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CIRCULAR
November 11, 2004

REQUEST FOR COMMENTS

SUPERVISION OF BRANCH OFFICES

AMENDMENTS TO ARTICLES 7352 AND 7452 ADDITION OF ARTICLE 7353

Summary

The Special Committee – Regulatory Division of Bourse de Montréal Inc. (the Bourse) has approved amendments to article 7352 and 7452 of the Rules and the addition of article 7353 to Rule Seven of the Bourse. The purpose of these proposed amendments and addition is to permit approved participants to appoint qualified persons to supervise institutional or non-retail branch offices without requiring that they meet branch manager proficiency requirements provided for in Policy F-2 of the Bourse. Also, these amendments will allow a better distinction between a "branch office" and a "sub-branch office".

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.

Circular no.: 146-2004

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 7352 and 7452 of the Rules and the addition of article 7353 to Rule Seven 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".



SUPERVISION OF BRANCH OFFICES

- AMENDMENTS TO ARTICLES 7352 AND 7452
- ADDITION OF ARTICLE 7353

I DETAILED ANALYSIS

A) Current Rules

Under the current rules of Bourse de Montréal Inc. (the Bourse), approved participants must appoint a branch manager to supervise all branch offices (or a manager responsible for each branch of the firm). In order to obtain registration as a branch manager, a candidate must, pursuant to article 7352 of the Rules of the Bourse, meet proficiency requirements set out in Policy F-2 – Proficiency Requirements – including the successful completion of *i*) the Branch Managers Course and, *ii*) within 18 months of approval as a branch manager, the Effective Management Seminar. This course and this seminar are designed to develop and test proficiency in the supervision of retail account opening and trading.

B) The Issue

Some approved participants have offices in which they conduct only institutional business. Sometimes, these branches also conduct other activities that do not affect retail business such as investment banking or research. In the case of such branches, the appointment of a person qualified to supervise retail accounts is unnecessary for investor protection and may in fact result in the appointment of persons less qualified to supervise the type of activity actually conducted at the office.

The proposed amendments to articles 7352 and 7452 of the Rules of the Bourse will permit approved participants to appoint a branch manager (non-retail) to be in charge of a branch office whose business is restricted to the handling of institutional accounts as defined in proposed Policy C-7¹. Under the proposed policy, non-individual clients meeting certain requirements and signing a required agreement will not receive the protections of the suitability requirements of paragraph 1) of article 7452. Such clients are sophisticated institutional investors capable of making their own investment decisions without reliance on the advice of approved participants. A branch office doing solely corporate finance or other non-trading business will also qualify for supervision by a branch manager (non-retail). Again, the investor protection provided to retail clients by the requirement for branch manager supervision is irrelevant to such offices.

Housekeeping changes are also proposed to article 7352. In order to make the rules easier to consult, all matters dealing with sub-branch offices will be removed from article 7352 and presented under the proposed new article 7353. Also, the option for an approved participant to appoint an assistant or co-branch manager² will be clearly specified in article 7352.

C) Objective

The objective of the proposed amendments to articles 7352 and 7452 of the Rules of the Bourse is to permit approved participants to appoint supervisors of non-retail branch offices without requiring that they be registered as branch managers and meet branch manager proficiency requirements designed for retail account supervision. Housekeeping amendments

¹ The proposed Policy C-7 entitled “Minimum Standards for Institutional Account Opening, Operation and Supervision” was submitted on October 6, 2003 to the *Autorité des marchés financiers* for approval.

² Proficiency requirements for assistant and co-branch manager are specified in Policy F-2 of the Bourse.

are also proposed to give to approved participants the option to appoint an assistant or a co-branch manager and, by adding the proposed new article 7353, to make a better distinction between a branch office and a sub-branch office.

D) Effect of Proposed Rules

The proposed amendments to articles 7352 and 7452 of the Rules of the Bourse will enable approved participants to appoint qualified persons to supervise institutional or other non-retail branch offices without requiring that they meet irrelevant proficiency requirements. It will enable approved participants to fill vacancies in such positions more quickly and reduce regulatory costs. Housekeeping changes to article 7352 and the addition of article 7353 will make the rules easier to consult.

E) Comparison with Similar Provisions

Autorité des marchés financiers Policy Statement Q-9, “Dealers, Advisers and Representatives”, requires, in Section 50, that branch managers “*for a dealer with unrestricted practice, a discount broker or an investment contract dealer shall have passed the Canadian Branch Managers’ Qualifying Examination of the Canadian Securities Institute*”.

The proposed Policy C-7 introduces a definition for branch office whose business is restricted to the handling of institutional accounts (non-retail office). The proposed amendments in the present document requires that the branch manager appointed to supervise a non-retail office successfully complete the Partners, Directors and Senior Officers Qualifying Exam.

F) Public Interest Objective

The objective of the proposed amendments is to eliminate irrelevant proficiency requirements for the qualified person in charge of a branch office whose business is restricted to the handling of institutional accounts or any other non-retail

business such as investment banking or research. Filling vacancies in such position more quickly will reduce regulatory costs. Consequently, the proposed amendments are considered to be in the public interest.

II COMMENTARIES

A) Effectiveness

The proposal, in addition to eliminating irrelevant proficiency requirements and reducing regulatory costs, does not permit unfair discrimination among customers, issuers, brokers, dealers, approved participants or others. It does not impose any burden on competition that is not necessary or appropriate in furtherance of the above purposes.

B) 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. 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* du Québec for approval and to the Ontario Securities Commission for information.

III REFERENCES

- Rule Seven of Bourse de Montréal Inc.;
- Proposed Policy C-7 of Bourse de Montréal Inc.;
- Policy C-13 of Bourse de Montréal Inc.;
- Policy F-2 of Bourse de Montréal Inc.; and
- Policy Statement Q-9, “Dealers, Advisers and Representatives” of the *Autorité des marchés financiers*.

**Section 7351 - 7400
Offices and Employees**

7352 Branch Offices

(01.08.87, 01.04.93, 21.08.02, 00.00.04)

- 1) No approved participant must establish a branch office (four or more registered representatives or investment representatives) or appoint or replace ~~the person in charge of a branch office~~ a branch manager without the prior consent of the Bourse. ~~An approved participant may operate a sub-branch (less than four registered representatives or investment representatives) but must obtain prior approval from the Bourse.~~ The ~~person in charge of a branch~~ branch manager must have experience acceptable to the Bourse and have satisfied the applicable proficiency requirements outlined in Policy F-2 of the Bourse. ~~An approved participant having a sub-branch with more than two registered representatives or investment representatives must designate a supervisor of such office who must normally be present at such office. An approved participant may appoint one or more assistant or co-branch managers who must have the same authority as a branch manager in the absence or incapacity of the branch manager. A branch manager must normally be present at the branch of which he is in charge.~~

- 2) To be approved as a branch manager, sales manager, assistant or co-branch manager, the person must have:
 - i) experience acceptable to the Bourse; and
 - ii) satisfied the applicable proficiency requirements outlined in Policy F-2 of the Bourse; or
 - iii) where an approved participant establishes a branch office which has no accounts other than institutional accounts,
 - I) satisfied the applicable proficiency requirements for partners, directors and officers outlined in Policy F-2 of the Bourse;
 - II) satisfied the applicable proficiency requirements for branch managers supervising trading in futures contracts or options outlined in Policy F-2 of the Bourse, where the approved participant trades for clients in futures contracts or options.

- 3) For the purposes of this article “institutional accounts” means:
 - acceptable counterparties;
 - acceptable institutions;
 - registrants under securities legislation or members of a recognized stock exchange;
 - qualified institutions registered in the United States which include:
 - 1) institutions (e.g. pension funds, investment companies, financial institutions other than banks, partnerships and industrial companies, but not individuals) that own or have investment discretion over \$100 million of securities.

- 2) banks and savings and loan associations that own or have investment discretion over \$100 million in securities and have a net worth of at least \$25 million;
 - foreign broker dealers that are members of the following self-regulatory organizations: any Canadian self-regulatory organization, the International Stock Exchange in the United Kingdom and any securities exchange registered with the United States Securities and Exchange Commission.
- 4) The Bourse may, at its discretion, at any time, withdraw any such consent as aforesaid and the approved participant concerned must comply with such directions as the Bourse may make pursuant to such withdrawal.

Exemption: Notwithstanding the foregoing provisions of this article, an approved participant is exempted from seeking approval by the Bourse provided approval is sought from and granted by the self-regulatory organization responsible for the supervision of the concerned approved participant, under the agreement establishing the Canadian Investor Protection Fund.

7353 ~~(Reserved for future use)~~Sub-Branch Offices
(00.00.04)

An approved participant may operate a sub-branch office (less than four registered representatives or investment representatives) but must obtain prior approval from the Bourse. An approved participant having a sub-branch office with more than two registered representatives or investment representatives must designate a supervisor of such office who must normally be present at such office.

**Section 7451 - 7475
Conduct of Accounts**

7452 Diligence as to Accounts

17.06.86, 01.08.87, 05.09.89, 15.09.89, 04.12.92, 01.04.93, 02.07.96, 09.03.99, 23.08.02,
21.11.03, 22.01.04, 00.00.04)

(...)

2) Every approved participant:

- a) must appoint, in accordance with Policy C-13 of the Bourse, an ultimate designated person or, in the case of a branch office, a branch manager [pursuant to article 7352](#), reporting directly to an ultimate designated person; and
- b) where necessary to ensure continuous supervision, may appoint one or more alternate designated person;

who must be approved by the Bourse. The ultimate designated person or, in the case of a branch office, the branch manager is responsible for establishing and maintaining procedures and for supervising account opening and account activity. He must ensure that the handling of client business is within the bounds of ethical conduct, consistent with just and equitable principles of trade and not detrimental to the reputation of the Bourse or the interests or the welfare of the public or the Bourse. He must supervise activity relating to securities in accordance with Bourse requirements and policies. In the absence or incapacity of the ultimate designated person, his authority and responsibilities must be assumed by an alternate designated person.

(...)