

FINANCIAL ACTIVITY MODERNIZATION ACT 96-597 OF 2 JULY 1996

TITLE I *THE PROVISION OF INVESTMENT SERVICES*

CHAPTER I INVESTMENT SERVICES

Section 1: Financial Instruments

Article 1

Financial instruments are:

1. Shares and other securities that afford or may afford direct or indirect access to equity or voting rights, transferable by book entry or by physical delivery;
2. Debt securities transferable by book entry or by physical delivery, each representing a claim on the legal person which issues it, other than trade bills (*effets de commerce*) and loan notes (*bons de caisse*);
4. Financial futures, and, for the purposes of this Act, all instruments equivalent to the foregoing issued under foreign laws. Financial instruments may be issued only by the State, a legal person, an unincorporated mutual fund (*fonds commun de placement*) or a securitization vehicle (*fonds commun de créances*).

Article 2

Collective investment undertakings are, for the purposes of this Act:

1. Open-end investment companies (*sociétés d'investissement à capital variable*);
2. Unincorporated mutual funds (*fonds communs de placement*);
3. Securitization vehicles (*fonds communs de créances*);
4. Real estate investment companies (*sociétés civiles de placement immobilier*).

Article 3

Financial futures are, for the purposes of this Act:

1. Financial futures and forward contracts involving any bills, securities, indices or currencies, including equivalent cash-settled instruments;
2. Forward interest-rate agreements;
3. Swaps;
4. Commodities futures and forwards,
5. Options to acquire or dispose of financial instruments; and all other futures and forward market instruments.

Section 2: Investment and Related Services

Article 4

Investment services involve to the financial instruments referred to in Article 1 of this Act and comprise:

- a) Receiving and transmitting orders for third parties;
- b) Executing orders for third parties,
- c) Trading for own account;
- d) Portfolio management for third parties;
- e) Underwriting;
- f) Placing.

However, this Act does not apply to services provided to the State or the *Banque de France* in connection with the monetary, exchange-rate, public-debt and reserves management policies of the State.

Article 5

Services related to investment services [i.e. non-core services] comprise:

- a) Safekeeping or administration of financial instruments;
- b) Granting credits or loans to an investor to allow him to carry out a transaction involving a financial instrument where the undertaking granting the credit or loan is involved in the transaction;
- c) Asset management advice;
- d) Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and acquisitions of undertakings;
- e) Services related to underwriting;
- f) Foreign-exchange services where these are related to the provision of investment services;
- g) Rental of safe-deposit boxes.

The conditions for investment firms carrying out the transactions listed in b) shall be set by the *Comité de la Réglementation Bancaire et Financière*.

CHAPTER II INVESTMENT SERVICE PROVIDERS

Section 1: Types of Investment Service Providers

Article 6

Investment service providers are investment firms and credit institutions authorized to provide investment services. The provision of related services shall be free, subject to compliance with the relevant statutory and regulatory provisions. Such provision shall not, however, in itself entitle any person to claim the status of an investment firm.

Article 7

Investment firms are legal persons, other than credit institutions, whose principal and usual business is the provision of investment services.

Article 8

I - Investment firms may, pursuant to the rules enacted by the *Comité de la Réglementation Bancaire et Financière* referred to in Article 30 of Act 84-46 of 24 January 1984 on the activities and supervision of credit institutions, acquire and hold equity in existing undertakings and undertakings being organized.

II - Any change in the capital structure of an investment firm must be made in accordance with the regulations of the *Comité de la Réglementation Bancaire et Financière*, reported to the *Comité des Établissements de Crédit et des Entreprises d'Investissement* and the *Conseil des Marchés Financiers*, and, if appropriate, authorized by the *Comité des Établissements de Crédit et des Entreprises d'Investissement*. In the case of portfolio management companies referred to in Article 15, the authority under this Article shall be exercised by the *Commission des Opérations de Bourse*.

Article 9

Investment firms may engage in a business other than those listed in Articles 4 and 5 only under the conditions set out by the *Comité des Établissements de Crédit et des Entreprises d'Investissement*.

Section 2: Authorizations

Article 10

I - In all statutory and regulatory provisions, including Article 29 of Act 84-46 of 24 January 1984 aforesaid, the term: "*Comité de la Réglementation Bancaire*" shall be amended to read: "*Comité de la Réglementation Bancaire et Financière*", the term: "*Comité des Établissements de Crédit*" shall be amended to read: "*Comité des Établissements de Crédit et des Entreprises d'Investissement*" and the term: "*Conseil National du Crédit*" shall be amended to read: "*Conseil National du Crédit et du Titre*".

II - See Article 30 of Act 84-46 of 24 January 1984

III - See Article 31 of Act 84-46 of 24 January 1984

IV - See the eighth paragraph (6) and the ninth paragraph (7) of Article 25 of Act 84-46 of 24 January 1984

Article 11

An investment firm or credit institution must obtain authorization to provide investment services. Subject to the third paragraph below, such authorization shall be granted by the *Comité des Établissements de Crédit et des Entreprises d'Investissement*. It shall not be required for providing one or more services listed in Article 5 only. Before such authorization is granted, the programme of operations of the investment firm or credit institution must be approved by the *Conseil des Marchés Financiers*. Such approval shall be necessary for each of the investment services provided for in Article 4.

A programme of operations relating to the service provided for in Article 4 d) shall be approved by the *Commission des Opérations de Bourse*. If the provision of such service is to be the principal business of an investment firm, the investment firm shall be authorized by the *Commission des Opérations de Bourse*.

A Decree in *Conseil d'État* shall set implementation procedures for this Article and define, *inter alia*, the rules under which the decisions are reached and notified as well as the specific provisions applicable to investment firms that are direct or indirect subsidiaries of investment firms or credit institutions that either have been authorized in another European Community Member State or are not subject to the laws of any such State.

Article 12

Before authorizing an investment firm, the *Comité des Établissements de Crédit et des Entreprises d'Investissement* referred to in Article 29 of Act 84-46 of 24 January 1984 aforesaid shall make sure that:

1. Its registered office and headquarters are in France;
2. It has, in view of the nature of the services that it wishes to provide, sufficient initial capital as determined by the *Comité de la Réglementation Bancaire et Financière*;
3. It identifies each of its direct and indirect natural- and legal-person shareholders with a qualifying holding and states the amount of such holding; the *Comité* shall assess such shareholders' qualifications in light of the need to ensure sound and prudent management of the investment firm;
4. At least two persons determine the course of its business;
5. Its legal form is appropriate for the business of an investment firm;
6. It has an approved programme of operations for each service which it plans to provide. The *Comité* may withhold authorization when it is likely to be hindered in the conduct of its supervision of the applicant undertaking either by the existence of equity links or links of direct or indirect control between the undertaking and other natural or legal persons, or by the existence of laws or regulations of a State that is not a party to the agreement on the European Economic Area applicable to one or more of the above-mentioned natural or legal persons.

The *Comité des Établissements de Crédit et des Entreprises d'Investissement* shall rule within three months of being sent the application by the *Conseil des Marchés Financiers*. It shall state the reason for its decision and notify the applicant.

Article 13

Before authorization to provide one or more investment services by a credit institution is granted, the *Comité des Établissements de Crédit et des Entreprises d'Investissement* shall, in addition to the requirements specified in Article 15 of Act 84-46 of 24 January 1984 aforesaid, make sure that such institution:

1. Has, in view of the nature of the services which it plans to provide, sufficient initial capital as determined by the *Comité de la Réglementation Bancaire et Financière*;
2. Has the legal form that is appropriate for providing investment services;
3. Has an approved programme of operations for each service which it plans to provide. The *Comité des Établissements de Crédit et des Entreprises d'Investissement* shall rule within three months of being sent the application by the *Conseil des Marchés Financiers*. It shall state the reasons for its decision and notify the applicant.

Article 14

Before approving the programme of operations of an investment service provider, the *Conseil des Marchés Financiers*, or the *Commission des Opérations de Bourse* if such programme relates to the investment service referred to in Article 4 d), shall assess the quality of such programme in the light of the qualifications and integrity of the senior management. Such programme shall describe the type of operations planned and the structure of the organization of the firm or institution.

The *Conseil des Marchés Financiers* or *Commission des Opérations de Bourse* shall rule within three months of the submission of the application. It shall state the reasons for its decision and notify the applicant. A regulation of the *Commission des Opérations de Bourse* shall set the conditions for approval of a programme of operations including the investment service referred to in Article 4 d).

Article 15

An investment firm whose principal business is the provision of the services referred to in Article 4 d) shall be authorized by the *Commission des Opérations de Bourse* and called a portfolio management company (*société de gestion de portefeuille*).

Before authorizing a portfolio management company, the *Commission* shall make sure that:

1. Its registered office and headquarters are in France;
2. It has sufficient initial capital;
3. It identifies each of its direct or indirect natural- and legal-person shareholders with a qualifying holding and states the amount of such holding; the *Commission* shall assess such shareholders' qualifications in light of the need to ensure sound and prudent management;
4. It is managed by persons having the necessary integrity and experience appropriate to their duties;
5. At least two persons determine the course of its business;
6. Its legal form is appropriate for providing the service referred to in Article 4 d);
7. It has a programme of operations for each service that it plans to provide. The *Commission des Opérations de Bourse* may withhold authorization when it is likely to be hindered in the conduct of its supervision of the portfolio management company either by the existence of equity links or links of direct or indirect control between the applicant undertaking and other natural or legal persons, or by the existence of laws or regulations of a State that is not a party to the agreement on the European Economic Area applicable to one or more of the above-mentioned natural or legal persons.

The *Commission des Opérations de Bourse* shall rule within three months of submission of the application. It shall state the reasons for its decision and notify the applicant. A regulation of the *Commission des Opérations de Bourse* shall set the conditions for the authorization of portfolio management companies.

Article 16

I - The Minister for Economic Affairs and Finance shall appoint a financial management consulting committee of seven members appointed for four years. The committee's membership shall consist of:

- one member of the *Commission des Opérations de Bourse*, as chairman, appointed on its recommendation;
- two members of the *Conseil des Marchés Financiers* appointed on its recommendation;
- four senior managers of portfolio management companies appointed after consultation with members of the profession concerned.

Two alternate members shall be appointed in the same conditions.

All persons participating in this committee's work shall be bound by the obligation of professional secrecy as provided and on pain of the penalties prescribed by Articles 226-13 and 226-14 of the Penal Code.

II - Said committee shall render an opinion on each authorization of a portfolio management company by the *Commission des Opérations de Bourse*. It shall also render an opinion on each approval of a programme of operations by the *Commission des Opérations de Bourse* pursuant to Article 11 of this Act. The *Commission des Opérations de Bourse* shall consult said committee with regard to the regulation referred to in the last paragraph of Article 15 and to every other regulatory provision concerning portfolio management.

III - Articles 23 through 25 of the Capital Market Transparency and Security Act 89-531 of 2 August 1989 are repealed.

Article 17

See Article 5 of Act 84-46 of 24 January 1984

Article 18

I - The *Comité des Établissements de Crédit et des Entreprises d'Investissement* shall revoke the authorizations of investment firms other than portfolio management companies, either at the request of the investment firm or *ex officio* when the firm no longer fulfils the conditions to which the authorization is subject, when it has not made use of its authorization within 12 months or when it has ceased carrying on its business for six months or longer. The revocation of authorization takes effect at the end of a period specified by the *Comité des Établissements de Crédit et des Entreprises d'Investissement*. During that period:

- the investment firm remains subject to the supervision of the *Commission Bancaire* and the *Conseil des Marchés Financiers*. The *Commission Bancaire*, the *Conseil des Marchés Financiers* and the *Commission des Opérations de Bourse* may impose the disciplinary sanctions provided for in Article 45 of Act 84-46 of 24 January 1984 aforesaid and in Articles 69 and 71 of this Act upon any investment firm whose authorization has been revoked;
- it may engage only in operations strictly necessary for winding-up its investment services;
- it may not refer to its status as an investment firm without making it clear that its authorization is being revoked.

Any securities issued by such firm which are not traded on a regulated market shall be redeemed by the firm at maturity or, if such maturity is subsequent to the end of the aforesaid period, on the date specified by the *Comité des Établissements de Crédit et des Entreprises d'Investissement*. At the end of said period, the firm shall no longer be an investment firm and its business name must be changed.

An investment firm that decides to dissolve before the end of such period remains subject to the supervision of the *Commission Bancaire* and the *Conseil des Marchés Financiers* until its liquidation has been completed. The *Commission Bancaire*, the *Conseil des Marchés Financiers* and the *Commission des Opérations de Bourse* may impose the disciplinary sanctions provided for in Article 45 of Act 84-46 of 24 January 1984 aforesaid and Articles 69 and 71 of this Act, including striking a firm off the list of authorized investment firms. In this event, such a firm may not refer to its status as an investment firm without making it clear that it is in liquidation.

II - An investment firm other than a portfolio management company may be struck off the list of authorized investment firms by the *Commission Bancaire* as a disciplinary sanction. The striking off shall entail liquidation of the legal person if its registered office is in France. In the case of branches of investment firms with their registered office outside the European Economic Area, such striking off shall entail liquidation of the branch's balance-sheet and off-balance-sheet assets and liabilities.

A firm struck off the list remains subject to the supervision of the *Commission Bancaire* until the liquidation has been completed. It may engage only in operations strictly necessary for its winding-up.

It may not refer to its status as an investment firm without making it clear that it has been struck off the list of authorized investment firms.

III - The *Comité de la Réglementation Bancaire et Financière* shall determine the implementing rules for this Article. It shall *inter alia* specify how:

- the decisions to revoke authorizations or strike investment firms off are publicized;
- the financial instruments entered in the firm's accounts may be transferred to another investment service provider or to the legal person that issued them.

Article 19

I - The *Commission des Opérations de Bourse* shall revoke the authorizations of portfolio management companies, either at the company's request or *ex officio* when the company no longer fulfils the conditions to which the authorization is subject, when it has not made use of its authorization within 12 months, when it has ceased carrying on its business for six months or longer, or when the continuation of its business is liable to harm the interests of investors. The revocation takes effect at the end of a period specified by the *Commission des Opérations de Bourse*. During such period:

- the portfolio management company shall be subject to the supervision of the *Commission des Opérations de Bourse*. The *Commission des Opérations de Bourse* may impose the disciplinary sanctions provided for in Article 71, including striking off the list of authorized portfolio management companies, upon any company whose authorization is revoked;
- it may engage only in operations strictly necessary for protection of customer interests;
- it may not refer to its status as a portfolio management company without making it clear that its authorization is being revoked.

At the end of such period, the company shall no longer be a portfolio management company and its business name must be changed. Any portfolio management company which decides to dissolve before the end of such period remains subject, until completion of its liquidation, to the supervision of the *Commission des Opérations de Bourse*, which may impose the sanctions provided for in Article 71 of this Act, including striking off the list of authorized portfolio management companies. It may not refer to its status as a portfolio management company without making it clear that it is in liquidation.

II - A portfolio management company may be struck off the list of authorized portfolio management companies by the *Commission des Opérations de Bourse* as a disciplinary sanction. The striking off shall entail liquidation of the legal person if its registered office is in France. In the case of branches of companies with their registered office outside the European Economic Area, such striking off shall entail liquidation of the branch's balance-sheet and off-balance-sheet assets and liabilities. A company struck off the list of authorized portfolio management companies remains subject to the supervision of the *Commission des Opérations de Bourse* until the liquidation has been completed. It may engage only in operations strictly necessary for protection of customer interests. It may not refer to its status as a portfolio management company without making it clear that it has been struck off the list of authorized portfolio management companies.

III - The *Commission des Opérations de Bourse* shall set the implementing rules for this Article. It shall *inter alia* specify how the decisions to revoke authorizations or to strike companies off are publicized.

Article 20

See the third paragraph of Article 18-2 of Act 84-46 of 24 January 1984.

Section 3: Prohibitions

Article 21

No one other than an investment service provider may provide investment services to third parties as its usual business.

Article 22

No one may serve on the board of directors or the supervisory board of an investment firm or, directly, indirectly or through an intermediary person, administer, direct or manage an investment firm in any capacity, or be authorized to sign on behalf of such a firm:

1. If he has been convicted:

- a) Of a crime;
- b) Of theft, fraud or breach of trust;
- c) Of violation of Penal Code Articles 432-11, 433-1 through 433-3, 441-1 or 441-8, of Labour Code Article L.152-6, of Article 52-1 of Freedom of Pricing and Competition Ordinance 86-1243 of 1 December 1986, or of an offence punishable under special statutes by the penalties provided for in Penal Code Articles 313-1 through 313-4 or in Article 1 of the Gaming Act 83-628 of 12 July 1983;
- d) Of misappropriation when acting as a public depository, extortion of funds or securities, fraudulent bankruptcy, impairment of the public credit or breach of the exchange control laws;
- e) Pursuant to Title II of Act 66-537 of 24 July 1966 on commercial companies or to Articles 6 (*Consumer Code, art L 313-5*) and 15 of Act 66-1010 of 28 December 1966 relating to usury, loans and certain canvassing and advertising operations;
- f) Of receiving items procured by means of such offences;
- g) Pursuant to Penal Code Articles 222-35 through 222-41 or Customs Code Article 415; or
- h) Pursuant to Title VI of this Act;

2. If he has been sentenced to more than two months' imprisonment pursuant to Article 66 of the Banking Law Unification Decree of 30 October 1935 (on cheques);

3. If he has been the subject of a conviction by a foreign court of law that is *res judicata*, constituting under French law a conviction for any of the crimes or offences listed in this Article.

The criminal court of the domicile of the convicted person shall, at the request of the State Prosecutor's Office, evaluate the validity and legality of the decision and give a ruling in chambers on the application of the prohibition in France, the person concerned having been duly summoned to attend;

4. If a personal bankruptcy or prohibition order as laid down in Article 108 of Act 67-563 of 13 July 1967 on receivership, court-ordered liquidation, personal bankruptcy and fraudulent bankruptcies has been pronounced against him or if he has been adjudged bankrupt by a foreign court of law provided that the adjudication in bankruptcy has been declared enforceable in France and he has not been discharged;

5. If he has been relieved of his duties as a law official by virtue of a court ruling.

Article 23

No undertaking other than an investment firm may use a business name, advertising or any expression whatsoever implying that it is an authorized investment firm or creating confusion in such regard. No investment firm may imply that it belongs to a category other than that in which it is authorized or create confusion in such regard.

Section 4: Organization of the Profession

Article 24

I - Each investment firm, market undertaking and clearing house shall belong to an association of its choosing responsible for the collective representation and the defence of the rights and interests of its members. Each such association shall be affiliated with the association for which provision is made in Article 23 of Act 84-46 of 24 January 1984 aforesaid.

II - In all statutory and regulatory provisions, including Article 23 of Act 84-46 of 24 January 1984 aforesaid, the term: *Association Française des Établissements de Crédit* shall be amended to read:

Association Française des Établissements de Crédit et des Entreprises d'Investissement.

Section 5: Scope

Article 25

The following may provide investment services in compliance with the relevant legislative provisions without being subject to the procedure provided for in Article 11 of this Act but without being entitled to the benefits provided for in Title IV:

1.
 - a) The Treasury;
 - b) The *Banque de France*;
 - c) The *Institut d'Émission des Départements d'Outre-Mer* and the *Institut d'Émission d'Outre-Mer*;
 - d) The Post Office;
2.
 - a) Insurance and reinsurance companies governed by the Insurance Code;
 - b) Collective investment undertakings, securitization vehicles and real estate investment companies as well as the companies responsible for management thereof governed by the Collective Investment Undertaking and Securitization Vehicle Act 88-1201 of 23 December 1988;
 - c) Firms that provide investment services only to the legal persons that have direct or indirect control of them within the meaning of Article 355-1 of Act 66-537 of 24 July 1966 aforesaid and to the legal persons that such persons control within the meaning of that Article;
 - d) Firms whose investment services are limited to the management of an employee savings scheme;
 - e) Firms that limit their activity to the operations mentioned in c) and d) above;
 - f) Persons who provide an investment service incidentally to a business activity where the rules governing the activity do not expressly prohibit such provision;
 - g) Persons whose business is governed by the Futures Markets Act of 28 March 1885, Act 66-1010 of 28 December 1966 aforesaid and the Financial Canvassing, Placement and Insurance Act 72-6 of 3 January 1972;

- h) Commodity brokers who provide an investment service only to their counterparties and only to the extent necessary for the purposes of their principal business.

Article 26

Investment services providers shall not be entitled to the benefits provided for in Title IV if their only business:

1. Is to provide the investment services referred to in Article 4 a); or
2. Relates to the financial instruments referred to in "Article 3-4".

TITLE II THE CAPITAL MARKETS

CHAPTER I THE CONSEIL DES MARCHÉS FINANCIERS

Section 1: Organization

Article 27

A professional authority named *Conseil des Marchés Financiers* shall be established as a legal person. It shall have 16 members appointed by a Decree of the Minister for Economic Affairs and Finance for a four-year term. Fourteen members shall be appointed after consultation of the representative trade associations and trade unions:

- six represent market intermediaries, at least two of which represent investment firms;
- one represents commodity markets;
- three represent industrial or commercial companies whose securities are traded on a regulated market;
- three represent investors, one of which manages portfolios represents managers for third parties;
- one represents employees of firms or institutions providing investment services, employees of market undertakings and employees of clearing houses.

Two members shall be prominent persons chosen for their financial expertise. The chairman of the *Conseil des Marchés Financiers* shall be elected by its members from amongst their number. Notice of his election shall be published in the *Journal Officiel de la République Française*. In the event of a tie, the chairman shall have the casting vote. A representative of the *Banque de France* may attend the meetings of the *Conseil* without a vote. He may also sit on the specialized committees without a vote. A Government commissioner shall be appointed by the Minister for Economic Affairs and Finance. He also sits on the disciplinary committees. When necessary, the Minister may appoint a Government commissioner to each of the specialized committees of the *Conseil*. The Government commissioner has no vote.

Prior to its deliberations, the *Conseil* may hear qualified persons. Where urgency established by its chairman so requires, the *Conseil* may, except in disciplinary matters, rule by means of written consultations. A Decree in *Conseil d'État* shall define the implementing rules for this Article and, *inter alia*, set forth the voting, quorum and proxy rules as well as the procedures for written consultations. Such Decree shall provide for filling half of the seats on the *Conseil* every other year after the second year following its establishment. At the first meeting of the *Conseil des Marchés Financiers*, the terms of office of each of its members shall be determined by drawing lots as provided by said decree, the terms of eight of the members being two years and the terms of the other eight four years. The members may be reappointed once.

Article 27-1

The *Conseil* may, under the conditions and within the limits set by its General Regulations, delegate to the chairman or his representative, who shall be a member of the *Conseil*, the power to take individual decisions, except in disciplinary matters, concerning bodies under its supervision and subject to the Government commissioner being informed in advance.

Article 28

The *Conseil des Marchés Financiers* may decide by a two-thirds majority to appoint its members to specialized committees for the exercise of its powers other than those governed by Articles 33 and 34. Such committees prepare the decisions of the *Conseil*. Each shall be chaired by the chairman of the *Conseil des Marchés Financiers*, who is an *ex officio* member, or by a member delegated by him to do so. Each committee chairman shall have the casting vote in the event of a tie. The operating procedures and powers of such committees shall be set forth in the General Regulations of the *Conseil des Marchés Financiers*.

When necessary, the *Conseil* may recommend that the Minister for Economic Affairs and Finance appoint experts to attend and vote at meetings of such committees for a specified period. In addition to these experts, the chairman of a specialized committee may invite qualified persons to participate in the committee's work in a consultative capacity.

Article 29

The *Conseil des Marchés Financiers* shall appoint some of its members to disciplinary committees. Each shall be chaired by the chairman of the *Conseil des Marchés Financiers*, who is an *ex officio* member, or by a member delegated by him to do so. Each committee chairman shall have the casting vote in the event of a tie. Each disciplinary committee shall have six members, including the member representing employees. Said committees shall exercise the disciplinary powers assigned to the *Conseil des Marchés Financiers* by this Act.

A decree in *Conseil d'Etat* shall set forth the operating rules for the disciplinary committees. The decisions of the disciplinary committees shall be reported to the *Conseil*.

Article 30

Every member of the *Conseil* must inform the chairman of any interests he holds or comes to hold and any functions he performs or comes to perform in a financial or economic activity and any office which he holds or comes to hold in a legal person. The members of the *Conseil* shall have access to such information as well as that concerning the chairman.

No member of the *Conseil* may deliberate in a matter in which he or a legal person in which he performs functions or holds office has an interest. Neither may he participate in a deliberation in which he or a legal person in which he performs functions or holds office has represented one of the interested parties in the 18 months preceding the deliberation.

The chairman of the *Conseil des Marchés Financiers* shall take appropriate steps to enforce the obligations and prohibitions contained in the two preceding paragraphs.

Article 31

The members, employees and agents of the *Conseil des Marchés Financiers* as well as the experts and persons consulted shall be bound by the obligation of professional secrecy as provided and on pain of the penalties prescribed by Articles 226-13 and 226-14 of the Penal Code.

Section 2: Regulations

Article 32

The General Regulations of the *Conseil des Marchés Financiers* shall be approved by a Decree of the Minister for Economic Affairs and Finance after consultation of the *Commission des Opérations de Bourse* and the *Banque de France*. Such Decree and the annexed General Regulations of the *Conseil* shall be published in the *Journal Officiel de la République Française*.

The General Regulations shall set forth: Concerning investment service providers, market undertakings and clearing houses:

1. The rules of conduct said persons shall observe at all times, except those applicable to the services referred to in Article 4 d); said rules shall have due regard for the business expertise of the person to whom the investment service is provided;
2. The conditions governing the provision by investment service providers of the services listed in Article 5, as well as the clearing and account-keeping functions;
3. The conditions governing authorization and revocation of authorization of natural persons acting under the authority or on behalf of such service providers and undertakings or of the *Conseil des Marchés Financiers*; 4. The conditions governing the approval of the rules of clearing houses by the *Conseil des Marchés Financiers* pursuant to Article 47 of this Act;
5. The conditions governing the exercise of supervision by the *Conseil des Marchés Financiers* pursuant to part III of this Act;
6. The rules applicable to the persons covered by Article 74 of this Act;
7. Deleted, as regards the guarantee fund (Act 99-532 of 25 June 1999, Article 71 – II);
8. The conditions under which certain investment service providers may act otherwise than as *del credere* agents;
9. The conditions governing the authorization of certain natural or legal persons who are not investment service providers to provide services referred to in Article 4 b) and c) on regulated markets. Specifically concerning regulated markets:
10. The general organizational and operating principles that regulated markets must observe and the rules governing execution, reporting and publicizing of transactions in financial instruments traded on those markets;

11. The conditions under which the *Conseil des Marchés Financiers* proposes to recognise or revoke the status of regulated market in financial instruments, pursuant to Articles 41 and 42 of this Act;
12. The conditions for obtaining a derogation to the first paragraph of Article 45 of this Act. The General Regulations shall also specify:
13. The administrative and financial operating procedures of the *Conseil des Marchés Financiers*.
14. The conditions governing the activities of safekeeping and administration of financial instruments by legal persons which carry out transactions involving a public solicitation of savings and by intermediaries authorized to perform such activities by the *Conseil des Marchés Financiers*;
15. The conditions governing the authorization of central depositories by the *Conseil des Marchés Financiers* and the conditions under which the *Conseil* approves their operating rules;
16. The general organizational and operational principles of financial instrument settlement and delivery systems and the conditions under which the *Conseil des Marchés Financiers* approves the operating rules of such systems, without prejudice to the powers granted to the Banque de France by Article 4 of Act 93-980 of 4 August 1993 on the status of the Banque de France and the activities and supervision of credit institutions.

Article 33

To ensure shareholder equality and market transparency, the General Regulations of the *Conseil des Marchés Financiers* shall set forth the rules governing public offerings involving financial instruments traded on a regulated market as well as:

1. The conditions under which a natural or legal person, acting alone or in concert within the meaning of Article 356-1-3 of Act 66-37 of 24 July 1966 aforesaid, who directly or indirectly comes to hold a certain percentage of the capital stock or voting rights in a company whose shares are traded on a regulated market shall be required forthwith so to inform the *Conseil* and file a proposed tender offer with a view to acquiring a specified quantity of the company's securities. If this filing is not made, the securities that the person holds in excess of the aforementioned percentage of the capital stock or voting rights shall be deprived of voting rights;
2. The conditions under which a proposed acquisition of a block of securities vesting a majority of the capital stock or voting rights of a company whose shares are traded on a regulated market entails an obligation for the acquirer(s) to buy any such securities then offered to them at the price at which the block is sold;
3. The conditions governing buy-out offer and request procedures when the majority shareholder(s) of a company whose shares are traded on a regulated market or whose securities have ceased to be traded on a regulated market hold in concert, within the meaning of Article 356-1-3 of Act 66-37 of 24 July 1966 aforesaid, a specified percentage of the voting rights or when a company whose shares are traded on a regulated market takes the form of a partnership limited by shares;
4. The conditions under which securities not tendered by the minority shareholders in a buy-out offer or request, and representing five percent or less of the capital stock or voting rights, are to be transferred to the majority shareholders at their demand and their holders compensated; the valuation of the securities by the objective methods used in cases of asset disposals shall take into account, according to a weighting appropriate to each case, the value of the company's assets, its earnings, its subsidiaries if any, its business prospects and the market value of the securities. The compensation per security shall be the greater of the result of such valuation and the buy-out price offered. The amount of the compensation accruing to unidentified holders shall be escrowed.

Article 34

A Decree shall determine the date and conditions for discontinuing the daily over-the-counter (*hors-cote*) market statements. The procedure prescribed in the third paragraph (2) of Article 33 shall be applicable from the date of publication of this Act until the date specified by the Decree provided for in the preceding paragraph to those companies whose shares have appeared at least once in the daily over-the-counter market statement in the period between 1 January 1995 and the date of publication of this Act. From the date of publication of this Act, only the securities issued by the aforesaid companies may appear in the daily over-the-counter market statement.

Section 3: Other Powers

Article 35

The Minister for Economic Affairs and Finance, the chairman of the *Commission des Opérations de Bourse* and the Governor of the *Banque de France*, acting as chairman of the *Commission Bancaire*, may refer any matters to the *Conseil des Marchés Financiers* that are within its attributions. The government commissioners on any committee of the *Conseil des Marchés Financiers* may request a reconsideration of any matter under rules enacted by a Decree in *Conseil d'Etat*. In the event that the *Conseil des Marchés Financiers* fails to act, the steps dictated by the circumstances shall be taken urgently by Decree.

Article 36

The *Conseil des Marchés Financiers* may make decisions of general or individual application to implement its General Regulations and to exercise its other powers under this Act.

Article 37

At the request of one or more investment service providers or of a trade association of investment service providers, the *Conseil des Marchés Financiers* may, after consulting the *Banque de France* and the *Commission des Opérations de Bourse*, approve standard contracts for transactions in financial instruments.

Article 38

The *Conseil des Marchés Financiers* shall publish annual reports to which its financial statements shall be annexed.

Section 4: Appeals

Article 39

The individual decisions of the *Conseil des Marchés Financiers*, other than those of a disciplinary nature and those relating to the approval of a programme of operations pursuant to the second paragraph of Article 11, may be appealed to the judicial courts. Such appeals have no suspensive effect, but the court to which an appeal is taken may stay execution of the appealed decision. A Decree in *Conseil d'État* shall determine the implementing rules for this Article.

CHAPTER II REGULATED MARKETS

Section 1: Market undertakings

Article 40

A market undertaking is a commercial company whose principal business is the operation of a regulated market for financial instruments. Subject to Article 47, such companies may also manage one or more clearing houses. They grant the authorizations of natural persons referred to in Article 32-3 with regard to access to the regulated markets which they operate.

Section 2: General Provisions Governing Regulated Markets

Article 41

Recognition of a regulated market for financial instruments shall be granted by Decree by the Minister for Economic Affairs and Finance on the recommendation of the *Conseil des Marchés Financiers* after consulting the *Commission des Opérations de Bourse* and the *Banque de France*. Such recognition may be revoked in the same conditions. The Decrees shall be published in the *Journal Officiel de la République Française*. The rules of markets so recognized shall be published as directed by the *Conseil des Marchés Financiers*.

Article 42

I - To be recognized as a regulated market, a market for financial instruments must ensure regular trading. The rules enacted by the market undertaking must *inter alia* include membership requirements and listing requirements, rules regarding the organization of trading, conditions under which trading in one or more financial instruments may be halted, and rules for the recording and publicizing of trades. Such rules shall be subject to approval by the *Conseil des Marchés Financiers*.

Amendments to such rules shall be notified to the *Conseil des Marchés Financiers*, the *Commission des Opérations de Bourse* and the *Banque de France*. The *Conseil* decides on the compatibility of the amendments with the recognition granted under Article 41 of this Act, informs the *Commission des Opérations de Bourse* and the *Banque de France* of its decision and refers any incompatibility to the Minister for Economic Affairs and Finance. In the event of disagreement regarding the decision of the *Conseil des Marchés Financiers*, the *Commission des Opérations de Bourse* or the *Banque de France* may appeal to the Minister for Economic Affairs and Finance within 15 days of the notification of such decision.

II - 1. Decisions to admit financial instruments to listing on a regulated market shall be made by the market undertaking, subject to the right of opposition of the *Commission des Opérations de Bourse*. The express consent of the issuer of the financial instruments is required. Where the financial instrument contains an underlying element, the issuer of the underlying element shall have a right of opposition in the cases and according to the procedures set forth in the General Regulations of the *Conseil des Marchés Financiers*. Where, this right of opposition shall not exist when the underlying element is a currency, a public debt security, a financial futures contract or an index.

2. After so informing the issuer, a market undertaking may halt trading in a financial instrument traded on its regulated market for a specified period pursuant to the rules of such market. It shall also inform the chairman of the *Commission des Opérations de Bourse* and the chairman of the *Conseil des Marchés Financiers* of such halt. A market undertaking may exceptionally be required to halt trading in a financial instrument by the chairman of the *Commission des Opérations de Bourse* in order to protect public savings. Such a halt may also be required by the chairman of the *Conseil des Marchés Financiers* within the powers of the *Conseil* under this

Act. The issuer of a financial instrument traded on a regulated market may request the market undertaking to halt trading in such instrument in order to enable the public to be informed satisfactorily.

3. Delisting of a financial instrument shall be decided on by the market undertaking, subject to the right of opposition of the *Commission des Opérations de Bourse*.

III - If an extraordinary event interferes with the regular operation of a regulated market, the chairman of the *Conseil des Marchés Financiers* or, if he is unable, his representative designated by him for that purpose may halt trading in whole or in part for not more than two consecutive trading days. Longer halts may be decreed by the Minister for Economic Affairs and Finance on recommendation of the chairman of the *Conseil des Marchés Financiers*. If a trading halt on a regulated market lasts longer than two consecutive trading days, the transactions pending on the date of the halt may be cleared and settled under the rules of the market.

Article 43

I - To be valid, trades and sales involving financial instruments traded on a regulated market and carried out in French departments may be effected only by an investment service provider or, where they are effected on a regulated market, by any member of such market.

II - However, the requirement contained in the preceding paragraph does not apply to sales:

- a) Between two natural persons, where the sale involves securities;
- b) Between two companies one of which directly or indirectly holds at least 20% of the other's capital stock;
- c) Between a legal person other than a company and a company if the legal person directly or indirectly holds at least 20% of the company's capital stock;
- d) Between two companies controlled, within the meaning of Article 355-1 of Act 66-537 of 24 July 1966 aforesaid, by the same undertaking;
- e) Between insurance companies belonging to the same group;
- f) Between legal persons and the pension or provident funds that they manage.

Article 44

I - In addition to duly authorized investment service providers, membership of a regulated market for financial instruments is, notwithstanding Article 21, open to:

- a) Legal persons whose members or shareholders have unlimited joint and several liability for their debts and obligations, provided that such members or shareholders are authorized to provide the services referred to in Article 4 b) and c);
- b) Natural or legal persons authorized by the *Conseil des Marchés Financiers* to provide the services referred to in Article 4 b) and c);
- c) Natural or legal persons already authorized, on the date of publication of this Act, to provide the services referred to in Article 4 b) and c) on markets recognized as regulated pursuant to Article 2- VI of Act 96-109 of 14 February 1996 relative to financial relations with other countries as regards foreign investments in France.

The authorization referred to in b) above shall be granted with due regard for the requirements of expertise, integrity, solvency and, insofar as need be, capital and guarantees specified in the General Regulations of the *Conseil des Marchés Financiers*.

II - Admission to and maintenance of membership in a regulated market by the market undertaking responsible for organizing trading on such market shall be subject to compliance with such market's rules. The relations between a market undertaking and members of the market shall be contractual in nature.

III - A market undertaking may not limit the number of investment service providers on its market. The *Conseil des Marchés Financiers* shall see to it that market undertakings adapt their technical capacity, insofar as need be, to the admission applications made to them.

IV - The trading members of a regulated market shall be responsible for execution of all orders placed with them, their agents or their employees, regardless of how such orders are placed.

Article 45

Transactions in a financial instrument traded on a regulated market and carried out for the benefit of an investor established or customarily residing in France by an investment service provider authorized in France or operating in France under the right of establishment or the freedom to provide services shall be void unless effected on a regulated market in a State party to the European Economic Area Agreement.

As a derogation to the provisions of the preceding paragraph, the transactions referred to therein may be carried out otherwise than on a regulated market pursuant to orders placed by investors established or customarily residing in French departments if the trade satisfies the requirements of the General Regulations of the *Conseil des Marchés Financiers* regarding its size, the investor's status, the nature of the financial instrument traded and reporting to the regulated market on which such instrument is listed. This derogation shall be automatic in the case of transactions that, included in an agreement other than an outright sale, are a necessary element thereof.

Section 3: Provisions Applicable to Futures Markets

Article 46

I - The financial futures referred to in Article 3 shall be valid, even if they are subject to special legislative provisions, as long as the cause and purpose thereof are lawful. No one may invoke Civil Code Article 1965 to avoid the obligations resulting from forward transactions even if such transactions are settled by the payment of a difference.

II - Commodity futures contracts that do not entail deliveries must be entered into by two or more parties at least one of which is an investment service provider, or an institution, body or undertaking referred to in Article 25, or a non-resident body having a comparable status.

CHAPTER III CLEARING ARRANGEMENTS

Article 47

I - Clearing houses ensure the supervision of positions, margin calls and, where necessary, the automatic closing of positions. Each must have the status of, or be managed by, a credit institution. Their operating rules shall be subject to approval by the *Conseil des Marchés Financiers*. The relations between a clearing house and a person mentioned in II below shall be contractual in nature.

II - Only the following may be members of a clearing house:

- persons authorized to become members of a regulated market;
- credit institutions. Such institutions are subject, with regard to their clearing business, to the same rules regarding approval of programmes of operations and supervision as this Act provides for investment firms;

– legal persons whose principal or sole object is the clearing of financial instruments. Such persons are subject to the same rules regarding authorization, approval of programmes of operations and supervision as this Act provides for investment firms.

III - The senior managers, employees and agents of clearing houses shall be bound by the obligation of professional secrecy as provided and on pain of the penalties prescribed by Articles 226-13 and 226-14 of the Penal Code.

Article 48

I - A clearing house may decide, without discrimination, that its members are *del credere* agents (*commissionnaires ducroire*) with regard to the principals (*donneurs d'ordres*) whose accounts they keep. The *del credere* requirement shall be necessary for a financial market to be recognizable as a regulated market pursuant to Article 41.

II - In all cases, the members of a clearing house undertake to discharge, vis-à-vis the clearing house, all the obligations deriving from the trades entered in their accounts in the names of third parties. Payment of any sums due on such basis may not be deferred. Any clause to the contrary shall be void.

Article 49

Regardless of their nature, all ownership rights relative to deposits by principals with investment service providers or members of a clearing house, or by such members with a clearing house as margin or collateral for positions taken on a market for financial instruments, are transferred when made, either to the service provider or to the member or to the clearing house concerned in payment of any debit balance in the event of an automatic closing of positions and of any other sum due to the service provider or member or to the clearing house.

No creditor of a member of a clearing house, of a service provider as referred to in the preceding paragraph or, as appropriate, of the clearing house itself, may assert any right to such deposits, even on the basis of the Business Reorganization and Bankruptcy Act 85-98 of 25 January 1985 or of Act 84-148 of 1 March 1984 regarding the Prevention and Out-of-Court Settlement of Business Problems.

Article 50

The provisions of the second paragraph of Article 49 also apply to every creditor of a principal, every representative of a principal or of a member of a clearing house, and every agent of a court appointed pursuant to Act 85-98 of 25 January 1985 or Act 84-148 of 1 March 1984 aforesaid.

The prohibitions contained in the first paragraph of this Article and the second paragraph of Article 49 also apply to judicial or other proceedings commenced outside France that are equivalent or similar to those provided for by Act 85-98 of 25 January 1985 or Act 84-148 of 1 March 1984 aforesaid.

Article 51

I - If recovery proceedings are instituted against a member of a clearing house, or in any other event of default of such a member:

1. The clearing house may require that the deposits made with such member as margin and security for positions taken by non-defaulting principals be transferred to another member;

2. The clearing house may transfer the positions recorded by it for the account of such member's principals and the related margin and security deposits to another member.

II - The members of the clearing houses may not invoke professional secrecy obligations to refuse inquiries by such clearing houses, for the purpose of supervision of positions, concerning the identity, positions and solvency of the principals whose accounts they keep.

Article 52

The liabilities and claims arising from transactions in financial instruments carried out in accordance with the General Regulations of the *Conseil des Marchés Financiers* or governed by a master agreement in keeping with the general principles of a national or international master agreement organizing the relations between two parties, at least one of whom is an investment service provider or a public institution or an institution, undertaking or body eligible for the benefit of Article 25 of this Act, or a non-resident having a comparable status, shall be set off according to the valuation rules in such General Regulations or master agreement.

If one of the parties is subject to proceedings under Act 84-148 of 1 March 1984 or Act 85-98 of 25 January 1985 aforesaid, said General Regulations or master agreement may provide for automatic cancellation of the transactions referred to in the preceding paragraph. The terms and procedures of cancellation, valuation and set-off prescribed by the General Regulations or master agreements referred to in the foregoing paragraphs shall be binding on the attaching creditors. Any cancellation, valuation and set-off made because of a civil execution proceeding shall be deemed to have antedated such proceeding.

The assignment of claims resulting from transactions governed by the master agreement referred to in the first paragraph of this Article shall be binding on third parties by virtue of the written agreement of the debtor. The parties to such master agreement may also provide, with regard to such transactions, for transfers conferring full ownership rights, made as security so binding on third parties without formality, of assets, securities, instruments or sums of money in order to cover changes in the value of such transactions. The liabilities and claims relative to such transfers and to such transactions shall be set off pursuant to the first paragraph of this Article. The provisions of Act 84-148 of 1 March 1984 and Act 85-98 of 25 January 1985 aforesaid do not prejudice the application of this Article.

Article 53

Article 38 bis of the General Tax Code shall be amended as follows:

A . A II bis reading as follows shall be added:

"II bis - The provisions of I and II of this Article apply under the same conditions to transfers conferring full ownership rights, made as security, of assets, securities or instruments pursuant to the fourth paragraph of Article 52 of the Financial Activity Modernization Act 96-597 of 2 July 1996 in connection with over-the-counter forward transactions in financial instruments and to the transfers of securities provided for in Article 31 c) of the Act referred to in I."

B - III shall be amended to read:

"III - 1. Failing the restitution of the cash, assets, securities or bills transferred as security or of the loaned securities corresponding to such transfers, the disposal shall be deemed for tax purposes to occur on the date of the default;

"2. For the purposes of Article 39 *duodecies*, the transferred assets, securities or bills shall be deemed to have been held until the date of the transfer thereof as security or, in the case of the loaned securities referred to in 1, until the date of the loan."

TITLE III
OBLIGATIONS AND SUPERVISION OF INVESTMENT SERVICE PROVIDERS

CHAPTER I
OBLIGATIONS OF INVESTMENT SERVICE PROVIDERS

Section 1: Management Standards

Article 54

Investment service providers shall be required as regards their investment service activities to meet the management standards designed to ensure their liquidity, solvency and the equilibrium of their financial structure as specified by the *Comité de la Réglementation Bancaire et Financière* pursuant to Article 33-1 of Act 84-46 of 24 January 1984 aforesaid. They must in particular meet risk-cover and risk-diversification ratios. Breach of said requirements shall entail application of the procedure provided for in Article 45 of Act 84-46 of 24 January 1984 aforesaid.

Article 55

I - See Article 33 (10) of Act 84-46 of 24 January 1984.
II - See Article 33-1 of Act 84-46 of 24 January 1984.

Article 56

The words: “ investment firms defined in Article 7 of the Financial Activity Modernization Act 96-597 of 2 July 1996 ” shall be inserted after the words: “ credit institutions ” in the second paragraph (1) of Article 19-III of Act 91-716 of 26 July 1991 containing various economic and financial provisions.

Section 2: Accounting and Reporting Requirements

Article 57

Investment firms shall be bound by the obligations set forth in Articles 54, 55, 56 and 57 of Act 84-46 of 24 January 1984 aforesaid.

Section 3: Rules of Conduct

Article 58

Investment service providers and the persons listed in Article 44-I shall be required to comply with rules of conduct designed to ensure the protection of investors and the regularity of transactions. Such rules shall be drawn up by the *Conseil des Marchés Financiers*, except that those relating to the services referred to in Article 4 d) shall be drawn up by the *Commission des Opérations de Bourse*.

Such rules apply to any related services that investment service providers may provide. They require *inter alia* investment service providers :

1. To act honestly and fairly in the best interests of their customers and of the integrity of the market;
2. To conduct their business with due skill, care and diligence in the best interests of their customers and of the integrity of the market;

3. To have the resources and procedures necessary to conduct their business properly and to use such resources and procedures efficaciously;
4. To seek information regarding the financial condition, investment experience and objectives of their customers as regards the services requested;
5. To make adequate disclosure of useful information in their dealings with their customers;
6. To try to avoid conflicts of interest and, when they cannot be avoided, to ensure that their customers are fairly treated;
7. To comply with all the regulations applicable to the conduct of their business so as to promote the best interests of their customers and the integrity of the market.

The rules set forth in this Article must be applied with due regard for the professional investment service expertise of the person to whom the investment service is provided.

Article 59

Investment service providers authorized to provide the investment services referred to in Article 4 a) and b) shall be liable to their principals for the delivery of and payment for what they sell or buy. Subject to Article 48-I, the General Regulations of the *Conseil des Marchés Financiers* specify the conditions under which derogations to the preceding paragraph may be granted.

Article 60

Every investment service provider and every person referred to in Article 44-I shall set forth in its internal regulations:

- a) The conditions under which employees may trade in financial instruments for their own account;
- b) The conditions under which employees must so inform their employer;
- c) The requirements incumbent upon them with a view to avoiding undue disclosure of confidential information.

The rules setting forth such conditions and requirements shall be included in the programme of operations submitted to the *Conseil des Marchés Financiers* pursuant to Article 11.

Article 61

Investment service providers and the persons listed in Article 44-I shall be required to inform investors, before entering into business relations with them, of the existence of an applicable compensation scheme in regard to the transaction(s) envisaged, of the amount and extent of the coverage provided, and of the identity of the compensation fund if any.

Article 62

A securities guarantee mechanism is hereby established. Its members shall be credit institutions and investment firms authorized in France, when they are the custodians of financial instruments entrusted to them by third parties, intermediaries authorized by the *Conseil des Marchés Financiers* to have custody of and administer financial instruments, and members of clearing houses. Its purpose is to compensate investors if their financial instruments or their cash deposits relating to an investment service or to the clearing or custody of financial instruments are unavailable and do not fall within the scope of the deposit guarantee fund

established by the above-mentioned Act 84-46 of 24 January 1984. The persons and funds excluded from compensation under the above-mentioned Article 52-1 may not benefit from the guarantee mechanism.

Article 62-1

Without prejudice to the provisions hereafter, the deposit guarantee fund shall manage the securities guarantee mechanism under the conditions laid down at Articles 52-2 to 52-13 of the above-mentioned Act 84-46 of 24 January 1984. For application of the first paragraph of Article 52-2 of the Act, the securities guarantee mechanism shall intervene at the request of the *Commission Bancaire* after seeking an opinion from the *Conseil des Marchés Financiers* as soon as the Commission finds that an institution mentioned at Article 62 of this Act is no longer able to return, immediately or in the short term, the financial instruments or deposits it has received from the public under the legal, regulatory and contractual conditions governing their restitution. If the guarantee mechanism intervenes, the member concerned shall be struck off. For the persons referred to at Article 74 and Articles 71-2 and 71-3 of the above-mentioned Act 84-46 of 24 January 1984, such striking-off shall be deemed to mean a ban prohibiting the member concerned from continuing to provide its services on the territory of the French Republic.

Sous réserve des dispositions ci-après, le fonds de garantie des dépôts gère le mécanisme de garantie des titres dans les conditions édictées par les articles 52-2 à 52-13 de la loi n° 84-46 du 24 janvier 1984 précitée. Pour l'application du premier alinéa de l'article 52-2 de cette loi, le mécanisme de garantie des titres est mis en oeuvre sur demande de la Commission bancaire après avis du Conseil des marchés financiers, dès que celle-ci constate que l'un des établissements mentionnés à l'article 62 de la présente loi n'est plus en mesure de restituer, immédiatement ou à terme rapproché, les instruments financiers ou les dépôts qu'il a reçus du public dans les conditions législatives, réglementaires ou contractuelles applicables à leur restitution. L'intervention du fonds de garantie entraîne alors la radiation de cet adhérent. Pour les personnes visées à l'article 74 et aux articles 71-2 et 71-3 de la loi n° 84-46 du 24 janvier 1984 précitée, cette radiation s'entend comme se traduisant par une interdiction faite à cet adhérent de continuer à fournir ses services sur le territoire de la République française.

On a proposal from the *Commission Bancaire* after seeking an opinion from the *Conseil des Marchés Financiers*, the securities guarantee mechanism may also intervene in a preventive capacity when a member's situation gives rise to fears that the deposits or financial instruments it has received from the public may become unavailable at some point in the future, taking into consideration the support from which the member concerned may otherwise benefit. When the guarantee mechanism agrees to take such preventive action, it shall define the conditions of its intervention after seeking an opinion from the *Commission Bancaire* and the *Conseil des Marchés Financiers*. In particular, it may make its intervention conditional on the total or partial sale of the undertaking concerned or the extinction of its activity, including by the sale of its business. It may also acquire the shares of a member institution.

Article 62-2

A regulation of the *Comité de la Réglementation Bancaire et Financière*, adopted with the approval of the *Conseil des Marchés Financiers*, shall lay down:

- the compensation ceiling per investor, the compensation procedures and time limits and rules regarding customer information;
- the characteristics of certificates of association and the conditions for their remuneration and for their reimbursement should authorization be revoked, after deduction of any losses suffered by the fund where applicable;
- the total amount of and the method for apportioning the annual subscriptions payable by the institutions mentioned at Article 62, the basis for which is the value of the deposits and financial instruments covered by the guarantee under Article 62, weighted by subscriptions already paid and by indicators of the financial situation of each institution concerned, reflecting the objective risks to which the member exposes the fund;

- the conditions under which an institution may be dispensed from paying part of such contributions to the guarantee fund in return for the constitution of appropriate guarantees.

Subscriptions due from credit institutions affiliated to one of the central bodies mentioned at Article 20 of the above-mentioned Act 84-46 of 24 January 1984 shall be paid directly to the guarantee fund by the central body concerned.

Article 62-3

Two members representing the members of the securities guarantee fund that are not credit institutions shall sit in a consultative capacity on the supervisory board of the deposit guarantee fund, except when the board takes decisions concerning the deposit guarantee. In such case, the financial contributions used to count votes under Article 52-9 of the above-mentioned Act 84-46 of 24 January 1984 are those called up under Article 62-2 of this Act. The regulation of the *Comité de la Réglementation Bancaire et Financière* mentioned at Article 62-2 shall lay down the conditions and procedures for appointing the above-mentioned two representatives and the length of their term of office. The two representatives referred to in the preceding paragraph must meet the conditions set forth at Article 22.

Article 63

I - Investment service providers and the persons listed in Article 44-I shall protect the title to the financial instruments of the investors whose accounts they keep. They may use such securities for their own purposes only with the explicit consent of the investor.

II - Investment firms may not under any circumstances use for their own purposes funds deposited with them by their customers, subject to the provisions of Articles 49 et ff.

III - Investment service providers and members of regulated markets shall record their orders as provided by the General Regulations of the *Conseil des Marchés Financiers*.

Article 64

I - Investment services providers may provide the service referred to in Article 4 d) only pursuant to a written agreement.

II - The shareholders, members or owners of a firm or institution providing investment services and authorized to manage financial instruments for third parties may take no action whose purpose or effect would be to prefer their own interests to the detriment of those of the investors that are customers of the undertaking. The senior managers of the firms and institutions mentioned in the preceding paragraph must, in the course of managing portfolios for third parties, maintain their independence in decision-making so as to ensure that the interests of their customers prevail in all circumstances.

Article 65

Portfolio management companies shall be prohibited from accepting deposits of funds, securities or gold from their customers and from carrying out transactions between the account of a customer and their own account or direct transactions between the accounts of their customers.

Article 66

Investment service providers, market undertakings and clearing houses must provide the *Banque de France* with the data necessary for the compiling of monetary statistics.

CHAPTER II
SUPERVISION OF INVESTMENT SERVICE PROVIDERS

Section 1: Supervisory Powers of The Conseil des Marchés Financiers

Article 67

I – The *Conseil des Marchés Financiers* shall supervise the compliance of investment service providers doing business in France, intermediaries authorized to have custody of or administer financial instruments, central securities depositories, members of the regulated markets mentioned at point I of Article 44, market undertakings and clearing houses with their professional obligations under this Act and the general regulations of the *Conseil des Marchés Financiers*. Such supervision shall be subject to the powers of the *Commission Bancaire* and, as regards supervision of persons providing the services referred to in Article 4 d), of the *Commission des Opérations de Bourse*. The *Conseil des Marchés Financiers* shall also monitor the regularity of transactions carried out on regulated markets.

II The *Conseil* may delegate the supervision of the business and transactions of members of regulated markets and of investment service providers that have transmitted orders on the market ainsi que par les prestataires de services d'investissement ayant transmis des ordres sur le marché to the relevant market undertakings and, where applicable, clearing houses. This delegation must be the subject of a written agreement and it may be cancelled at any time. The *Conseil des Marchés Financiers* may, for the supervision of investment service providers and within the limit of their business relating to investment services or connected services, have recourse to outside supervisory bodies, the auditors of the above-mentioned service providers, experts appearing on a list of court experts or persons or authorities with competence in the matter of investment services or connected services. A decree in *Conseil d'Etat* shall specify the conditions of application for this paragraph. The *Conseil des Marchés Financiers* and the organizations referred to in Article 40 and Article 47-I shall advise the *Commission des Opérations de Bourse* of any fact liable to infringe its regulations of which they have notice in the discharge of their duties, and supply it with the information necessary for an assessment thereof.

- III In connection with the supervision under I of this Article, professional secrecy may not be invoked to refuse information to the *Conseil des Marchés Financiers*, to the supervisory body, persons or authorities referred to at the second paragraph of point II above, au corps de contrôle, personnes ou autorités visés au deuxième alinéa du II ci-dessus, to any market undertakings or clearing houses which assist the *Conseil* by delegation. For implementation of this Article, auditors shall be relieved of their professional secrecy obligation with regard to the *Conseil des Marchés Financiers*.

All persons who participate or have participated in the supervision of the parties mentioned in the first paragraph of I of this Article shall be bound by the obligation of professional secrecy as provided and on pain of the penalties prescribed by Article 226-13 of the Penal Code. However, this secrecy may not serve as grounds for non-disclosure of information to a court engaged in criminal proceedings.

IV. – Auditors are required to advise the *Conseil* promptly of any fact or decision concerning an investment service provider or an intermediary authorized to have custody of or administer financial instruments that comes to their attention in the conduct of their assignment and that may constitute a breach of the general regulations of the *Conseil des Marchés Financiers* relating to good conduct or the conditions under which financial instruments are held in custody or administered. The *Conseil des Marchés Financiers* may also furnish the auditors of investment service providers with the information they require to conduct their assignment. Information furnished in this way is covered by a professional secrecy obligation.

V. – The *Conseil des Marchés Financiers* may ask the auditors of an investment service provider or of an intermediary authorized to have custody of or administer financial instruments for all information concerning

application by such service provider or intermediary of the provisions of this Act or of the general regulations of the *Conseil des Marchés Financiers* relating to good conduct or the conditions under which financial instruments are held in custody or administered.

Article 68

For implementation of this Act, exchanges of information between supervisory authorities are governed by the provisions of Article 45 of Act 92-665 of 16 July 1992 adapting the legislation governing insurance and credit to the Single European Market.

Article 69

I - If an investment service provider or a person referred to in Article 44-I breaches its professional obligations under the relevant laws and regulations, the *Conseil des Marchés Financiers* may, after affording its senior managers a hearing, address to them a cautionary notice.

II - Investment service providers, members of a regulated market, market undertakings and clearing houses shall be liable to sanctions by the *Conseil des Marchés Financiers* for breaches of their professional obligations under the relevant laws and regulations. In disciplinary matters, the *Conseil* acts either *ex officio* or at the request of the Government commissioner, of the chairman of the *Commission des Opérations de Bourse*, of the Governor of the *Banque de France*, acting as chairman of the *Commission Bancaire*, of a market undertaking or of a clearing house. It rules in this field by giving its decisions and reasons therefor. No sanction may be imposed unless the legal representative of the investment service provider, the market undertaking or the clearing house has been afforded a hearing, or failing that, duly summoned to appear. The applicable sanctions are warnings, reprimands, and temporary or permanent prohibitions on providing some or all of the services concerned. Such prohibitions entail, as the case may be, suspension or revocation of the authorization to provide the relevant service granted pursuant to Article 11.

The *Conseil des Marchés Financiers* may also impose, instead of or in addition to such sanctions, a pecuniary sanction not exceeding FRF 5,000,000 or ten times any profits realized. The sums shall be paid into the guarantee fund with which the penalized person is affiliated, or else to the Treasury. The *Commission Bancaire* and the *Comité des Établissements de Crédit et des Entreprises d'Investissement* shall be informed of every temporary or permanent prohibition on performing some or all of the activities concerned.

III - Persons subject to the authority or acting on behalf of investment service providers, market undertakings and clearing houses shall be liable to sanctions by the *Conseil des Marchés Financiers* for breaches of their professional obligations under the relevant laws and regulations. The *Conseil* acts either *ex officio* or at the request of the Government commissioner, of the chairman of the *Commission des Opérations de Bourse*, of the Governor of the *Banque de France*, acting as chairman of the *Commission Bancaire*, of a market undertaking or of a clearing house. It rules by giving its decisions and reasons therefor. No sanction may be imposed unless the person has been afforded a hearing, or failing that, duly summoned to appear.

The applicable sanctions are warnings, reprimands, and temporary or permanent revocation of the authorization. The *Conseil des Marchés Financiers* may also impose, instead of or in addition to such sanctions, a pecuniary sanction not exceeding FRF 400,000 or three times any profits realized. The sums shall be paid into the guarantee fund with which the legal person under whose authority or on whose behalf the penalized party acts is affiliated, or else to the Treasury. If urgency so requires, a person against whom proceedings are taken under this paragraph may be suspended by the *Conseil des Marchés Financiers*.

IV - The *Conseil des Marchés Financiers* shall, if appropriate, inform the European Commission and the competent authorities of the other Member States of the European Community of its decisions taken pursuant to this Article. It may also publicize such decisions.

Article 69-1

The safekeeping and administration of financial instruments and central depository activities shall be subject to the provisions of Articles 67 through 69.

Section 2: The Powers of the Commission des Opérations de Bourse

Article 70

Only the *Commission des Opérations de Bourse* shall issue rules of conduct regarding the investment services referred to in Article 4 d).

Only the *Commission des Opérations de Bourse* has the power to supervise investment service providers authorized to provide the services referred to in Article 4 d) and portfolio management companies.

Article 70-1

Any person who participates or has participated in the supervision of companies carrying on the business of portfolio management for third parties shall be bound by the obligation of professional secrecy subject to the penalties laid down in Article 226-13 of the Penal Code. This secrecy may not serve as grounds for non-disclosure of information to a court engaged either in a court-ordered liquidation procedure concerning a company carrying on the business of portfolio management for third parties or in criminal proceedings.

Article 71

I - If an investment service provider authorized to provide the services referred to in Article 4 d) or a portfolio management company breaches its professional obligations under the relevant laws and regulations, the *Commission des Opérations de Bourse* may, after affording its senior managers a hearing, address to them a cautionary notice.

II - Without prejudice to the powers of the *Conseil de Discipline de la Gestion Financière*, investment service providers authorized to provide the services covered by Article 4 d) and portfolio management companies shall be liable to sanctions by the *Commission des Opérations de Bourse* for breach of their professional obligations under the relevant laws and regulations. The *Commission des Opérations de Bourse* acts either *ex officio*, or at the request of the Governor of the *Banque de France*, acting as chairman of the *Commission Bancaire*, or of the chairman of the *Conseil des Marchés Financiers*. It rules in this field by giving its decisions and reasons therefor. No sanction may be imposed unless the legal representative of the investment service provider or the portfolio management company has been afforded a hearing, or failing that, duly summoned to appear.

The applicable sanctions are warnings, reprimands, and temporary or permanent prohibitions on providing some or all of the services concerned. Such prohibitions entail, as the case may be, suspension or revocation of the authorization granted under Article 11 for the service concerned. The *Commission des Opérations de Bourse* may also impose, instead of or in addition to such sanctions, a pecuniary sanction not exceeding FRF 5,000,000 or ten times any profits realized. The sums shall be paid to the Treasury.

The *Commission Bancaire* and the *Comité des Établissements de Crédit et des Entreprises d'Investissement* shall be informed of every temporary or permanent prohibition on performing some or all of the activities concerned.

III - Persons subject to the authority or acting on behalf of investment service providers authorized to provide the services referred to in Article 4 d) or of portfolio management companies shall be liable to sanctions by the *Commission des Opérations de Bourse* for breaches of their professional obligations under the relevant laws

and regulations. The *Commission des Opérations de Bourse* acts either *ex officio* or at the request of the Governor of the *Banque de France*, acting as chairman of the *Commission Bancaire*, or of the chairman of the *Conseil des Marchés Financiers*. It rules by giving its decisions and reasons therefor. No sanction may be imposed unless the person concerned has been afforded a hearing, or failing that, duly summoned to appear. The applicable sanctions are warnings, reprimands, and temporary or permanent revocation of the authorization. The *Commission des Opérations de Bourse* may also impose, instead of or in addition to such sanctions, a pecuniary sanction not exceeding FRF 400,000 or three times any profits realized. The sums shall be paid to the Treasury. If urgency so requires, the persons mentioned in this paragraph against whom proceedings are being taken may be suspended by the *Commission des Opérations de Bourse*.

IV - The *Commission des Opérations de Bourse* shall, if appropriate, inform the European Commission and the competent authorities of the other Member States of the European Community of its decisions taken pursuant to this Article. It may also publicize such decisions.

V - Persons upon whom sanctions are imposed pursuant to this Article may appeal to the *Conseil d'Etat* within two months of service of the decision.

Article 71-1.

The auditors of portfolio management companies are relieved of the professional secrecy obligation with regard to the *Commission des Opérations de Bourse*. Auditors are required to advise the *Commission des Opérations de Bourse* promptly of any fact or decision concerning a portfolio management company that comes to their attention in the conduct of their assignment and that may:

- constitute a breach of the laws or regulations applicable to such a company and be likely to have significant effects on its financial situation, results or assets;

84

- prejudice its status as a going concern;
- cause the auditors to issue a qualified or adverse opinion.

The same obligation applies to the facts and decisions referred to above that come to the auditors' attention in the conduct of their assignment with regard to a parent or subsidiary of an above-mentioned company. Auditors may not be held liable for any information or facts they may disclose in the conduct of their assignment or in fulfillment of the obligations imposed by this Article.

The *Commission des Opérations de Bourse* may also furnish the auditors of portfolio management companies with the information they require to discharge their duties. Information furnished in this way is covered by a professional secrecy obligation.

Article 71-2

When a breach of the provisions of this Act committed by an auditor of a portfolio management company, undertaking for collective investment in transferable securities, open-end investment company or unincorporated mutual fund comes to the notice of the *Commission des Opérations de Bourse*, or when it considers that the conditions of independence necessary for the proper conduct of an auditor's assignment are not met, it may ask the competent court to relieve the auditor concerned of his duties as set forth at Article 227 of Act 66-537 of 24 July 1966 on commercial companies.

The *Commission des Opérations de Bourse* may also report such breach to the competent disciplinary authority. To this end, the *Commission des Opérations de Bourse* may furnish all information necessary to ensure that the authority concerned is fully informed.

Section 3: The Supervisory powers of the Commission Bancaire

Article 72

I - See Article 37-1 of Act 84-46 of 24 January 1984.

II - See the second paragraph of Article 40 of act 84-46 aforesaid.

IV - See Article 45 of act 84-46 aforesaid.

TITLE IV RIGHT OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES IN THE MEMBER STATES OF THE EUROPEAN COMMUNITY

Article 73

I - In this Act and for purposes of the provisions relative to the right of establishment and freedom to provide services:

1. The term "competent authorities" means the authorities of a European Community Member State empowered pursuant to that State's laws to authorize or to supervise investment firms having their registered office there;

2. The term "home Member State" means, in the case of an investment firm, the Member State where it has its registered office or, if under its national law it has no registered office, the State where it is actually managed and, in the case of a market, the State where the registered office or else the actual management of the body that provides trading facilities is situated;

3. The term "host Member State" means any Member State where the investment firm does business through a branch or under the freedom to provide services;

4. The term "branch" means one or more parts of an investment firm which are not legal persons and whose purpose is to provide investment services;

5. The term "transaction under the freedom to provide services" means transaction whereby an investment firm provides an investment service in a host Member State otherwise than by means of a permanent presence in such State.

II - For the purposes of this Act, investment firms having their registered office or actual management in another State party to the European Economic Area agreement shall be equated with investment firms having their registered office or actual management in a Member State of the European Community other than France.

CHAPTER I FREEDOM TO PROVIDE SERVICES AND RIGHT OF ESTABLISHMENT IN FRANCE

Article 74

To the extent of the services it is authorized to provide in its home Member State and in accordance with such authorization, any natural or legal person authorized to provide investment services may, without prejudice to Articles 71-1 ff. of Act 84-46 of 24 January 1984 aforesaid, establish branches in metropolitan France and the French overseas departments to provide investment and related services, and operate under the freedom to

provide services pursuant to the rules enacted by the *Conseil des Marchés Financiers*, as regards *inter alia* the protection of customer funds. For the purposes of Articles 21, 37, 43, 44, 46, 52, 56, 58, 60 through 64 and 66, the persons referred to in the preceding paragraph shall be equated with investment service providers.

CHAPTER II
FREEDOM TO PROVIDE SERVICES AND RIGHT OF ESTABLISHMENT
IN THE OTHER MEMBER STATES OF THE EUROPEAN COMMUNITY

Article 75

I - 1. Any investment service provider having its registered office in metropolitan France or the French overseas departments and authorized to provide investment services pursuant to Article 11 that wishes to open a branch in another Member State shall notify the *Comité des Établissements de Crédit et des Entreprises d'Investissement* and the *Conseil des Marchés Financiers* of its intention according to the rules laid down by a Decree in *Conseil d'État*. Such intentions and the information prescribed by Article 61 ensuring the protection of the branch's customers shall, within three months of receipt thereof, be transmitted to the competent authorities of the host Member State as provided by the Decree in *Conseil d'État* referred to above. Such transmittal may be refused only if the *Comité des Établissements de Crédit et des Entreprises d'Investissement* and the *Conseil des Marchés Financiers* determine that the administrative structures or financial condition of the investment firm or credit institution providing investment services preclude the opening of such a branch. The investment service provider concerned shall be notified of such transmittal.

If the *Comité des Établissements de Crédit et des Entreprises d'Investissement* and the *Conseil des Marchés Financiers* refuse to report the information mentioned in the first paragraph to the competent authorities of the host Member State, they shall advise the investment firm or credit institution concerned of the reasons for such refusal within three months of receipt of said information. On receipt of the reply of the competent authorities of the host Member State, or if they do not reply within two months of the receipt of the information provided by the *Comité des Établissements de Crédit et des Entreprises d'Investissement* and the *Conseil des Marchés Financiers*, the branch of the applicant firm or institution may be opened and commence business subject to meeting any specific conditions required for trading on a regulated market.

2. Any investment service provider with its registered office in metropolitan France or the French overseas departments and authorized to provide investment services pursuant to Article 11 of this Act that wishes to do business in another Member State under the freedom to provide services shall so advise the *Comité des Établissements de Crédit et des Entreprises d'Investissement* and the *Conseil des Marchés Financiers* as provided by the Decree in *Conseil d'État* referred to in 1 above. The *Comité des Établissements de Crédit et des Entreprises d'Investissement* and the *Conseil des Marchés Financiers* shall notify the competent authorities of the host Member State of such advice within one month of due receipt thereof. The investment service provider may then begin to provide the advised investment services in the host Member State. This Article applies automatically to the provision of investment services mentioned in Article 4. It may also apply to the related services referred to in Article 5 if the applicant investment service provider is authorized to provide some or all of the services listed in Article 4.

II - The *Commission des Opérations de Bourse* exercises the powers specified in Chapters I and II with regard to portfolio management companies as well as those undertakings subject to Article 74 whose principal business is the provision of the services referred to in Article 4 d).

Article 76

The *Comité des Établissements de Crédit et des Entreprises d'Investissement* shall prepare and keep current a list of the investment service providers doing business in France, showing the activities performed. Such list shall contain the names and activities of the investment service providers authorized to provide investment services on the date this Act goes into force. It shall be published in the *Journal Officiel de la République Française*.

The *Comité des Établissements de Crédit et des Entreprises d'Investissement* shall supply the list of investment service providers providing investment services in the other Member States of the European Community under the right of establishment or the freedom to provide services to the competent authorities of each of such other States.

The *Comité des Établissements de Crédit et des Entreprises d'Investissement* shall receive the information supplied by the competent authorities of the other Member States with regard to investment service providers providing investment services in France under the right of establishment or the freedom to provide services according to the provisions of this Act.

The *Comité des Établissements de Crédit et des Entreprises d'Investissement* shall *Bourse*.

Article 77

The Decree in *Conseil d'État* mentioned in Article 75 shall define the conditions for supplying the information mentioned in this Article to the competent authorities of the Member State concerned.

CHAPTER III ACCESS TO THE REGULATED MARKETS OF THE EUROPEAN COMMUNITY

Article 78

Subject to provisions relating to the protection of public savings, every regulated market of a Member State which operates without requiring the actual presence of natural persons may afford means of access to such market in metropolitan France and the French overseas departments.

CHAPTER IV SUPERVISION

Article 79

I - The competent authorities of its home Member State may require of an investment service provider enjoying the benefit of Article 74 and of its branches in France that they supply all information useful for the supervision of such provider.

Following prior notice to the *Commission Bancaire*, or in the case of the services referred to in Article 4 d) to the *Commission des Opérations de Bourse*, the branches of such service provider in metropolitan France or French overseas departments may be subjected to on-site supervision by the competent authorities of their home Member State, directly or through persons specially mandated by such authorities to do so. The results of such supervision shall be reported to the *Commission Bancaire* without being hindered by professional secrecy rules. The *Commission Bancaire* shall, where appropriate, report such supervision and the results

thereof to the *Conseil des Marchés Financiers* or the *Commission des Opérations de Bourse*. The *Commission Bancaire*, the *Commission des Opérations de Bourse* and the *Conseil des Marchés Financiers* shall also make any verifications requested by the competent authorities of the home Member State.

II - The *Conseil des Marchés Financiers* shall enforce compliance by the investment service providers referred to in Article 74 of this Act with the laws and regulations applicable to them, other than the management standards that such service providers are subject to within the meaning of Article 33-1 of Act 84-46 of 24 January 1984 aforesaid. The *Conseil* shall examine how they perform their activities and the results thereof, with due regard for the supervision by the competent authorities of the home Member State.

III - If the *Commission Bancaire* or, in the case of the service referred to in Article 4 d), the *Commission des Opérations de Bourse*, determines that an investment service provider enjoying the benefit of Article 74 is in breach of the laws and regulations of a prudential nature or regarding its authorization, said authorities may require the provider to remedy such breach and so notify the competent authorities of the home Member State. If, despite the steps taken by the home Member State or because such steps are inadequate or no such steps are taken in that State, the investment service provider persists in breaching the laws and regulations mentioned in the preceding paragraph, the *Commission Bancaire*, the *Commission des Opérations de Bourse* and, where appropriate, the *Conseil des Marchés Financiers* shall take appropriate steps to prevent or sanction further irregularities and, if need be, to prevent such service provider from carrying out further transactions in metropolitan France and the French overseas departments. Said authorities shall forthwith so inform the authorities of the home Member State.

IV - A Decree in *Conseil d'État* shall set forth the procedures to be followed by the *Commission Bancaire*, the *Commission des Opérations de Bourse* and the *Conseil des Marchés Financiers* in the exercise of their powers under the preceding paragraphs. Said decree shall in particular set forth the procedures for informing the competent authorities of the other Member States.

TITLE V EXCHANGE OF INFORMATION

Article 80

Subject to reciprocity, the *Conseil des Marchés Financiers*, market undertakings and the clearing houses of regulated markets may supply their foreign counterparts with the information necessary for the discharge of their respective duties concerning access to, organization and security of markets, provided that such counterpart organizations are also bound by an obligation of professional secrecy within a legislative framework offering similar guarantees to those in force in France. In the case of market undertakings that organize trading and clearing houses of regulated markets, such information, for the supervision of the risks incurred by their members, includes positions taken on the market, security or margin deposits and the composition thereof, as well as margin calls.

The information received by the organizations mentioned in the preceding paragraph may be used only in accordance with the instructions of the competent authority which supplies the same.

Article 81

I - Opening of information, liaison or representative offices in France by investment firms must be reported in advance to the *Comité des Établissements de Crédit et des Entreprises d'Investissement*, which shall inform the *Conseil des Marchés Financiers*. Such offices shall show the names of the firms which they represent.

II - Such investment firms whose principal activities are those referred to in Article 4 d) shall make the required report to the *Commission des Opérations de Bourse*, which shall inform the *Comité des Établissements de Crédit et des Entreprises d'Investissement* and the *Conseil des Marchés Financiers*.

TITLE VI PENALTIES

Article 82

A natural person found guilty of either of the following offences shall be liable to three years' imprisonment and a fine of FRF 2,500,000:

1. Provision of investment services to third parties on a professional basis without being authorized as provided by Article 11 or being exempted under Article 25;
2. Execution of trades or sales in France, other than those mentioned in the last six paragraphs of Article 43-II, involving financial instruments traded on a regulated market without recourse to an investment service provider.

A natural person found guilty of either of the offences listed in 1 and 2 above also incurs the following additional punishments:

1. Loss of civic, civil and family rights as provided in Penal Code Article 131-26;
2. Disqualification for not more than five years, as provided in Penal Code Article 131-27, to hold public office or to perform the professional or social activity in the course of or in connection with which the offence was committed;
3. Closing for not more than five years of any or all of the places of business used for committing the offence;
4. Confiscation of anything used or meant to be used for commission of the offence or anything resulting from the offence, except articles which can be restituted;
5. Posting or publication of the conviction and sentence as provided by Penal Code Article 131-39.

Article 83

Any natural person disregarding a disqualification pursuant to Article 22 or a prohibition pursuant to Article 23 shall be liable to three years' imprisonment and a fine of FRF 2,500,000. The court may also order posting or publication of its decision as provided by Penal Code Article 131-39.

Article 84

The senior managers of an investment firm who fail to prepare for each financial year the inventory and annual financial statements and a management report as provided by Article 57 shall be liable to a fine of FRF 100,000.

Article 85

The senior managers of an investment firm who fail to cause the appointment of its statutory auditors or to invite them to attend the shareholders' meeting shall be liable to two years' imprisonment and a fine of FRF 200,000.

The senior managers of an investment firm or any other person in its employ who interfere with the investigations or audits of the statutory auditors or refuse them on-site access to all documents useful for the discharge of their duties, including contracts, records, accounting documents and registers of minutes, shall be liable to five years' imprisonment and a fine of FRF 500,000.

Article 86

The senior managers of an investment firm who fail to publish its annual financial statements as provided by Article 57 shall be liable to a fine of FRF 100,000.

Article 87

The senior managers of an investment firm who fail to prepare its financial statements in consolidated form in accordance with Article 57 shall be liable to a fine of FRF 100,000.

Article 88

Legal persons may be convicted of the offences described in Articles 82 through 87 of this Act as provided by Penal Code Article 121-2. The punishment to which legal persons shall be liable is:

1. A fine as provided by Penal Code Article 131-38;
2. The punishment prescribed by Penal Code Article 131-39.

The prohibition referred to at point 2 of Penal Code Article 131-39 relates to the activity in the course of or in connection with which the offence was committed.

TITLE VII SUNDRY PROVISIONS

CHAPTER I PROVISIONS RELATING TO THE COMMISSION DES OPÉRATIONS DE BOURSE

Article 89

Ordinance 67-833 of 28 September 1967 establishing a *Commission des Opérations de Bourse* and relative to the information of securities holders and the disclosure of certain securities market transactions shall be amended as follows:

I - In Article 1:

- a) The first paragraph shall be amended to read:

“ The *Commission des Opérations de Bourse*, an independent administrative authority, shall be responsible for the protection of savings invested in financial instruments and all other investments involving a public solicitation of savings, for the information of investors and for the proper functioning of the markets for financial instruments. ”;

- b) The second paragraph shall be amended to read:

“ In the discharge of the duties of the *Commission* under this ordinance, the chairman thereof shall be empowered to act in the name of the State in any court except a criminal court. ”

II - Article 2 shall be amended as follows:

1. The first paragraph shall be amended to read:

“The *Commission* consists of a chairman and nine other members.”;

2. The third paragraph shall be replaced by ten paragraphs that read:

"The members are:

“ – a member of the *Conseil d'État* appointed by its vice-chairman;

“ – a member of the *Cour de cassation* appointed by its senior presiding justice;

“ – a member of the *Cour des Comptes* appointed by its senior presiding judge;

“ – a representative of the *Banque de France* appointed by the Governor;

“ – a member of the *Conseil des Marchés Financiers* appointed by it;

“ – a member of the *Conseil National de la Comptabilité* appointed by it;

“ – three qualified persons appointed respectively by the speaker of the Senate, the speaker of the National Assembly and the chairman of the *Conseil Économique et Social* chosen because of their financial and legal expertise and their experience in the field of public solicitation of savings. ”

“ The chairman or a member of the *Commission* delegated by him to do so shall be the rapporteur for purposes of the decisions reached pursuant to Articles 9-1 and 9-2 of this ordinance. ”

“ A representative of the Minister for Economic Affairs and Finance shall be heard by the *Commission* except with regard to individual decisions. He may submit any proposal for consideration by the *Commission* except in such cases. ”

III - Two Articles (*2 bis* and *2 ter*) reading as follows shall be inserted after Article 2:

“ Article 2 *bis* - The *Commission* shall adopt internal regulations containing rules regarding the preparation of the decisions and deliberations of the *Commission*. They shall be published in the *Journal Officiel de la République Française*.

“ Article 2 *ter* - The chairman and other members of the *Commission* must inform it of any interests they hold or come to hold and any functions they perform or come to perform in an economic or financial activity and of any offices they hold or come to hold in legal persons.

“ Neither the chairman nor any other member of the *Commission* may deliberate in a matter in which he or a legal person in which he performs functions or holds office has an interest, or participate in a deliberation concerning a matter in which he or a legal person in which he performs functions or holds office has represented an interested party in the 36 months preceding the deliberation. ”

IV - The words: “ to the official list of the securities exchanges or in the daily statement of the over-the-counter (*hors cote*) market ” in the first paragraph of Article 3 shall be replaced by the words: “ to trading on a regulated market or appear in the daily statement of the over-the-counter market mentioned in Article 34 of the Financial Activity Modernization Act 96-597 of 2 July 1996 ”.

V - In Article 4:

In the second paragraph, the words: “ of securities ” shall be replaced by the words: “ of financial instruments ”, the words: “ securities exchanges ” shall be replaced by the words: “ markets for financial instruments ”, and the words: “ brokerage firms ” shall be replaced by the words:

“ investment service providers ”.

In the third paragraph, the words: “ and to the Parliament ” shall be inserted after the words: “ to the President of the Republic ”.

The following paragraph shall be inserted after the third paragraph:

“ The chairman of the *Commission des Opérations de Bourse* shall testify before the finance committees of both houses of Parliament at their request and may request to be heard by them. ”

VI - The following paragraph shall be inserted after the first paragraph of Article 4-1:

"The instructions and recommendations adopted by the *Commission* to specify the interpretation and conditions of application of its regulations shall be published by it within fifteen days of their transmittal to the Minister for Economic Affairs and Finance."

VII - The following paragraph shall be inserted after the fourth paragraph of Article 5 *bis*:

“ The *Commission* may, for the implementation of the preceding paragraphs, make agreements organizing its relations with foreign authorities having powers similar to its own. Such agreements shall be approved by the Commission as provided in Article 2, and shall be published in the *Journal Officiel de la République Française*. ”

VIII - In Article 6:

The words: “ to the official list of the securities exchanges ” in the second paragraph shall be replaced by the words: “ to trading on a regulated market ”.

The last sentence of the third paragraph shall be amended to read:

In the event of an initial listing on a regulated market, it shall also be placed at the disposal of the public at the market undertaking which operates such market. ”

IX - The following Article 9-3 shall be inserted after Article 9-2:

“ Article 9-3 - If the *Commission des Opérations de Bourse* imposes a pecuniary penalty which becomes final before the criminal court has ruled by final judgement on the same or connected facts, the criminal court may order the pecuniary penalty to be credited against any fine imposed by it. ”

X - Article 10-1 shall be amended to read:

“ Article 10-1 - The senior managers of a company mentioned in Article 162-1 of the Commercial Companies Act 66-537 of 24 July 1966, or anyone having, by virtue of his profession or functions, inside information with regard to the prospects or situation of an issuer whose securities are traded on a regulated market or the future price of a financial instrument traded on a regulated market, who directly or through an intermediary person carries out one or more transactions or knowingly enables such transactions to be carried out before the public is aware of such information shall be liable to two years' imprisonment and a fine neither less than the amount of any profit realized nor more than the greater of FRF 10 million or ten times the amount of such profit.

“ Anyone having, by virtue of his profession or functions, inside information with regard to the prospects or situation of an issuer whose securities are traded on a regulated market or the future price of a financial instrument traded on a regulated market, who discloses the same to another party otherwise than in the ordinary course of his profession or functions shall be liable to six months' imprisonment and a fine of FRF 100,000.

“ Anyone who knowingly spreads in any way false or misleading information in the public as to the prospects or situation of an issuer whose securities are traded on a regulated market or the future price of a financial instrument traded on a regulated market which is likely to affect prices shall be liable to the punishments provided in the first paragraph. ”

XI - Article 10-3 shall be amended to read:

“ Article 10-3 - Anyone who directly or through an intermediary person takes or attempts to take action intended to interfere with the proper functioning of a market for financial instruments by misleading others shall be liable to the punishments provided in the first paragraph of Article 10-1. ”

XII - The following Articles 10-4 and 10-5 shall be inserted after Article 10-3:

“ Article 10-4 - Legal persons may be convicted as provided by Penal Code Article 121-2 of the offences described in Articles 10-1 and 10-3 of this ordinance.

“ The punishment to which legal persons shall be liable is:

“ 1. A fine as provided by Penal Code Article 131-38;

“ 2. The punishments prescribed by Penal Code Article 131-39.

“ The prohibition referred to in 2 of Penal Code Article 131-39 relates to the activity in the course of or in connection with which the offence was committed.

“ Article 10-5 - Articles 10-1 and 10-4 shall be applicable where the information relates to an issuer whose securities appear or have appeared in the daily over-the-counter (*hors-cote*) market statement. ”

Article 90

Notwithstanding the second and fourteenth paragraphs of Article 2 of Ordinance 67-833 of 28 September 1967 aforesaid:

- the terms of office still current on the effective date of this Act shall end on the date of the first meeting of the *Commission* following the appointments made pursuant to Article 89-II of this Act;
- the appointments made more than four years before the effective date of this Act shall be disregarded for the purposes of the rules regarding reappointments in Article 2 of Ordinance 67-833 of 28 September 1967 aforesaid.

CHAPTER II COORDINATING PROVISIONS

Article 91

Act 88-1201 of 23 December 1988 aforesaid shall be amended as follows:

I - The first paragraph of Article 11 shall be amended to read:

"The unincorporated mutual fund (*fonds commun de placement*) shall be created on the joint initiative of a portfolio management company governed by Article 15 of the Financial Activity Modernization Act 96-597 of 2 July 1996 or a management company referred to in Article 12 responsible for management thereof, and of a legal person that is the custodian of its assets."

II - The first sentence of the second paragraph of Article 12 shall be deleted.

III - The following paragraph shall be inserted after the first paragraph of Article 12:

“ The management company shall be subject to the same authorization, supervision and other rules as the companies referred to in Article 15 of the Financial Activity Modernization Act 96-597 of 2 July 1996. ”

IV - The last paragraph of Article 12 shall be amended to read:

“ The unincorporated mutual fund shall be represented vis-à-vis third parties by the company responsible for managing it, mentioned in the first paragraph of Article 11. Such company may defend or assert the rights or interests of the unit holders in legal proceedings. ”

Article 92

Article 34 of Act 88-1201 of 23 December 1988 aforesaid shall be amended as follows :

1. The last sentence of the first paragraph shall be deleted;
2. The third paragraph shall be amended to read:

“ The conditions under which the fund may acquire claims and issue new units after the initial units of shares and the rules of investment of the moneys temporarily available and awaiting employment shall be specified by Decree. The fund may not borrow. ”

Article 93

The Futures Markets Act of 28 March 1885 shall be amended as follows:

1. Article 11 shall be amended to read:

“ Article 11 - Only investment service providers and legal persons referred to in Article 44 of the Financial Activity Modernization Act 96-597 of 2 July 1996 may resort to canvassing with a view to executing transactions in the financial forwards and futures defined in Article 3 of that Act. ”;

2. In Article 15:

The words: “ *Conseil du Marché à Terme* ” in the first paragraph shall be replaced by the words:

“ *Conseil des Marchés Financiers* ”;

The words: “ *Conseil du Marché à Terme* ” in the fourth paragraph shall be replaced by the words:

“ *Conseil des Marchés Financiers* ”;

The words: “ to the Treasury ” in the fourth paragraph shall be amended to read: “ to the guarantee fund mentioned in Article 61 of Act 96-597 of 2 July 1996 aforesaid or else to the Treasury ”;

3. The following sentence shall be inserted at the end of the second paragraph of Article 18:

“ Said provisions, except those relative to the protection of public savings, do not apply to regulated markets having their registered office in a Member State of the European Community. ”;

4. Articles 1, 2, 4 through 9, 7 and 17 *bis* shall be repealed.

Article 94

I - The Securities Exchange Act 88-70 of 22 January 1988 shall be repealed, except that the amendments of other Acts and Codes made by that Act remain valid.

II - The words: "brokerage firms" shall be replaced by the words: "investment service providers" in all laws and regulations in force.

III - Article 44 of Act 85-1321 of 14 December 1985 amending certain provisions of the law of securities, negotiable debt securities and securities transactions shall be repealed.

Article 95

I – See Article 12-4 of Act 84-46 of 24 January 1984.

II – See Article 35 (first paragraph) and 49 of Act 84-46 of 24 January 1984.

III – See the first paragraph of Article 15-1 of Act 84-46 of 24 January 1984.

IV – See Article 34-4 of Act 84-46 of 24 January 1984.

V – See the third paragraph of Article 41-1 of Act 84-46 of 24 January 1984.

VI – See Article 53 of Act 84-46 of 24 January 1984.

VII – See Article 53-1 of Act 84-46 of 24 January 1984.

VIII – See Article 68 of Act 84-46 of 24 January 1984.

IX – See Article 69 of Act 84-46 of 24 January 1984.

X – See Article 72 of Act 84-46 of 24 January 1984.

XI – See the third paragraph of Article 74 of Act 84-46 of 24 January 1984.

Article 96

I - Act 66-537 of 24 July 1966 aforesaid shall be amended as follows:

- a) In Article 72, the words: “ admitted to the official list or the second market of a securities exchange ” shall be replaced by the words: “ admitted to trading on a regulated market ”;
- b) In Articles 97-1 and 119, the words: “ to the official list of a securities exchange ” shall be replaced by the words: “ admitted to trading on a regulated market ”;
- c) In Article 162-1, the words: “ admitted to the official list or the second market of a securities exchange ” shall be replaced by the words: “ admitted to trading on a regulated market or appearing in the daily over-the-counter market statement mentioned in Article 34 of the Financial Activity Modernization Act 96-597 of 2 July 1996 ”;
- d) In Article 172-1, the words: “ admitted to the official list or the second market of a securities exchange ” shall be replaced by the words: “ whose shares are admitted to trading on a regulated market ”;
- e) In Article 180-V and Article 208-1, the words: “ to the official list or the second market of a securities exchange ” shall be replaced by the words: “ to trading on a regulated market ”;
- f) In Articles 186-1, 186-3, 200 and 271, the words: “ admitted to the official list or the second market of a securities exchange ” shall be replaced by the words: “ admitted to trading on a regulated market ”;
- g) In Article 193-1, the words: “ the equity securities are admitted to the official list or the second market of a securities exchange ” shall be amended to read: “ the shares are admitted to trading on a regulated market ” and the words: “ securities of another company admitted to the official list or the second market of the Paris stock exchange or admitted to the official list of a State party to the European Economic Area agreement other than France or of the securities exchange of a Member State of the Organization for Economic Cooperation and Development ” shall be

- replaced by the words: “ shares of another company whose shares are admitted to trading on a regulated market of a State which is a party to the Economic European Area agreement or a member of the Organization for Economic Cooperation and Development ”;
- h) In Article 194-5, the words: “ admitted to the official list or the second market of a securities exchange ” shall be replaced by the words: “ admitted to trading on a regulated market ”;
 - i) In Articles 196 and 217-2, the words: “ to the official list or the second market of a securities exchange ” shall be replaced by the words: “ to trading on a regulated market ”;
 - j) In Article 217-5, the words: "the securities dealers association" shall be replaced by the words: "*the Conseil des Marchés Financiers*";
 - k) In Article 263-2: the words; “ listed on a securities exchange ” shall be replaced by the words: “ traded on a regulated market ”;
 - l) In Articles 341-1, 341-2 and 357-2, the words: “ admitted to the official list of securities exchanges ” shall be replaced by the words: “ admitted to trading on a regulated market ”;
 - m) In Article 347-2, the words: “ admitted to the official list or the second market ” shall be replaced by the words: “ admitted to trading on a regulated market ”;
 - n) In Article 352, the words: “ admitted to the official list or the second market ” shall be replaced by the words: “ admitted to trading on a regulated market ”;
 - o) In Article 356-1, the words: “ admitted to the official list or the second market or the over-the-counter market of a securities exchange ” shall be replaced by the words: “ admitted to trading on a regulated market or appearing in the daily over-the-counter market statement mentioned in Article 34 of the Financial Activity Modernization Act 96-597 of 2 July 1996 ”, the words: “ admitted to the official list of a securities exchange or the second market ” shall be replaced by the words: “ admitted to trading on a regulated market ” and the words: “ the securities dealers association ” shall be replaced by the words: “ the *Conseil des Marchés Financiers* ”;
 - p) In Article 356-1-1, the words: “ if it is listed ” shall be replaced by the words: “ if its shares are admitted to trading on a regulated market ” and the words: “ *Conseil des Bourses de Valeurs* ” shall be replaced by the words: “ *Conseil des Marchés Financiers* ”;
 - q) In Article 356-1-4, the words: “ listed on a French regulated market ” shall be replaced by the words: “ whose shares are admitted to trading on a regulated market ”;
 - r) In Article 434, the words: “ admitted to the official list of a securities exchange ” shall be replaced by the words: “ admitted to trading on a regulated market ”.

II - In the second paragraph of Article 94-II of the 1982 Budget Act (Act 81-1160 of 30 December 1981), the words: "admitted to the official list or the second market of a securities exchange" shall be replaced by the words: "admitted to trading on a regulated market".

III - In the other laws in force not referred to above as well as regulations, the provisions applicable in the same way to the official list or the second market of a securities exchange apply to the regulated markets governed by this Act.

IV - Article 19 of Act 91-716 of 26 July 1991 aforesaid shall be amended as follows:

- in I, the words: “ or over the counter ” shall be inserted after the words: “ on a regulated market ”;
- V shall be repealed.

CHAPTER III IMPLEMENTING PROVISIONS

Article 97

I - The legal persons authorized to provide an investment service referred to in Article 4 on the date when this Act enters into force need not follow, in order to provide such service, the procedures provided for in Article

11 and shall be entitled to the benefit of Articles 75 and 78. They shall harmonize their articles of association with this Act and file an activity report, before 31 December 1996, with the *Comité des Établissements de Crédit et des Entreprises d'Investissement*, which shall publish a list thereof as provided in Article 76. In compiling such list, the *Comité des Établissements de Crédit et des Entreprises d'Investissement* shall assess the accuracy of such reports and may correct the information they contain. The *Commission des Opérations de Bourse* shall exercise the powers under this paragraph of the *Comité des Établissements de Crédit et des Entreprises d'Investissement* with regard to portfolio management companies and investment firms whose principal business activity is that referred to in Article 4 d). The legal persons on the lists issued by the *Comité des Établissements de Crédit et des Entreprises d'Investissement* and the *Commission des Opérations de Bourse* shall be deemed to be authorized under Article 11 to provide the services concerned. If they do not file the aforementioned report, they shall discontinue providing the investment services listed in Article 4.

II - The management companies referred to in Article 12 of Act 88-1201 of 23 December 1988 aforesaid shall also harmonize their articles of association, their organization and their resources with this Act; they shall file an activity report and submit authorization applications to the *Commission des Opérations de Bourse* before 31 December 1996. They may continue their operations until such applications are acted on.

III - The management companies governed by Article 23 of the Capital Market Transparency and Security Act 89-531 of 2 August 1989 shall automatically become portfolio management companies and need not follow the procedure prescribed by Article 15 of this Act.

IV - The securities houses (*maisons de titres*) governed by the third paragraph of Article 18-2 of the Banking Act 84-46 of 24 January 1984 must, before 1 January 1998, choose the status of investment firm governed by this Act or that of credit institution. They must notify their choice to the *Comité des Établissements de Crédit et des Entreprises d'Investissement*. If they make no such notification within such time, they shall be deemed to have chosen investment firm status.

A securities house that chooses investment firm status shall be deemed to be authorized to provide all of the investment services listed in Article 4. It must satisfy the capital and all other requirements entailed by such status. A securities house that chooses credit institution status shall be subject to the procedure prescribed by Article 15 of Act 84-46 of 24 January 1984 aforesaid. It shall also be deemed to be authorized to provide all of the investment services listed in Article 4 of this Act provided that it satisfies all the capital and other requirements entailed by such status.

V - In Article 191-1 of Act 66-537 of 24 July 1966 aforesaid, the words: “ institutions authorized as such as provided by Decree, whether credit institutions or institutions referred to in Article 99 of the Banking Act 84-46 of 24 January 1984, ” shall be amended to read: “ investment service providers authorized as such as provided in Article 11 of the Financial Activity Modernization Act 96-597 of 2 July 1996 ”.

VI - This Act does not prejudice the collective bargaining agreements in force on the date of publication of this Act.

VII - The securities and futures markets based on the aforesaid Acts of 28 March 1885 and 88-70 of 22 January 1988 that are regularly operating on the date of publication of this Act shall be recognized as regulated markets within the meaning of Article 41 of this Act.

VIII - Only “ brokerage firms ” (*sociétés de bourse*) and “ money market brokers ” (*agents des marchés interbancaires*) authorized as such on the date of publication of this Act may continue to use such names to describe themselves.

Article 98

The *Conseil des Marchés Financiers* exercises the powers devolved on the *Conseil des Bourses de Valeurs* and the *Conseil du Marché à Terme* by the statutory provisions in force that are not repealed by this Act. Until publication in the *Journal Officiel de la République Française* of the notice concerning the establishment of the *Conseil des Marchés Financiers*, the *Conseil des Bourses de Valeurs* and the *Conseil du Marché à Terme* as they are composed on the date of publication of this Act shall exercise the powers devolved on them by the laws and regulations in force on that date. On the date of such publication, the *Conseil des Marchés Financiers* shall be subrogated in the respective rights and obligations of the *Conseil des Bourses de Valeurs* referred to in Article 5 of Act 88-70 of 22 January 1988 aforesaid and the *Conseil du Marché à Terme* referred to in Article 5 of the Act of 28 March 1885 aforesaid.

Article 99

- I – See Article 75 of Act 84-46 of 24 January 1984.*
- II – See Article 77 of Act 84-46 of 24 January 1984.*
- III – See Article 78 of Act 84-46 of 24 January 1984.*
- IV – See Article 79 of Act 84-46 of 24 January 1984.*
- V – See Article 80 of Act 84-46 of 24 January 1984.*
- VI – See Article 81 of Act 84-46 of 24 January 1984.*
- VII – See Article 82 of Act 84-46 of 24 January 1984.*
- VIII – See Article 83 of Act 84-46 of 24 January 1984.*
- IX – See Article 84 of Act 84-46 of 24 January 1984.*
- X – See Article 84-1 of Act 84-46 of 24 January 1984.*

Article 100

- A - See Article 19 of Act 84-46 of 24 January 1984.*
- B - See Articles 19-1 and 19-2 of Act 84-46 of 24 January 1984.*
- C – See Article 46 of Act 84-46 of 24 January 1984.*
- D – See Article 52-1 of Act 84-46 of 24 January 1984.*
- E – See Article 100-2 of Act 84-46 of 24 January 1984.*

Article 101

A report on the application of this Act shall be submitted by the government to Parliament by 31 December 1998. Such report shall among other things describe the difficulties entailed by the operation in France of natural persons authorized as investment firms in their home Member States. It shall also describe the effects of this Act on the development of the securities houses (*maisons de titres*) and on the application of measures regarding the over-the-counter (*hors-cote*) market.

Article 102

I - Article 29 of the Savings Protection and Investment Development Act 83-1 of 3 January 1983 shall be amended to read:

“ Article 29 - An account of financial instruments mentioned in Article 1 of the Financial Modernization Activity Act 96-597 of 2 July 1996 shall be pledged, between the parties as well as vis-à-vis the issuer and other persons, by a statement signed by the account holder. The contents of 100 such statement shall be specified by Decree. The financial instruments in the pledged account, those substituted therefor or added thereto in any way as well as any income therefrom and proceeds thereof in all currencies shall be subject to the pledge. The account keeper shall, at the pledge creditor's request,

give the pledge creditor a financial instrument account pledge certificate detailing the financial instruments and sums in all currencies in the pledged account on the date of such certificate.

“ The pledged account shall be a special account in the holder's name kept by an authorized intermediary, a central depository or the issuer of the instruments concerned.

“ In the absence of a special account, the financial instruments referred to in the first paragraph and the sums in all currencies identified for that purpose by a computer process shall be deemed to form the pledged account.

“ The pledge creditor and the holder of the account shall agree on the terms on which the latter may dispose of the financial instruments and sums in all currencies in the pledged account. The pledge creditor has in any event a possessory lien on the financial instruments and sums in all currencies in the pledged account.

“ A pledge creditor having a rightful claim which is due and payable may foreclose the pledge, be it civil or commercial, on any French and foreign securities traded on a regulated market, collective investment undertaking units referred to in the first Article of Act 96-597 of 2 July 1996 aforesaid and sums in all currencies eight days, or at the end of any other time previously agreed on with the holder of the account, after service of notice of default on the debtor by hand delivery or registered mail. Such notice of default shall also be served on the pledgor, if other than the debtor, and on the account keeper if it is not the pledge creditor. The pledge shall be foreclosed in accordance with the procedures specified by decree.

“ The pledge shall be foreclosed on financial instruments other than those referred to in the preceding paragraph as provided in Commercial Code Article 93. ”

II - The following Article 29-1 shall be inserted after Article 29 of Act 83-1 of 3 January 1983 aforesaid:

“ Article 29-1 - The fifth and sixth paragraphs of Article 29 relative to foreclosure of pledges apply to pledges antedating the date this Act enters into force, where such pledges relate to French or foreign financial instruments held in account. ”

III - The third paragraph of Article 19-II of Act 91-716 of 26 July 1991 aforesaid shall be amended to read:

“ Negotiable debt securities (*titres de créances négociables*) shall be pledged as provided in Article 29 of the Savings Protection and Investment Development Act 83-1 of 3 January 1983. ”

IV - Article 7 of Ordinance 45-679 of 13 April 1945 requiring banks, financial institutions and certain other organizations to deposit their Treasury bills in current accounts shall be repealed.

Article 103

The following paragraph shall be added to Article 47^{ter} of Act 83-1 of 3 January 1983 aforesaid: 101

“ An account keeper or custodian which settles a transaction by delivery of securities versus a cash payment in lieu of its defaulting customer shall be entitled to the benefit of this Article; it acquires full ownership rights to the securities or cash received from the counterparty. The Business Reorganization and Bankruptcy Act 85-98 of 25 January 1985 does not prejudice the application of this Article. No creditor of the defaulting customer may assert any right to such securities or cash. ”

Article 104

The Savings Act 87-416 of 17 January 1987 shall be amended as follows:

1. The words "full ownership rights" shall be added to the second paragraph of Article 31-c;

2. The following paragraph shall be added to Article 31:

“ The parties may agree on additional full-ownership transfers of cash or securities to allow for changes in value of the securities loaned. ”;

3. The following Article 33 shall be reinserted:

“ Article 33 - Debts and claims relating to loans of securities and governed by a master agreement governing the dealings between two parties may be set off as provided in such master agreement. ”;

“ Such master agreement may provide, when one of the parties is the subject of one of the procedures provided for by Acts 84-148 of 1 March 1984 and 85-98 of 25 January 1985 aforesaid and by Title III of Book III of the Consumer Code, for automatic cancellation of all the loans of securities mentioned in Article 31 of this Act.

“ This Article applies notwithstanding any provision of said Acts and Code. ”

Article 105

I - In the second paragraph of Article 5 of the French Language Use Act 94-665 of 4 August 1994, the words: “ the *Banque de France* or the *Caisse des Dépôts et Consignations* ” shall be inserted after the words: “ of an industrial and commercial nature ”.

II - The following sentence shall be added to the same paragraph of the same Article of the same Act:

“ For the purposes of this paragraph, loans issued under the benefit of General Tax Code Article 131 *quater* and contracts for the provision of investment services as defined in Article 4 of the Financial Activity Modernization Act 96-597 of 2 July 1996 which may be sued on in a foreign court shall be deemed to be performed entirely outside France. ”

Article 106

The General Regulations of the *Conseil des Bourses de Valeurs* and the *Conseil du Marché à Terme* remain applicable. They may be amended or repealed by the *Conseil des Marchés Financiers* as provided in Article 32 of this Act or by the *Comité de la Réglementation Bancaire et Financière* as provided in Article 30 of Act 84-46 of 24 January 1984 aforesaid. This Act shall be executed as an Act of the State.

Article 107

I - Articles 44-1 (c), 53, 95 III and Title IV of this Act shall not apply in the *collectivité territoriale de Saint Pierre et Miquelon* (territorial unit of Saint Pierre et Miquelon). 102

II - The following, as worded prior to the promulgation of Act n° 98-546 of 2 July 1998, shall remain applicable in the overseas territories and the *collectivité territoriale de Mayotte* (territorial unit of Mayotte) : Title I of the present Act, except for Article 26, Title II, except for Articles 44-1 (c) and 53, Title III, except for Article 56 Titles V and V, and Articles 90, 93, 94-I and II, 95-I and II, 95-IV to 95-XI, 96-I (b), 96-I (c), 96-I

(h) to 96-I (j), 96-I (l), 96-I (n) to 96-I (r), 96-III, 97 to 101 and 106 of Title VII, subject to the following modifications :

– Article 22, 1°, c : the reference to Article 52-1 of Freedom of Pricing and Competition Ordinance 86-1243 of 1 December 1986 shall be deleted and the reference to Labour Code Article L. 152-6 shall be replaced by the reference to Penal Code Article 717-1;

– Article 25, 2°, g : the reference to Act 72-6 of 3 January 1972 shall be deleted ;

– Article 62, paragraph 2 : the words "by 1 January 1998" shall be replaced by the words "within eighteen months from the date of publication of Ordinance 98-775 of 2 September 1998 in the overseas territory or territorial unit concerned";

– Article 96, I, b : the reference to Article 97-1 of Act 66-537 of 24 July 1966 shall be deleted;

– Article 96, I, c : the words : "or appearing in the daily over-the-counter market statement mentioned in Article 34 of the Financial Modernization Act 96-597 of 2 July 1996" shall be deleted;

– Article 96, I, i : the reference to Article 217-2 shall be deleted;

– Article 96, I, l : the reference to Article 357-2 shall be deleted;

– Article 97, I, paragraph 1, the words : "and shall be entitled to the benefit of Articles 75 and 78" shall be deleted;

– Article 97, I, paragraph 2, the words : "before 31 December 1966" shall be replaced by the words: "within six months from the date of publication of Ordinance 98-775 of 2 September 1998 in the overseas territory or territorial unit concerned";

– Article 97, II, the words : "before 31 December 1966" shall be replaced by the words by the words: "within six months from the date of publication of Ordinance 98-775 of 2 September 1998 in the overseas territory or territorial unit concerned";

– Article 97, IV, paragraph 1, the words : "before 1 January 1998" shall be replaced by the words : "within eighteen months from the date of publication of Ordinance 98-775 of 2 September 1998 in the overseas territory or territorial unit concerned".