

GUIDELINES - OFF EXCHANGE TRANSFERS

This document is a reference work of the Regulatory Division (the "Division") of Bourse de Montréal Inc. (the "Bourse"). The content of this document does not supersede the Rules of the Bourse (the "Rules") or any other applicable regulations.

The objective of these guidelines is to describe what constitutes a permissible off-exchange transfer of Listed Products on the Bourse, describe the conditions applicable to specific situations and explain the process to be followed to undertake an off-exchange transfer.

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1. What constitutes an off-exchange transfer?

According to article 6.2¹ and article 6.3² of the Rules, all transactions on Listed Products³ must take place on or through the electronic trading system of the Bourse during a trading session. However the Rules provide for specific exceptions to this principle, for instance special terms transactions, such as EFRPs.

Additionally, the Rules set out specific events where open futures contracts can be transferred without trading through the electronic trading system of the Bourse (“off-exchange transfer”).

In order for an off-exchange transfer to qualify under the Rules, certain conditions must be satisfied.

2. Under what circumstances is an off-exchange transfer permissible?

Article 6.200⁴ prescribes the circumstances where an off-exchange transfer⁵ is permitted and the conditions that must be met.

Paragraph (a) of this article refers to four specific scenarios where an off-exchange transfer can be executed subject to no change in beneficial ownership of the open futures contracts.

Paragraph (c), on the other hand, expands on other situations where an off-exchange transfer may be permitted at the discretion of the Bourse, such as a corporate restructuring or where it is deemed to be in the best interest of the market.

No change in beneficial ownership

There are four situations identified under paragraph (a) where a transfer can be executed:

- a. at the request of the beneficial owner of the futures contracts to transfer from one Approved Participant to another; or
- b. at the request of an Approved Participant to transfer open futures contracts to another Approved Participant; or
- c. to correct an error in clearing; or

¹ Previously article 6004

² Previously article 6380

³ **Listed Products** is defined under article 1.101 (previously article 1102) of the Rules as “*any derivative instrument listed for trading on the Bourse*”

⁴ Previously article 6816

⁵ Referred as ‘*Non-Trading system transfers...*’ under article 6.200 of the Rules of Bourse de Montréal (January 1st, 2019 version)

- d. to correct an error in the recording of transactions in the Approved Participants' books.

However, an off-exchange transfer under these situations can only be carried out if there is no change in beneficial ownership of the futures contracts following the transfer. Therefore, it is important that the Approved Participants acting as parties to this transaction ensure that the open positions remain under the same beneficial ownership despite the transfer.

Relevant documentary evidence demonstrating that due diligence on the beneficial ownership has been performed, should be retained in the Approved Participants' records in addition to all order confirmations, records, memoranda or notes pertaining to the transfer.

Restructuring or Consolidation

Paragraphs (c)(i) and (ii) of article 6.200 provide for situations where a corporation or similar entity is undergoing a restructuring and where an off-exchange transfer may be permitted. The transfer of position may either be on the books of an Approved Participant or from one Approved Participant to another.

Under paragraph (c)(i) a request for an off-exchange transfer must be in relation to a merger, asset purchase, consolidation or similar transaction between two or more entities. An entity can either be a client holding open positions or it can be an Approved Participant wishing to move the open positions to another entity as a consequence of a merger, asset purchase consolidation or similar transaction. Such transactions are considered as non-recurring.

The purpose of paragraph (c)(ii) of this article is to address circumstances relating to the restructuring or consolidation of a partnership, investment fund or commodity pool. An off-exchange transfer may be permitted in this particular scenario subject to the following conditions:

- a. the managing partner or pool operator remains the same;
- b. the transfer should not result in the liquidation of any open positions; and
- c. the prorated allocation of interests in the consolidated account does not result in more than a *de minimis* change in the value of the interest of any party.

Best interest of the market

There may be other situations which call for an off-exchange transfer but are not covered specifically under paragraph (a), (c) (i) or (c) (ii) of article 6.200. Such transfers may still be permitted in accordance with article 6.200 (c) (iii) where it is concluded to be in the

best interest of the market and the situation so requires it. In considering a request for an off-exchange transfer under this part, the Division will look at the following criteria:

- a. Whether the arising situation is a non-recurring event;
- b. If there is an economic rationale why the change in interest should not happen by liquidating and reestablishing the position through a regular market execution;
- c. Whether a benefit to the market can be articulated or an adverse impact on the market should be averted;
- d. If such a transfer will advantage a particular category of market participant over another class of market participant, and if it does, such benefit must be necessary to address a market need.

The criteria listed above are not exhaustive and the Division can consider other criteria when considering such a request.

As an example, an accounting-standard setting body changes its definition of hedging, requiring that hedges be carried in the subsidiary having the risk and not consolidated at a group level. In order to come into compliance with the new ruling, the parent corporation of an Approved Participant or any other entity, wants to transfer open positions to the books of the appropriate subsidiary. This scenario does not fit under the paragraphs (a), (c) (i) or (c) (ii). However, it would be in the market's best interest to permit all affected entities to adjust their positions in this way.

3. Is the approval of the Bourse required?

Since an off-exchange transfer is subject to different conditions depending on the situation triggering the need to perform the transfer outside of the electronic trading system, the Bourse has oversight over these transfers.

For all situations listed under article 6.200 (a), where there is no change in beneficial ownership of the open positions after the transfer, no prior approval from the Bourse is required. That being said, Approved Participants shall keep an audit trail and proper records in order to demonstrate to the Division, should a request be made, the legitimacy of the off-exchange transfer by providing documentary records on any off-exchange transfer initiated under article 6.200 (a), including confirmation that the beneficial ownership of the open positions did not change after the transfer.

The Approved Participant should be able to promptly provide the Division with all records and supporting documents demonstrating that all the conditions applicable under article 6.200 (a) are met.

On the other hand, all off-exchange transfers as per article 6.200 (c) require the prior approval of the Division before submitting the transfer request to the Canadian Derivatives Clearing Corporation (“CDCC”) as provided under article 6.200 (b).

4. Who can request an off-exchange transfer?

Depending on the situation, an off-exchange transfer can be requested by the beneficial owner or an Approved Participant.

Where the request emanates from the beneficial owner of open futures contracts as stipulated under article 6.200 (a)(i), to transfer the positions from one Approved Participant to the another Approved Participant, the Approved Participants involved should submit the request on behalf of the beneficial owner of the positions.

In line with article 6.200 (b) any request for an off-exchange transfer must be submitted by the Approved Participant involved with the open positions to the CDCC and the Approved Participant should complete the request in the form prescribed by CDCC.

For purposes of article 6.200 (c) the Approved Participant involved should first seek the approval of the Division. During the review process more information or supporting documents may be required and the Approved Participant is expected to provide those in a timely manner. Once the request has been reviewed and the Division is satisfied that the off-exchange transfer can be permitted, the Approved Participant will be informed of the decision, and the transfer can be submitted to CDCC.

The Approved Participants should at all times maintain all records relating to the orders, records, memoranda or other documentary evidence such as confirmation notes, copies of electronic confirmations (email, Instant Message), blotters or statements as applicable. The Approved Participants must be able to promptly produce these when requested by the Division.

5. What information should be included in a request for approval?

As indicated in the previous sections, a request for approval has to be submitted by the Approved Participants for any off-exchange transfer under article 6.200 (c). To enable the Division to effectively assess the circumstances surrounding the off-exchange transfer being proposed, the request should include at a minimum the information and relevant supporting documents specified hereafter.

Where a notification of an off-exchange transfer is sent to the Division, the following information should be included:

- a. The applicable article of the Rules under which a request is being submitted;
- b. The reason for requesting an off-exchange transfer, and a detailed description of the circumstances leading to the proposed off-exchange transfer. The description should articulate how the applicable circumstances meet the requirement of the specific situation described in the article of the Rules cited;
- c. The name of all parties involved;
- d. Details of the open positions that are to be transferred, and indication whether it is a partial or full transfer of the open positions;
- e. The proposed transfer date; and
- f. All supporting documents in light of the information submitted or in support of the request (such as current and new organizational structure in case of the merger).

While reviewing a request for approval, the Division reserves the right to ask for additional information or supporting documents which it considers relevant. The Division will process any request in a timely manner but cannot guarantee that it can accommodate such request before the proposed transfer date. Therefore it is recommended to submit such a request to the Division well in advance.