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## **CIRCULAR 124-17**

September 1, 2017

*(Updated January 15, 2019)<sup>1</sup>*

### **REGULATORY GUIDANCE ON REPORTS RELATED TO THE ACCUMULATION OF LARGE OPEN POSITIONS (“LOPR”) AND SPECIAL INSPECTION ON LOPR BY THE REGULATORY DIVISION**

The purpose of this circular is: (1) to provide approved participants (the “participants”) of Bourse de Montréal Inc. (the “Bourse”) with supplementary regulatory guidance on requirements with respect to their reports on the accumulation of large open positions (“LOPR”) and the related surveillance and compliance system, and (2) to notify participants of the special inspection on LOPR.

Pursuant to article 6.500<sup>2</sup> of the Rules of the Bourse, each participant must, on a daily basis, provide the Regulatory Division (the “Division”) with information on the accumulation, in accounts for clients or for itself, of open positions held on derivative instruments traded on the Bourse. Since 2016, the Division has noted several compliance deficiencies among participants with respect to the accuracy or completeness of the information provided in their LOPR reports or in their related surveillance and compliance systems. The Division has identified the compliance and supervision obligations of participants and the accuracy of the information provided to it by participants as compliance priorities in 2017 ([https://www.m-x.ca/f\\_circulaires\\_en/023-17\\_en.pdf](https://www.m-x.ca/f_circulaires_en/023-17_en.pdf)). The Division would like to remind participants of the importance of meeting their regulatory obligations as set out in articles 3.100<sup>3</sup> and 6.500 of the Rules of the Bourse.

To this end, the Division will perform a special inspection on LOPR during which participants will be required to: (i) verify, validate and confirm to the Division the accuracy and completeness of their LOPR reports, and (ii) confirm to the Division that reasonably designed surveillance and compliance mechanisms have been implemented in order to ensure the regulatory compliance of their LOPR reports submitted to the Division.

The current information is being provided in the form of a list of frequently asked questions (“FAQ”). This FAQ is also available in the LOPR section of the Division’s website (<https://reg.m-x.ca/en/regulatory/lopr>), and may be updated from time to time.

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<sup>1</sup> Updated to modify references to the Rules of the Bourse following the publication of the new version of the Rules, effective January 1, 2019

<sup>2</sup> Formerly Article 14102

<sup>3</sup> Formerly Article 3011

## FREQUENTLY ASKED QUESTIONS

### **1. The regulatory requirements for LOPR reports and the related surveillance and compliance system**

#### **1.1 – What are the regulatory requirements for LOPR reports?**

Article 6.500:

[https://www.m-x.ca/f\\_publications\\_en/mx\\_rules\\_en.pdf?v=20190101](https://www.m-x.ca/f_publications_en/mx_rules_en.pdf?v=20190101)

The Division has published a guide on this subject:

[https://reg.m-x.ca/f\\_techdocs\\_en/lopr\\_regulatory\\_requirements\\_guide\\_v14\\_en.pdf](https://reg.m-x.ca/f_techdocs_en/lopr_regulatory_requirements_guide_v14_en.pdf)

The Division has also published an FAQ document about LOPR:

[https://www.m-x.ca/f\\_circulaires\\_en/063-16\\_en.pdf](https://www.m-x.ca/f_circulaires_en/063-16_en.pdf)

#### **1.2 – How to ensure surveillance and compliance on LOPR reports?**

Pursuant to article 3.100 of the Rules of the Bourse, each participant “*must establish and maintain a system [...] that is reasonably designed to achieve compliance*” with article 6.500 of the Rules of the Bourse, and must ensure that the information contained in its LOPR reports is complete and accurate.

The supervision and compliance obligations are principles-based. No single approach applies to all participants. It is up to participants to design and implement a supervision system that is tailored to their business model, structure and risks. The Division acknowledges that it must be flexible and allow participants the latitude to determine what is appropriate based on their needs, and adjust their systems accordingly.

The Division has published a non-exhaustive list of questions that it uses to understand and determine whether the participant’s supervision system is reasonable for LOPR reports. The Division believes that these questions may also provide the Bourse’s participants with guidance on how to design their supervision system and determine its relevance:

1. Does the participant’s supervision system address LOPR reports?
2. Do the participant’s policies and procedures include reviews of compliance with the Rules of the Bourse regarding LOPR reporting requirements, including the accuracy and completeness of the information sent to the Division?
3. Are the policies and procedures documented in writing?
4. Does the participant have policies and procedures detailing its internal controls of the effectiveness of its supervision system? Are these policies and procedures documented in writing?
5. Does the participant have policies and procedures that require retaining the reports or documents related to its supervision activities?
6. How much time does the participant need to identify a compliance problem, should one arise?
7. Does the participant have an escalation process? What is it? Is it documented in writing?
8. If a compliance issue is identified in a LOPR report and the problem is escalated, does the participant have a process for identifying the root cause?
9. Is the participant’s escalation process documented and verifiable, and is the documentation

retained?

10. What process applies if a systematic problem is identified in the participant's LOPR reports?

### **1.3 – Does the LOPR report surveillance and compliance obligation apply to a participant that has delegated this function to a third-party?**

Yes. This obligation applies to each participant, whether it is its own back-office, or a third-party to which this function has been delegated (article 6.500 (l) (v)<sup>4</sup> of the Rules of the Bourse).

Moreover, on August 22, 2017, the Bourse published a technical notice regarding the LOPR enhancements ([https://m-x.ca/f\\_avis\\_tech\\_en/17-007\\_en.pdf](https://m-x.ca/f_avis_tech_en/17-007_en.pdf)). The new LOPR enhancements will introduce a new concept of "Supervisors" to help participants monitor the submitted account information and positions submitted. Participants are invited to test this new feature in the Bourse Test environment at their convenience. The new functions are available in the test environment since August 31, 2017.

## **2. Special inspection on LOPR**

### **2.1 – What is the special inspection on LOPR performed by the Division?**

The special inspection by the Division is ordered by the Division's Vice President under article 4.3<sup>5</sup> of the Rules of the Bourse. The special inspection on LOPR is focused on two areas: (i) the accuracy and completeness of the information of the LOPR reports, and (ii) the related surveillance and compliance system.

A member of the Division has been designated and assigned exclusively to the special inspection on LOPR in order to offer support to participants and assist them during the course of the special inspection.

### **2.2 – Who is subject to the special inspection on LOPR?**

All participants for which the Division has not granted exemptions from LOPR reporting (article 6.500 (k)<sup>6</sup>).

In order to avoid imposing an unnecessary burden on participants, the Division's examination service will not cover the compliance of LOPR reporting activities for participants who will be subject to an examination during the period following September 1, 2017 until December 31, 2017. Examinations will begin covering this topic again starting in January 2018.

### **2.3 – What happens during a special inspection on LOPR?**

The Division will contact each of the participants targeted by the special inspection on LOPR. The Division will ask each participant to review the content of its LOPR reports and certify that, as of August 31, 2017:

(i) Its reports comply with the Bourse's regulatory requirements in regards of article 6.500; and

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<sup>4</sup> Formerly Article 14102 9) v)

<sup>5</sup> Formerly Article 4003

<sup>6</sup> Formerly Article 14102 8)

(ii) It meets the Bourse's regulatory requirements on surveillance and compliance related to LOPR reports, since it has implemented a system "*that is reasonably designed to achieve compliance*" with article 6.500 of the Rules of the Bourse, pertaining to article 3.100 of the Rules of the Bourse.

Participants will need to send this certification to the Division by November 1, 2017 at the latest.

#### **2.4 – What needs to be done if the participant cannot certify one or both of the items in point 2.3?**

If the participant cannot certify that its LOPR reports or its surveillance and compliance system on LOPR is compliant, it will need to complete and provide the Division with a notice of non-compliance (a "Gatekeeper") on or before November 1, 2017. For information purposes only, this Gatekeeper should specify the period covered by the review, the nature of the identified non-compliance issue, the root cause(s) of the observed deficiency(ies), and the identified corrective measures, if any.

Once the Division receives a Gatekeeper from the participant as part of the special inspection on LOPR, it will contact the participant. The Division will assist the participant, providing guidance as it identifies the improvements to be made to its processes and systems. This should help the participant ensure the accuracy and completeness of the information it provides in its LOPR reports and/or as it implements a surveillance and compliance system that will satisfy the regulatory requirements. The participant will then need to develop and submit an action plan, with completion dates, for the Division to monitor.

#### **2.5 – If the participant provides a Gatekeeper for the special inspection on LOPR, what will be the consequences?**

Any Gatekeeper received with respect to the special inspection on LOPR will not result in the opening of an investigation on the participant, nor will it lead to disciplinary proceedings.

However, participants are obliged to participate in this inspection, in particular by providing the requested documents and/or information (article 4.1<sup>7</sup> of the Rules of the Bourse) within the prescribed timeframe. Consequently, should a participant neglect, refuse or fail to send the information requested by the Division, this may lead to the opening of disciplinary proceedings. The Division may also impose administrative fees for late filing of documents.

#### **2.6 – Who should be contacted if we have questions regarding LOPR reports and the special inspection on LOPR?**

Participants can contact the Division ([info.mxr@tmx.com](mailto:info.mxr@tmx.com)) for questions on regulatory issues and the Bourse's Technical Help Desk ([SAMSUPPORT@tmx.com](mailto:SAMSUPPORT@tmx.com)) for questions of a technical nature.

Julie Rochette  
Vice President and Chief Regulatory Officer

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<sup>7</sup> Formerly Article 4001