



CIRCULAR 115-19

August 23, 2019

SELF-CERTIFICATION

AMENDMENTS TO ARTICLE 6.208 OF THE RULES OF BOURSE DE MONTRÉAL INC.

The Rules and Policies Committee of Bourse de Montréal Inc. (the “**Bourse**”) and the Special Committee of the Regulatory Division of the Bourse approved amendments to article 6.208 of the Rules of the Bourse in order to clarify the requirements pertaining to the pricing of EFRP transactions. These amendments were self-certified in accordance with the self-certification process as established in the *Derivatives Act* (CQLR, Chapter I-14.01).

These amendments attached herewith will become effective on **August 26, 2019**, after market close. Please note that the revised article will also be available on the Bourse’s website (www.m-x.ca).

The amendments described in the present circular were published for public comment by the Bourse on May 22, 2019 (see [Circular 079-19](#)). Further to the publication of this circular, the Bourse received comments. A summary of the comments received as well as responses from the Bourse to these comments is attached hereto.

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Chapter C—Prearranged Transactions and Trade Cancellation

[...]

Article 6.208 Exchange of Futures for Related Products

(a) EFRP Transactions in general. Exchanges for Related Product (“EFRP”) Transactions involving Futures Contracts listed and traded on the Bourse are permitted if such Transactions are executed in accordance with the requirements of this Article. An EFRP Transaction is composed of the privately negotiated execution of a Bourse Futures Contract and the opposite, simultaneous execution of an approximately equivalent quantity or value of cash product, by-product, related product, or Over-The-Counter (“OTC”) Derivative Instrument underlying the Futures Contract.

(i) An EFRP Transaction is permitted to be executed off of the Trading System pursuant to Article 6.204 if such Transaction is conducted in accordance with each of the requirements and conditions of this Article.

[...]

(viii) The price at which an EFRP Transaction is arranged and mutually agreed upon by parties to the Transaction must be “~~fair and~~ reasonable” in light of, notably: (w) the size of the Transaction; (x) currently traded prices and bid and ask prices in the same contract (y) the underlying markets; and (z) general market conditions, all at the time of the Transaction. ~~Although there is no requirement for an EFRP to be executed within the daily high and low prices, execution outside of that price range may result in a request by the Regulatory Division for additional information about the Transaction.~~

[...]

(e) Books and records of EFRP Transactions. Each party to an EFRP Transaction must maintain full and complete records and documentary evidence relating to the EFRP, including but not limited to all records relating to the purchase or sale of the cash market or OTC derivative component of the Transaction and to any transfer of funds or ownership made in connection with such Transaction. Such records include, but are not limited to, documentation customarily generated in accordance with market practice, such as cash account statements, Trade confirmation statements, ISDA® Master Agreements or other documents of title; third party documentation supporting proof of payment or transfer of

title, such as canceled checks, bank statements; cash account statements and cash instruments Clearing Corporation documents. In addition, Futures Contracts order tickets (which must clearly indicate the time of execution of the EFRP Transaction) must be maintained. If the price at which the EFRP Transaction is arranged is not within the prevailing market prices at the time of the Transaction, such records must demonstrate that the price is reasonable. Records related to the Transaction must be provided to the Bourse upon request and it is the responsibility of the Approved Participant to obtain and provide on a timely basis records of their clients as requested by the Bourse.

[...]

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[...]

Circular 079-19: Summarized comments and responses
EFRP PRICING

No.	Date comments received	Participant Category	Subject	Summary of comments	Summary of responses
1.	June 17, 2019	IIAC	Industry participants seeking clarifications and guidance	The IIAC and its members seek clear rules and guidance. As such, we welcome the current proposal on pricing of EFRP transactions and generally agree with the proposal.	The Bourse acknowledges your comment.
2.	June 17, 2019	IIAC	Confusing wording	As previously mentioned by the IIAC to the Regulatory Division of the Bourse, the members believe that the price of the futures leg in an EFRP transaction does not have to be within the daily high and low prices of the futures contract. We believe the EFRP transaction itself must be properly priced - We assume that this is what the Regulatory Division was trying to convey in the proposal.	<p>The Bourse takes note of IIAC's comment on the daily high and low price range. As indicated in the analysis document, the Regulatory Division recognized that the futures leg may not be executed within the daily high and low, and therefore having such a reference may be in conflict with the test of "reasonableness". Hence the proposal to remove this part as a whole does not require having an express paragraph to state that there is no requirement to execute the futures leg within the daily high and low.</p> <p>The reference to "...the same contract..." is effective since the version of the article that came</p>

			<p>We believe that the proposed wording creates confusion. We are including examples below:</p> <p>Article 6.208, paragraph (viii) now states:</p> <p><i>The price at which an EFRP Transaction is arranged and mutually agreed upon by parties to the Transaction must be “reasonable” in light of, notably: (w) the size of the Transaction; (x) currently traded prices and bid and ask prices in the same contract (y) the underlying markets; and (z) general market conditions, all at the time of the Transaction.</i> [Emphasis added]</p> <p>When mentioning “the same contract” in the section above, we believe the Regulatory Division is referring to the same derivative contract. If so, wording should be amended to provide greater clarity.</p> <p>Furthermore, we believe the wording may cause confusion as the futures leg does not have to be executed within the daily</p>	<p>into force in January 2018. The current amendment proposal did not make any changes thereto. The Bourse did not receive comments on this item before now. The Bourse takes note of the comment and will consider a modification in the course of subsequent Rule amendments.</p>
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				<p>high and low, nor at the market price of the futures leg at the time of the EFRP. Additional confusion may exist since the following has been removed: “Although there is no requirement for an EFRP to be executed within the daily high and low prices, execution outside of that price range may result in a request by the Regulatory Division for additional information about the Transaction.” We believe that the fact that there is no requirement for the futures leg of an EFRP to be executed within the daily high and low prices should be included in the article.</p>	
3.	June 17, 2019	IIAC	Confusing wording	<p>Article 6.208 also states: <i>(e) Books and records of EFRP Transactions: Each party to an EFRP Transaction must maintain full and complete records and documentary evidence relating to the EFRP, including but not limited to all records relating to the purchase or sale of the cash market or OTC derivative</i></p>	<p>The Bourse acknowledges the comment and understands the importance of maintaining as well as ensuring that client information is kept confidential. However, the aforementioned situation and the Participant’s role as executing broker for the EFRP transactions do not absolve the Participant from maintaining, and in this case, having the ability to provide full and complete records and documentary evidence relating to the EFRP transactions as per the rules. Additionally,</p>

				<p><i>component of the Transaction and to any transfer of funds or ownership made in connection with such Transaction. Such records include, but are not limited to, documentation customarily generated in accordance with market practice, such as cash account statements, Trade confirmation statements, ISDA® Master Agreements or other documents of title; third party documentation supporting proof of payment or transfer of title, such as canceled checks, bank statements; cash account statements and cash instruments Clearing Corporation documents. In addition, Futures Contracts order tickets (which must clearly indicate the time of execution of the EFRP Transaction) must be maintained. If the price at which the EFRP Transaction is arranged is not within the prevailing market prices at the time of the Transaction, such records must demonstrate that the price is reasonable. Records</i></p>	<p>the Bourse refers to the following excerpt from Circular 135-13:</p> <p>“Before executing a special terms transaction, Approved Participants must obtain reasonable assurance from their “client” that the proposed special terms transaction is being entered into in accordance to the provisions and requirements of the aforementioned article and procedures. However, this reasonable assurance does not in any way absolve the Approved Participant from its responsibility to ensure that the complete records and documentary evidence be made readily available upon request to the Regulatory Division of the Bourse (the Division). The latter will accept that the requested information be provided by the Approved Participant or its “client” directly.”</p> <p>This guidance underlines that the obligation of ensuring, maintaining, and having the ability to provide full and complete records and documentary evidence relating to the EFRP is the responsibility of the executing Approved Participant. It is aligned with paragraph (e) of article 6.208 which stipulates “Records related to the Transaction must be provided to the Bourse upon request and it is the responsibility of the Approved Participant to obtain and provide on a timely basis records of their clients as requested by the Bourse.”</p> <p>On the other hand, as the circular dictates, the</p>
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				<p><i>related to the Transaction must be provided to the Bourse upon request and it is the responsibility of the Approved Participant to obtain and provide on a timely basis records of their clients as requested by the Bourse.</i> [Emphasis added]</p> <p>We believe that the proposed wording may create confusion for members solely executing the futures leg portion of the EFRP transaction for another member's client. Such an executing broker cannot provide some of the client documentation listed above – for the cash market as an example - as it would breach privacy laws. We believe the Regulatory Division should reach out directly to the member carrying the cash leg in order to request the documentation. The wording above should be amended to cover such EFRP transactions.</p>	<p>Bourse will accept that the remaining cash and futures statements be provided by the executing Participant, or its "clients" directly.</p> <p>With regard to the terms "prevailing market prices", these are found only in the analysis document. They are not used in the Rules.</p> <p>In the Rules examples of such factors are highlighted under paragraph (viii), notably: "<i>currently traded prices and bid and ask prices in the same contract (y) the underlying markets; and (z) general market conditions, all at the time of the Transaction</i>".</p>
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				<p>We also believe that the Regulatory Division should amend the “prevailing market prices” wording as it creates confusion. Additional information should be included so that members understand which “prevailing market prices” the Regulatory Division is referring to. We assume the Regulatory Division is referring to the futures leg when mentioning prevailing market prices.</p> <p>We must mention once again that the fact that there is “no requirement” for the futures leg of an EFRP to be executed within the daily high and low prices should be included in the Article.</p>	
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