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CIRCULAR
June 22, 2005

REQUEST FOR COMMENTS

RETENTION OF THE BOURSE'S JURISDICTION ON FORMER APPROVED PARTICIPANTS, APPROVED PERSONS OR RESTRICTED TRADING PERMIT HOLDERS

AMENDMENTS TO ARTICLE 4101

Summary

The Special Committee – Regulatory Division of Bourse de Montréal Inc. (the Bourse) has approved amendments to article 4101 of the Rules of the Bourse, which deal with the filing of complaints by the Bourse. The objective of the proposed amendments is to clarify the extent of the Bourse's jurisdiction over a person who is no longer approved but who is subjected to an investigation within thirty-six (36) months following the date where such person has ceased to be approved.

Process for Changes to the Rules

Bourse de Montréal Inc. is recognized as a self-regulatory organization (SRO) by the Autorité des marchés financiers (the Autorité). 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 supervision responsibilities of 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.: 094-2005

The Division is under the authority of a Special Committee appointed by the Board of Directors of the Bourse. 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 approved participant, approval of persons, disciplinary matters, management of client accounts and operations. These changes are submitted to the Autorité for approval.

Comments on the proposed amendments to article 4101 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 Autorité. Please submit your comments to:

*Ms. Joëlle Saint-Arnault
Vice-President, Legal Affairs and Secretary
Bourse de Montréal Inc.
Tour de la Bourse
P.O. Box 61, 800 Victoria Square
Montréal, Quebec H4Z 1A9
E-mail: legal@m-x.ca*

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

*Ms. Anne-Marie Beaudoin
Director – Secretariat of L'Autorité
Autorité des marchés financiers
800 Victoria Square, 22nd Floor
P.O. Box 246, Tour de la Bourse
Montréal (Quebec) H4Z 1G3
E-mail: consultation-en-cours@lautorite.qc.ca*

Appendices

For your information, you will find in 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 "Autorité des marchés financiers".



RETENTION OF THE BOURSE'S JURISDICTION ON FORMER APPROVED PARTICIPANTS, APPROVED PERSONS OR RESTRICTED TRADING PERMIT HOLDERS

– AMENDMENT TO ARTICLE 4101

I SUMMARY

A – Current Rules

Current Rules of Bourse de Montréal Inc. (the Bourse) allow, pursuant to paragraph b) of article 4101, to subject to the jurisdiction of the Disciplinary Committee a former approved participant, approved person or restricted trading permit holders (hereinafter designated as the “approved persons”) only in connection with acts or omissions committed or that happened while these persons were duly approved by the Bourse.

B – The Issue

Following a decision rendered on February 14, 2005 by the Disciplinary Committee of the Bourse in connection with a complaint deposited by the Bourse against François Gourlay, a former approved person (see circular no. 049-2005 issued by the Bourse on April 5, 2005 and the related decision of the Committee both available on the website of the Bourse), it appears that the Disciplinary Committee does not have jurisdiction when former approved persons refuse to cooperate to an investigation made by the Bourse while these persons are no longer approved.

In its decision of February 14, 2005, the Disciplinary Committee underlined the fact that the following conditions must be satisfied as required by paragraph b) of article 4101 in order to consider that jurisdiction over former approved persons still exists:

- the complaint must be related to a violation of the Rules of the Bourse or to one of the default referred to in subparagraphs i) or ii) of paragraph a) of article 4101 of the Rules of the Bourse;
- the complaint must be deposited within the twelve (12) months following the date on which the approved persons ceased to be approved (it is to be noted however that this delay is now of thirty-six months (36) following a regulatory amendment that was implemented on March 15, 2005 – see circular no. 041-2005 issued by the Bourse on March 15, 2005);
- the acts or omissions on which are based the allegations of the Bourse must have occurred in the period during which the concerned persons were duly approved by the Bourse.

In reason of the exceptional character of this provision, the Disciplinary Committee mentioned in its decision that it must be interpreted in the stricter manner.

Based on the foregoing, it is therefore currently impossible to invoke against a former approved person the refusal of this person to cooperate with the Bourse when such refusal occurs after this person ceased to be approved by the Bourse.

II DETAILED ANALYSIS

C – Comparison with similar provision

CANADA

- Investment Dealers Association of Canada (IDA)

By-Law 20 of the IDA, in subparagraph 20.7 (1), provides that “... *any member and any approved person shall remain subject to the jurisdiction of the Association for a period of five years from the date on which such Member or Approved Person ceased to be a Member or an Approved Person of the Association ...*”

UNITED STATES

- National Association of Securities Dealers (NASD)

Article IV of Section 4 of the NASD Rules provides for a retention of jurisdiction for a period of two years from the date on which the association of a person with a member is terminated for what regards the conduct of this person prior to the termination of such association or, as the case may be, if this person fails to provide information required by the NASD.

- New York Stock Exchange (NYSE)

Pursuant to NYSE Rule 477, a formerly approved person continues to be subjected to the jurisdiction of this organization for a period of one year from the date of termination of this person’s approval. More particularly, this formerly approved person has the obligation to comply with any request made by the NYSE during this period.

D – Summary of the proposed amendment

It is proposed to amend paragraph b) of article 4101 of the Rules of the Bourse by deleting the third condition relating to the retention of

jurisdiction over formerly approved persons as outlined by the Committee in its decision in the above-mentioned disciplinary complaint. This way, it will be sufficient that a complaint relating to a violation of the Rules of the Bourse be served within the thirty-six (36) months from the date on which the approved person will cease to be recognized as such. Between the date on which this person ceases to be an approved person and the expiration of the thirty-six (36) months period, this person will remain under the jurisdiction of the Bourse relatively to any investigation and will therefore be obligated to cooperate with this investigation if the Bourse requires it.

This amendment will also permit to harmonize the Rules of the Bourse on this matter with the existing regulations of the securities industry and more particularly with the IDA By-Laws.

E – Public Interest

The proposed amendment, by permitting to the Bourse to retain its jurisdiction over former approved persons for a period of thirty-six (36) months from the date of termination of their approval, will more particularly ensure the cooperation of these persons with any investigation undertaken by the Bourse during this period, and this in the best interest of the industry and of the public in general,

III COMMENTS

A) Efficiency

The proposed amendments will permit to clarify the extent of the jurisdiction that the Bourse has over a person who is no longer an approved one when this person is subjected to an investigation by providing that the Bourse has jurisdiction not only for acts committed when this person was approved but also thereafter.

B) Process

The first step of the approval process for the regulatory amendment proposed in the present document consists in having them approved by the Special Committee – Regulatory Division of the Bourse. Once the approval of the Special Committee obtained, the project is simultaneously published by the Bourse for a 30-day comment period and submitted to the Autorité des marchés financiers for approval and to the Ontario Securities Commission for information.

IV SOURCES

- Circular no. 049-2005 issued by the Bourse on April 5, 2005 regarding a complaint from Bourse de Montréal Inc. against François Gourlay and available on the website of the Bourse at the following address:
http://www.m-x.ca/f_circulaires_en/049-05_en.pdf
- Decision rendered on February 14, 2005 by the Disciplinary Committee of Bourse de Montréal Inc. relatively to a complaint deposited by the Bourse against François Gourlay and available on the website of the Bourse at the following address (available in French language only):
http://www.m-x.ca/f_publications_fr/050215_decision_disciplinaire_01_fr.pdf
- By-Law 20 of the Investment Dealers Association of Canada (IDA)
- Article IV, Section 4 of the Rules of the National Association of Securities Dealers (NASD)
- Rule 477 of the New York Stock Exchange (NYSE) Rules

4101 Complaints

(11.03.85, 11.03.92, 15.03.05, 00.00.05)

- a) The Bourse, an approved participant, an approved person or a restricted trading permit holder may, in accordance with the procedures provided in articles 4151 and following, file a complaint against an approved participant, an approved person or a restricted trading permit holder, in respect of:
- i) a breach of the regulations of the Bourse;
 - ii) any act, conduct, practice or proceeding unbecoming an approved participant of the Bourse, an approved person or a restricted trading permit holder, inconsistent with just and equitable principles of trade, or detrimental to the reputation of the Bourse or to the interests or the welfare of the public or of the Bourse,

whether or not such act, conduct or proceeding is related to dealings or transactions on the Bourse.

- b) The Bourse may also file a complaint of the type described in paragraph a) above against a former approved participant, approved person or restricted trading permit holder ~~for acts or omissions which occurred while such person was an approved participant, an approved person or a restricted trading permit holder~~, provided an originating notice is served on such person within thirty six (36) months from the date upon which the person ceased to be an approved participant, an approved person or a restricted trading permit holder.

This provision is in addition to the powers the Bourse may hold and choose to exercise pursuant to powers delegated by a securities commission.

- c) Without in any way limiting the generality of the foregoing, the following actions of an approved participant, approved person or restricted trading permit holder shall be deemed an act, conduct, practice or proceeding covered by sub-paragraph a) ii) of the present article:
- i) misleading or attempting to mislead the Bourse on any material point;
 - ii) breaching any statute or regulation related to the trading of securities or derivative instruments;
 - iii) indiscriminate or improper solicitations of orders, either by telephone or otherwise;
 - iv) using high pressure or other sales tactics of a character considered undesirable according to the standards of the industry;
 - v) using or knowingly participating in the use of any manipulative or deceptive methods of trading, including those set out in article 6306 of the Rules of the Bourse;
 - vi) breaching any provisions of the Code of Ethics and Conduct for Registered Representatives, included in the Conduct and Practices Handbook Course, published by the Canadian Securities Institute.
- d) The Disciplinary Committee or the Special Committee shall, in accordance with this Rule, decide whether an act, conduct, practice or proceeding is of the sort described in sub-paragraph a) ii) of the present article.