

**CIRCULAR 029-19**  
February 20, 2019

**REQUEST FOR COMMENTS**

**AMENDMENTS TO ARTICLE 4.308 OF THE RULES OF BOURSE DE MONTRÉAL INC.**

The Rules and Policies Committee of Bourse de Montréal Inc. (the “**Bourse**”) and the Special Committee (the “**Special Committee**”) of the Regulatory Division (the “**Division**”) of the Bourse approved amendments to article 4.308 of the Rules of the Bourse in order to remove the violation “*Non-compliance with the time limit for reporting an exchange for physical transaction, or an exchange for risk (EFP/EFRP)*” from the list of minor violations, and introduce late filing fees in the List of fees of the Bourse instead.

Comments on the proposed amendments must be submitted at the latest on **March 25, 2019**. Please submit your comments to:

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P.O. Box 37  
Montreal, Quebec H3B 0G7  
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A copy of these comments shall also be forwarded to the *Autorité des marchés financiers* (the “**Autorité**”) to:

M<sup>e</sup> 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 (Québec) H4Z 1G3  
**E-mail: [consultation-en-cours@lautorite.gc.ca](mailto:consultation-en-cours@lautorite.gc.ca)**

Please note that comments received by one of these recipients will be transferred to the other recipient and that the Bourse may publish a summary of such comments as part of the self-certification process concerning this file. **Unless specified otherwise, comments will be published anonymously by the Bourse.**

## Appendices

You will find in the appendices an analysis as well as the text of the proposed amendments. The implementation date of the proposed amendments will be determined by the Bourse, in accordance with the self-certification process as established by the *Derivatives Act* (CQLR, chapter I-14.01).

## Process for Changes to the Rules

The Bourse is authorized to carry on business as an exchange and is recognized as a self-regulatory organization (“**SRO**”) by 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 the Rules, the Policies and the Procedures, which are thereafter submitted to the Autorité in accordance with the self-certification process as determined by the *Derivatives Act* (CQLR, chapter I-14.01).

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 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 the 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.



## **AMENDMENTS TO ARTICLE 4.308 OF THE RULES OF BOURSE DE MONTRÉAL INC.**

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## I. SUMMARY

The Regulatory Division (the "Division") of Bourse de Montreal (the "Bourse") hereby proposes amendments to article 4.308<sup>1</sup> of the Rules of Bourse (the "Rules") and the [List of fines for minor violations](#) to remove the item '*Non-compliance with the time limit for reporting an exchange for physical transaction, or an exchange for risk (EFP/EFRP)*' under paragraph (a) (iii) of the article.

As an alternative, in enforcing the requirement to report EFRP transaction within the prescribed one hour time limit the Division will introduce late filing fees for such occurrences in the [List of fees](#).

## II. ANALYSIS

### a. Background

Article 6.208 (d)<sup>2</sup> of the Rules provides that Approved Participants have to report EFRP transactions within one hour upon determination of all the terms of the transaction.

To enforce this requirement, currently the Division has to take action either under article 4.308 to impose a fine for minor violation or initiate a disciplinary complaint under article 4.201<sup>3</sup>. However, under both instances the Division must conduct an investigation.

When conducting its regulatory activities in 2017, the Division identified several instances involving at least ten (10) Approved Participants where EFRP transactions were reported late to the Market Operations Department (MOD). Given the nature of the non-compliance, initiating an investigation for each of these instances would be time consuming and costly for both the Division and the Approved Participants.

The Division therefore decided to conduct an analysis to determine the impact of a reporting delay, hence the need for such a requirement. At the same time the Division reexamined the means it has to enforce this requirement.

### b. Description and Analysis of Market Impacts

In order to adequately address the issue, the Division considered the necessity of reporting EFRP transactions and validated the time limit of one hour as it is presently prescribed in the Rules.

The previous analysis of the Bourse on the subject<sup>4</sup> indicate that futures' prices are generally not influenced by the publication of EFRP transactions. After analyzing rationale of reporting EFRP transactions, it was concluded that disseminating this information to the market participants is critical regardless of whether they act on such information or not. Given that an EFRP

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<sup>1</sup> Previously article 4220 of the Rules

<sup>2</sup> Previously article 6815 1) k)

<sup>3</sup> Previously article 4101

<sup>4</sup> [Circular 118-15](#) - Amendments to Procedures for the execution and reporting of Exchange for Physical (EFP), Exchange for Risk (EFR) and substitution of OTC derivative instruments for futures contracts transactions

transaction contains a future leg which relates to a standard contract listed on the Bourse, it is critical that all activities surrounding this contract are transparent to the market. In Canada dissemination of information and market transparency remain fundamental features embedded in the securities and derivatives regulations, for example article 7.2 of Regulation 21-101 regarding *'Post-Trade Information Transparency – Exchange-Traded Securities'*. Similarly in the US the Commodity Futures Trading Commission ("CFTC") regulations provide for a competitive, open, and efficient market and EFRP transactions are allowed as an exception to this rule for bona fide business purposes. In a proposed guidance and acceptable practices report published for comments by the CFTC<sup>5</sup> under these regulations, the CFTC expressly states that *'Exchanges of futures for commodities or for derivatives positions should be reported to the contract market within a reasonable period of time'*.

With regards to the time limit of one hour, the comparative analysis that was conducted when the Rules were amended in 2016 to adopt the one hour time limit was reviewed. All the exchanges that were considered in the said comparative analysis continue to maintain the same time limit, varying from 15 minutes to 1 hour, except for the CME group which moved to introduce a less prescriptive standard - *'as soon as possible'*. Therefore, the Division is of the view that the current one hour time limit should be maintained.

For market transparency and in fairness to all Approved Participants abiding to the requirement, the Division considers it important to be able to enforce a breach of the reporting requirement under article 6.208 in the most efficient manner. As per the International Organization of Securities Commissions ("IOSCO")<sup>6</sup> some of the factors that are likely to deter unwanted behaviour on the markets are the predictability of consequences, the severity of sanctions, efficient and proportionate sanctions, and their dissuasive effect.

Accordingly for the Division, efficiency in enforcing this particular requirement means being able to swiftly deter market participants from reporting transactions late. This can be achieved by charging a late filing fee which can be progressive depending on the number of occurrences. Higher late filing fees for repetitive filing delays can have the dissuasive effect required to ensure that such omissions are not repeated.

Notwithstanding the charge of a late filing fee, the Division will retain its discretion to conduct a formal investigation which could lead to disciplinary actions in cases where the breach is recurrent and/or the breach involves other factors the Division may consider as aggravating circumstances, thus justifying a more severe deterrent or penalty. The procedures provided in article 4.251<sup>7</sup> will then be applied by the Division following the filing of a complaint under article 4.201.

The models used by other exchanges, such as EUREX, One Chicago and CME to deter late filing rely on similar principles as the model the Division is proposing: a sanction model which is efficient to address untimely reporting, which considers the magnitude, frequency and impact of the reporting infraction in determining the amount of the sanction, and which provides

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<sup>5</sup> FR Doc E8-21865[Federal Register: September 18, 2008 (Volume 73, Number 182)]: CFTC proposed Guidance and Accepted practices on Execution of Transactions: Regulation 1.38 and Core Principle 9

<sup>6</sup> "Credible Deterrence in the Enforcement of Securities Regulation," OICV-IOSCO, June 2015

<sup>7</sup> Previously article 4151

discretion to refer cases considered more serious to a higher enforcement level which will require initiating a formal procedure.

Hence, the late filing fee process together with the discretion of the Division to have recourse to more severe actions under article 4.201 provide a more efficient means to regulate the reporting time delay prescribed in the Rules and come up with sanctions equivalent to the seriousness of the non-compliance.

### **c. Benchmarking**

Our benchmarking relied primarily on the exchanges looked at during the comparative analysis conducted (i.e. rules of exchanges such as EUREX, ASX and CME) when article 6.208 was modified to provide for the 1 hour time frame to report an EFRP transaction ([Circular 118-15](#)). The current assessment established that these exchanges continue to maintain the same time limit, varying from 15 minutes to 1 hour, as previously identified except for the CME group which moved to introduce a less prescriptive standard - 'as soon as possible'.

As identified in the analysis section, the sanction models applicable to late reporting of EFRPs adopted by other exchanges, such as CME, EUREX and OneChicago LLC, were looked at. All these models rely on the same premise where a fee or a fine is triggered on the occurrence of late reporting, similar to the late filing fee regime of the Bourse. Furthermore those models also provide for increasing the fine amount depending on aggravating factors such as magnitude, frequency, impact on the infraction and discretion to escalate in cases considered more serious in nature.

### **d. Proposed Amendments**

Please refer to Appendix 1, which details the amendments to Article 4.308 of the Rules of the Bourse.

## **III. AMENDMENT PROCESS**

This amendment process is being undertaken to fine tune the Division's ability to act and enforce a breach in reporting EFRP. By introducing late filing fees for the late reporting of EFRP and with the possibility of pursuing an action under article 4.201 as previously described, the non-compliance of the time limit for EFRP as a minor violation under article 4.308 becomes redundant.

## **IV. IMPACTS ON TECHNOLOGICAL SYSTEMS**

None of the proposed amendments have an impact on the Bourse's technological systems or those of its approved participants.

## **V. OBJECTIVES OF THE PROPOSED AMENDMENTS TO THE PROCEDURES AND RULES OF THE BOURSE**

The objectives of the proposed amendments are to:

- establish a more efficient method for the Division to handle a breach of the time limit to report EFRP transactions;
- being able to react instantly, without initiating a formal investigation which can be lengthy and costly for both the Division and the Approved Participant;
- deter non-compliance with the prescribed time limit to report EFRP transactions; and
- as such uphold the transparency of the market on listed products of the Bourse by ensuring that information is disseminated in a timely manner.

#### **VI. PUBLIC INTEREST**

It is in the public interest that the Rules and their enforcement be fair for all market participants. The purpose of the proposed amendments will allow the Division to uphold the requirements of the rules more efficiently.

#### **VII. EFFICIENCY**

The proposed amendments will improve market efficiency by ensuring that information on listed products of the Bourse is disseminated as required by the Rules of the Bourse and thus support a transparent market.

#### **VIII. PROCESS**

The proposed amendments are subject to the Special Committee and the Rules and Policies Committee of the Bourse for approval purposes. They will also be submitted to the Autorité des marchés financiers in accordance with the self-certification procedure and to the Ontario Securities Commission for information.

#### **IX. APPENDIX**

- Appendix 1: Proposed Amendments to Article 4.308 of the Rules of the Bourse.

**Appendix 1: Proposed Amendments to Article 4.308 of the Rules of the Bourse**  
**Blackline version**

**PART 4 - INSPECTIONS AND ENFORCEMENT**

[...]

**Chapter D—Settlements and Appeals**

[...]

**Article 4.308 Fine for Minor Violation**

- a) The Vice-President of the Regulatory Division may, in accordance with the procedure provided in Articles 4.310 and following, for any violation appearing in the *List of Fines for Minor Violations* published on the website of the Bourse, impose a predetermined fine that cannot exceed \$5000 per violation, against an Approved Participant or an Approved Person. The violations included in the *List of Fines for Minor Violations* are:
- (i) Incomplete or inaccurate report pertaining to the accumulation of positions for Derivative Instruments (Article 6.500 (a));
  - (ii) Exceeding position limits (Article 6.310);
  - ~~(iii) Non-compliance with the time limit for reporting an Exchange for Physical or an Exchange for Risk transaction (EFP/EFR) (Article 6.208 (d));~~
  - ~~(iv)~~(iii) Non-compliance with the time of market exposure (Article 6.205);
  - ~~(v)~~(iv) Failure to send a notice of non-compliance or a notice of exceeding position limits, within the prescribed time (Articles 3.105 and 6.500 (j));
  - ~~(vi)~~(v) Prohibited use of the "hidden volume" functionality (Article 6.204);
  - ~~(vii)~~(vi) Granting unapproved access to the Electronic Trading System (Articles 3.4 (a) and 3.400).
- b) The Vice-President of the Regulatory Division, may impose a fine for any violation included in the *List of Fines for Minor Violations* against a former Approved Participant or former Approved Person, on the condition that a notice of minor violation is served within the delay provided in article 4.201 (b).
- c) Notwithstanding the possibility of imposing a fine for a minor violation included in the *List of Fines for Minor Violations* in accordance with paragraphs a) and b), the Vice-President of the Regulatory Division, may, at his discretion, choose to file a complaint in accordance with the procedure provided in Articles 4.251 and following.



**Appendix 1: Proposed Amendments to Article 4.308 of the Rules of the Bourse**  
**Clean version**

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