

13.1.8 Bourse de Montréal Inc. - Draft Exemption Order

DRAFT EXEMPTION ORDER

**IN THE MATTER OF
THE SECURITIES ACT, R.S.O. 1990, CHAPTER S.5,
AS AMENDED (the "Act")**

AND

**IN THE MATTER OF
THE COMMODITY FUTURES ACT, R.S.O. 1990,
CHAPTER C20,
AS AMENDED (the "CFA")**

AND

**IN THE MATTER OF
BOURSE DE MONTRÉAL INC.**

ORDER

**(Section 147 of the Act, section 80 of the CFA and
section 6.1 of OSC Rule 91-502)**

WHEREAS Bourse de Montréal Inc. ("the Bourse") has applied to the Ontario Securities Commission (the "Commission") for:

- (a) an order pursuant to section 147 of the Act exempting the Bourse from the recognition requirement in section 21 of the Act; and
- (b) an order pursuant to section 80 of the CFA exempting the Bourse from the registration requirement in section 15 of the CFA;

AND WHEREAS the Bourse has applied to the Director for an order 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;

AND WHEREAS deemed rule *In the Matter of Trading in Commodity Futures Contracts Entered Into On The Montreal Stock Exchange* issued August 25, 1980, and deemed rule *In the Matter of Trading In Commodity Futures Contracts and Commodity Futures Options Entered Into On The Montreal Exchange* issued August 22, 1989, exempt trades by and with registered dealers trading commodity futures contracts and commodity futures options entered into on the Bourse from section 33 of the CFA;

AND WHEREAS the Bourse has represented to the Commission and the Director as follows:

Corporate Structure, Recognition and Services in Ontario

1. The Bourse was incorporated on September 29, 2000 pursuant to the *Companies Act* (Québec).

2. On November 24, 2000, the Bourse was granted recognition as a self-regulatory organization to carry on business in Québec pursuant to section 169 of the *Securities Act*, R.S.Q., c. V-1.1, under Ruling No. 2000-C-0729 (the "Recognition Order, attached as Schedule "A") issued by the Commission des valeurs mobilières du Québec (the "CVMQ").
3. The Bourse is situated in Montréal, Québec and has an office in Toronto, Ontario.
4. The Canadian Derivatives Clearing Corporation ("CDCC") is a wholly-owned subsidiary of the Bourse and is recognized by the CVMQ as a self-regulatory organization.

Regulatory Oversight

5. The Bourse is subject to regulatory oversight by the CVMQ.
6. The Bourse has been advised that the Commission and 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 market operation and member and market regulation.
7. 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.
8. The Bourse concurrently provides the Commission with copies of all Rules that it files for review and approval with the CVMQ. The Bourse also provides copies of all final Rules to the Commission. All copies are in both English and French.

Corporate Governance

9. 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 Bourse's Board and its 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; and
- (d) appropriate conflict of interest provisions between
 - (i) the Bourse and CDCC;
 - (ii) the directors, officers and employees of CDCC and the directors, officers and employees of the Bourse; and
 - (iii) the Bourse and the Regulatory Division.

Access

- 10. The Bourse has established written standards for granting access to trading through the trading facilities of the Bourse.
- 11. The Bourse has established written standards that are designed to ensure that the Bourse does not unreasonably prohibit or limit access by a person or company to services offered by it.
- 12. 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.

Contract Specification Review

- 13. The Bourse provides all new contract specifications and amendments to their contract specifications to the CVMQ for review and approval in accordance with the procedures established by the CVMQ, as amended from time to time.
- 14. The Bourse concurrently provides 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 also provides copies of all approved contracts to the Commission.

Fees

- 15. Any and all fees imposed by the Bourse on its Approved Participants, Foreign Approved

Participants and Restricted Trading Permit Holders are allocated on an equitable basis. Fees do not have the effect of creating barriers to access and are balanced with the criterion that the Bourse must have sufficient revenues to satisfy its responsibilities.

- 16. The process established by the Bourse for setting fees is fair and appropriate.

Public Interest Rules and Policies

- 17. The Bourse has established Rules that:
 - (a) are not contrary to the public interest;
 - (b) are fair; and
 - (c) are designed, with respect to Approved Participants, Foreign Approved Participants and Restricted Trading Permit Holders and their representatives, to:
 - (i) ensure compliance with applicable securities legislation;
 - (ii) prevent fraudulent and manipulative acts and practices;
 - (iii) promote just and equitable principles of trade;
 - (iv) ensure a fair and orderly market, including preventing excessive trading; and
 - (v) foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, options, commodity futures contracts and commodity futures options.

- 18. 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.

Regulation by the Bourse

- 19. The Bourse is responsible for conducting member and market regulation of its Approved

- Participants, Foreign Approved Participants and Restricted Trading Permit Holders.
20. The Bourse maintains a separate regulatory division called the Regulatory Division that has clearly defined market regulation responsibilities, responsibilities relating to the member regulation of Approved Participants, Foreign Approved Participants and Restricted Trading Permit Holders and a separate administrative structure. The Regulatory Division is governed by a special committee of the Board.
21. The Bourse has enacted and adopted Rules that are designed to ensure that its Approved Participants, Foreign Approved Participants and Restricted Trading Permit Holders and their representatives shall be appropriately supervised and disciplined for violations of securities legislation and the Rules of the Bourse.
22. The Bourse has the means to adequately 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 of the Bourse.
23. The Bourse has the means to adequately monitor and actively monitors trading in its markets, including cross market conduct, for possible abuses.

Financial Statements

24. The Bourse prepares annual audited financial statements, in accordance with Canadian GAAP and covered by a report prepared by an independent auditor.
25. The Bourse provides the CVMQ with copies of the financial statements referred to in clause 24.

System Security, Capacity and Sustainability

26. The Bourse will promptly notify the CVMQ of any material systems failures or changes that could impact market operations, including trading and clearing operations.

Clearing and Settlement

27. The Bourse ensures that a clearing agency or clearinghouse (“clearing agency”) has adequate clearing and settlement system in place so that the requirements of contracts traded on the exchange are met. The clearing agency has policies and procedures to deal with problems relating to clearing and settling contracts.
28. CDCC is the clearing agency for all trades in options, commodity futures contracts and commodity futures options traded on the Bourse.

29. CDCC provides any proposed changes to its Rules to the CVMQ for review and approval in accordance with the procedures established by the CVMQ, as amended from time to time.
30. CDCC concurrently provides the Commission with copies of all Rules that it files for review and approval with the CVMQ. The CDCC also provides copies of all final Rules to the Commission. All copies are provided in English and French.

Additional Information

31. The Bourse will provide to the CVMQ and the Commission any information required under National Instrument 21-101 *Marketplace Operation*.

AND UPON the Commission being satisfied that the granting of an exemption from recognition and registration to the Bourse would not be contrary to the public interest;

AND UPON the Director being satisfied that an exemption from Part 4 of Rule 91-502 would not be contrary to the public interest;

IT IS HEREBY ORDERED by the Commission that pursuant to section 147 of the Act, the Bourse is exempt from recognition as a stock exchange under section 21 of the Act, and pursuant to section 80 of the CFA, the Bourse is exempt from registration as a commodity futures exchange under section 15 of the CFA;

AND IT IS HEREBY ORDERED by the Director that pursuant to section 6.1 of Rule 91-502, the Bourse is exempt from Part 4 of Rule 91-502;

PROVIDED THAT:

- (a) The Bourse continues to be recognized as a self-regulatory organization by the CVMQ or its successor securities regulatory authority;
- (b) The Bourse continues to be subject to such joint regulatory oversight as may be established and prescribed by the CVMQ and the Commission from time to time;
- (c) The MOU referred to in clause 6 above has not been terminated;
- (d) The Bourse provides any proposed changes to its Rules to the CVMQ for review and approval in accordance with the procedures established by the CVMQ. These procedures require the Bourse to file a concise statement of the nature, purposes and effects of the Rule, including the possible effects of the Rule on market structure, Approved

- Participants, Foreign Approved Participants, Restricted Trading Permit Holders, competition and costs of compliance, a description of the context in which the Rule was developed, the process followed, the issues considered, the alternative approaches considered and rejected (including reasons), a review of the implementation plan and, if the Rule requires technology systems changes, a description of the implications of the Rule on systems and an implementation plan, where possible. The procedures also require publication of proposed public interest Rules for comment in English and in French.
- (e) The Bourse concurrently provides the Commission with copies of all Rules that it files for review and approval with the CVMQ in both English and French. The Bourse also provides copies of all final Rules to the Commission within two weeks of approval by the CVMQ. The Bourse posts the final Rules, in English and French, on its website or makes them publicly available, as soon as practicable, and in any event, at least two weeks prior to the implementation of the Rule or Rule amendment.
- (f) The Bourse provides all new contract specifications and amended contract specifications to the CVMQ for review and approval in accordance with the procedures established by the CVMQ, as amended from time to time. These procedures require the Bourse to file the Rules setting forth the contract specifications and to provide a description of the underlying market upon which the contract is based and
- (i) for cash settled contracts, confirmation that the settlement of the contract is at a price reflecting the underlying market, will not be subject to manipulation or distortion and the settlement price is based on a price that is determined with reference to a price discovery process that is fair, transparent, efficient and publicly available;
- (ii) for physical delivery contracts, confirmation that the specifications will result in a deliverable supply such that the contract will not be open to manipulation or distortion and the settlement of the contract is based on a price that is
- determined in reference to a price discovery process that is fair, transparent, efficient and publicly available.
- (g) The Bourse concurrently provides 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 also provides copies of all approved contracts to the Commission within two weeks of approval by the CVMQ. The Bourse posts the approved contracts, in English and French, on its website, as soon as practicable, and in any event, at least two weeks prior to the launching of a new product or two weeks before the effective date of the contract specifications.
- (h) Upon request by the Commission to the CVMQ, the Bourse provides to the Commission through the CVMQ any information in the possession of the Bourse, or over which the Bourse has control, relating to Approved Participants, Foreign Approved Participants and Restricted Trading Permit Holders and their representatives and the market operations of the Bourse, including, but not limited to, Approved Participant, Foreign Approved Participant and Restricted Trading Permit Holder lists, shareholder lists, products, trading information and disciplinary decisions.
- (i) The Bourse will, until such time as CDCC is recognized by the Commission as a recognized clearing agency under the Act and recognized clearing house under the CFA or is subject to joint regulatory oversight pursuant to the terms of a memorandum of understanding entered into between the CVMQ and the Commission,
- (i) cause CDCC to continue to provide the Commission, concurrently with the CVMQ, with copies of all Rules that CDCC files for review with the CVMQ, including copies of all final CDCC Rules filed with the CVMQ and all copies shall be provided in English and in French;
- (ii) cause CDCC to continue to provide the Commission, concurrently with the CVMQ, with copies of all audited financial statements and reports

- prepared by an independent auditor in respect of CDCC's financial situation and operations;
- (iii) cause CDCC to provide the Commission, concurrently with the CVMQ, with copies of all internal CDCC risk management reports intended for its members and any outside report, including any audit report prepared in accordance with section 5900 of the Canadian Institute of Chartered Accountants Handbook, on the results of an examination or review of CDCC's risk management policies, controls and standards undertaken by an independent person;
 - (iv) cause CDCC to promptly notify the Commission, together with the CVMQ, of any material failures or changes to its systems;
 - (v) cause CDCC to promptly notify the Commission, together with the CVMQ, of any material problems with the clearance and settlement of transactions in contracts traded on the Bourse, including any failure by a member of CDCC to promptly fulfil its settlement obligations that could materially affect the operations and financial situation of CDCC; and
 - (vi) promote within CDCC a corporate governance structure that minimizes the potential for any conflict of interest between the Bourse and CDCC that could adversely affect the clearance and settlement of trades in contracts or the effectiveness of CDCC's risk management policies, controls and standards.
- (j) Within six months of the date of the recognition order issued by the CVMQ, the Board of Directors of the Bourse will be made up of at least 50% independent directors. Independent directors are those that are independent of the Bourse's Approved Participants, Foreign Approved Participants, Restricted Trading Permit Holders, officers, employees and shareholders that own or control, directly or indirectly, over 10% of the Bourse.
- (k) The Bourse will, within one year of this order,
 - (i) develop, implement and maintain appropriate rules, policies or other similar instruments and systems designed to monitor insider trading activities;
 - (ii) use best efforts to enter into an agreement, and will implement procedures to co-ordinate surveillance, between the Bourse, any marketplace on which any security underlying the Bourse's product or a related security is traded, or the marketplace's regulation services provider to detect violations of insider trading prohibitions and rules against manipulative or abusive practices;
 - (iii) implement procedures to co-ordinate trading halts, in addition to circuit breakers, between the Bourse and any marketplace on which any security underlying the Bourse's product is traded, or its regulation services provider, and any other marketplace on which any related security is traded, or its regulation services provider; and
 - (iv) introduce written policies and procedures that monitor and address conflicts of interest between the Bourse and CDCC and the Bourse and the Regulatory Division.
- IT IS HEREBY FURTHER ORDERED** that the Bourse is deemed to be in compliance with clauses (d) to (g) and (i) unless the Bourse has been provided with written notice of non-compliance and failed to provide the documents or information within 10 business days of receipt of such written notice.
- DATED this of , 2002

SCHEDULE "A"

CVMQ RECOGNITION ORDER OF THE BOURSE DE
MONTRÉAL

RULING No. 2000-C-0729

RE: RECOGNITION OF THE BOURSE DE
MONTRÉAL INC. AS A SELF-REGULATORY
ORGANIZATION

WHEREAS a stock exchange must be recognized as a self-regulatory organization in order to carry on business in Québec pursuant to Section 169 of the *Securities Act* (R.S.Q., c.V-1.1) ("Act");

AND WHEREAS the Bourse de Montréal Inc., within the context of its demutualization project, has filed with the *Commission des valeurs mobilières du Québec* an application for recognition of the Bourse de Montréal Inc. as a self-regulatory organization;

AND WHEREAS the *Commission des valeurs mobilières du Québec*, has verified that the constituting documents, by-laws and operating rules of the Bourse de Montréal Inc. are in compliance with Sections 175 and 176 of the *Act*;

AND WHEREAS the *Commission des valeurs mobilières du Québec* considers that the financial resources and administrative structure of the Bourse de Montréal Inc. are adequate to its objects;

AND WHEREAS the Bourse de Montréal Inc. created a division responsible for market regulation ("Division") whose primary mission is to supervise the regulatory duties and operations of the Bourse de Montréal Inc.;

AND WHEREAS the *Commission des valeurs mobilières du Québec* sees fit to grant recognition to the Bourse de Montréal Inc., provided the terms and conditions are respected;

IN CONSEQUENCE THEREOF, the *Commission des valeurs mobilières du Québec*, pursuant to Section 174 of the *Act*, grants the Bourse de Montréal Inc. recognition as a self-regulatory organization to carry on business in Québec.

This recognition is granted based on the following terms and conditions:

For the purpose of this ruling, the terms "approved participant" and "shareholder" correspond to the term "member" within the meaning of the *Act*, with any necessary modifications.

I. SHARE OWNERSHIP

a) No person or persons associated with said person, shall be allowed to hold, own or exercise control, either directly or indirectly, over more than 10% of any class or series of voting shares of the Bourse de Montréal Inc.

b) The Bourse de Montréal Inc. shall inform the *Commission des valeurs mobilières du Québec* ("Commission") immediately in writing, if it becomes aware that any person or persons associated with said person, holds, owns or exercises control, either directly or indirectly, over more than 10% of any class or series of voting shares of the Bourse de Montréal Inc. and shall take the necessary steps to immediately remedy the situation, in compliance with Appendix 1 of the deed of incorporation.

c) The Bourse de Montréal Inc. shall submit to the Commission a list of its shareholders on a semi-annual basis, within 30 days of June 30 and December 31 of every year.

d) The Bourse de Montréal Inc. shall immediately inform the Commission in writing of any shareholder agreements that it is aware of.

II. CORPORATE STRUCTURE

a) Arrangements made by the Bourse de Montréal Inc. with respect to the appointment, removal from office, and functions of the persons ultimately responsible for making and enforcing the rules of the Bourse de Montréal Inc., namely the Board of Directors, its committees and the Special Committee -Regulatory Division (hereinafter called the "Governing Body"), shall ensure a proper balance between the interests of the different entities desiring access to the facilities of the Bourse de Montréal Inc. (hereinafter called "Approved Participants") and, in order to ensure diversity of representation on the Board, a reasonable number and proportion of directors shall not be associated with an Approved Participant within the meaning of the Bourse de Montréal Inc.'s by-laws. In particular, the Bourse de Montréal Inc. shall ensure that at least 50% of its directors shall consist of individuals who are not associated with Approved Participants within the meaning of the Bourse de Montréal Inc.'s by-laws and that a maximum of two of its directors shall be part of senior management at the Bourse de Montréal Inc.

b) Arrangements made by the Bourse de Montréal Inc. with respect to quorum at directors' meetings shall ensure that the number and make-up of directors necessary to constitute quorum and a proper balance between the interests of the different entities on the Board. In particular, the Bourse de Montréal Inc. shall ensure that quorum at directors' meetings is at least equal to the majority of directors.

c) Without limiting the generality of the foregoing, the Bourse de Montréal Inc.'s administrative structure shall provide for:

- i) fair and meaningful representation on its governing body, given the nature and structure of the Bourse de Montréal Inc., and any governance committee thereto or similar body, and in the approval of its rules;
- ii) appropriate representation of persons who are not associated with Approved Participants on the Bourse de Montréal Inc.'s committees, to which powers are delegated by the Board within the meaning of the Bourse de Montréal Inc.'s by-laws, with a minimum of 50%. A transitional period of one year has been granted to the Bourse de Montréal Inc. to ensure the application of this requirement by existing committees on the date of this ruling.

III. ACCESS

- a) The Bourse de Montréal Inc. shall permit all dealers that satisfy the applicable regulatory requirements to access the trading facilities of the Bourse de Montréal Inc.
- b) Without limiting the generality of the foregoing, the Bourse de Montréal Inc. shall:
 - i) establish written standards for granting access to trading on the Bourse de Montréal Inc.'s facilities;
 - ii) not unreasonably prohibit or limit access by a person or company to services offered by it; and
 - iii) keep records of:
 - all granted access requests, specifying the entities to which access was granted in addition to the reasons for granting such access; and
 - all denial or limitation of access, specifying the reasons for denying or limiting access to any applicant.

IV. FEES

- a) Any and all fees imposed by the Bourse de Montréal Inc. on its Approved Participants and Restricted Trading Permit Holders shall be equitably allocated. Fees shall not have the effect of creating barriers to access; however, they must take into consideration that the Bourse de Montréal Inc. must have sufficient revenues to perform its duties and regulatory and stock market operations.

- b) The Bourse de Montréal Inc.'s process for setting fees shall be fair and appropriate.
- c) A list of fees required by the Bourse de Montréal Inc. shall be submitted to the Commission on an annual basis.

V. REGULATORY DIVISION

- a) The Bourse de Montréal Inc. shall maintain a separate regulatory division, which shall fall under a special committee named by the Board with clearly defined market regulation responsibilities as well as Approved Participant and Restricted Trading Permit Holder responsibilities and a separate administrative structure.
- b) The Bourse de Montréal Inc. shall obtain prior approval from the Commission for any changes to the Division's administrative and organizational structure or to the Special Committee – Regulatory Division, which may materially affect regulatory duties and operations.
- c) The Division shall be completely autonomous in accomplishing its functions and in its decision-making process. The independence of the Division and its personnel shall be ensured and strict partition measures shall be established in order to prevent conflicts of interest with the Bourse de Montréal Inc.'s other activities.
- d) The Bourse de Montréal Inc. shall provide the Commission with an annual report, including a report on this Division's operations prepared by the latter. This report shall include information that may be requested from time to time and shall take into consideration the observance of terms and conditions related to the Division and shall be in such form as may be specified by the Commission.
- e) The Division shall promptly report to the Commission when there is reason to believe that there has been any misconduct or fraud by Approved Participants or their representatives, by Restricted Trading Permit Holders or other persons where investors, Approved Participants or their clients, Restricted Trading Permit Holders or the Canadian Investor Protection Fund or the Bourse de Montréal Inc. may reasonably be expected to suffer serious damage as a consequence thereof, including where the solvency of an Approved Participant or a Restricted Trading Permit Holder is at risk or there may exist material deficiencies in their supervisory or internal controls.
- f) The Commission shall be notified on a monthly basis of: (i) all new investigations initiated by the Division, including the persons involved and the nature of the investigation; and (ii) all investigations which do not lead to disciplinary

proceedings and which are closed, including the date the investigation started, the conduct and persons involved and the disposition of the investigation.

- g) A conflict of interest policy shall be established by the Bourse de Montréal Inc. to allow the personnel and members of the Special Committee – Regulatory Division to declare their interests and to foresee the possibility that a person may withdraw from a file and/or a ruling.
- h) The Division shall obtain prior approval from the Commission before providing any regulatory duties or operations to other exchanges, self-regulatory organizations, persons operating Alternative Trading Systems or other persons.
- i) The Division shall obtain prior approval from the Commission before subcontracting a portion of its regulatory duties or operations to other self-regulatory organizations.
- j) Subject to any changes that may be agreed upon between the Bourse de Montréal Inc. and the Commission, the Division shall be operated on the following basis:
 - i) The Division's duties and operations shall be independent and structurally separated from the for-profit operations of the Bourse de Montréal Inc. The Division must perform its duties and operations based on the principle of self-financing and shall be not-for-profit.
 - ii) The Division shall be a separate business unit of the Bourse de Montréal Inc., which shall be governed by the Board of Directors of the Bourse de Montréal Inc. The Board shall establish a Special Committee – Regulatory Division (hereinafter called the "Special Committee") to oversee the duties and operations of the Division, which shall be made up of seven persons of which at least four shall not be associated with an Approved Participant within the meaning of the Bourse de Montréal Inc.'s "Rules Regarding the Special Committee – Regulatory Division." The quorum at meetings shall be five members of the Special Committee of which the majority shall be Independent Members within the meaning of the Bourse de Montréal Inc.'s "Rules Regarding the Special Committee – Regulatory Division."
 - iii) The chief operating officer of the Division (the "Vice-President – Regulatory Division") shall report any regulatory or disciplinary issues to the Bourse de Montréal Inc.'s Special Committee. The

Vice-President – Regulatory Division, or the person designated by the Vice-President – Regulatory Division, shall be present at all meetings of the Special Committee relating to the duties and operations of the Division, unless otherwise indicated by the Special Committee, and shall provide information upon request to the Special Committee with respect to the duties and operations of the Division. The Special Committee and the Vice-President – Regulatory Division shall both be responsible for ensuring that the duties and operations of the Division are conducted appropriately.

- iv) The Division's financial structure shall be separate and it shall operate on a cost-recovery basis. Any surplus shall be redistributed to Approved Participants, and any shortfall shall be made up by a special assessment by the Approved Participants or by the Bourse de Montréal Inc. upon recommendation to the Board by the Special Committee.
- v) The Division shall have a separate budget, which shall be subject to the approval of the Board upon recommendation by the Special Committee and shall be administered by the Vice-President – Regulatory Division. The Division shall be allocated the necessary support from other departments of the Bourse de Montréal Inc., including in the technology area, in accordance with its budgets and reasonable requirements, while ensuring its independence.
- vi) The Bourse de Montréal Inc. shall ensure that the Division has the necessary resources to fulfil its market and Approved Participant and Restricted Trading Permit Holder regulation functions and submit to the Commission, on an annual basis, the Division's budget as well as the report justifying the setting of annual fees charged to Approved Participants and Restricted Trading Permit Holders.
- vii) The Bourse de Montréal Inc. shall adopt and use all reasonable efforts to comply with policies and procedures designed to ensure that confidential information concerning the Division's duties and operations is maintained in confidence and not shared inappropriately with the for-profit operations of the Bourse de Montréal Inc. or other persons.

- viii) The Vice-President – Regulatory Division, the President, the Special Committee and the Board shall provide information with respect to the duties and operations of the Division to the Commission upon request.
- ix) The Bourse de Montréal Inc. shall inform the Commission, on a semi-annual basis, of its staff complement, by function, specifying authorized, filled and vacant positions and any material changes or reductions in Division personnel, by function.
- x) Management of the Bourse de Montréal Inc., including the Division Vice-President, shall at least annually self-assess the performance by the Division of its market and Approved Participant and Restricted Trading Permit Holder regulation functions and report thereon to the Special Committee, together with any recommendations for improvements. The Special Committee shall in turn report to the Board as to the performance by the Division of its market and Approved Participant and Restricted Trading Permit Holder regulation functions. The Bourse de Montréal Inc. shall provide the Commission with copies of such reports and shall advise the Commission of any proposed measures arising therefrom.
- xi) Decisions made by the Special Committee with respect to disciplinary matters or summary procedures are revisable in accordance with the *Act*.

VI. FINANCIAL VIABILITY AND FINANCIAL REPORTS

- a) The Bourse de Montréal Inc. shall maintain sufficient financial resources for the proper performance of its functions.
 - b) The Bourse de Montréal Inc. shall be in default and shall report without delay to the Commission when, calculated based on its non-consolidated financial statements:
 - i) its working capital ratio is less than or equal to 1.5:1 (current liquid assets i.e. cash, short-term investments, accounts receivable and long-term investments cashable at any time / current liabilities excluding deferred contributions);
 - ii) its cash flow / total debt outstanding is less than or equal to 20% (adjusted net earnings of items that do not affect liquidities i.e. amortization, deferred taxes and any other expenses that do not
- iii) its solvency ratio is less than or equal to 1.3:1 (total assets / total liabilities excluding deferred contributions);
 - iv) its financial leverage ratio is greater than or equal to 4.0 (total assets / capital).
 - c) Should the Bourse de Montréal Inc. fail to respect any of the above-mentioned financial ratios for a period of more than three months, the Bourse de Montréal Inc. shall promptly inform the Commission in writing of the reasons for the continued ratio deficiencies and the steps being taken to rectify the problem and reestablish its financial equilibrium. Furthermore, from the moment the Bourse de Montréal Inc. fails to respect the financial ratios for a period exceeding 3 months and until the ratio deficiencies have been eliminated for at least six months, the Bourse de Montréal Inc. shall not, without the prior approval of the Commission, make any capital expenditures not already reflected in the financial statements or make any loans, bonuses, dividends or other distributions of assets to any director, officer, related company or shareholder.
 - d) The Bourse de Montréal Inc. shall provide a report, attached with the quarterly financial statements, which shall include the monthly calculation of each ratio for the three months covered by the quarterly financial statements.
 - e) The Bourse de Montréal Inc. shall submit its annual consolidated and non-consolidated audited financial statements as well as those of each of its subsidiaries within 90 days following the end of the fiscal year.
 - f) The Bourse de Montréal Inc.'s quarterly consolidated and non-consolidated financial statements, as well as those of each of its subsidiaries, shall be submitted within 60 days following the end of each quarter.
 - g) Quarterly and annual audited financial statements shall include sectional information for the Division and any other financial information that shall be required by the Commission.

VII. SYSTEMS

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 de Montréal Inc. shall promptly notify the Commission in writing of any material systems failures or changes that could impact market operations.

VIII. CLEARING AND SETTLEMENT

The Bourse de Montréal Inc. shall ensure 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 de Montréal Inc. shall ensure that settlement and clearing services are provided by a clearing agency recognized by the Commission and shall have policies and procedures in place to deal with problems related to settling and clearing negotiated contracts.

IX. DELEGATION OF POWERS

The delegations of powers pronounced by the Commission in accordance with the Act, which currently apply to the Bourse de Montréal Inc. pursuant to the ruling on the temporary exemption of recognition of the Bourse de Montréal Inc. as a self-regulatory organization, which was handed down on September 28, 2000, shall continue to apply with the necessary modifications until a new ruling to this effect is handed down by the Commission. The new ruling related to the delegation of powers shall be handed down within six months of this ruling.

X. PURPOSE OF RULES

The Bourse de Montréal Inc. shall, subject to the terms and conditions of this Recognition Ruling and the jurisdiction and oversight of the Commission in accordance with Québec securities laws, through the Division or otherwise, establish such rules, regulations, policies, procedures, practices or other similar instruments as are necessary or appropriate to govern and regulate all aspects of its business and internal affairs and shall in so doing specifically govern and regulate so as to:

- i) seek to ensure compliance with securities legislation;
- ii) seek to prevent fraudulent and manipulative acts and practices;
- iii) seek to promote just and equitable principles of trade;
- iv) seek to foster cooperation and coordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

XI. DISCIPLINE OF APPROVED PARTICIPANTS AND RESTRICTED TRADING PERMIT HOLDERS AND THEIR REPRESENTATIVES

The Bourse de Montréal Inc., through the Division, shall appropriately discipline its Approved Participants and Restricted Trading Permit Holders and their representatives for violations of securities legislation and by-laws, rules, regulations, policies, procedures, practices and other similar instruments of the Bourse de Montréal Inc.

XII. DUE PROCESS

The Bourse de Montréal Inc., including the Division, shall ensure that the requirements of the Bourse de Montréal Inc. relating to access to the facilities of the Bourse de Montréal Inc., the imposition of limitations or conditions on access and denial of access are fair and reasonable, including in respect of notices, an opportunity to be heard or make representations, the keeping of records, the giving of reasons and the provisions for appeals.

XIII. INFORMATION SHARING

The Bourse de Montréal Inc., including the Division, shall cooperate by the sharing of information and otherwise, with the Commission and its personnel, with the Canadian Investor Protection Fund and other Canadian exchanges, recognized self-regulatory organizations and regulatory authorities responsible for the supervision or regulation of securities, subject to the applicable laws concerning the sharing of information and the protection of personal information.

XIV. ADDITIONAL INFORMATION

Following implementation of the Alternative Trading System proposal, the Bourse de Montréal Inc. shall file any information required thereunder.

XV. MISCELLANEOUS

The terms and conditions of this document shall be reviewed by the Commission within 24 months from the date of this ruling to ensure that they are still adapted accordingly.

Montréal, November 24, 2000.