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**CIRCULAR**  
November 11, 2004

## **REQUEST FOR COMMENTS**

### **BUSINESS CONTINUITY PLAN**

#### **ADDITION OF ARTICLE 3012**

#### **Summary**

The Special Committee – Regulatory Division of Bourse de Montréal Inc. (the Bourse) has approved the addition of article 3012 to Rule Three of the Bourse, which deals with the obligation for approved participants to have a business continuity plan. The purpose of imposing this requirement is to ensure that approved participants have made adequate preparations to deal with significant business interruption situations and are able to resume service within an acceptable period of time.

#### **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 addition of article 3012 to Rule Three 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".



### BUSINESS CONTINUITY PLAN

#### – ADDITION OF ARTICLE 3012

#### I DETAILED ANALYSIS

##### A) Current Rules

Under the current rules of Bourse de Montréal Inc. (the Bourse), approved participants are required to have in place appropriate financial and operational safeguards to protect client assets. These safeguards include the obligation:

- to maintain an adequate risk adjusted capital at all times (article 7006 and Policy C-3);
- to keep and maintain adequate books and records (articles 7455 and 7467);
- to establish and maintain adequate internal control systems (article 7010 and Policy C-4);
- to segregate fully paid and excess margin securities held for a client (Section 7501-7550); and
- to maintain adequate insurance coverage at all times (article 7076 and Policy C-3).

However, there is no current requirement for an approved participant to establish and maintain a business continuity plan.

##### B) The Issue and Alternatives Considered

The client assets safeguard requirements are only effective when the approved participant

services (both staff and systems based) are relatively uninterrupted. Any disruption in service can quickly impair the ability of the firm to honor its obligations, both to its clients and other capital markets intermediaries.

Given the complex interdependencies of the markets, there is a potential for a sudden business disruption to cascade into a significant market-wide crisis. This issue has become a major concern for the securities industry and the subject of much discussion, both nationally and internationally, particularly in response to the serious new risks posed in the post-9/11 environment. The resilience of the securities industry and the financial sector as a whole in the event of a market-wide disruption is contingent upon the rapid recovery and resumption of many critical activities that support financial markets.

It was considered to present more prescriptive business contingency plan requirements than those being proposed. However, it was decided against a more prescriptive approach due to concerns that procedures/processes that might be critical to the resumption of service for a large approved participant (i.e., permanent disaster recovery backup location) would be both inordinately costly and inappropriate for a small approved participant. A more principles-based rule was therefore developed to give approved participants of varying sizes and business focus the flexibility to establish a business continuity plan that addresses their key business resumption risks and that is cost effective.

##### C) Objective

The objective of the addition of article 3012 to Rule Three of the Bourse is to oblige all approved participants to have a business continuity plan. The requirement to have such a plan and its existence will not by themselves guarantee that an approved participant will not suffer service interruptions. Rather, the objective of making it compulsory for an approved participant to have a business continuity plan (including the regular testing of

such plan) is to ensure that adequate preparations have been made to deal with significant business interruption scenarios and that the approved participant is able to resume service within an acceptable period of time.

### **D) Effect of Proposed Rules**

The proposed new article 3012 will require that each approved participant have a business continuity plan. The level of impact on each approved participant will be highly dependent on the extent of current preparedness for business interruptions, something that can only be determined once a firm specific business impact assessment has been performed. It is believed that while system impacts may be felt in varying degrees at each approved participants, the industry benefits of requiring a business contingency plan, in terms of improved securities industry preparedness for business interruptions, will be far greater.

### **E) Comparison with Similar Provisions**

#### **United States**

NASD Rule 3510, Business Continuity Plans, deals with business continuity planning. This rule requires NASD member firms to create and maintain written business continuity plans. As with proposed article 3012, the NASD Rule 3510 recognizes that business continuity plans should reflect the particular operations and activities of a dealer. Therefore, the rule allows members to tailor or customize plans to suit their size, business and structure.

However, there are minimum standards that this plan must meet including data back-up and recovery of mission critical systems, financial and operational assessments, alternate communications, counterparty impact, regulatory reporting and communications with regulators. Plans must be reviewed annually to determine if modifications are necessary. In addition, plans must be made available to NASD staff for inspection during routine examinations and promptly on request by NASD staff. NASD limits its review of a member firm's business

continuity plan to the categories listed above to ensure that NASD is not micromanaging the business operations of its members.

#### **United Kingdom**

The Financial Services Authority (FSA) requires financial institutions to have a business contingency plan, but it has not set out any prescriptive guidance/requirements. In July 2002, the FSA issued a paper dealing with the management of operational risk. This paper contained high-level guidance on some of the main operation risks areas that a firm should consider, including business continuity risk management. The paper was followed in March 2003 by a policy statement confirming that respondents to the July 2002 paper had broadly approved the FSA's high-level approach to business continuity risk management. The policy statement reassured firms that the FSA had no intention of being prescriptive in its guidance on business continuity. Instead the policy was designed to be flexible and to be interpreted in accordance with the nature, scale and complexity of a firm's activities.

### **F) Public Interest Objective**

The objective of the proposed amendments is to make it compulsory for all approved participants to have a business continuity plan. As a result, the related general purpose of this proposal is to standardize industry practices where necessary or desirable for investor protection. Consequently, the proposed amendments are considered to be in the public interest.

## **II COMMENTARIES**

### **A) Effectiveness**

Since the proposal seeks to require that each approved participant have a business continuity plan, there will be costs borne by those approved participants that do not currently have a business continuity plan. However, the proposed

amendment will not impact market structure or competition between approved participants and others.

### **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 is 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 Three of Bourse de Montréal Inc.;
- FSA Consultation Paper 142, Operation Risk Systems and Controls;
- FSA Policy Statement, Feedback on FSA Consultation Paper 142, Operation Risk Systems and Controls;
- NASD Rule 3510, Business Continuity Plans.

**3012 Business Continuity Plan**

(00.00.04)

Each approved participant must establish and maintain a business continuity plan identifying the necessary procedures to be undertaken during an emergency or significant business disruption. Such procedures must be reasonably designed to enable the approved participant to stay in business in the event of a future significant business disruption in order to meet obligations to its clients and capital markets counterparts and must be derived from the approved participant's assessment of its critical business functions and required levels of operation during and following a disruption.

Each approved participant must update its plan in the event of any material change to its operations, structure, business or location. Each approved participant must also conduct an annual review and test of its business continuity plan to determine whether any modifications are necessary in light of changes to the approved participant's operations, structure, business or location. The Bourse, in its discretion, may require this annual review to be performed by a qualified third party.

**30123013 Assessments, Fees and Charges**

(02.10.92, 00.00.04)

Each member shall pay such assessments, fees and charges, whether special or general, as shall be fixed by the Governing Committee and which shall become due and payable to the Exchange or the Clearing House at such time or times and in such manner as the Governing Committee shall direct. Liability hereunder shall not be affected by the dissolution, winding-up, expulsion or death of the member.

**30133014 Registration**

(02.10.92, 00.00.04)

No one may claim membership on the Exchange without being registered as a member on the register kept for that purpose by the Exchange. Registration as a member shall not occur until all the other conditions of admission to membership have been fulfilled, and membership on the Exchange shall be deemed to commence upon such registration. The register shall record any additional rights of membership acquired by the member through transfer from another member as provided in article 3702 or through merger.