



**TO: Approved Participants
Chief Financial Officers
External Auditors
Holders of the Rules and Policies Manual**

August 23, 2002

**MINIMUM REQUIREMENTS FOR SUITABILITY RELIEF CONCERNING
TRADES NOT RECOMMENDED BY AN APPROVED PARTICIPANT
AMENDMENTS TO RULE SEVEN AND ADDITION OF POLICY C-12**

The Special Committee – Regulatory Division of Bourse de Montréal Inc. (the “Bourse”) has approved amendments to article 7452 of Rule Seven as well as the addition of Policy C-12, “Minimum Requirements for Suitability Relief Concerning Trades Not Recommended by an Approved Participant”, to the Rules and Policies Manual of the Bourse. These amendments become effective immediately.

This new regulation aims to meet the new realities of the securities industry where an increasing number of clients are no longer seeking investment recommendations and where more and more approved participants are offering order-execution services for which no recommendations are provided.

Thus, the new Policy C-12 provides that an approved participant who does not provide any recommendation to a client will not be obliged to proceed with a review of the suitability, subject to having obtained from the Bourse an exemption from this requirement.

To obtain such an exemption, an approved participant shall be able to clearly demonstrate to the Bourse that it will not provide advisory services to its clients nor recommendations for particular transactions. The exemption from the suitability obligation will be applicable only once it has been formally approved by the Bourse and this approval will only be granted once the approved participant satisfies the requirements set out in Policy C-12 in regards to its internal policies and procedures.

Policy C-12 requires that approved participants put in place supervisory and record keeping systems as well as audit trails that allow to ensure that clients are not provided with recommendations while no suitability review is undertaken.

Circular no.: 113-2002
Amendment no.: 016-2002

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

However, Policy C-12 does not specify in detail what these internal policies and procedures must contain. The rationale for such an approach is that approved participants have different needs depending on their internal structure, their way of managing business and the nature of their clientele.

Policy C-12 is divided in two separate sets of policies and procedures. The first set is applicable to approved participants who solely offer order-execution services while the second set is applicable to approved participants who offer both advisory and order-execution services.

For the approved participants who offer advisory services and order-execution services, Policy C-12 aims to ensure that appropriate measures of warning will be implemented in order for clients to properly understand the difference between the types of transaction they can execute, the risks that can be associated with each type of transaction and the responsibilities that fall upon the clients when they trade through an order-execution service.

Both sets of policies and procedures require that upon the opening of an account, the approved participant makes a written disclosure to the customer regarding the changes to the suitability obligation and the new responsibilities placed from now on upon the client. This means that approved participants will be required to obtain, from every customer opening an account, an acknowledgement that the customer has received and understood the disclosure made to him. This disclosure shall indicate that the approved participant or the separate business unit of the approved participant will not provide any recommendations to the customer and will not be responsible for making a suitability determination of transactions when accepting orders from the customer. Such disclosure shall clearly explain to the customer that he alone is responsible for his investment decisions and that the approved participant will not consider the customer's financial situation, investment knowledge, investment objectives and risk tolerance when accepting orders from the customer.

To help approved participants determine what constitutes a recommendation, the Bourse includes in this circular some examples of what may or may not be a recommendation. However, it should be recognized that this circular is not intended to define all situations that fall under the definition of the term "recommendation". Whether a particular transaction has in fact been "recommended" depends on an analysis of all the relevant facts and circumstances of the particular case. Furthermore, the determination as to whether a recommendation has been provided should be based upon whether or not a reasonable person in similar circumstances would consider that a recommendation has been made.

In addition, the Bourse does not want to restrict the amount or type of information documents that are sent to customers by an approved participant as this information provides a useful service to customers and assists them in reaching investment decisions.

However, the Bourse considers that it is beneficial to provide some guidance on what may or may not constitute a recommendation. As mentioned previously, approved participants must be aware that the triggering of a suitability examination (i.e. if a recommendation has been provided

to the customer) is dependent on the particular circumstances of each individual situation. Consequently, the fact that an approved participant is of the opinion that the transaction in question falls under one of the examples of what may not constitute a recommendation listed below, will not necessarily relieve the approved participant from its obligations to make a suitability determination.

Approved participants should note that the following examples of what may or may not constitute a recommendation are not intended to be exhaustive and that each situation must be judged on its own specific facts and circumstances.

Examples of what may or may not constitute a recommendation:

- 1) The qualification of a transaction as “recommended” does not depend on its qualification as “solicited” or “unsolicited”.
- 2) The determination of whether a recommendation has been made does not depend on the method or medium of communication. Rather, it is the substance of the communication that must be the primary factor in determining whether a recommendation has been provided.
- 3) With respect to a particular transaction, an approved participant would not be considered to have made a recommendation to a customer solely because he has provided or made available to the customer or to a class of customers investment information¹, provided that, in so doing, the approved participant does not make an individual proposal tailored for the particular customer or class of customers.
- 4) An approved participant would not be considered to provide recommendations to a customer when it simply informs customers or prospective customers, by any means, of the availability of general categories of investment information.
- 5) General advertisements or general statements, in which there is no recommendation to the customer, does not constitute a recommendation.
- 6) The wide distribution of research documents on a website or otherwise by an approved participant does not constitute a recommendation.
- 7) The distribution of general lists of securities for sale by an approved participant does not constitute a recommendation.

¹ For the purposes of this circular, "investment information" means information, whether prepared by or on behalf of an approved participant or of a third party and, without limiting the generality of the foregoing, includes financial market information, news, research, opinions, charting and portfolio tracking information, asset allocation models, analyst opinion reports, quotes, public disclosure documents and extracts therefrom, information relating to offerings and sale materials.

- 8) Hyperlinks and portals offered by an approved participant to other investment-related Web pages do not constitute a recommendation.
- 9) If a customer sets out the parameters of the types of investments information that he wishes to receive, the approved participant, when providing that information, would not be considered to be providing recommendations.
- 10) An approved participant would not be considered to provide recommendations when the approved participant or a separate business unit of the approved participant provides “order-execution only” services to its customers. An “order-execution only” service exists when an approved participant or a separate business unit of the approved participant executes the instructions of a customer to buy or sell specific securities without providing any advisory services in relation to these securities.

Examples of what may constitute a recommendation

- 1) An approved participant would be considered to make recommendations to a customer if it provides information that is individually tailored to a specific customer or class of customers.
- 2) An approved participant would be considered to make recommendations to a customer if it develops systems that would enable the approved participant to “data mine” its customers’ investment habits and preferences based on their past investment decisions and if this information is then used to target investment-related information to these customers.
- 3) An approved participant would be considered to provide recommendations to a customer if it promotes a specific security to this customer.
- 4) An approved participant would be considered to provide recommendations to a customer if it promotes a specific trading strategy to this customer.
- 5) A waiver or a disclaimer given to a customer stating that the information provided by the approved participant does not constitute a recommendation is not a determining factor.
- 6) An approved participant would be considered to provide recommendations to a customer if it holds itself out as taking into account the customer’s objectives and financial situation with respect to any transaction.
- 7) An approved participant that categorizes itself as a “discount broker” may still be considered to be providing recommendations depending on the facts and circumstances of that particular situation.

- 8) Charging a lower commission to a customer has no bearing on whether the approved participant would be considered to be providing recommendations.
- 9) An approved participant would be considered to provide recommendations where a customer enters an order online, pursuant to a recommendation made by the approved participant via the telephone.
- 10) Whether a transaction is classified as a “buy” or “sell” has no impact on whether the approved participant would be considered to be providing a recommendation.
- 11) The lack of the existence of a previous relationship between the approved participant and the customer does not imply that the approved participant is not providing recommendations.

For further information, please contact Chantal Villeneuve, Legal counsel, Regulatory Division at (514) 871-4949, ext. 360, or via e-mail at cvilleneuve@m-x.ca

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

Encl.