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**CIRCULAR**  
August 11, 2004

## **REQUEST FOR COMMENTS**

### **SPECIAL COMMITTEE – REGULATORY DIVISION – COMPOSITION AND QUORUM**

#### **AMENDMENTS TO THE RULES REGARDING THE SPECIAL COMMITTEE – REGULATORY DIVISION**

#### **Summary**

The Board of Directors of Bourse de Montréal Inc. (the Bourse) has approved amendments to the Rules regarding the Special Committee – Regulatory Division of the Bourse. The purpose of the proposed amendments is to see to it that the provisions of the Rules regarding the Special Committee – Regulatory Division relating to the composition and quorum of the Committee no longer require a minimal number of members, and that it is no longer mandatory that the Board of Directors of the Bourse be represented on the Committee by one of its members.

#### **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 broker-dealers 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.

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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 the Rules regarding the Special Committee – Regulatory Division 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](mailto: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, 22<sup>nd</sup> Floor  
P.O. Box 246, Tour de la Bourse  
Montréal (Quebec) H4Z 1G3  
E-mail: [consultation-en-cours@lautorite.qc.ca](mailto: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".



### SPECIAL COMMITTEE – REGULATORY DIVISION – COMPOSITION AND QUORUM

#### – AMENDMENTS TO THE RULES REGARDING THE SPECIAL COMMITTEE – REGULATORY DIVISION OF BOURSE DE MONTRÉAL INC.

## 1 SUMMARY

### A) Introduction

The Rules concerning the Special Committee – Regulatory Division (the Committee) set, among other things, the composition of the Committee and how the quorum is established.

Thus, pursuant to paragraph 3 of the current Rules, the Committee must be composed of seven (7) persons among whom at least four (4) must be independent members. Paragraph 1 of these Rules defines what is an “independent member”. Also, paragraph 5 provides that the quorum is composed of five (5) members and the majority of them must be independent members.

### B) The Issue

In the course of discussions held during the Fall of 2002 between the staff of the Bourse and of the Commission des valeurs mobilières du Québec (the Commission) (now the Autorité des marchés financiers) in connection with the revision and renewal of the decision issued by the Commission on November 24, 2000

recognizing the Bourse as a self-regulatory organization (decision no. 2000-C-0729), the staff of the Bourse informed the Commission's staff of practical problems that the Regulatory Division was frequently encountering when calling meetings of the Committee. The quorum being composed of five (5) persons with a majority of independent members, it was very difficult to schedule meeting dates in reason of the requirement to have at all time a minimum of three (3) independent members out of the four (4) who are on the Committee. Some independent members have major professional activities and, consequently, in reason of their very busy schedules, it was very difficult to set meeting dates that were convenient for everyone.

In addition, the staff of the Bourse was considering that the requirement to have a prescribed number of persons who must be members of the Committee was, per se, of a restrictive nature because it was forbidding the Division to increase or reduce the size of the Committee according to its needs.

The staff of the Bourse therefore proposed to the Commission staff that the requirements concerning the composition and the quorum of the Committee be amended as follows:

- that it be no longer required that the Committee be composed of a specific number of members in order to allow some flexibility to the Regulatory Division in determining what constitutes an appropriate number of members; and
- that the quorum be set at the simple majority in order to facilitate the planning and holding of meetings.

These proposals were not affecting in any manner the principle of having at all times, for both the composition of the Committee and the determination of the quorum, a majority of independent members.

The Commission's staff demonstrated open-mindedness to these proposals and retained them when they drafted the new recognition decision that was issued by the Commission on December 17, 2002 (decision no. 2002-C-0470) as well as in its corrected version issued on May 13, 2003 (decision no. 2003-C-0184). It is therefore no longer required that the Committee be composed of a specific number of members and the quorum is now set at a simple majority. The requirement to have a majority of independent members in both the Committee composition and the establishment of the quorum is maintained.

However, it is impossible actually to take advantage of the easing of conditions granted by the Commission in reason of the fact that the Rules of the Bourse concerning the composition and the quorum of the Special Committee – Regulatory Division have not been amended to reflect the provisions specified in the Commission's decision.

In addition, for what concerns the composition of the Committee, the current rules require that at least one member of the Committee, but not more than three, be also members of the Board of Directors of the Bourse (the Board). It must be noted that the Bourse's recognition decision issued by the Commission does not include any requirement that there must be members of the Board sitting on the Special Committee. After thorough consideration, the Bourse came to the conclusion that the Board had entire discretion regarding the designation of persons who can sit on the Committee, its sole obligation being to make sure that the composition of this Committee complies with the independence rules set by the regulations. Consequently, the Bourse proposes to withdraw from paragraph 3 of the Rules concerning the Special Committee the requirement to have at least one member (but not more than three) coming from the Board. The withdrawal of this requirement will give to the Board a greater flexibility in the designation of persons having particular

expertise in regulatory matters to sit on the Special Committee. Furthermore, the Board will still have the possibility of designating one of its members to sit on the Special committee if it deems it necessary.

**C) Objective**

The purpose of the proposed amendments is to arrange for the provisions of the Rules regarding the Special Committee composition and quorum to no longer require a specific minimum number of members and that it be no longer required that the Board be represented by one of its member on the Special Committee. To this end, paragraph 3 concerning the composition would be worded so that it would specify only the obligation to have a majority of independent members and paragraph 5 concerning the quorum would limit itself to specify that the quorum is reached when more than half of the Committee members are present and that the majority of those who are present are independent members.

**D) Effect of proposed amendments**

The proposed amendments will allow to harmonize the Rules concerning the Special Committee with the provisions contained in the Commission decision 2002-C-0470 dated December 17, 2002 (and with the May 13, 2003 corrected decision no. 2003-C-0184) for what concerns the composition and the quorum of the Committee.

**E) Public Interest**

Proposed amendments are deemed to be of public interest since it is necessary for the Bourse to comply with the principle of having a majority of independent members for both the composition of the Committee and the quorum necessary to allow it to act. The proposed amendments comply with this principle.

### F) Process

The first step of the approval process for the regulatory amendments proposed in the present document consists in having the proposed amendments approved by the Special Committee – Regulatory Division of the Bourse. The amendments are then submitted to the Board of Directors of the Bourse. Once the approval of the Board of Directors 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.

### G) References

- Rules concerning the Special Committee – Regulatory Division of Bourse de Montréal inc.
- Commission des valeurs mobilières du Québec – Recognition of Bourse de Montréal Inc. as a self-regulatory organization pursuant to article 169 of the *Quebec Securities Act* (L.R.Q., chap. V-1.1), Decision no. 2000-C-0729 dated November 24, 2000.
- Commission des valeurs mobilières du Québec – Recognition of Bourse de Montréal Inc. as a self-regulatory organization pursuant to article 169 of the *Quebec Securities Act* (L.R.Q., chap. V-1.1), Decision no. 2002-C-0470 dated December 17, 2002.
- Commission des valeurs mobilières du Québec – Recognition of Bourse de Montréal Inc. as a self-regulatory organization pursuant to article 169 of the *Quebec Securities Act* (L.R.Q., chap. V-1.1), Decision no. 2003-C-0184 dated May 13, 2003.

**RULES REGARDING THE  
SPECIAL COMMITTEE - REGULATORY DIVISION**

(...)

**3. Composition of the Special Committee**

(24.11.00, 00.00.04)

The Special Committee shall consist of ~~seven persons, at least four of whom shall be a majority of~~ Independent Members. ~~At least one member of the Special Committee, but no more than three, shall be members of the Board.~~

**5. Quorum**

(24.11.00, 00.00.04)

The quorum at meetings shall be ~~five~~ constituted of a majority of members of the Special Committee attending in person, by telephone or by videoconference. ~~A-The majority of those~~ composed of Independent Members.

(...)