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CIRCULAR
April 1, 2004

IDENTIFICATION AND ENTRY OF ORDERS AND MAINTENANCE OF RELATED RECORDS

REPEAL OF ARTICLE 6312 AND AMENDMENTS TO ARTICLES 6376, 6377 AND 6379 OF THE RULES OF BOURSE DE MONTRÉAL INC.

The Executive Committee of Bourse de Montréal Inc. (the “Bourse”) approved the repeal of article 6312 and amendments to articles 6376, 6377 and 6379 of the Rules of the Bourse relating to the identification and entry of orders and to the maintenance of related records. The purpose of these regulatory amendments is to incorporate into the Rules of the Bourse clear definitions of the terms “order for the account of a client”, “order for the account of a firm” and “order for the account of a professional”. Their purpose is also to clearly set what are the requirements regarding the information that must appear on order tickets. Finally, they impose to the approved participants an obligation to identify orders coming from an insider or from a significant shareholder when entering such orders in the Montreal Automated System (“SAM”) and to ensure that this information is retained in the records that must be maintained in connection with these orders. These amendments are effective immediately and the text is attached herewith as Appendix II.

Nature of amendments

Article 6312 of the Rules of the Bourse has been entirely repealed. This article contained two paragraphs, one concerning the priority of clients’ orders and the other defining what is an “order for the account of a client”. This definition is now in the amended article 6376. For what concerns the paragraph on clients’ orders priority, it has been repealed since article 6374 of the Rules of the Bourse already covers this subject and the relevant paragraph of article 6312 was simply a duplication of a part of the existing provisions of article 6374. Therefore, the repeal of article 6312 does not affect at all the obligation for approved participants of the Bourse to properly manage order priority and to ensure at all times that the orders of their clients are handled in compliance with the requirements of article 6374.

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Amendment no.: 003-2004

Article 6376 of the Rules of the Bourse has been amended not only by transferring therein the definition of “order for the account of a client” that was previously found in article 6312, but also by incorporating in it many new definitions that were not previously in the regulations of the Bourse such as orders for the account of a professional, those for the account of a firm, of an insider or of a significant shareholder. Definitions of these last two terms as well as a reference to the definition of “related firm” have also been included in article 6376.

For what concerns article 6377 of the Rules of the Bourse, it has been amended by adding to paragraphs 2 (executed orders) and 4 (unexecuted orders) a requirement to include in the records maintained by approved participants information concerning the classification of orders according to one or the other definitions that are in article 6376. A new provision has also been added to article 6377 requiring that when an order ticket is completed, it must contain all the information required pursuant to Section 11.2 of National Policy 23 – 101, “*Trading Rules*”.

Finally, article 6379 of the Rules of the Bourse has been amended by adding thereto a specific reference to the definitions of article 6376 and a requirement to identify in the automated trading system of the Bourse orders entered for the account of insiders or significant shareholders.

Changes made to the Montreal Automated System (“SAM”)

During the 2003 summer and fall, the Bourse proceeded to changes and tests to its automated trading system in order to allow approved participants to comply with the new requirements concerning orders entered for the account of insiders or of significant shareholders. For this purpose, an entry field is to be used in SAM to permit the specific identification of these orders.

Messages using the STAMP protocol allow the approved participant to identify orders in the “RegulationId” field as “IN” in the case of orders for the account of insiders and “SS” in the case of orders for the account of significant shareholders.

For systems using MMTP messages, the following values of the “Origin” field will allow to properly identify the order :

- “I” for an order for the account of a client who is an insider;
- “N” for an order for the account of a firm that is an insider;
- “S” for an order for the account of a professional who is an insider;
- “H” for an order for the account of a client who is a significant shareholder;
- “O” for an order for the account of a firm that is a significant shareholder; and
- “L” for an order for the account of a professional who is a significant shareholder.

If the significant shareholder is also an insider, the insider identification code prevails.

Replies to the Request for Comments

The regulatory amendments explained above were subjected to a Request for Comments that was published by the Bourse on October 29, 2003 (Circular No. 148-2003). This Request for comments was also published by the Commission des valeurs mobilières du Québec (now the Autorité des marchés financiers) in its October 31, 2003 weekly bulletin (Volume XXXIV, number 43). Following these publications, the Bourse received one comment letter. This letter and the reply of the Bourse to it have been summarized in the Appendix I attached to this circular.

For any question regarding the regulatory aspects of this circular, please contact Ms. Nathalie Gallant, Supervisor, Market Surveillance, at (514) 871-3525 or by e-mail at ngallant@m-x.ca. For any question regarding the functionalities of the Montreal Automated System related to the identification of orders, please contact the Technical Help Desk at 1-877-588-8489 or by e-mail at samsupport@m-x.ca.

Joëlle Saint-Arnault
Vice-President, Legal Affairs and Secretary

APPENDIX I

COMMENTS ON THE PROPOSED AMENDEMENTS CONCERNING THE IDENTIFICATION OF ORDERS

Comments Author	Comments	Reply to comments
<p>RBC Dominion Securities Inc.</p>	<p>The definitions proposed for “order for the account of a professional” and “order for the account of a firm” that are in article 6376 proposed by the Bourse both refer to the notion of direct or indirect ownership interest in an account while the definition of “order for the account of a client” does not refer to the ownership concept. There could therefore be an application problem since the exclusions relating to an order for the account of a client are broader than the inclusions relating to an order for the account of a professional or for the account of a firm. Consequently, an order not qualifying as order for the account of a client could also not qualify as an order for the account of a professional or for the account of a firm.</p> <p>A question is also asked to clarify if a bonus or any form of remuneration based on the profitability of an account represents an ownership interest.</p> <p>Finally, in the case where an employee of an approved participant enters an order for the account of an entity that is affiliated to the approved participant but which does not qualify as a “related firm” and in whose account the approved participant has an economic interest, the regulatory amendment proposed by the Bourse indicates that such an order would be an order for the account of a client. The approved participant having an economic interest in the account, the order should it not qualify as being entered for the account of the firm?</p>	<p>The Bourse concluded that the fact of referring to the ownership concept in the case of the definitions of “order for the account of a professional” and of “order for the account of a firm” while not referring to this same concept in the definition of what is an “order for the account of a client” could effectively create some confusion as well as application and interpretation problems. The two definitions referred to in the comments have therefore been modified in order to withdraw from them the reference to ownership. All three definitions now refer only to the notion of direct or indirect interest which includes itself the ownership concept.</p> <p>The modifications made to article 6376 no longer referring to the ownership concept, it is not really necessary to reply to this question for the purpose of the present amendments. However, the forms of remuneration mentioned in the question do effectively represent an interest in the account. To determine if the approved participant interest is sufficiently significant to consider that an order which should normally be considered as order for the account of a firm or of a professional may rather be considered as an order for the account of a client, the Bourse will have to take into consideration various factors such as the importance of this remuneration and its conditions.</p> <p>The basic principle that the Bourse intends to see complied with is that any order entered for the account of an entity affiliated to an approved participant must be entered as being an order for the account of a client. The only exception permitted by the Rules is when this entity qualifies as a related firm pursuant to article 1102 (i.e. the affiliated entity carries on the activities of a securities broker, is a member of self-regulatory organization and is a participant to the Canadian Investor Protection Fund). To determine if the approved participant economic interest in the account is sufficiently significant to consider that an order which should normally be considered as order for the account of a firm or of a professional may rather be considered as an order for the account of a client, the Bourse will have to take into consideration various factors such as the importance of this remuneration and its conditions.</p>

6312 Customers' Orders Have Priority
(10.10.91, 16.12.93, abr. 01.04.04)

6376 Order Identification
(25.09.00, 24.09.01, 29.10.01, 01.04.04)

Approved participants must ensure the proper identification of orders when entered into the trading system in order to ensure compliance with the provisions of article 6374 regarding management of priorities.

- a) "Order for the account of a customer" means an order for a security or a derivative instrument entered for the account of a customer of any approved participant or of a customer of a related firm of an approved participant, but does not include an order entered for an account in which an approved participant, a related firm of an approved participant, a person approved by the Bourse or a restricted trading permit holder has a direct or indirect interest, other than an interest in a commission charged;
- b) "Order for the account of a professional" means an order for a security or a derivative instrument for an account in which a director, officer, partner, employee or agent of an approved participant or of a related firm of the approved participant, a person approved by the Bourse or a restricted trading permit holder has a direct or indirect interest, other than an interest in a commission charged. The Bourse may designate any order as being an order for the account of a professional if, in its opinion, circumstances justify it;
- c) "Order for the account of the firm" means an order for a security or a derivative instrument for an account in which the approved participant or a related firm of the approved participant has a direct or indirect interest, other than an interest in a commission charged;
- d) "Order for an insider or significant shareholder" means an order for a security or a derivative instrument for the account of a client, a professional or a firm who is an insider and/or significant shareholder of the issuer of the underlying security which is the subject of the order. If such client, professional or firm is both an insider and a significant shareholder, the significant shareholder designation must be used.

For the purposes of this article :

"insider" means a person who is an insider, pursuant to applicable securities legislation, of the issuer of the security underlying the security or the derivative instrument traded;

"significant shareholder" means any person holding separately, or jointly with other persons, more than 20 per cent of the outstanding voting securities of the issuer whose security is underlying the security or the derivative instrument traded.

"related firm" has the meaning given to that term in the definitions in article 1102 of the Rules of the Bourse.

6377 Keeping Records of Orders

(25.09.00, 24.09.01, 29.10.01, 01.04.04)

- 1) With the exception of orders transmitted by a market maker to comply with obligations required by his role and responsibilities, a record must be kept by each approved participant of each order received for the purchase or sale of securities or derivative instruments traded on the Bourse.
- 2) The record of each order filled must indicate the person who received the order, the time the order was entered, the price, the time of execution of the order, its classification pursuant to the provisions of article 6376, the approved participant from or to or through whom the security or derivative instrument traded on the Bourse was purchased or sold and such record must be retained for seven years.
- 3) No order can be executed on the trading system of the Bourse until it has been identified as above by the approved participant who received the order.

All orders for securities or derivative instruments traded on the Bourse must be time-stamped.

- 4) The record of each order which remains unfilled must indicate the person who received the order, its time of receipt and its classification pursuant to the provisions of article 6376 and such record must be retained for seven years.
- 5) All telephone conversations related to trading in securities or derivative instruments listed on the Bourse must be recorded. The following conditions apply:
 - i) Recordings must be kept by Approved Participants for a period of one year.
 - ii) Authorization to consult the recordings of telephone conversations shall be granted in the case of an investigation by the Bourse, the Commission des valeurs mobilières du Québec or by any other regulatory body with which the Bourse has concluded an information sharing agreement;
 - iii) In the case of litigation or in disciplinary matters, the recording may be filed as evidence;
 - iv) Approved participants must advise their clients of the recording process of telephone conversations and abide by the provisions of article 7452 of Rule 7.
- 6) Where an order ticket is completed, it must comply, for what concerns the information that must be entered on it, with the requirements of Section 11.2 of National Instrument 23-101 regarding Trading Rules.
- 7) Exceptionally, the Bourse may grant exemptions from all or any part of the requirements set in paragraphs 1) to 5) above.

6379 Input of Orders

(25.09.00, 24.09.01, 29.10.01, 01.04.04)

Except as provided in paragraph b) of article 6375, the market orders and limit orders are entered into the trading system and presented to the market without delay in accordance with the chronology of their receipt. The other orders are presented to the market as soon as their time limit or triggering limit is reached.

Any order which is entered into the trading system must indicate if the order is for the account of a firm, of a client or of a professional, as these terms are defined in article 6376. In addition, if the order is for the account of an insider or of a significant shareholder, as these terms are defined in article 6376, it must be identified as such. When these conditions are fulfilled, the input in the system triggers the recording of the order. Should the final receiver fail to be identified directly in the system, a time-stamped recording in accordance with article 6377 of the Rules must be completed.

If a chronological ranking of receipt cannot be established between many orders, the client priority rules of article 6374 of the Rules apply.