

CIRCULAR
August 14, 2003

**RECOGNITION OF CONTINGENT LOSS
ARISING FROM LITIGATION**

The purpose of the present circular is to provide guidance regarding capital requirements applicable to contingent losses resulting from lawsuits for which an enforceable judgment has been rendered against an approved participant.

▪ **CAPITAL REQUIREMENT FOR CONTINGENT LIABILITY**

For regulatory capital calculation purposes, after studying whether a capital charge should be applied or not at the time of the judgment, it was determined, based on the potential for the judgment amount becoming a definite liability, that a capital charge, subject to the exception listed below, must be provided.

▪ **ADVERSE JUDGMENT AGAINST WHICH THE APPROVED PARTICIPANT DOES NOT INTEND TO APPEAL**

If an approved participant does not intend to appeal an adverse judgment, the approved participant must accrue a loss provision equal to the judgment amount plus any interest and costs applicable thereon.

▪ **ADVERSE JUDGMENT AGAINST WHICH THE APPROVED PARTICIPANT INTENDS TO APPEAL**

Where the approved participant intends to appeal against a judgment, the approved participant must:

- a) notify Bourse de Montréal Inc. (the “Bourse”) of its intention to appeal; and
- b) provide, within 30 days following the date of the judgment, a legal opinion by an independent legal counsel outlining the errors of fact and/or law that could justify a reversal of the judgment. The Bourse will consider as an independent legal counsel any lawyer or law firm that is not a party to the proceedings or the appeal.

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If such a legal opinion is provided to the Bourse, no capital charge will be required until the appeal has been heard and ruled upon. However, if the approved participant does not obtain such an opinion or decides not to obtain one within this 30-day period mentioned above, the approved participant shall either accrue a loss provision or provide a capital charge equal to the judgment amount, less any loss provisions that have already been accrued by the approved participant, until such time that the appeal is heard and ruled upon.

▪ **ALL APPROVED PARTICIPANTS ARE REMINDED THAT:**

- a) pursuant to the provisions of article 7010 of the Rules of the Bourse, an approved participant may be designated by the Bourse as being in level 1 or level 2 of the Early Warning System and be subjected to the restrictions applicable in such a case, if the Bourse considers that the judgment rendered against the approved participant will have a significant adverse impact on its regulatory capital; and
- b) approved participant must, in accordance with the requirements set by the Bourse in its circular no. 249-93 dated November 9, 1993, and entitled “Reporting of Civil Lawsuits to the Montreal Exchange”, report to the Bourse any adverse judgment of a global amount superior to \$50,000.

For further information, please contact the undersigned at (514) 871-3518, or by e-mail at jtanguay@m-x.ca.

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