



**CIRCULAR 151-24**

December 20, 2024

**DISCIPLINARY DECISION — SETTLEMENT AGREEMENT  
NATIONAL BANK FINANCIAL INC.**

The Regulatory Division of the Bourse de Montréal Inc. (the “**Bourse**”) filed the following complaint against National Bank Financial Inc. (the “**Respondent**”), an Approved Participant:

During the period from July 31, 2018 to March 31, 2020, the Respondent contravened article 3.100 of the Rules of the Bourse (the “Rules”) (article 3011 prior to January 1, 2019) - “Surveillance and Compliance” by failing to enforce its surveillance policies adequately as to Trader X and thus breaching article 3.100 of the Rules which requires to establish and maintain a system to supervise the activities of each employee, Approved Person and agent of the Approved Participant that is reasonably designed to achieve compliance with the Regulations of the Bourse.

Following a hearing held on November 21, 2024, a Disciplinary Committee duly constituted pursuant to the Rules accepted the settlement agreement negotiated between the Bourse and the Respondent, which includes a fine totalling \$250,000 as well as the payment of an additional amount of \$26,750 for the related costs.

The Disciplinary Committee’s decision is attached.

For further information, please contact the legal affairs of the Regulatory Division of the Bourse by email at [mxrlegal@tmx.com](mailto:mxrlegal@tmx.com).

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**CANADA  
PROVINCE OF QUEBEC  
FILE NO. EN-DC-23003**

**In the Matter of:**

**Bourse de Montréal Inc. (the “Bourse”)**

and

**National Bank Financial Inc., (“NBFI”),  
an Approved Participant of the Bourse**

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Panel: Marie-Julie Nicolo, Chair  
Rosanna Bruni, Member  
Yves Ruest, Member

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### **DISCIPLINARY COMMITTEE: REASONS FOR DECISION**

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#### **PROCEEDINGS**

1. On or about October 17<sup>th</sup>, 2024, a disciplinary complaint was formally filed alleging that NBFI contravene article 3.100 (***article 3011 prior to January 1<sup>st</sup>, 2019, noting that for the purposes of consistency in terminology reference will only be made to article 3.100***) of the Rules of Bourse de Montréal Inc. (the “Rules”) as follows (the “Complaint”):

During the period from July 31<sup>st</sup>, 2018 to March 31<sup>st</sup>, 2020, NBFI contravened article 3.100 of the Rules (article 3011 prior to January 1, 2019) – “Surveillance and Compliance” by failing to enforce its surveillance policies adequately as to Trader X and thus breaching Article 3.100 of the Rules which requires to establish and maintain a system to supervise the activities of each employee, Approved Person and agent of the Approved Participant that is reasonably designed to achieve compliance with the Regulations of the Bourse.

The whole rendering NBFI subject to a disciplinary complaint pursuant to article 4.200 of the Rules and to the sanctions listed in articles 4.400 and following of the Rules.

2. On November 21, 2024, the parties submitted for approval a written Settlement Agreement regarding the Complaint (the “**Settlement Agreement**”) at a hearing before this Disciplinary Committee (the “**Committee**”) which was established in accordance with article 4.200 et seq. of the Rules.
3. Prior to the hearing, the members of the Committee made a solemn affirmation that there were no grounds for recusation, as required by article 4.602 of the Rules.
4. The Bourse was represented at the hearing by Me Annie Leblanc, while NBFI was represented by Me Fabrice Benoit.

5. After hearing the representations made by Me Leblanc and the supplemental responses provided by Me Benoit, the Committee rendered an oral decision approving the Settlement Agreement and undertook to provide written reasons at a later date.

### **PART I – INTRODUCTION**

1. NBF1 has been an Approved Participant of the Bourse since October 1, 2000.
2. During the month of October 2019, as part of its regulatory activities, the Regulatory Division of the Bourse (the “**Division**”) identified alerts of potential violation of the Rules for one of NBF1’s traders (“**Trader X**”) via its SOLA Surveillance System.
3. On August 6, 2020, an investigation was opened regarding potential violation of the Rules of trading involving Trader X and NBF1’s surveillance system. The investigation focused on the period between July 31, 2018 and April 23, 2021.
4. Trader X was an employee of NBF1 and an Approved Person of the Bourse during the period under review.
5. The trading pattern identified by the Division involved Trader X entering orders on both sides of the market, including potential illegitimate (non-bona fide) orders that were immediately canceled.
6. This pattern can be indicative of potential violations of the Rules as illegitimate orders create the false impression of either buying or selling pressure with execution occurring at more favorable prices than those potentially obtainable in the absence of the illegitimate orders.
7. These alerts were identified by NBF1’s surveillance system and led to contemporaneous reviews of the underlying trading activities. However, these alerts did not result in a sufficiently detailed and documented review and corresponding escalation of the matter to meet certain requirements of NBF1’s supervision procedures.
8. The Division concluded that during the period between July 31, 2018 and March 31, 2020, NBF1 failed to enforce its surveillance policies adequately as to Trader X and thus did not establish and maintain a surveillance system that is reasonably designed to achieve compliance with the Regulations of the Bourse.

### **PART II - STATEMENT OF THE FACTS AGREED UPON BY THE BOURSE AND NBF1**

9. From January 1, 2019 to March 31, 2020, a number of alerts of potential violation of the Rules were generated for Trader X by NBF1’s surveillance system. NBF1’s compliance department uses NASDAQ Trade Surveillance (SMARTS) as its main surveillance system.
10. Even though a majority of the alerts from the surveillance system were identified and reviewed in the form of comments by NBF1’s compliance department, the vast majority used generic phrases to close-out alerts lacking the level of details required in the circumstances. In addition, NBF1 did not provide any supporting material related to the

assessment of these alerts, only the comments themselves. NBFi recognizes that during the period between 2018 and 2019, the cancellation rate of Trader X was not sufficiently considered.

11. NBFi's Derivatives supervision procedures called "Financial Markets and Wealth Management Derivatives Trading Conduct Compliance" (the "**Manual**") lists a series of questions under the wording "Criterion to consider" to try to identify the transactions that could be considered potential violations of the Rules.
12. The Manual states that the decision to initiate escalation is at the discretion of the reviewer. Factors to consider include the seriousness of the activity or event, presumed intent, repetitive non-compliant behavior, pattern of recurrent activity or of findings in similar activity or violations, gravity of the harm or potential harm to the firm, clients or market integrity.
13. Despite the provisions of the Manual, the alerts did not result in a sufficiently detailed and documented review of all criteria of the Manual including a discussion with Trader X. Furthermore, the alerts did not result in the corresponding escalation of the matter to meet certain requirements of NBFi's supervision procedures.
14. Considering the repetitive nature of alerts triggered by Trader X and the seriousness of these alerts, the level of internal communication and internal analysis that followed was insufficient and did not follow NBFi's own supervision procedures. Furthermore, NBFi recognizes that the quality assurance to oversee the adequacy of the compliance reviews being conducted was inadequate in light of the Manual as it relates to the alerts for Trader X between July 31, 2018 and March 30, 2020.
15. It was only after the first communication with the Division, on November 29, 2019 (the "**First Communication**"), that NBFi started to subject these alerts to internal correspondences with Trader X and completed the various steps provided for by the Manual.
16. In December 2019, Trader X was informed of the Division's questions with respect to his trading. He was advised by NBFi to keep these questions in mind, going forward and to be cautious in his trading.
17. On January 2, 2020, NBFi questioned Trader X on trading that took place on December 30, 2019.
18. NBFi recognizes that the Rules prohibit the practice of placing an order with the intent of canceling it. Nevertheless, and despite the identification of the alerts and the Trader X's response, NBFi's actions were insufficient to meet the criteria and processes provided by its own policies including the Manual.
19. During the period following the January 2, 2020 warning, supervision around Trader X increased as provided for by the Manual and the number of triggered alerts by the surveillance system diminished considerably. Trader X is no longer an employee of NBFi.
20. Following the First Communication, NBFi's surveillance team reviewed its practices, specifically in regard to the depth of its review of similar alerts in light of its existing surveillance procedures.

21. Furthermore, NBFi took the following actions:

- Additional trade surveillance staff was hired.
- An overall review of the use of SMARTS was completed, and a process for ongoing recalibration and control of SMARTS parameters was put into place.
- A program consisting of a surveillance team review of qualitative and quantitative data related to higher risk SMARTS alerts was put into place.
- A dashboard intended for the CCO was added containing qualitative and quantitative alert statistics.

### **PART III - PROVISIONS OF THE RULES THAT NBFi ACKNOWLEDGES HAVING BREACHED**

22. NBFi acknowledges having breached:

Article 3.100 of the Rules—“Surveillance and Compliance” by, from July 31st, 2018 to March 31st, 2020, failing to enforce its surveillance policies adequately as to Trader X and thus breaching Article 3.100 of the Rules which requires to establish and maintain a system to supervise the activities of each employee, Approved Person and agent of the Approved Participant that is reasonably designed to achieve compliance with the Regulations of the Bourse.

### **PART IV - FACTORS TO BE CONSIDERED FOR APPROPRIATE PENALTIES**

23. **Mitigation Factors**

***Disciplinary record:*** NBFi does not have previous disciplinary records, however noting that upon further questioning by the Committee members, such absence refers solely to the records of the Bourse.

***Acknowledgment of responsibility:*** NBFi, being the sole Respondent of the Complaint, admits the violation of 3.100 of the Rules of the Bourse, however noting that upon further questioning by the Committee members and as further stated in the Settlement Agreement Part VII. Miscellaneous (par. 5), the Division shall not initiate any further action against any other party in relation to the matter addressed in the Settlement Agreement, and as such, Trader X shall remain unidentified.

***Corrective measures:***

- NBFi’s surveillance team reviewed its practices following the First Communication, specifically in regard to the depth of its review of similar alerts in light of its existing surveillance procedures.
- Additional trade surveillance staff was hired.
- An overall review of the use of SMARTS was completed, and a process for ongoing recalibration and control of SMARTS parameters was put into place.
- A program consisting of a surveillance team review of qualitative and quantitative data related to higher risk SMARTS alerts was put into place.
- A dashboard intended for the CCO was added containing qualitative and quantitative alert statistics.

***Risk of re-offence:*** The risk of re-offence is low.

**Approved Participant did not try to conceal the offence and sent relevant information to the Division:** There was no attempt from NBF1 to conceal the offence.

**Misconduct by the Approved Participant is not intentional:** There is no evidence to conclude that the misconduct by NBF1 was intentional.

**Level of cooperation with the Regulatory Division:** NBF1 demonstrated proactive collaboration with the Division at the onset of the investigation and throughout the issuance of the Complaint, favoring discussions for a settlement at the first opportunity.

24. **Aggravating Factors:**

**Consequences of the offence for the Bourse's reputation and the integrity of markets:** Comprehensive and effective controls, policies, and procedures by an Approved Participant are part of the first line of defense for the integrity of financial markets. Strict adherence to article 3.100 of the Rules by all Approved Participants is thus an integral component in the Division's work to ensure the integrity of the market, the respect of the Regulations of the Bourse and its reputation of the Bourse.

**Length of offending conduct:** The contraventions lasted 20 months.

**PART V - RECOMMENDED SANCTIONS AND COSTS**

The Division and NBF1 agreed to the following sanctions and costs:

- a fine totaling \$250,000 for contravening article 3.100 of the Rules;
- an additional amount of \$26,750 as reimbursement of the related costs of this matter.

The sum of \$276,750 CAD payable within 30 days of the date of service of the written decision of the Committee.

**PART VI - WAIVER**

NBF1 has agreed to waive all its rights under the Rules to a hearing or an appeal if the Settlement Agreement is approved by the Committee.

**PART VII - ANALYSIS**

1. As established in the decisions listed below, the responsibility of the Committee is to review the Settlement Agreement in order to ensure that the proposed penalties fall within a reasonable range of appropriateness in relation to the offences and relevant circumstances described in the Settlement Agreement, and that there is nothing in the Settlement Agreement which would be contrary to the public interest or bring the administration of the Rules into disrepute:

*-Re Toh, 2011 IIROC 51 (par. 6)*

*-Re MacEachren, 2014 IIROC 37 (par. 6 and 8)*

- Re *JitneyTrade Inc. (June 22, 2023) (par. 37-38)*
- Re *Laurentian Bank Securities Inc. (April 25, 2023) (par. 29)*
- Re *Scotia Capital Inc. (May 23, 2018) (par. 1-2)*

2. As stated in *Re MacEachren (supra, par. 8)*, in doing so, the Committee “must also give serious consideration to the fact that the parties have made a joint submission with respect to the appropriateness of the sanctions”.
3. In arriving at its decision, the Committee relied on the Guidelines on the Disciplinary Sanctions of the Bourse (the “**Guidelines**”). As stated in *Re Laurentian Bank Securities Inc. (April 25, 2023) (par. 27)*, the Guidelines list five underlying principles which should be considered, the following two of which are most relevant to the present case:
  - a) penalties shall be imposed to prevent future offences and maintain a high standard of business conduct, with the aim of protecting the public; and
  - b) penalties shall be specific and proportionate to the facts of the alleged offence.
4. The corollary purpose of article 3.100 of the Rules is to assure that Approved Participants have an appropriate internal mechanism in place to maintain a surveillance system that is reasonably designed to achieve compliance with the Rules and to enforce supervisory controls. However, despite NBFi having in place supervision procedures in its Manual, NBFi recognizes that the quality assurance to oversee the adequacy of the compliance reviewed being conducted was inadequate as it related to the alerts for Trader X.
5. As such, in acknowledging in the Settlement Agreement that NBFi’s supervision procedures in place proved to be inadequate and correspondingly failed in its obligation to comply with important regulatory supervisory requirements, it was noted that NBFi’s surveillance team trigger a review of its practices, specifically regarding the depth of its review of similar alerts. It is accordingly of considerable importance that the necessary procedures to comply with regulatory requirements be followed, monitored and quality assessed on a regular and ongoing basis to ensure that the deficiencies which came to light in this case do not occur again.
6. A summary list of the various relevant precedents was articulately cited by Me Leblanc regarding the range of appropriateness of applicable monetary sanctions for contraventions of articles 3.100 of the Rules, and as such, the Committee retained two recent cases which in parallel highlighted the notion that the amount of the penalty should have a deterrent effect:

- Re *Wedbush Securities Inc. (August 25, 2023)*
- Desjardins (March 8, 2024)*

In essence, since the fact patterns in cited precedents are reliably aligned with the statement of facts agreed upon by NBFi and the Bourse in Part II hereinabove, Me Leblanc sought to comparatively quantify the monetary sanctions, for which a distinct parallel was made to the satisfaction of the Committee.

7. In reiterating for the purposes of concluding, the range of appropriateness is determined by the Guidelines on disciplinary sanctions of the Bourse, as well as the relevant case law, having regard to the facts of the case. Having carefully analyzed the relevant facts recited

in the Settlement Agreement and the submissions of the parties, and weighed all of the aggravating and mitigating factors, the Committee finds that the penalties proposed in the Settlement Agreement fall within the reasonable range of appropriateness established by the above-cited precedents and respect the need for specific and general deterrence.

8. Accordingly, the Committee approves the Settlement Agreement, namely the sanctions and costs detailed in Part V hereinabove, for which the aggregated amount of such is stated below for ease of reference.

**FOR THESE REASONS, THE DISCIPLINARY COMMITTEE:**

**APPROVES** the Settlement Agreement;

**ORDERS** NBF1 to pay a fine in the aggregate amount of \$276,750 CAD, payable within thirty (30) days of the service of the written decision of the Disciplinary Committee of the Bourse.

Montréal, December 3, 2024

Signed by:

*Marie-Julie Nicolo*

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Marie-Julie Nicolo, Chair

Signed by:

*Rosanna Bruni*

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Rosanna Bruni, Member

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*Yves Ruest*

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Yves Ruest, Member