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CIRCULAR
April 5, 2005

**DECISION OF THE DISCIPLINARY COMMITTEE OF BOURSE DE MONTREAL INC.
REJECTION OF A COMPLAINT OF THE BOURSE AGAINST FRANÇOIS GOURLAY**

On June 3, 2004, a disciplinary hearing was held before the Disciplinary Committee (the Committee) of Bourse de Montréal Inc. (the Bourse) in connection with a complaint filed by the Bourse against François Gourlay to the effect that, during the period of March to May 2003, and contrary to the Rules of the Bourse, he had a conduct unbecoming an approved person and detrimental to the interests and to the welfare of the public and of the Bourse by refusing to provide information and to appear after having duly convoked regarding an investigation.

In March 2003, the Bourse was informed of a complaint by former clients of François Gourlay. At the time that the Bourse was informed of this complaint and decided to initiate its investigation, François Gourlay was no longer working in the securities industry.

On many occasions, during the period of March to May 2003, the staff of the Investigation Department of the Regulatory Division of the Bourse asked François Gourlay, in writing and verbally, to provide his comments as well as his version of the facts regarding the allegations of his former clients and to provide the Bourse with the relevant documents and information. François Gourlay was also convoked by the Bourse in order to discuss the allegations. Rather than complying with these requests, François Gourlay tried to elude them by pleading various motives, including the fact that he was no longer a securities representative.

As a consequence of François Gourlay refusal to comply with the Bourse's requests for information and to its instructions, the Bourse served him, on September 10, 2003, with a notice of disciplinary complaint reproaching him his failure to cooperate to the investigation, to provide information when enjoined to do so and to present himself for the interrogation to which he had been convoked.

The Bourse may at any time bring a representative that is considered guilty by the Bourse of this type of infraction before a disciplinary Committee while this person is an "approved person" pursuant to the Rules of the Bourse. It can even do it after the representative has ceased to be an approved person provided the complaint is filed within the prescribed delay following the termination date of this person as an approved person. This prescribed delay is set out in paragraph b) of article 4101 of the Rules of the Bourse and was of twelve (12) months when the above-mentioned disciplinary complaint was served to François Gourlay.

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Paragraph b) of article 4101 also provides that the complaint must be related to acts or omissions that occurred while the person was an approved one. But, in the present case, although the complaint was served within the prescribed delay, it related to acts, in the instance the refusal to cooperate, made long after François Gourlay had ceased to be an approved person.

The Committee therefore questioned the admissibility of the complaint served by the Bourse and the competence of the Committee to handle it. The Committee determined that its competence was coming from the contractual relationship between an approved person and the Bourse and that such competence ceases to exist at the moment where a person ceases to be an approved one unless the Rules provide otherwise and maintain the Committee's jurisdiction beyond the termination date. Paragraph b) of article 4101 of the Rules of the Bourse maintains for a certain time the capacity of the Bourse to file a complaint against a person who is no longer approved by the Bourse as well as the competence of the Committee to receive such complaint and to decide on it. However, the preservation of such jurisdiction is subjected to certain conditions, the most important of which is, in the present case, that the acts or omissions reproached occurred while the respondent was an approved person pursuant to the Rules of the Bourse.

Although the Bourse's investigation related to acts or omissions presumably committed by François Gourlay while he was an approved person, the complaint served by the Bourse was not relating to these acts or omissions but on other ones committed after the termination of François Gourlay as an approved person.

The Committee could not find in the regulations of the Bourse any provision which could have permitted to extend the jurisdiction of the Bourse and the competence of the Committee to acts or omissions committed after the termination of François Gourlay's status as an approved person and this, notwithstanding the fact that his refusal to cooperate was related to an investigation regarding acts that had occurred prior to the termination of his status.

The Committee therefore concluded that the provisions of paragraph b) of article 4101 of the Rules of the Bourse had to be strictly interpreted and that the refusal to cooperate by a person who is no longer an approved person did not constitute an act subjected to the disciplinary jurisdiction of the Committee. The Committee therefore decided that the complaint of the Bourse against François Gourlay inadmissible in reason of an absence of jurisdiction.

To access the full text version of the Committee, please refer to the following link: http://www.m-x.ca/f_publications_fr/050215_decision_disciplinaire_01_fr.pdf (available in French only).

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