association,
- (b) a member who holds more than one per cent of the membership shares of a distributing association,
- (c) a central cooperative credit society that is a member of a distributing association and any other member designated by the Superintendent,
- (d) a distributing association that purchases or otherwise acquires, except by means of a donation or redemption, shares issued by it, or
- (e) a person who beneficially owns more than 10 per cent of the shares of a distributing association or who exercises control or direction over more than 10 per cent of the votes attached to shares of a distributing association, excluding shares owned by a securities underwriter under an underwriting agreement while those shares are in the course of a distribution to the public;

"officer" « dirigeant d'une association »

"officer", in relation to an association, means

- (a) an officer as defined in paragraph (a) of the definition "officer" in section 2, or
- (b) any natural person who performs functions for the association similar to those performed by a person referred to in paragraph (a) of the definition "officer" in section 2;

"put" « option de vente »

"put" means an option, transferable by delivery, to deliver a specified number or amount of shares at a fixed price within a specified time;

"share" « action »

"share" means a voting share and includes

- (a) a security currently convertible into a voting share, and
- (b) a currently exercisable option or a right to acquire a voting share or a security referred to in paragraph (a), but does not include a membership share.

Control

(2) For the purposes of this section and sections 261 to 267, a person controls a body corporate when the person controls the body corporate within the meaning of section 3, determined without regard to paragraph 3(1)(e).

Deemed insiders and beneficial owners

(3) For the purposes of this section and sections 261 to 267,

- (a) a director or an officer of a body corporate that is an insider of a distributing association is deemed to be an insider of the distributing association;
- (b) a director or an officer of a body corporate that is a subsidiary of a distributing association is deemed to be an insider of the distributing association;
- (c) a person is deemed to beneficially own shares beneficially owned by a body corporate controlled directly or indirectly by that person;
- (d) a body corporate is deemed to beneficially own shares beneficially owned by its affiliates; and
- (e) the acquisition or disposition by an insider of an option or right to acquire a share is deemed to be a change in the beneficial ownership of the share to which the option or right to acquire relates.

Becoming an insider

(4) For the purposes of this section and sections 261 to 267,

- (a) if a body corporate becomes an insider of a distributing association or enters into a business combination with a distributing association, or
- (b) if a distributing association becomes an insider of a body corporate, every director or officer of the body corporate and every shareholder of the body corporate who is a person referred to in paragraph (e) of the definition "insider" in subsection (1) is deemed to have been an insider of the distributing association for the previous six months or for such shorter period as the director, officer or shareholder was a director, officer or shareholder of the body corporate.

Insider Reporting

First insider report

261. (1) An insider shall send to the Superintendent an insider report in prescribed form not later than ten days after the later of

- (a) the end of the month in which the person became an insider, and
- (b) the end of the month in which regulations prescribing the form of an insider report come into force.

(2) [Repealed, 1997, c. 15, s. 131]

Constructive insider

(3) A person who is deemed to have been an insider under subsection 260(4) shall, not later than ten days after

(a) the end of the month in which the person is deemed to have become an insider, or

(b) the end of the month in which regulations prescribing the form of an insider report come into force, whichever is later, send to the Superintendent, in prescribed form and for the period in respect of which the person is deemed to have been an insider, the insider report that the person would have been required to send under this section had the person been otherwise an insider for that period.

1991, c. 48, s. 261; 1997, c. 15, s. 131.

Subsequent insider report

262. An insider whose interest in securities of a distributing association changes from that shown or required to be shown in the last insider report sent or required to be sent by the insider shall, within ten days after the end of the month in which the change takes place, send to the Superintendent an insider report in prescribed form.

Exemption by regulation

262.1 Under prescribed circumstances, an insider is exempt from any of the requirements of section 261 or 262.

1997, c. 15, s. 132.

One insider report

263. (1) An insider report of a person that includes securities deemed to be beneficially owned by that person is deemed to be an insider report of a body corporate referred to in paragraph 260(3)(c) and the body corporate is not required to send a separate insider report.

Deemed report

(2) An insider report of a body corporate that includes securities deemed to be beneficially owned by the body corporate is deemed to be an insider report of an affiliate referred to in paragraph 260(3)(d) and the affiliate is not required to send a separate insider report.

Contents

(3) An insider report of a person that includes securities deemed to be beneficially owned by that person pursuant to paragraph 260(3)(c) or (d) shall disclose separately

(a) the number of securities owned by a body corporate; and

(b) the name of the body corporate.

Exemption by Superintendent

264. (1) On an application by or on behalf of an insider, the Superintendent may, in writing, on such terms as the Superintendent thinks fit, exempt the insider from any of the requirements of sections 261 to 263, and the exemption may be given retroactive effect.

Publication

(2) The Superintendent shall summarize or cause to be summarized in a periodical available to the public the information contained in insider reports sent to the Superintendent under sections 261 to 263 and the particulars of exemptions granted under subsection (1) together with the reasons therefor.

Insider Trading

Short selling prohibited

265. (1) An insider shall not knowingly sell, directly or indirectly, a share of the distributing association or any of its affiliates if the insider does not own or has not fully paid for the share to be sold.

Exception for convertible shares

(2) Notwithstanding subsection (1), an insider may sell a share that the insider does not own if the insider owns another share convertible into the share sold or an option or right to acquire the share sold and, within ten days after the sale, the insider

(a) exercises the conversion privilege, option or right and delivers the share so acquired to the purchaser; or

(b) transfers the convertible share, option or right to the purchaser.

Prohibited calls and puts

(3) An insider shall not, directly or indirectly, buy or sell a call or put in respect of a share of the association or any of its affiliates.

*Civil Remedies***Extended meaning of "insider"**

266. (1) In subsections (2) and 267(1), "insider" means, with respect to an association,

- (a) the association;
- (b) an affiliate of the association;
- (c) a director or officer of the association;
- (d) a member who holds more than one per cent of the membership shares of the association;
- (e) a central cooperative credit society that is a member of the association and any other member of the association designated by the Superintendent;
- (f) a person who beneficially owns more than 10 per cent of the shares of the association or who exercises control or direction over more than 10 per cent of the votes attached to the shares of the association;
- (g) a person employed or retained by the association; and
- (h) a person who receives specific confidential information from a person described in this section, including a person described in this paragraph, and who has knowledge that the person giving the information is a person described in this section, including a person described in this paragraph.

Deemed insider

(2) For the purposes of subsection 267(1),

- (a) if a body corporate becomes an insider of an association or enters into a business combination with an association, or
- (b) if an association becomes an insider of a body corporate, every director or officer of the body corporate is deemed to have been an insider of the association for the previous six months or for such shorter period as the director or officer was a director or officer of the body corporate.

Civil liability

267. (1) An insider who, in connection with a transaction in a security of the association or any of its affiliates, makes use of any specific confidential information for the insider's own benefit or

advantage that, if generally known, might reasonably be expected to affect materially the value of the security

(a) is liable to compensate any person for any direct loss suffered by that person as a result of the transaction, unless the information was known or in the exercise of reasonable diligence should have been known to that person; and

(b) is accountable to the association for any direct benefit or advantage received or receivable by the insider as a result of the transaction.

Limitation of action

(2) An action to enforce a right created by subsection (1) may not be commenced

(a) after a period of two years after discovery of the facts that gave rise to the cause of action; or

(b) if the transaction was required to be reported under sections 261 to 263, after a period of two years from the time of reporting under those sections.

PROSPECTUS

Prospectus requirements

268. (1) After the day that is twelve months after the coming into force of this section, an association shall not distribute any of its securities and a person shall not distribute any securities of an association unless a preliminary prospectus and a prospectus in a form substantially as prescribed have been filed with the Superintendent in relation to the distribution and receipts have been received therefor from the Superintendent.

Idem

(2) Where there is filed in any jurisdiction a preliminary prospectus, prospectus, short-form prospectus or similar document relating to the distribution of securities in a form substantially as prescribed, a copy of that document may be accepted by the Superintendent under subsection (1).

Meaning of distribution

(3) For the purposes of this section and sections 269 to 277, "distribution" means

(a) a trade by or on behalf of an association in securities of the association that have not previously been issued; or

(b) a trade in previously issued securities of an association from the holdings of any person or group of persons who act in concert and who hold in excess of 10 per cent of the shares of any class of voting shares of the association.

Form and content

269. (1) A preliminary prospectus in relation to the distribution of securities shall substantially comply with the requirements of this Act and any regulations made under subsection 270(1) respecting the form and content of a prospectus, except that any report or reports of the auditors of the association required by the regulations need not be included.

Idem

(2) A preliminary prospectus in relation to the distribution of securities need not include information in respect of the price to the securities underwriter or the offering price of any securities or any other matters dependent on or relating to that price.

Regulations

270. (1) The Governor in Council may make regulations

- (a) respecting the form and content of a preliminary prospectus and a prospectus;
- (b) specifying the financial statements, reports and other documents that are to be included with a preliminary prospectus and a prospectus;
- (c) respecting, for the purposes of subsection 274(1), the disclosure of material facts in relation to securities to be distributed;
- (d) respecting the distribution of a preliminary prospectus and a prospectus to prospective purchasers;
- (e) exempting any class of distributions from the application of sections 268, 269, and 271 to 277; and
- (f) generally, for carrying out the purposes and provisions of sections 268, 269 and 271 to 277.

1999, c. 31, s. 55.

Authority of Superintendent

(2) Any regulation made under subsection (1) may authorize the Superintendent to permit or require additions to, variations in or omissions from

- (a) a preliminary prospectus or prospectus; or
- (b) any information, report or document contained or required to be contained in the preliminary prospectus or prospectus or related thereto.

Idem

(3) Where a regulation described in subsection (2) has been made, the Superintendent may exercise the authority thereby given in any case where the Superintendent is satisfied that it is necessary to do so owing to the circumstances related to the issue of the securities concerned.

Idem

(4) All additions, variations or omissions referred to in subsection (2) shall be made in accordance with the permission or requirement of the Superintendent under that subsection and shall be in accordance with such terms and conditions, if any, as the Superintendent may impose as being necessary to ensure, to the greatest extent possible, a full, true and plain disclosure of all material facts relating to the securities to be distributed.

1991, c. 48, s. 270; 1994, c. 26, s. 27(F).

Order of exemption

271. (1) On application by an association or any person proposing to make a distribution, the Superintendent may, by order, exempt that distribution from the application of sections 268, 269 and 272 to 277 if the Superintendent is satisfied that the association has filed or is about to file, in compliance with the laws of the relevant jurisdiction, a prospectus relating to the distribution that, in form and content, substantially complies with the requirements of this Act and any regulations made under subsection 270(1).

1999, c. 31, s. 56

Conditions

(2) An order under subsection (1) may contain such conditions or limitations as the Superintendent deems appropriate.

Receipt for preliminary prospectus

272. (1) The Superintendent shall issue a receipt for a preliminary prospectus forthwith on its filing with the Superintendent.

Record to be maintained

(2) A person proposing to distribute securities of an association to which a preliminary prospectus relates shall maintain a record of all persons to whom a copy of the preliminary prospectus has been sent.

Withdrawal of receipt

(3) Where it appears to the Superintendent, after providing a reasonable opportunity to the person by whom the preliminary prospectus was filed to make representations, that a preliminary prospectus in respect of which a receipt has been issued under subsection (1) is defective in that it does not substantially comply with the requirements of this Act and the regulations, the receipt may be withdrawn and the person by whom the preliminary prospectus was filed shall forthwith be notified of its withdrawal.

Notice

(4) Notice of withdrawal of a receipt under subsection (3) shall forthwith be sent by the person by whom the preliminary prospectus was filed to any persons proposing to take part in the distribution of the securities to which the preliminary prospectus relates and, by the association and each such person, to each person named on the records maintained in respect of the preliminary prospectus by the association and each such person.

Receipt for prospectus

273. (1) The Superintendent shall issue a receipt for a prospectus forthwith on its filing with the Superintendent unless, after providing a reasonable opportunity to the person by whom the prospectus was filed to make representations, it appears to the Superintendent that

(a) the prospectus or any document required to be filed therewith

(i) fails to substantially comply with any of the requirements of this Act or the regulations, or

(ii) contains a misrepresentation or any statement, promise, estimate or forecast that is misleading, false or deceptive; or

(b) it would not be in the public interest to issue a receipt for the prospectus.

(2) to (4) [Repealed, 1996, c. 6, s. 54]

1991, c. 48, s. 273; 1996, c. 6, s. 54.

Full disclosure

274. (1) A prospectus shall provide full, true and plain disclosure of all material facts relating to the securities to be distributed and shall contain or be accompanied by such financial statements, reports or other documents as are required by any regulations made under subsection 270(1).

Certificate

(2) A prospectus shall include a certificate in prescribed form signed

(a) by the chief executive officer and the chief financial officer of the association making the distribution or, in the event of the absence or inability to act of either of those officers, any other officer of the association authorized by the directors to sign in the stead of the officer who is absent or unable to act, and such other persons as are prescribed, and

(b) in the case of an initial distribution of shares of an association incorporated after the coming into force of this section, by each person who is a promoter of the association to the effect that, according to the person's information, knowledge and belief, the disclosure required by subsection (1) and by any regulations made under subsection 270(1) has been provided.

Promoter

(3) For the purposes of subsection (2) and section 276, "promoter" means an applicant for letters patent to incorporate an association or a director named in the application for letters patent, but such an applicant or director is a promoter only for the period of two years following the application.

Certificate of securities underwriter

275. Where a securities underwriter is associated in the distribution of securities of an association, a prospectus shall include a certificate in prescribed form signed by each securities underwriter who, with respect to the securities offered by the prospectus, is in a contractual relationship with the association or other distributor of the securities, to the effect that, according to the securities underwriter's information, knowledge and belief, the disclosure required by subsection 274(1) and by any regulations made under subsection 270(1) has been provided.

Signature by agent

276. With the consent of the Superintendent, an agent, duly authorized in writing, of a promoter or a securities underwriter referred to in subsection 274(2) or section 275 may, on behalf of the promoter or securities underwriter, as the circumstances require, sign the certificate referred to in that subsection or section.

Sending out prospectus

277. No person shall distribute a preliminary prospectus or a prospectus in relation to a distribution of securities of an association except in accordance with any regulations made under subsection 270(1).

TRUST INDENTURES

Definitions

278. In this section and sections 279 to 290,

"event of default" « cas de défaut »

"event of default" means, in relation to a trust indenture, an event specified in the trust indenture on the occurrence of which the principal, interest and other moneys payable thereunder become or may be declared to be payable before maturity, but the event is not an event of default until all the conditions set out in the trust indenture in connection with the giving of notice of the event have been satisfied or the period of time for giving the notice has elapsed;

"issuer" « émetteur »

"issuer" means an association that has issued, is about to issue or is in the process of issuing subordinated indebtedness;

"trustee" « fiduciaire »

"trustee" means any person appointed as trustee under the terms of a trust indenture to which an association is a party, and includes any successor trustee;

"trust indenture" « acte de fiducie »

"trust indenture" means any deed, indenture or other instrument, including any supplement or amendment thereto, made by an association under which the association issues subordinated indebtedness and in which a person is appointed as trustee for the holders of the subordinated indebtedness issued thereunder.

Application

279. Sections 280 to 290 apply in respect of a trust indenture if the subordinated indebtedness issued or to be issued under the trust indenture is part of a distribution to the public.

Exemption

280. The Superintendent may, in writing, exempt a trust indenture from the application of sections 281 to 290 if, in the Superintendent's opinion, the trust indenture and the subordinated indebtedness are subject to a law of a province or other jurisdiction, other than Canada, that is substantially equivalent to the provisions of this Act relating to trust indentures.

Conflict of interest

281. (1) No person shall be appointed as trustee if at the time of the appointment there is a material conflict of interest between the person's role as trustee and any other role of the person.

Eliminating conflict of interest

(2) A trustee shall, within ninety days after the trustee becomes aware that a material conflict of interest exists,

- (a) eliminate the conflict of interest; or
- (b) resign from office.

Validity despite conflict

282. A trust indenture and any subordinated indebtedness issued thereunder are valid notwithstanding a material conflict of interest of the trustee.

Removal of trustee

283. If a trustee is appointed in contravention of subsection 281(1) or if a trustee contravenes subsection 281(2), any interested person may apply to a court for an order that the trustee be replaced, and the court may make an order on such terms as it thinks fit.

Trustee qualifications

284. A trustee, or at least one of the trustees if more than one is appointed, must be a trust company incorporated under the *Trust and Loan Companies Act*, or a body corporate that is incorporated under the laws of a province and authorized to carry on business as a trustee.

1991, c. 48, ss. 284, 496.

List of security holders

285. (1) A holder of subordinated indebtedness issued under a trust indenture may, on payment to the trustee of a reasonable fee and on delivery of a statutory declaration to the trustee, require the trustee to provide, within fifteen days after the delivery to the trustee of the statutory declaration, a list setting out

- (a) the names and addresses of the registered holders of the outstanding subordinated indebtedness,
- (b) the principal amount of outstanding subordinated indebtedness owned by each such holder, and

(c) the aggregate principal amount of subordinated indebtedness outstanding as shown on the records maintained by the trustee on the day the statutory declaration is delivered to that trustee.

Duty of issuer

(2) On the demand of a trustee, the issuer of subordinated indebtedness shall provide the trustee with the information required to enable the trustee to comply with subsection (1).

Where applicant is entity

(3) Where the person requiring the trustee to provide a list under subsection (1) is an entity, the statutory declaration required under that subsection shall be made by a director or an officer of the entity or a person acting in a similar capacity.

Contents of statutory declaration

(4) The statutory declaration required under subsection (1) must state

(a) the name and address of the person requiring the trustee to provide the list and, if the person is an entity, the address for service thereof; and

(b) that the list will not be used except as permitted by subsection (5).

Use of list

(5) No person shall use a list obtained under this section except in connection with

(a) an effort to influence the voting of the holders of subordinated indebtedness;

(b) an offer to acquire subordinated indebtedness; or

(c) any other matter relating to the subordinated indebtedness or the affairs of the issuer or guarantor thereof.

Compliance with trust indentures

286. (1) An issuer or a guarantor of subordinated indebtedness issued or to be issued under a trust indenture shall, before undertaking

(a) the issue, certification and delivery of subordinated indebtedness under the trust indenture, or

(b) the satisfaction and discharge of the trust indenture, provide the trustee with evidence of compliance with the conditions in the trust indenture in respect thereof.

Compliance by issuer or guarantor

(2) On the demand of a trustee, the issuer or guarantor of subordinated indebtedness issued or to be issued under a trust indenture shall provide the trustee with evidence of compliance with the conditions in the trust indenture by the issuer or guarantor in respect of any act to be done by the trustee at the request of the issuer or guarantor.

Evidence of compliance

(3) The following documents constitute evidence of compliance for the purposes of subsections (1) and (2):

(a) a statutory declaration or certificate made by a director or an officer of the issuer or guarantor stating that the conditions referred to in subsections (1) and (2) have been complied with;

(b) an opinion of legal counsel that the conditions of the trust indenture requiring review by legal counsel have been complied with, if the trust indenture requires compliance with conditions that are subject to review by legal counsel; and

(c) an opinion or report of the auditors of the issuer or guarantor, or such other accountant as the trustee selects, that the conditions of the trust indenture have been complied with, if the trust indenture requires compliance with conditions that are subject to review by auditors.

Further evidence of compliance

(4) The evidence of compliance referred to in subsection (3) shall include a statement by the person giving the evidence

(a) declaring that the person has read and understands the conditions of the trust indenture referred to in subsections (1) and (2);

(b) describing the nature and scope of the examination or investigation on which the person based the certificate, statement or opinion; and

(c) declaring that the person has made such examination or investigation as the person believes necessary to enable the statements to be made or the opinions contained or expressed therein to be given.

Trustee may require evidence

287. (1) On the request of a trustee, the issuer or guarantor of subordinated indebtedness issued under a trust indenture shall provide the trustee with evidence in such form as the trustee requires

of compliance with any condition thereof relating to any action required or permitted to be taken by the issuer or guarantor under the trust indenture.

Certificate of compliance

(2) At least once in each twelve month period beginning on the date of the trust indenture and at any other time on the demand of a trustee, the issuer or guarantor of subordinated indebtedness issued under a trust indenture shall provide the trustee with a certificate stating that the issuer or guarantor has complied with all requirements contained in the trust indenture that, if not complied with, would, with the giving of notice, lapse of time or otherwise, constitute an event of default, or, if there has been failure to so comply, giving particulars thereof.

Notice of default

288. A trustee shall, within thirty days after the trustee becomes aware of the occurrence thereof, give to the holders of subordinated indebtedness issued under a trust indenture notice of every event of default arising under the trust indenture and continuing at the time the notice is given, unless the trustee believes on reasonable grounds that it is in the best interests of the holders of the subordinated indebtedness to withhold the notice and so informs the issuer and guarantor in writing.

Duty of care

289. (1) In exercising a trustee's powers and discharging a trustee's duties, the trustee shall

- (a) act honestly and in good faith with a view to the best interests of the holders of the subordinated indebtedness issued under the trust indenture; and
- (b) exercise the care, diligence and skill of a reasonably prudent trustee.

Reliance on statements

(2) Notwithstanding subsection (1), a trustee is not liable if the trustee relies in good faith on statements contained in a statutory declaration, certificate, opinion or report that complies with this Act or the trust indenture.

No exculpation

290. No term of a trust indenture or of any agreement between a trustee and the holders of subordinated indebtedness issued thereunder or between the trustee and the issuer or guarantor operates to relieve a trustee from the duties imposed on the trustee by sections 281, 285 and 288 and subsection 289(1).

FINANCIAL STATEMENTS AND AUDITORS

Annual Financial Statement

Financial year

291. (1) The financial year of an association ends on the expiration of the thirty-first day of December in each year.

First financial year

(2) Where an association has, after the first day of July in any year, obtained an order approving the commencement and carrying on of business, the first financial year of the association ends on the expiration of the thirty-first day of December in the next calendar year.

Annual financial statement

292. (1) The directors of an association shall place before the members at every annual meeting

(a) a comparative annual financial statement (in this Act referred to as an "annual statement") relating separately to

(i) the financial year immediately preceding the meeting, and

(ii) the financial year, if any, immediately preceding the financial year referred to in subparagraph (i);

(b) the report of the auditor of the association; and

(c) any further information respecting the financial position of the association and the results of its operations required by the by-laws of the association to be placed before the members at the annual meeting.

Contents of annual statement

(2) An annual statement of an association must contain, with respect to each of the financial years to which it relates,

(a) a balance sheet as at the end of the financial year,

(b) a statement of income for the financial year,

(c) a statement of change of financial position for the financial year, and

(d) a statement of changes in equity for the financial year, showing such information and particulars as in the opinion of the directors are necessary to present fairly, in accordance with the accounting principles referred to in subsection (4), the financial position of the association as at the end of the financial year to which it relates and the results of the operations and changes in the financial position of the association for that financial year.

Additional information

(3) An association shall include with its annual statement

(a) a list of the subsidiaries of the association, other than subsidiaries that are not required to be listed by the regulations and subsidiaries acquired pursuant to section 394 or pursuant to a realization of security in accordance with section 395 and which the association would not otherwise be permitted to hold, showing, with respect to each subsidiary,

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, that portion of paragraph (a) before subparagraph (i) read as follows:

(a) a list of subsidiaries of the association, other than subsidiaries acquired pursuant to section 394 or pursuant to a realization of security in accordance with section 395 and which the association would not otherwise be permitted to hold, showing, with respect to each subsidiary,

(i) its name and the address of its head or principal office,

(ii) the book value of the aggregate of any shares of the subsidiary beneficially owned by the association and by other subsidiaries of the association, and

(iii) the percentage of the voting rights attached to all the outstanding voting shares of the subsidiary that is carried by the aggregate of any voting shares of the subsidiary beneficially owned by the association and by other subsidiaries of the association; and

(b) such other information as the Governor in Council may, by order, require in such form as may be prescribed.

Accounting principles

(4) The financial statements referred to in subsection (1), paragraph (3)(b) and subsection 294(1) shall, except as otherwise specified by the Superintendent, be prepared in accordance with generally accepted accounting principles, the primary source of which is the Handbook of the Canadian Institute of Chartered Accountants. A reference in any provision of this Act to the accounting principles referred to in this subsection shall be construed as a reference to those generally accepted accounting principles with any specifications so made.

Regulations

(5) The Governor in Council may make regulations respecting subsidiaries that are not required to be listed for the purposes of paragraph (3)(a).

Legislative History – This subsection (5) was added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such sub-section previously existed in this Act.

1991, c. 48, s. 292; 1997, c. 15, s. 133; 2001, c. 9, s. 293.

Approval by directors

293. (1) The directors of an association shall approve the annual statement and the approval of the directors shall be evidenced by the signature of

(a) the chairperson of the board of directors or, in the event of that officer's absence or inability to act, any other officer of the association authorized by the directors to sign in the stead of the chairperson; and

(b) one director, if the signature required by paragraph (a) is that of a director, or two directors if the signature required by that paragraph is that of an officer who is not a director.

Condition precedent to publication

(2) An association shall not publish copies of an annual statement unless it is approved and signed in accordance with subsection (1).

Statements- subsidiaries

294. (1) An association shall keep at its head office a copy of the current financial statements of each subsidiary of the association.

Examination

(2) Subject to this section, the members and shareholders of an association and their personal representatives may, on request therefor, examine the statements referred to in subsection (1) during the usual business hours of the association and may take extracts therefrom free of charge.

Barring examination

(3) An association may refuse to permit an examination under subsection (2) by any person.

Application for order

(4) Within fifteen days after a refusal under subsection (3), the association shall apply to a court for an order barring the right of the person concerned to make an examination under subsection (2) and the court shall either order the association to permit the examination or, if it is satisfied that the examination would be detrimental to the association or to any other body corporate the financial statements of which would be subject to examination, bar the right and make any further order it thinks fit.

Notice to Superintendent

(5) An association shall give the Superintendent and the person seeking to examine the statements referred to in subsection (1) notice of an application to a court under subsection (4), and the Superintendent and the person may appear and be heard in person or by counsel at the hearing of the application.

Distribution of annual statement

295. (1) An association shall, not later than twenty-one days before the date of each annual meeting or before the signing of a resolution under paragraph 161(1)(b) in lieu of the annual meeting, send to each member and shareholder at the recorded address of the member or shareholder a copy of the documents referred to in subsections 292(1) and (3), unless that time period is waived by the member or shareholder.

Exception

(2) An association is not required to comply with subsection (1) with respect to a member or shareholder who has informed the association, in writing, that the member or shareholder does not wish to receive the annual statement.

Effect of default

(3) Where an association is required to comply with subsection (1) and the association does not comply with that subsection, the annual meeting at which the documents referred to in that subsection are to be considered shall be adjourned until that subsection has been complied with.

1991, c. 48, s. 295; 1997, c. 15, s. 134.

Copy to Superintendent

296.(1) Subject to subsection (2), an association shall send to the Superintendent a copy of the documents referred to in subsections 292(1) and (3) not later than twenty-one days before the date of each annual meeting of members of the association.

Later filing

(2) If an association's shareholders or members sign a resolution under paragraph 161(1)(b) in lieu of an annual meeting, the association shall send a copy of the documents referred to in subsections 292(1) and (3) to the Superintendent not later than thirty days after the signing of the resolution.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Copy to Superintendent

296. (1) An association shall send to the Superintendent a copy of the documents referred to in subsections 292(1) and (3) not later than twenty-one days before

(a) the date of each annual meeting of members of the association; or

(b) the signing of a resolution under paragraph 161(1)(b) in lieu of an annual meeting of members of the association.

Consent to file later

(2) The Superintendent may give an association consent in writing to comply with subsection (3) rather than subsection (1) on the condition that the association's shareholders or members sign a resolution under paragraph 161(1)(b) in lieu of an annual meeting.

Later filing

(3) Where the Superintendent has given that consent to an association and has not notified the association that the consent has been withdrawn, the association shall send a copy of the documents referred to in subsections 292(1) and (3) to the Superintendent not later than thirty days after the signing of that resolution.

1991, c. 48, s. 296; 1997, c. 15, s. 135; 2001, c. 9, s. 294.

AUDITOR

Definitions

297. For the purposes of this section and sections 298 to 317,

"firm of accountants" « cabinet de comptables »

"firm of accountants" means a partnership, the members of which are accountants engaged in the practice of accounting, or a body corporate that is incorporated by or under an Act of the legislature of a province and engaged in the practice of accounting;

"member" « membre »

"member", in relation to a firm of accountants, means

(a) an accountant who is a partner in a partnership, the members of which are accountants engaged in the practice of accounting, or

(b) an accountant who is an employee of a firm of accountants.

Appointment of auditor

298. (1) The members of an association shall, by ordinary resolution at the first meeting of members and at each succeeding annual meeting, appoint an auditor to hold office until the close of the next annual meeting.

Remuneration of auditor

(2) The remuneration of an auditor may be fixed by ordinary resolution of the members but, if not so fixed, shall be fixed by the directors.

Qualification of auditor

299. (1) A natural person or firm of accountants is qualified to be an auditor of an association if

(a) in the case of a natural person, the person is an accountant who

(i) is a member in good standing of an institute or association of accountants incorporated by or under an Act of the legislature of a province,

(ii) has at least five years experience at a senior level in performing audits of a financial institution,

(iii) is ordinarily resident in Canada, and

(iv) is independent of the association; and

(b) in the case of a firm of accountants, the member of the firm jointly designated by the firm and the association to conduct the audit of the association on behalf of the firm is qualified in accordance with paragraph (a).

Independence

(2) For the purposes of subsection (1),

(a) independence is a question of fact; and

(b) a person is deemed not to be independent of an association if that person, any partner of that person or any member of a firm of accountants of which that person is a member, or if the firm of accountants

(i) is a director or an officer or employee of the association, any subsidiary of the association or any central cooperative credit society that is a member of the association or is a business partner of any director, officer or employee of the association, any subsidiary of the association or any central cooperative credit society that is a member of the association,

(ii) beneficially owns or controls, directly or indirectly, a material interest in the shares of the association or of any subsidiary of the association or central cooperative credit society that is a member of the association, or

(iii) has been a liquidator, trustee in bankruptcy, receiver or receiver and manager of any member that is a central cooperative credit society or of any subsidiary of the association within the two years immediately preceding the person's proposed appointment as auditor of the association, other than a subsidiary of the association acquired pursuant to section 394 or through a realization of security pursuant to section 395.

Notice of designation

(3) Within fifteen days after the appointment of a firm of accountants as auditor of the association, the association and the firm of accountants shall jointly designate a member of the firm who meets the qualifications described in subsection (1) to conduct the audit of the association on behalf of the firm and the association shall forthwith notify the Superintendent in writing of the designation.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this sub-section read as follows:

Notice of designation

(3) Within fifteen days after the appointment of a firm of accountants as auditor of the association, the association and the firm of accountants shall jointly designate a member of the firm who meets the qualifications described in subsection (1) to conduct the audit of the association on behalf of the firm and shall forthwith notify the Superintendent in writing of the designation.

New designation

(4) Where for any reason a member of a firm of accountants designated pursuant to subsection (3) ceases to conduct the audit of the association, the association and the firm of accountants may jointly designate another member of the same firm of accountants who meets the qualifications described in subsection (1) to conduct the audit of the association and the association shall forthwith notify the Superintendent in writing of the designation.

Deemed vacancy

(5) In any case where subsection (4) applies and a designation is not made pursuant to that subsection within thirty days after the designated member ceases to conduct the audit of the association, there shall be deemed to be a vacancy in the office of auditor of the association.

1991, c. 48, s. 299; 2001, c. 9, s. 295.

Duty to resign

300. (1) An auditor who ceases to be qualified under section 299 shall resign forthwith after the auditor, where the auditor is a natural person, or any member of the firm of accountants, where the

auditor is a firm of accountants, becomes aware that the auditor or the firm has ceased to be so qualified.

Disqualification order

(2) Any interested person may apply to a court for an order declaring that an auditor of an association has ceased to be qualified under section 299 and declaring the office of auditor to be vacant.

Revocation of appointment

301. (1) The members of an association may, by ordinary resolution at a special meeting, revoke the appointment of an auditor.

Idem

(2) The Superintendent may at any time revoke the appointment of an auditor made under subsection (3) or 298(1) or section 303 by notice in writing signed by the Superintendent and sent by registered mail to the auditor and to the association addressed to the usual place of business of the auditor and the association.

Filling vacancy

(3) A vacancy created by the revocation of the appointment of an auditor under subsection (1) may be filled at the meeting at which the appointment was revoked and, if not so filled, shall be filled by the directors under section 303.

Ceasing to hold office

302. (1) An auditor of an association ceases to hold office when

- (a) the auditor resigns;
- (b) the auditor, where the auditor is a natural person, dies; or
- (c) the appointment of the auditor is revoked by the members or the Superintendent.

Effective date of resignation

(2) The resignation of an auditor becomes effective at the time a written resignation is sent to the association or at the time specified in the resignation, whichever is later.

Filling vacancy

303. (1) Subject to subsection 301(3), where a vacancy occurs in the office of auditor of an association, the directors shall forthwith fill the vacancy, and the auditor so appointed holds office for the unexpired term of office of the predecessor of that auditor.

Where Superintendent may fill vacancy

(2) Where the directors fail to fill a vacancy in accordance with subsection (1), the Superintendent may fill the vacancy and the auditor so appointed holds office for the unexpired term of office of the predecessor of that auditor.

Designation of member of firm

(3) Where the Superintendent has, pursuant to subsection (2), appointed a firm of accountants to fill a vacancy, the Superintendent shall designate the member of the firm who is to conduct the audit of the association on behalf of the firm.

Right to attend meetings

304. (1) The auditor of an association is entitled to receive notice of every meeting of members or shareholders and, at the expense of the association, to attend and be heard thereat on matters relating to the duties of the auditor.

Duty to attend meeting

(2) If a director, member or shareholder of an association, whether or not the shareholder is entitled to vote at the meeting, gives written notice, not less than ten days before a meeting of members or shareholders to an auditor or former auditor of the association that the director, member or shareholder wishes the auditor's attendance at the meeting, the auditor or former auditor shall attend the meeting at the expense of the association and answer questions relating to the auditor's or former auditor's duties as auditor.

Notice to association

(3) A member, director or shareholder who gives notice under subsection (2) shall send concurrently a copy of the notice to the association and the association shall forthwith send a copy thereof to the Superintendent.

Superintendent may attend

(4) The Superintendent may attend and be heard at any meeting referred to in subsection (2).

Statement of auditor

305. (1) An auditor of an association who

(a) resigns,

(b) receives a notice or otherwise learns of a meeting of members called for the purpose of revoking the appointment of the auditor, or

(c) receives a notice or otherwise learns of a meeting of directors or members at which another person is to be appointed in the auditor's stead, whether because of the auditor's resignation or revocation of appointment or because the auditor's term of office has expired or is about to expire, shall submit to the association and the Superintendent a written statement giving the reasons for the resignation or the reasons why the auditor opposes any proposed action.

Statement to be sent

(2) Where an association receives a written statement referred to in subsection (1) that relates to a resignation as a result of a disagreement with the directors or officers of the association or that relates to a matter referred to in paragraph (1)(b) or (c), the association shall forthwith send a copy of the statement to each member.

Duty of replacement auditor

306. (1) Where an auditor of an association has resigned or the appointment of an auditor has been revoked, no person or firm shall accept an appointment as auditor of the association or consent to be the auditor of the association until the person or firm has requested and received from the other auditor a written statement of the circumstances and reasons why the other auditor resigned or why, in the other auditor's opinion, the other auditor's appointment was revoked.

Exception

(2) Notwithstanding subsection (1), a person or firm may accept an appointment or consent to be appointed as auditor of an association if, within fifteen days after a request under that subsection is made, no reply from the other auditor is received.

Effect of non-compliance

(3) Unless subsection (2) applies, an appointment as auditor of an association is void if subsection (1) has not been complied with.

Auditor's examination

307. (1) The auditor of an association shall make such examination as the auditor considers necessary to enable the auditor to report on the annual statement and on other financial statements required by this Act to be placed before the members, except such annual statements or parts thereof as relate to the period referred to in subparagraph 292(1)(a)(ii).

Auditing standards

(2) The auditor's examination referred to in subsection (1) shall, except as otherwise specified by the Superintendent, be conducted in accordance with generally accepted auditing standards, the primary source of which is the Handbook of the Canadian Institute of Chartered Accountants.

Right to information

308. (1) On the request of the auditor of an association, the present or former directors, officers, employees or agents of the association shall, to the extent that such persons are reasonably able to do so,

(a) permit access to such records, assets and security held by the association or any entity in which the association has a substantial investment, and

(b) provide such information and explanations as are, in the opinion of the auditor, necessary to enable the auditor to perform the duties of auditor of the association.

Directors to provide information

(2) On the request of the auditor of an association, the directors of the association shall, to the extent that they are reasonably able to do so,

(a) obtain from the present or former directors, officers, employees and agents of any entity in which the association has a substantial investment the information and explanations that such persons are reasonably able to provide and that are, in the opinion of the auditor, necessary to enable the auditor to perform the duties of auditor of the association; and

(b) provide the auditor with the information and explanations so obtained.

No civil liability

(3) A person who in good faith makes an oral or written communication under subsection (1) or (2) shall not be liable in any civil action arising from having made the communication.

Auditor's report and extended examination

309. (1) The Superintendent may, in writing, require that the auditor of an association report to the Superintendent on the extent of the auditor's procedures in the examination of the annual statement and may, in writing, require that the auditor enlarge or extend the scope of that examination or direct that any other particular procedure be performed in any particular case, and the auditor shall comply with any such requirement of the Superintendent and report to the Superintendent thereon.

Special examination

(2) The Superintendent may, in writing, require that the auditor of an association make a particular examination relating to the adequacy of the procedures adopted by the association for the safety of its creditors, members and shareholders, or any other examination as, in the Superintendent's opinion, the public interest may require, and report to the Superintendent thereon.

Idem

(3) The Superintendent may direct that a special audit of an association be made if, in the opinion of the Superintendent, it is so required and may appoint for that purpose an accountant or a firm of accountants qualified pursuant to subsection 299(1) to be an auditor of the association.

Expenses payable by association

(4) The expenses entailed by any examination or audit referred to in any of subsections (1) to (3) are payable by the association on being approved in writing by the Superintendent.

Auditor's report

310. (1) The auditor shall, not less than twenty-one days before the date of the annual meeting of the members, make a report in writing to the members on the annual statement referred to in subsection 292(1).

Content of audit

(2) In each report required under subsection (1), the auditor shall state whether, in the auditor's opinion, the annual statement presents fairly, in accordance with the accounting principles referred to in subsection 292(4), the financial position of the association as at the end of the financial year to which it relates and the results of the operations and changes in the financial position of the association for that financial year.

Auditor's remarks

(3) In each report referred to in subsection (2), the auditor shall include such remarks as the auditor considers necessary when

(a) the examination has not been made in accordance with the auditing standards referred to in subsection 307(2);

(b) the annual statement has not been prepared on a basis consistent with that of the preceding financial year; or

(c) the annual statement does not present fairly, in accordance with the accounting principles referred to in subsection 292(4), the financial position of the association as at the end of the financial year to which it relates or the results of the operations or changes in the financial position of the association for that financial year.

Report on directors' statement

311. (1) The auditor of an association shall, if required by the members, audit and report to the members on any financial statement submitted by the directors to the members, and the report shall state whether, in the auditor's opinion, the financial statement presents fairly the information required.

Making of report

(2) A report of the auditor made under subsection (1) shall be attached to the financial statement to which it relates and a copy of the statement and report shall be sent by the directors to every member and the Superintendent.

Report to officers

312. (1) It is the duty of the auditor of an association to report in writing to the chairperson of the board of directors, the chief executive officer and the chief financial officer of the association any transactions or conditions that have come to the auditor's attention affecting the well-being of the association that in the auditor's opinion are not satisfactory and require rectification and, without restricting the generality of the foregoing, the auditor shall, as occasion requires, make a report to those persons in respect of

(a) transactions of the association that have come to the auditor's attention and that in the auditor's opinion have not been within the powers of the association, and

(b) loans owing to the association by any person the aggregate amount of which exceeds one half of one per cent of the regulatory capital of the association and in respect of which, in the auditor's opinion, loss to the association is likely to occur, but when a report required under paragraph (b) has been made in respect of loans to any person, it is not necessary to report again in respect of loans to that person unless, in the opinion of the auditor, the amount of the loss likely to occur has increased.

Transmission of report

(2) Where the auditor of an association makes a report under subsection (1),

- (a) the auditor shall transmit the report, in writing, to the chairperson of the board of directors, the chief executive officer and the chief financial officer of the association;
- (b) the report shall be presented to the first meeting of the directors following its receipt;
- (c) the report shall be incorporated in the minutes of that meeting; and
- (d) the auditor shall, at the time of transmitting the report pursuant to paragraph (a), provide the Superintendent with a copy of the report.

Auditor of subsidiaries

313. (1) An association shall take all necessary steps to ensure that its auditor is duly appointed as the auditor of each of its subsidiaries.

Subsidiary outside Canada

(2) Subsection (1) applies in the case of a subsidiary that carries on its operations in a country other than Canada unless the laws of that country do not permit the appointment of the auditor of the association as the auditor of that subsidiary.

Exception

(3) Subsection (1) does not apply in respect of any particular subsidiary where the association, after having consulted its auditor, is of the opinion that the total assets of the subsidiary are not a material part of the total assets of the association.

Auditor's attendance

314. (1) The auditor of an association is entitled to receive notice of every meeting of the audit committee and the conduct review committee of the association and, at the expense of the association, to attend and be heard at those meetings.

Attendance

(2) If so requested by a member of the audit committee, the auditor shall attend every meeting of the audit committee held during the member's term of office.

1991, c. 48, s. 314; 1993, c. 34, s. 53(F).

Calling meeting

315. (1) The auditor of an association or a member of the audit committee may call a meeting of the audit committee.

Right to interview

(2) The chief internal auditor of an association or any officer or employee of the association acting in a similar capacity shall, at the request of the auditor of the association and on receipt of reasonable notice, meet with the auditor.

Notice of errors

316. (1) A director or an officer of an association shall forthwith notify the audit committee and the auditor of the association of any error or misstatement of which the director or officer becomes aware in an annual statement or other financial statement on which the auditor or any former auditor has reported.

Error noted by auditor

(2) If the auditor or a former auditor of an association is notified or becomes aware of an error or misstatement in an annual statement or other financial statement on which the auditor reported and in the auditor's opinion the error or misstatement is material, the auditor or former auditor shall inform each director and the chief executive officer of the association accordingly.

Duty of directors

(3) When under subsection (2) the auditor or a former auditor of an association informs the directors of an error or misstatement in an annual statement or other financial statement, the directors shall

- (a) prepare and issue a revised annual statement or financial statement; or
- (b) otherwise inform the members and the Superintendent of the error or misstatement.

Qualified privilege for statements

317. Any oral or written statement or report made under this Act by the auditor or a former auditor of an association has qualified privilege.

REMEDIAL ACTIONS**Derivative action**

318. (1) Subject to subsection (2), a complainant or the Superintendent may apply to a court for leave to bring an action under this Act in the name and on behalf of an association or any of its subsidiaries, or to intervene in an action under this Act to which the association or a subsidiary of the association is a party, for the purpose of prosecuting, defending or discontinuing the action on behalf of the association or the subsidiary.

Conditions precedent

(2) No action may be brought and no intervention in an action may be made under subsection (1) by a complainant unless the court is satisfied that

(a) the complainant has given reasonable notice to the directors of the association or the subsidiary of the complainant's intention to apply to the court under that subsection if the directors of the association or its subsidiary do not bring, diligently prosecute or defend, or discontinue the action;

(b) the complainant is acting in good faith; and

(c) it appears to be in the interests of the association or the subsidiary that the action be brought, prosecuted, defended or discontinued.

Notice to Superintendent

(3) A complainant under subsection (1) shall give the Superintendent notice of the application and the Superintendent may appear and be heard in person or by counsel at the hearing of the application.

Powers of court

319. (1) In connection with an action brought or intervened in under subsection 318(1), the court may at any time make any order it thinks fit including, without limiting the generality of the foregoing,

(a) an order authorizing the Superintendent, the complainant or any other person to control the conduct of the action;

(b) an order giving directions for the conduct of the action;

(c) an order directing that any amount adjudged payable by a defendant in the action be paid, in whole or in part, directly to former and present members or security holders of the association or of the subsidiary instead of to the association or to the subsidiary; and

(d) an order requiring the association or the subsidiary to pay reasonable legal fees incurred by the Superintendent or the complainant in connection with the action.

Jurisdiction

(2) Notwithstanding subsection (1), the court may not make any order in relation to any matter that would, under this Act, require the approval of the Minister or the Superintendent.

Status of approval

320. (1) An application made or an action brought or intervened in under subsection 318(1) or section 322 need not be stayed or dismissed by reason only that it is shown that an alleged breach of a right or duty owed to the association or its subsidiary has been or might be approved by the members or shareholders of the association or subsidiary, but evidence of approval by the members or shareholders may be taken into account by the court in making an order under section 319.

Court approval to discontinue

(2) An application made or an action brought or intervened in under subsection 318(1) or section 322 shall not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the court given on such terms as the court thinks fit and, if the court determines that the interests of any complainant might be substantially affected by any stay, discontinuance, settlement or dismissal, the court may order any party to the application or action to give notice to the complainant.

No security for costs

321. (1) A complainant is not required to give security for costs in any application made or any action brought or intervened in under subsection 318(1) or section 322.

Interim costs

(2) In an application made or an action brought or intervened in under subsection 318(1) or section 322, the court may at any time order the association or its subsidiary to pay to the complainant interim costs, including legal fees and disbursements, but the complainant may be held accountable by the court for those interim costs on final disposition of the application or action.

Application to rectify records

322. (1) If the name of a person is alleged to be or to have been wrongly entered or retained in, or wrongly deleted or omitted from, the securities register, the members register or any other record of an association, the association, any member or security holder of the association or any aggrieved person may apply to a court for an order that the register or record be rectified.

Notice to Superintendent

(2) An applicant under this section shall give the Superintendent notice of the application and the Superintendent may appear and be heard in person or by counsel at the hearing of the application.

Powers of court

(3) In connection with an application under this section, the court may make any order it thinks fit including, without limiting the generality of the foregoing,

- (a) an order requiring the register or other record of the association to be rectified;
- (b) an order restraining an association from calling or holding a meeting or paying a dividend before the rectification;
- (c) an order determining the right of a party to the proceedings to have the party's name entered or retained in, or deleted or omitted from, the registers or records of the association, whether the issue arises between two or more members or security holders or alleged members or security holders, or between the association and any member or security holder or alleged member or security holder; and
- (d) an order compensating a party who has incurred a loss.

LIQUIDATION AND DISSOLUTION

Interpretation and Application

Definition of "court"

323. For the purposes of subsections 330(1) and 331(1) and (2), sections 332 to 336, subsection 337(1), sections 339 and 341 to 343, subsections 347(3) and (4) and section 352, "court" means a court having jurisdiction in the place where the association has its head office.

Application of subsection (2) and sections 325 to 352

324. (1) Subsection (2) and sections 325 to 352 do not apply to an association that is insolvent within the meaning of the *Winding-up and Restructuring Act*.

Staying proceedings on insolvency

(2) Any proceedings taken under this Part to dissolve or to liquidate and dissolve an association shall be stayed if the association is at any time found to be insolvent within the meaning of the *Winding-up and Restructuring Act*.

1991, c. 48, s. 324; 1996, c. 6, s. 167.

Returns to Superintendent

325. A liquidator appointed under this Part to wind up the business of an association shall provide the Superintendent with such information relating to the business and affairs of the association in such form as the Superintendent requires.

Simple Liquidation

No property and no liabilities

326. (1) An association that has no property and no liabilities may, if authorized by a special resolution of the members, apply to the Minister for letters patent dissolving the association.

Dissolution by letters patent

(2) Where the Minister has received an application under subsection (1) and is satisfied that all the circumstances so warrant, the Minister may issue letters patent dissolving the association.

Effect of letters patent

(3) An association in respect of which letters patent are issued under subsection (2) ceases to exist on the day stated in the letters patent.

Proposing liquidation

327. (1) The voluntary liquidation and dissolution of an association, other than an association referred to in subsection 326(1),

(a) may be proposed by its directors; or

(b) may be initiated by way of a proposal made by a member.

Terms must be set out

(2) A notice of any meeting of members at which the voluntary liquidation and dissolution of an association is to be proposed shall set out the terms of the proposal.

Resolution

328. Where the voluntary liquidation and dissolution of an association is proposed, the association may apply to the Minister for letters patent dissolving the association if authorized by a special resolution of the members and, where the association has issued one or more classes of shares, a special resolution of each class of shareholders.

Approval of Minister required

329. (1) No action directed toward the voluntary liquidation and dissolution of an association shall be taken by an association, other than as provided in sections 327 and 328, until an application made by the association pursuant to section 328 has been approved by the Minister.

Conditional approval

(2) Where the Minister is satisfied on the basis of an application made pursuant to section 328 that the circumstances warrant the voluntary liquidation and dissolution of an association, the Minister may, by order, approve the application.

Effect of approval

(3) Where the Minister has approved an application made pursuant to section 328 with respect to an association, the association shall not carry on business except to the extent necessary to complete its voluntary liquidation.

Liquidation process

(4) Where the Minister has approved an application made pursuant to section 328 with respect to an association, the association shall

(a) cause notice of the approval to be sent to each known claimant against and creditor of the association;

(b) publish notice of the approval once a week for four consecutive weeks in the *Canada Gazette* and once a week for two consecutive weeks in one or more newspapers in general circulation in each province in which the association transacted any business within the preceding twelve months;

(c) proceed to collect its property, dispose of property that is not to be distributed in kind to its members, discharge all its obligations and do all other acts required to liquidate its business; and

(d) after giving the notice required under paragraphs (a) and (b) and adequately providing for the payment or discharge of all its obligations, distribute its remaining property, either in money or in kind, among its members according to their respective rights.

Dissolution instrument

330. (1) Unless a court has made an order in accordance with subsection 331(1), the Minister may, if satisfied that the association has complied with subsection 329(4) and that all the circumstances so warrant, issue letters patent dissolving the association.

Association dissolved

(2) An association in respect of which letters patent are issued under subsection (1) is dissolved and ceases to exist on the day stated in the letters patent.

Court-supervised Liquidation

Application for court supervision

331. (1) The Superintendent or any interested person may, at any time during the liquidation of an association, apply to a court for an order for the continuance of the voluntary liquidation under the supervision of the court in accordance with this section and sections 332 to 344 and on such application the court may so order and make any further order it thinks fit.

Idem

(2) An application under subsection (1) to a court to supervise a voluntary liquidation shall state the reasons, verified by an affidavit of the applicant, why the court should supervise the liquidation.

Notice to Superintendent

(3) Where a person, other than the Superintendent, makes an application under subsection (1), the person shall give the Superintendent notice of the application and the Superintendent may appear and be heard in person or by counsel at the hearing of the application.

Court supervision thereafter

332. (1) When a court makes an order under subsection 331(1), the liquidation of the association shall continue under the supervision of the court.

Commencement of liquidation

(2) The supervision of the liquidation of an association by the court pursuant to an order made under subsection 331(1) commences on the day the order is made.

Powers of court

333. In connection with the liquidation and dissolution of an association, the court may, where it is satisfied that the association is able to pay or adequately provide for the discharge of all its obligations, make any order it thinks fit including, without limiting the generality of the foregoing,

(a) an order to liquidate;

(b) an order appointing a liquidator, with or without security, fixing a liquidator's remuneration and replacing a liquidator;

(c) an order appointing inspectors or referees, specifying their powers, fixing their remuneration and replacing inspectors or referees;

- (d) an order determining the notice to be given to any interested person, or dispensing with notice to any person;
- (e) an order determining the validity of any claims made against the association;
- (f) an order, at any stage of the proceedings, restraining the directors and officers of the association from
 - (i) exercising any of their powers, or
 - (ii) collecting or receiving any debt or other property of the association, and from paying out or transferring any property of the association, except as permitted by the court;
- (g) an order determining and enforcing the duty or liability of any present or former director, officer, member or shareholder
 - (i) to the association, or
 - (ii) for an obligation of the association;
- (h) an order approving the payment, satisfaction or compromise of claims against the association and the retention of assets for that purpose, and determining the adequacy of provisions for the payment, discharge or transfer of any obligation of the association, whether liquidated, unliquidated, future or contingent;
- (i) with the concurrence of the Superintendent, an order providing for the disposal or destruction of the documents, records or registers of the association;
- (j) on the application of a creditor, an inspector or the liquidator, an order giving directions on any matter arising in the liquidation;
- (k) after notice has been given to all interested parties, an order relieving the liquidator from any omission or default on such terms as the court thinks fit and confirming any act of the liquidator;
- (l) subject to sections 340 to 342, an order approving any proposed, interim or final distribution to members, in money or in property;
- (m) an order disposing of any property belonging to members, shareholders or creditors who cannot be found;
- (n) on the application of any director, officer, member, shareholder, creditor or the liquidator,

- (i) an order staying the liquidation proceedings on such terms and conditions as the court thinks fit,
 - (ii) an order continuing or discontinuing the liquidation proceedings, or
 - (iii) an order to the liquidator to restore to the association all of its remaining property; and
- (o) after the liquidator has rendered the liquidator's final account to the court, an order directing the association to apply to the Minister for letters patent dissolving the association.

Cessation of business and powers

334. (1) Where a court makes an order for the liquidation of an association,

- (a) the association continues in existence but shall cease to carry on business, except the business that is, in the opinion of the liquidator, required for an orderly liquidation; and
- (b) the powers of the directors, members and shareholders, if any, are vested in the liquidator and cease to be vested in the directors, members or shareholders, except as specifically authorized by the court.

Delegation by liquidator

(2) A liquidator may delegate any of the powers vested by paragraph (1)(b) to the directors, members or shareholders, if any.

Appointment of liquidator

335. When making an order for the liquidation of an association or at any time thereafter, the court may appoint any person, including a director, an officer, a member or a shareholder of the association or any other association, as liquidator of the association.

Vacancy in liquidator's office

336. Where an order for the liquidation of an association has been made and the office of liquidator is or becomes vacant, the property of the association is under the control of the court until the office of liquidator is filled.

Duties of liquidator

337. (1) A liquidator shall

- (a) forthwith after appointment give notice thereof to the Superintendent and to each claimant and creditor of the association known to the liquidator;

(b) forthwith after appointment publish notice thereof once a week for four consecutive weeks in the Canada Gazette and once a week for two consecutive weeks in one or more newspapers in general circulation in each province in which the association has transacted any business within the preceding twelve months, requiring

(i) any person indebted to the association to render an account and pay to the liquidator at the time and place specified in the notice any amount owing,

(ii) any person possessing property of the association to deliver it to the liquidator at the time and place specified in the notice, and

(iii) any person having a claim against the association, whether liquidated, unliquidated, future or contingent, to present particulars thereof in writing to the liquidator not later than sixty days after the first publication of the notice;

(c) take into custody and control the property of the association;

(d) open and maintain a trust account for the moneys received by the liquidator in the course of the liquidation of the association;

(e) keep accounts of the moneys received and paid out by the liquidator in the course of the liquidation of the association;

(f) maintain separate lists of each class of persons having claims against the association;

(g) if at any time the liquidator determines that the association is unable to pay or adequately provide for the discharge of its obligations, apply to the court for directions;

(h) deliver to the court and to the Superintendent, at least once in every twelve month period after the liquidator's appointment or more often as the court requires, the annual statement of the association prepared in accordance with subsection 292(1) or prepared in such manner as the liquidator thinks proper or as the court requires; and

(i) after the final accounts are approved by the court, distribute any remaining property of the association among the members or shareholders, according to their respective rights.

Powers of liquidator

(2) A liquidator may

(a) retain lawyers, notaries, accountants, appraisers and other professional advisers;

(b) bring, defend or take part in any civil, criminal or administrative action or proceeding in the name and on behalf of the association;

(c) carry on the business of the association as required for an orderly liquidation;

- (d) sell by public auction or private sale any property of the association;
- (e) do all acts and execute documents in the name and on behalf of the association;
- (f) borrow money on the security of the property of the association;
- (g) settle or compromise any claims by or against the association; and
- (h) do all other things necessary for the liquidation of the association and distribution of its property.

Reliance on statements

338. A liquidator is not liable if the liquidator relies in good faith on

- (a) financial statements of the association represented to the liquidator by an officer of the association, or on a written report of the auditor of the association, to reflect fairly the financial condition of the association; or
- (b) an opinion, a report or a statement of a lawyer, a notary, an accountant, an appraiser or other professional adviser retained by the liquidator.

Examination of others

339. (1) Where a liquidator has reason to believe that any property of the association is in the possession or under the control of a person or that a person has concealed, withheld or misappropriated any such property, the liquidator may apply to the court for an order requiring that person to appear before the court at the time and place designated in the order and to be examined.

Restoration and compensation

(2) Where an examination conducted pursuant to subsection (1) discloses that a person has concealed, withheld or misappropriated any property of the association, the court may order that person to restore the property or pay compensation to the liquidator.

Costs of liquidation

340. A liquidator shall pay the costs of liquidation out of the property of the association and shall pay or make adequate provision for all claims against the association.

Final accounts

341. (1) Within one year after the appointment of a liquidator and after paying or making adequate provision for all claims against the association, the liquidator shall apply to the court

(a) for approval of the final accounts of the liquidator and for an order permitting the distribution, in money or in kind, of the remaining property of the association to its members or shareholders, according to their respective rights; or

(b) for an extension of time, setting out the reasons therefor.

Member's application

(2) If a liquidator fails to make the application required by subsection (1), a member of the association may apply to the court for an order for the liquidator to show cause why a final accounting and distribution should not be made.

Notification of final accounts

(3) A liquidator shall give notice of the liquidator's intention to make an application under subsection (1) to the Superintendent, to each inspector appointed under section 333, to each member or shareholder of the association and to any person who provided a security or fidelity bond for the liquidation.

Publication

(4) The liquidator shall publish the notice required under subsection (3) in the Canada Gazette and once a week for two consecutive weeks in one or more newspapers in general circulation in each province in which the association has transacted any business within the preceding twelve months or as otherwise directed by the court.

Final order

342. (1) If the court approves the final accounts rendered by a liquidator, the court shall make an order

(a) directing the association to apply to the Minister for letters patent dissolving the association;

(b) directing the custody or disposal of the documents, records and registers of the association; and

(c) discharging the liquidator except in respect of the duty of a liquidator under subsection (2).

Delivery of order

(2) The liquidator shall forthwith send a certified copy of the order referred to in subsection (1) to the Superintendent.

Right to distribution of money

343. (1) If in the course of the liquidation of an association the members resolve to, or the liquidator proposes to,

(a) exchange all or substantially all of the remaining property of the association for securities of another entity that are to be distributed to the members and shareholders, or

(b) distribute all or part of the remaining property of the association to the members and shareholders in kind, a member or shareholder may apply to the court for an order requiring the distribution of the remaining property of the association to be in money.

Powers of court

(2) On an application under subsection (1), the court may order

(a) all of the remaining property of the association to be converted into and distributed in money; or

(b) the claim of any member or shareholder applying under this section to be satisfied by a distribution in money.

Order by court

(3) Where an order is made by a court under paragraph (2)(b), the court

(a) shall fix a fair value on the share of the property of the association attributable to the member or shareholder;

(b) may in its discretion appoint one or more appraisers to assist the court in fixing a fair value in accordance with paragraph (a); and

(c) shall render a final order against the association in favour of the member or shareholder for the amount of the share of the property of the association attributable to the member or shareholder.

Dissolution by letters patent

344. (1) On an application made pursuant to an order under paragraph 342(1)(a), the Minister may issue letters patent dissolving the association.

Association dissolved

(2) An association in respect of which letters patent are issued under subsection (1) is dissolved and ceases to exist on the date of the issuance of the letters patent.

*General***Extended definitions of "member" and "shareholder"**

345. In sections 347 and 348, "member" and "shareholder" includes the personal representative of a member or shareholder, as the case may be.

Continuation of actions

346. (1) Notwithstanding the dissolution of an association under this Part,

(a) a civil, criminal or administrative action or proceeding commenced by or against the association before its dissolution may be continued as if the association had not been dissolved;

(b) a civil, criminal or administrative action or proceeding may be brought against the association within two years after its dissolution as if the association had not been dissolved; and

(c) any property that would have been available to satisfy any judgment or order if the association had not been dissolved remains available for that purpose.

Service on association

(2) Service of a document on an association after its dissolution may be effected by serving the document on a person shown as a director in the incorporating instrument of the association or, if applicable, in the latest return sent to the Superintendent under section 432.

Limitations on liability

347. (1) Notwithstanding the dissolution of an association, a member or shareholder to whom any of its property has been distributed is liable to any person claiming under subsection 346(1) to the extent of the amount received by that member on the distribution.

Limitation

(2) An action to enforce liability under subsection (1) may not be commenced except within two years after the date of the dissolution of the association.

Action against class

(3) A court may order an action referred to in subsections (1) and (2) to be brought against the persons who were members, or shareholders, as a class, subject to such conditions as the court thinks fit.

Reference

(4) If the plaintiff establishes a claim in an action under subsection (3), the court may refer the proceedings to a referee or other officer of the court who may

- (a) add as a party to the proceedings each person found by the plaintiff to have been a member or shareholder;
- (b) determine, subject to subsection (1), the amount that each person who was a member or shareholder must contribute towards satisfaction of the plaintiff's claim; and
- (c) direct payment of the amounts so determined.

Where person cannot be found

348. Where a creditor, member or shareholder to whom property is to be distributed on the dissolution of an association cannot be found, the portion of the property to be distributed to that creditor, member or shareholder shall be converted into money and paid in accordance with section 350.

Vesting in Crown

349. Subject to subsection 346(1) and sections 350 and 351, property of an association that has not been disposed of at the date of the dissolution of the association vests in Her Majesty in right of Canada.

Unclaimed money on winding-up

350. (1) Notwithstanding the *Winding-up and Restructuring Act*, where the business of an association is being wound up, the liquidator or the association shall pay to the Minister on demand and in any event before the final winding-up of that business any amount that is payable by the liquidator or the association to a creditor, member or shareholder of the association to whom payment thereof has not, for any reason, been made.

Records

(2) Where a liquidator or an association makes a payment to the Minister under subsection (1) with respect to a creditor, member or shareholder, the liquidator or association shall concurrently forward to the Minister all documents, records and registers in the possession of the liquidator or association that relate to the entitlement of the creditor, member or shareholder.

Payment to Bank of Canada

(3) The Minister shall pay to the Bank of Canada all amounts paid to the Minister under subsection (1) and shall provide the Bank of Canada with any document, record or register received by the Minister under subsection (2).

Liquidator and association discharged

(4) Payment by a liquidator or an association to the Minister under subsection (1) discharges the liquidator and the association in respect of which the payment is made from all liability for the amount so paid, and payment by the Minister to the Bank of Canada under subsection (3) discharges the Minister from all liability for the amount so paid.

1991, c. 48, s. 350; 1996, c. 6, s. 167.

Liability of Bank of Canada

351. (1) Subject to section 22 of the *Bank of Canada Act*, where payment has been made to the Bank of Canada of an amount under subsection 350(3), the Bank of Canada, if payment is demanded by a person who, but for subsection 350(4), would be entitled to receive payment of that amount from the liquidator, the association or the Minister, is liable to pay to that person at its head office an amount equal to the amount so paid to it, with interest thereon for the period, not exceeding ten years, from the day on which the payment was received by the Bank of Canada until the date of payment to the person, at such rate and computed in such manner as the Minister determines.

Enforcing liability

(2) The liability of the Bank of Canada under subsection (1) may be enforced by action against the Bank of Canada in the court in the province in which the debt or instrument was payable.

Custody of records after dissolution

352. A person who has been granted custody of the documents, records and registers of a dissolved association shall keep them available for production for six years following the date of the dissolution of the association or until the expiration of such shorter period as may be ordered by the court when it orders the dissolution.

Insolvency

353. (1) In the case of the insolvency of an association,

(a) the payment of any amount due to Her Majesty in right of Canada, in trust or otherwise, except indebtedness evidenced by subordinated indebtedness, shall be a first charge on the assets of the association;

(b) the payment of any amount due to Her Majesty in right of a province, in trust or otherwise, except indebtedness evidenced by subordinated indebtedness, shall be a second charge on the assets of the association;

(c) the payment of the deposit liabilities of the association and all other liabilities of the association, except the liabilities referred to in paragraphs (d) and (e), shall be a third charge on the assets of the association;

(d) subordinated indebtedness of the association and all other liabilities that by their terms rank equally with or subordinate to such subordinated indebtedness shall be a fourth charge on the assets of the association; and

(e) the payment of any fines and penalties for which the association is liable shall be a last charge on the assets of the association.

Priority not affected

(2) Nothing in subsection (1) prejudices or affects the priority of any holder of any security interest in any property of an association.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this sub-section read as follows:

Priority not affected

(2) Nothing in subsection (1) prejudices or affects the priority of any holder of any security interest in any property of an association that the association is permitted to create under subsection 383(1).

Priorities

(3) Priorities within each of paragraphs (1)(a) to (e) shall be determined in accordance with the laws governing priorities and, where applicable, by the terms of the indebtedness and liabilities referred to therein.

1991, c. 48, s. 353; 2001, c. 9, s. 296.

PART VIII**OWNERSHIP****DIVISION I****CONSTRAINTS ON OWNERSHIP****Constraining acquisition**

354. (1) No person, or entity controlled by a person, shall, without the approval of the Minister, purchase or otherwise acquire any share of an association or purchase or otherwise acquire control of any entity that holds any share of an association if

(a) the acquisition would cause the person to have a significant interest in any class of shares of the association; or

(b) where the person has a significant interest in a class of shares of the association, the acquisition would increase the significant interest of the person in that class of shares.

Amalgamation, etc., constitutes acquisition

(2) Where, as a result of an amalgamation, merger or reorganization, the entity that results therefrom would have a significant interest in a class of shares of an association, that entity shall be deemed to be acquiring a significant interest in that class of shares of the association through an acquisition for which the approval of the Minister is required pursuant to subsection (1).

Exemption

(3) On application by an association, the Superintendent may exempt from the application of this section and section 355 any class of shares of the association that do not amount to more than 30% of the equity of the association.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this sub-section read as follows:

Exemption

(3) The Superintendent may, by order, exempt from the application of this section and section 355 any class of shares of an association that does not amount to more than 10 per cent of the equity, within the meaning of subsection (4), of the association.

Definition of “equity”

(4) For the purposes of this section, “equity”, in respect of an association, means its equity as determined in accordance with the regulations.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this sub-section read as follows:

Definition of "equity"

(4) For the purposes of this section, "equity", in respect of an association, means the sum of the equity of the association and the minority interests in entities controlled by the association as they appear in the consolidated financial statements of the association.

1991, c. 48, s. 354; 1993, c. 34, s. 54; 2001, c. 9, s. 297.

No acquisition of control without approval

354.1 No person shall acquire control, within the meaning of paragraph 3(1)(e), of an association without the prior approval of the Minister.

Legislative History – This section 354.1 was added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such section previously existed in this Act.

2001, s. 298.

Constraining registration

355. No association shall, unless the acquisition of the share has been approved by the Minister, record in its securities register a transfer or issue of any share of the association to any person or to any entity controlled by a person if

- (a) the transfer or issue of the share would cause the person to have a significant interest in any class of shares of the association; or
- (b) where the person has a significant interest in a class of shares of the association, the transfer or issue of the share would increase the significant interest of the person in that class of shares of the association.

Exception for small holdings

355.1 Notwithstanding section 355, where, as a result of a transfer or issue of shares of a class of shares of an association to a person, the total number of shares of that class registered in the securities register of the association in the name of that person

- (a) would not exceed five thousand, and
- (b) would not exceed 0.1 per cent of the outstanding shares of that class, the association is entitled to assume that no person is acquiring or increasing a significant interest in that class of shares of the association as a result of that issue or transfer of shares.

1994, c. 47, s. 53.

Where approval not required

356. (1) Notwithstanding subsections 354(1) and (2) and section 355, approval of the Minister is not required where a person with a significant interest in a class of shares of an association or an entity controlled by a person with a significant interest in a class of shares of an association

(a) purchases or otherwise acquires shares of that class, or

(b) acquires control of any entity that holds any share of that class, and the number of shares of that class purchased or otherwise acquired, or the acquisition of control of the entity, as the case may be, would not increase the significant interest of the person in that class of shares of the association to a percentage that is greater than the percentage referred to in subsection (2) or (3), whichever is applicable.

Percentage

(2) Subject to subsection (3), for the purposes of subsection (1), the percentage is 5 percentage points in excess of the significant interest of the person in that class of shares of the association on the later of the day this Part comes into force and the day of the most recent purchase or other acquisition by

(a) the person, or

(b) any entity controlled by the person, other than the entity referred to in paragraph (1)(b), of shares of that class of shares of the association, or of control of an entity that held shares of that class of shares of the association, for which approval was given by the Minister.

Idem

(3) Where a person has a significant interest in a class of shares of an association and the person's percentage of that class has decreased after the date of the most recent purchase or other acquisition by

(a) the person, or

(b) any entity controlled by the person, other than the entity referred to in paragraph (1)(b), of shares of that class of shares of the association, or of control of an entity that held shares of that class of shares of the association, for which approval was given by the Minister, the percentage for the purposes of subsection (1) is the percentage that is the lesser of

(c) 5 percentage points in excess of the significant interest of the person in that class of shares of the association on the later of the day this Part comes into force and the day of the most recent purchase or other acquisition by

(i) the person, or

(ii) any entity controlled by the person, other than the entity referred to in paragraph (1)(b), of shares of that class of shares of the association, or of control of an entity that held shares of that class of shares of the association, for which approval was given by the Minister, and

(d) 10 percentage points in excess of the lowest significant interest of the person in that class of shares of the association at any time after the later of the day this Part comes into force and the day of the most recent purchase or other acquisition by

(i) the person, or

(ii) any entity controlled by the person, other than the entity referred to in paragraph (1)(b), of shares of that class of shares of the association, or of control of an entity that held shares of that class of shares of the association, for which approval was given by the Minister.

Exception

(4) Subsection (1) does not apply if the purchase or other acquisition of shares or the acquisition of control referred to in that subsection would

(a) result in the acquisition of a significant interest in a class of shares of the association by an entity controlled by the person and the acquisition of that investment is not exempted by the regulations; or

(b) result in an increase in a significant interest in a class of shares of the association by an entity controlled by the person by a percentage that is greater than the percentage referred to in subsection (2) or (3), whichever applies, and the increase is not exempted by the regulations.

Regulations

(5) The Governor in Council may make regulations

(a) exempting from the application of paragraph (4)(a) the acquisition of a significant interest in a class of shares of the association by an entity controlled by the person; and

(b) exempting from the application of paragraph (4)(b) an increase in a significant interest in a class of shares of the association by an entity controlled by the person by a percentage that is greater than the percentage referred to in subsection (2) or (3), whichever applies.

When approval not required

357.(1) Despite subsections 354(1) and (2) and section 355, the approval of the Minister is not required if

(a) the Superintendent has, by order, directed the association to increase its capital and shares of the association are issued and acquired in accordance with the terms and conditions, if any, that may be specified in the order; or

(b) a person who controls, within the meaning of paragraph 3(1)(d), the association acquires additional shares of the association.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this sub-section read as follows:

Where approval not required

357. (1) Notwithstanding subsections 354(1) and (2) and section 355, the approval of the Minister is not required where the Superintendent has, by order, directed an association to increase its capital and shares of the association are issued and acquired in accordance with such terms and conditions as may be specified in the order.

Pre-approval

(2) For the purposes of subsections 354(1) and (2) and section 355, the Minister may approve

(a) the purchase or other acquisition of such number or percentage of shares of an association as may be required in a particular transaction or series of transactions; or

(b) the purchase or other acquisition of up to a specified number or percentage of shares of an association within a specified period.

1991, c. 48, s. 357; 2001, c. 9, s. 299.

Application for approval

358.(1) An application for an approval of the Minister required under this Part must be filed with the Superintendent and contain the information, material and evidence that the Superintendent may require.

Applicant

(2) If, with respect to any particular transaction, this Part applies to more than one person, any one of those persons may make the application to the Minister for approval on behalf of all of those persons.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Application for approval

358. (1) An application for an approval of the Minister required under subsection 354(1) or (2) or section 355 must be filed with the Superintendent and contain such information, material and evidence as the Superintendent may require.

Applicant

(2) Where, with respect to any particular transaction, subsection 354(1) applies to more than one person, any one of those persons may make the application to the Minister for approval on behalf of all of those persons.

1991, c. 48, s. 358; 2001, c. 9, s. 300.

Matters for consideration

358.1 If an application for an approval under subsection 354(1) is made, the Minister, in determining whether or not to approve the transaction, shall take into account all matters that the Minister considers relevant to the application, including

- (a) the nature and sufficiency of the financial resources of the applicant or applicants as a source of continuing financial support for the association;
- (b) the soundness and feasibility of the plans of the applicant or applicants for the future conduct and development of the business of the association;
- (c) the business record and experience of the applicant or applicants;
- (d) the character and integrity of the applicant or applicants or, if the applicant or any of the applicants is a body corporate, its reputation for being operated in a manner that is consistent with the standards of good character and integrity;
- (e) whether the association will be operated responsibly by persons with the competence and experience suitable for involvement in the operation of a financial institution;
- (f) the impact of any integration of the businesses and operations of the applicant or applicants with those of the association on the conduct of those businesses and operations;
- (g) whether the association is to be operated in accordance with cooperative principles; and
- (h) the best interests of the financial system in Canada and, in particular, the cooperative financial system in Canada.

Legislative History – This section 358.1 was added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such section previously existed in this Act.

2001, c. 9, s. 300.

Terms and conditions

359. The Minister may impose any terms and conditions in respect of an approval given under this Part that the Minister considers necessary to ensure compliance with any provision of this Act.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Terms and conditions

359. The Minister may impose such terms and conditions in respect of any approval given under this Part as the Minister deems necessary or appropriate.

Certifying receipt of application

360. (1) Where, in the opinion of the Superintendent, an application filed with the Superintendent under subsection 358(1) contains all the required information, the Superintendent shall forthwith refer the application to the Minister and send a receipt to the applicant certifying the date on which the completed application was received by the Superintendent.

Incomplete application

(2) Where, in the opinion of the Superintendent, an application filed under subsection 358(1) is incomplete, the Superintendent shall send a notice to the applicant specifying the information required by the Superintendent to complete the application.

Notice of decision to applicant

361. (1) Subject to subsections (2) and (3) and section 362, the Minister shall, within a period of thirty days after the certified date referred to in subsection 360(1), send to the applicant

(a) a notice approving the transaction to which the application relates; or

(b) if the Minister is not satisfied that the transaction to which the application relates should be approved, a notice to that effect, advising the applicant of the right to make representations to the Minister in respect of the matter.

Notice of decision

(2) Subject to subsections (4) and 362(2), if an application involves the acquisition of control of an association, the Minister shall, within a period of forty-five days after the certified date referred to in subsection 360(1), send to the applicant

(a) a notice approving the transaction to which the application relates; or

(b) if the Minister is not satisfied that the transaction to which the application relates should be approved, a notice to that effect, advising the applicant of the right to make representations to the Minister in respect of the matter.

Extension of period for notice

(3) If the Minister is unable to complete the consideration of an application within the period referred to in subsection (1), the Minister shall,

(a) within that period, send a notice to that effect to the applicant; and

(b) within a further period of thirty days after the date of the sending of the notice referred to in paragraph (a) or within any other further period that may be agreed on by the applicant and the Minister, send a notice referred to in paragraph (1)(a) or (b) to the applicant.

Further extensions

(4) If the Minister considers it appropriate to do so, the Minister may extend the period referred to in subsection (2) for one or more periods of forty-five days.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

361. (1) Subject to subsection (2) and section 362, the Minister shall, within a period of thirty days after the certified date referred to in subsection 360(1), send to the applicant

(a) a notice approving the transaction to which the application relates; or

(b) where the Minister is not satisfied that the transaction to which the application relates should be approved, a notice to that effect, advising the applicant of the right to make representations to the Minister in respect of the matter.

Extension of period for notice

(2) Where the Minister is unable to complete the consideration of an application within the period referred to in subsection (1), the Minister shall,

(a) within that period, send a notice to that effect to the applicant; and

(b) within a further period of thirty days after the date of the sending of the notice referred to in paragraph (a) or within such other further period as may be agreed on by the applicant and the Minister, send a notice referred to in paragraph (1)(a) or (b) to the applicant.

1991, c. 48, s. 361; 2001, c. 9, s. 301.

Reasonable opportunity to make representations

362. (1) Where, after receipt of the notice referred to in paragraph 361(1)(b), the applicant advises the Minister that the applicant wishes to make representations, the Minister shall provide the applicant with a reasonable opportunity within a period of thirty days after the date of the notice, or within such further period as may be agreed on by the applicant and the Minister, to make representations in respect of the matter.

Reasonable opportunity to make representations

(2) If after receipt of the notice referred to in paragraph 361(2)(b) the applicant advises the Minister that the applicant wishes to make representations, the Minister must provide the applicant with a

reasonable opportunity within a period of forty-five days after the date of the notice, or within any further period that may be agreed on by the applicant and the Minister, to make representations in respect of the matter.

Legislative History – This sub-section (2) was added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such sub-section previously existed in this Act.

1991, c. 48, s. 362; 2001, c. 9, s. 302.

Notice of decision

363. (1) Within a period of thirty days after the expiration of the period for making representations referred to in subsection 362(1), the Minister shall, in the light of any such representations and having regard to the matters to be taken into account, send a notice to the applicant indicating whether or not the Minister approves the transaction to which the application relates.

Notice of decision

(2) Within a period of forty-five days after the expiration of the period for making representations referred to in subsection 362(2), the Minister shall, in the light of any such representations and having regard to the matters to be taken into account, send a notice to the applicant indicating whether or not the Minister approves the transaction to which the application relates.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Notice of decision

363. Within a period of thirty days after the expiration of the period for making representations referred to in section 362, the Minister shall, in the light of any such representations and having regard to the matters to be taken into account, send a notice to the applicant indicating whether or not the Minister approves the share transaction to which the application relates.

1991, c. 48, s. 363; 2001, c. 9, s. 303.

Deemed approval

364. If the Minister does not send a notice under subsection 361(1) or (3) or 363(1) within the period provided for in those subsections, the Minister is deemed to have approved the transaction to which the application relates.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Deemed approval

364. Where the Minister does not send a notice under subsection 361(1) or (2) or section 363 within the period provided for in those subsections, the Minister is deemed to have approved the share transaction to which the application relates.

1991, c. 48, s. 364; 2001, c. 9, s. 303.

DIVISION II

[Repealed, 1994, c. 47, s. 54]

DIVISION III**DIRECTIONS****Disposition of shareholdings**

368. (1) If, with respect to any association, a person contravenes section 354 or 354.1 or fails to comply with any terms and conditions imposed under section 359, the Minister may, if the Minister deems it in the public interest to do so, by order,

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, that portion of the sub-section before paragraph (a) read as follows:

Disposition of shareholdings

368. (1) Where, with respect to any association, a person contravenes section 354 or fails to comply with any terms and conditions imposed pursuant to section 359, the Minister may, if the Minister deems it in the public interest to do so, by order,

(a) direct that person and any person controlled by that person not to exercise any voting rights attached to shares of the association beneficially owned by any of those persons as the Minister deems appropriate and specifies in the order; and

(b) direct that person and any person controlled by that person to dispose of such number of shares of the association beneficially owned by any of those persons as the Minister specifies in the order, within such time as the Minister specifies therein and in such proportion, if any, as between the person and the persons controlled by that person as is specified in the order.

Representations

(2) No direction shall be made under subsection (1) unless the Minister has provided each person to whom the direction relates and the association concerned with a reasonable opportunity to make representations in respect of the subject-matter of the direction.

Appeal

(3) Any person with respect to whom a direction has been made under subsection (1) may, within thirty days after the date of the direction, appeal the matter in accordance with section 462.

No stay

(4) A direction made under paragraph (1)(a) is not stayed by an appeal under subsection (3).

Application to court

369. (1) Where a person fails to comply with a direction made under subsection 368(1), an application on behalf of the Minister may be made to a court for an order to enforce the direction.

Court order

(2) A court may, on an application under subsection (1), make such order as the circumstances require to give effect to the terms of the direction and may, without limiting the generality of the foregoing, require the association concerned to sell the shares that are the subject-matter of the direction.

Appeal

(3) An appeal from an order of a court under this section lies in the same manner as, and to the same court to which, an appeal may be taken from any other order of the court.

Interest of securities underwriter

370. This Part does not apply to a securities underwriter in respect of shares of a body corporate or ownership interests in an unincorporated entity that are acquired by the underwriter in the course of a distribution to the public of those shares or ownership interests and that are held by the underwriter for a period of not more than six months.

Arrangements to effect compliance

371. (1) The directors of an association may make such arrangements as they deem necessary to carry out the intent of this Part and, in particular, but without limiting the generality of the foregoing, may

(a) require any person in whose name a share of the association is held to submit a declaration setting out

(i) the beneficial ownership of the share, and

(ii) such other information as the directors deem relevant for the purposes of this Part;

(b) require any person who wishes to have a transfer of a share registered in the name of, or to have a share issued to, that person to submit a declaration referred to in paragraph (a) as though the person were the holder of that share; and

(c) determine the circumstances in which a declaration referred to in paragraph (a) is to be required, the form of the declaration and the times at which it is to be submitted.

Order of Superintendent

(2) The Superintendent may, by order, direct an association to obtain from any person in whose name a share of the association is held a declaration setting out the name of every entity controlled by that person and containing information concerning

- (a) the ownership or beneficial ownership of the share; and
- (b) such other related matters as are specified by the Superintendent.

Compliance required

(3) As soon as possible after receipt by an association of a direction under subsection (2),

- (a) the association shall comply with the direction; and
- (b) every person who is requested by the association to provide a declaration containing information referred to in subsection (1) or (2) shall comply with the request.

Outstanding declaration: effect

(4) Where, pursuant to this section, a declaration is required to be submitted by a shareholder or other person in respect of the issue or transfer of any share, an association may refuse to issue the share or register the transfer unless the required declaration is submitted.

Reliance on information

372. An association and any person who is a director or an officer, employee or agent of the association may rely on any information contained in a declaration required by the directors pursuant to section 371 or on any information otherwise acquired in respect of any matter that might be the subject of such a declaration, and no action lies against the association or any such person for anything done or omitted to be done in good faith in reliance on any such information.

373. [Repealed, 1994, c. 47, s. 55]

Exemption regulations

374. The Governor in Council may, by regulation, exempt from any of the provisions of this Part any share transaction or any class of share transactions involving the transfer of shares on the death of the beneficial owner thereof, or any arrangement made in contemplation of the death of the beneficial owner, to one or more members of the beneficial owner's family, or to one or more trustees on their behalf.

PART IX

BUSINESS AND POWERS

GENERAL BUSINESS

Main business

375. (1) Subject to this Act, an association shall not engage in or carry on any business other than such business as generally appertains to the business of

(a) providing financial services to one or more of the following:

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, that portion of the sub-section before sub-paragraph (a)(i) read as follows:

Main business

375. (1) Subject to this Act, an association shall not engage in or carry on any business other than the business of

(a) providing financial services to one or more entities each of which is

(i) a member of the association,

(ii) an entity in which an association has a substantial investment as allowed by section 390,

(ii.1) another association,

(iii) a cooperative credit society,

(iv) a cooperative corporation, or

(v) an entity controlled by an entity or group of entities described by any of subparagraphs (i) to (iv); and

Legislative History - With the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, sub-paragraphs (iii), (iv), and (v) were replaced by sub-paragraphs (ii.1), (iii), (iv), and (v). Sub-paragraphs (iii), (iv), and (v) previously read as follows:

(iii) a cooperative credit society,

(iv) a cooperative corporation, or

(v) an entity controlled by an entity described by any of subparagraphs (i) to (iv); and

(b) providing administrative, educational, promotional, technical, research and consultative services and related goods to any cooperative credit society, or any person intending to organize or operate such a society, in support of the financial services provided or to be provided by the society.

Idem

(2) For greater certainty, an association may act as a financial agent for, and provide investment counselling and portfolio management services to, any person referred to in paragraph (1)(a).

Restriction

(3) Subject to any order that may be made by the Superintendent under section 61 or 62, an association shall not receive money on deposit from a local cooperative credit society, or a cooperative corporation, that is not a member of the association.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this sub-section read as follows:

Restriction

(3) An association shall not receive money on deposit from a local cooperative credit society, or a cooperative corporation, that is not a member of the association, without the prior written approval of the Superintendent.

1991, c. 48, s. 375; 1997, c. 15, s. 137; 2001, c. 9, s. 306.

Additional businesses

375.1 (1) In addition to engaging in or carrying on any business that an association is permitted to engage in or carry on under subsection 375(1), an association may, with the approval of the Minister and subject to any order of the Superintendent that may be made under section 61 or 62,

(a) provide financial services to persons or entities that are not persons or entities referred to in any of subparagraphs 375(1)(a)(i) to (v); or

(b) provide clearing, settlement and payment services to members of the Canadian Payments Association and engage in or carry on ancillary services related to those clearing, settlement and payment services.

Terms and conditions

(2) The Minister may impose any terms and conditions in respect of the provision of financial services provided by a retail association as the Minister considers necessary or appropriate. The Minister may also vary or revoke any of those terms and conditions.

Regulations

(3) The Governor in Council may make regulations

(a) respecting what an association may or may not do with respect to the provision of services and products referred to in paragraphs (1)(a) and (b); and

- (b) imposing terms and conditions in respect of the provision of services and products referred to in paragraphs 1(a) and (b).

2001, c. 9, s. 307.

Additional activities

376. (1) In addition, an association may

- (a) hold, manage and otherwise deal with real property;
- (b) act as a custodian of property on behalf of any entity referred to in paragraph 375(1)(a) or, if the association is a retail association, on behalf of any person to whom the association may provide financial services;
- (c) receive money on deposit, on such terms as to interest and time and mode of repayment as may be agreed on, from
 - (i) the government of Canada, a province or a municipality in Canada, or any agency thereof, and
 - (ii) a deposit protection agency;
- (d) make loans to and investments in entities that are not members of the association;
- (e) make loans to officers and employees of the association;
- (f) provide management, investment, administrative, advisory, educational, promotional, technical, research and consultative services to the entities described in paragraph 375(1)(a);
- (g) outside Canada, or with the prior written approval of the Minister, in Canada, provide the following services to entities described in paragraph 375(1)(a) or, if the association is a retail association, to any person:
 - (i) collecting, manipulating and transmitting
 - (A) information that is primarily financial or economic in nature,
 - (B) information that relates to the business of a permitted entity, as defined in subsection 386(1), or
 - (C) any other information that the Minister may, by order, specify,
 - (ii) providing advisory or other services in the design, development or implementation of information management systems,

- (iii) designing, developing or marketing computer software, and
 - (iv) designing, developing, manufacturing or selling, as an ancillary activity to any activity referred to in any of subparagraphs (i) to (iii) that the association is engaging in, computer equipment integral to the provision of information services related to the business of financial institutions or to the provision of financial services;
- (h) with the prior written approval of the Minister, develop, design, hold, manage, manufacture, sell or otherwise deal with data transmission systems, information sites, communication devices or information platforms or portals that are used
- (i) to provide information that is primarily financial or economic in nature,
 - (ii) to provide information that relates to the business of a permitted entity, as defined in subsection 386(1), or
 - (iii) for a prescribed purpose or in prescribed circumstances, and
- (i) if it is a retail association,
- (i) act as a financial agent,
 - (ii) provide investment counselling services and portfolio management services,
 - (iii) issue payment, credit or charge cards and, in cooperation with others including other financial institutions, operate a payment, credit or charge card plan,
 - (iv) promote merchandise and services to the holders of any payment, credit or charge card issued by the association,
 - (v) engage in the sale of
 - (A) tickets, including lottery tickets, on a non-profit public service basis in connection with special, temporary and infrequent non-commercial celebrations or projects that are of local, municipal, provincial or national interest,
 - (B) urban transit tickets, and
 - (C) tickets in respect of a lottery sponsored by the federal government or a provincial or municipal government or an agency of any such government or governments, and
 - (vi) act as receiver, liquidator or sequestrator.

Specialized business management or advisory services

(2) A retail association may engage, under prescribed terms and conditions, if any are prescribed, in specialized business management or advisory services.

Restriction

(3) Except as authorized by or under this Act, an association shall not deal in goods or engage in any trade or business.

Regulations

(4) The Governor in Council may make regulations

(a) respecting what an association may or may not do with respect to the provision of services and products referred to in paragraphs (1)(g) and (h) and subsection (2);

(b) imposing terms and conditions in respect of the provision of investment counselling and portfolio management services and the provision of services and products referred to in paragraphs (1)(g) and (h) and subsection (2); and

(c) respecting the circumstances in which associations may be exempted from the requirement to obtain the approval of the Minister before carrying on a particular activity referred to in paragraphs (1)(g) or (h).

Legislative History – With the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, section 376 was replaced with sections 375.1 and 376. Prior to this amendment, section 376 read as follows:

Additional powers

376. (1) In addition to the powers that an association may exercise under section 375, an association may

- (a) hold, manage and otherwise deal with real property;
- (b) act as a custodian of property on behalf of any person referred to in paragraph 375(1)(a);
- (c) receive money on deposit, on such terms as to interest and time and mode of repayment as may be agreed on, from
 - (i) the government of Canada, a province or a municipality in Canada, or any agency thereof, and
 - (ii) a deposit protection agency;
- (d) make loans to and investments in entities that are not members of the association;
- (e) make loans to officers and employees of the association;
- (f) provide management, investment, administrative, advisory, educational, promotional, technical, research and consultative services to the entities described in paragraph 375(1)(a); and
- (g) provide to any person referred to in paragraph 375(1)(a) the services and products that an information services corporation, as defined in subsection 386(1), may provide, if before providing those services and products the association obtains the Minister's written approval for it to provide those services and products.

Restriction

(2) Except as authorized by or under this Act, an association shall not deal in goods or engage in any trade or business.

Regulations

(3) The Governor in Council may make regulations

(a) respecting what an association may or may not do with respect to the provision of services and products referred to in paragraph (1)(g); and

(b) imposing terms and conditions in respect of the provision of investment counselling and portfolio management services and the provision of services and products referred to in paragraph (1)(g).

1991, c. 48, s. 376; 1997, c. 15, s. 138; 2001, c. 9, s. 307.

Networking

377. Subject to section 381, an association may

a) act as agent for any entity referred to in paragraph 375(1)(a), any member of a cooperative credit society or, if the association is a retail association, any other person in respect of the provision of any service that is provided by a financial institution, a permitted entity as defined in subsection 386(1) or a prescribed entity and may enter into an arrangement with any person in respect of the provision of that service; or

(b) refer any person to any such financial institution or entity.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, paragraphs (a) and (b) of the section read as follows:

(a) act as an agent for a financial institution or a body corporate in which the association is permitted to have a substantial investment pursuant to section 390 in respect of the provision of any service that is provided to any person referred to in paragraph 375(1)(a) or to a member of a cooperative credit society, and may enter into an arrangement with the financial institution in respect of the provision of that service; or

(b) refer any person to any such financial institution or body corporate.

1991, c. 48, s. 377; 2001, c. 9, s. 308.

Restriction on fiduciary activities

378. No association shall act in Canada as

(a) an executor, administrator or official guardian or a guardian, tutor, curator, judicial adviser or committee of a mentally incompetent person; or

(b) a trustee for a trust.

Restriction on deposit taking

378.1 A retail association shall not accept deposits in Canada unless it is a member institution within the meaning of section 2 of the *Canada Deposit Insurance Corporation Act*.

Legislative History – This section 378.1 was added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such section previously existed in this Act.

2001, c. 9, s. 309.

Restriction on guarantees

379. (1) An association shall not guarantee on behalf of any person the payment or repayment of any sum of money unless

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, portion of the sub-section before paragraph (a) read as follows:

Restriction on guarantees

379. (1) An association shall not guarantee on behalf of any person other than itself the payment or repayment of any sum of money unless

(a) the sum of money is a fixed sum of money with or without interest thereon;
and

(b) the person on whose behalf the association has undertaken to guarantee the payment or repayment has an unqualified obligation to reimburse the association for the full amount of the payment or repayment to be guaranteed.

Exception

(2) Paragraph (1)(a) does not apply where the person on whose behalf the association has undertaken to guarantee a payment or repayment is a subsidiary of the association.

Exception

(3) Paragraph (1)(a) does not apply in respect of a guarantee given on behalf of a central, within the meaning of section 472, or a local cooperative credit society if the payment guaranteed represents the obligation of the central or the local cooperative credit society to settle for payment items in accordance with the by-laws and rules of the Canadian Payments Association.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this sub-section read as follows:

Idem

(3) Paragraph (1)(a) does not apply in respect of any guarantee given on behalf of a central, within the meaning of section 472, where the payment guaranteed represents the obligation of the central to settle for payment items in accordance with the by-laws and rules of the Canadian Payments Association.

Regulations

(4) The Governor in Council may make regulations imposing terms and conditions in respect of guarantees permitted by this section.

1991, c. 48, s. 379; 1997, c. 15, s. 139; 2001, c. 9, s. 310.

Restriction on securities activities

380. An association shall not deal in Canada in securities to the extent prohibited or restricted by such regulations as the Governor in Council may make for the purposes of this section.

Restriction on insurance business

381. (1) An association shall not undertake the business of insurance except to the extent permitted by this Act or the regulations.

Restriction on acting as agent

(2) An association shall not act in Canada as agent for any person in the placing of insurance and shall not lease or provide space in its offices in Canada to any person engaged in the placing of insurance.

Regulations

(3) The Governor in Council may make regulations respecting the matters referred to in subsection (1) and regulations respecting relations between associations and

- (a) entities that undertake the business of insurance; or
- (b) insurance agents or insurance brokers.

Saving

(4) Nothing in this section precludes an association from

- (a) requiring insurance to be placed by a borrower for the security of the association; or
- (b) obtaining group insurance for its employees or the employees of its members or of any bodies corporate in which it has a substantial investment pursuant to section 390.

No pressure

(5) No association shall exercise pressure on a borrower to place insurance for the security of the association with any particular insurance company, but an association may require that an insurance company chosen by a borrower meet with its approval, which shall not be unreasonably withheld.

Annuities

(6) For the purposes of this section, the business of insurance includes the issuance of any annuity where the liability thereon is contingent on the death of a person.

Restriction on leasing

382. An association shall not engage in Canada in any personal property leasing activity in which a financial leasing entity, within the meaning of subsection 386(1), is not permitted to engage.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Restriction on leasing

382. An association shall not engage in Canada in any personal property leasing activity in which a financial leasing corporation within the meaning of subsection 386(1) is not permitted to engage.

1991, c. 48, s. 382; 2001, c. 9, s. 311.

Restriction on residential mortgages

382.1 (1) A retail association shall not make a loan in Canada on the security of residential property in Canada for the purpose of purchasing, renovating or improving that property, or refinance such a loan, if the amount of the loan, together with the amount then outstanding of any mortgage having an equal or prior claim against the property, would exceed 75% of the value of the property at the time of the loan.

Exception

(2) Subsection (1) does not apply in respect of

- (a) a loan made or guaranteed under the *National Housing Act* or any other Act of Parliament by or under which a different limit on the value of property on the security of which the association may make a loan is established;
- (b) a loan if repayment of the amount of the loan that exceeds the maximum amount set out in subsection (1) is guaranteed or insured by a government agency or a private insurer approved by the Superintendent;
- (c) the acquisition by the association from an entity of securities issued or guaranteed by the entity that are secured on any residential property, whether in favour of a trustee or otherwise, or the making of a loan by the association to the entity against the issue of such securities; or
- (d) a loan secured by a mortgage where

(i) the mortgage is taken back by the association on a property disposed of by the association, including where the disposition is by way of a realization of a security interest, and

(ii) the mortgage secures payment of an amount payable to the association for the property.

Legislative History – This section 382.1 was added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such section previously existed in this Act.

2001, c. 9, s. 311.

Policies re security interests

383. (1) The directors of an association shall establish and the association shall adhere to policies regarding the creation of security interests in property of the association to secure obligations of the association and the acquisition by the association of beneficial interests in property that is subject to security interests.

Order to amend policies

(2) The Superintendent may, by order, direct an association to amend its policies as specified in the order.

Compliance

(3) An association shall comply with an order made under subsection (2) within the time specified in the order.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Restriction on security interests

383. (1) Subject to subsection (3), an association shall not create a security interest in any property of the association to secure an obligation of the association, unless

- (a) the obligation is to the Bank of Canada or the Canada Deposit Insurance Corporation; or
- (b) the Superintendent has approved in writing the creation of the security interest.

Encumbered property

(2) An association shall notify the Superintendent in writing of any beneficial interest in real and personal property acquired by the association, other than by way of realization, that is subject to a security interest.

Exceptions

(3) Subsection (1) does not apply in respect of security interests created on

- (a) such classes of personal property as the Superintendent may, by order, designate; or
- (b) property having an aggregate value that is less than such amount as the Superintendent may, by order, specify.

1991, c. 48, s. 383; 2001, c. 9, s. 311.

Regulations and guidelines

383.1 The Governor in Council may make regulations and the Superintendent may make guidelines respecting the creation by an association of security interests in its property to secure obligations of the association and the acquisition by the association of beneficial interests in property that is subject to security interests.

Legislative History – This section 383.1 was added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such section previously existed in this Act.

2001, c. 9, s. 311.

Exception

383.2 Sections 383 and 383.1 do not apply in respect of a security interest created by an association to secure an obligation of the association to the Bank of Canada or the Canada Deposit Insurance Corporation.

Legislative History – This section 383.2 was added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such section previously existed in this Act.

2001, c. 9, s. 311.

Restriction on receivers

384. An association shall not grant to a person the right to appoint a receiver or a receiver and manager of the property or business of the association.

Restrictions on partnerships

385. (1) Except with the approval of the Superintendent, an association may not be a general partner in a limited partnership or a partner in a general partnership.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this sub-section read as follows:

Restriction on partnerships

385. (1) Except by order of the Superintendent, an association shall not be a general partner in a limited partnership or a partner in a general partnership.

Meaning of "general partnership"

(2) For the purposes of subsection (1), "general partnership" means any partnership other than a limited partnership.

DEPOSIT ACCEPTANCE

Deposit acceptance

385.01 (1) A retail association may, without the intervention of any other person,

(a) accept a deposit from any person whether or not the person is qualified by law to enter into contracts; and

(b) pay all or part of the principal of the deposit and all or part of the interest on that principal to or to the order of that person.

Exception

(2) Paragraph (1)(b) does not apply if, before payment, the money deposited in the association pursuant to paragraph (1)(a) is claimed by some other person

(a) in any action or proceeding to which the association is a party and in respect of which service of a writ or other process originating that action or proceeding has been made on the association; or

(b) in any other action or proceeding pursuant to which an injunction or order made by the court requiring the association not to make payment of that money or make payment thereof to some person other than the depositor has been served on the association.

If such a claim is made, the money so deposited may be paid to the depositor with the consent of the claimant or to the claimant with the consent of the depositor.

2001, c. 9, s. 313.

Execution of trust

385.02 (1) An association is not bound to see to the execution of any trust to which any deposit made under the authority of this Act is subject.

Payment when association has notice of trust

(2) Subsection (1) applies regardless of whether the trust is express or arises by the operation of law, and it applies even when the association has notice of the trust if it acts on the order of or under the authority of the holder or holders of the account into which the deposit is made.

2001, c. 9, s. 313.

UNCLAIMED BALANCES

Unclaimed balances

385.03 (1) Where

(a) a deposit has been made in Canada that is payable in Canada in Canadian currency and in respect of which no transaction has taken place and no statement of account has been requested or acknowledged by the creditor during a period of ten years

(i) in the case of a deposit made for a fixed period, from the day on which the fixed period terminated, and

(ii) in the case of any other deposit, from the day on which the last transaction took place or a statement of account was last requested or acknowledged by the creditor, whichever is later, or

(b) a cheque, draft or bill of exchange (including any such instrument drawn by one branch of a retail association on another branch of the association but not including such an instrument issued in payment of a dividend on the capital of an association) payable in Canada in Canadian currency has been issued, certified or accepted by an association in Canada and no payment has been made in respect of the instrument for a period of ten years after the date of issue, certification, acceptance or maturity, whichever is later,

the retail association shall pay to the Bank of Canada not later than December 31 in each year an amount equal to the principal amount of the deposit or instrument, plus interest, if any, calculated in accordance with the terms of the deposit or instrument, and payment accordingly discharges the association from all liability in respect of the deposit or instrument.

Particulars

(2) A retail association shall, on making a payment under subsection (1), provide the Bank of Canada, for each deposit or instrument in respect of which the payment is made, with all the particulars of the deposit or instrument listed in subsection 431.1(3) or 431.2(2), as the case may be, current as of the date the payment is made.

Payment to claimant

(3) Subject to section 22 of the *Bank of Canada Act*, if a payment has been made to the Bank of Canada under subsection (1) in respect of any deposit or instrument, and if payment is demanded or the instrument is presented at the Bank of Canada by the person who, but for that section, would be entitled to receive payment of the deposit or instrument, the Bank of Canada is liable to pay, at its agency in the province in which the deposit or instrument was payable, an amount equal to the amount so paid to it together with interest, if interest was payable under the terms of the deposit or instrument,

(a) for a period not exceeding ten years from the day on which the payment was received by the Bank of Canada until the date of payment to the claimant; and

(b) at the rate and computed in the manner that the Minister determines.

Enforcing liability

(4) The liability of the Bank of Canada under subsection (3) may be enforced by action against the Bank of Canada in the court in the province in which the deposit or instrument was payable.

Application of subsection (1)

(5) Subsection (1) applies only in respect of deposits made, and cheques, drafts and bills of exchange issued, certified or accepted, after the day that subsection comes into force.

2001, c. 9, s. 313.

Notice of unpaid amount

385.04 (1) A retail association shall mail to each person, insofar as is known to the association, to whom a deposit referred to in paragraph 385.03(1)(a) is payable, or to whom or at whose request an instrument referred to in paragraph 385.03(1)(b) was issued, certified or accepted, at the person's recorded address, a notice stating that the deposit or instrument remains unpaid.

When notice to be given

(2) A notice required by subsection (1) must be given during the month of January next following the end of the first two year period, and also during the month of January next following the end of the first five year period,

(a) in the case of a deposit made for a fixed period, after the fixed period has terminated;

(b) in the case of any other deposit in respect of which no transaction has taken place and no statement of account has been requested or acknowledged by the creditor; and

(c) in the case of a cheque, draft or bill of exchange, in respect of which the instrument has remained unpaid.

2001, c. 9, s. 313.

ACCOUNTS

Definitions

385.05 The following definitions apply in this section, and in sections 385.1 to 385.13, 385.27 and 385.28.

"member association" means a retail association that is a member institution as defined in section 2 of the *Canada Deposit Insurance Corporation Act*. «association membre»

"personal deposit account" means a deposit account in the name of one or more natural persons that is kept by that person or those persons for a purpose other than that of carrying on business. «compte de dépôt personnel»

"retail deposit account" means a personal deposit account that is opened with a deposit of less than \$150,000 or any greater amount that may be prescribed. «compte de dépôt de détail»

2001, c. 9, s. 313.

Account charges

385.06 A retail association shall not, directly or indirectly, charge or receive any sum for the keeping of an account unless the charge is made by express agreement between the association and a customer or by order of a court.

2001, c. 9, s. 313.

Disclosure on opening account

385.07 (1) A retail association shall not open or maintain an interest-bearing deposit account in Canada in the name of any natural person unless the association discloses, in accordance with the regulations, to the person who requests the association to open the account, the rate of interest applicable to the account and how the amount of interest to be paid is to be calculated.

Exception

(2) Subsection (1) does not apply in respect of an interest-bearing deposit account that is opened with a deposit in excess of \$150,000 or any greater amount that may be prescribed.

2001, c. 9, s. 313.

Disclosure in advertisements

385.08 No person shall authorize the publication, issue or appearance of any advertisement in Canada that indicates the rate of interest offered by a retail association on an interest-bearing

deposit or a debt obligation unless the advertisement discloses, in accordance with the regulations, how the amount of interest is to be calculated.

2001, c. 9, s. 313.

Disclosure regulations

385.09 The Governor in Council may make regulations respecting

- (a) the manner in which and the time at which disclosure is to be made by a retail association of
 - (i) interest rates applicable to debts of the association and deposits with the association, and
 - (ii) the manner in which the amount of interest paid is to be calculated;
- (b) the manner in which any charges for the keeping of an account are to be disclosed by a retail association to its customers and when the disclosure is to be made; and
- (c) any other matters or things that may be necessary to carry out the requirements of sections 385.06 to 385.08.

2001, c. 9, s. 313.

Disclosure required on opening a deposit account

385.1 (1) Subject to subsections (2) to (4), a retail association shall not open a deposit account in the name of a customer unless, at or before the time the account is opened, the retail association provides in writing to the individual who requests the opening of the account

- (a) a copy of the account agreement with the association;
- (b) information about all charges applicable to the account;
- (c) information about how the customer will be notified of any increase in those charges and of any new charges applicable to the account;
- (d) information about the association's procedures relating to complaints about the application of any charge applicable to the account; and
- (e) any other information that may be prescribed.

Exception

(2) If a deposit account is not a personal deposit account and the amount of a charge applicable to the account cannot be established at or before the time the account is opened, the retail association shall, as soon as is practicable after the amount is established, provide the customer in whose name the account is kept with a notice in writing of the amount of the charge.

Exception

(3) If a retail association has a deposit account in the name of a customer and the customer by telephone requests the opening of another deposit account in the name of the customer and the retail association has not complied with subsection (1) in respect of the opening of that other account, the retail association shall not open the account unless it provides the customer orally with any information prescribed at or before the time the account is opened.

Disclosure in writing

(4) If a retail association opens an account under subsection (3), it shall, not later than seven business days after the account is opened, provide to the customer in writing the agreement and information referred to in subsection (1).

Right to close account

(5) A customer may, within 14 business days after a deposit account is opened under subsection (3), close the account without charge and in such case is entitled to a refund of any charges related to the operation of the account, other than interest charges, incurred while the account was open.

Regulations

(5) For the purposes of subsection (4), the Governor in Council may make regulations prescribing circumstances in which, and the time when, the agreement and information will be deemed to have been provided to the customer.

2001, c. 9, s. 313.

Disclosure of charges

385.11 A retail association shall disclose, in the prescribed manner and at the prescribed time, to its customers and to the public, the charges applicable to deposit accounts with the association and the usual amount, if any, charged by the association for services normally provided by the association to its customers and to the public.

2001, c. 9, s. 313.

No increase or new charges without disclosure

385.12 (1) A retail association shall not increase any charge applicable to a personal deposit account with the association or introduce any new charge applicable to a personal deposit account with the association unless the association discloses the charge in the prescribed manner and at the prescribed time to the customer in whose name the account is kept.

No increase or new charges without disclosure

(2) With respect to such services in relation to deposit accounts, other than personal deposit accounts, as are prescribed, a retail association shall not increase any charge for any such service in relation to a deposit account with the association or introduce any new charge for any such service in relation to a deposit account with the association unless the association discloses the charge in the prescribed manner and at the prescribed time to the customer in whose name the account is kept.

2001, c. 9, s. 313.

Application

385.13 Sections 385.1 to 385.12 apply only in respect of charges applicable to deposit accounts with the retail association in Canada and services provided by it in Canada.

2001, c. 9, s. 313.

BORROWING COSTS**Definition of "cost of borrowing"**

385.14 For the purposes of this section and sections 385.15 to 385.24, "cost of borrowing" means, in respect of a loan made by a retail association,

- (a) the interest or discount applicable to the loan;
- (b) any amount charged in connection with the loan that is payable by the borrower to the association; and
- (c) any charge prescribed to be included in the cost of borrowing.

For these purposes, however, "cost of borrowing" does not include any charge prescribed to be excluded from the cost of borrowing.

2001, c. 9, s. 313.

Rebate of borrowing costs

385.15 (1) If a retail association makes a loan in respect of which the disclosure requirements of section 385.16 apply and the loan is not secured by a mortgage on real property and is required to be repaid either on a fixed future date or by instalments, the association shall, if there is a prepayment of the loan, rebate to the borrower a portion of the charges included in the cost of borrowing in respect of the loan.

Exception

(2) The charges to be rebated do not include the interest or discount applicable to the loan.

Regulations

(3) The Governor in Council may make regulations governing the rebate of charges under subsection (1). The rebate shall be made in accordance with those regulations.

2001, c. 9, s. 313.

Disclosing borrowing costs

385.16 (1) A retail association shall not make a loan to a natural person that is repayable in Canada unless the cost of borrowing, as calculated and expressed in accordance with section 385.17, and other prescribed information have in the prescribed manner and at the prescribed time been disclosed by the association to the borrower.

Non-application

(2) Subsection (1) does not apply in respect of a loan that is of a prescribed class of loans.

2001, c. 9, s. 313.

Calculating borrowing costs

385.17 The cost of borrowing shall be calculated, in the prescribed manner, on the basis that all obligations of the borrower are duly fulfilled and shall be expressed as a rate per annum and, in prescribed circumstances, as an amount in dollars and cents.

2001, c. 9, s. 313.

Additional disclosure

385.18 (1) If a retail association makes a loan in respect of which the disclosure requirements of section 385.16 are applicable and the loan is required to be repaid either on a fixed future date or by instalments, the association shall disclose to the borrower, in accordance with the regulations,

(a) whether the borrower has the right to repay the amount borrowed before the maturity of the loan and, if applicable,

(i) any terms and conditions relating to that right, including the particulars of the circumstances in which the borrower may exercise that right, and

(ii) whether, in the event that the borrower exercises the right, any portion of the cost of borrowing is to be rebated, the manner in which any such rebate is to be calculated or, if a charge or penalty will be imposed on the borrower, the manner in which the charge or penalty is to be calculated;

(b) in the event that an amount borrowed is not repaid at maturity or, if applicable, an instalment is not paid on the day the instalment is due to be paid, particulars of the charges or penalties to be paid by the borrower because of the failure to repay or pay in accordance with the contract governing the loan;

(c) at such time and in such manner as may be prescribed, any changes respecting the cost of borrowing or the loan agreement as may be prescribed;

(d) particulars of any other rights and obligations of the borrower; and

(e) any other prescribed information, at such time and in such form and manner as may be prescribed.

Disclosure in credit card applications

(2) A retail association shall, in accordance with the regulations, at such time and in such manner as may be prescribed, provide prescribed information in any application forms or related documents that it prepares for the issuance of credit, payment or charge cards and provide prescribed information to any person applying to it for a credit, payment or charge card.

Disclosure re credit cards

(3) If a retail association issues or has issued a credit, payment or charge card to a natural person, the association shall, in addition to disclosing the costs of borrowing in respect of any loan obtained through the use of the card, disclose to the person, in accordance with the regulations,

(a) any charges or penalties described in paragraph (1)(b);

(b) particulars of the person's rights and obligations;

(c) any charges for which the person becomes responsible by accepting or using the card;

(d) at such time and in such manner as may be prescribed, any changes respecting the cost of borrowing or the loan agreement may be prescribed; and

(e) any other prescribed information, at such time and in such form and manner as may be prescribed.

Additional disclosure re other loans

(4) If a retail association enters into or has entered into an arrangement, including a line of credit, for the making of a loan in respect of which the disclosure requirements of section 385.16 apply and the loan is not a loan in respect of which subsection (1) or (3) applies, the association shall, in addition to disclosing the costs of borrowing, disclose to the person to whom the loan is made, in accordance with the regulations,

(a) any charges or penalties described in paragraph (1)(b);

(b) particulars of the person's rights and obligations;

(c) any charges for which the person is responsible under the arrangement;

(d) at such time and in such manner as may be prescribed, any changes respecting the cost of borrowing under the arrangement as may be prescribed; and

(e) any other prescribed information, at such time and in such form and manner as may be prescribed.

2001, c. 9, s. 313.

Renewal statement

385.19 If a retail association makes a loan in respect of which the disclosure requirements of section 385.16 apply and the loan is secured by a mortgage on real property, the association shall disclose to the borrower, at such time and in such manner as may be prescribed, such information as may be prescribed respecting the renewal of the loan.

2001, c. 9, s. 313.

Disclosure in advertising

385.2 No person shall authorize the publication, issue or appearance of any advertisement in Canada relating to arrangements referred to in subsection 385.18(4), loans, credit cards, payment cards or charge cards, offered to natural persons by a retail association, and purporting to disclose prescribed information about the cost of borrowing or about any other matter unless the advertisement contains such information as may be required by the regulations, in such form and manner as may be prescribed.

2001, c. 9, s. 313.

Regulations re borrowing costs**385.21** The Governor in Council may make regulations

- (a) respecting the manner in which, and the time at which, a retail association is to disclose to a borrower
 - (i) the cost of borrowing,
 - (ii) any rebate of the cost of borrowing, and
 - (iii) any other information relating to a loan, arrangement, credit card, payment card or charge card referred to in section 385.18;
- (b) respecting the contents of any statement disclosing the cost of borrowing and other information required to be disclosed by a retail association to a borrower;
- (c) respecting the manner of calculating the cost of borrowing;
- (d) respecting the circumstances under which the cost of borrowing is to be expressed as an amount in dollars and cents;
- (e) specifying any class of loans that are not to be subject to section 385.15, subsection 385.16(1) or 385.18(1) or (4) of section 385.19 or 385.2 or the regulations or any specified provisions of the regulations;
- (f) respecting the manner in which and the time at which any rights, obligations, charges or penalties referred to in sections 385.15 to 385.2 are to be disclosed;
- (g) prohibiting the imposition of any charge or penalty referred to in section 385.18 or providing that the charge or penalty, if imposed, will not exceed a prescribed amount;
- (h) respecting the nature or amount of any charge or penalty referred to in paragraph 385.18(1)(b), (3)(a) or (4)(a) and the costs of the retail association that may be included or excluded in the determination of the charge or penalty;
- (i) respecting the method of calculating the amount of rebate of the cost of borrowing, or the portion of the cost of borrowing referred to in subparagraph 385.18(1)(a)(ii);
- (j) respecting advertisements made by a retail association regarding arrangements referred to in subsection 385.18(4), loans, credit cards, payment cards or charge cards;
- (k) respecting the renewal of loans; and
- (l) respecting such other matters or things as are necessary to carry out the purposes of sections 385.15 to 385.20.

2001, c. 9, s. 313.

COMPLAINTS

Procedures for dealing with complaints

385.22 (1) A retail association shall

- (a) establish procedures for dealing with complaints made by persons having requested or received products or services in Canada from the retail association;
- (b) designate an officer or employee of the association to be responsible for implementing those procedures; and
- (c) designate one or more officers or employees of the association to receive and deal with those complaints.

Procedures to be filed with Commissioner

(2) A retail association shall file with the Commissioner a copy of its procedures established under paragraph (1)(a).

2001, c. 9, s. 313.

Obligation to be member

385.23 In any province, if there is no law of the province that makes a retail association subject to the jurisdiction of an organization that deals with complaints made by persons having requested or received products or services in the province from a retail association, the retail association shall be a member of an organization that is not controlled by it and that deals with those complaints that have not been resolved to the satisfaction of the persons under procedures established by retail associations under paragraph 385.22(1)(a).

2001, c. 9, s. 313.

Information on contacting Agency

385.24 (1) A retail association shall, in the prescribed manner, provide a person requesting or receiving a product or service from it with prescribed information on how to contact the Agency if the person has a complaint about a deposit account, an arrangement referred to in subsection 385.18(4), a payment, credit or charge card, the disclosure of or manner of calculating the cost of borrowing in respect of a loan or about any other obligation of the retail association under a consumer provision.

Report

(2) The Commissioner shall prepare a report, to be included in the report referred to in section 34 of the Financial Consumer Agency of Canada Act, respecting

- (a) procedures for dealing with complaints established by retail associations pursuant to paragraph 385.22(1)(a); and
- (b) the number and nature of complaints that have been brought to the attention of the Agency by persons who have requested or received a product or service from a retail association.

2001, c. 9, s. 313.

MISCELLANEOUS

Prepayment protected

385.25 (1) A retail association shall not make a loan to a natural person that is repayable in Canada, the terms of which prohibit prepayment of the money advanced or any instalment thereon before its due date.

Minimum balance

(2) Except by express agreement between the retail association and the borrower, the making in Canada of a loan or advance by a retail association to a borrower shall not be subject to a condition that the borrower maintain a minimum credit balance with the association.

Non-application of subsection (1)

(3) Subsection (1) does not apply in respect of a loan that is

- (a) secured by a mortgage on real property; or
- (b) made for business purposes and the principal amount of which is more than \$100,000 or such other amount as may be prescribed.

Government cheques

(4) A retail association shall not make a charge

- (a) for cashing a cheque or other instrument drawn on the Receiver General or on the Receiver General's account in the Bank of Canada, in an association or in any other deposit-taking Canadian financial institution incorporated by or under an Act of Parliament;

(b) for cashing any other instrument issued as authority for the payment of money out of the Consolidated Revenue Fund; or

(c) in respect of any cheque or other instrument that is

(i) drawn in favour of the Receiver General, the Government of Canada or any department thereof or any public officer acting in the capacity of a public officer, and

(ii) tendered for deposit to the credit of the Receiver General.

Deposits of Government of Canada

(5) Nothing in subsection (4) precludes any arrangement between the Government of Canada and a retail association concerning

(a) compensation for services performed by the association for the Government of Canada; or

(b) interest to be paid on any or all deposits of the Government of Canada with the association.

2001, c. 9, s. 313.

Regulations re customer information

385.26 The Governor in Council may make regulations

(a) requiring a retail association to establish procedures regarding the collection, retention, use and disclosure of any information about its customers or any class of customers;

(b) requiring a retail association to establish procedures for dealing with complaints made by a customer about the collection, retention, use or disclosure of information about the customer;

(c) respecting the disclosure by a retail association of information relating to the procedures referred to in paragraphs (a) and (b);

(d) requiring a retail association to designate the officers and employees of the association who are responsible for

(i) implementing the procedures referred to in paragraph (b), and

(ii) receiving and dealing with complaints made by a customer of the association about the collection, retention, use or disclosure of information about the customer;

(e) requiring a retail association to report information relating to

(i) complaints made by customers of the association about the collection, retention, use or disclosure of information, and

(ii) the actions taken by the association to deal with the complaints; and

(f) defining "information", "collection" and "retention" for the purposes of paragraphs (a) to (e) and the regulations made under those paragraphs.

2001, c. 9, s. 313.

Notice of branch closure

385.27 (1) Subject to regulations made under subsection (5), a member association with a branch in Canada at which it, through a natural person, opens retail deposit accounts and disburses cash to customers, shall give notice in accordance with those regulations before closing that branch or having it cease to carry on either of those activities.

Pre-closure meeting

(2) After notice is given but before the branch is closed or ceases to carry on the activities, the Commissioner may, in prescribed situations, require the member association to convene and hold a meeting between representatives of the member association, representatives of the Agency and interested parties in the vicinity of the branch in order to exchange views about the closing or cessation of activities.

Meeting details

(3) The Commissioner may establish rules for convening a meeting referred to in subsection (2) and for its conduct.

Not statutory instruments

(4) The Statutory Instruments Act does not apply to rules established under subsection (3).

Regulations

(5) The Governor in Council may make regulations prescribing

(a) the manner and time, which may vary according to circumstances specified in the regulation, in which notice shall be given under subsection (1), to whom it shall be given and the information to be included;

(b) circumstances in which a member association is not required to give notice under subsection (1), circumstances in which the Commissioner may exempt a member association from the requirement to give notice under that subsection, and circumstances in

which the Commissioner may vary the manner and time in which notice is required to be given under any regulation made under paragraph (a); and

(c) circumstances in which a meeting may be convened under subsection (2).

2001, c. 9, s. 313.

Regulations re disclosure

385.28 The Governor in Council may, subject to any other provisions of this Act relating to the disclosure of information, make regulations respecting the disclosure of information by retail associations or any prescribed class of retail associations, including regulations respecting

(a) the information that must be disclosed, including information relating to

(i) any product or service or prescribed class of products or services offered by them,

(ii) any of their policies, procedures or practices relating to the offer by them of any product or service or prescribed class of products or services,

(iii) anything they are required to do or to refrain from doing under a consumer provision, and

(iv) any other matter that may affect their dealings with customers or the public;

(b) the manner, place and time in which and the persons to whom information is to be disclosed; and

(c) the content and form of any advertisement, by retail associations or any prescribed class of retail associations, relating to any matter referred to in paragraph (a).

2001, c. 9, s. 313.

Bank Act security

385.29 A bank that is continued as an association under this Act that, immediately before that continuance, held any outstanding security pursuant to section 426 or 427 of the *Bank Act* may continue to hold the security for the life of the loan to which the security relates and all the provisions of the *Bank Act* relating to the security and its enforcement continue to apply to the association as though it were a bank.

2001, c. 9, s. 313.

Transmission in case of death

385.3 (1) If the transmission of a debt owing by a retail association by reason of a deposit, of property held by a retail association as security or for safe-keeping or of rights with respect to a safety deposit box and property deposited therein takes place because of the death of a person, the delivery to the association of

(a) an affidavit or declaration in writing in a form satisfactory to the association signed by or on behalf of a person claiming by virtue of the transmission stating the nature and effect of the transmission, and

(b) one of the following documents, namely,

(i) when the claim is based on a will or other testamentary instrument or on a grant of probate thereof or on such a grant and letters testamentary or other document of like import or on a grant of letters of administration or other document of like import, purporting to be issued by any court of authority in Canada or elsewhere, an authenticated copy or certificate thereof under the seal of the court or authority without proof of the authenticity of the seal or other proof, or

(ii) when the claim is based on a notarial will, an authenticated copy thereof,

is sufficient justification and authority for giving effect to the transmission in accordance with the claim.

Transmission in case of death

(2) Nothing in subsection (1) shall be construed to prevent a retail association from refusing to give effect to a transmission until there has been delivered to the association such documentary or other evidence of or in connection with the transmission as it may deem requisite.

2001, c. 9, s. 313.

Branch of account with respect to deposits

385.31 (1) For the purposes of this Act, the branch of account with respect to a deposit account is

(a) the branch the address or name of which appears on the specimen signature card or other signing authority signed by a depositor with respect to the deposit account or that is designated by an agreement between the retail association and the depositor at the time of opening of the deposit account; or

(b) if no branch has been identified or agreed on as provided in paragraph (a), the branch that is designated as the branch of account with respect thereto by the retail association by notice in writing to the depositor.

Where debt payable

(2) The amount of any debt owing by a retail association by reason of a deposit in a deposit account in the association is payable to the person entitled thereto only at the branch of account and the person entitled thereto is not entitled to demand payment or to be paid at any other branch of the association.

Where debt payable

(3) Despite subsection (2), a retail association may permit, either occasionally or as a regular practice, the person to whom the association is indebted by reason of a deposit in a deposit account in the association to withdraw moneys owing by reason of that deposit at a branch of the association other than the branch of account or to draw cheques or other orders for the payment of such moneys at a branch other than the branch of account.

Situs of indebtedness

(4) The indebtedness of a retail association by reason of a deposit in a deposit account in the association shall be deemed for all purposes to be situated at the place where the branch of account is situated.

2001, c. 9, s. 313.

Effect of writ, etc.

385.32 (1) Subject to subsections (3) and (4), the following documents are binding on property belonging to a person and in the possession of an association, or on money owing to a person by reason of a deposit account in an association, only if the document or a notice of it is served at the branch of the association that has possession of the property or that is the branch of account in respect of the deposit account, as the case may be:

- (a) a writ or process originating a legal proceeding or issued in or pursuant to a legal proceeding;
- (b) an order or injunction made by a court;
- (c) an instrument purporting to assign, perfect or otherwise dispose of an interest in the property or the deposit account; or
- (d) a notice of a support order or support provision.

Notices

(2) Any notification sent to an association with respect to a customer of the association, other than a document referred to in subsection (1) or (3), constitutes notice to the association and fixes the

association with knowledge of its contents only if sent to and received at the branch of the association that is the branch of account of an account held in the name of that customer.

Exception

(3) Subsections (1) and (2) do not apply in respect of an enforcement notice in respect of a support order or support provision if

(a) the enforcement notice, accompanied by a written statement containing the information required by the regulations, is served at an office of an association designated in accordance with the regulations in respect of a province; and

(b) the order or provision can be enforced under the laws of that province.

Time of application

(4) Subsection (3) does not apply in respect of an enforcement notice in respect of a support order or support provision until the second business day following the day of service referred to in that subsection.

Regulations

(5) The Governor in Council may make regulations

(a) respecting the designation by an association, for the purpose of subsection (3), of a place in any province for the service of enforcement notices in respect of support orders and support provisions;

(b) prescribing the manner in which an association shall publicize the locations of designated offices of the association; and

(c) respecting the information that must accompany notices of support orders and support provisions.

Definitions

(6) The following definitions apply in this section.

"designated office" means a place designated in accordance with the regulations made for the purpose of subsection (3). «bureau désigné»

"enforcement notice", in respect of a support order or support provision, means a garnishee summons or other instrument issued under the laws of a province for the enforcement of the support order or support provision. «avis d'exécution»

"support order" means an order or judgment or interim order or judgment for family financial support. «ordonnance alimentaire»

"support provision" means a provision of an agreement relating to the payment of maintenance or family financial support. «disposition alimentaire»

Legislative History – Sections 385.01 through 385.32, inclusive were added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such sections previously existed in this Act.

2001, c. 9, s. 313.

PART X**INVESTMENTS****DEFINITIONS AND APPLICATION****Definitions**

386. (1) The following definitions in this subsection apply in this Part.

"commercial loan" « prêt commercial » means

(a) any loan made or acquired by an association, other than

(i) a loan to a natural person in an amount of two hundred and fifty thousand dollars or less;

(ii) a loan to the Government of Canada, the government of a province, a municipality, or to any agency thereof, or to the government of a foreign country or any political subdivision thereof, or any agency thereof, or to a prescribed international agency,

(iii) a loan that is guaranteed by, or fully secured by securities issued by, a government, a municipality or an agency referred to in subparagraph (ii),

(iv) a loan that is secured by a mortgage on real property, where

(A) the mortgage is on residential property and the amount of the loan, together with the amount then outstanding of any mortgage having an equal or prior claim against the property, does not exceed 75% of the value of the property at the time the loan is made or acquired, or

(B) the mortgage is on real property other than residential property and

(I) the amount of the loan, together with the amount then outstanding of any mortgage having an equal or prior claim against the property, does not exceed 75% of the value of the property at the time the loan is made or acquired, and

(II) at the time the loan is made or acquired the property provides an annual income sufficient to pay all annual expenses related to the property, including the payments owing under the mortgage and the mortgages having an equal or prior claim against the property,

(v) a loan that is secured by a mortgage on real property, where

(A) the mortgage is on residential property and

(I) the amount of the loan, together with the amount then outstanding of any mortgage having an equal or prior claim against the property, exceeds 75% of the value of the property at the time the loan is made or acquired, and

(II) repayment of the amount of the loan that exceeds 75% of the value of the property is guaranteed or insured by a government agency or private insurer approved by the Superintendent, or

(B) the mortgage is on real property other than residential property and

(I) the amount of the loan, together with the amount then outstanding of any mortgage having an equal or prior claim against the property, exceeds 75% of the value of the property at the time the loan is made or acquired,

(II) repayment of the amount of the loan that exceeds 75% of the value of the property is guaranteed or insured by a government agency or private insurer approved by the Superintendent, and

(III) at the time that loan is made or acquired, the property provides an annual income sufficient to pay all annual expenses related to the property, including the payments owing under the mortgage and the mortgages having an equal or prior claim against the property,

(vi) a loan that

(A) consists of a deposit made by the association with a financial institution,

(B) is fully secured by a deposit with any financial institution, including the association,

(C) is fully secured by debt obligations guaranteed by any financial institution other than the association, or

(D) is fully secured by a guarantee of a financial institution other than the association,

(vii) a loan to another association under prescribed terms and conditions, if any are prescribed, or

(viii) a loan to any prescribed entity under prescribed terms and conditions, if any are prescribed;

(b) an investment in debt obligations, other than

(i) debt obligations that are

(A) guaranteed by any financial institution other than the association,

(B) fully secured by deposits with any financial institution, including the association, or

(C) fully secured by debt obligations that are guaranteed by any financial institution other than the association,

(ii) debt obligations issued by the Government of Canada, the government of a province, a municipality, or by any agency thereof, or by the government of a foreign country or any political subdivision thereof, or by any agency thereof, or by a prescribed international agency,

(iii) debt obligations that are guaranteed by, or fully secured by securities issued by, a government, a municipality or an agency referred to in subparagraph (ii),

(iv) debt obligations that are widely distributed, as that expression is defined by the regulations,

(v) debt obligations that are issued by another association under prescribed terms and conditions, if any are prescribed,

(vi) debt obligations of a of an entity controlled by the association, or

(vii) debt obligations of a prescribed entity that are issued under prescribed terms and conditions, if any are prescribed; and

(c) an investment in shares of a body corporate or ownership interests in an unincorporated entity, other than

(i) shares or ownership interests that are widely distributed, as that expression is defined by the regulations,

(ii) shares or ownership interests of an entity controlled by the association, or

(iii) participating shares.

"factoring entity" means a factoring entity as defined in the regulations. «entité s'occupant d'affacturage »

"finance entity" means a finance entity as defined in the regulations. «entité s'occupant de financement »

"financial leasing entity" means an entity

(a) whose activities are limited to the financial leasing of personal property and such related activities as are prescribed and whose activities conform to such restrictions and limitations thereon as are prescribed; and

(b) that, in conducting the activities referred to in paragraph (a) in Canada, does not

(i) direct its customers or potential customers to particular dealers in the leased property or the property to be leased,

(ii) enter into lease agreements with persons in respect of any motor vehicle having a gross vehicle weight, as that expression is defined by the regulations, of less than twenty-one tonnes, or

(iii) enter into lease agreements with natural persons in respect of personal household property, as that expression is defined by the regulations. « entité s'occupant de crédit-bail »

"loan" includes an acceptance, endorsement or other guarantee, a deposit, a financial lease, a conditional sales contract, a repurchase agreement and any other similar arrangement for obtaining funds or credit but does not include investments in securities. « prêt » ou « emprunt »

"motor vehicle" means a motorized vehicle designed to be used primarily on a public highway for the transportation of persons or things, but does not include

(a) a fire engine, bus, ambulance or utility truck; or

(b) any other special purpose motorized vehicle that contains significant special features that make it suitable for a specific purpose. « véhicule á moteur »

"mutual fund distribution entity" means an entity whose principal activity is acting as a selling agent of units, shares or other interests in a mutual fund and acting as a collecting agent in the collection of payments for any such interests if

(a) the proceeds of the sales of any such interests, less any sales commissions and service fees, are paid to the mutual fund; and

(b) the existence of a sales commission and service fee in respect of the sale of any such interest is disclosed to the purchaser of the interest before the purchase of the interest.
 courtier de fonds mutuels »

"mutual fund entity" means an entity

(a) whose activities are limited to the investing of the funds of the entity so as to provide investment diversification and professional investment management to the holders of its securities; and

(b) whose securities entitle their holders to receive, on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in a part of its net assets, including a separate fund or trust account of the entity. « entité s'occupant de fonds mutuels »

"participating share" means a share of a body corporate that carries the right to participate in the earnings of the body corporate to an unlimited degree and to participate in a distribution of the remaining property of the body corporate on dissolution. « action participante »

"permitted entity" means an entity in which an association is permitted to acquire a substantial investment under section 390. « entité admissible »

"prescribed subsidiary" means a subsidiary that is one of a prescribed class of subsidiaries.
 « filiale réglementaire »

"real property brokerage entity" means an entity that is primarily engaged in

(a) acting as an agent for vendors, purchasers, mortgagors, mortgagees, lessors or lessees of real property; and

(b) the provision of consulting or appraisal services in respect of real property. « courtier immobilier »

"specialized financing entity" means a specialized financing entity as defined in the regulations.
 « entité s'occupant de financement spécial »

Members of an association's group

(2) For the purpose of this Part, a member of an association's group is any of the following:

(a) an entity referred to in paragraph 390(1)(a) that controls the association;

(b) a subsidiary of the association or of an entity referred to in paragraph 390(1)(a) that controls the association;

(c) an entity in which the association, or an entity referred to in paragraph 390(1)(a) that controls the association, has a substantial investment; or

(d) a prescribed entity in relation to the association.

Non-application of Part

(3) This Part does not apply in respect of

(a) the holding of a security interest in real property, unless the security interest is prescribed under paragraph 403 (a) to be an interest in real property; or

(b) the holding of a security interest in securities of an entity.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Definitions

386. (1) In this Part,

"commercial loan" « prêt commercial »

"commercial loan" means

(a) any loan made or acquired by an association, other than

(i) a loan to a natural person in an amount of two hundred and fifty thousand dollars or less,

(ii) a loan to the Government of Canada, the government of a province, a municipality, or to any agency thereof, or to the government of a foreign country or any political subdivision thereof, or any agency thereof, or to a prescribed international agency,

(iii) a loan that is guaranteed by, or fully secured by securities issued by, a government, a municipality or an agency referred to in subparagraph (ii),

(iv) a loan that is secured by a mortgage on real property, where

(A) the mortgage is on residential property and the amount of the loan, together with the amount then outstanding of any mortgage having an equal or prior claim against the property, does not exceed 75% of the value of the property at the time the loan is made or acquired, or

(B) the mortgage is on real property other than residential property and

(I) the amount of the loan, together with the amount then outstanding of any mortgage having an equal or prior claim against the property, does not exceed 75% of the value of the property at the time the loan is made or acquired, and

(II) at the time the loan is made or acquired the property provides an annual income sufficient to pay all annual expenses related to the property, including the payments owing under the mortgage and the mortgages having an equal or prior claim against the property,

(v) a loan that is secured by a mortgage on real property, where

(A) the mortgage is on residential property and

(I) the amount of the loan, together with the amount then outstanding of any mortgage having an equal or prior claim against the property, exceeds 75% of the value of the property at the time the loan is made or acquired, and

(II) repayment of the amount of the loan that exceeds 75% of the value of the property is guaranteed or insured by a government agency or private insurer approved by the Superintendent, or

(B) the mortgage is on real property other than residential property and

(I) the amount of the loan, together with the amount then outstanding of any mortgage having an equal or prior claim against the property, exceeds 75% of the value of the property at the time the loan is made or acquired,

(II) repayment of the amount of the loan that exceeds 75% of the value of the property is guaranteed or insured by a government agency or private insurer approved by the Superintendent, and

(III) at the time the loan is made or acquired, the property provides an annual income sufficient to pay all annual expenses related to the property, including the payments owing under the mortgage and the mortgages having an equal or prior claim against the property,

(vi) a loan that

(A) consists of a deposit made by the association with a financial institution,

(B) is fully secured by a deposit with any financial institution, including the association,

(C) is fully secured by debt obligations guaranteed by any financial institution other than the association, or

(D) is fully secured by a guarantee of a financial institution other than the association, or

(vii) a loan to another association,

(b) an investment in debt obligations, other than

(i) debt obligations that are

(A) guaranteed by any financial institution other than the association,

(B) fully secured by deposits with any financial institution, including the association, or

(C) fully secured by debt obligations that are guaranteed by any financial institution other than the association,

(ii) debt obligations issued by the Government of Canada, the government of a province, a municipality, or by any agency thereof, or by the government of a foreign country or any political subdivision thereof, or by any agency thereof, or by a prescribed international agency,

(iii) debt obligations that are guaranteed by, or fully secured by securities issued by, a government, a municipality or an agency referred to in subparagraph (ii),

(iv) debt obligations that are widely distributed, as that expression is defined by the regulations,

(v) debt obligations that are issued by another association, or

(vi) debt obligations of an entity controlled by the association, and

(c) an investment in shares of a body corporate or ownership interests in an unincorporated entity, other than

(i) shares or ownership interests that are widely distributed, as that expression is defined by the regulations,

(ii) shares or ownership interests of an entity controlled by the association, or

(iii) participating shares;

"factoring corporation" « société d'affacturage »

"factoring corporation" means a body corporate the activities of which are limited to acting as a factor in respect of accounts receivable, which activities include the raising of money for the purpose of acting as a factor and the lending of money while acting as such a factor;

"financial leasing corporation" « société de crédit-bail »

"financial leasing corporation" means a body corporate

(a) the activities of which are limited to the financial leasing of personal property and such related activities as are prescribed and whose activities conform to such restrictions and limitations thereon as are prescribed, and

(b) that, in conducting the activities referred to in paragraph (a) in Canada, does not

(i) direct its customers or potential customers to particular dealers in the leased property or the property to be leased,

(ii) enter into lease agreements with persons in respect of any motor vehicle having a gross vehicle weight, as that expression is defined by the regulations, of less than twenty-one tonnes, or

(iii) enter into lease agreements with natural persons in respect of personal household property, as that expression is defined by the regulations;

"information processing services" « services de traitement des données »

"information processing services" means the collection, manipulation and transmission of information that is primarily financial or economic in nature or that relates to the business of an entity referred to in any of paragraphs 390(1)(a) to (n) or subsection 390(2) or any other information that the Minister may, by order, specify;

"information services corporation" « société d'information »

"information services corporation" means a body corporate that, except as may be prescribed, is primarily engaged in

(a) providing information processing services,

(b) providing advisory or other services in the design, development or implementation of information management systems, or

(c) designing, developing or marketing computer software, and the activities of which may include, as an ancillary activity, the design, development, manufacture or sale of special purpose computer hardware;

"investment counselling and portfolio management corporation" « société de conseil en placement et de gestion de portefeuille »

"investment counselling and portfolio management corporation" means a body corporate the principal activity of which consists of

(a) the offering of advice, or advising, on investments, or

(b) the investment or control, in any way that involves an element of discretionary judgment by the body corporate, of money, property, deposits or securities that

(i) are not owned by the body corporate, or

(ii) are not moneys deposited with the body corporate in the ordinary course of business;

"loan" « prêt » ou « emprunt »

"loan" includes an acceptance, endorsement or other guarantee, a deposit, a financial lease, a conditional sales contract, a repurchase agreement and any other similar arrangement for obtaining funds or credit but does not include investments in securities;

"motor vehicle" « véhicule à moteur »

"motor vehicle" means a motorized vehicle designed to be used primarily on a public highway for the transportation of persons or things, but does not include

(a) a fire-engine, bus, ambulance or utility truck, or

(b) any other special purpose motorized vehicle that contains significant special features that make it suitable for a specific purpose;

"mutual fund corporation" « société de fonds mutuel »

"mutual fund corporation" means a body corporate whose activities are limited to the investing of the funds of the body corporate, and includes a body corporate that is an issuer of securities that entitle the holder to receive, on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets, including a separate fund or trust account, of the issuer of the securities;

"mutual fund distribution corporation" « société de courtage de fonds mutuels »

"mutual fund distribution corporation" means a body corporate whose principal activity is acting as a selling agent of units, shares or other interests in a mutual fund and acting as a collecting agent in the collection of payments for any such interests if

(a) the proceeds of the sales of any such interests, less any sales commissions and service fees, are paid to the fund, and

(b) the existence of a sales commission and service fee in respect of the sale of any such interest is disclosed to the purchaser of the interest prior to the purchase thereof;

"participating share" « action participante »

"participating share" means a share of a body corporate that carries the right to participate in the earnings of the body corporate to an unlimited degree and to participate in a distribution of the remaining property of the body corporate on dissolution;

"prescribed subsidiary" « filiale réglementaire »

"prescribed subsidiary" means a subsidiary that is one of a prescribed class of subsidiaries;

"real property brokerage corporation" « société de courtage immobilier »

"real property brokerage corporation" means a body corporate that is primarily engaged in

(a) acting as an agent for vendors, purchasers, mortgagors, mortgagees, lessors or lessees of real property, and

(b) the provision of consulting or appraisal services in respect of real property;

"real property corporation" « société immobilière »

"real property corporation" means a body corporate that is primarily engaged in holding, managing or otherwise dealing with real property or shares of a body corporate or ownership interests in an unincorporated entity that is also primarily engaged in holding or otherwise dealing with real property, including another real property corporation or a real property holding vehicle;

"real property holding vehicle" « société d'opérations immobilières »

"real property holding vehicle" means a limited partnership or a trust that is primarily engaged in holding, managing or otherwise dealing with real property or shares of a body corporate or ownership interests in an unincorporated entity that is also primarily engaged in holding or otherwise dealing with real property, including a real property corporation or another real property holding vehicle;

"service corporation" « société de services »

"service corporation", in relation to an association, means a body corporate that engages exclusively in the provision of services to any or all of the following, namely,

(a) an association,

(b) an entity in which an association has a substantial investment,

(c) a financial institution that is affiliated with an association,

(d) any entity in which a financial institution referred to in paragraph (c) has a substantial investment,

(e) any other Canadian financial institution incorporated or formed by or under an Act of Parliament that has a substantial investment in the body corporate,

(f) an entity in which any Canadian financial institution referred to in paragraph (e) has a substantial investment,

(g) any financial institution that is affiliated with any Canadian financial institution referred to in paragraph (e),

(h) any entity in which a financial institution referred to in paragraph (g) has a substantial investment,

(i) a cooperative credit society, and

(j) a financial institution in which a cooperative credit society has a substantial investment, so long as the body corporate is providing services to the association or any of the entities referred to in paragraphs (b) to (d);

"special purpose computer hardware" « matériel informatique spécial »

"special purpose computer hardware" means computer equipment that is integral to the provision of

(a) financial services, or

(b) information services related to the business of financial institutions;

"specialized financing corporation" « société de financement spécial »

"specialized financing corporation" means a body corporate that is primarily engaged, under prescribed terms and conditions, in providing specialized business management, in making investments or in providing financing or advisory services.

Holding shares

(2) For the purposes of this Part, a "factoring corporation", a "financial leasing corporation", an "information services corporation", an "investment counselling and portfolio management corporation", a "mutual fund corporation", a "mutual fund distribution corporation", a "real property brokerage corporation", a "service corporation" and a "specialized financing corporation" includes any such body corporate that is also engaged in

(a) the holding of shares of another "factoring corporation", "financial leasing corporation", "information services corporation", "investment counselling and portfolio management corporation", "mutual fund corporation", "mutual fund distribution corporation", "real property brokerage corporation", "service corporation" and "specialized financing corporation", respectively; or

(b) the holding of shares of a financial holding corporation referred to in paragraph 390(1)(l).

Non-application of Part

(3) This Part does not apply in respect of

(a) the holding of a security interest in real property, unless the security interest is prescribed pursuant to paragraph 402(a) to be an interest in real property; or

(b) the holding of a security interest in securities of an entity.

1991, c. 48, s. 386; 1993, c. 34, s. 55(F); 1997, c. 15, s. 140; 2001, c. 9, s. 314.

GENERAL CONSTRAINTS ON INVESTMENTS

Investment standards

387. The directors of an association shall establish and the association shall adhere to investment and lending policies, standards and procedures that a reasonable and prudent person would apply in respect of a portfolio of investments and loans to avoid undue risk of loss and obtain a reasonable return.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Investment standards

387. The directors of an association shall establish and the association shall adhere to investment and lending policies, standards and procedures that a reasonable and prudent person would apply in respect of a portfolio of investments and loans to avoid undue risk of loss and obtain a reasonable return.

1991, c. 48, s. 387; 2001, c. 9, s. 314.

Restrictions on substantial investments

388. (1) Subject to subsections (2) to (4), no association shall acquire control of, or hold, acquire or increase a substantial investment in, any entity other than a permitted entity.

Exception: indirect investments

(2) An association may, subject to Part XII, acquire control of, or acquire or increase a substantial investment in, an entity other than a permitted entity by way of

(a) an acquisition of control of an entity referred to in any paragraphs 390(1)(a) to (h), a specialized financing entity or a prescribed entity that controls or has a substantial investment in the entity; or

(b) an acquisition of shares or ownership interests in the entity by

(i) an entity referred to in any of paragraphs 390(1)(a) to (h), a specialized financing entity or a prescribed entity that is controlled by the association, or

(ii) an entity controlled by an entity referred to in any of paragraphs 390(1)(a) to (h), a specialized financing entity or a prescribed entity that is controlled by the association.

Exception: temporary investments, realizations and loan workouts

(3) An association may, subject to Part XII, acquire control of, or acquire or increase a substantial investment in, an entity by way of

(a) a temporary investment permitted by section 393;

(b) an acquisition of shares of a body corporate or of ownership interests in an unincorporated entity permitted by section 394; or

(c) a realization of security permitted by section 395.

Exception: specialized financing regulations

(4) A retail association may, subject to Part XII, acquire control of, or hold, acquire or increase a substantial investment in, an entity other than a permitted entity if it does so in accordance with regulations made under paragraph 389(d) concerning specialized financing.

Exception: uncontrolled event

(5) An association is deemed not to contravene subsection (1) if the association acquires control of, or acquires or increases a substantial investment in, an entity solely as the result of an event not within the control of the association.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Restriction on substantial investments

388. (1) Subject to subsections (2) and (3), no association shall acquire or increase a substantial investment in any entity, other than an entity referred to in section 390 or 391.

Exception: indirect investments

(2) An association may acquire or increase a substantial investment in an entity that is not an entity referred to in section 390 or 391 by way of

- (a) an acquisition of control of a financial institution or specialized financing corporation that has a substantial investment in the entity; or
- (b) an acquisition of shares or ownership interests in the entity by
 - (i) a financial institution or specialized financing corporation that is controlled by the association, or
 - (ii) an entity controlled by a financial institution or specialized financing corporation that is controlled by the association.

Exception: temporary investments, realizations and loan workouts

(3) An association may acquire or increase a substantial investment in an entity by way of

- (a) a temporary investment permitted by section 393;
- (b) an acquisition of shares of a body corporate or of ownership interests in an unincorporated entity permitted by section 394; or
- (c) a realization of security permitted by section 395.

Exception: uncontrolled event

(4) An association shall be deemed not to contravene subsection (1) where the association acquires a substantial investment solely as the result of an event not within the control of the association.

1991, c. 48, s. 388; 1997, c. 15, s. 141; 2001, c. 9, s. 314.

Regulation re limits

389. The Governor in Council may make regulations

- (a) respecting the determination of the amount or value of loans, investments and interests for the purposes of this Part;
- (b) respecting the loans and investments, and the maximum aggregate amount of all loans and investments, that may be made or acquired by an association and its prescribed subsidiaries to or in a person and any persons connected with that person;

(c) specifying the classes of persons who are connected with any person for the purposes of paragraph (b); and

(d) concerning specialized financing for the purposes of subsection 388(4).

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Regulations re limits

389. The Governor in Council may make regulations

(a) respecting the determination of the amount or value of loans, investments and interests for the purposes of this Part;

(b) respecting the loans and investments, and the maximum aggregate amount of all loans and investments, that may be made or acquired by an association and its prescribed subsidiaries to or in a person and any persons connected with that person; and

(c) specifying the classes of persons who are connected with any person for the purposes of paragraph (b).

1991, c. 48, s. 389; 2001, c. 9, s. 314.

SUBSIDIARIES AND EQUITY INVESTMENTS

Permitted investments

390. (1) Subject to subsections (4) to (6) and Part XII, an association may acquire control of, or acquire or increase a substantial investment in,

(a) an association;

(b) a bank or a bank holding company as that expression is defined in section 2 of the *Bank Act*;

(c) a body corporate to which the *Trust and Loan Companies Act* applies;

(d) an insurance company, a fraternal benefit society or an insurance holding company incorporated or formed by or under the *Insurance Companies Act*;

(e) a trust, loan or insurance corporation incorporated or formed by or under an Act of the legislature of a province;

(f) a cooperative credit society incorporated or formed, and regulated, by or under an Act of the legislature of a province;

(g) an entity that is incorporated or formed by or under an Act of Parliament or of the legislature of a province and that is primarily engaged in dealing in securities; or

(h) an entity that is incorporated or formed, and regulated, otherwise than by or under an Act of Parliament or of the legislature of a province and that is primarily engaged outside

Canada in a business that, if carried on in Canada, would be the business of banking, the business of a cooperative credit society, the business of insurance, the business of providing fiduciary services or the business of dealing in securities.

Permitted investments

(2) Subject to subsections (3) to (6) and Part XII, an association may acquire control of, or acquire or increase a substantial investment in, an entity, other than an entity referred to in any of paragraphs (1)(a) to (h), whose business is limited to one or more of the following:

(a) engaging in any financial service activity or in any other activity that a retail association is permitted to engage in under subsection 375(2) or section 376 or 377;

(b) acquiring or holding shares of, or ownership interests in, entities in which an association is permitted under this Part to hold or acquire;

(c) engaging in the provision of any services exclusively to any or all of the following, so long as the entity is providing those services to the association or any member of the association's group:

(i) the association,

(ii) any member of the association's group,

(iii) any entity that is primarily engaged in the business of providing financial services,

(iv) any permitted entity in which an entity referred to in subparagraph (iii) has a substantial investment, or

(v) any prescribed person, if it is doing so under prescribed terms and conditions, if any are prescribed;

(d) engaging in any activity that a retail association is permitted to engage in, other than an activity referred to in paragraph (a) or (e), that relates to

(i) the promotion, sale, delivery or distribution of a financial product or financial service that is provided by the association or any member of the association's group, or

(ii) if a significant portion of the business of the entity involves an activity referred to in subparagraph (i), the promotion, sale, delivery or distribution of a financial product or financial service that is provided by any other entity that is primarily engaged in the business of providing financial services;

(e) engaging in the activities referred to in the definition "mutual fund entity", "mutual fund distribution entity" or "real property brokerage entity" in subsection 386(1); and

(f) engaging in prescribed activities, under prescribed terms and conditions, if any are prescribed.

Restriction

(3) An association may not acquire control of, or acquire or increase a substantial investment in, an entity whose business includes any activity referred to in any of paragraphs (2)(a) to (e) if the entity engages in the business of accepting deposit liabilities or if the activities of the entity include

(a) activities that an association is not permitted to engage in under any of sections 378, 382 and 382.1;

(b) dealing in securities, except as may be permitted under paragraph (2)(e) or as may be permitted either to an association under paragraph 376(1)(f) or to a retail association under subparagraph 376(1)(i)(ii);

(c) activities that an association is not permitted to engage in under section 381 if the entity engages in the activities of a finance entity or of any other entity as may be prescribed;

(d) acquiring control of or acquiring or holding a substantial investment in another entity unless

(i) in the case of an entity that is controlled by the association, the association itself would be permitted under this Part to acquire a substantial investment in the other entity, or

(ii) in the case of an entity that is not controlled by the association, the association itself would be permitted to acquire a substantial investment in the other entity under subsection (1) or (2) or 388(2), paragraph 388(3)(b) or (c) or subsection 388(4); or

(e) any prescribed activity.

Control

(4) Subject to subsection (8) and the regulations, an association may not acquire control of, or acquire or increase a substantial investment in,

(a) an entity referred to in any of paragraphs (1)(a) to (h), unless

(i) the association controls, within the meaning of paragraph 3(1)(e), the entity, or would thereby acquire control, within the meaning of that paragraph, of the entity, or

- (ii) the association is permitted by regulations made under paragraph 396(a) to acquire or increase the substantial investment;
- (b) an entity whose business includes one or more of the activities referred to in paragraph (2)(a) and that engages, as part of its business, in any financial intermediary activity that exposes the entity to material market or credit risk, including a finance entity, a factoring entity and a financial leasing entity, unless
- (i) the association controls, within the meaning of paragraph 3(1)(e), the entity, or would thereby acquire control, within the meaning of that paragraph, of the entity, or
 - (ii) the association is permitted by regulations made under paragraph 396(a) to acquire or increase the substantial investment; or
- (c) an entity whose business includes an activity referred to in paragraph (2)(b), including a specialized financial entity, unless
- (i) the association controls, within the meaning of paragraph 3(1)(e), the entity, or would thereby acquire control, within the meaning of that paragraph, of the entity,
 - (ii) the association is permitted by regulations made under paragraph 396(a) to acquire or increase the substantial investment, or
 - (iii) subject to prescribed terms and conditions, if any are prescribed, the activities of the entity do not include the acquisition or holding of control of, or the acquisition or holding of shares or other ownership interests in, an entity referred to in paragraph (a) or (b) or an entity that is not a permitted entity.

Minister's approval

- (5) Subject to the regulations, an association may not, without the prior written approval of the Minister,
- (a) acquire control of an entity referred to in any of paragraphs (1)(e) to (g) from a person who is not a member of the association's group;
 - (b) acquire control of an entity referred to in paragraph (1)(h) or (4)(b), other than an entity whose activities are limited to the activities of one or more of the following entities, if the control is acquired from an entity referred to in any of paragraphs (1)(a) to (d) that is not a member of the association's group:
 - (i) a factoring entity, or
 - (ii) a financial leasing entity;

(c) acquire control of, or acquire or increase a substantial investment in, an entity whose business includes one or more of the activities referred to in paragraph (2)(d);

(d) acquire control of, or acquire or increase a substantial investment in, an entity that engages in an activity described in paragraph 376(1)(g) or (h); or

(e) acquire control of, or acquire or increase a substantial investment in, an entity engaging in an activity prescribed for the purposes of paragraph (2)(f).

Superintendent's approval

(6) Subject to subsection (7) and the regulations, an association may not acquire control of, or acquire or increase a substantial investment in, an entity referred to in any of paragraphs (1)(e) to (g) and (4)(b) and (c), unless the association obtains the approval of the Superintendent.

Exception

(7) Subsection (6) does not apply in respect of a particular transaction if

(a) the association is acquiring control of an entity whose business includes an activity referred to in paragraph (2)(b), other than a specialized financing entity;

(b) the association is acquiring control of an entity whose activities are limited to the activities of a factoring entity or a financial leasing entity; or

(c) the Minister has approved the transaction under subsection (5) or is deemed to have approved it under subsection 391(1).

Control not required

(8) An association need not control an entity referred to in paragraph (1)(h), or an entity that is incorporated or formed otherwise than by or under an Act of Parliament or of the legislature of a province, if the laws or customary business practices of the country under the laws of which the entity was incorporated or formed do not permit the association to control the entity.

Prohibition on giving up control in fact

(9) An association that, under subsection (4), controls an entity may not, without the prior written approval of the Minister, give up control, within the meaning of paragraph 3(1)(e), of the entity while it continues to control the entity.

Giving up control

(10) An association that, under subsection (4), controls an entity may, with prior written approval of the Superintendent, give up control of the entity while keeping a substantial investment in the entity if

- (a) the association is permitted to do so by regulations made under paragraph 396(c); or
- (b) the entity meets the conditions referred to in subparagraph 4(c)(iii).

Subsections do not apply

(11) If an association controls, within the meaning of paragraph 3(1)(a), (b), (c) or (d), an entity, subsections (5) and (6) do not apply in respect of any subsequent increases by the association of its substantial investment in the entity so long as the association continues to control the entity.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Permitted substantial investments

390. (1) Subject to subsection (3) and Part XII, an association may acquire or increase a substantial investment in a body corporate if the body corporate is any of the following, namely,

- (a) a financial institution;
- (b) a factoring corporation;
- (c) a financial leasing corporation;
- (d) an information services corporation;
- (e) an investment counselling and portfolio management corporation;
- (f) a mutual fund corporation;
- (g) a mutual fund distribution corporation;
- (h) a real property brokerage corporation;
- (i) a real property corporation;
- (j) a service corporation;
- (k) a specialized financing corporation;
- (l) a financial holding corporation that does not have a substantial investment in any entity, other than in
 - (i) a body corporate referred to in this subsection,
 - (ii) an entity referred to in subsection (1.1),
 - (iii) a real property holding vehicle referred to in subsection (2), or
 - (iv) any other entity in which a financial institution or specialized financing corporation controlled by the financial holding corporation has a substantial investment;
- (m) a body corporate
 - (i) whose activities are ancillary to the business of the association or of a financial institution that is its subsidiary, and
 - (ii) that does not provide services to any person other than the association and the persons referred to in subsection 375(1); or
- (n) a body corporate that engages in two or more of the businesses or activities engaged in or carried on by bodies corporate referred to in any of paragraphs (b) to (m).

Other permitted substantial investments

(1.1) Subject to Part XII and any terms and conditions that may be imposed by the Minister, an association may, with the approval of the Minister, acquire or increase a substantial investment in an entity that is not a body corporate if the activities of the entity are the same as or substantially similar to those of a body corporate referred to in any of paragraphs (1)(b) to (n).

Exception

(1.2) Subsection (1.1) does not apply to the acquisition or increase of a substantial investment in a real property holding vehicle.

Real property holding vehicles

(2) Subject to Part XII, an association may acquire or increase a substantial investment in a real property holding vehicle.

Where control or approval required

(3) An association may not acquire or increase a substantial investment in a body corporate pursuant to subsection (1) unless

(a) in the case of a body corporate that is a financial institution, other than an association, or that carries on one or more of the businesses or activities engaged in or carried on by a body corporate referred to in paragraphs (1)(b), (c), (k) and (l),

(i) the association controls the body corporate or would thereby acquire control of the body corporate, or

(ii) the association is permitted by regulations made pursuant to paragraph 396(a) to acquire or increase the substantial investment;

(a.1) in the case of a body corporate referred to in paragraph (1)(n) that carries on one or more of the businesses or activities engaged in or carried on by bodies corporate referred to in any of paragraphs (1)(b), (c), (k) and (l),

(i) the association controls the body corporate or would thereby acquire control of the body corporate, or

(ii) the association is permitted by regulations made under paragraph 396(a) to acquire or increase the substantial investment;

(b) the association obtains the prior written approval of the Minister on the recommendation of the Superintendent in the case of

(i) a body corporate that is a financial institution, other than an association, or that carries on one or more of the businesses or activities engaged in or carried on by bodies corporate referred to in any of paragraphs (1)(d), (k) and (m), or

(ii) a body corporate that carries on one or more of the businesses or activities engaged in or carried on by bodies corporate referred to in paragraph (1)(b), (c) or (l) where the association is permitted by regulations made pursuant to paragraph 396(a) to acquire or increase the substantial investment;

(c) in the case of a body corporate that carries on one or more of the businesses or activities engaged in or carried on by a body corporate referred to in paragraph (1)(b), (c) or (k), the business and activities of the body corporate are limited to providing services to

(i) members of the association,

(ii) entities in which any association has a substantial investment pursuant to this section,

(iii) cooperative credit societies,

(iv) cooperative corporations,

(v) members of cooperative credit societies, or

(vi) members of cooperative corporations; and

(d) the association obtains the prior written approval of the Minister on the recommendation of the Superintendent in the case of

(i) a body corporate referred to in paragraph (1)(n) that carries on one or more of the businesses or activities engaged in or carried on by bodies corporate referred to in paragraph (1)(d), (k) or (m), or

(ii) a body corporate referred to in paragraph (1)(n) that carries on one or more of the businesses or activities engaged in or carried on by bodies corporate referred to in paragraph (1)(b), (c) or (l), if the association is permitted by regulations made under paragraph 396(a) to acquire or increase the substantial investment.

Control not required

(4) Notwithstanding paragraphs (3)(a) and (a.1), an association need not control a foreign institution or other body corporate incorporated elsewhere than in Canada in which it has a substantial investment, and that it would otherwise be required by one of those paragraphs to control, if the laws or customary business practices of the country under the laws of which the foreign institution or body corporate was incorporated do not permit the association to control the foreign institution or body corporate.

Approval for indirect investments

(5) For the purposes of paragraphs (3)(b) and (d), where an association obtains the prior written approval of the Minister for the association to acquire or increase a substantial investment in a financial institution or a specialized financing corporation and through that acquisition or increase the association indirectly acquires or increases a substantial investment in another body corporate referred to in any of paragraphs (1)(d), (k) and (m), and that indirect acquisition or increase is disclosed in writing to the Minister before that approval is obtained, the association is deemed to have obtained the prior written approval of the Minister for that indirect acquisition or increase.

Acquisition of legal control without control in fact

(6) An association shall not, without the prior written approval of the Minister, acquire control of a body corporate, as authorized by subparagraph (3)(a)(i) or (a.1)(i), unless it also acquires control of the body corporate within the meaning of paragraph 3(1)(e).

Giving up of control in fact

(7) An association that acquires control of a body corporate, as authorized by paragraph (3)(a)(i) or (a.1)(i), shall not, without the prior written approval of the Minister, give up control of the body corporate within the meaning of paragraph 3(1)(e) while continuing to control the body corporate.

Giving up of control

(8) An association that controls a body corporate referred to in paragraph (3)(a) or (a.1) may give up control of the body corporate and keep a substantial investment in the body corporate if

(a) the association is permitted to do so by regulations made under paragraph 396(b); and

(b) the association has the prior written approval of the Superintendent.

1991, c. 48, s. 390; 1997, c. 15, s. 142; 2001, c. 9, s. 314.

Approval for indirect investments

391. (1) If an association obtains the approval of the Minister under subsection 390(5) to acquire control of, or to acquire or increase a substantial investment in, an entity and, through that acquisition or increase, the association indirectly acquires control of, or acquires or increases a substantial investment in, another entity that would require the approval of the Minister under subsection 390(5) or the Superintendent under subsection 390(6) and that indirect acquisition or increase is disclosed to the Minister in writing before the approval is obtained, the association is deemed to have obtained the approval of the Minister or the Superintendent for that indirect acquisition or increase.

Approval for indirect investments

(2) If an association obtains the approval of the Superintendent under subsection 390(6) to acquire control of, or to acquire or increase a substantial investment in, an entity and, through that acquisition or increase the association indirectly acquires control of, or acquires or increases a

substantial investment in, another entity that would require the approval of the Superintendent under that subsection and that indirect acquisition or increase is disclosed to the Superintendent in writing before the approval is obtained, the association is deemed to have obtained the approval of the Superintendent for that indirect acquisition or increase.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Similar activities

391. (1) On application in writing by an association, the Minister may, by order and on such terms and conditions as are specified in the order, deem a body corporate named in the order to be, for all purposes of this Act, a body corporate referred to in any of paragraphs 390(1)(b) to (n) if the activities of the body corporate are substantially similar to those of a body corporate referred to in any of those paragraphs.

Revocation of order

(2) Where, in the opinion of the Minister, an association has failed to comply with any term or condition set out in an order made under subsection (1) or the activities of a body corporate in respect of which an order is made under that subsection are no longer substantially similar to those of a body corporate referred to in any of paragraphs 390(1)(b) to (n), the Minister may revoke the order and, where the Minister does so, the association is deemed to have acquired, on the day the order is revoked, a temporary investment in the body corporate in respect of which paragraph 393(1)(b) applies.

1991, c. 48, s. 391; 2001, c. 9, s. 314.

Undertakings

392. (1) If an association controls a permitted entity, other than an entity referred to in any of paragraphs 390(1)(a) to (d), the association shall provide the Superintendent with any undertakings that the Superintendent may require regarding

- (a) the activities of the entity; and
- (b) access to information about the entity.

Undertakings

(2) If an association acquires control of an entity referred to in any of paragraphs 390(1)(e) to (g), the association shall provide the Superintendent with any undertakings concerning the entity that the Superintendent may require.

Agreements with other jurisdictions

(3) The Superintendent may enter into an agreement with the appropriate official or public body responsible for the supervision of any entity referred to in any of paragraphs 390(1)(e) to (g) in each province or in any other jurisdiction concerning any matters referred to in paragraphs (1)(a) and (b) or any other matter the Superintendent considers appropriate.

Access to records

(4) Despite any other provision of this Part, an association shall not control a permitted entity, other than an entity referred to in any of paragraphs 390(1)(a) to (d), unless, in the course of the

acquisition of control or within a reasonable time after the control is acquired, the association obtains from the permitted entity an undertaking to provide the Superintendent with reasonable access to the records of the permitted entity.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Undertakings

392. (1) Where an association controls a financial institution incorporated by or under an Act of Parliament or a body corporate referred to in any of paragraphs 390(1)(b) to (n), the association shall provide the Superintendent with such undertakings as the Superintendent may require regarding

- (a) the activities of the financial institution or body corporate; and
- (b) access to information about the financial institution or body corporate.

Idem

(2) Where an association acquires control of a financial institution, other than a financial institution incorporated by or under an Act of Parliament, the association shall provide the Superintendent with such undertakings concerning the financial institution as the Superintendent may require.

Agreements with other jurisdictions

(3) The Superintendent may enter into an agreement with the appropriate official or public body responsible for the supervision of financial institutions in each province or in any other jurisdiction concerning any matters referred to in paragraphs (1)(a) and (b) or any other matter the Superintendent deems appropriate.

Access to records

(4) Notwithstanding any other provision of this Part, an association shall not control a body corporate referred to in any of paragraphs 390(1)(a) to (n) unless

- (a) where control is acquired after the coming into force of this Part, in the course of acquiring control or within a reasonable time thereafter, and
- (b) in any other case, within a reasonable time after the coming into force of this Part, the association obtains from the body corporate an undertaking to provide the Superintendent with reasonable access to the records of the body corporate.

EXCEPTIONS AND EXCLUSIONS

Temporary investments in entity

393. (1) Subject to subsection (4), an association may, by way of a temporary investment, acquire control of, or acquire or increase a substantial investment in, an entity but, within two years, or any other period that may be specified or approved by the Superintendent, after acquiring control or after acquiring or increasing the substantial investment, as the case may be, it shall do all things necessary to ensure that it no longer controls the entity or has a substantial investment in the entity.

Transitional

(2) Despite subsection (1), if an association that was in existence immediately before June 1, 1992 had an investment in an entity on September 27, 1990 that is a substantial investment within the meaning of section 12 and the association subsequently increases that substantial investment by way of a temporary investment, the association shall, within two years, or any other period that is specified or approved by the Superintendent, after increasing the substantial investment, do all

things necessary to ensure that its substantial investment in the entity is no greater than it was on September 27, 1990.

Extension

(3) The Superintendent may, in the case of any particular association that makes an application under this subsection, extend the period of two years, or the other period specified or approved by the Superintendent, that is referred to in subsection (1) or (2) for any further period or periods, and on any terms and conditions, that the Superintendent considers necessary.

Temporary investment

(4) If an association, by way of temporary investment, acquires control of, or acquires or increases a substantial investment in, an entity for which the approval of the Minister under subsection 390(5) is required, the association must, within 90 days after acquiring control or after acquiring or increasing the substantial investment,

(a) apply to the Minister for approval to retain control of the entity or to continue to hold the substantial investment in the entity for a period specified by the Minister or for an indeterminate period on any terms and conditions that the Minister considers appropriate; or

(b) do all things necessary to ensure that, on the expiry of the 90 days, it no longer controls the entity or does not have a substantial investment in the entity.

Indeterminate extension

(5) If an association, by way of temporary investment, acquires control of, or acquires or increases a substantial investment in, an entity for which the approval of the Superintendent under subsection 390(6) is required, the Superintendent may, in the case of any particular association that makes an application under this subsection, permit the association to retain control of the entity or to continue to hold the substantial investment in the entity for an indeterminate period, on any terms and conditions that the Superintendent considers necessary.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Temporary investment in body corporate

393. (1) An association may, by way of a temporary investment, acquire or increase a substantial investment in a body corporate, subject to the following conditions:

(a) after the acquisition or increase,

(i) the voting rights attached to the aggregate of any voting shares of the body corporate beneficially owned by the association and by any bodies corporate referred to in any of paragraphs 390(1)(a) to (n) that it controls shall not exceed 50 per cent of the voting rights attached to all of the outstanding voting shares of the body corporate, or

(ii) in the case of a cooperative corporation, the association and the bodies corporate referred to in subparagraph (i) must not have the right to exercise more than 50 per cent of the votes that may be cast at an annual meeting of the cooperative corporation; and

(b) within two years, or such other period as may be specified by the Superintendent, after acquiring the substantial investment in the body corporate, the association shall do all things necessary to ensure that the association no longer has a substantial investment in the body corporate.

Temporary investments in unincorporated entity

(2) An association may, by way of a temporary investment, acquire or increase a substantial investment in an unincorporated entity, but within two years, or such other period as may be specified by the Superintendent, after acquiring the substantial investment the association shall do all things necessary to ensure that the association no longer has a substantial investment in the unincorporated entity.

Transitional

(3) Notwithstanding subsections (1) and (2), where on September 27, 1990 an association had an investment in an entity that is a substantial investment within the meaning of section 12 and the association subsequently increases that substantial investment by way of a temporary investment, the association shall, within two years, or such other period as may be specified by the Superintendent, after increasing the substantial investment, do all things necessary to ensure that its substantial investment in the entity is no greater than it was on September 27, 1990.

Extension

(4) The Superintendent may, in the case of any particular association, extend the period of two years, or the other period specified by the Superintendent, referred to in subsections (1) to (3) for such further period or periods, and on such terms and conditions, as the Superintendent considers necessary.

Exception

(5) The Superintendent may, on application therefor, by order and on such terms and conditions as may be specified in the order, permit an association to acquire or increase, notwithstanding paragraph (1)(a) and by way of a temporary investment, a substantial investment in a body corporate, notwithstanding that, after the acquisition or increase,

(a) the voting rights attached to the aggregate of any voting shares of the body corporate beneficially owned by the association and by any bodies corporate referred to in any of paragraphs 390(1)(a) to (n) that it controls exceed 50 per cent of the voting rights attached to all of the outstanding voting shares of the body corporate; or

(b) in the case of a cooperative corporation, the association and the bodies corporate referred to in paragraph (a) have the right to exercise more than 50 per cent of the votes that may be cast at an annual meeting of the cooperative corporation.

1991, c. 48, s. 393; 2001, c. 9, s. 314.

Loan workouts

394. (1) Despite anything in this Part, if an association or any of its subsidiaries has made a loan to an entity and, under the terms of the agreement between the association, or any of its subsidiaries, and the entity with respect to the loan and any other documents governing the terms of the loan, a default has occurred, the association may acquire

(a) if the entity is a body corporate, all or any of the shares of the body corporate;

(b) if the entity is an unincorporated entity, all or any of the ownership interests in the entity;

(c) all or any of the shares or all or any of the ownership interests in any entity that is an affiliate of the entity; or

(d) all or any of the shares of a body corporate that is primarily engaged in holding shares of, ownership interests in or assets acquired from the entity or any of its affiliates.

Obligation of association

(2) If an association acquires shares or ownership interests in an entity under subsection (1), the association shall, within five years after acquiring them, do all things necessary to ensure that the association does not control the entity or have a substantial investment in the entity.

Transitional

(3) Despite subsection (1), if an association that was in existence immediately before June 1, 1992 had an investment in an entity on September 27, 1990 that is a substantial investment within the meaning of section 12 and the association later increases that substantial investment by way of an investment made under subsection (1), the association shall, within five years after increasing the substantial investment, do all things necessary to ensure that its substantial investment in the entity is no greater than it was on September 27, 1990.

Extension

(4) The Superintendent may, in the case of any particular association that makes an application under this subsection, extend the period of five years referred to in subsection (2) or (3) for any further period or periods, and on any terms and conditions, that the Superintendent considers necessary.

Exception – entities controlled by foreign governments

(5) Despite anything in this Part, if an association has made a loan to, or holds a debt obligation of, the government of a foreign country or an entity controlled by the government of a foreign country and, under the terms of the agreement between the association and that government or the entity, as the case may be, and any other documents governing the terms of the loan or debt obligation, a default has occurred, the association may acquire all or any of the shares of, or ownership interests in, that entity or in any other entity designated by that government, if the acquisition is part of a debt restructuring program of that government.

Time for holding shares

(6) If an association acquires any shares or ownership interests under subsection (5), the association may, on any terms and conditions that the Superintendent considers appropriate, hold those shares or ownership interests for an indeterminate period or for any other period that the Superintendent may specify.

Exception

(7) If, under subsection (1), an association acquires control of, or acquires or increases a substantial investment in, an entity that it would otherwise be permitted to acquire or increase under section 390, the association may retain control of the entity or continue to hold the substantial investment for an indeterminate period, if the approval in writing of the Minister is obtained before the end of

the period referred to in subsection (2) or (3), including any extension of it granted under subsection (4).

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Loan workouts

394. (1) Notwithstanding anything in this Part, where an association has made a loan to an entity and, pursuant to the terms of the agreement between the association and the entity with respect to the loan and any other documents governing the terms of the loan, a default has occurred, the association may acquire

- (a) where the entity is a body corporate, all or any of the shares of the body corporate,
- (b) where the entity is an unincorporated entity, all or any of the ownership interests in the entity,
- (c) all or any of the shares or all or any of the ownership interests in any entity that is an affiliate of the entity, or
- (d) all or any of the shares of a body corporate that is primarily engaged in holding shares of, ownership interests in or assets acquired from the entity or any of its affiliates, but the association shall, within five years after acquiring the shares or ownership interests, do all things necessary to ensure that the association does not have a substantial investment in any entity referred to in paragraphs (a) to (d).

Transitional

(2) Notwithstanding subsection (1), where on September 27, 1990 an association had an investment in an entity that is a substantial investment within the meaning of section 12 and the association later increases that substantial investment by way of an investment made under subsection (1), the association shall, within five years after increasing the substantial investment, do all things necessary to ensure that its substantial investment in the entity is no greater than it was on September 27, 1990.

Extension

(3) The Superintendent may, in the case of any particular association, extend the period of five years referred to in subsections (1) and (2) for any further period or periods, and on any terms and conditions, that the Superintendent considers necessary.

Exception

(4) Where under subsection (1) an association acquires a substantial investment in an entity that it would otherwise be permitted to acquire or increase under section 390, the association may continue to hold the substantial investment if the approval in writing of the Minister is obtained before the end of the period referred to in subsection (1) or (2), including any extension of it granted under subsection (3).

1991, c. 48, s. 394; 1997, c. 15, s. 143; 2001, c. 9, s. 314.

Realizations

395. (1) Despite anything in this Act, an association may acquire

- (a) an investment in a body corporate;
- (b) an interest in an unincorporated entity, or
- (c) an interest in real property,

if the investment or interest is acquired through the realization of a security interest held by the association or any of its subsidiaries.

Disposition

(2) Subject to subsection 81(2), if an association acquires control of, or a substantial investment in, an entity by way of the realization of a security interest held by the association or any of its subsidiaries, the association shall, within five years after the day on which the substantial investment is acquired, do all things necessary, or cause its subsidiary to do all things necessary, as the case may be, to ensure that the association no longer controls the entity or has a substantial investment in the entity.

Transitional

(3) Despite subsection (2), if an association that was in existence immediately before June 1, 1992 had an investment in an entity on September 27, 1990 that is a substantial investment within the meaning of section 12 and the association later increases that substantial investment by way of a realization of a security interest under subsection (1), the association shall, within five years after increasing the substantial investment, do all things necessary to ensure that its substantial investment in the entity is no greater than it was on September 27, 1990.

Extension

(4) The Superintendent may, in the case of any particular association that makes an application under this subsection, extend the period of five years referred to in subsection (2) or (3) for any further period or periods, and on any terms and conditions, that the Superintendent considers necessary.

Exception

(5) If, under subsection (1), an association acquires control of, or acquires or increases a substantial investment in, an entity that it would otherwise be permitted to acquire or increase under section 390, the association may retain control of the entity or continue to hold the substantial investment for an indeterminate period, if the approval in writing of the Minister is obtained before the end of the period referred to in subsection (2) or (3), including any extension of it granted under subsection (4).

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Realizations

395. (1) Notwithstanding anything in this Act, an association may acquire

- (a) an investment in a body corporate,
- (b) an interest in an unincorporated entity, or
- (c) an interest in real property, if the investment or interest is acquired through the realization of a security interest held by the association.

Disposition

(2) Subject to subsection 81(2), where an association acquires a substantial investment in an entity by way of the realization of a security interest held by the association, the association shall, within five years after the day on which the substantial

investment is acquired, do all things necessary to ensure that the association no longer has a substantial investment in the entity.

Transitional

(3) Notwithstanding subsection (2), where on September 27, 1990 an association had an investment in an entity that is a substantial investment within the meaning of section 12 and the association later increases that substantial investment by way of the realization of a security interest under subsection (1), the association shall, within five years after increasing the substantial investment, do all things necessary to ensure that its substantial investment in the entity is no greater than it was on September 27, 1990.

Extension

(4) The Superintendent may, in the case of any particular association, extend the period of five years referred to in subsections (2) and (3) for any further period or periods, and on any terms and conditions, that the Superintendent considers necessary.

Exception

(5) Where, pursuant to the realization of a security interest held by an association, the association acquires or increases a substantial investment in an entity that it would otherwise be permitted to acquire or increase pursuant to section 390, the association may continue to hold the substantial investment if the approval in writing of the Minister is obtained prior to the expiration of the period referred to in subsection (2) or (3), including any extension thereof granted pursuant to subsection (4).

1991, c. 48, s. 395; 1997, c. 15, s. 144; 2001, c. 9, s. 314.

Regulations restricting ownership

396. The Governor in Council may make regulations

(a) for the purposes of subsection 390(4), permitting the acquisition of control or the acquisition or increase of substantial investments, or prescribing the circumstances under which that subsection does not apply or the association or other entities in respect of which that subsection does not apply, including prescribing associations or other entities on the basis of the activities they engage in;

(b) for the purposes of subsection 390(5) or (6), permitting the acquisition of control or the acquisition or increase of substantial investments, or prescribing the circumstances under which either of those subsections does not apply or the associations or other entities in respect of which either of those subsections does not apply, including prescribing associations or other entities on the basis of the activities they engage in;

(c) for the purposes of subsection 390(10), permitting an association to give up control of an entity; and

(d) restricting the ownership by an association of shares of a body corporate or of ownership interests in an unincorporated entity under sections 390 to 395 and imposing terms and conditions applicable to associations that own such shares or interests.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Regulations restricting ownership

396. The Governor in Council may make regulations

(a) for the purposes of subsection 390(3), permitting the acquisition or increase of substantial investments;

(b) for the purposes of subsection 390(8), permitting an association to give up control of a body corporate; and

(c) restricting the ownership by an association of shares of a body corporate or of interests in a real property holding vehicle pursuant to sections 390 to 395 and imposing terms and conditions applicable to associations that own such shares or interests.

1991, c. 48, s. 396; 1997, c. 15, s. 145; 2001, c. 9, s. 314.

PORTFOLIO LIMITS

Exclusion from portfolio limits

397. (1) Subject to subsection (3), the value of all loans, investments and interests acquired by an association and any of its prescribed subsidiaries under section 394 or as a result of a realization of a security interest is not to be included in calculating the value of loans, investments and interests of the association and its prescribed subsidiaries under sections 398 to 402

(a) for a period of twelve years following the day on which the interest was acquired, in the case of an interest in real property; and

(b) for a period of five years after the day on which the loan, investment or interest was acquired, in the case of a loan, investment or interest, other than an interest in real property.

Extension

(2) The Superintendent may, in the case of any particular association, extend any period referred to in subsection (1) for any further period or periods, and on any terms and conditions, that the Superintendent considers necessary.

Exception

(3) Subsection (1) does not apply in respect of an investment or interest described in that subsection if the investment or interest is defined by a regulation made under section 403 to be an interest in real property and

(a) the association or the subsidiary acquired the investment or interest as a result of the realization of a security interest securing a loan that was defined by a regulation made under section 403 to be an interest in real property; or

(b) the association or the subsidiary acquired the investment or interest under section 394 as a result of a default referred to in that section in respect of a loan that was defined by a regulation made under section 403 to be an interest in real property.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Exclusion from portfolio limits

397. (1) Subject to subsection (3), the value of all loans, investments and interests acquired by an association and any of its prescribed subsidiaries as a result of a realization of a security interest or pursuant to section 394 shall not be included in

calculating the value of loans, investments and interests of the association and its prescribed subsidiaries under sections 398 to 403

(a) for a period of twelve years following the day on which the interest was acquired, in the case of an interest in real property; and

(b) for a period of five years after the day on which the loan, investment or interest was acquired, in the case of a loan, investment or interest, other than an interest in real property.

Extension

(2) The Superintendent may, in the case of any particular association, extend any period referred to in subsection (1) for such further period or periods, and on such terms and conditions, as the Superintendent considers necessary.

Exception

(3) Subsection (1) does not apply to an investment or interest described in that subsection if the investment or interest is defined by a regulation made under section 402 to be an interest in real property and

(a) the association or the subsidiary acquired the investment or interest as a result of the realization of a security interest securing a loan that was defined by a regulation made under section 402 to be an interest in real property; or

(b) the association or the subsidiary acquired the investment or interest under section 394 as a result of a default referred to in that section in respect of a loan that was defined by a regulation made under section 402 to be an interest in real property.

1991, c. 48, s. 397; 1997, c. 15, s. 146; 2001, c. 9, s. 314.

COMMERCIAL LOANS

Lending limit: regulatory capital of \$25 million or less

398. An association with twenty-five million dollars or less of regulatory capital shall not, and shall not permit its prescribed subsidiaries to,

(a) make or acquire a commercial loan, or

(b) acquire control of a permitted entity that holds commercial loans,

if the aggregate value of all commercial loans held by the association and its prescribed subsidiaries exceeds, or the acquisition or making of the commercial loan or the acquisition of control of the entity would cause the aggregate value of all commercial loans held by the association and its prescribed subsidiaries to exceed, 5% of the total assets of the association.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Lending limit: regulatory capital of \$25 million or less

398. An association with twenty-five million dollars or less of regulatory capital shall not, and shall not permit its prescribed subsidiaries to,

(a) make or acquire a commercial loan, or

(b) acquire control of a body corporate referred to in any of paragraphs 390(1)(a) to (n) that holds commercial loans, if the aggregate value of all commercial loans held by the association and its prescribed subsidiaries exceeds, or the acquisition or making of the commercial loan or the acquisition of control of the body corporate would cause the aggregate value of all commercial loans held by the association and its prescribed subsidiaries to exceed, 5 per cent of the total assets of the association.

1991, c. 48, s. 398; 2001, c. 9, s. 314.

Lending limit: regulatory capital over \$25 million

399. An association with more than twenty-five million dollars of regulatory capital may

- (a) make or acquire commercial loans, or
- (b) acquire control of a permitted entity that holds commercial loans,

if the aggregate value of all commercial loans held by the association and its prescribed subsidiaries would thereby exceed 5% of the total assets of the association only with the prior approval in writing of the Superintendent and in accordance with any terms and conditions that the Superintendent may specify.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Lending limit: regulatory capital over \$25 million

399. An association with more than twenty-five million dollars of regulatory capital may

- (a) make or acquire commercial loans, or
- (b) acquire control of a body corporate referred to in any of paragraphs 390(1)(a) to (n) that holds commercial loans, where the aggregate value of all commercial loans held by the association and its prescribed subsidiaries would thereby exceed 5 per cent of the total assets of the association only with the prior approval in writing of the Superintendent and in accordance with such terms and conditions as the Superintendent may specify.

1991, c. 48, s. 399; 2001, c. 9, s. 314.

Meaning of "total assets"

400. For the purposes of sections 398 and 399, "total assets", in respect of an association, has the meaning given to that expression by the regulations.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Meaning of "total assets"

400. For the purposes of sections 398 and 399, "total assets", in respect of an association, has the meaning given to that expression by the regulations.

1991, c. 48, s. 400; 2001, c. 9, s. 314.

REAL PROPERTY

Limit on total property interest

401. An association shall not, and shall not permit its prescribed subsidiaries to, purchase or otherwise acquire an interest in real property or make an improvement to any real property in

which the association or any of its prescribed subsidiaries has an interest if the aggregate value of all interests of the association in real property exceeds, or the acquisition of the interest or the making of the improvement would cause that aggregate value to exceed, the prescribed percentage of the regulatory capital of the association.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Limit on total property interest

401. An association shall not, and shall not permit its prescribed subsidiaries to,

(a) purchase or otherwise acquire an interest in real property, or

(b) make an improvement to any real property in which the association or any of its prescribed subsidiaries has an interest, if the aggregate value of all interests of the association in real property exceeds, or the acquisition of the interest or the making of the improvement would cause that aggregate value to exceed, 35 per cent of the regulatory capital of the association.

1991, c. 48, s. 401; 2001, c. 9, s. 314.

EQUITIES

Limits on equity acquisitions

402. An association shall not, and shall not permit its prescribed subsidiaries to,

(a) purchase or otherwise acquire any participating shares of any body corporate or any ownership interests in any unincorporated entity, other than those of a permitted entity in which the association has, or by virtue of the acquisition would have, a substantial investment, or

(b) acquire control of an entity that holds shares or ownership interests referred to in paragraph (a),

if the aggregate value of

(c) all participating shares, excluding participating shares of permitted entities in which the association has a substantial investment, and

(d) all ownership interests in unincorporated entities, other than ownership interests in permitted entities in which the association has a substantial investment,

beneficially owned by the association and its prescribed subsidiaries exceeds, or the purchase or acquisition would cause that aggregate value to exceed, the prescribed percentage of the regulatory capital of the association.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, the heading "Equities" did not appear before this section and this section read as follows:

Regulations

402. For the purposes of this Part, the Governor in Council may make regulations

- (a) defining the interests of an association in real property; and
- (b) determining the method of valuing those interests.

1991, c. 48, s. 402; 2001, c. 9, s. 314.

MISCELLANEOUS

Regulations

403. For the purposes of this Part, the Governor in Council may make regulations

- (a) defining the interests of an association in real property;
- (b) determining the method of valuing those interests; or
- (c) exempting classes of associations from the application of sections 397 to 402.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this heading and section read as follows:

EQUITIES

Limits on equity acquisitions

403. An association shall not, and shall not permit its prescribed subsidiaries to,

- (a) purchase or otherwise acquire any participating shares of any body corporate or any ownership interests in any unincorporated entity, other than those of an entity referred to in section 390 in which the association has, or by virtue of the acquisition would have, a substantial investment, or
- (b) acquire control of a body corporate that holds shares or ownership interests referred to in paragraph (a), if the aggregate value of
- (c) all participating shares, excluding participating shares of bodies corporate referred to in section 390 in which the association has a substantial investment, and
- (d) all ownership interests in unincorporated entities, other than ownership interests acquired under section 390 in entities in which the association has a substantial investment, beneficially owned by the association and its prescribed subsidiaries exceeds, or the purchase or acquisition would cause that aggregate value to exceed, 35 per cent of the regulatory capital of the association.

1991, c. 48, s. 403; 1997, c. 15, s. 147; 2001, c. 9, s. 314.

Divestment order

404. (1) The Superintendent may, by order, direct an association to dispose of, within any period that the Superintendent considers reasonable, any loan, investment or interest made or acquired in contravention of this Part.

Divestment order

(2) If, in the opinion of the Superintendent,

(a) an investment by an association or any entity it controls in shares of a body corporate or in ownership interests in an unincorporated entity enables the association to control the body corporate or the unincorporated entity, or

(b) the association or any entity it controls has entered into an arrangement whereby it or its nominee may veto any proposal put before

(i) the board of directors of a body corporate, or

(ii) a similar group or committee of an unincorporated entity,

or whereby no proposal may be approved except with the consent of the association, the entity it controls or the nominee,

the Superintendent may, by order, require the association, within any period that the Superintendent considers reasonable, to do all things necessary to ensure that the association no longer controls the body corporate or unincorporated entity or has the ability to veto or otherwise defeat any proposal referred to in paragraph (b).

Divestment order

(3) If

(a) an association

(i) fails to provide or obtain within a reasonable time the undertakings referred to in subsection 392(1), (2) or (4), or

(ii) is in default of an undertaking referred to in subsection 392(1) or (2) and the default is not remedied within ninety days after the day of receipt by the association of a notice from the Superintendent of the default, or

(b) a permitted entity referred to in subsection 392(4) is in default of an undertaking referred to in subsection 392(4) and the default is not remedied within ninety days after the day of receipt by the association of a notice from the Superintendent of the default,

the Superintendent may, by order, require the association, within any period that the Superintendent considers reasonable, to do all things necessary to ensure that the association no longer has a substantial investment in the entity to which the undertaking relates.

Exception

(4) Subsection (2) does not apply in respect of an entity in which an association has a substantial investment permitted by this Part.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, the heading "Miscellaneous" appeared before this section, and the section read as follows:

MISCELLANEOUS

Divestment order

404. (1) The Superintendent may, by order, direct an association to dispose of, within such period as the Superintendent considers reasonable, any loan, investment or interest made or acquired in contravention of this Part.

Idem

(2) Where, in the opinion of the Superintendent,

(a) an investment by an association or any entity it controls in shares of a body corporate or in ownership interests in an unincorporated entity enables the association to control the body corporate or the unincorporated entity, or

(b) the association or any entity it controls has entered into an arrangement whereby it or its nominee may veto any proposal put before

(i) the board of directors of a body corporate, or

(ii) a similar group or committee of an unincorporated entity, or whereby no proposal may be approved except with the consent of the association, the entity it controls or the nominee, the Superintendent may, by order, require the association, within such period as the Superintendent considers reasonable, to do all things necessary to ensure that the association no longer controls the body corporate or unincorporated entity or has the ability to veto or otherwise defeat any proposal referred to in paragraph (b).

Idem

(3) Where

(a) an association

(i) fails to provide or obtain within a reasonable time the undertakings referred to in subsection 392(1), (2) or (4), or

(ii) is in default of an undertaking referred to in subsection 392(1) or (2) and the default is not remedied within ninety days after the day of receipt by the association of a notice from the Superintendent of the default, or

(b) a body corporate referred to in subsection 392(4) is in default of an undertaking referred to in subsection 392(4) and the default is not remedied within ninety days after the day of receipt by the association of a notice from the Superintendent of the default, the Superintendent may, by order, require the association, within such period as the Superintendent considers reasonable, to do all things necessary to ensure that the association no longer has a substantial investment in the body corporate to which the undertaking relates.

Exception

(4) Subsection (2) does not apply in respect of an entity in which an association has a substantial investment permitted by this Part.

1991, c. 48, s. 404; 2001, c. 9, s. 314.

Deemed temporary investment

405. If an association controls or has a substantial investment in an entity as permitted by this Part and the association becomes aware of a change in the business or affairs of the entity that, if the change had taken place before the acquisition of control or of the substantial investment, would have caused the entity not to be a permitted entity or would have been such that approval for the acquisition would have been required under subsection 390(5) or (6), the association is deemed to have acquired, on the day the association becomes aware of the change, a temporary investment in respect of which section 393 applies.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Deemed temporary investment

405. (1) Where an association has a substantial investment in an entity as permitted by this Part and the association becomes aware of a change in the business or affairs of the entity that, if the change had taken place prior to the acquisition of the substantial investment, would have precluded the acquisition, the association shall be deemed to have acquired, on the day the association becomes aware of the change, a temporary investment in respect of which paragraph 393(1)(b) or subsection 393(2) applies.

Approved holding of investment

(2) The association may continue to hold the substantial investment after the end of the period referred to in subsection 393(1) or (2) that applies in respect of the investment, including any extension of the period granted under subsection 393(4), with the approval in writing of the Minister obtained before the end of that period or extended period.

1991, c. 48, s. 405; 1997, c. 15, s. 148; 2001, c. 9, s. 314.

Asset transactions

406. (1) An association shall not, and shall not permit its subsidiaries to, without the approval of the Superintendent, acquire assets from a person or transfer assets to a person if

$$A + B > C$$

where

A is the value of the assets;

B is the total value of all assets that the association and its subsidiaries acquired from or transferred to that person in the twelve months ending immediately before the acquisition or transfer; and

C is ten per cent of the total value of the assets of the association, as shown in the last annual statement of the association prepared before the acquisition or transfer.

Restriction

(2) The prohibition in subsection (1) does not apply in respect of a transaction or series of transactions between an association and a member of the association.

Exception

(3) The prohibition in subsection (1) does not apply in respect of

(a) an asset that is a debt obligation referred to in subparagraphs (b)(i) to (vi) of the definition "commercial loan" in subsection 386(1); or

(b) a transaction or series of transactions by an association with another financial institution as a result of the association's participation in one or more syndicated loans with that financial institution.

Exception

(4) The approval of the Superintendent is not required if

(a) the association sells assets under a sale agreement that is approved by the Minister under section 233.5; or

(b) the association or its subsidiary acquires shares of, or ownership interests in, an entity for which the approval of the Minister under Part VIII or subsection 390(5) is required or the approval of the Superintendent under subsection 390(6) is required.

Value of assets

(5) For the purposes of "A" in subsection (1), the value of the assets is

(a) in the case of assets that are acquired, the purchase price of the assets or, if the assets are shares of, or ownership interests in, an entity the assets of which will be included in the annual statement of the association after the acquisition, the fair market value of the assets; and

(b) in the case of assets that are transferred, the book value of the assets as stated in the last annual statement of the association prepared before the transfer, or, if the assets are shares of, or ownership interests in, an entity the assets of which were included in the last annual statement of the association before the transfer, the value of the assets as stated in the annual statement.

Total value of all assets

(6) For the purposes of subsection (1), the total value of all assets that the association or any of its subsidiaries has acquired during the period of twelve months referred to in subsection (1) is the purchase price of the assets or, if the assets are shares of, or ownership interests in, an entity the assets of which immediately after the acquisition were included in the annual statement of the association, the fair market value of the assets of the entity at the date of the acquisition.

Total value of all assets

(7) For the purposes of subsection (1), the total value of all assets that the association or any of its subsidiaries has transferred during the period of twelve months referred to in subsection (1) is the book value of the assets as stated in the last annual statement of the association prepared before the transfer, or, if the assets are shares of, or ownership interests in, an entity the assets of which were included in the last annual statement of the association before the transfer, the value of the assets of the entity as stated in the annual statement.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Assets transactions

406. (1) An association shall not at any time, without the prior written approval of the Superintendent, directly or indirectly acquire assets from a person, or directly or indirectly transfer assets to a person, if

$$A + B > C$$

where

- A is the value of the assets;
- B is the total value of all assets that the association directly or indirectly acquired from, or directly or indirectly transferred to, that person in the twelve months ending immediately before that time; and
- C is ten per cent of the total value of the assets of the association, as shown in the last annual financial statement of the association prepared before that time.

Meaning of "total assets"

(1.1) For the purpose of subsection (1), "total assets" of the association has the meaning that it is given by section 400.

Restriction

(2) Subsection (1) does not apply to a transaction or series of transactions between an association and a member of the association.

Exception

(3) Subsection (1) does not apply to

- (a) an asset that is a debt obligation referred to in subparagraphs (b)(i) to (vi) of the definition "commercial loan" in subsection 386(1); or
- (b) a transaction or series of transactions by an association with another financial institution as a result of the association's participation in one or more syndicated loans with that financial institution.

1991, c. 48, s. 406; 1997, c. 15, s. 149; 2001, c. 9, s. 314.

Transitional

407. Nothing in this Part requires

- (a) the termination of a loan made before February 7, 2001;
- (b) the termination of a loan made after that date as a result of a commitment made before that date;
- (c) the disposal of an investment made before that date; or
- (d) the disposal of an investment made after that date as a result of a commitment made before that date.

But if the loan or investment would be precluded or limited by this Part, the amount of the loan or investment may not, except as provided in subsections 393(2), 394(3) and 395(3), be increased after that date.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Transitional

407. Nothing in this Part requires

(a) the termination of a loan or a commitment to make a loan or investment or to increase a loan or investment, or

(b) the disposal of an investment made before the coming into force of this Part but, if the loan or investment would be precluded or limited by this Part, the amount of the loan or investment shall not, except as provided in subsections 393(3), 394(2) and 395(3), or pursuant to a commitment referred to in paragraph (a), be increased after the coming into force of this Part.

1991, c. 48, s. 407; 2001, c. 9, s. 314.

Saving

408. A loan or investment referred to in section 407 is deemed not to be prohibited by the provisions of this Part.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Saving

408. A loan or investment referred to in section 407 is deemed not to be prohibited by the provisions of this Part.

1991, c. 48, s. 408; 2001, c. 9, s. 314.

PART XI

ADEQUACY OF CAPITAL AND LIQUIDITY

Adequacy of capital and liquidity

409. (1) An association shall, in relation to its operations, maintain

(a) adequate capital, and

(b) adequate and appropriate forms of liquidity, and shall comply with any regulations in relation thereto.

Regulations and guidelines

(2) The Governor in Council may make regulations and the Superintendent may make guidelines respecting the maintenance by associations of adequate capital and adequate and appropriate forms of liquidity.

Directives

(3) Notwithstanding that an association is complying with regulations or guidelines made under subsection (2), the Superintendent may, by order, direct the association

(a) to increase its capital; or

(b) to provide additional liquidity in such forms and amounts as the Superintendent may require.

Compliance

(4) An association shall comply with an order made under subsection (3) within such time as the Superintendent specifies therein.

Notice of value

(5) Where an appraisal of any asset held by an association or any of its subsidiaries has been made by the Superintendent and the value determined by the Superintendent to be the appropriate value of the asset varies materially from the value placed by the association or subsidiary on the asset, the Superintendent shall send to the association, the auditor of the association and the audit committee of the association a written notice of the appropriate value of the asset as determined by the Superintendent.

PART XII

SELF-DEALING

INTERPRETATION AND APPLICATION

Definition of "senior officer"

409.1 For the purposes of this Part, a "senior officer" of a body corporate is a person who is

- (a) a director of the body corporate who is a full-time employee of the body corporate;
- (b) the chief executive officer, chief operating officer, president, secretary, treasurer, controller, chief financial officer, chief accountant, chief auditor or chief actuary of the body corporate;
- (c) a natural person who performs functions for the body corporate similar to those performed by a person referred to in paragraph (b);
- (d) the head of the strategic planning unit of the body corporate;
- (e) the head of the unit of the body corporate that provides legal services or human resources services to the body corporate; or
- (f) any other officer reporting directly to the body corporate's board of directors, chief executive officer or chief operating officer.

1997, c. 15, s. 150.

Related party of association

410. (1) For the purposes of this Part, a person is a related party of an association where the person

- (a) is a person, other than a member, who has a significant interest in a class of shares of the association;
- (b) is a director or senior officer of the association or of a body corporate that controls the association;

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this paragraph read as follows:

(b) is a director or senior officer of the association;

- (c) is the spouse, or a child who is less than eighteen years of age, of a person described in paragraph (a) or (b);

(d) is an entity that is controlled by a person referred to in any of paragraphs (a) to (c);

(d.1) is an entity in which a person who controls the association has a substantial investment; or

Legislative History – This paragraph (d.1) was added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such paragraph (d.1) previously existed in this Act.

(e) is a person, or a member of a class of persons, designated under subsection (2) or (3) as, or deemed under subsection (4) to be, a related party of the association.

(f) and (g) [Repealed, 1997, c. 15, s. 151]

Related party of retail association

(1.1) Subject to the regulations, for the purposes of this Part, a person is a related party of a retail association if the person is

(a) a member of the association or of an association that controls, or has a significant interest in, the association;

(b) a director or senior officer of the association or of a body corporate that controls the association;

(c) the spouse or common-law partner, or a child who is less than eighteen years of age, of a person referred to in paragraph (a) or (b);

(d) an entity that is controlled, within the meaning of section 3, determined without regard to paragraph 3(1)(e), by a person referred to in any of paragraphs (a) to (c); or

(e) a person, or a member of a class of persons, designated under subsection (2) or (3) as, or deemed under subsection (4) to be, a related party of the association.

Exception – subsidiaries and substantial investments of associations

(1.2) If an entity in which an association has a substantial investment would, but for this subsection, be a related party of the association only because a person who controls the association controls the entity or has a substantial investment in the entity, and the person does not control the entity or have a substantial investment in the entity otherwise than through the person's controlling interest in the association, the entity is not a related party of the association.

Legislative History – These sub-sections (1.1) and (1.2) were added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such sub-sections previously existed in this Act.

Designated related party

(2) For the purposes of this Part, the Superintendent may, with respect to a particular association, designate as a related party of the association any person or class of persons whose direct or

indirect interest in or relationship with the association or a related party of the association might reasonably be expected to affect the exercise of the best judgment of the association in respect of a transaction.

Idem

(3) Where a person is designated as a related party of an association pursuant to subsection (2), the Superintendent may also designate any entity in which the person has a substantial investment and any entity controlled by such an entity to be a related party of the association.

Deemed related party

(4) Where, in contemplation of a person becoming a related party of an association, the association enters into a transaction with the person, the person is deemed for the purposes of this Part to be a related party of the association in respect of that transaction.

Exemption

(5) The Superintendent may, by order, designate a class of non-voting shares of an association for the purpose of this subsection. If a class of non-voting shares of an association is so designated, a person is deemed, notwithstanding paragraph (1)(a), not to be a related party of the association if the person would otherwise be a related party of the association only because the person has a significant interest in that class.

Determination of control

(6) For the purposes of paragraph (1)(d), "controlled" means "controlled, within the meaning of section 3, determined without regard to paragraph 3(1)(e)".

(7) [Repealed, 1997, c. 15, s. 151]

1991, c. 48, s. 410; 1997, c. 15, s. 151; 2001, c. 9, s. 315.

Non-application of part

411. (1) This Part does not apply in respect of any transaction entered into prior to the coming into force of this Part but, after the coming into force of this Part, any modification of, addition to, or renewal or extension of a prior transaction is subject to this Part.

Idem

(2) This Part does not apply in respect of

- (a) the issue of shares of any class of shares of an association when fully paid for in money or when issued

(i) in accordance with any provisions for the conversion of other issued and outstanding securities of the association into shares of that class of shares,

(ii) as a share dividend,

(ii.1) in exchange for shares of a body corporate that has been continued as an association under Part III,

Legislative History – This paragraph (ii.1) was added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such paragraph previously existed in this Act.

(iii) in accordance with the terms of an amalgamation under Part VII,

(iii.1) by way of consideration in accordance with the terms of a sale agreement under Part VII, or

Legislative History – This paragraph (iii.1) was added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such paragraph previously existed in this Act.

(iv) with the approval in writing of the Superintendent, in exchange for shares of another body corporate;

(b) the payment of dividends by an association; or

(c) transactions that consist of the payment or provision by an association to persons who are related parties of the association of salaries, fees, stock options, pension benefits, incentive benefits or other benefits or remuneration in their capacity as directors, officers or employees of the association.

Exception

(3) Nothing in paragraph (2)(c) exempts from the application of this Part the payment by an association of fees or other remuneration to a person for

(a) the provision of services referred to in paragraph 419(1)(a); or

(b) duties outside the ordinary course of business of the association.

Exception for holding body corporate

(4) Subject to subsection (5), a holding body corporate of an association is not a related party of the association.

Holding body corporate of a retail association

(5) Unless the regulations provide otherwise, a holding body corporate of a retail association is a related party of the retail association.

Substantial investment – related party exception

(6) If a holding body corporate of an association is, because of subsection (4), not a related party of the association, any entity in which the holding body corporate has a substantial investment is not a related party of the association if no related party of the association has a substantial investment in the entity otherwise than through the control of the holding body corporate.

Legislative History – Sub-sections (4) through (6), inclusive were added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such sub-sections previously existed in this Act.

1991, c. 48, s. 411; 2001, c. 9, s. 316.

Meaning of "transaction"

412. (1) For the purposes of this Part, entering into a transaction with a related party of an association includes

- (a) making a guarantee on behalf of the related party;
- (b) making an investment in any securities of the related party;
- (c) taking an assignment of or otherwise acquiring a loan made by a third party to the related party; and
- (d) taking a security interest in the securities of the related party.

Interpretation

(2) For the purposes of this Part, the fulfilment of an obligation under the terms of any transaction, including the payment of interest on a loan or deposit, is part of the transaction, and not a separate transaction.

Meaning of "loan"

(3) For the purposes of this Part, "loan" includes a deposit, a financial lease, a conditional sales contract, a repurchase agreement and any other similar arrangement for obtaining funds or credit, but does not include investments in securities or the making of an acceptance, endorsement or other guarantee.

PROHIBITED RELATED PARTY TRANSACTIONS

Prohibited transactions

413. (1) Except as provided in this Part, an association shall not, directly or indirectly, enter into any transaction with a related party of the association.

Transaction of entity

(2) Without limiting the generality of subsection (1), an association is deemed to have indirectly entered into a transaction in respect of which this Part applies where the transaction is entered into by an entity that is controlled by the association.

Exception

(3) Subsection (2) does not apply where an entity that is controlled by an association is a financial institution incorporated or formed under the laws of a province and is subject to regulation and supervision, satisfactory to the Minister, regarding transactions with related parties of the association.

Idem

(4) Subsection (2) does not apply in respect of transactions entered into by an entity that is controlled by an association if the transaction is a prescribed transaction or is one of a class of prescribed transactions.

PERMITTED RELATED PARTY TRANSACTIONS**Nominal value transactions**

414. Notwithstanding anything in this Part, an association may enter into a transaction with a related party of the association if the value of the transaction is nominal or immaterial to the association when measured by criteria that have been established by the conduct review committee of the association and approved in writing by the Superintendent.

Secured loans

415. An association may make a loan to or a guarantee on behalf of a related party of the association or take an assignment of or otherwise acquire a loan to a related party of the association if

(a) the loan or guarantee is fully secured by securities of or guaranteed by the Government of Canada or the government of a province; or

(b) the loan is a loan made to a related party who is a natural person on the security of a mortgage of the principal residence of that related party.

Deposits

416. An association may enter into a transaction with a related party of the association if the transaction consists of a deposit by the association with a financial institution that is a direct clearer

or a member of a clearing group under the by-laws of the Canadian Payments Association and the deposit is made for clearing purposes.

Borrowing, etc., from related party

417. An association may borrow money from, take deposits from, or issue debt obligations to, a related party of the association.

Acquisition of assets

418. (1) An association may purchase or otherwise acquire from a related party of the association

- (a) securities of, or securities guaranteed by, the Government of Canada or the government of a province;
- (b) assets fully secured by securities of, or securities guaranteed by, the Government of Canada or the government of a province; or
- (c) goods for use in the ordinary course of business.

Sale of assets

(2) Subject to section 406, an association may sell any assets of the association to a related party of the association if

- (a) the consideration for the assets is fully paid in money; and
- (b) there is an active market for those assets.

Asset transactions with financial institutions

(3) Notwithstanding any of the provisions of subsections (1) and (2), an association may, in the normal course of business and pursuant to arrangements that have been approved by the Superintendent in writing, acquire or dispose of any assets, other than real property, from or to a related party of the association that is a financial institution.

Asset transactions in restructuring

(3.1) Despite any of the provisions of subsections (1) and (2), an association may acquire any assets from, or dispose of any assets to, a related party of the association as part of, or in the course of, a restructuring, if the acquisition or disposition has been approved in writing by the Superintendent.

Legislative History – This sub-section (3.1) was added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such sub-section previously existed in this Act.

Goods or space for use in business

(4) An association may lease assets

(a) from a related party of the association for use in the ordinary course of business of the association, or

(b) to a related party of the association, if the lease payments are made in money.

1991, c. 48, s. 418; 2001, c. 9, s. 317.

Services

419. (1) An association may enter into a transaction with a related party of the association if the transaction

(a) subject to subsection (2), consists of a written contract for the purchase by the association of services used in the ordinary course of business;

(a.1) in the case of a retail association, involves, subject to subsection (4), the provision of services, other than loans or guarantees, normally provided to the public by the association in the ordinary course of business;

Legislative History – This paragraph (a.1) was added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such paragraph previously existed in this Act.

(b) consists of a written contract with a financial institution or an entity in which the association is permitted to have a substantial investment pursuant to section 390 that is a related party of the association

(i) for the networking of any services provided by the association or the financial institution or entity, or

(ii) for the referral of any person by the association to the financial institution or entity, or for the referral of any person by the financial institution or entity to the association;

(c) consists of a written contract for such pension or benefit plans or their management or administration as are incidental to directorships or to the employment of officers or employees of the association or its subsidiaries; or

(d) involves the provision by the association of management, advisory, accounting, information processing or other services in relation to any business of the related party.

Order concerning management by employees

(2) Where an association has entered into a contract pursuant to paragraph (1)(a) and the contract, when taken together with all other such contracts entered into by the association, results in all or substantially all of the management functions of the association being exercised by persons who are not employees of the association, the Superintendent may, by order, if the Superintendent considers that result to be inappropriate, require the association, within such time as may be specified in the order, to take all steps necessary to ensure that management functions that are integral to the carrying on of business by the association are exercised by employees of the association to the extent specified in the order.

Service corporations

(3) Notwithstanding subsection 413(2), an association is deemed not to have indirectly entered into a transaction in respect of which this Part applies if the transaction is entered into by a service corporation, as defined in subsection 386(1), that is controlled by the association and the transaction is on terms and conditions at least as favourable to the association as market terms and conditions, as defined in subsection 425(2).

Loans or guarantees not included

(4) The provision of services, for the purposes of paragraph (1)(a.1), does not include the making of loans and guarantees.

Legislative History – This sub-section (4) was added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such sub-section previously existed in this Act.

1991, c. 48, s. 419; 1997, c. 15, s. 152; 2001, c. 9, s. 318.

Directors and officers and their interests

420. (1) Subject to subsection (2) and sections 421 and 422, an association may enter into any transaction with a related party of the association if the related party is

(a) a natural person who is a related party of the association only because the person is

(i) a director or senior officer of the association or of an entity that controls the association, or

(ii) the spouse or common-law partner, or a child who is less than eighteen years of age, of a director or senior officer of the association or of an entity that controls the association.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, sub-paragraphs (i) and (ii) read as follows:

(i) a director or a senior officer of the association, or

(ii) the spouse, or a child who is less than eighteen years of age, of a director or senior officer of the association; or

(b) an entity that is a related party of the association only because the entity is controlled by

(i) a director or senior officer of the association or of an entity that controls the association, or

(ii) the spouse or common-law partner, or a child who is less than eighteen years of age, of a director or senior officer of the association or of an entity that controls the association.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, sub-paragraphs (i) and (ii) read as follows:

(i) a director or senior officer of the association, or

(ii) the spouse, or a child who is less than eighteen years of age, of a director or senior officer of the association.

Loans to full-time senior officers

(2) An association may, with respect to a related party of the association referred to in subsection (1) who is a full-time senior officer of the association, make, take an assignment of or otherwise acquire a loan to the related party only if the aggregate principal amount of all outstanding loans to the related party that are held by the association and its subsidiaries, together with the principal amount of the proposed loan, does not exceed the greater of twice the annual salary of the related party and \$100,000.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this sub-section read as follows:

Loans to full-time senior officers

(2) An association may, with respect to a related party of the association referred to in subsection (1) who is a full-time senior officer of the association, make, take an assignment of or otherwise acquire a loan to the related party only if the aggregate principal amount of all outstanding loans to the related party that are held by the association and its subsidiaries, together with the principal amount of the proposed loan, does not exceed the greater of the annual salary of the related party and \$50,000.

Exception

(3) Subsection (2) does not apply in respect of

(a) loans referred to in paragraph 415(b), and

(b) margin loans referred to in section 422, and the amount of any such loans to a related party of an association shall not be included in determining, for the purposes of subsection (2), the aggregate principal amount of all outstanding loans made by the association to the related party.

Preferred terms - loan to senior officer

(4) Notwithstanding section 425, an association may make a loan, other than a margin loan, to a senior officer of the association on terms and conditions more favourable to the officer than market terms and conditions, as defined in subsection 425(2), if those terms and conditions of the loan have been approved by the conduct review committee of the association.

Preferred terms – loan to spouse or common-law partner of senior officer

(4.1) Despite section 425, an association may make a loan referred to in paragraph 415(b) to the spouse or common-law partner of a senior officer of the association on terms and conditions more favourable than market terms and conditions, as defined in subsection 425(2), by the association if those terms and conditions have been approved by the conduct review committee of the association.

Preferred terms – other financial services

(5) Despite section 425, an association may offer financial services, other than loans or guarantees, to a senior officer of the association, or to the spouse or common-law partner, or to a child who is less than eighteen years of age, of a senior officer of the association, on terms and conditions more favourable than market terms and conditions, as defined in subsection 425(2), if

(a) the financial services are offered by the association to employees of the association on those favourable terms and conditions; and

(b) the conduct review committee of the association has approved the practice of making those financial services available on those favourable terms and conditions to senior officers of the association or to the spouses or the common-law partners, or to the children under eighteen years of age, of senior officers of the association.

Legislative History – With the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, sub-section (4.1) was added and sub-section (5) was amended. Sub-section (5) previously read as follows:

Preferred terms - other financial services

(5) Notwithstanding section 425, an association may offer financial services, other than loans or guarantees, to a senior officer of the association, on terms and conditions more favourable than market terms and conditions, as defined in subsection 425(2), if

(a) the financial services are offered by the association to employees of the association on those favourable terms and conditions; and

(b) the conduct review committee of the association has approved the practice of making those financial services available on those favourable terms and conditions to senior officers of the association.

1991, c. 48, s. 420; 1997, c. 15, s. 153; 2001, c. 9, s. 319.

Board approval required

421. (1) Except with the concurrence of at least two thirds of the directors present at a meeting of the board of directors of the association, an association shall not, with respect to a related party of the association referred to in subsection 420(1),

(a) make, take an assignment of or otherwise acquire a loan to the related party, including a margin loan referred to in section 422,

(b) make a guarantee on behalf of the related party, or

(c) make an investment in the securities of the related party if, immediately following the transaction, the aggregate of

(d) the principal amount of all outstanding loans to the related party that are held by the association and its subsidiaries, other than

(i) loans referred to in paragraph 415(b), and

(ii) where the related party is a full-time senior officer of the association, loans to the related party that are permitted by subsection 420(2),

(e) the sum of all outstanding amounts guaranteed by the association and its subsidiaries on behalf of the related party, and

(f) where the related party is an entity, the book value of all investments by the association and its subsidiaries in the securities of the entity would exceed 2 per cent of the regulatory capital of the association.

Limit on transactions with directors, officers and their interests

(2) An association shall not, with respect to a related party of the association referred to in subsection 420(1),

(a) make, take an assignment of or otherwise acquire a loan to the related party, including a margin loan referred to in section 422,

(b) make a guarantee on behalf of the related party, or

(c) make an investment in the securities of the related party if, immediately following the transaction, the aggregate of

(d) the principal amount of all outstanding loans to all related parties of the association referred to in subsection 420(1) that are held by the association and its subsidiaries, other than

(i) loans referred to in section 415, and

(ii) loans permitted by subsection 420(2),

(e) the sum of all outstanding amounts guaranteed by the association and its subsidiaries on behalf of all related parties of the association referred to in subsection 420(1), and

(f) the book value of all investments by the association and its subsidiaries in the securities of all entities that are related parties of the association referred to in subsection 420(1) would exceed 50 per cent of the regulatory capital of the association.

Exclusion of de minimis transactions

(3) Loans, guarantees and investments that are referred to in section 414 shall not be included in calculating the aggregate of loans, guarantees and investments referred to in subsections (1) and (2).

1991, c. 48, s. 421; 1997, c. 15, s. 154.

Margin loans

422. The Superintendent may establish terms and conditions with respect to the making by an association of margin loans to a director or senior officer of the association.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Margin loans

422. The Superintendent may establish terms and conditions with respect to the making by an association of margin loans to a senior officer of the association.

1991, c. 48, s. 422; 1997, c. 15, s. 155; 2001, c. 9, s. 320.

Exemption by order

423. (1) An association may enter into a transaction with a related party of the association if the Superintendent, by order, has exempted the transaction from the provisions of section 413.

Conditions for order

(2) The Superintendent shall not make an order referred to in subsection (1) unless the Superintendent is satisfied that the decision of the association to enter into the transaction has not been and is not likely to be influenced in any significant way by a related party of the association and does not involve in any significant way the interests of a related party of the association.

1991, c. 48, s. 423; 1996, c. 6, s. 56.

Prescribed transactions

424. An association may enter into a transaction with a related party of the association if the transaction is a prescribed transaction or one of a class of prescribed transactions.

RESTRICTIONS ON PERMITTED TRANSACTIONS

Market terms and conditions

425. (1) Except as provided in subsections 420(4) and (5), any transaction entered into with a related party of the association shall be on terms and conditions that are at least as favourable to the association as market terms and conditions.

Meaning of "market terms and conditions"

(2) For the purposes of subsection (1), "market terms and conditions" means

(a) in respect of a service or a loan facility or a deposit facility offered to the public by the association in the ordinary course of business, terms and conditions that are no more or less favourable than those offered to the public by the association in the ordinary course of business; and

(b) in respect of any other transaction,

(i) terms and conditions, including those relating to price, rent or interest rate, that might reasonably be expected to apply in a similar transaction in an open market under conditions requisite to a fair transaction between parties who are at arm's length and who are acting prudently, knowledgeably and willingly, or

(ii) if the transaction is one that would not reasonably be expected to occur in an open market between parties who are at arm's length, terms and conditions, including those relating to price, rent or interest rate, that would reasonably be expected to provide the association with fair value, having regard to all the circumstances of the transaction, and that would be consistent with the parties to the transaction acting prudently, knowledgeably and willingly.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this sub-section read as follows:

Meaning of "market terms and conditions"

(2) For the purposes of subsection (1), "market terms and conditions" means, in respect of any transaction, terms and conditions, including those relating to price, rent or interest rate, that might reasonably be expected to apply in a similar transaction in an open market under conditions requisite to a fair transaction between parties who are at arm's length and acting prudently, knowledgeably and willingly.

1991, c. 48, s. 425; 2001, c. 9, s. 321.

426. and 427. [Repealed, 1997, c. 15, s. 156]

DISCLOSURE

Association obligation

428. (1) Where, in respect of any proposed transaction permitted by this Part, other than those referred to in section 414, an association has reason to believe that the other party to the transaction is a related party of the association, the association shall take all reasonable steps to obtain from the other party full disclosure, in writing, of any interest or relationship, direct or indirect, that would make the other party a related party of the association.

Reliance on information

(2) An association and any person who is a director or an officer, employee or agent of the association may rely on any information contained in any disclosure received by the association pursuant to subsection (1) or any information otherwise acquired in respect of any matter that might be the subject of such a disclosure and no action lies against the association or any such person for anything done or omitted in good faith in reliance on any such information.

Notice to Superintendent

429. If an association has entered into a transaction that the association is prohibited by this Part from entering into, or an association has entered into a transaction for which approval is required under subsection 421(1) without having obtained the approval, the association shall, on becoming aware of that fact, notify the Superintendent without delay.

1991, c. 48, s. 429; 1997, c. 15, s. 157.

REMEDIAL ACTIONS

Voidable contracts

430. (1) If an association enters into a transaction that it is prohibited from entering into by this Part, the association or the Superintendent may apply to a court for an order setting aside the transaction or for any other appropriate remedy, including an order directing that the related party of the association involved in the transaction account to the association for any profit or gain realized or that any director or senior officer of the association who authorized the transaction compensate the association for any loss or damage incurred by the association.

Time limit

(2) An application under subsection (1) in respect of a particular transaction may only be made within the period of three months following the day the notice referred to in section 429 in respect of the transaction is given to the Superintendent or, if no such notice is given, the day the Superintendent becomes aware of the transaction.

Certificate

(3) For the purposes of subsection (2), a document purporting to have been issued by the Superintendent, certifying the day on which the Superintendent became aware of the transaction, shall, in the absence of evidence to the contrary, be received in evidence as conclusive proof of that fact without proof of the signature or of the official character of the person appearing to have signed the document and without further proof.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Voidable contracts

430. (1) Where an association enters into a transaction that it is prohibited from entering into by this Part, the association or the Superintendent may apply to a court for an order setting aside the transaction and directing that the related party of the association involved in the transaction account to the association for any profit or gain realized.

Court order

(2) On an application to a court under subsection (1), the court may make such order as it thinks fit, including an order for compensation for any loss or damage incurred by the association.

Time limit

(3) An application under subsection (1) in respect of a particular transaction may only be made within the period of three months following the day the notice referred to in section 429 in respect of the transaction is given to the Superintendent.

1991, c. 48, s. 430; 2001, c. 9, s. 322.

PART XIII**REGULATION OF ASSOCIATIONS - SUPERINTENDENT**

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this heading formerly read "Regulation of Associations".

SUPERVISION*Returns***Required information**

431. An association shall provide the Superintendent with such information, at such times and in such form as the Superintendent may require.

Report of unclaimed deposits

431.1 (1) A retail association shall, within sixty days after the end of each calendar year, provide the Superintendent with a return, in the form that the Superintendent may determine, as of the end of that calendar year, in respect of all deposits made with the association in Canada in Canadian currency for which no transaction has taken place and no statement of account has been requested or acknowledged by the depositors during a period of nine years or more.

Period

(2) The period referred to in subsection (1) shall be calculated

(a) in the case of a deposit made for a fixed period, from the day on which the fixed period terminated, and

(b) in the case of any other deposit, from the day on which the last transaction took place or a statement of account was last requested or acknowledged by the depositor, whichever is later,

until the date of the return under that subsection.

Content of return

(3) A return made under subsection (1) must show, insofar as is known to the association,

(a) the name of each depositor in whose name each deposit is held;

(b) the recorded address of each such depositor;

(c) the outstanding amount of each deposit; and

(d) the branch of the association at which the last transaction took place in respect of the deposit, and the date of that transaction.

Amounts under one hundred dollars

(4) If the total outstanding amount of deposits in the name of a depositor is less than one hundred dollars, the association may omit the particulars in respect thereof required by subsection (3) from the return required by subsection (1).

2001, c. 9, s. 324.

Return on unclaimed bills of exchange

431.2 (1) A retail association shall, within sixty days after the end of each calendar year, provide the Superintendent with a return, in the form that the Superintendent may determine, as of the end of that calendar year, in respect of all negotiable instruments (including instruments drawn by one branch of the association on another branch of the association but not including instruments issued in payment of a dividend on the capital of the association) payable in Canada in Canadian currency that have been issued, certified or accepted by the association at branches of the association in Canada and for which no payment has been made for a period of nine years or more calculated from the date of issue, certification, acceptance or maturity, whichever is the latest, until the date of the return.

Content of return

(2) A return made under subsection (1) must show, insofar as is known to the association,

(a) the name of each person to whom or at whose request each instrument was issued, certified or accepted;

(b) the recorded address of each such person;

(c) the name of the payee of each instrument;

(d) the amount and date of each instrument;

(e) the name of the place where each instrument was payable; and

(f) the branch of the association at which each instrument was issued, certified or accepted.

Amounts under one hundred dollars

(3) If the amount of an instrument in respect of which subsection (1) applies is less than one hundred dollars, the association may omit the particulars in respect thereof required by subsection (2) from the return required by subsection (1).

Money orders

(4) A retail association may omit from a return required by subsection (1) the particulars required by subsection (2) in respect of any money order in respect of which subsection (1) applies.

2001, c. 9, s. 324.

Total to be reported

431.3 If a retail association, under subsection 431.1(4) or 431.2(3) or (4), omits from a return required by subsection 431.1(1) or 431.2(1) the particulars of any deposit or instrument, the total of the amounts of all deposits or instruments that have been so omitted must be reported in the return.

Legislative History – Sections 431.1 to 431.3, inclusive were added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such sections previously existed in this Act.

2001, c. 9, s. 324.

Names of directors and auditors

432. (1) An association shall, within thirty days after each annual meeting of the association, provide the Superintendent with a return showing

- (a) the name, residence and citizenship of each director holding office immediately following the meeting;
- (b) the mailing address of each director holding office immediately following the meeting;
- (c) the bodies corporate of which each director referred to in paragraph (a) is an officer or director and the firms of which each director is a member;
- (d) the names of the directors referred to in paragraph (a) who are officers or employees of the association or any subsidiary of the association, and the positions they occupy;
- (e) the name of each committee of the association on which each director referred to in paragraph (a) serves;
- (f) the date of expiration of the term of each director referred to in paragraph (a); and
- (g) the name, address and date of appointment of the auditor of the association.

Changes

(2) Where

- (a) any information relating to a director or auditor of an association shown in the latest return made to the Superintendent under subsection (1), other than information referred to in paragraph (1)(c), becomes inaccurate or incomplete,
- (b) a vacancy in the position of auditor of the association occurs or is filled by another person, or
- (c) a vacancy on the board of directors of the association occurs or is filled, the association shall forthwith provide the Superintendent with such information as is required to maintain the return in a complete and accurate form.

Copy of by-laws

433. An association shall send to the Superintendent within thirty days after the coming into effect of a by-law or an amendment to a by-law, a copy of the by-law or amendment.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Copy of by-laws

433. An association shall send to the Superintendent

- (a) within six months after the coming into force of this Part, a copy of all by-laws of the association that are continued in effect by sections 195 and 196; and
- (b) within thirty days after the coming into effect of a by-law or an amendment to a by-law, a copy of the by-law or amendment.

1991, c. 48, s. 433; 2001, c. 9, s. 325.

Register of associations

434. (1) The Superintendent shall, in respect of each association, cause a register to be maintained containing a copy of

- (a) the incorporating instrument of the association; and
- (b) the information referred to in paragraphs 432(1)(a) and (c) to (g) contained in the latest return sent to the Superintendent under section 432.

Form

(2) The register may be maintained in

- (a) a bound or loose-leaf form or in a photographic film form; or

(b) a system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable time.

Access

(3) Persons are entitled to reasonable access to the register and may make copies of or take extracts from the information in it.

Evidence

(4) A statement containing information in the register and purporting to be certified by the Superintendent is admissible in evidence in all courts as proof, in the absence of evidence to the contrary, of the facts stated in the statement without proof of the appointment or signature of the Superintendent.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Register of associations

434. The Superintendent shall, in respect of each association, cause a register to be maintained containing a copy of

(a) the incorporating instrument of the association, and

(b) the information referred to in paragraphs 432(1)(a) and (c) to (g) contained in the latest return sent to the Superintendent pursuant to section 432,

and all persons are entitled to examine the register during regular business hours and to make copies of or take extracts from the documents contained therein.

Confidential information

435. (1) Subject to section 436, all information regarding the business or affairs of an association, or regarding a person dealing with an association, that is obtained by the Superintendent, or by any person acting under the direction of the Superintendent, as a result of the administration or enforcement of any Act of Parliament, and all information prepared from that information, is confidential and shall be treated accordingly.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this sub-section read as follows:

Confidential information

435. (1) Subject to section 436, all information regarding the business or affairs of an association or person dealing therewith that is obtained by the Superintendent, or by any person acting under the direction of the Superintendent, as a result of the administration or enforcement of any Act of Parliament is confidential and shall be treated accordingly.

Disclosure permitted

(2) Nothing in subsection (1) prevents the Superintendent from disclosing any information

(a) to any government agency or body that regulates or supervises financial institutions, for purposes related to that regulation or supervision,

(a.1) to any other agency or body that regulates or supervises financial institutions, for purposes related to that regulation or supervision,

(a.2) to the Canada Deposit Insurance Corporation for purposes related to its operation, and

Legislative History – This paragraph (a.2) was added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such paragraph (a.2) previously existed in this Act.

(b) to the Deputy Minister of Finance or any officer of the Department of Finance authorized in writing by the Deputy Minister of Finance or to the Governor of the Bank of Canada or any officer of the Bank of Canada authorized in writing by the Governor of the Bank of Canada, for the purposes of policy analysis related to the regulation of financial institutions,

if the Superintendent is satisfied that the information will be treated as confidential by the agency, body or person to whom it is disclosed.

1991, c. 48, s. 435; 1997, c. 15, s. 158; 2001, c. 9, s. 326.

Regulations

435.1 The Governor in Council may make regulations prohibiting, limiting or restricting the disclosure by associations of prescribed supervisory information.

1999, c.38, s.117

Publication

435.2 The Superintendent shall cause to be published in the *Canada Gazette* the information contained in each of the returns made under sections 431.1 and 431.2 within sixty days after the expiration of the time provided by this Act for providing the return.

Legislative History – This sub-section 435.2 was added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such sub-section previously existed in this Act.

2001, c. 9, s. 327.

Disclosure by Superintendent

436. (1) The Superintendent shall disclose at such times and in such manner as the Minister may determine, such information obtained by the Superintendent under this Act as the Minister considers ought to be disclosed for the purposes of the analysis of the financial condition of an association and that

(a) is contained in returns filed pursuant to the Superintendent's financial regulatory reporting requirements in respect of associations; or

(b) has been obtained as a result of an industry-wide or sectoral survey conducted by the Superintendent in relation to an issue or circumstances that could have an impact on the financial condition of associations.

Prior consultation required

(2) The Minister shall consult with the Superintendent before making any determination under subsection (1).

1991, c. 48, s. 436; 1994, c. 26, s. 28; 1996, c. 6, s. 57.

Disclosure by an association

436.1 An association shall make available to the public such information concerning

(a) the compensation of its executives, as that expression is defined by the regulations, and

(b) its business and affairs for the purpose of the analysis of its financial condition, in such form and manner and at such times as may be required by or pursuant to such regulations as the Governor in Council may make for the purpose.

1996, c. 6, s. 57.

Exceptions to disclosure

436.2 No information obtained by an association regarding any of its customers shall be disclosed or made available under subsection 436(1) or section 436.1.

1996, c. 6, s. 57.

Report respecting disclosure

436.3 The Superintendent shall prepare a report, to be included in the report referred to in section 40 of the *Office of the Superintendent of Financial Institutions Act*, respecting the disclosure of information by associations and describing the state of progress made in enhancing the disclosure of information in the financial services industry.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Report respecting disclosure

436.3 The Superintendent shall prepare a report, to be included in the report referred to in section 25 of the *Office of the Superintendent of Financial Institutions Act*, respecting the disclosure of information by associations and describing the state of progress made in enhancing the disclosure of information in the financial services industry.

1996, c. 6, s. 57; 2001, c. 9, s. 328.

Inspection of Associations

Examination of associations

437. (1) The Superintendent, from time to time, but at least once in each calendar year, shall make or cause to be made any examination and inquiry into the business and affairs of each association that the Superintendent considers to be necessary or expedient to determine whether the association is complying with the provisions of this Act and whether the association is in a sound financial condition and, after the conclusion of each examination and inquiry, shall report on it to the Minister.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this sub-section read as follows:

Examination of associations

437. (1) The Superintendent, from time to time, but at least once in each calendar year, shall make or cause to be made such examination and inquiry into the business and affairs of each association as the Superintendent may deem to be necessary or expedient for the purposes of satisfying the Superintendent that the provisions of this Act are being duly observed and that the association is in a sound financial condition and, after the conclusion of each examination and inquiry, shall report thereon to the Minister.

Access to records of association

(2) The Superintendent or a person acting under the Superintendent's direction

(a) has a right of access to any records, cash, assets and security held by an association; and

(b) may require the directors, officers and auditor of an association to provide information and explanations, to the extent that they are reasonably able to do so, in respect of the condition and affairs of the association or any entity in which the association has a substantial investment.

1991, c. 48, s. 437; 2001, c. 9, s. 329.

Power of Superintendent on inquiry

438. The Superintendent has all the powers of a person appointed as a commissioner under Part II of the *Inquiries Act* for the purpose of obtaining evidence under oath, and may delegate those powers to any person acting under the Superintendent's direction.

2001, c. 9, s. 330.

REMEDIAL POWERS

Prudential Agreements

Prudential agreement

438.1 The Superintendent may enter into an agreement, called a "prudential agreement", with an association for the purposes of implementing any measure designed to maintain or improve its safety and soundness.

Legislative History – The heading and section 438.1 were added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such heading or section previously existed in this Act.

Directions of Compliance

Superintendent's directions to association

439. (1) Where, in the opinion of the Superintendent, an association, or a person with respect to an association, is committing, or is about to commit, an act that is an unsafe or unsound practice in conducting the business of the association, or is pursuing or is about to pursue any course of conduct that is an unsafe or unsound practice in conducting the business of the association, the Superintendent may direct the association or person to

- (a) cease or refrain from committing the act or pursuing the course of conduct; and
- (b) perform such acts as in the opinion of the Superintendent are necessary to remedy the situation.

Opportunity for representations

(2) Subject to subsection (3), no direction shall be issued to an association or person under subsection (1) unless the association or person is provided with a reasonable opportunity to make representations in respect of the matter.

Temporary direction

(3) Where, in the opinion of the Superintendent, the length of time required for representations to be made under subsection (2) might be prejudicial to the public interest, the Superintendent may make a temporary direction with respect to the matters referred to in paragraphs (1)(a) and (b) having effect for a period of not more than fifteen days.

Idem

(4) Subject to section 440, a temporary direction under subsection (3) continues to have effect after the expiration of the fifteen day period referred to in that subsection if no representations are made to the Superintendent within that period or, if representations have been made, the Superintendent

notifies the association or person that the Superintendent is not satisfied that there are sufficient grounds for revoking the direction.

440. [Repealed, 1996, c. 6, s. 58]

Court enforcement

441. (1) Where an association or person

(a) is contravening or has failed to comply with a prudential agreement entered into under section 438.1 or a direction of the Superintendent issued to the association or person pursuant to subsection 439(1) or (3),

(b) is contravening this Act, or

(c) has omitted to do any thing under this Act that is required to be done by or on the part of the association or person,

the Superintendent may, in addition to any other action that may be taken under this Act, apply to a court for an order requiring the association or person to comply with the prudential agreement or the direction, cease the contravention or do any thing that is required to be done, and on such application the court may so order and make any other order it thinks fit.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this sub-section read as follows:

Court enforcement

441. (1) Where an association or person

(a) is contravening or has failed to comply with a direction of the Superintendent issued to the association or person pursuant to subsection 439(1) or (3),

(b) is contravening this Act, or

(c) has omitted to do any thing under this Act that is required to be done by or on the part of the association or person,

the Superintendent may, in addition to any other action that may be taken under this Act, apply to a court for an order requiring the association or person to comply with the direction, cease the contravention or do any thing that is required to be done, and on such application the court may so order and make any other order it thinks fit.

Appeal

(2) An appeal from a decision of a court under subsection (1) lies in the same manner, and to the same court, as an appeal from any other order of the court.

1991, c. 48, s. 441; 2001, c. 9, s. 331.

Disqualification and Removal of Directors or Senior Officers

Meaning of "senior officer"

441.01 In sections 441.1 and 441.2, "senior officer" means the chief executive officer, secretary, treasurer, controller of an association or any other officer reporting directly to the association's board of directors or chief executive officer.

Legislative History - With the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, the heading "Disqualification from Election or Appointment", was replaced with the new heading "Disqualification and Removal of Directors or Senior Officers" and with sub-section 441.01.

2001, c. 9, s. 332.

Application

441.1 (1) This section applies only in respect of an association

(a) that has been notified by the Superintendent that this section applies to it where the association is subject to measures designed to maintain or improve its safety and soundness, which measures

(i) have been specified by the Superintendent by way of conditions or limitations in respect of the order approving the commencement and carrying on of the association's business, or

(ii) are contained in a prudential agreement entered into under section 438.1 or an undertaking given by the association to the Superintendent; or

(b) that is the subject of a direction made under section 439 or an order made under subsection 409(3).

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, paragraphs (a) and (b) read as follows:

(a) that has been notified by the Superintendent that this section so applies where the association is subject to measures requiring it to maintain or improve its safety and soundness, which measures have been specified by the Superintendent by way of

(i) conditions or limitations in respect of the order approving the commencement and carrying on of the association's business, or

(ii) a written agreement or undertaking between the association and the Superintendent; or

(b) that is the subject of

(i) a direction made pursuant to section 439, or

(ii) an order made pursuant to subsection 409(3) requiring the association to increase its capital.

Information to be provided

(2) An association shall provide the Superintendent with the name of

(a) each person who has been nominated for election or appointment as a member of its board of directors, and

(b) each person who has been selected by the association for appointment as a senior officer,

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this paragraph read as follows:

(b) each person who has been selected by the directors of the association for appointment as chief executive officer, secretary, treasurer, controller, or any other officer reporting directly to the association's board of directors or chief executive officer,

together with such other information about the background, business record and experience of the person as the Superintendent may require.

When information to be provided

(3) The information required by subsection (2) shall be provided to the Superintendent at least thirty days prior to the date or proposed date of the election or appointment or within such shorter period as the Superintendent may allow.

Disqualification

(4) If the Superintendent is of the opinion that, on the basis of the competence, business record, experience, conduct or character of a person, he or she is not suitable to hold that position, the Superintendent may, by order, disqualify the person from being elected or appointed as a director of an association or from being appointed as a senior officer.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this sub-section read as follows:

Disqualification

(4) Where, in respect of an association, the Superintendent is of the opinion that on the basis of the competence, business record, experience or character of a person referred to in

(a) paragraph (2)(a), the person is not suitable for a position as a member of the board of directors of the association, or

(b) paragraph (2)(b), the person is not suitable for the discharge of the duties and responsibilities associated with the position referred to in that paragraph, the Superintendent may, subject to subsection (5), by order, disqualify the person from being elected or appointed to the position.

Risk of prejudice

(4.1) In forming an opinion under subsection (4), the Superintendent must consider whether the interests of the depositors and creditors of the association would likely be prejudiced if the person were to take office or continue to hold office, as the case may be.

Legislative History - This sub-section 4.1 was added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such sub-section previously existed in this Act.

Representations may be made

(5) The Superintendent must in writing notify the person concerned and the association of any action that the Superintendent proposes to take under subsection (4) and must afford them an opportunity within 15 days after the date of the notice, or within any longer period that the Superintendent allows, to make representations to the Superintendent in relation to the matter.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this sub-section read as follows:

Representations may be made

(5) The Superintendent must in writing notify the association and the person concerned of any action that the Superintendent proposes to take under subsection (4) and must afford them an opportunity within fifteen days after the date of the notice to make representations to the Superintendent in relation to the matter.

Prohibition

(6) Where an order has been made under subsection (4) disqualifying a person from being elected or appointed to a position, the person shall not be, and the association shall not permit the person to be, elected or appointed to the position.

1996, c. 6, s. 59; 2001, c. 9, s. 333.

Removal of directors or senior officers

441.2 (1) The Superintendent may, by order, remove a person from office as a director or senior officer of an association if the Superintendent is of the opinion that the person is not suitable to hold that office

(a) on the basis of the competence, business record, experience, conduct or character of the person; or

(b) because the person has contravened or, by action or negligence, has contributed to the contravention of

(i) this Act or the regulations made under it,

(ii) a direction made under section 439,

(iii) an order made under subsection 409(3),

(iv) a condition or limitation in respect of the order approving the commencement and carrying on of the association's business; or

(v) a prudential agreement entered into under section 438.1 or an undertaking given by the association to the Superintendent.

Risk of prejudice

(2) In forming an opinion under subsection (1), the Superintendent must consider whether the interests of the depositors and creditors of the association have been or are likely to be prejudiced by the person's holding office as a director or senior officer.

Representations may be made

(3) The Superintendent must in writing notify the person concerned and the association of any removal order that the Superintendent proposes to make under subsection (1) and must afford them an opportunity within 15 days after the date of the notice, or within any longer period that the Superintendent allows, to make representations to the Superintendent in relation to the matter.

Suspension

(4) If the Superintendent is of the opinion that the public interest may be prejudiced by the director or senior officer continuing to exercise the powers or carry out the duties and functions of that office during the period for making representations, the Superintendent may make an order suspending the director or senior officer. The suspension may not extend beyond 10 days after the expiration of that period.

Notice of order

(5) The Superintendent shall, without delay, notify the director or senior officer, as the case may be, and the association of a removal order or suspension order.

Consequences of removal order

(6) The director or senior officer, as the case may be, ceases to hold that office as of the date the removal order is made or any later date specified in the order.

Appeal

(7) The director or senior officer, as the case may be, or the association may, within 30 days after the date of receipt of notice of the removal order under subsection (5), or within any longer period that the Court allows, appeal the matter to the Federal Court.

Powers of Federal Court

(8) The Federal Court, in the case of an appeal, may dismiss the appeal or set aside the removal order.

Order not stayed by appeal

(9) A removal order is not stayed by an appeal.

Legislative History – This section 441.2 was added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such section previously existed in this Act.

2001, c. 9, s. 334.

SUPERVISORY INTERVENTION

Superintendent may take control

442. (1) Subject to this Act, where any of the circumstances described in subsection (1.1) exist in respect of an association, the Superintendent may

(a) take control, for a period not exceeding sixteen days, of the assets of the association and the assets held under the administration of the association; or

(b) unless the Minister advises the Superintendent that the Minister is of the opinion that it is not in the public interest to do so,

(i) take control, for a period exceeding sixteen days, of the assets of the association and the assets held under the administration of the association,

(ii) where control of assets has been taken under paragraph (a), continue the control beyond the sixteen days referred to in that paragraph, or

(iii) take control of the association.

Circumstances for taking control

(1.1) Control by the Superintendent under subsection (1) may be taken in respect of an association where

(a) the association has failed to pay its liabilities or, in the opinion of the Superintendent, will not be able to pay its liabilities as they become due and payable;

(b) in the opinion of the Superintendent, a practice or state of affairs exists in respect of the association that may be materially prejudicial to the interests of its creditors;

(c) the assets of the association are not, in the opinion of the Superintendent, sufficient to give adequate protection to its depositors and creditors;

(d) any asset appearing on the books or records of the association or held under the administration of the association is not, in the opinion of the Superintendent, satisfactorily accounted for;

(e) the regulatory capital of the association has, in the opinion of the Superintendent, reached a level or is eroding in a manner that may detrimentally affect its depositors and creditors;

(f) the association has failed to comply with an order of the Superintendent under paragraph 409(3)(a);

(g) in the case of a retail association, the association's deposit insurance has been terminated by the Canada Deposit Insurance Corporation; or

(h) in the opinion of the Superintendent, any other state of affairs exists in respect of the association that may be materially prejudicial to the interests of the depositors or creditors of the association or to those of the owners of any assets under the association's administration.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, these paragraphs (c) through (f), inclusive, read as follows:

(c) the assets of the association are not, in the opinion of the Superintendent, sufficient to give adequate protection to its creditors;

(d) any asset appearing on the books or records of the association or held under the administration of the association is not, in the opinion of the Superintendent, satisfactorily accounted for;

(e) the regulatory capital of the association has, in the opinion of the Superintendent, reached a level or is eroding in a manner that may detrimentally affect its creditors; or

(f) the association has failed to comply with an order of the Superintendent under paragraph 409(3)(a).

Notice of proposed action

(1.2) The Superintendent must notify

(a) an association of any action proposed to be taken in respect of it under paragraph (1)(b) and of its right to make written representations to the Superintendent within the time specified in the notice, not exceeding ten days after it receives the notice; and

(b) where the action proposed to be taken under subsection (1) is in respect of a central, within the meaning of Part XVI, the minister of the Crown in right of the province in which the central is incorporated who is responsible for the supervision of the central.

Objectives of Superintendent

(2) If, pursuant to subsection (1), the Superintendent has control of the assets of an association referred to in that subsection, the Superintendent may do all things necessary or expedient to protect the rights and interests of the depositors and creditors of the association.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this sub-section read as follows:

Objectives of Superintendent

(2) Where, pursuant to subsection (1), the Superintendent has control of the assets of an association referred to in that subsection, the Superintendent may do all things necessary or expedient to protect the rights and interests of the creditors of the association.

Powers of Superintendent

(3) Where, pursuant to subsection (1), the Superintendent has control of the assets of an association referred to in that subsection,

(a) the association shall not make, acquire or transfer any loan or make any purchase, sale or exchange of membership shares or securities or any disbursement or transfer of cash of any kind without the prior approval of the Superintendent or a representative designated by the Superintendent; and

(b) no director, officer or employee of the association shall have access to any cash or securities held by or under the administration of the association unless

(i) a representative of the Superintendent accompanies the director, officer or employee, or

(ii) the access is previously authorized by the Superintendent or the Superintendent's representative.

1991, c. 48, s. 442; 1996, c. 6, s. 60; 2001, c. 9, s. 335.

443. to 445. [Repealed, 1996, c. 6, s. 61]

Powers of directors and officers suspended

446. (1) Where the Superintendent takes control of an association pursuant to subparagraph 442(1)(b)(iii), the powers, duties, functions, rights and privileges of the directors of the association and of the officers of the association responsible for its management are suspended.

Superintendent to manage association

(2) Where the Superintendent takes control of an association pursuant to subparagraph 442(1)(b)(iii), the Superintendent shall manage the business and affairs of the association and in so doing the Superintendent

(a) may perform any of the duties and functions that the persons referred to in subsection (1) were performing prior to the taking of control; and

(b) has and may exercise any power, right or privilege that any such person had or could have exercised prior to the taking of control.

Persons to assist

(3) Where the Superintendent takes control of an association pursuant to subparagraph 442(1)(b)(iii), the Superintendent may appoint one or more persons to assist in the management of the association.

1991, c. 48, s. 446; 1996, c. 6, s. 62.

Expiration of control

447. Control by the Superintendent under subsection 442(1) of an association or of the assets of an association and the assets held under the administration of the association expires on the day on which a notice by the Superintendent is sent to the directors and officers who conducted the business and affairs of the association stating that the Superintendent is of the opinion that the circumstances leading to the taking of control by the Superintendent have been substantially rectified and that the association can resume control of its business and affairs.

1991, c. 48, s. 447; 1996, c. 6, s. 62.

Superintendent may request winding-up

447.1 The Superintendent may, at any time before the receipt of a request under section 448 to relinquish control of an association or of the assets of an association and the assets held under the administration of the association, request the Attorney General of Canada to apply for a winding-up order under section 10.1 of the *Winding-up and Restructuring Act* in respect of the association where

- (a) the assets of the association and the assets held under the administration of the association are under the control of the Superintendent pursuant to subparagraph 442(1)(b)(i) or (ii); or
- (b) the association is under the control of the Superintendent pursuant to subparagraph 442(1)(b)(iii).

1996, c. 6, s. 62.

Requirement to relinquish control

448. Where no action has been taken by the Superintendent under subsection 447.1 and, after thirty days following the taking of control by the Superintendent under subsection 442(1) of an association or of the assets of an association and the assets held under the administration of the association, the Superintendent receives from the board of directors a notice in writing requesting the Superintendent to relinquish control, the Superintendent must, not later than twelve days after receipt of the notice,

- (a) comply with the request; or
- (b) request the Attorney General of Canada to apply for a winding-up order under section 10.1 of the *Winding-up and Restructuring Act* in respect of the association.

1991, c. 48, s. 448; 1996, c. 6, s. 62.

Advisory committee

449. The Superintendent may, from among the associations that are subject to an assessment under section 23 of *the Office of the Superintendent of Financial Institutions Act* and required to share in the expenses resulting from the taking of control of an association pursuant to subsection 442(1), appoint a committee of not more than six members to advise the Superintendent in respect of assets, management and all other matters pertinent to the duties and responsibilities of the Superintendent in exercising control of the association.

1991, c. 48, s. 449; 1996, c. 6, s. 62.

Expenses payable by associations

450. (1) Where the Superintendent has taken control of an association pursuant to subparagraph 442(1)(b)(iii) and the control expires or is relinquished pursuant to section 447 or paragraph 448(a), the Superintendent may direct that the association be liable for repayment of all or part of the expenses resulting from the taking of control of the association and assessed against and paid by other associations pursuant to section 23 of *the Office of the Superintendent of Financial Institutions Act*, together with such interest in respect thereof at such rate as is specified by the Superintendent.

Debt due to Her Majesty

(2) Where any direction is made under subsection (1), the amount for which the association is liable is a debt due to Her Majesty in right of Canada payable on demand and is recoverable in the Federal Court or any other court of competent jurisdiction.

1991, c. 48, s. 450; 1996, c. 6, s. 63.

Priority of claim in liquidation

451. In the case of the winding-up of an association, the expenses resulting from the taking of control of the association under subsection 442(1) and assessed against and paid by other associations pursuant to section 23 of the *Office of the Superintendent of Financial Institutions Act*, and interest in respect thereof at such rate as is specified by the Superintendent, constitute a claim of Her Majesty in right of Canada against the assets of the association that ranks after all other claims but prior to any claim in respect of the membership shares or shares of the association.

1991, c. 48, s. 451; 1996, c. 6, s. 64(E).

Application of assessment

452. Any amount recovered pursuant to section 450 or 451 shall be applied to reduce the total amount of expenses incurred for or in connection with the administration of this Act.

PART XIII.1**REGULATION OF RETAIL ASSOCIATIONS – COMMISSIONER****Required information**

452.1 A retail association shall provide the Commissioner with the information at the times and in the form that the Commissioner may require for the purposes of the administration of the *Financial Consumer Agency of Canada Act* and the consumer provisions.

2001, c. 9, s. 336.

Confidential information

452.2 (1) Subject to subsection (2), information regarding the business or affairs of a retail association or regarding persons dealing with one that is obtained by the Commissioner or by any person acting under the direction of the Commissioner, in the course of the exercise or performance of powers, duties, and functions referred to in subsection 5(1) of the *Financial Consumer Agency of Canada Act*, and any information prepared from that information, is confidential and shall be treated accordingly.

Disclosure permitted

(2) If the Commissioner is satisfied that the information will be treated as confidential by the agency, body or person to whom it is disclosed, subsection (1) does not prevent the Commissioner from disclosing it

- (a) to any government agency or body that regulates or supervises financial institutions, for purposes related to that regulation or supervision;
- (b) to any other agency or body that regulates or supervises financial institutions, for purposes related to that regulation or supervision;
- (c) to the Canada Deposit Insurance Corporation, for purposes related to its operation; and
- (d) to the Deputy Minister of Finance or any officer of the Department of Finance authorized in writing by the Deputy Minister of Finance or to the Governor of the Bank of Canada or any officer of the Bank of Canada authorized in writing by the Governor of the Bank of Canada, for the purposes of policy analysis related to the regulation of financial institutions.

2001, c. 9, s. 336.

Examination

452.3 (1) The Commissioner, from time to time, but at least once in each calendar year, shall make or cause to be made any examination and inquiry that the Commissioner considers necessary for the purposes of satisfying the Commissioner that the applicable consumer provisions are being complied with and, after the conclusion of each examination and inquiry, shall report on it to the Minister.

Access to records of retail association

(2) The Commissioner or a person acting under the Commissioner's direction in carrying out his or her duties under subsection (1)

(a) has a right of access to any records, including electronic records, of a retail association; and

(b) may require the directors or officers of a retail association to provide information and explanations, to the extent that they are reasonably able to do so, in respect of any matter subject to examination or inquiry under subsection (1).

2001, c. 9, s. 336.

Power of Commissioner on inquiry

452.4 The Commissioner, in carrying out his or her duties in relation to consumer provisions, has all the powers of a person appointed as a commissioner under Part II of the *Inquiries Act* for the purpose of obtaining evidence under oath, and may delegate those powers to any person acting under the Commissioner's direction.

2001, c. 9, s. 336.

Compliance agreement

452.5 The Commissioner may enter into an agreement, called a "compliance agreement", with a retail association for the purposes of implementing any measure designed to further compliance by it with the consumer provisions.

2001, c. 9, s. 336.

Legislative History – Sections 452.1 through 452.5, inclusive were added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such sections 452.1 through 42.5 previously existed in this Act.

PART XIV**ADMINISTRATION***Notices and Other Documents***Notice to directors, members and shareholders**

453. A notice or document required by this Act or the regulations or by the incorporating instrument or by-laws of an association to be sent to a director, member or shareholder of an association may be sent by prepaid mail addressed to, or may be delivered personally to,

- (a) the director at the director's latest address as shown in the records of the association or in the latest return made under section 432;
- (b) the member at the member's latest address as shown in the records of the association; and
- (c) the shareholder at the shareholder's latest address as shown in the records of the association or its transfer agent.

Presumption from return

454. A director named in the latest return sent by an association to the Superintendent under section 432 is presumed for the purposes of this Act to be a director of the association referred to in the return.

Presumption of receipt

455. (1) A notice or document sent by mail in accordance with section 453 to a director, member or shareholder is deemed to be received by the director, member or shareholder at the time it would be delivered in the ordinary course of mail unless there are reasonable grounds for believing that the director, member or shareholder did not receive the notice or document at that time or at all.

Undelivered notices

(2) If an association sends a notice or document to a member or shareholder in accordance with section 453 and the notice or document is returned on three consecutive occasions because the member or shareholder cannot be found, the association is not required to send any further notices or documents to the member or shareholder until informed in writing of the member's or shareholder's new address.

Service on an association

456. A notice or document required by this Act to be sent to or served on an association may be sent by registered mail to the head office of the association and, if so sent, is deemed to be received or served at the time it would be delivered in the ordinary course of mail unless there are reasonable grounds for believing that the association did not receive the notice or document at that time or at all.

Certificate of association

457. (1) A certificate issued on behalf of an association stating any fact that is set out in the incorporating instrument, the by-laws, the minutes of a meeting, or in a contract to which the association is a party, may be signed by a director or an officer of the association.

Proof of certain cases

(2) When introduced as evidence in any civil, criminal or administrative action or proceeding,

- (a) a fact stated in a certificate referred to in subsection (1),
- (b) a certified extract from the members register of an association,
- (c) a certified extract from a securities register of an association, or
- (d) a certified copy of, or an extract from, minutes of a meeting

is, in the absence of evidence to the contrary, proof of the facts so certified without proof of the signature or official character of the person appearing to have signed the certificate.

Entry in securities register

458. (1) An entry in the securities register of, or on a security certificate issued by, an association is evidence that the person in whose name the security is registered is the owner of the securities described in the register or in the certificate.

Entry in members register

(2) An entry in the members register of an association is evidence that the person in whose name a membership share is registered is a member of that association and the owner of that membership share.

Verification of documents or fact

459. (1) The Superintendent may require that a document or a fact stated in a document that is required by or under this Act to be sent to the Superintendent or to the Minister be verified in accordance with subsection (2).

Form of proof

(2) A document or fact required by this Act or by the Superintendent to be verified may be verified by affidavit made under oath or by statutory declaration under the *Canada Evidence Act* before any commissioner for oaths or for taking affidavits.

Alternative means of publication

459.1 (1) Anything that is required by a provision of this Act to be published in the *Canada Gazette* or to be published in any other way may, instead of being published in that way, be published in any manner that may be prescribed for the purpose of that provision.

Alternative means of publishing summaries

(2) Anything that is required by a provision of this Act to be summarized in a publication may instead be summarized and published in any manner that may be prescribed for the purpose of that provision.

Publication conditions

(3) Any condition under a provision of this Act that something be published in the *Canada Gazette* or in any other way is satisfied if that thing is published instead in any manner that may be prescribed for the purpose of that provision.

Other consequences

(4) Where a provision of this Act provides for consequences to follow the publication of something in the *Canada Gazette* or in any other manner, the same consequences follow the publication of that thing in any other manner that may be prescribed for the purpose of that provision.

1997, c. 15, s. 159.

APPROVALS: TERMS, CONDITIONS AND UNDERTAKINGS

Definition of "approval"

459.2 (1) In this section, "approval" includes any consent, order, exemption, extension or other permission granted by the Minister or the Superintendent under this Act, and includes the issuance of letters patent.

Minister – terms, conditions and undertakings

(2) In addition to any other action that may be taken under this Act, the Minister may, in granting an approval, impose such terms and conditions or require such undertaking as the Minister considers necessary, including any terms, conditions or undertaking specified by the Superintendent to maintain or improve the safety and soundness of any financial institution regulated under an Act of Parliament and to which the approval relates or that may be affected by it.

Superintendent – terms, conditions and undertakings

(3) In addition to any other action that may be taken under this Act, the Superintendent may, in granting an approval, impose such terms and conditions or require such undertaking as the Superintendent considers necessary.

Effect of non-compliance on approval

(4) Unless otherwise expressly provided in this Act, a failure to comply with a term or condition or an undertaking imposed or required under any provision of this Act does not invalidate the approval to which the term, condition or undertaking relates.

Non-compliance

(5) In addition to any other action that may be taken under this Act, in case of non-compliance by a person with a term, condition or undertaking imposed or required under any provision of this Act, the Minister or Superintendent, as the case may be, may

- (a) revoke, suspend or amend the approval to which the term, condition or undertaking relates; or
- (b) apply to a court for an order directing the person to comply with the term, condition or undertaking, and on such application the court may so order and make any other order it thinks fit.

Representations

(6) Before taking any action under subsection (5), the Minister or the Superintendent, as the case may be, shall afford the person concerned a reasonable opportunity to make representations.

Revocation, suspension or amendment

(7) At the request of the person concerned, the Minister or the Superintendent, as the case may be, may revoke, suspend or amend any terms or conditions imposed by him or her or may revoke or suspend an undertaking given to him or her or approve its amendment.

Legislative History – This section 459.2 was added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such section previously existed in this Act.

2001, c. 9, s. 337.

ORDERS AND DIRECTIVES

Not statutory instruments

460. An instrument issued or made under this Act and directed to a single association or person, other than an order referred to in section 423, is not a statutory instrument for the purposes of the *Statutory Instruments Act*.

Form

461. The Superintendent may, by order, establish the form of any application to be made to the Minister or the Superintendent under this Act.

APPLICATIONS TO SUPERINTENDENT

Content of applications

461.1 (1) The following applications to the Superintendent must contain the information, material and evidence that the Superintendent may require:

- (a) applications for approval under subsection 74(1), 80(2), 82(4), 86(5), 87(1), 177(1), 221(2), 385(1), 390(6) or (10), 393(1) or (2) or 406(1), subparagraph 411(2)(a)(iv), section 414 or subsection 418(3) or (3.1);
- (b) applications for consent under subsection 79(1);
- (c) applications for exemptions under subsection 166.05(3) or 242(1); and
- (d) applications for extensions of time under subsection 393(3) or (5), 394(4) or 395(4).

Receipt

(2) Without delay after receiving the application, the Superintendent shall send a receipt to the applicant certifying the date on which it was received.

Notice of decision to applicant

(3) Subject to subsection (4), the Superintendent shall, within a period of thirty days after the receipt of the application, send to the applicant

- (a) a notice approving the application, subject to any terms and conditions that the Superintendent considers appropriate; or

(b) if the Superintendent is not satisfied that it should be approved, a notice to that effect.

Extension of period

(4) If the Superintendent is unable to complete the consideration of the application within the period referred to in subsection (3), the Superintendent shall, within that period, send a notice to the applicant informing the applicant that the Superintendent has extended the period for a further period set out in the notice.

Deemed approval

(5) If the applicant does not receive the notice required by subsection (3) and, where applicable, subsection (4), within the required period, the Superintendent is deemed to have approved the application and granted the approval, consent, extension or exemption to which the application relates, regardless of whether the approval, consent, extension or exemption is to be in writing or not.

Legislative History – This section 461.1 was added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such section previously existed in this Act.

2001, c. 9, s. 338.

APPEALS

Appeal to Federal Court

462. (1) An appeal lies to the Federal Court from any direction of the Minister made under subsection 368(1).

Powers

(2) The Federal Court may, in an appeal under subsection (1),

- (a) dismiss the appeal;
- (b) set aside the direction or decision; or
- (c) set aside the direction or decision and refer the matter back for re-determination.

Certificate

(3) For the purposes of an appeal under subsection (1), the Minister shall, at the request of the association or person making the appeal, provide the association or person with a certificate in writing setting out the direction or decision appealed from and the reasons why the direction or decision was made.

1991, c. 48, ss. 462, 498; 1996, c. 6, s. 65.

REGULATIONS

Power to make regulations

463. The Governor in Council may make regulations

(a) prescribing anything that is required or authorized by this Act to be prescribed;

(a.1) prescribing the way in which anything that is required or authorized by this Act to be prescribed shall be determined;

(b) defining words and expressions to be defined for the purposes of this Act;

(c) requiring the payment of a fee in respect of the filing, examining or issuing of any document or in respect of any action that the Superintendent is required or authorized to take under this Act, and fixing the amount thereof or the manner of determining the amount thereof;

(d) respecting the regulatory capital and total assets of an association;

(e) respecting the retention, in Canada, of assets of an association;

(f) respecting the value of assets of an association to be held in Canada and the manner in which those assets are to be held;

(g) respecting the protection and maintenance of assets of an association and assets held under the administration of an association, including regulations respecting the bonding of directors, officers and employees of an association;

(h) respecting the holding of membership shares and shares for the purposes of section 78;

(i) respecting information, in addition to the information required by section 434, to be maintained in the register referred to in that section;

(i.1) respecting the determination of the equity of an association;

(i.2) respecting persons who are a related party to a retail association; and

Legislative History – Paragraphs (i.1) and (i.2) were added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such paragraphs previously existed in this Act.

(j) generally for carrying out the purposes and provisions of this Act.

1991, c. 48, s. 463; 1997, c. 15, s. 160; 2001, c. 9, s. 339.

DELEGATION

Delegation

464. The Minister may delegate any of the Minister's powers, duties and functions under this Act to any Minister of State appointed pursuant to the *Ministries and Ministers of State Act* to assist the Minister.

PART XV
SANCTIONS

Offence

465. (1) Every person who, without reasonable cause, contravenes any provision of this Act or the regulations is guilty of an offence.

Undue preference to creditor

(2) Every director, officer or employee of an association who wilfully gives or concurs in giving to any creditor of the association any fraudulent, undue or unfair preference over other creditors, by giving security to the creditor, by changing the nature of the creditor's claim or otherwise, is guilty of an offence.

Failure to provide information

(3) Every person who, without reasonable cause, refuses or fails to comply with a requirement made under paragraph 437(2)(b) is guilty of an offence.

Use of name

(4) Except to the extent permitted by the regulations, every person who uses the name of an association in a prospectus, offering memorandum, takeover bid circular, advertisement for a transaction related to securities or in any other document in connection with a transaction related to securities is guilty of an offence.

Punishment

466. (1) Every person who is guilty of an offence under any of subsections 465(1) to (4) is

(a) in the case of a natural person, liable

(i) on summary conviction, to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding twelve months, or to both, or

(ii) on conviction on indictment, to a fine not exceeding \$500,000 or to imprisonment for a term not exceeding five years, or to both; and

(b) in the case of an entity, liable

(i) on summary conviction, to a fine not exceeding \$500,000, or

(ii) on conviction on indictment, to a fine not exceeding \$5,000,000.

Order to comply

(2) Where a person has been convicted of an offence under this Act, the court may, in addition to any punishment it may otherwise impose, order the person to comply with the provisions of this Act or the regulations in respect of which the person was convicted.

Additional fine

(3) Where a person has been convicted of an offence under this Act, the court may, where it is satisfied that as a result of the commission of the offence the convicted person acquired any monetary benefits or that monetary benefits accrued to the convicted person or to the spouse or other dependant of the convicted person, order the convicted person to pay, notwithstanding the maximum amount of any fine that may otherwise be imposed under this Act, an additional fine in an amount equal to the court's estimation of the amount of those monetary benefits.

1991, c. 48, s. 466; 1997, c. 15, s. 161.

Liability of officers, directors, etc.

467. Where an entity commits an offence under this Act, any officer, director or agent of the entity who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and liable on summary conviction or on conviction on indictment to the punishment provided under paragraph 466(1)(a) for the offence, whether or not the entity has been prosecuted or convicted.

1991, c. 48, s. 467; 1997, c. 15, s. 162.

Limitation period

467.1 (1) Proceedings by way of summary conviction in respect of an offence under a provision of this Act may be commenced at any time within, but not later than, two years after the day on which the subject-matter of the proceedings became known, in the case of an offence under a consumer provision, to the Commissioner and, in any other case, to the Superintendent.

Certificate of Superintendent or Commissioner

(2) A document appearing to have been issued by the Superintendent or Commissioner, as the case may be, certifying the day on which the subject-matter of any proceedings became known to the Superintendent or Commissioner is admissible in evidence without proof of the signature or official character of the person appearing to have signed it and is, in the absence of evidence to the contrary, proof of the matter asserted in it.

Legislative History – This section 467.1 was added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such section previously existed in this Act.

2001, c. 9, s. 340.

Effect of offence on contracts

468. Unless otherwise expressly provided in this Act, a contravention of any provision of this Act or the regulations does not invalidate any contract entered into in contravention of the provision.

Compliance or restraining order

469. (1) If an association or any director, officer, employee or agent of an association does not comply with any provision of this Act or the regulations other than a consumer provision, or of the incorporating instrument or any by-law of the association, the Superintendent, any complainant or any creditor of the association may, in addition to any other right that that person has, apply to a court for an order directing the association, director, officer, employee or agent to comply with – or restraining the association, director, officer, employee or agent from acting in breach of – the provision and, on the application, the court may so order and make any further order it thinks fit.

Compliance or restraining order - consumer provisions

(2) If a retail association or any director, officer, employee or agent of a retail association does not comply with any applicable consumer provision, the Commissioner or any complainant may, in addition to any other right that that person has, apply to a court for an order directing the retail association, director, officer, employee or agent to comply with – or restraining the retail association, director, officer, employee or agent from acting in breach of – the consumer provision and, on the application, the court may so order and make any further order it thinks fit.

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this section read as follows:

Restraining or compliance order

469. If an association or any director, officer, employee or agent of an association does not comply with any provision of this Act, the regulations, the incorporating instrument of the association or any by-law of the association, the Superintendent, any complainant or any creditor of the association may, in addition to any other right that person has, apply to a court for an order directing the association or the director, officer, employee or agent to comply with, or restraining the association or the director, officer, employee or agent from acting in breach of, the provision and, on the application, the court may so order and make any further order it thinks fit.

1991, c. 48, s. 469; 2001, c. 9, s. 341.

Appeals

470. Any decision or order of a court under this Act may be appealed to the court of appeal.

Recovery and application of fines

471. All fines payable under this Act are recoverable and enforceable, with costs, at the suit of Her Majesty in right of Canada, instituted by the Attorney General of Canada, and, when recovered, belong to Her Majesty in right of Canada.

PART XVI

CENTRAL COOPERATIVE CREDIT SOCIETIES

Definition of "central"

472. In the English version of this Part, "central" means a central cooperative credit society for which an order has been made under subsection 473(1).

1991, c. 48, s. 472; 1993, c. 34, s. 56(F).

Application

473. (1) On application by a central cooperative credit society, the Superintendent may, by order, apply this Part to the central.

Contents of application

(2) The application referred to in subsection (1) shall be filed together with

- (a) evidence satisfactory to the Superintendent that
 - (i) the applicant is a cooperative credit society, and
 - (ii) the applicant is a member of an association, or if not such a member, the applicant has applied for and will be accepted into membership in an association;
- (b) a copy of a special resolution of the applicant authorizing the application; and
- (c) such other information, material and evidence as the Superintendent may require.

Effect of order

474. (1) Every central is deemed to be an association incorporated under this Act for the purposes of

- (a) subsections 16(1), (3) and (4),
- (a.1) paragraphs 167(2)(a) and (b),
- (b) sections 199 and 200,
- (c) sections 291 to 317, other than subsection 291(2), and

(d) Parts IX to XV and XVII, other than subsection 375(3), section 375.1 and paragraph 442(1.1)(g),

Legislative History - Prior to the passage of S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), in June, 2001, this paragraph read as follows:

(d) Parts IX to XV and XVII, other than subsection 375(3), subparagraphs 443(1)(b)(v) and (2)(a)(v) and paragraph 443(3)(f),

and, subject to subsections (3) and (4), is invested with all the powers, privileges and immunities conferred by, and is subject to the limitations and liabilities set out in, those provisions, with such modifications as the circumstances require.

No limitation on provincial powers, etc.

(2) Nothing in this Act prohibits a central from exercising any power, right or privilege conferred on it by any law of the province in which it is incorporated except as specifically prohibited by sections 379, 383 to 385 or any provision of Part X.

Prohibited powers, etc.

(3) A central shall not exercise a power, right or privilege conferred on it by this Act if it is specifically prohibited or restricted from exercising the power, right, or privilege by any law of the province in which it is incorporated.

Exception

(4) Subsections 16(1), (3) and (4) and Part IX, other than sections 379 and 383 to 385, do not apply to a central that is incorporated in a province the laws of which do not empower the central to exercise the powers, privileges and immunities conferred by this Act.

Exception

(5) Paragraph 390(4)(a) does not apply to the acquisition or increase of a substantial investment by a central in an association referred to in section 14.

Legislative History – This sub-section (5) was added by S.C. 2001, c. 9 (*Financial Consumer Agency of Canada Act*), passed in June, 2001. No such sub-section previously existed in this Act.

1991, c. 48, s. 474; 1997, c. 15, s. 163; 2001, c. 9, s. 342.

Additional powers

475. (1) For the purposes of Part X, a central may make a deposit in or a loan to, invest in the debt obligations of, or purchase members' shares issued by, a cooperative credit society, or a cooperative corporation, that is a member of that central, and any such loan, deposit, investment or purchase shall be deemed not to be a commercial loan.

Security interest

(2) Notwithstanding section 383, a central may create a security interest in any of its property to secure an obligation of the central to

- (a) an association of which the central is a member; or
- (b) a deposit protection agency, or the government of the province in which the central is incorporated, if the agency or government is designated by the Minister.

Guarantees

(3) Paragraph 379(1)(a) does not apply to a central where

- (a) the guarantee is given on behalf of a member of the central or on behalf of another central; and
- (b) the payment guaranteed represents the obligation of that member or other central to settle for payment items in accordance with the by-laws and rules of the Canadian Payments Association.

Terms and conditions

476. (1) The Superintendent may impose such terms and conditions in respect of the making of an order under subsection 473(1) as the Superintendent deems necessary.

Variations

(2) In respect of an order under subsection 473(1), the Superintendent may at any time, by further order,

- (a) make the order subject to such conditions or limitations that are consistent with this Act and that relate to the business of the central as the Superintendent deems expedient and necessary, or
- (b) amend or revoke any condition or limitation to which the order is subject,

but before making any such further order the Superintendent shall provide the central with an opportunity to make representations regarding that further order.

Public notice

477. On the making of an order under subsection 473(1), the central shall publish a notice of the making of the order in a newspaper in general circulation at or near the place where the head office

of the central is located and the Superintendent shall cause such a notice to be published in the Canada Gazette.

Revocation of order

478. (1) Subject to subsections (2) and (3), where a central ceases to be a member of an association or applies to the Superintendent to have the order under subsection 473(1) revoked, the Superintendent shall, by order, revoke the order.

Conditions

(2) The Superintendent shall not revoke an order pursuant to subsection (1) on a central ceasing to be a member of an association, unless the Superintendent is satisfied that

- (a) the regulatory authorities in the province in which the central is incorporated have been duly notified by the central of the cessation of membership; and
- (b) the central is following standards of sound business and financial practice.

Idem

(3) The Superintendent shall not revoke an order pursuant to subsection (1) on an application by a central, unless the Superintendent is satisfied that

- (a) the regulatory authorities in the province in which the central is incorporated have been duly notified by the central of its intention to apply for revocation;
- (b) the central has published in the Canada Gazette at least 30 days before making the application a notice of its intention to apply for revocation; and
- (c) the central is following standards of sound business and financial practice.

Effect of revocation

479. On the day specified in the order under subsection 478(1), sections 474 and 475 cease to apply to the central.

Transitional

480. For the purposes of this Act, a central cooperative credit society to which section 92 of the former Act applied immediately before the coming into force of this section is deemed to be a central cooperative credit society for which an order has been made under subsection 473(1).

PART XVII

LOANS TO ASSOCIATIONS AND DEPOSIT PROTECTION AGENCIES

Definition of "Corporation"

481. In this Part, "Corporation" means the Canada Deposit Insurance Corporation established by the *Canada Deposit Insurance Corporation Act*.

Loans to associations

482. (1) The Corporation, where it is satisfied that an association has substantially exhausted the sources of funds reasonably available to it, may, out of amounts advanced to the Corporation pursuant to section 485, make short term loans to the association, to enable the association to meet the requirements for liquid funds needed to discharge its maturing debt obligations.

Loans to deposit protection agencies

(2) The Corporation may also, with the approval of the Governor in Council, make short term loans to a deposit protection agency to enable it to meet its requirements for liquid funds for its operations.

Term of loan and conditions

483. (1) The maximum term of a loan made under section 482 is six months, the loans shall bear interest at a rate that, in the opinion of the Corporation, is higher than the rate at which such a loan could otherwise be obtained by the association or deposit protection agency and the loan shall be subject to such other conditions, including conditions respecting security for the loan, as the Corporation deems advisable.

Renewal

(2) The loan referred to in subsection (1) may be renewed for a term or terms, each of which shall not exceed six months, at a rate of interest determined in the manner described in subsection (1) and subject to the other conditions on which it was originally made, or any other conditions that the Corporation deems advisable.

Information to be available to the Corporation

484. (1) The Corporation, in relation to the exercise of its powers under this Part, is entitled to review all information obtained by the Superintendent by or in respect of an association or deposit protection agency pursuant to this Act.

Powers of Superintendent

(2) The Superintendent shall, notwithstanding any other Act of Parliament, at the request of the Corporation,

(a) examine the affairs of an association or deposit protection agency to which a loan has been made under this section or whose application for a loan is being considered; and

(b) obtain information relating to an association or deposit protection agency that can be reasonably obtained pursuant to this Act.

Report

(3) Where, pursuant to sections 442 and 443, the Superintendent makes a report to the Minister in relation to an association, the Superintendent shall send a copy thereof to the Corporation and shall advise the Corporation of any action taken by the Minister as a consequence of the report.

Payments out of C.R.F.

485. (1) Subject to subsection (2), out of the Consolidated Revenue Fund, the Minister

(a) may, on terms and conditions approved by the Governor in Council, authorize advances to the Corporation of amounts required for the purpose of making loans under section 482; and

(b) shall authorize the reimbursement of the Corporation for losses sustained by it in respect of such loans.

Limits on payments out of C.R.F.

(2) The amount of advances outstanding under paragraph (1)(a) shall not at any time exceed the amount by which two hundred million dollars exceeds the aggregate of reimbursements to the Corporation under paragraph (1)(b).

Information not to be included in capital budgets

(3) The capital budget of the Corporation submitted pursuant to section 124 of the Financial Administration Act shall not include information relating to anticipated capital requirements of the Corporation under this section.

Special account

486. (1) The Corporation shall establish in the Bank of Canada a special account to which shall be credited all interest received by it on loans made under section 482 and to which shall be charged

- (a) all interest on advances made to it;
- (b) all expenses incurred by it in carrying out its duties and functions under this Part; and
- (c) any funds paid to the Receiver General pursuant to subsection (2).

Transfer of surplus to C.R.F.

(2) The Corporation shall, on the last day of March, June, September and December in each year, pay to the Receiver General any surplus funds in the special account established pursuant to subsection (1).

Operations under this Act to be separate and distinct

487. The assets and liabilities and the receipts and disbursements of the Corporation arising from its operations under this Act, and the records of the Corporation relating thereto, shall be kept separate and distinct from those arising from its operations under the *Canada Deposit Insurance Corporation Act*.

PART XVIII

GENERAL PROVISIONS

488. to 499. [Amendments and repeal]

COMING INTO FORCE

Coming into force

***500.** This Act or any provision thereof shall come into force on a day or days to be fixed by order of the Governor in Council.

*[Note: Act in force June 1, 1992, see SI/92-92.]