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**CIRCULAR**  
**April 11, 2005**

## **LIABILITY OF THE BOURSE**

### **AMENDMENTS TO ARTICLE 2510, DELETION OF ARTICLE 2510A AND ADDITION OF ARTICLES 2511 AND 2512 OF THE RULES OF BOURSE DE MONTRÉAL INC.**

The Autorité des marchés financiers approved amendments to article 2510, deletion of article 2510A and addition of articles 2511 and 2512 pertaining to the limitation of the liability of the Bourse. You will find enclosed the new Rule Two effective immediately.

Circular no. 086-2004 contained a detailed analysis of the amendments adopted. Approved participants are invited to consult as needed this circular on the Bourse's website at [http://www.m-x.ca/f\\_circulaires\\_en/086-04\\_en.pdf](http://www.m-x.ca/f_circulaires_en/086-04_en.pdf).

For further information, please contact the undersigned at (514) 871-3528 or by e-mail at [jstarnault@m-c.ca](mailto:jstarnault@m-c.ca).

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Circulaire no : 057-2005  
Modification no : 005-2005

**RULE TWO****LIABILITY AND RELATED MATTERS****2510 Liability to the Bourse**

(03.02.77, 17.12.81, 09.03.99, 18.10.02, 11.04.05)

No director, member of any committee, officer or employee of the Bourse shall be liable to the Bourse for the acts, receipts, errors or omissions of any other director, member of any committee, officer or employee of the Bourse, or for joining in any receipt or other act for conformity, or for any loss, damage or expense occurring through the insufficiency or deficiency of title to any property acquired for or on behalf of the Bourse, or for the insufficiency or deficiency of any security in or upon which any of the moneys of the Bourse shall be invested or for any loss or damage arising from the bankruptcy, insolvency or wrongful act of any person with whom any of the moneys, securities or assets of the Bourse shall be deposited, or for any loss occasioned by any error of judgment or oversight on his part, or for any other loss or damage whatever which shall happen in the execution of the duties of his office or in relation thereto, unless the same are occasioned by his own intentional or gross fault.

**2510A Bourse Liability**

(11.03.92, 18.10.02, abr. 11.04.05)

**2511 Liability of the Bourse**

(11.04.05)

- 1) Any claim against the Bourse by an approved participant, an approved person, a restricted trading permit holder, or a partner, shareholder, director, officer, agent or employee of an approved participant shall be governed by the laws of Québec.
- 2) Except as expressly provided herein, the Bourse and its directors, officers, committee members and employees shall be exempt from all liability arising out of the acts or omissions of the Bourse, an affiliate of the Bourse, or the directors, officers, employees, agents, and independent contractors of the Bourse or of an affiliate of the Bourse.
- 3) The exemption from liability set out in paragraph 2 above shall not extend to, nor limit liability for damages caused through an intentional or gross fault as defined in Article 1474 of the Civil Code of Québec.
- 4) Notwithstanding paragraph 2 above, the Bourse undertakes to make payments in settlement of claims by approved participants for losses arising out of an error by an employee of the Bourse in regard to an order of the approved participant on the trading systems of the Bourse. Such payments shall be subject to the following conditions and limitations:
  - a) Any such payment may only be made as compensation for losses, except for loss of profit, sustained as an immediate, direct and foreseeable consequence of an error by an employee of the Bourse in regard to an order on the trading systems of the Bourse.
  - b) The Bourse's total liability in respect of all such claims by all approved participants of the Bourse in any calendar year shall be limited to \$240,000. All claims by approved participants shall be reviewed and evaluated by the Bourse on a yearly basis and shall share *pro rata*

whenever the aggregate amount payable in respect of all such claims by all approved participants as determined by the Bourse exceeds the yearly limit.

- c) Immediately upon becoming aware of an error for which it may make a claim, the approved participant must inform the Bourse of all the relevant details of which the approved participant is aware in order for the Bourse to trace the affected order in its systems (the “Advance Notice Requirement”). The Bourse will process a claim for payment only if (1) the approved participant has complied with the Advance Notice Requirement, (2) the approved participant has submitted a claim in writing to the Bourse within thirty days from the date the approved participant first knew of the loss, but in any event no later than thirty days from the end of the calendar year during which the approved participant’s order relating to the loss occurred, and (3) the approved participant has provided to the Bourse, as soon as available but in any event no later than thirty days from the earlier of (a) the date the approved participant first knew of the loss and (b) the end of the calendar year during which the approved participant’s order relating to the loss occurred, all documents and information reasonably required by the Bourse to enable it to evaluate the claim (the “Required Information”). The Bourse undertakes to review and evaluate such claims in a commercially reasonable manner and to advise the approved participant of its decision regarding payment of the claim within thirty days from the receipt of the Required Information. The Bourse undertakes to pay the amount which it determines is due in respect of each claim, subject to any pro rating required under paragraph 4) b) above, within sixty days from the end of the calendar year in which the loss occurred. Any disputed claim must be arbitrated in accordance with articles 5201 *et seq.* of Rule Five, which shall apply *mutatis mutandis*.
- d) Without limiting the generality of paragraph 4) a), no loss shall be eligible for payment by the Bourse under paragraph 4):
  - i) if it was the result of a failure or defect in the hardware or software used by the Bourse or an interruption in the supply of energy or communications services, except to the extent that the fault of an employee of the Bourse contributed to the loss;
  - ii) if it relates to the market surveillance or regulatory activities of the Bourse;
  - iii) to the extent that it was due to the failure of the approved participant or its client to take reasonable steps to mitigate the loss.
- e) No payment by the Bourse under this paragraph 4 shall be construed as an admission of liability by the Bourse.

## **2512 Indemnification**

(11.04.05)

- 1) Every approved participant shall ensure that all of its clients on whose behalf the approved participant enters orders on the trading system of the Bourse have agreed to comply with the Rules of the Bourse, including the provisions of the present Rule relating to limitation of the Bourse’s liability. An approved participant shall hold harmless and indemnify the Bourse, its affiliates and the directors, officers, committee members and employees of the Bourse and of its affiliates in respect of any claim by a client of the approved participant which arises out of the approved participant’s failure to fulfill this requirement.

- 2) An approved participant or an approved person shall reimburse the Bourse for the cost of attending or providing evidence in any proceedings against the approved participant or approved person by a third party.