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**CIRCULAR**  
December 22, 2004

## **INSURING AGREEMENT C OF FINANCIAL INSTITUTION BOND – IN TRANSIT COVERAGE**

### **AMENDMENTS TO ARTICLE 7076**

The Special Committee – Regulatory Division of Bourse de Montréal Inc. (the Bourse) has approved amendments to subparagraph 2 c) of article 7076 of the Rules of the Bourse concerning Insuring Agreement C of the Financial Institution Bond that must be subscribed by the approved participants of the Bourse. This Insuring Agreement concerns the loss of property in transit. The purpose of the proposed amendments is to improve the clarity of the wording and thus make its interpretation easier. They also intend to avoid any ambiguity by inducing the approved participant, if it wants more information on the nature and extent of the available insurance coverage, to refer to the insurance policy issued by its insurer. **These amendments will become effective on January 1, 2005.**

The amendments made to subparagraph 2 c) of Article 7076 first consist in specifically designating some types of property that are not covered by Insuring Agreement C of the Financial Institution Bond, namely certified cheques and bank drafts. The reason for this specification is that the standard wording used by insurers issuing this type of coverage neither excludes nor includes this type of instruments. Effectively, when analyzing the coverage exclusions that are found in this type of insurance policy, the above-mentioned instruments are not referred to. On the other hand, the definitions of the terms “money”, “securities” and “property” do not include certified cheques and bank drafts. Approved participants making an intensive use of these types of instruments, it was not clear for them to determine whether or not they had to take them into account when establishing the necessary amount of coverage to cover risks incurred while in transit.

Furthermore, it is important to mention that the loss, the disappearance or the destruction of this type of instrument can generally be compensated by subscribing to a “Lost Instrument Bond”. This type of surety is not included in the insurance coverage of the Financial Institution Bond and must be subscribed separately by the beneficiary of the instrument in favour of the financial institution that issued the certified cheque or the bank draft. In counterparty of the surety bond given to it, the financial institution will then issue a new certified cheque or a new bank draft.

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Amendment no. 012-2004

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Secondly, all references to the specific causes and circumstances of the loss such as theft and burglary have been withdrawn from the Rule. These causes and circumstances, such as they were listed until now in the Rule were incomplete and did not reflect adequately the coverage granted by the insurers neither the exclusions that may apply. Furthermore, they were creating a risk of contradiction between what was mentioned in the Rule and the actual provisions of the insurance policy. The deletion of these references will allow avoiding any risk of incorrect interpretation of the coverage offered by Insuring Agreement C of the Financial Institution Bond and of the exclusions that may apply to this Insuring Agreement. To determine what are the protections offered and the exclusions that may apply, approved participants must refer to the document issued by their insurer. This is the only way for them to correctly understand the extent of the protection available to them.

Finally, a precision has been added specifying that money, securities and other property covered by Insuring Agreement C can be negotiable or non-negotiable. Effectively, some types of property are covered by insurers regardless of the fact that they are negotiable or not while some other types of property must, in order to be covered, be in a non-negotiable form such as, for example, securities certificates registered in the name of a designated holder and that have not been endorsed.

For further information, please contact Mr. Jacques Tanguay, Vice-President, Regulatory Division, at (514) 871-3518 or by e-mail at [jtanguay@m-x.ca](mailto:jtanguay@m-x.ca).

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

Encl.

**Section 7076 - 7150  
Insurance**

**7076 Insurance**

(28.02.87, 09.10.87, 30.12.88, 06.08.90, 20.12.91, 01.05.92, 03.03.93, 01.04.93, 01.12.94, 08.11.95, 20.12.96, 01.07.97, 01.04.03, 01.01.05)

1) Mail Insurance

Every approved participant must effect and keep in force mail insurance against loss arising by reason of any outgoing shipments of money or securities, negotiable or non negotiable, by first class mail, registered mail, registered air mail, express or air express, such insurance to provide at least 100% cover.

The Vice-President of the Regulatory Division of the Bourse may exempt an approved participant from the requirement of the present paragraph if the approved participant delivers a written undertaking to the Vice-President Regulatory Division, that it will not use the mail for outgoing shipments of money or securities, negotiable or non-negotiable, by first-class mail, registered mail, registered air mail, express or air express.

2) Financial Institution Bond

Every approved participant must, by means of a Financial Institution Bond or Bonds (with Discovery Rider attached or Discovery Provisions incorporated in the Bond), effect and keep in force insurance against losses arising as follows as provided for in the standard-form contract:

a) Clause (A) - Fidelity

Any loss through any dishonest or fraudulent act of any of its employees, committed anywhere and whether committed alone or in collusion with others, including loss of property through any such act of any of its employees;

b) Clause (B) - On Premises

Any loss of money and securities or other property through robbery, burglary, theft, hold-up or other fraudulent means, mysterious disappearance, damage or destruction while within any office of the insured, of a banking institution or clearing house or within any recognized place of safe deposit, as more fully defined in the Standard Form Number 14 of Financial Institution Bond, herein referred to as the Standard Form;

c) Clause (C) - In Transit

Any loss of money and securities or other property (except certified cheques and bank drafts), whether negotiable or non-negotiable, must be covered by insurance. The value of securities in transit in the custody of any employee or any person acting as a messenger must not at any time exceed the protection provided under the present subparagraph;

d) Clause (D) - Forgery, Alterations

Any loss through forgery or alteration of any cheques, drafts, promissory notes or other written orders or directions to pay sums in money, excluding securities, as more fully defined in the Standard Form;

e) Clause (E) - Securities

Any loss through having purchased or acquired, sold or delivered, or extended any credit or acted upon securities or other written instruments which prove to have been forged, counterfeited, raised or altered, or lost or stolen, or through having guaranteed in writing or witnessed any signatures upon any transfers, assignments or other documents or written instruments, as more fully defined in the Standard Form.

3) a) Notice of termination

Each Financial Institution Bond maintained by an approved participant must contain a rider containing provisions to the following effect:

- i) the underwriter must notify the Bourse at least 30 days prior to the termination or the cancellation date of the bond, except in the event of termination of the bond due to:
  - a) the expiration of the bond period specified;
  - b) the receipt of written notice from the insured of its desire to cancel the bond;
  - c) upon the taking over of the insured by a receiver or other liquidator, or by provincial, federal or state officials; or
  - d) upon the taking over of the insured by another institution or entity.
- ii) In the event of termination of bond as an entirety in accordance with sub-paragraphs i) b), c) or d), the underwriter must, upon becoming aware of such termination, give immediate written notice of the termination to the Bourse. Such notice shall not impair or delay the effectiveness of the termination.

b) Termination or cancellation as a result of a take-over

In the event a Financial Institution Bond is to be terminated or cancelled as a result of the take-over of an approved participant by another institution or entity as described in paragraph 3 a) i) d), the approved participant must ensure that bond coverage is in place and provides a period of 12 months from the date of such take-over within which to discover the losses, if any, sustained by the approved participant prior to the effective date of such take-over. The approved participant must then pay, or cause to be paid, any applicable additional premium.

4) Amounts required

The minimum amounts of insurance to be maintained for each clause in the aggregate under paragraph 2 of this article must be the greater of:

- a) \$500,000 or, in the case of a Type 1 Introducing broker, \$200,000; and
- b) 1% of the balance of the base amount or, in the case of a Type 1 and Type 2 introducing broker, one half of one percent of the base amount (½%);

provided that, for each clause, such minimum amount of insurance need not exceed \$25,000,000.

For the purposes of this paragraph, the term "base amount" means the greater of:

- i) the aggregate of net equity for each customer, such aggregate being determined by taking the total value of cash and securities owed to the customer by the approved participant less the total value of cash and securities owed by the customer to the approved participant; and
- ii) the aggregate of total liquid assets and total other allowable assets of the approved participant determined in accordance with Statement A of the Joint Regulatory Financial Questionnaire and Report.

5) Provisos

- a) the amounts of insurance required to be maintained by an approved participant must as a minimum be by way of a Financial Institution Bond with a double aggregate limit or a provision for full reinstatement of the amount of coverage;
- b) should there be insufficient coverage, an approved participant will be deemed to be complying with the requirements of this article provided that any such deficiency does not exceed 10 percent of the insurance coverage required and that evidence is provided within two months of the dates of completion of the quarterly operations questionnaires or the annual audit that the deficiency has been corrected. If the deficiency of the insurance coverage required is 10 percent or more, measures must be taken by the approved participant in order to correct the said deficiency within 10 days of its determination and the approved participant must immediately notify the Chief Examiner of the Exchange;
- c) insurance against losses under sub-paragraph 2) e), Clause (E) (Securities), may be incorporated in the Financial Institution Bond or may be carried by means of a rider attached thereto or by a separate Securities Forgery Bond;
- d) the Financial Institution Bond maintained pursuant to paragraph 2 of this article may contain a clause or rider stating that all claims made under the bond are subject to a deductible;

- e) for the purposes of calculating insurance requirements, no distinction must be made between securities in non-negotiable form and those in negotiable form.

6) Insurer

Insurance required to be effected and kept in force by an approved participant pursuant to this article 7076 may be underwritten directly with either (i) an insurer registered or licensed under the laws of Canada or any province of Canada or (ii) any foreign insurer approved by the Bourse. No foreign insurer will be approved by the Bourse if its net worth, according to the last audited balance sheet, is lesser than \$75 millions, provided acceptable financial information with respect to such insurer is available for inspection and the Bourse is satisfied that the insurer is subject to supervision by regulatory authorities in the jurisdiction of incorporation of the insurer which is substantially similar to the supervision of insurance companies in Canada.

7) Global Insurance Policies

Where the insurance maintained by an approved participant in respect of any of the requirements under this article 7076 names as the insured or benefits the approved participant, together with any other person or group of persons, whether within Canada or elsewhere, the following must apply:

- a) the approved participant must have the right to claim directly against the insurer in respect of any loss, and any payment or satisfaction of such loss must be made directly to the approved participant; and
- b) the individual or aggregate limits under the policy may only be affected by claims made by or on behalf of:
  - i) the approved participant;
  - ii) any of the approved participant's subsidiaries whose financial results are consolidated with those of the approved participant; or
  - iii) a holding company of the approved participant provided that this holding company does not carry on any business or own any investment other than its interest in the approved participant,

without regard to the claims, experience or any other factor referable to any other person.

8) Exemption

The Special Committee may exempt an approved participant from the requirements of this article where the approved participant is not dealing with the public and/or is not a clearing member.