

## THE SICOVAM AND CURRENT ACCOUNTS FOR SECURITIES

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### 1. Introduction

On November 21, 1980, Bill No. 108 was placed before the French Senate. If adopted, it will alter the current system of holding securities in France by compelling registration of securities issued by companies listed on the stock exchange and requiring the placement of these securities into the accounts of a centralized depository. After a brief history designed to acquaint the reader with the development of the securities system in France, this article will analyze the aims of the proposed legislation, the changes it will bring about, and its likely effects.

### 2. History

The reform of the system of transferable securities envisioned by Bill No. 108 aims at replacing the current system of optional deposit of securities into a centralized account with a system of mandatory deposits. It is not a new concept, but rather a continuation of a trend begun in 1854 [1]. In that year, French banks attempted to open securities accounts with the Bank of France. Because the securities were not fungible, however, this and similar attempts in 1905 and 1930 failed. During the same period, Germany succeeded in creating a central depository for securities, known as the *Kassenvereine* [2]. However, in pre-war France, only numbered bearer shares and registered shares circulated.

The German occupation of France during the Second World War led to changes in the French system of transferable securities. The Occupation Forces, for purposes of control, wished to learn the identities of the holders of French transferable securities. In addition, the Vichy Government wanted to fight speculation and oversee German shareholding in French industries. As a result, the Vichy Government adopted the German *Kassenvereine* model in establishing the "Caisse Centrale des Dépôts et Virements de Titres" (the CCDVT).

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The Vichy Government's first step, the Law of February 28, 1941, made compulsory for all securities either the registered form or deposit in banks of bearer shares. A subsequent law, passed on June 18, 1941, created the CCDVT. This office, which was charged with centralizing bank deposits, opened an account based on the type of securities deposited for all depository establishments, a procedure which rendered the numbering of securities irrelevant. From this point onward, the movement of securities between intermediaries following a stock exchange transaction was done by a simple transfer from one account to another. Finally, the Law of February 3, 1943, standardized the scheme of deposits in the CCDVT by making deposit compulsory.

The advantages of the obligatory deposit required by the 1943 law and the current account system were obvious: the transfer system speeded and simplified distributive and administrative securities operations and resulted in considerable savings in management expenses. Professionals, who had benefited from the system, recognized these advantages and supported retention of the system. The requirement of obligatory deposits, however, led to opposition from the general public and demands that it be abandoned. Ultimately, a compromise was reached: a law passed on July 5, 1949, abolished the CCDVT and a decree issued on August 4 of the same year instituted the "Société Interprofessionnelle de Compensation des Valeurs Mobilières" (the Interprofessional Company for the Compensation of Transferable Securities), known as the SICOVAM. This new organization was based on principles similar to those of the defunct CCDVT, but with one important difference: deposits were no longer compulsory.

In practice, the public and intermediaries did not withdraw their securities from the SICOVAM once deposit was no longer obligatory. In fact, the kinds of transferable securities likely to be included in the operations of the interprofessional organization multiplied, and the number of holders of securities in current accounts grew steadily. Currently, only about 10% of the shares of companies listed on the exchange are held personally by their owners [3]. The reform now under discussion would, therefore, only minimally affect current securities holding practices. It would essentially result in standardization, making compulsory the system of current securities accounts [4] and would modernize and simplify the scheme of transferable securities.

### **3. Proposed legislation**

Bill No. 108, passed by the National Assembly and placed before the Senate on November 21, 1980, retains both forms of transferable securities: bearer shares and registered securities. However, it provides for only one method of shareholding: registering in an account, which is made compulsory for shares and bonds quoted on the stock exchange and for shares of variable capital

investment companies. Registration is optional for other kinds of securities. Under the new system, the accounts would be held by the issuing corporate body or by a qualified financial intermediary. The SICOVAM would control the administration of the accounts. In sum, the reform would require registering all quoted securities in an account.

The proposed extension of the share account system should not cause a major upheaval in the practical functioning of these accounts. On the contrary, material simplifications will result. The legal interpretation of the relations between the parties, however, might require modification.

#### 4. The SICOVAM

Many of the techniques perfected by the CCDVT have been adopted by the SICOVAM. The SICOVAM is a limited company with capital of 2,250,000 French francs which is divided into 3,000 registered shares [5]. It is composed of the "Compagnie des Agents de Change" (Company of Stock Brokers), the "Association Professionnelle des Banques" (Professional Bank Association), and various other banks and financial establishments [6]. Its principal purpose is "to allow individuals or corporations involved in the banking or stock brokering professions to invest their transferable securities, for which they are the trustee or for which they conduct transactions, under the scheme of current accounts of transferable securities, instituted by Section II, title 1 of the Decree of August 4, 1949" [7]. Most of the twelve administrators of the SICOVAM are representatives of the banking and brokering professions.

The SICOVAM functions as a semi-public organization. Its statutes and general regulations are subject to the approval of the Minister of the Economy. Furthermore, a government official is appointed to oversee the functioning of the interprofessional society [8]. As an institution, however, the SICOVAM is not directly concerned with individual shareholders because all its operations are conducted among its members, the compulsory intermediaries, who are required to act on behalf of the beneficial shareholders. While this structure and the membership process theoretically reduce the number of accounts opened with the interprofessional organization, they also minimize direct communication between corporations and their shareholders.

##### 4.1. The members

The August 4, 1949, decree allows banks, financial agencies, and trustees to deposit transferable securities in a current account with the SICOVAM [9], if the SICOVAM has accepted their membership [10]. The Board of Administration decides whether to accept an applicant for admission after it reviews a document that provides information regarding the financial situation of the

applicant, and the size of the transactions of securities and stocks of the petitioning establishment. The Board is not required to state the reasons for its decision [11]. Until now, nearly all requests have been accepted by the Board. Non-member companies are those that have not affiliated with the SICOVAM because they do not conduct a sufficient number of transactions of securities and stocks to justify either opening a current account with the SICOVAM or engaging in the practical organization required by opening an account. Despite this, the clients of non-members can benefit from the current account system through the intermediation of a member.

One can arrange to act through an intermediary by contracting for his services in either of two ways. The contract can specify that the member assure that the non-affiliated establishment retains and manages the shares. In this arrangement, known as global submembership, the name of the client is not revealed. Such anonymity is not found under the second approach, under which the member, by means of a service contract, does the accounting for those clients of the bank not affiliated with the SICOVAM.

The proposed reforms raise the question of who will be the financial intermediaries qualified to open the share accounts. Will they simply be the organizations affiliated with the SICOVAM or will the present system of sub-memberships be continued? Furthermore, insofar as the accounts held by the issuing companies are concerned, by whom will they be centralized? The answer to the first question appears to be that the present system of submemberships will be retained, and the number of account holders, which would be established by ministerial decree, should increase well beyond the present number of members [12]. Finally, issuer accounts will be managed by a member, generally the leading establishment, which will centralize the financial operations of the issuer through a special account of the member by which the member represents the issuer. Such accounts are known as fictitious member accounts [13].

The SICOVAM can accept similar foreign organizations as members and can itself join such organizations. At present, a reciprocal membership links the SICOVAM to the "Caisse Interprofessionnelle de Dépôts et de Virements de Titres" (CIK), of Brussels, and to the "Japan Securities Clearing Corporation" (JSCC), of Tokyo. The SICOVAM, however, is not a member of certain organizations which are members of the SICOVAM, such as the "Centrum voor Fondsenadministratie N.V." (CF), of Amsterdam [14].

After accepting a member, the SICOVAM opens an account for securities in its name, based on the kind of securities deposited. For his part, the member must open a current cash account, which must remain open for the duration of the membership. The minimum balance to be kept in these cash accounts is fixed by the Board of Administration.

In addition to being free to choose its members, the SICOVAM may, on one month's notice, close any current account which does not show a sufficient

number of operations or deposited shares [15]. It may also immediately close the current transferable securities account of any member who fails to respect the general regulations, and most important, the securities account of any member who issues, transfers, or orders withdrawals without sufficient provision in the account [16]. Members may close accounts on one month's notice.

#### *4.2. Transferable securities accepted by the SICOVAM*

According to the decree of August 4, 1949, the management of transferable securities by current account concerns only French transferable bearer securities [17]. This management system demands perfect fungibility; the certificates must be interchangeable. Three kinds of transferable securities, once registered on the official list, are accepted by the SICOVAM.

(1) Shares. French securities laws permit, in certain cases, redemption of both shares and bonds by lot. Because it is necessary to be able to identify holders of particular certificates when the lot is conducted, these certificates must be distinguishable. This lack of fungibility and its incompatibility with the system of current accounts has led the regulatory officials to completely ban redemption by lot (Article 3, D. 1949).

(2) Non-convertible bonds and bonds that can be converted into fungible shares. The focus here is on bonds redeemable in series if the series is broad and homogeneous. In fact, all certificates of the same series are fungible and can be handled by the SICOVAM.

(3) Non-convertible bonds and convertible bonds redeemable by lot and subject to the special conditions of Articles 18-1 to 18-5 of the decree of August 4, 1949. These complex regulations allow the SICOVAM to accept debentures by conferring on all bonds, even those with identifying numbers, equivalent chances of being redeemed by lot. Under the regulations, SICOVAM is required to redistribute the redeemed certificates among its members in proportion to their holdings in the issuer. Upon receipt of these redeemed certificates, each member compiles a list of eligible depositors (holders of the issuer's convertible bonds). Each member then conducts its own drawing in order to give its clients the redeemed certificates it has received from the SICOVAM [18]. At present, approximately 10% of the holders of fungible bonds hold physically-represented securities [19].

In addition to those securities which are registered on the official list and likely to be accepted by the SICOVAM, Article 4 of the decree of August 4, 1949, permits acceptance of any other transferable security or category of transferable securities, upon approval of the Minister of the Economy. In practice, this rule applies to shares that are not quoted on the stock exchange [20]. A general ministerial authorization has been given regarding the possibility of these shares being admitted to the operations of the SICOVAM.

In actuality, most of the bearer shares quoted on the stock exchange are

presently managed through current accounts. The popularity and advantages of the current account method of management explain why the reforms attempt to make compulsory the current account system for shares and bonds of quoted companies. It should be noted, however, that this technique would be valid not only for bearer shares, but also for registered shares [21]. It will, therefore, cause considerable growth in the number of bonds held in current accounts. The advocates of reform also support the principle that the system should preserve investor anonymity [22], but it must be noted that, at present, total anonymity is far from being guaranteed [23]. This being the case, it may be asked if keeping both forms of shares, registered and bearer, can be justified, at least, notwithstanding the French investors' predilection for the anonymous bearer form. In any case, the differences in the systems which separate these two types of shares will be strictly respected in the future. The essential difference will lie in the fact that the name of the holder of registered shares will be communicated to the issuing company so that it can obtain all the information it requires.

#### *4.3. Shareholders*

Since the decree of August 4, 1949, the deposit of securities in a current account has been optional. However, when a shareholder deposits his securities with a member of the SICOVAM, they are normally deposited in the current account. Those investors who wish to have their original certificates returned must so indicate, either at the time of remittal or, at the latest, within five days of deposit, if the latter is done with an affiliated establishment [24].

A special rule has been drawn up for legal and judicial administrators for the property of other parties that are neither public administrators nor savings deposit banks. Unless they have legal authorization to do otherwise, these people must request that the securities for which they are responsible not be deposited in a current account [25]. This rule appears to be justified either (a) because the trustee must account for the property he holds in trust and is obligated to return the identical property entrusted to him at the expiration of the trust [26], or (b) because of the possible risks incurred by depositors once their property is no longer clearly identifiable to them [27]. Once all the securities are registered in an account, however, these considerations do not appear to warrant the creation of a special system for trustees. Depositing shares in an account as envisioned by the reform will "dematerialize" or eliminate the physical representation of all shares, giving them all equal status. Once this is accomplished, there seems to be no reason to create a separate status for the trustee [28], because special identification of trustee-held property will serve no useful purpose.

## 5. The practical functioning of the current accounts for securities

The basic purposes of the SICOVAM are first, to facilitate the circulation of transferable securities between member establishments while avoiding material movement of shares; and second, to simplify their management. The adoption of the reforms offered by Bill No. 108 should both reduce and facilitate SICOVAM operations.

### 5.1. Operations of circulation of securities

#### 5.1.1. Deposits

Shares accepted for deposit by the SICOVAM must be physically deposited if they are physically represented. The deposit of securities is carried out by the members themselves, and are made into various accounts according to the type of securities [29]. In theory, the deposit is made through the SICOVAM. However, it can be agreed that the deposit be carried out directly by the depository establishment designated by the SICOVAM. In fact, given the size of its premises, the SICOVAM keeps only the amount of shares necessary for its working treasury. A second lot of shares is kept by the SICOVAM in the Paris premises which it rents. Finally, a number of shares is kept by a depository establishment with which the SICOVAM has a contract.

In general, the depository is the bank in charge of administering interest and dividends on the shares [30]. In order to be registered in the share accounts opened in the name of member establishments, the shares deposited must be in order, in good physical condition, and properly stamped. The shares must be "currently valid", that is, they must have all their renewable coupons, none of which has expired. In addition, they must not be open to a challenge regarding rightful ownership, or to "opposition" [31].

The SICOVAM refuses any share that is not legal or is subject to opposition. The members are entirely responsible for obvious or hidden defects in the deposited shares from the moment when these defects come to light [32]. Therefore, careful scrutiny is required before securities are submitted to the SICOVAM.

#### 5.1.2. Withdrawals

Because the deposit of shares is currently optional, shareholders may request, at any time, the material delivery of their shares to their account held with a member establishment. In view of the interchangeability of these shares, the return is carried out without respect to serial numbers. The withdrawn shares are valid from the day when the request for withdrawal is submitted to the SICOVAM. The withdrawal is included in the day's accounts, but the shares are available for members only on the fourth day after the submission of the request to the central organization, making it possible to check the state of the member's account in the interim.

In practice, the most important members keep a certain number of available shares in their reserves in order to meet without delay the requests of their clients and to avoid costly operations. These reserves may simply consist of new deposits. Total liberty is granted to the affiliated establishment regarding the assessment of the number of shares to be kept. However, considering the advantages of deposit in current accounts, it is in the member's interest to keep as small a reserve as possible.

To demonstrate the importance of the material movement of securities, the SICOVAM, in 1979, received 296,632 deposits covering 184,407,597 shares, resulting in a daily average of 1,187 deposits for 737,630 shares [33]. These figures illustrate the advantage of having shares represented not by paper, but by account. Handling and verifications can be avoided by both the members and the SICOVAM, while reducing the risk of mistakes and irregularities. An important part of the material operations with which the SICOVAM would deal would be eliminated. Its role in transfer operations, on the other hand, would be maintained.

#### *5.1.3. Transfer of securities*

According to Article 7, paragraph II, of the decree of August 4, 1949, the member establishments can exchange among themselves only transferable securities invested in their current accounts by means of a transfer conducted by the interprofessional organization. In other words, any delivery of shares following stock exchange transactions or on the request of a client can be carried out only through a transfer to the SICOVAM. The movement of shares therefore takes place solely through journal entries, a classic practice of the banking industry. For example, on the request of one of its clients, a bank sells some of its shares – it transfers them to the account of the stockbroker in charge of the transaction. Once this is completed, the selling agent transfers the shares to his purchasing colleague, who finally transfers them to his client, if he is a member of the SICOVAM [34].

The transfers are not endorsable. Rather, they are established according to the type of securities, and in the name of a single beneficiary member. The SICOVAM strictly forbids circulating transfers between members and sending transfers to a private party or to a non-affiliated establishment. Any suspicious transfer, or one that does not conform to the prescribed procedure, is refused by the interprofessional organization. A member may effect a transfer only if its current account is covered.

#### *5.1.4. Form submitted to the SICOVAM*

The transfer process is presently conducted as follows. The transfers are effected by the seller of the shares, who sends two copies of the transfer form to the SICOVAM. The latter then sends a copy to the buyer.

In order to avoid using a large number of transfers for daily transactions

(for example, stock exchange operations), the member can use an internal compensation system and thereby submit only one transfer for the balance of several transactions. In fact, transfer operations over several days can be combined. Similarly, compensation for sales and purchases over one or more days, which involve the same security and the same partner, can be settled with a single balance payment. The "Chambre Syndicale de la Compagnie des Agents de Change" (Union of the Stock Brokers Company) has instituted a periodic compensation system (every two weeks), and the balance of these "compensations" is calculated by the SICOVAM according to the instructions provided by the "Chambre Syndicale".

Because this procedure considerably reduces the number of transfers, the "Commission Pèrouse" recommended extension of the system. The Commission suggested, however, that a daily procedure, common to all the intermediaries and quoted shares, be substituted for the method currently used by a limited number of intermediaries [35]. The Commission recommended that the SICOVAM organize a system of payment on delivery similar to that which exists in other countries with comparable establishments. Under such a system, each share payment would actually consist of a transfer between cash accounts [36].

## 5.2. *The administration of securities*

Not only does a current account for securities facilitate the transmittal of transferable securities, it also considerably simplifies their management. This simplification is the result of both the provisions of the decree of August 4, 1949, and the SICOVAM's practice regarding members' fictitious accounts. These accounts, managed by the central transaction establishments, make the transfer process possible [37].

### 5.2.1. *Payment of coupons, subscription and attribution rights*

Article 6 of the decree of August 4, 1949, allows the interprofessional organization either to create certificates representing coupons, subscription or attribution rights, or to receive for the member's account the proceeds of these rights upon the presentation of documents certified by it. This first procedure used by the SICOVAM allows it to dispense with detaching the rights. Expensive and detailed physical operations are thereby eliminated [38]. The SICOVAM detaches coupons for accounting purposes and for subscription or attribution rights on the same day of the payment or upon the opening of a subscription or attribution.

Each member collects share coupons, using certificates authorized by the SICOVAM. In order to avoid double payment of coupons, the issuing companies, or the establishments in charge of the financial management of their shares, can ask the interprofessional organization to send them periodic

notification of the numbers of the shares deposited. The organization also sends a list of certificates issued, giving their number and the number of the coupons of each, but not mentioning the names or code numbers of members in order to ensure that the operations remain confidential.

As for subscription or attribution rights, the SICOVAM opens a rights account in the name of each member, which it credits in proportion to the number of securities in the member's account. In the case of a stock dividend, it does not open a rights account, but automatically credits the securities accounts of the members.

The transfer system operates in the same manner for rights accounts as for securities accounts. Thus, transactions in rights on the stock exchange are settled by the seller's transferring the rights to the buyer. In addition, as in transactions in shares, the practice of compensation reduces the number of transfers.

The procedures used therefore simplify to the maximum extent the operations of collecting the coupons and subscriptions or attribution of securities.

#### *5.2.2. The conversion of transferable securities*

In order to avoid moving physically-represented securities at the time of conversion, and to make the issuance of securities less expensive, the companies can entrust to the SICOVAM all or part of their registered fund. The bearer certificates form the counterpart of the registered certificates. Also, many of the securities can be represented by multiple coupons.

The documents used in the conversion of registered shares to bearer shares, or vice versa, are sent by the member concerned to the issuing company, or to the establishment in charge of transfer operations. Thus, the SICOVAM is not involved in studying or transmitting the file. At the time of conversion, either an account representing all registered funds entrusted to the SICOVAM is credited or debited with bearer shares [39] or, conversely, the member's account is debited or credited with the corresponding securities.

#### *5.2.3. Other operations*

The SICOVAM plays a fairly important role in the other operations related to the management of securities. It is entirely responsible for the exchange of grouped securities, stamping, renewal of coupons, and related activities [40]. On the other hand, it is not concerned with the types of securities held as collateral [41]. The collateral securities are not differentiated, have no special account, and are included in the current account of each member. The role of the SICOVAM is also very limited with regard to the participation of shareholders in general shareholder meetings. In fact, the lists of fixed assets are drawn up by the banks [42]. The SICOVAM limits itself to certifying, on the request of the member concerned, that the member actually possesses the shares listed in its file.

In this way the current account for securities constitutes an important simplifying factor in the circulation and administration of transferable bearer certificates. The delivery and attribution of securities are effected by transfers, and book entries replace the manual handling and physical detachment of payment and subscription rights.

## 6. Legal analysis of the deposit in a current account

The technical methods perfected by the SICOVAM should for the most part be maintained. It should be noted, however, that what appears to be a simple standardization of the system of registering with an account leads to some changes in the legal interpretation of the relations between the parties, be it a matter of defining the nature or of examining the legal structure of the operations.

### 6.1. *Legal nature*

The decree of August 4, 1949, presents some problems of interpretation when deciphering the legal nature of the deposit of securities in a current account. In fact, the notions of regular deposit and of fungibility, ownership, and claims proportionate to the rights of the depositor are rather confused. These contradictions, inherited from the regulations which previously governed the CCDVT, lead to unsatisfactory analyses.

Under German law, securities deposited in a current account are regarded as fungible shares in a pool for joint ownership [43]. Under French law, however, the deposit of fungible securities is generally considered an irregular deposit, owned by the depositor. Article 11 of the decree of August 4, 1949, states that the obligations and responsibilities of both the interprofessional organization and the members are established by the regulations of the civil code, and the decree also provides that the deposits be treated as regular deposits. In addition, the idea of joint ownership by shareholders [44], as provided by German law, does not apply.

At present, there is no legal interpretation which deals adequately with current accounts for securities. Difficulties are overcome in a pragmatic manner. Thus, the transfer of the ownership of securities is considered to have taken place from the moment the transaction is completed, that is, when the transfer is registered with the Stock Brokers' Index.

In fact, it seems that recourse to civil law is insufficient to account for the existing relations between the parties [45]. This observation, which applied under the 1949 decree, would be even more relevant in the case of a total lack of physically-represented securities. It would then be difficult to speak of a deposit, collective or otherwise, and of security ownership [46]. Obviously, the

rights of the shareholder will not change: his powers will remain the same. However, instead of being reflected by an actual sheet of paper, the state of being a shareholder will be shown by registration in an account [47]. In order to assert his rights, the shareholder or bondholder will simply have to prove the registration of a certain number of shares with his account, and the various modifications or transfer of rights will be made in writing. A new category of non-physically represented transferable shares will come into existence, in much the same way that non-physically represented money has replaced bank notes [48]. While this analysis would not wholly apply if securities were physically-represented and could not be withdrawn from the SICOVAM, the present reforms allow it to be adopted [49].

The development of non-physically-represented transferable securities in place of stock certificates will accentuate the role of the SICOVAM as a central organization for accounts. That role will be emphasized even more when the SICOVAM takes over the control of the administration of the accounts [50]. This presents an interesting example of a semi-private company undertaking a public function [51].

## *6.2. Legal structure*

The decree of August 4, 1949, established the rights and obligations of the SICOVAM, affiliated establishments, and depositors. For shares deposited in the SICOVAM, the decree adopts the rules of the civil code regarding legal deposit whereby the depositor remains the owner of the deposit. The decree had to adopt the civil code, however, to take into account the fungible nature of the securities, especially in regard to their return, the system of opposition, and the deposit of securities as collateral in current accounts.

### *6.2.1. The return of securities*

Because deposit is optional, the depositor can request the return of his securities at any time. Because they are fungible, they will be returned to him without identification numbers. He will only need to prove that he deposited the same kind of security with the interprofessional organization, or with an affiliated establishment [52]. This proof can be provided by presenting a receipt or an affidavit [53], or by similar means [54].

In the case of bankruptcy of an affiliated establishment, depositors, as owners of transferable securities, can assert their claims on the group of securities of the same kind which were paid by the establishment to a current account, or kept as a floating cash reserve [55]. If that sum is insufficient to provide the entire restitution which is due, it is divided among the depositors in proportion to their rights [56]. In view of the fact that shares deposited with the SICOVAM are not personalized, the law has proved to be quite flexible as to proof of identity between what is deposited and what is claimed [57]. The

decree of August 4, 1949, insists on affirming the "ownership" rights of the shareholder or bondholder, to protect him as much as possible from the bankruptcy of the member establishment and from most of its creditors. The proposed regulations embrace this same idea [58].

Article 12, section 3, of the decree has the same goal: to give the best possible guarantee to the shareholders. In case of the bankruptcy of a third-party holder who entrusted securities to an affiliated establishment which in turn deposited them in a current account, the decree gives the owner the right to bring a claim against that affiliated establishment. This mainly concerns banks that are not members of the SICOVAM, but have accounts through members of the SICOVAM [59].

Article 13 of the decree relates to the loss or destruction by "force majeure" of a large number of the same kind of shares and the return of these shares or the proportionate sharing of them if the loss is only partial. These provisions had generated public concern when the deposit of shares was compulsory. They also aggravated the controversy over the method of deposit in current accounts. These provisions, which were of little use under the former law, will become obsolete when the shares do not exist physically.

#### *6.2.2. The opposition system*

The fungibility of transferable securities deposited in accounts compelled an adaptation of the regulations stated in the law of June 15, 1872 [60], regarding the loss or theft of bearer shares. Based on the law of June 18, 1941, the decree of August 4, 1949, states that the remittal of shares to a member establishment has the same effect as a transaction. Consequently, any subsequent publication opposing this remittal has no effect. The member establishments must also carefully check that the transferable securities deposited were not the object of a still valid opposition. If they fail to do so, they will be liable under common law (Article 16).

In the event there should be a challenge to the ownership of fungible securities on deposit, the regulations state that the SICOVAM or member establishment will provide the issuing company with a certificate showing the date of the deposit of the securities. A copy of this document is sent by the company to the opposing body and to the "Chambre Syndicale des Agents de Change" (Union of Stock Brokers). The opposer, who challenges the ownership of the securities, will be able to have the establishment which issued the certificate send him the name of the party that deposited the contested securities.

It appears that the provisions which take into account the special nature of securities deposited in a current account will become superfluous once all securities are registered in an account, as the elimination of risk of loss or theft is one of the advantages of this reform.

### *6.2.3. The deposit of securities as collateral in current accounts*

The legislature did not want to prevent securities in current accounts from being pledged. Therefore, it had to adapt the securities rules so as to make them more flexible. When securities are deposited as collateral, because of their fungibility, they are identified only by type and not by number. The date of deposit and the name of the depository establishment is also shown, at least when the securities are pledged as collateral for the benefit of a third party.

Possible difficulties might arise concerning property pledged as collateral and the public character of the pledge [61]. In fact, the decree of 1949 does not even require the presentation of a certificate of deposit. Such a presentation would not in itself guarantee that the creditor-pledgee would retain the collateral because the debtor can retrieve the securities by proving the deposit by any acceptable means. Some commentators recommend that an official statement acknowledging the pledge be given to the depository establishment [62]. In practice, the transfer to the creditor-pledgee does not present any difficulty if the beneficiary of the pledge is the depositor member. In the case where the securities are pledged for a third party and the member holds them for the third party, the securities deposited as collateral are registered with the member in a special account for collateral [63]. While similar methods will come into play if the Bill is adopted, the discussions at the National Assembly have reflected the wish to provide additional assurances to the creditor-pledgee. Within the framework of its task of controlling the holdings of the accounts, the SICOVAM would open a pledge account parallel to the pledge account held by the banker [64].

## **7. Conclusion**

The preceding analysis illustrates changes in French securities law that may evolve from obligatory registration of securities in current accounts. Further study of these changes should be undertaken when reform is complete and the enforcement conditions are known. Nevertheless, making compulsory the practice of registering with an account offers significant advantages that will result from standardization, increased managerial efficiency, and additional safety for investors. The successful practical experience of the SICOVAM has demonstrated all of these advantages. It remains to be seen whether the gradual adoption of this reform [65] will progress smoothly.

## Notes

[1] On the historical aspect, see Roux, *La Compensation et le Virement des Titres* (1930) (thesis, Paris); Gambert, *Le Nouveau Régime des Actions au Porteur et la C.C.D.V.T.* (1943) (thesis, Paris); L. Averan, *De la C.C.D.V.T. à la S.I.C.O.V.A.M.* (1957) (thesis, Grenoble); Esmein, *La Mise Obligatoire au Nominatif et la Négociation des Actions de Sociétés*, 1 *Gazette du Palais* 77 (1941); Rousseau, *Les Mesures Relatives à la Forme et à la Négociation des Actions et les Parts de Fondateur*, 1 *Juris-Classeur Périodique* (La Semaine juridique) [hereinafter cited as J.C.P.] 290 (1942); *La Forme des Actions et la C.C.D.V.T.*, 1 J.C.P. 410 (1944); Jeantet, *Le Dépôt Collectif de Titres au Porteur à la C.C.D.V.T.* 3, *Journal des sociétés* 161 ss. (1945); Tunc, *La Représentation des Actions Par la Comptabilité de la C.C.D.V.T.*, 1 J.C.P. 659 (1947); Ripert, *Le Nouveau Régime des Valeurs Mobilières*, *Revue des sociétés* 37 (1948); *Le Régime des Valeurs Mobilières et le Décret du 4 Août 1949*, *Revue des sociétés* 261 (1949); Gore, *Le Nouveau Régime des Valeurs Mobilières*, 1 J.C.P. 949 (1951); Roux, *Le Compte Courant et le Virement de Titres En France*, *Banque* (Revue mensuelle) 16 (1963).

[2] On its institutions, see Roux, thesis, *supra* note 1; Haas, *Le Virement et la Compensation des Titres en Allemagne* (1932) (thesis, Paris); J. Escarra, E. Escarra and Rault, *Principes de Droit Commercial*, t. VI, No. 994; Gambert, *supra* note 1, at 29.

[3] *The Modernization of the Listing of Exchange Transactions and the Conservation of Securities*, Rapport de la Commission Pérouse.

[4] See Proposition de Loi, presented to the Assemblée nationale (April 21, 1980); Report by M. Foyer (November 5, 1930), Assemblée nationale document No. 2030; Journal officiel deb. Assemblée nationale (November 20, 1980) 4207; Bill No. 108 presented to the Senate November 21, 1980 [hereinafter cited as Bill No. 108].

[5] Note that in practice the SICOVAM does not allow itself to make profits. Cf. Averan, *supra* note 1, at 188.

[6] Currently there are sixty shareholders.

[7] Article 2 of the SICOVAM regulations.

[8] On the subject of the public organization nature of the CCDVT, see Tunc, *supra* note 1, at No. 16; regarding SICOVAM, see Everan, *supra* note 1.

[9] Note the special nature of this current account, whose origin is more legal than conventional; it cannot have a debit balance, and its registered shares can neither be seized by law nor opposed. See decree of August 4, 1949, Articles 8, 16.

[10] There are currently 220 members; in 1960 there were 381. This decrease reflects concentration centered on the banking sector.

[11] Règlement Général de La Compagnie des Agents de Change (Company of Stock Brokers) [hereinafter cited as Règlement Général], Article 7.

[12] There would be 400–500 account holders while currently there are only 220 members. The considerable difference can be explained by the fact that henceforth registration with an account would be compulsory; moreover, a working hypotheses is being used here.

[13] See text accompanying note 37 *infra*.

[14] Agreements are currently being negotiated for a reciprocal affiliation with the German Kassenvereine, but their practical introduction depends on a law being passed in Germany.

[15] This possibility is hardly ever used.

[16] Règlement Général, Article 6.

[17] Decree of August 4, 1949, Article 10.

[18] The bonds redeemable by drawing of the numbers of shares constitute the R.P.T.A. sector (Répartition Proportionnelle des Titres Amortis).

[19] Rapport de la Commission Pérouse, *supra* note 3 at 63.

[20] Règlement Général, Article 132-1.

[21] Bill No. 108, Article 22. It will be possible to register these shares either with a qualified

intermediary, a member or sub-member of the SICOVAM, or with the issuer, who is hypothetically a non-member. In this case the issuing account will be managed by a member. See text accompanying notes 11–13 *supra*.

[22] Bill No. 108, Article 25.

[23] An observation made by the Commission Pérouse notes some practices which make the anonymity of shareholders fallacious: registered declaration of subscription and payment to increase capital, registered list of stock exchange transactions, receipts signed by the beneficiary on delivery of the securities, files of coupons which make it possible to identify anybody who receives dividends or interest. Rapport de la Commission Pérouse, *supra* note 3, at 66. On the same subject one can quote the recommendation of the Commission on Stock Exchange Operations of January, 1977, on the shareholding of quoted companies (monthly bulletin of the C.O.B., April, 1981). A.M. Cachia, *Le Déclin de l'Anonymat Dans les Sociétés Par Actions* 213 (1979).

[24] Decree of August 4, 1949, Articles 10 al. 1 and 4.

[25] *Id.* al. 2.

[26] See Averan, *supra* note 1, at 50.

[27] Cf. text accompanying note 55 *infra*.

[28] Cf. Rapport de la Commission Pérouse, *supra* note 3, at 61.

[29] About the documents which must be presented with the deposit (deposit notice, numerical statement and summary statement), and in general, information on the practical functioning of accounts, see "Instructions à l'Usage des Adhérents".

[30] *Id.* at 7, 11.

[31] Règlement Général, Article 9.

[32] *Id.* Article 11. This provision seems to have to be applied in practice only in the event of counterfeit securities which, given the very strict printing regulations, at least in the case of shares, is a very rare occurrence. Nevertheless, in such a case, the bank's liability would be settled simply by a debit from its account.

[33] Statistical report on the activity of the SICOVAM in 1979 (July, 1980), extracts in *Revue des sociétés* 629 (1980).

[34] Cf. D. Petit, *Cours précité*, I Fasc. 82.

[35] Only stock brokers and seven banking establishments currently use this system. Rapport de la Commission Pérouse, *supra* note 3, at 33.

[36] *Id.* at 66.

[37] The main fictitious member accounts are:

–Member 10: Represents all the registered funds entrusted to the SICOVAM.

–Member 11: Receives the new shares issued following (free) capital increases, by exchange of founder's shares, or following a merger.

–Members 12

and 13: Operate in the event of transactions dealing with the consolidation of shares, exchanges, dividing up shares, or liquidation by refund of capital. Member 12 is a liquidation account. Member 13 acts as a provision account.

[38] The expenses incurred upon the payment of a coupon would currently be 6 francs, when the security is deposited with the SICOVAM; 40 francs when the share is managed by the bank; 80 francs when the shareholder presents it in person (at the counter). See Report by M. Foyer, *supra* note 4, at 8.

[39] See *supra* note 37.

[40] Règlement Général, Article 19.

[41] See *infra* text accompanying notes 61–64.

[42] See Decree of March 23, 1967, Article 136.

[43] Cf. Jeantet, *supra* note 1, at No. 7; Gambert, *supra* note 1, at 67.

[44] See Jeantet, *supra* note 1, at No. 10 ss.; Averan, *supra* note 1, at No. 238 ss.

[45] Cf. Ripert and Roblot, *Traité élémentaire de droit commercial*, t. II, No. 1764 (1976).

[46] It would be equally difficult to speak of bearer shares, although the legislature keeps this form of shares. See Bill No. 108, Article 22.

[47] On this analysis under the CCDVT scheme, see Escarra, Commercial Law Lectures, 1st ed., No. 1253; Tunc, *supra* note 1, at No. 4 ss.; Jeantet, *supra* note 1, at No. 24. Under the SICOVAM system see Escarra *et al*, *supra* note 2, 2nd. ed., No. 1254; Ripert and Roblot, *supra* note 45; J. Guyenot and S. Vidal-Naquet, *Les mécanismes des comptes courants de titres*, Les Petites Affiches 11 (August, 1977).

[48] Cf. Rapport de la Commission Pérouse, *supra* note 3, at 51.

[49] See Bill No. 108.

[50] See Bill No. 108, Article 24, and J.O. deb. A.N. session (November 20, 1980), *supra* note 4, at 4216. SICOVAM's monitoring of accounts is twofold. First, it must ensure that the total sum of each issue is equal to the balance of the financial intermediaries' accounts. Secondly, it must verify the existence of the clients' shares with the account holders.

[51] It is known that since the famous ruling "Caisse primaire Aide et Protection" (C.E., May 13, 1938, R. at 417), administrative jurisprudence recognizes the right of a private party to conduct a public service organization. However, as J. Chevallier emphasizes in *Le service public*, P.U.F. (1971), at 13: "The management of a public service implies that the private party be under the control and surveillance of the administrative authorities."

[52] Decree of August 4, 1949, Article 15 al. 1.

[53] See ruling of May 6, 1959, stating the conditions under which the establishments affiliated with the SICOVAM will have to register the numbers of the shares deposited in current accounts. 1959 J.O. 5387.

[54] Decree of August 4, 1949, Article 15.

[55] See *supra* subsection 5.1.2.

[56] Decree of August 4, 1949, Article 12 al. 1. Since the Decree of June 24, 1969, this rule is applied in a certain way to foreign transferable securities. On the former law, see Trib. com. Seine, January 11, 1962, 1962 D. 595, note crit. M. Vasseur; Paris, December 2, 1963, 1965 D. 377, concl. Bertrand; 1 Gazette du Palais 406 (1964); Banque (Revue mensuelle) 185 (1964), obs. Marin; 17 Revue trimestrielle de droit commercial 43 (1964), obs. crit. Houin; C. Cass, February 13, 1967, 1967 D. 599.

[57] See, especially, Paris, November 16, 1959, 1 Gazette du Palais 79 (1960); 1960 J.C.P. No. 11 11631n, concl. Lambert; 53 Revue trimestrielle de droit commercial 187 (1960), obs. Houin; Paris, April 13, 1964, 1964 J.C.P. IV 138.

[58] Cf. Bill No. 198, Article 27; Report by M. Foyer, *supra* note 4, at 43. See also the first draft of Bill No. 1651, Article 11.

[59] Cf. *supra* text accompanying notes 9-13. See Ripert, La revendication des valeurs mobilières déposées en compte courant, Banque (Revue mensuelle) 729 (1949).

[60] Bill No. 108, reforms the system of opposition in the event of loss or theft of the bearer shares. See Article 29 ss.; Report by M. Foyer, *supra* note 4, at 11.

[61] Cf. Ripert, *supra* note 58, at No. 4; L. Averan, *supra* note 1, at 159.

[62] Ripert and Roblot, *supra* note 45, at No. 1811.

[63] See X. Marin, *Valeurs mobilières*, Rep. Dalloz Sociétés, No. 405 ss.

[64] Cf. J.O. deb. A.N. (November 20, 1980), *supra* note 4, at 4216.

[65] See the calendar for the enforcement of the reform predicted in Bill No. 108, Article 28.