



**CIRCULAR**  
September 30, 2003

## **REQUEST FOR COMMENTS**

### **CONFIRMATION OF TRANSACTION FOR MANAGED ACCOUNTS**

#### **AMENDMENTS TO ARTICLES 7455, 11155 AND 14154**

#### **Summary**

The Special Committee – Regulatory Division of Bourse de Montréal Inc. (the "Bourse") has approved amendments to articles 7455, 11155 and 14154 of the Rules of the Bourse concerning the confirmation of transactions. The purpose of the proposed amendments is to relieve approved participants from sending confirmations to customers for every trade made in their managed account, subject to certain conditions.

#### **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.: 135-2003

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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 7455, 11155 and 14154 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:

*Mr. Jacques Tanguay*  
*Vice-President, Regulatory Division*  
*Bourse de Montréal Inc.*  
*Tour de la Bourse*  
*P.O. Box 61, 800 Victoria Square*  
*Montréal, Quebec H4Z 1A9*  
*E-mail: [reg@m-x.ca](mailto:reg@m-x.ca)*

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

*Ms. Denise Brosseau*  
*Secretary*  
*Commission des valeurs mobilières du Québec*  
*800 Victoria Square, 22<sup>nd</sup> Floor*  
*P.O. Box 246, Tour de la Bourse*  
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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.



### CONFIRMATIONS OF TRANSACTION FOR MANAGED ACCOUNTS

#### – AMENDEMENTS TO ARTICLES 7455, 11155 AND 14154

#### I -- OVERVIEW

##### A -- Current Rules

Article 7455 of the Rules of Bourse de Montréal Inc. (the “Bourse”) requires that approved participants issue a confirmation for each trade in securities in a customer account and lists the information that must be included on such confirmation. Article 11155, which concerns confirmations regarding options transactions, requires that confirmations to clients on options transactions contain all the informations required by article 7455 plus additional information that is specific to option contracts such as exercise price, premium, expiration month, etc. Finally, article 14154 of the Rules specifies what are the information that must be provided on confirmations relating to futures contract transactions.

##### B -- The Issue

Holders of accounts managed by portfolio managers at approved participants have raised objections to receiving confirmations for every transaction as they have passed, pursuant to a portfolio management agreement, the making of investment decisions to the approved participant. Such customers are more interested in the overall performance of their portfolio than in reviewing each individual investment decision.

##### C -- Objective

The objective of the proposed amendments is to relieve approved participants from sending confirmations to customers who do not want them and to prevent customers from having to manipulate these documents.

#### D -- Effect of Proposed Rules

The proposed rule amendment will reduce the administration costs of managed accounts at approved participants who offer this type of accounts.

#### II -- DETAILED ANALYSIS

##### A -- Present Rules, Relevant History and Proposed Amendments

Approved participants who offer managed accounts have frequently reported that some clients complain about receiving separate confirmations for every trade for their managed accounts.

Recently, all members of the Canadian Securities Administrators except the Prince Edward Island Securities Office, to which application was not made, granted to some approved participants of the Bourse an exemption from providing confirmations to managed account customers pursuant to an internally managed program, subject to certain conditions.

The purpose of the proposed amendments to Articles 7455, 11155 and 14154 of the Rules of the Bourse is to make the above-mentioned exemption granted to some approved participants available to all approved participants of the Bourse that offer managed accounts, subject to the same conditions as those included in the exemption decisions.

These conditions are the following ones:

1. The client must consent in writing to not receiving confirmations and must be able to terminate such consent by notice in writing. The approved participant must then resume

sending confirmations on receipt of such notice and this, starting on the following day.

2. The approved participant must send to the client a monthly statement in compliance with, as the case may be, articles 7455, 11155 or 14154 of the Rules of the Bourse. The monthly statement must contain for each trade all of the information that is required on the confirmation except:
  - a. the day and exchange on which the transaction took place;
  - b. the fees or other charges, if any, levied by any securities regulatory authority in connection with the transaction;
  - c. the name of the registered representative, if any, having participated in the transaction;
  - d. the name of the dealer, if any, used by the approved participant as its agent to effect the transaction; and
  - e. for an exchange trade, the name of the counterparty.
3. There are two items of information that are found on confirmations but not normally on monthly statements and that will have to be included on the monthly statements. These are:
  - a. the commission. This requirement may be irrelevant in the case of many managed account programs for which management fees are charged rather than commissions; and
  - b. the indication as to whether the approved participant acted as principal or agent for the execution of the transaction.

### **B -- Other Alternatives Considered**

No other alternatives were considered.

### **C -- Comparison with Similar Provisions**

Provincial securities legislations such as Section 162 of the *Securities Act (Quebec)* require that registered dealers send a confirmation of each trade to customers. No similar provision applies to registered portfolio managers who also manage customer accounts. Under Section 249 of the *Quebec Regulation concerning securities* (V-1.1, r. 1), registered portfolio managers are required to send to their customers quarterly statements of their portfolio.

### **D – Effect of the Proposed Amendments on the Systems**

The proposed rule amendments could have systems implications for some approved participants in that it will require that additional disclosures or information be added to the monthly statements for those clients that do not wish to receive confirmations.

Approved participants will also have to obtain and document consent from clients who do not wish to receive confirmations.

Approved participants wishing to take advantage of the proposed exemption will have to submit to the Bourse specimen copies of the consent forms they intend to use and of any other relevant forms, and they will also have to confirm their ability to provide the additional information required on monthly statements for clients to whom they do not send confirmations.

### **E. -- Best Interests of the Capital Markets**

The Bourse has determined that the proposed rule amendments are not detrimental to public interest and to the interests of the capital markets.

### **F -- Public Interest Objective**

The proposal is designed to eliminate unnecessary paperwork which is unwanted by many customers.

The proposal does not permit unfair discrimination among customers, issuers, brokers, dealers, approved participants or other persons. It does not impose an unnecessary or inappropriate burden on competitiveness

### III -- COMMENTARIES

#### A -- Filing in Other Jurisdictions

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

#### B – Effectiveness

Although the proposed amendments will eliminate a requirement of the Bourse in regards to confirmations, they do not address similar requirements that may exist under Provincial or Territorial securities legislation. Approved participants seeking to use the exemption under the revised rules shall therefore have to apply for exemptions under securities legislation in the provinces and territories in which they are registered.

#### C -- Process

The issue discussed in this document was originally raised by approved participants offering managed accounts in response to client demand. The current proposal was then reviewed and supported by the “Joint Industry Compliance Group” (now called the “Compliance and Legal Section”) of the Investment Dealers Association of Canada (IDA). However, in reason of opposition from certain of the Canadian Securities Administrators at that time, the proposal was not implemented in full, being strictly limited to external portfolio managers. Although the IDA eventually amended its By-Law 200 to permit a waiver of confirmation in the case of managed accounts handled by an external portfolio manager, the Bourse did not amend its own Rules in a similar manner at that time.

This issue has since been raised on several occasions by the Compliance and Legal Section of the IDA. Most approved participants of the Bourse are members of the IDA and participate actively to the discussions of the Compliance and Legal Section. Considering the fact that these approved participants, through the Compliance and Legal Section, have expressed a continuous support to the idea of making it possible to have internally managed accounts exempt from confirmation requirements when the clients express their wish to not receive such confirmations, the Bourse considers that it should amend its Rules in order to better harmonize them with those of the IDA.

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

- Articles 7455, 11155 and 14154 of the Rules of Bourse de Montréal Inc.
- By-Law 200 of the Investment Dealers Association of Canada
- Quebec Securities Act (L.R.Q., c. V-1.1)
- Quebec Regulation concerning securities (V-1.1, r. 1)
- MRRS for Exemptive Relief Application Decision Document - Decision dated May 21, 2003 – “In the matter of the Securities Legislation of British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, Ontario New Brunswick, Nova Scotia Newfoundland and Labrador, Yukon Territory, Northwest Territories and Nunavut – and – in the matter of the Mutual Reliance Review System for Exemptive Relief Applications – and – in the matter of

RBC Dominion Securities Inc., RBC Global Investment Management Inc. and RBC Parameters Portfolios Program.”

- MRRS for Exemptive Relief Application Decision Document - Decision dated June 11, 2003 – “In the matter of the Securities Legislation of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, Newfoundland and Labrador, Yukon Territory, Northwest Territories and Nunavut Territories– and – in the matter of the Mutual Reliance Review System for Exemptive Relief Applications – and – in the matter of National Bank Financial Inc.”

**7455 Confirmation and Statement of Account to Client**

(06.11.89, 01.04.93, 29.10.93, 30.09.94, 02.08.95, 18.02.97, 26.03.03, 00.00.03)

- 1) Subject to paragraph 7), the approved participant must promptly furnish to each client a written confirmation of each transaction in securities. This confirmation must at least provide:
  - a) the quantity and description of the securities traded;
  - b) the selling or purchase price;
  - c) whether the approved participant was acting as principal or agent;
  - d) if acting as agent, the name of the approved participant from, or to, or through whom the security was bought or sold;
  - e) the date upon which the purchase or sale took place;
  - f) the amount of the commission, if any, charged in respect of such purchase or sale;
  - g) the name of the registered representative or investment representative or other person instructed by the customer to make the purchase or sale;
  - h) the name of the exchange, if any, on which the transaction took place;
  - i) where the transaction includes non-voting shares, subordinate voting shares or restricted voting shares, these shares must be designated as such on the confirmation and they must not be described as "common";
  - j) for transactions on stripped coupons and stripped bonds:
    - i) the yield thereon calculated on a semi-annual basis in a manner consistent with the yield calculation for the debt instrument which has been stripped;
    - ii) the yield thereon calculated on an annual basis in a manner consistent with the yield calculation for other debt securities which are commonly regarded as being competitive in the market with such coupons or stripped bonds such as guaranteed investment certificates, bank deposit receipts and other indebtedness for which the term and interest rate are fixed.
  - k) the fees or other charges, if any, levied by any securities regulatory authority in connection with the ~~trade~~transaction.
- 2) For the purpose of subparagraphs 1) d) and g), a person, a company, a registered representative or an investment representative may be identified in a written confirmation by means of a code or symbol if the written confirmation also contains a statement that the name of the person, the company, the registered representative or the investment representative will be furnished to the customer on request.

- 3) A copy of all confirmations and all statements of account must be retained by each approved participant for 5 years.
- 4) A statement of account must be sent at the end of each month to each client in whose account there have been any transactions recorded (exclusive of entries related to interest and dividends). Additionally, statements must be sent to all clients having open security positions or money balances at the end of each quarter. Quarterly statements must set forth the dollar balance carried forward and security position as of the statement date. Statements must indicate all securities which are segregated or held in safekeeping. In addition, exchange listed non-voting shares, subordinate voting shares or restricted voting shares must be designated as such on the statement and these shares must not be described as "common".
- 5) Every statement of account issued to a client by an approved participant or related company must bear the notation required by paragraph 1 of article 7502.
- 6) Every confirmation and every statement of account issued to a client by an approved participant or related company must contain the following notice:

"Clients' accounts are protected by the Canadian Investor Protection Fund within specified limits. A brochure describing the nature and limits of coverage is available upon request."

- 7) The requirements of the present article may be complied with by delivery of the confirmation of purchase or sale or of a statement of account to the customer by electronic means, provided that the approved participant complies with Policy C-15 and that:
  - i) the client has authorized, in writing, the approved participant to deliver the confirmation or the statement of account by electronic means;
  - ii) the electronic transmission procedure has been approved by the Bourse;
  - iii) the confirmation or the statement of account delivered electronically complies with all other requirements of the present article; and
  - iv) the electronic transmission system can, if necessary, reproduce a copy of the confirmation or statement of account in printed form.

Exemption: Notwithstanding the foregoing provisions of this paragraph, the approved participant is exempt 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.

- 8) Notwithstanding the provisions of the present article, an approved participant is not required to provide a confirmation to a client in respect of a transaction made in a managed account, provided that:
  - i) prior to the transaction, the client has accepted in writing to not receive the trade confirmation which is required to be transmitted pursuant to the present article;

- ii) the client may terminate the waiver in subparagraph i) by notice in writing. Such termination notice shall be effective upon its receipt by the approved participant and this for all transactions made after the date of receipt;
- iii) the approved participant sends to the client a monthly statement that contains all the information required to be contained in a confirmation under the present article except:
  - a) the day and the exchange on which the transaction took place;
  - b) the fees or other charges, if any, levied by any securities regulatory authority in connection with the transaction;
  - c) the name of the registered representative, if any, having participated to the transaction;
  - d) the name of the dealer, if any, used by the approved participant as its agent to effect the transaction; and
  - e) the name of the person or company from or to or through whom the security was purchased or sold if acting as agent in a transaction made on an exchange;
- iv) the approved participant maintains the information not required to be in the monthly statement pursuant to subparagraph iii) and discloses to the client on the monthly statement that such information will be provided to the client on request.

**11155 Confirmation to Clients**

(00.00.03)

Every ~~approved participant~~~~member shall~~ must promptly furnish to each client a written confirmation of each transaction in option contracts. In addition to the information required by article 7455, the confirmation ~~must~~~~shall~~ at least provide:

- a) the expiration month;
- b) the exercise price;
- c) the amount of the premium;
- d) indication whether an opening or closing transaction is involved;
- e) the settlement date;

and any other information which may be prescribed from time to time by the BourseExchange.

Notwithstanding the provisions of the present article, an approved participant is not required to provide a confirmation to a client in respect of a transaction made in a managed account, provided that:

- i) prior to the transaction, the client has accepted in writing to not receive the trade confirmation which is required to be transmitted pursuant to the present article;
- ii) the client may terminate the waiver in subparagraph i) by notice in writing. Such termination notice shall be effective upon its receipt by the approved participant and this for all transactions made after the date of receipt;
- iii) the approved participant sends to the client a monthly statement that contains all the information required to be contained in a confirmation under the present article except:
  - a) the day and the exchange on which the transaction took place;
  - b) the fees or other charges, if any, levied by any securities regulatory authority in connection with the transaction;
  - c) the name of the registered representative, if any, having participated to the transaction;
  - d) the name of the dealer, if any, used by the approved participant as its agent to effect the transaction; and
  - e) the name of the person or company from or to or through whom the security was purchased or sold if acting as agent in a transaction made on an exchange;
- iv) the approved participant maintains the information not required to be in the monthly statement pursuant to subparagraph iii) and discloses to the client on the monthly statement that such information will be provided to the client on request.

**14154 A) Trade Confirmations and Monthly Statements to the Client (ex-14156)**

(10.03.83, 24.04.84, 28.05.99, 26.03.03, 00.00.03)

**A) Trade Confirmations to the Client**

- 1) The approved participant must promptly furnish to each client a written confirmation of each transaction in futures contracts and in options on futures contract which must at least indicate:
  - a) the date of the transaction and the date of settlement;
  - b) the description of the futures contract or of the option on futures contracts, and the quantity bought or sold;
  - c) the exchange upon which the transaction was made;
  - d) the expiration month and year of the futures contract or, in the case of an option on futures contract, the expiration month and exercise price of the option on futures contract;
  - e) the price at which the futures contract was entered into or, in the case of an option on futures contract, the premium or any consideration;
  - f) whether an opening transaction, an offsetting transaction or a delivery;
  - g) the name of the dealer, if any, used by the approved participant as its agent to effect the trade;
  - h) the name of the approved representative for futures contracts and options on futures contract or other person instructed by the client to execute the trade;
  - i) the amount of the commission, if applicable;
  - j) whether the approved participant was acting as agent or principal, and any other information which may be prescribed from time to time by the Bourse.
  
- 2) Whenever an approved participant has acted in connection with a closing trade in a futures contract or an option on futures contract, he must furnish to the client, in addition to the confirmation required under paragraph 1) above, a statement setting forth the following information:
  - a) the dates of the opening and closing trades;
  - b) the prices of the opening and closing trades;
  - c) the gross profit or loss on the transaction;
  - d) the commission and any other fees;
  - e) the net profit or loss on the transaction;and any other information which may be prescribed from time to time by the Bourse.

- 3) For the purposes of subparagraphs g) and h) of paragraph 1), a person, a company, a registered representative or an investment representative may be identified in a written confirmation by means of a code or symbols if the confirmation also specifies that the name of the person, company, registered representative or investment representative will be provided to the client on request. An up-to-date list of such identification shall be maintained for review by the Bourse.
- 4) A copy of all confirmations must be kept for five years.

**B) Monthly Statement to Clients**

- 1) A statement of account must be sent at the end of each month to each client having an open position in an account. This statement must at least provide:
  - a) the opening cash balance for the month in the client's account;
  - b) all deposits, credits, withdrawals and debits to or from the client's account;
  - c) the closing cash balance in the client's account;
  - d) a description of each position; and
  - e) the price at which each trade was entered into.
- 2) A copy of all monthly statements of account must be kept for five years.
- 3) Every statement of account issued to a client by an approved participant or related company must contain the following notice :

"any free credit balance represents funds payable on demand which, although properly recorded in our books, are not segregated and may be used in the conduct of our business."

In this respect, if on a daily basis the net position in the account of a client has increased in value based on the settlement price for a futures contract on the previous business day, the approved participant carrying such account must upon demand pay the amount of the gain to the client, subject in every case to the right of the approved participant to retain such gain where: a) payment of gain contravenes to other margin, credit or deposit requirements; b) the amount is not important, i.e., \$200 or less; c) it is deemed necessary to secure indebtedness or obligations of other accounts carried by the approved participant for the client.

**C) Mandatory Content**

- 1) With respect to transactions for managed accounts and discretionary accounts, the written confirmation and the monthly statement of account must be sent directly to the person in whose name the account is carried.
- 2) Every confirmation and every statement of account issued to a client by an approved participant or related company must contain the following notice:

"Clients' accounts are protected by the Canadian Investor Protection Fund within specified limits. A brochure describing the nature and limits of coverage is available upon request."

**D) Confirmations relating to futures contracts and options on futures contracts managed accounts**

Notwithstanding the provisions of the present article, an approved participant is not required to provide a confirmation to a client in respect of a transaction made in a managed account, provided that:

- i) prior to the transaction, the client has accepted in writing to not receive the trade confirmation which is required to be transmitted pursuant to the present article;
- ii) the client may terminate the waiver in subparagraph i) by notice in writing. Such termination notice shall be effective upon its receipt by the approved participant and this for all transactions made after the date of receipt;
- iii) the approved participant sends to the client a monthly statement that contains all the information required to be contained in a confirmation under the present article except:
  - a) the day and the exchange on which the transaction took place;
  - b) the fees or other charges, if any, levied by any securities regulatory authority in connection with the transaction;
  - c) the name of the registered representative, if any, having participated to the transaction;
  - d) the name of the dealer, if any, used by the approved participant as its agent to effect the transaction; and
  - e) the name of the person or company from or to or through whom the security was purchased or sold if acting as agent in a transaction made on an exchange;
- iv) the approved participant maintains the information not required to be in the monthly statement pursuant to subparagraph iii) and discloses to the client on the monthly statement that such information will be provided to the client on request.