



CIRCULAR
September 30, 2003

REQUEST FOR COMMENTS

ADVERTISEMENT, SALES LITERATURE AND CORRESPONDENCE

AMENDEMENTS TO ARTICLES 8001, 8002, 11003 AND 14054 ADDITION OF ARTICLES 8003, 8004 AND 8005 TO RULE EIGHT

Summary

The Special Committee – Regulatory Division of Bourse de Montréal Inc. (the "Bourse") has approved amendments to articles 8001, 8002, 11003 and 14054 of the Rules of the Bourse as well as the addition of articles 8003, 8004 and 8005 to Rule Eight, which concerns all advertisements and all sales literature issued by an approved participant. The purpose of the proposed amendments and addition is to extend the definition of "advertisement" and of "sales literature", and to normalize the various types of communication with the public like, for example, the use of advertisement, sales literature and correspondence by approved participants.

Process for Changes to the Rules

Bourse de Montréal Inc. is recognized as a self-regulatory organization (SRO) by the Commission des valeurs mobilières du Québec ("the Commission"). 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-dealer 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.

Circular no.: 134-2003

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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 and the management of client accounts. These changes are submitted to the Commission for approval.

Comments on the proposed amendments to articles 8001, 8002, 11003 and 14054 and the addition of articles 8003, 8004 and 8005 must be submitted within 30 days following the date of publication of the present notice in the bulletin of the Commission. Please submit your comments to:

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

*Ms. Denise Brosseau
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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 with the other Canadian self-regulatory organizations, if applicable, following approval by the Commission des valeurs mobilières du Québec.



ADVERTISEMENT, SALES LITERATURE AND CORRESPONDENCE

- AMENDEMENTS TO ARTICLES 8001, 8002, 11003 AND 14054
- ADDITION OF ARTICLES 8003, 8004 AND 8005 TO RULE EIGHT

I – OVERVIEW

A -- Current Rules

Pursuant to current article 8001 of the Rules of Bourse de Montréal Inc. (the “Bourse”), all advertisements and sales literature issued by an approved participant must be pre-approved by a designated partner, director, officer or branch manager before it is issued. Articles 11003 and 14054 also respectively impose upon the registered options principal and the futures contracts principal an obligation to approve any advertisement relating to options contracts and futures contracts.

Article 8002 prohibits approved participants from issuing, participating or knowingly allowing their name to be used in advertisements or sales literature that, among other things, contain any untrue statements, material omissions or unjustified promises of results, fail to fairly present risks to clients or are detrimental to the interests of the public.

B -- The Issue

The current Rules do not address supervision of correspondence from approved persons to clients, which may contain similar improper statement or omissions. Also, these Rules do not directly address electronic media such as web sites and e-mails. Finally, they address only sales literature that contains a

recommendation as to a specific security without covering sales literature, which recommends a broader trading strategy.

The current rules also prescribe an approval procedure that is not appropriate to all circumstances. For example, many approved participants have template advertisements that remain largely unchanged when placed in different publications such as information concerning changes in branch address and name and phone numbers of contact persons. Under the current rules, each time such an advertisement is used, the person authorized for this purpose by the approved participant must give a separate, pre-use approval.

The current rules do not contain either any provision regarding advertisement, sales literature or correspondence that would not be in compliance with any applicable legislation or with the guidelines, policies or instructions of any regulatory authority having jurisdiction.

Finally, the current rules do not contain any requirements for retention of advertising, sales literature or correspondence.

C -- Objective

The proposed amendments to Rule Eight of the Bourse are designed to extend the current requirements to correspondence, integrate specific references to electronic media, and extend the definition of “sales literature” in order to include material recommending trading strategies. They are also designed to allow approved participants to implement approval or review policies and procedures that may vary, while remaining appropriate, according to different types of advertising and sales literature. They also contain retention requirements for advertising, sales literature and correspondence. Finally, it is proposed to add a new provision to article 8002 in order to ensure that approved participants comply not only with the requirements of the Bourse but also with those of any regulatory authority having jurisdiction.

Furthermore, since the proposed new rules will allow approved participants, at certain

conditions, to have policies and procedures providing for an examination of advertising, sales literature and correspondence subsequent to their use, amendments are also proposed to articles 11003 and 14054 of the Rules of the Bourse. Paragraph d) of article 11003 of the Rules requires the registered options principal to approve any advertising relating to options. Paragraph c) of article 14054 imposes the same obligation to the futures contracts principal. It is therefore proposed to withdraw this requirement from each of the concerned articles, the Bourse being of the opinion that any advertising, sales literature or correspondence issued or distributed by an approved participant should be subjected to a unique and same standard and this, even in the case of option and futures contracts. Imposing different standards for this type of financial instruments would translate in difficulties of application and nothing justify such imposition in such a case.

D -- Effect of Proposed Rules

The proposed rules extend the definition of “advertising” to include all material available through electronic means, such as web sites. They also define what is “correspondence” and extend the current prohibitions in regards to content. Finally, they extend the definition of “sales literature” to include material recommending a trading strategy.

The proposed amendments will provide approved participants with latitude to develop policies and procedures that best fit their business structure and the nature of the distributed material. Consequently, this should allow them to service their clients in the most efficient and productive manner while still maintaining integrity and honesty in the marketplace. Such policies and procedures will be subject to review and approval by the Bourse pursuant to new article 8003.

The proposed rules also impose a retention period, from the creation date, of two years for advertising and sales literature and of five years for correspondence.

II -- DETAILED ANALYSIS

A -- Current Rules and Proposed Amendments

Under current article 8002 and the proposed amendments all approved participants and their approved persons are prohibited from issuing to the public, participating in or knowingly allowing their names to be used in respect of any advertisement or sales literature containing any untrue statements, omitting material fact, is misleading, containing unjustified promises of specific results, using unrepresentative statistics that may suggest unwarranted or exaggerated conclusions, containing opinions or forecasts of future events which is not clearly labeled as such, failing to fairly present the potential risks to a client and that are detrimental to the interests of the public, the Bourse or its approved participants. Approved participants and their approved persons are also prohibited from participating to the broadcasting of such products or from knowingly allow that their name be associated to it. The revised article 8002 does not change these requirements but add a new provision specifying that the concerned material must also be in compliance with any applicable legislation, guidelines, policies or instructions of any regulatory authority having jurisdiction over the approved participant.

The proposed amendments to article 8002 also extend the above-mentioned prohibitions to all forms of correspondence.

It is also proposed to amend Rule Eight by incorporating in article 8001 definitions of certain terms in order to clarify what type of communication falls into each category.

Thus, a definition of “advertisement” has been drawn up in order to include materials disseminated or made available electronically and as such this includes e-mails and websites. A definition of “sales literature” has also been developed in order to include written or electronic communication while before the Rule was silent with respect to the means of

communication. This definition has been designed in order to help provide better guidance to approved participants as to what specifically constitutes sales literature. The proposed Rule will specifically mention that the following types of documents constitute sales literature: circulars, promotional seminar texts, texts used for telemarketing purposes and reprints or excerpts of any other sales literature or published material.

The current Rule was also unclear as to whether or not sales literature included only material containing a recommendation as to a security. The new definition has therefore been designed to include material that contains a “trading strategy” recommendation. The definition of this term has also been added to article 8001.

Under the current version of article 8001 all advertisements and sales literature must be reviewed and approved by a partner, director, officer or branch manager prior to issuance. Articles 11003 and 14054 also respectively imposed an obligation upon the registered options principal and the futures contracts principal to review and approve advertisement relating to these instruments. These requirements have been withdrawn from the concerned articles and a new article 8003 was drafted. This new article covers the subject of policies and procedures.

The new article 8003 maintains the requirement to have in place a review and approval process for advertising and communications but it eliminates the requirement to pre-review all materials because such integral pre-review is impractical. However, in order to facilitate the interpretation and application of the new rules, article 8003 specifies, by enumerating them, what are the types of advertising and communications that must be necessarily subjected to a prior approval. Furthermore, a requirement has been included in article 8003 providing that where pre-approval is not required, approved participants must include in their policies and procedures provisions for the education and training of registered and approved persons as to such policies and procedures as well as follow ups to ensure that

such policies and procedures are adhered to. The new Rule has also been designed so that approved participants have the needed flexibility to develop policies and procedures that are most suitable for the type of material that is distributed.

The first paragraph of proposed new article 8003 provides that where an approved participant is in breach of article 8002 but has exercised due diligence in developing and implementing policies and procedures and in monitoring their application, it will not be deemed to be in violation of article 8002 requirements. This provision was included to give approved participants the possibility to use due diligence as defense when there are instances where improper material is issued. Because the prior review of all materials is practically impossible, it would be unduly onerous to impose on approved participants a strict liability standard in instances where an approved individual issues improper material that does not require prior review.

Finally, a provision has been included in article 8003 requiring that approved participants’ policies and procedures be approved by the Bourse before being implemented and that all relevant materials be retained and kept available for inspection during sales compliance reviews to determine that the concerned policies and procedures have been properly implemented and enforced. The requirement for retention has been set at two years from their date of creation for all copies of advertisements, sales literature and related documents and at five years from their date of creation for all correspondence and related documents.

B -- Issues and Alternatives Considered

No other alternatives were considered.

C -- Comparison with Similar Provisions

In the United States, Rule 3010 of the National Association of Securities Dealers (“NASD”) deals with supervision of registered representatives. Under this Rule, NASD members are required to establish procedures for

the review of all transactions as well as for the review of all incoming and outgoing written and electronic communications of their representatives. Under NASD Rule 3010 (2), members are also required to develop procedures that are appropriate to their business, size, structure, and customers for the review of incoming and outgoing written and electronic communications with the public. Furthermore, where pre-use review is not required, provisions must be included in the members' policies and procedures regarding the education and training of representatives. Finally, all concerned communications must be retained for a minimum period of three years.

Under NASD Rule 2210, "*Communications with the public*", all advertisements and sales literatures must be pre-approved by a responsible person of the firm. This requirement is similar to the one that could be found until now in article 8001 of the Rules of the Bourse. Furthermore, a separate file of all advertisements and sales literature must be kept which includes the names of the persons who prepared them or approved their use and must be maintained and retained for a minimum period of three years from the date of use. It is also worth mentioning that NASD Rule 2210 requires that copies of all advertisements and sales literature be filed for review with the NASD at least ten business days prior to be used in some instances or within ten business days following the first use in some other instances.

The Securities & Exchange Commission recently approved new NASD Rule 2211 which will become effective on November 3, 2003. While, until now, Rule 2210 was applicable to all types of advertising and sales material, regardless of the targeted audience, the implementation of new Rule 2211 will allow NASD members to make a distinction between advertisements and sales literature targeted to retail investors and those targeted to institutional investors. Rule 2210 will continue to apply, with the same requirements as in the past concerning prior approval and filing of documents with the NASD, to advertisements and sales literature prepared for retail investors, while Rule 2211 will apply to advertisements

and sales literature prepared for institutional investors. In addition to defining what is meant by "institutional investor", Rule 2211 will impose much less strict requirements in the sense that advertisements and sales material intended for institutional investor will not need prior approval by a responsible person nor filing with NASD prior to the use. However, members are obliged to develop and put in place appropriate policies and procedures. In fact, the requirements applicable in these cases are identical to those that can be found in proposed new article 8003.

As stated above, the intent of the Bourse is to move away from mandatory pre approval for all advertisements, sales literature and correspondence and to allow approved participants more flexibility to determine where such pre-approval may be warranted and to develop and put in place policies and procedures that better suit their business structure and types of clients, which should allow them to better service clients.

For what concerns NASD Rule 2210 requirement that all advertisements and sales literature (with some exceptions) be filed with the NASD as mentioned above, it was determined that this was an unnecessary practice and that it would be preferable to opt for a requirement to the effect that all policies and procedures must be approved by the Bourse prior to implementation.

D -- Systems Impact of Proposed Amendments

Approved participants may be required to develop systems to ensure that they capture all correspondence between approved persons and clients. They may also have to develop systems to scan large volumes of electronic correspondence to clients to search for and trace improper representations.

E. -- Best Interests of the Capital Markets

The Regulatory Division of the Bourse has determined that the proposed amendments are

not detrimental to the best interests of the capital markets.

F -- Public Interest Objective

The proposed amendments are designed to allow approved participants to operate in a manner that best suits their operations while continuing to ensure compliance with securities laws and prevention of fraudulent and manipulative acts and practices.

The proposed amendments will not result in an unfair discrimination among customers, issuers, brokers, dealers, approved participants and other third parties. They will not impose unnecessary or inappropriate obligations on competition.

III -- COMMENTARY

A – Filing in other jurisdictions

The proposed amendments will be filed for approval with the Commission des valeurs mobilières du Québec and they will also be filed for information with the Ontario Securities Commission.

B – Effectiveness

The proposed rules are simple and effective and it is not considered that their implementation will impose a too heavy burden upon approved participants.

C -- Process

The first step of the approval process for the regulatory amendments discussed in the present document consists in having the proposed amendments approved by the Compliance Subcommittee of the Regulatory Division of the Bourse. The amendments are then submitted to the Special Committee – Regulatory Division. 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 Commission des valeurs mobilières du Québec for approval.

IV -- SOURCES

- Rule Eight of Bourse de Montréal Inc.
- Articles 11003 and 14054 of the Rules of Bourse de Montréal Inc.
- Rules 2210, 2211 and 3010 of the National Association of Securities Dealers
- Notice to Members No. 03-38 of the National Association of Securities Dealers, July 2003

RULE EIGHT
ADVERTISING AND COMMUNICATIONS

Section 8001 - 8050
Advertising
(05.11.80, 01.04.82, 00.00.03)

8001 Approval of Advertising Definitions
(05.11.80, 27.04.82, 29.05.02, 00.00.03)

~~—Any circular, market letter, bulletin text or other message broadcast, telecast or distributed through any electronic means, including the Internet, by an approved participant must first be approved by a partner, director or officer of the approved participant, and an exact signed copy thereof as evidence of such approval must be retained by the approved participant among its records, for a period of at least two years.~~

~~—When an approved participant issues written recommendations on the purchase of any exchange listed non-voting shares, subordinate voting shares or restricted voting shares, he must designate these shares as such therein, and these shares must not be described as "common".~~

For the purposes of the present Rule:

"advertisement(s) or advertising" includes television or radio commercials or commentaries, newspaper and magazine advertisements or commentaries, and any published material including materials disseminated or made available electronically promoting the business of an approved participant.

"sales literature" includes any written or electronic communication, other than advertisements and correspondence, distributed to or made generally available to a client or potential client including a recommendation with respect to a security or trading strategy. Sales literature includes but is not limited to records, videotapes and similar material, market letters, research reports, circulars, promotional seminar text, telemarketing scripts and reprints or excerpts of any other sales literature or published material, but does not include preliminary or final prospectuses.

"correspondence" means any written or electronic business related communication prepared for delivery to a single current or prospective client, and not for dissemination to multiple clients or to the general public.

"trading strategy" means a broad general approach to investments including matters such as the use of specific products, leverage, frequency of trading or a method of selecting particular investments but does not include specific trade or sectorial weighting recommendations.

8002 Guidelines

(01.03.82, 29.05.02, 00.00.03)

~~No~~An approved participant or approved person ~~shall advertise or promote, either a financial product or their own services, using material~~ must not issue to the public, participate in or knowingly allow its name to be used in respect of any advertisement, sales literature or correspondence in connection with its or his or her business which:

- a) contains any untrue statement or omission of a material fact or is otherwise false or misleading;
- b) contains an unjustified promise of specific results;
- c) uses unrepresentative statistics to suggest unwarranted or exaggerated conclusions, or fails to identify the material assumptions made in arriving at these conclusions;
- d) contains any opinion of forecast ~~of or~~ future events, which is not clearly labeled as such;
- e) fails to fairly present the potential risks to the client;~~or~~
- f) is detrimental to the interests of the public, the Bourse or its approved participants;~~;~~ or
- g) does not comply with any applicable legislation or the guidelines, policies or directives of any regulatory authority having jurisdiction.

8003 Policies and Procedures

(00.00.03)

An approved participant will not be deemed to have breached article 8002 if it has exercised due diligence in establishing, implementing and monitoring internal policies and procedures reasonably designed to ensure that advertisements, sales literature and correspondence do not violate such article. Such policies and procedures must be appropriate for the approved participant' size, structure, business and clients and must be approved by the Bourse.

The policies and procedures referred to in the preceding paragraph may provide that the review and supervision of advertisements, sales literature and correspondence will be done by pre-use approval, post use review or post use sampling, as appropriate to the type of material. However, the following types of advertisements, sales literature or correspondence must be approved prior to publication or use by a partner, director, officer or branch manager of the approved participant who is designated to approve such material:

- a) research reports;
- b) market letters;
- c) telemarketing scripts;
- d) promotional seminar texts (not including educational seminar texts);
- e) original advertisements;
- f) original template advertisements; and
- g) any material used to solicit clients that contain performance reports or summaries.

Where the policies and procedures of the approved participant do not require the approval of advertisements, sales literature or correspondence prior to being issued, the approved participant must include provisions for the education and training of registered and approved persons as to the approved participant's policies and procedures governing such materials as well as follow-ups to ensure that such policies and procedures are implemented and adhered to.

Copies of all advertisements, sales literature and correspondence and all records of supervision under the policies and procedures required by the present article must be retained and be readily available for examination by the Bourse. All advertisements, sales literature and related documents must be retained for a period of two (2) years from their date of creation and all correspondence and related documents must be retained for a period of five (5) years from their date of creation.

8004 Designation of Securities

(00.00.03)

When an approved participant issues written recommendations on the purchase of any exchange listed non-voting shares, subordinate voting shares or restricted voting shares, he must designate these shares as such therein, and these shares must not be described as "common".

8005 Failure to Comply

(00.00.03)

The Bourse or an approved participant may, in accordance with the procedure provided in the Rules and, more particularly in articles 4101 and following, file a complaint against an approved participant or approved person, charging them with having contravened the above-mentioned guidelines.

**RULE ELEVEN
EXCHANGE-TRADED
OPTION CONTRACTS**

**Section 11001 - 11150
Qualification of Members**

11003 Duties of the Registered Options Principal

(01.08.87, 10.11.92, ~~00.00.03~~)

Every registered options principal is responsible for the operation and the supervision of ~~an member~~ approved participant with regard to option contracts and more particularly, but without limiting the generality of the foregoing, the registered options principal ~~shall~~must:

- a) authorize the opening of every option account by accepting in writing every option account application form with the exception of the provision of paragraph 11151 b);
- b) supervise every account dealing in option contracts;
- c) approve discretionary orders~~;~~;
- ~~d) approve all advertisements relating to options.~~

**Section 14051 - 14100
Requirements for Dealing
with Clients**

14054 Duties of the Futures Contract Principal
(24.04.84, 21.08.02, 00.00.03)

The futures contract principal is responsible for the operation and the supervision of an approved participant with regard to futures contracts and more particularly but without limiting the generality of the foregoing the futures contract principal must:

- a) authorize the opening of every futures contracts account by accepting in writing every futures contracts account application form;
- b) supervise and take appropriate actions with respect to every account dealing in futures contracts on a continuous basis;
- ~~c) approve all advertisements relating to futures contracts.~~

A futures contract principal may delegate by written direction any duties to a person whom he believes capable of performing such duties; provided that the futures contract principal shall monitor, to the extent necessary, and remain fully responsible for the performance of such duties.