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<input checked="" type="checkbox"/>	Trading – Equity and Index Derivatives	<input checked="" type="checkbox"/>	Technology
<input checked="" type="checkbox"/>	Back-office – Futures	<input checked="" type="checkbox"/>	Regulation

**CIRCULAR**  
January 16, 2012

## REQUEST FOR COMMENTS

### OBLIGATIONS PERTAINING TO SUPERVISION AMENDMENTS TO ARTICLE 4002

The Special Committee – Regulatory Division of Bourse de Montréal Inc. (the Bourse) has approved amendments to article 4002 of the Rules of the Bourse, which deal with notices of non-compliance submitted to the Bourse. The purpose of this updating is to introduce new obligations applicable to approved participants when an actual or potential breach of the Rules, Policies or trading Procedures of the Bourse is noticed or suspected.

Comments on the proposed amendments to article 4002 of the Rules of the Bourse must be submitted within 30 days following the date of publication of the present notice, at the latest on February 20, 2012. Please submit your comments to:

*Mr. François Gilbert*  
*Vice-President, Legal Affairs, Derivatives*  
*Bourse de Montréal Inc.*  
*Tour de la Bourse*  
*P.O. Box 61, 800 Victoria Square*  
*Montréal, Quebec H4Z 1A9*  
*E-mail: [legal@m-x.ca](mailto:legal@m-x.ca)*

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

*Ms. Anne-Marie Beaudoin*  
*Corporate Secretary*  
*Autorité des marchés financiers*  
*800 Victoria Square, 22<sup>nd</sup> Floor*  
*P.O. Box 246, Tour de la Bourse*  
*Montréal (Quebec) H4Z 1G3*  
*E-mail: [consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)*

Circular no.: 004-2012

## **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 by the Bourse, in accordance with the self certification process as established in the Derivatives Act (2008, c.24).

### **Process for Changes to the Rules**

Bourse de Montréal Inc. is authorized to carry on business as an exchange and is recognized as a self-regulatory organization (SRO) by the Autorité des marchés financiers (the Autorité). The Board of Directors of the Bourse has delegated to the Rules and Policies Committee of the Bourse its powers to approve and amend its Rules. The Rules of the Bourse are submitted to the Autorité in accordance to the self-certification process as established in the Derivatives Act (2008, c.24).

In its SRO capacity, the Bourse assumes market regulation and supervision responsibilities of 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.

The Division is under the authority of a Special Committee appointed by the Board of Directors of the Bourse. The Special Committee is empowered to recommend to the Board of Directors the approval or amendment of some aspects of the Rules of the Bourse governing approved participants. The Board of Directors has delegated to the Rules and Policies Committee of the Bourse its powers to approve or amend these Rules upon recommendation from the Special Committee.



## OBLIGATIONS PERTAINING TO SUPERVISION

### AMENDMENTS TO ARTICLE 4002 — NOTICE OF NON-COMPLIANCE

#### I SUMMARY

On August 10, 2011, Bourse de Montréal Inc. (the Bourse) published a circular informing its approved participants that it was implementing a new gatekeeper report<sup>1</sup>. Pursuant to that circular, this new gatekeeper report became the appropriate means to communicate to the Bourse the notices of non-compliance provided for in article 4002 of its Rules.

The Bourse expects that approved participants diligently initiate necessary verifications and investigations when a violation of the Rules, Policies or trading Procedures of the Bourse is suspected, especially for certain types of violations. The Bourse therefore proposes certain amendments to article 4002 of Rule Four – Investigations, Discipline and Appeals.

#### II ANALYSIS

##### A) The Context

Current paragraph a) of article 4002 of the Rules of the Bourse stipulates in a general manner that an approved participant, an approved person or a restricted trading permit holder must immediately advise the Regulatory Division of the Bourse of their own failure or of the failure of another approved participant, employee, approved person

<sup>1</sup> See circular No. 131-2011 issued by the Bourse on August 10, 2011 – *Launch of Gatekeeper Report* ([http://www.m-x.ca/f\\_circulaires\\_en/131-11\\_en.pdf](http://www.m-x.ca/f_circulaires_en/131-11_en.pdf)).

or client to comply with the regulations of the Bourse.

In addition to maintaining the obligation to inform the Regulatory Division when such violations are discovered, the Bourse wishes to specify certain specific situations for which internal verification and investigation procedures are required from approved participants when they suspect that an employee, an approved person, a restricted trading permit holder or a client has not complied with the Rules, Policies or trading Procedures of the Bourse.

The regulatory amendments proposed by the Bourse were inspired by the Rules and Policies of the Investment Industry Regulatory Organization of Canada (IIROC) pertaining to the obligation to protect the interests of clients<sup>2</sup>.

##### B) Proposed Amendments

It is first proposed to separate article 4002 into five distinct paragraphs, the first one reiterating the general obligation to inform the Bourse in writing of any non-compliance to matters currently described in the article. However, given the amendments proposed below pertaining to the deadlines for the completion of internal verification or investigation as well as to the obligation to communicate the results thereof to the Regulatory Division, the Bourse proposes to replace the term “immediately” by the words “within ten (10) business days” in order to standardize the process.

By adding a new paragraph 2 to article 4002, the Bourse wishes to establish the obligation for any approved participant to proceed diligently with necessary verifications and investigations when such approved participant suspects a violation of the regulations of the Bourse in certain matters.

<sup>2</sup> Rule 10.16 and Policy 10.16 of the Investment Industry Regulatory Organization of Canada (IIROC) Market Integrity Rules (UMIR) - *Gatekeeper Obligations of Directors, Officers and Employees of Participants and Access Persons* ([http://www.iiroc.ca/English/Documents/Rulebook/UMIR1016\\_en.pdf](http://www.iiroc.ca/English/Documents/Rulebook/UMIR1016_en.pdf))

In addition to providing a non-exhaustive list of examples of types of violations to the Rules, Policies or trading Procedures of the Bourse to which the obligation to conduct the necessary verifications and investigations applies, this paragraph would also specify that such verifications and investigations must be conducted and completed diligently.

The Bourse also proposes to add a third paragraph to article 4002 in order to specify that any verification or investigation undertaken by an approved participant pursuant to this article must be recorded in writing and be adequately documented. This paragraph would also provide that these records must be kept for a minimum of seven years. This retention period corresponds to the one currently prescribed elsewhere in the Rules of the Bourse and by Canadian regulators pertaining to trading data and other information.

Furthermore the new paragraph 4 of article 4002 that is proposed would specify that an approved participant shall forward the required information to the Regulatory Division of the Bourse on the form prescribed for that purpose when such approved participant, after having completed its verification and investigation process, concludes that there is an actual or potential violation of the Rules, Policies or trading Procedures of the Bourse in connection with either one of the prohibitions and obligations enumerated in paragraph 2. Pursuant to the proposed regulatory text, this information would have to be forwarded to the Regulatory Division of the Bourse not later than 10 business days after the date on which the approved participant reached such a conclusion. The prescribed form to which this paragraph refers is the one that was put in place on August 10, 2011<sup>3</sup>.

Finally, the Bourse proposes to add a fifth paragraph to article 4002, which would formally establish the principle that complying with the obligations provided in this article would not in

any way prevent the Bourse from undertaking disciplinary measures against an approved participant, an approved person or a restricted trading permit holder.

### **C) Public interest**

Since the regulatory amendments proposed in this analysis aim to specify the nature and extent of the obligations applicable to all approved participants when they suspect a breach to the Rules, Policies or trading Procedures of the Bourse, the Bourse considers that these amendments are of public interest.

### **D) Impact of the Proposed Amendments on Systems**

The Bourse considers that the regulatory amendments proposed in this analysis will not impact the systems of approved participants, approved persons, their clients or the public.

### **E) Interest of Financial Markets**

For the reasons mentioned above, the Bourse considers that the regulatory amendments proposed in this analysis will not negatively affect the interests of financial markets.

### **F) Other Alternatives Considered**

No other alternative was considered by the Bourse.

## **III COMMENTS**

### **A) Efficiency**

As previously mentioned, the main objective of the proposed regulatory amendments to article 4002 that are discussed in this analysis is to introduce new obligations applicable to approved participants when an actual or potential breach of the Rules, Policies or trading Procedures of the Bourse is noticed or suspected, especially in the case of certain types of violations.

### **B) Process**

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<sup>3</sup> A specimen of the prescribed form is attached as Appendix I to this analysis. Form is available on the Regulatory Division Website but can be accessed only by using a password provided by the Regulatory Division.

The first step for the approval of the regulatory amendments that are proposed in this analysis consists in having them approved by the Special Committee – Regulatory Division of the Bourse. Once approved by the Special Committee, the proposed amendments, including this analysis, are simultaneously published by the Bourse for a 30-day comment period and submitted to the Autorité des marchés financiers for approval. The AMF also publishes the proposed amendments, as well as the 30 day request for comments, in its weekly bulletin.

Finally, a copy of the amendments proposal is transmitted to the Ontario Securities Commission for information.

#### IV REFERENCES

- Article 4002 of Rule Four of the Rules of Bourse de Montréal Inc. – *Notice of Non-Compliance*
- Rule 10.16 and Policy 10.16 of the Investment Industry Regulatory Organization of Canada (IIROC) Market Integrity Rules (UMIR) - *Gatekeeper Obligations of Directors, Officers and Employees of Participants and Access Persons* ([http://www.iiroc.ca/English/Documents/Rulebook/UMIR1016\\_en.pdf](http://www.iiroc.ca/English/Documents/Rulebook/UMIR1016_en.pdf)).
- Circular no. 131-2011 issued by the Bourse on August 10, 2011 – *Launch of Gatekeeper Report* ([http://www.m-x.ca/f\\_circulaires\\_en/131-11\\_en.pdf](http://www.m-x.ca/f_circulaires_en/131-11_en.pdf))

**SPECIMEN GATEKEEPER REPORT FORM**

**Reference no.:** (Assigned by the Bourse’s system)

**Approved participant number:** (Normally identical to the execution number used for trading purposes)

**Reporting individual:** (to be filled by user)

**E-mail:** (to be filled by user)

**Phone number:** (to be filled by user)

**Subject Rule:** e.g. Article 6305 Front Running

**Start Date Violation:** DD/MM/YY

**End Date Violation :** DD/MM/YY

**Individual/Employee/  
Director/Officer Involved** \_\_ (to be filled by user) \_\_

**Client(s) Involved:** \_\_ (to be filled by user) \_\_

**Trading Symbol:** \_\_ (to be filled by user) \_\_

**Attachments:** e.g. Account Statements  
Trade Tickets  
Trade Blotter  
Audio recordings/Chat Screen-print  
Etc.

**Click the ‘Browse’ button to upload any of the above items (allows approved participants to search for attachments in their systems)**

**BROWSE** \_\_\_\_\_

**4002 Notice of Non-Compliance**(11.03.85, 11.03.92, 15.03.05, 02.09.11, 00.00.00)

- ~~1. Immediate~~ Notice must be given in writing to the Regulatory Division by an approved participant, approved person or restricted trading permit holder, within ten (10) business days of a finding, in the event that:
  - a) such person, or any other approved participant, employee, restricted trading permit holder, client authorized to use the order routing system of an approved participant pursuant to article 6366 B) or approved person fails to comply with the regulations of the Bourse, or
  - b) such person, or any other approved participant, employee, restricted trading permit holder or approved person fails to be able to continue to meet its obligations or becomes insolvent or commits an act of bankruptcy within the meaning of the Bankruptcy and Insolvency Act.
2. Without limiting the above, approved participants must diligently conduct and complete all necessary audits and investigations, in compliance with their internal supervision policies and procedures, when they suspect an employee, an approved person, a restricted trading permit holder or a client of having contravened the Rules of the Bourse pertaining to, notably:
  - a) the obligation to trade in compliance with equitable principles;
  - b) the prohibition to use any manipulative or deceptive methods of trading;
  - c) the prohibition to enter orders or to execute trades in an irregular manner;
  - d) the prohibition of front running;
  - e) the obligation to execute clients' orders at the best possible price;
  - f) the obligation to ensure the priority of client's orders;
  - g) the obligation to execute on the Bourse's market all transactions on derivative instruments listed on the Bourse, subject to specific exceptions provided for in the Rules of the Bourse; and
  - h) any other obligation, prohibition or requirement that may be established by the Bourse from time to time.
3. Any verification or investigation made in accordance with this article, regardless of the conclusion, must be recorded in writing and adequately documented. These Records so created must be kept for a period of at least seven (7) years as of their date of creation and must be made available to the Regulatory Division, upon request.
4. If upon completion of the verifications and investigations provided for in paragraph 2, an approved participant concludes to a possible violation of any of the obligations, prohibitions or requirements mentioned in said paragraph, it must forward the required information to the Regulatory Division of the Bourse, using the prescribed form, within ten (10) business days following the date on which it reached such conclusion.
5. The obligations of an approved participant provided for in this article are in addition to the other obligations stipulated in the Rules, Policies and trading Procedures of the Bourse, notably with regards to supervision and, in any case, shall not prevent the Bourse from undertaking disciplinary measures against an approved participant, an approved person or a restricted trading permit holder.