



CIRCULAR
April 8, 2003

REQUEST FOR COMMENTS

OFFICER DUTIES EXERCISED ON A PART-TIME BASIS

AMENDMENTS TO ARTICLES 3301, 3303, 3401 AND 3403

Summary

The Special Committee – Regulatory Division of Bourse de Montréal Inc. (the "Bourse") has approved amendments to articles 3301, 3303, 3401 and 3403 of the Rules of the Bourse in order to allow some officers to exercise their duties on a part-time basis. The objective of the proposed amendments is to address concerns expressed by approved participants who have limited business activity or are of a smaller size. These approved participants do not really need more than one full-time officer. Therefore, the purpose of the proposed amendments is to allow these approved participants to have part-time officers.

Process for Changes to the Rules

Bourse de Montréal Inc. (the "Bourse") is recognized as a self-regulatory organization (SRO) by the Commission des valeurs mobilières du Québec (the "Commission"). In accordance with this recognition, the Bourse carries on activities as an exchange and as a SRO in Québec. In its SRO capacity, the Bourse assumes market regulation and broker-dealer regulation responsibilities. The broker-dealers regulated by the Bourse are its approved participants. The responsibility for regulating the market and the approved participants of the Bourse comes under the Regulatory Division of the Bourse (the "Division"). The Division carries on its activities as a distinct business unit separate from the other activities of the Bourse.

Circular no.: 041-2003

Tour de la Bourse
C. P. 61, 800, square Victoria, Montréal (Québec) H4Z 1A9
Téléphone : (514) 871-2424
Sans frais au Canada et aux États-Unis : 1 800 361-5353
Site Internet : www.m-x.ca

Tour de la Bourse
P.O. Box 61, 800 Victoria Square, Montréal, Quebec H4Z 1A9
Telephone: (514) 871-2424
Toll-free within Canada and the U.S.A.: 1 800 361-5353
Website: www.m-x.ca

The Board of Directors of the Bourse has delegated to the Special Committee – Regulatory Division its powers to approve or amend some aspects of the Rules and Policies of the Bourse governing approved participants, among which, the Rules and Policies relating to admission as an approved participant, approval of persons, disciplinary matters and the management of client accounts. These changes are submitted to the Commission for approval.

Comments on the proposed amendments to articles 3301, 3303, 3401 and 3403 of the Rules of the Bourse must be submitted within 30 days following the date of publication of the present notice in the bulletin of the Commission. Please submit your comments to:

*Mr. Jacques Tanguay
Vice-President, Regulatory Division
Bourse de Montréal Inc.
Tour de la Bourse
P.O. Box 61, 800 Victoria Square
Montréal, Quebec H4Z 1A9
E-mail: reg@m-x.ca*

A copy of these comments shall also be forwarded to the Commission to:

*Ms. Denise Brosseau
Secretary
Commission des valeurs mobilières du Québec
800 Victoria Square, 22nd Floor
P.O. Box 246, Tour de la Bourse
Montréal (Quebec) H4Z 1G3
E-mail: consultation-en-cours@cvmq.com*

Appendices

For your information, you will find in the appendices an analysis document of the proposed rule amendments as well as the proposed regulatory text. The implementation date of the proposed amendments will be determined, if applicable, with the other Canadian self-regulatory organizations following approval by the Commission des valeurs mobilières du Québec.



OFFICER DUTIES EXERCISED ON A PART-TIME BASIS

– AMENDMENTS TO ARTICLES 3301, 3303, 3401 AND 3403

I OVERVIEW

Bourse de Montréal Inc. (the "Bourse") wishes to amend articles 3301, 3303, 3401 and 3403 of its Rules in order to allow some officers to act as part-time officers.

A – Current Rules

Currently, articles 3302 and 3402 of the Rules of the Bourse limit the duties an officer may carry on. Section 28 of Quebec Policy Statement Q-9 requires approved participants to have a minimum of two officers approved as representatives and section 53 provides that, except under specific circumstances, a representative must carry on his duties on a full time basis.

B – The Issue

Over the last few years, the emergence of new types of approved participants as well as major transformations in business structures have changed the needs of the industry. Currently, there are small approved participants that have insufficient business activity to justify having many full time officers, while some individuals would like to sit on the board of directors of more than one firm.

C – Objective

The objective of the proposed amendments is to allow some officers to act as part-time officers while being in compliance with the requirements set in Quebec Policy Statement Q-9. To achieve that, approved participants will be required to have a minimum of two officers fulfilling the criteria set in this regulatory document. The Bourse considers that the implementation of the proposed amendments will meet the needs of approved participants.

D – Effect of Proposed Policy

The Bourse considers that the implementation of the proposed amendments will have no effect on market structure or other rules.

II DETAILED ANALYSIS

A – Present Rules, Relevant History and Proposed Amendments

Over the past few years, changes in the size and structure of firms have led to changes in the firms' needs in term of the number and availability of officers. On the other hand, some individuals have shown an interest to act as an officer for more than one firm or to act as a part-time officer for a single firm.

Until now, pursuant to articles 3302 and 3402 of the Rules of the Bourse, the duties of an officer had to be exercised within a single firm of the financial sector since these articles prohibit a person approved as an officer to be an officer or an employee of any other approved participant, of an affiliate of any approved participant or of a partnership or corporation which is not an approved participant.

In order to fulfill the needs of approved participants and of certain officers, the Bourse proposes to amend articles 3301, 3303, 3401 and 3403 to permit, in some cases, the exercise of the officer function on a part-time basis for more than one firm, provided that the following requirements are fulfilled:

- the approved participant must have a sufficient number of officers to fulfill the requirements set in the Rules of the Bourse as well as in the applicable legislation;
- the Bourse has approved the part-time function as an officer;
- policies and procedures will be adopted and put in place by approved participants to minimize the potential for conflicts of interests resulting from multiple employments.

B – Comparison with Similar Provisions

This project is inspired by an amendment to By-Law 7 of the Investment Dealers Association of Canada (IDA) that permits member firms to have one full-time officer and one part-time officer.

C – Public Interest Objectives

The Bourse considers that the proposed amendments are in the public interest since they will make it easier for approved participants to recruit competent officers while ensuring compliance with regulatory requirements in Quebec.

III COMMENTARY

A – Effectiveness

The proposed amendments are simple and efficient. They will allow approved participants to recruit competent and experienced officers while complying with regulatory requirements in Quebec.

IV REFERENCES

- Section 28 and 53 of Quebec Policy Statement Q-9;
- Bourse de Montréal Inc., articles 3301, 3303, 3401 and 3403 of the Rules of the Bourse.
- Investment Dealers Association of Canada, Amendment to By-Law 7 regarding partners, directors and officers implemented on November 4, 2002, Bulletin no. 3068;

22 - 24.10.1994, 00.00.2003

III. Member Firms

3301 **Business and Constitution of ~~Member Firms~~ Partnership Approved Participant** (24.10.94, 00.00.03)

As long as a ~~member firm~~ partnership remains an ~~member~~ approved participant:

- a) it ~~shall~~ must be formed under ~~and its~~ a partnership agreement ~~shall be~~ governed by the laws of one of the Provinces of Canada ~~or another jurisdiction which has been recognized by the Exchange~~ unless it is a ~~member~~ firm that does not deal with the public in Canada and is registered with a securities commission or another regulatory organization recognized by the ~~Exchange~~ Bourse;
- b) it ~~shall~~ must not ~~be~~ dissolved, liquidate its assets, ~~or~~ change its name, ~~nor~~ permit any partner to retire, or effect or permit any change of major position in the partners' interests in the ~~member firm~~ partnership without the prior approval of the ~~Exchange~~ Bourse;
- c) its principal business ~~shall~~ must be that of a broker or dealer in securities or ~~commodity~~ futures ~~contracts~~ and it ~~shall~~ must trade the products listed on the ~~Exchange~~ Bourse to an extent acceptable to the ~~Exchange~~ Bourse;
- d) it ~~shall~~ must not own ~~any~~ major position in any ~~firm~~ partnership or ~~any~~ corporation ~~except~~ without the prior approval of the ~~Exchange~~ Bourse;
- e) at least 40% of ~~the~~ its ~~partners of a member firm~~, which 40% ~~shall~~ must include:
 - i) partners beneficially owning ~~not less than~~ at least 40% of ~~the~~ equity interest in the ~~member firm~~ partnership;
 - ii) partners holding beneficially ~~not less of~~ at least 40% of all voting interest in the ~~member firm~~ partnership;

~~shall~~ must be industry members;
- f) ~~the principal officers shall be partners and industry members~~ at least one (1) officer must be a partner and an industry member;
- g) all persons holding any interest in the ~~firm~~ partnership ~~must~~ be partners.

3303 **Officers of ~~Member Firms~~ Partnership Approved Participant** (00.00.02)

~~Each officer of a member firm at the time he first becomes an officer and throughout his term of office shall comply with article 3302 as required by the context and shall satisfy the requirements of items ii) and iii) in the definition of "industry member" as provided in By-law One~~ All officers of a partnership approved participant, at the time they first become officers and throughout their term of office, must comply with article 3302, excluding paragraphs b) and e) as required by the context.

Each approved participant must have two officers approved as representatives that act as full time representatives.

Other officers may act as part time officers provided that:

- i) a sufficient number of officers fulfill the requirements set in the Rules of the Bourse as well as in the applicable legislation;
- ii) the Bourse has approved the part-time function as an officer
- iii) policies and procedures are adopted by the approved participant to minimize the potential for conflicts of interests resulting from multiple employment.

Exemption: Notwithstanding the foregoing provisions of ~~this~~ the present article, such officer is exempted from seeking approval ~~by~~ of the ~~Exchange-Bourse~~ provided approval is sought from and granted by the self-regulatory body responsible for supervision of the ~~member corporation, under~~ concerned approved participant, pursuant to the agreement establishing the Canadian Investor Protection Fund.

12 - 08.07.2002, 00.00.2003

IV. Corporate Approved Participants

3401 Business and Constitution of Corporate Approved Participants

(06.08.90, 24.10.94, 08.07.02, 00.00.03)

As long as a corporation remains an approved participant:

- a) it must be a corporate entity having as its principal business that of a broker or dealer in securities or futures contracts and it must trade the products listed on the Bourse to an extent acceptable to the Bourse;
- b) it must not be engaged in any business disapproved by the Bourse;
- c) it must be incorporated under the laws of Canada or one of the provinces thereof, unless it is a foreign approved participant;
- d) it must not, without the prior approval of the Bourse, change its name, effect or permit any change in its constitution affecting voting rights, dissolve, wind-up, surrender its charter, liquidate its assets or take any step authorizing or with a view to such action, or effect or permit any alteration in its capital structure, including allotment, issue, transfer, re-purchase, redemption, cancellation, subdivision, consolidation of any shares in its capital stock;
- e) it must not issue, incur or become obligated in respect of any option, warrant or agreement creating any obligation to allot, issue or transfer any share of its capital stock without the prior approval of the Bourse; but agreements entered into by a corporate approved participant to ensure transferability of its shares to a transferee for whom the approval of the Bourse is not required under this Rule, and whose ownership is permitted under this Rule, do not require approval under this paragraph;
- f) at least 40 percent of the members of the board of directors of a corporate approved participant must be industry members;

g) at least one (1) officer must be an industry member.

3403 Officers of ~~Member Corporations~~ Corporate Approved Participants

~~Each officer of a member corporation at the time he first becomes an officer and throughout his term of office shall comply with provisions enunciated mutatis mutandis at article 3402 and shall satisfy the requirements of items ii) and iii) in the definition of "industry member" provided in By Law One~~ All officers of a corporate approved participant, at the time they first become officers and throughout their term of office, must comply with article 3402, as required by the context.

Each corporate approved participant must have two (2) officers approved as representatives that act as full time representatives.

Other officers may act as part-time officers provided that:

- i) a sufficient number of officers fulfill the requirements set in the Rules of the Bourse as well as in the applicable legislation;
- ii) the Bourse has approved the part-time function as an officer;
- iii) policies and procedures are adopted by the corporate approved participant to minimize the potential for conflicts of interests resulting from multiple employment.

Exemption: Notwithstanding the foregoing provisions of ~~this the present~~ article, ~~such an~~ officer is exempted from seeking the approval ~~by of~~ the ~~Exchange-Bourse provided if such~~ approval is sought from and granted by the self-regulatory body responsible for the supervision of the ~~member corporation, underconcerned approved participant, pursuant to the agreement establishing~~ the Canadian Investor Protection Fund.