

13.1.7 Bourse de Montréal Inc. - Application for Exemption from Recognition as a Stock Exchange Under Section 21 of the Securities Act, for Exemption from Registration as a Commodity Futures Exchange Under Section 15 of the Commodity Futures Act and for Certain Ancillary Exemptions

November 28, 2002

APPLICATION FOR EXEMPTION FROM RECOGNITION AS A STOCK EXCHANGE UNDER SECTION 21 OF THE SECURITIES ACT, FOR EXEMPTION FROM REGISTRATION AS A COMMODITY FUTURES EXCHANGE UNDER SECTION 15 OF THE COMMODITY FUTURES ACT AND FOR CERTAIN ANCILLARY EXEMPTIONS

Bourse de Montréal Inc. (the "Bourse") is currently recognized as a self-regulatory organization in Québec under section 169 of the *Securities Act (Québec)* which enables it to carry on the activities of an exchange in Québec.

The Bourse wishes to carry on business as a stock exchange and a commodity futures exchange in Ontario and hereby makes application to the Ontario Securities Commission (the "Commission") pursuant to section 147 of the Securities Act (the "Act") and 80 of the Commodity Futures Act (the "CFA") for an order exempting the Bourse from recognition as a stock exchange and from registration as a commodity futures exchange in Ontario.

The Commission granted the Bourse a temporary exemption from recognition as a stock exchange under section 21 of the Act and a temporary exemption from registration as a commodity futures exchange under section 15 of the CFA on June 25, 2002. The order granting the exemptions will terminate at the earlier of (i) the date that the Bourse is granted an order by the Commission recognizing it as a stock exchange and registering it as a commodity futures exchange or exempting it from the requirement to be recognized as a stock exchange and registered as a commodity futures exchange; and (ii) January 31, 2003.

Bourse de Montréal Inc. also hereby makes application to the Director for exemption pursuant to section 6.1 of OSC Rule 91-502 Trades in Recognized Options ("Rule 91-502") for an exemption from Part 4 of Rule 91-502

A. Corporate Structure and Services in Ontario

The Bourse was incorporated on September 29, 2000 pursuant to the *Companies Act (Québec)*. The Bourse is situated in Montréal, Québec and has an office in Toronto, Ontario. The Bourse is the successor corporation to the Montreal Exchange, which was incorporated by an act of the Legislative Assembly of Québec in 1874. By a blanket order of the Commission dated August 25, 1980 (as amended by a blanket order of the Commission dated August 22, 1989), trades on The Montreal Exchange were

exempted, *inter alia*, from the provisions of section 33 of the CFA.

B. Recognition by the Commission des valeurs mobilières du Québec

The Bourse is recognized as a self-regulatory organization in Québec. The recognition criteria and regulatory oversight provided by the Commission des valeurs mobilières du Québec (CVMQ) in connection with the Bourse's recognition as a self-regulatory organization is substantially equivalent to that provided by the Commission in connection with recognized exchanges.

The criteria that govern the Bourse's recognition as a self-regulatory organization in Québec and that warrant the Bourse's exemption from recognition as a stock exchange under the Act and exemption from registration under the CFA are detailed below.

C. Basis for Exemptive Relief

1. Regulatory Oversight

The Bourse is subject to regulatory oversight by the CVMQ.

The Bourse has been advised that the Commission and the CVMQ have entered into a memorandum of understanding ("MOU") respecting the continued oversight of the Bourse by the CVMQ. Under the terms of the MOU, the CVMQ will be responsible for conducting the regulatory oversight of the Bourse and for conducting an oversight program of the Bourse for the purpose of ensuring that the Bourse meets appropriate standards for member and market operation and regulation.

The Bourse provides any proposed changes to its rules, policies and other similar instruments ("Rules") to the CVMQ for review and approval in accordance with the procedures established by the CVMQ, as amended from time to time.

The Bourse concurrently provides the Commission with copies of all Rules, Policies and other similar instruments that it files for review and approval with the CVMQ. The Bourse also provides copies of all final Rules to the Commission. All copies will be in both English and French.

2. Corporate Governance

The Bourse's governance structure provides for:

- a) fair and meaningful representation having regard to the nature and structure of the Bourse;
- b) appropriate representation on the Board of the Bourse and Board Committees of persons independent of the Bourse's shareholders that own or control, directly or indirectly, over 10% of its shares, Approved Participants, Foreign Approved Participants, Restricted Trading Permit Holders and employees ;

c) appropriate qualification, remuneration and conflict of interest provisions and limitation of liability and indemnification protections for directors, officers and employees of the Bourse generally.

3. Access

The Bourse has established written standards for granting access to trading through the trading facilities of the Bourse, which are designed to ensure that the Bourse does not unreasonably prohibit or limit access by a person or company to services offered by it.

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The Bourse keeps records of:

- a) each grant of access including for each Approved Participant, Foreign Approved Participant and Restricted Trading Permit Holder, the reasons for granting such access; and
- b) each denial or limitation of access, including the reasons for denying or limiting access to any applicant.

4. Contract Specification Review

The Bourse provides all new contract specifications and amendments to the contract specifications to the CVMQ for review and approval in accordance with the procedures established by the CVMQ, as amended from time to time.

The Bourse ensures that it will provide the Commission with copies of all contract specifications and amended contract specifications that it files for review and approval with the CVMQ in both English and French. The Bourse will also provide copies of all approved contracts to the Commission.

5. Fees

Any and all fees imposed by the Bourse on its Approved Participants, Foreign Approved Participants and Restricted Trading Permit Holders are presently allocated on an equitable basis. Fees do not have the effect of creating barriers to access and are balanced with the criteria that the Bourse must have sufficient revenues to satisfy its responsibilities. The Bourse believes that the process established for setting fees is fair and appropriate.

6. Public Interest Rules and Policies

The Bourse has established Rules, Policies and other similar instruments that are fair and not contrary to the public interest and are designed, with respect to Approved Participants, Foreign Approved Participants and Restricted Trading Permit Holders to:

- a) ensure compliance with securities and commodity futures legislation;
- b) prevent fraudulent and manipulative acts and practices;
- c) promote just and equitable principles of trade;
- d) ensure a fair and orderly market, including preventing excessive trading; and
- e) foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities and derivatives instruments.

The Bourse does not:

- a) permit unreasonable discrimination between Approved Participants, Foreign Approved Participants and Restricted Trading Permit Holders; or
- b) impose any burden on competition that is not necessary or appropriate in furtherance of applicable securities legislation.

7. Regulatory Division of the Bourse

Bourse de Montréal Inc. has established and must maintain a separate Regulatory Division responsible for market regulation and member regulation. The Regulatory Division is under the control and supervision of a Special Committee, which is appointed by the Board of Directors of the Bourse. The Special Committee is presently composed of seven members, at least four of whom are independent members.

The Bourse must obtain prior approval from the CVMQ for any changes to the Division's administrative and organizational structure or to the Special Committee of the Regulatory Division, which may materially affect regulatory duties and operations. The Division is completely autonomous in accomplishing its functions and in its decision-making process. The Bourse prepares an annual report, including a report on the Division's operations.

The Division is operated on the basis that the Division's duties and operations are independent and structurally separated from the for-profit operations of the Bourse. The Division must perform its duties and operations based on the principle of self-financing and is not-for-profit. The Division is a separate business unit of the Bourse. The Bourse must ensure that the Division has the necessary resources to fulfil its market and member regulation functions. Decisions made by the Special Committee with respect to disciplinary matters or summary procedures are subject to CVMQ revision in accordance with the *Securities Act (Québec)*.

The mandate of market regulation is to endeavour to ensure that the Bourse operates honestly and fairly. The

focus of market regulation is investor protection and the need to have accurate and timely disclosure on which to base investment decisions.

The Bourse has enacted and adopted rules, policies and other similar instruments that are designed to ensure that its Approved Participants, Foreign Approved Participants and Restricted Trading Permit Holders shall be appropriately disciplined for violations of securities legislation and the rules, policies and other similar instruments of the Bourse. The Bourse's Rules, Policies and other similar instruments are available upon request.

The Bourse has means to monitor and actively monitors Approved Participants, Foreign Approved Participants and Restricted Trading Permit Holders and their representatives for compliance with securities legislation and the rules, policies and other similar instruments of the Bourse.

8. Financial Statements

The Bourse prepares annual audited financial statements, in accordance with Canadian GAAP and covered by a report prepared by an independent auditor submits these statements to the CVMQ.

9. System Security, Capacity and Sustainability

For each of its systems that support order entry, order routing, order execution, data feeds, trade reporting and trade comparison, capacity and integrity requirements, the Bourse shall promptly notify the CVMQ of any material systems failures or changes that could impact market operations.

10. Clearing and Settlement

The Bourse ensures that there is an adequate clearing and settlement system in place so that the requirements of contracts traded on the exchange are met. The Bourse ensures that settlement and clearing services are provided by a clearing agency recognized by the CVMQ and has policies and procedures in place to deal with problems related to settling and clearing negotiated contracts.

The Canadian Derivatives Clearing Corporation ("CDCC") is the clearinghouse for all trades in options, exchange traded interest rate and equity derivative contracts on the Bourse. CDCC is a wholly owned subsidiary of the Bourse. CDCC is recognized by the CVMQ as a self-regulatory organization and is therefore subject to all the requirements applicable to a self-regulatory organization.

Bourse de Montréal Inc. respectfully submits this application for exemption from recognition as a stock exchange under section 21 of the Securities Act, for exemption from registration as a commodity futures exchange under section 15 of the Commodity Futures Act and for certain ancillary exemptions.

November 28, 2002

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