



CIRCULAR 166-18
October 23, 2018

SECOND REQUEST FOR COMMENTS

AMENDMENTS TO THE RULES OF BOURSE DE MONTREAL INC. TO CLARIFY THE GOVERNANCE STRUCTURE OF THE REGULATORY DIVISION

On March 22, 2017, Bourse de Montréal Inc. (the “**Bourse**”) published the Request for Comments circular [038-17](#) regarding amendments to the Bourse’s Rules in order to clarify the governance structure of its Regulatory Division (the “**Initial Circular**”). On April 26, 2017, the Bourse published the circular [052-17](#) to extend the request for comments period until June 5, 2017.

As part of this Request for Comments, the Bourse received a comment letter from the Investment Industry Association of Canada (“**IIAC**”), which letter is attached to this circular. The Bourse thanks IIAC for its consideration of the proposed rule changes and for its comment letter.

The Bourse studied all of the comments provided and, in light of those, is proposing an adjustment to the rule changes and present more details relating to the governance structure presented in the Initial Circular.

Composition of the Special Committee:

Initial proposition: The Special Committee will be composed of directors of the Bourse (at least 3), of which at least 50% will be independent directors, at least 50% will be residents of Quebec and at least 50% will have an expertise in derivatives.

Revised proposition: In addition to the criteria mentioned above, the Rules respecting the Special Committee of the Regulatory Division will provide that at least one director will be a representative of an approved participant of the Bourse in order to ensure representativeness of the participants of the Bourse within the Special Committee, while preserving a good governance (at least 50% of the members to be independents).

Advisory Committee of the Regulatory Division:

The initial circular was not addressing the constitution of an Advisory Committee as it does not require a rule change nor a request for comment. However, in order to allow a more global assessment of the proposed governance, we have amended the analysis to support the proposed rule changes in order to include information regarding the composition and the role of that Advisory Committee.

Composition: The Advisory Committee will be composed of no more than 8 members of which 5 will be representatives of approved participants of the Bourse, 3 will comply with the independence criteria applicable to the directors of the Bourse, and at least 50% will be residents of Quebec.

Role: The Advisory Committee may advise the Division and the Special Committee, at their request, concerning a wide range of subjects affecting the activities of the Division and its oversight and will also have the power to make non-binding recommendations to the Special Committee.

The Bourse is in the opinion that this Advisory Committee will address some of the concerns stated in IIAC's comment letter.

We attach to this circular the revised analysis to support the proposed rule changes along with the proposed rule changes. All the changes remain the same, except those related to rules regarding the Special Committee of the Regulatory Division with respect to the composition of the committee, as explained above. However, the rule changes proposed have been updated to account for other rule changes self-certified since the issuance of the Initial Circular.

Moreover, although this document is not subject to the request for comment and self-certification process, we attach to this circular, for information purposes, the draft Mandate of Advisory Committee of the Regulatory Division.

Finally, you will find attached a summary of other comments stated in the comment letter received and the responses of the Bourse to those comments.

Comments on the proposed amendments must be submitted at the latest on **November 26, 2018**. Please submit your comments to:

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A copy of these comments shall also be forwarded to the *Autorité des marchés financiers* (the "**Autorité**") to:

M^e Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800 Victoria Square, 22nd Floor
P.O. Box 246, Tour de la Bourse
Montréal (Québec) H4Z 1G3
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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.

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 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).

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**AMENDMENTS TO THE RULES OF BOURSE DE MONTRÉAL INC.
TO CLARIFY THE GOVERNANCE STRUCTURE OF THE REGULATORY DIVISION**

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I. SUMMARY

Bourse de Montréal Inc. (the “Bourse”) hereby proposes to modify its rules to clarify the governance structure of its Regulatory Division (the “Division”). The objective of the proposed amendments is to better align the governance of the Division with the practices of other options and futures exchanges globally and to reflect fully the spirit of the governance structure contemplated under Decision no. 2012-PDG-0075 (the “2012 Decision”) of the Autorité des marchés financiers (the “Autorité”) recognizing the Bourse as an exchange and a self-regulatory organization (“SRO”). More particularly, the Bourse wishes to modify its rules to clarify that the Special Committee within the meaning of the 2012 Decision shall be a committee of its Board of Directors (the “Board”).

II. ANALYSIS

a. Background

The Division was created in 2000 in the context of the demutualization of the Bourse. The application to be recognized as an SRO filed by the Bourse and published by the Autorité on July 28, 2000 explained the context and the reasons underlying the creation of the Division at the time¹.

On November 24, 2000, the Autorité recognized the Bourse as an exchange and as an SRO as per Decision no. 2000-C-0729 (the “2000 Decision”) which contained conditions and requirements with respect to the Board, the Division, the Special Committee and the rules of the Bourse. The 2000 Decision has been formally reviewed on 4 occasions over the years, including in 2008 at time of the Bourse merger with TSX Group Inc. and in 2012 in the context of the Maple transaction. Therefore, throughout the years, the Autorité issued different decisions which are all individually referred to as the “Recognition Decision” in the present document.

The Recognition Decision always required the Bourse to have a Division to oversee the regulatory functions and operations of the Bourse and always provided that the Division shall be a separate business unit of the Bourse that shall be governed by the Board. The Recognition Decision provided for the Board to appoint a Special Committee to oversee the duties and operations of the Division. Under the 2000 Decision, the Special Committee had to be composed of seven individuals of whom at least four shall not be associated with an Approved Participant within the meaning of the Bourse’s rules. Initially and for a few years, members of the Special Committee included directors and employees of the Bourse while not required specifically by the 2000 Decision.

Notwithstanding the reviews of the Recognition Decision over the years, the requirements for the Division to be a separate business unit of the Bourse governed by the Board of Directors of the Bourse and the appointment of a Special Committee to oversee the functions and activities of the Division remained. However, the requirements with respect to the composition of the Special Committee evolved and ultimately, the Recognition Decision provides that the Special Committee should be composed of “no less than 50% of persons who are residents of Québec at the time of

¹ See attachment A.

their appointment and for the duration of their terms of office, no less than 50% of persons who satisfy the independence criteria applicable to the directors of the Bourse, and no less than 50% of persons who have expertise in derivatives.”

While the Recognition Decision never required it, the composition of the Special Committee evolved over time as to no longer include any directors or employees of the Bourse.

The Autorité has raised questions with respect to the mandate, powers and responsibilities of the Special Committee and the accountability of the Board in light of the requirements of the Recognition Decision. Ongoing dialogue with the Autorité has led the Bourse to revisit the governance structure, which has resulted in the present proposal.

b. Description and Analysis of Impacts

The Bourse is recognized as an SRO. Therefore, as the Recognition Decision contemplates it, the ultimate accountability for the Bourse’s SRO responsibilities lies with its Board. While exercising its regulatory functions independently, the Division is part of the Bourse and therefore, is subject to the ultimate oversight of the Board. In that context, sound governance principles and public interest considerations require relevant powers to rest with the body ultimately accountable for SRO responsibilities and obligations of the Bourse, which is the Board.

Directors’ duties and basic governance principles are described in the publication *Directors’ Responsibilities in Canada*², the following extracts of which are relevant when considering the appropriate governance structure for the Division:

In Canada, a director’s duty is owed to the corporation. This duty is grounded in basic principles of good faith, stewardship and accountability. Each director must act honestly and in good faith with a view to the best interests of the corporation and must exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Delegation is permitted with certain exceptions and must be reasonable in the circumstances, but responsibility for major decisions and the exercise of general discretion will always be the responsibility of the directors. Effective corporate governance requires each Board of Directors to assume responsibility for the stewardship of the corporation.

Directors are fiduciaries of the corporation they serve. The directors’ fiduciary duty requires a director to act in the best interests of the corporation. In determining whether they are acting in the best interests of the corporation, directors may consider the interests of various stakeholders. The directors’ fiduciary duty comprehends a duty to treat individual stakeholders affected by corporate actions equitably and fairly. Directors must therefore think carefully about whether a course of action will benefit the corporation, while ensuring they have also considered the

² Osler, Hoskin & Harcourt LLP and The Institute of Corporate Directors (ICD), 2014, https://www.icd.ca/getmedia/581897ca-d69d-4d4f-a2a2-ca6b06ef223b/5467_Osler_Directors_Responsibilities_-Canada-FINAL.pdf.aspx

impact of that course of action on those whom it will affect. In resolving competing interests, directors should act to make the corporation a “better” corporation.

Good corporate governance is integral to directors discharging their responsibilities appropriately. In a general sense, “corporate governance” refers to the process and procedures used to manage the business and affairs of a corporation. The process and structure should ensure that the Board can function independently of management.

The complexities of modern business impose a number of challenges on the ability of directors to manage or supervise the management of a corporation. Responsibility for the day-to-day management of a corporation’s affairs are usually delegated to senior officers of the corporation who are responsible to, and report back to, the Board. Responsibilities can also be delegated to Committees of the Board, which allow directors to share responsibility and to devote the necessary resources to a particular issue or area. Committees consisting solely of independent directors are constituted to address particular Board matters, so that Board deliberations on such matters are, and are perceived to be, independent. Notwithstanding this delegation of responsibilities to Board committees, the Board retains its ultimate responsibility for all matters assigned to the committee for consideration and resolution.”

The ability of a board of directors to delegate any of its powers is governed by corporate law. The Bourse was established under the Quebec Business Corporations Act (the “QBCA”) which imposes on the Board the obligation to manage, or supervise the management of, the business and affairs of the corporation. With respect to delegation of powers, the QBCA provides that the Board has the authority to delegate its powers to a director or a subcommittee of directors or officers of the Bourse. Regardless of any delegation, Board of directors remain accountable for decisions affecting the management of the business and affairs of a corporation.

The Bourse’s by-laws provide that the Board may appoint from their number one or more committees of the Board, however designated, and delegate to any such committee any of the powers of the Board except those which pertain to items which, under the QBCA, a committee of the Board has no authority to exercise. The Bourse’s by-laws also gives the Board the power to appoint advisory bodies, but, in accordance with the QBCA, do not contemplate the ability to delegate any Board’s powers to such advisory bodies. More specifically with respect to the Division, the Bourse’s by-laws provide that:

“For greater certainty, there will be a division of the [Bourse] which focuses primarily on market regulation created to oversee the [Bourse]’s regulatory functions and operations, and such division will be subject to supervision by a special committee designated by the Board of Directors, the division being subject to the ultimate authority of the Board of Directors and of the Autorité des marchés financiers. More than 50% of the members of such committee shall be independent members based on the standards set forth in the Board of Directors Standards of the Company.”

In light of the wording of the Recognition Decision, principles of corporate law and the Bourse’s by-laws, the Bourse is of the view that the Special Committee should be a committee of the Board. Such interpretation is in line with the purpose of the Board, its role, expertise, duties and

responsibilities described above. Given the Bourse in its entirety is the entity recognized as an exchange and an SRO by the Autorité, the ultimate accountability and authority over the Division lies with the Board which is legally responsible for managing, or supervising the management of, the business and affairs of the corporation. This principle is acknowledged by the Recognition Decision and public interest warrants that the Board be accountable for the SRO responsibilities of the Bourse.

The Recognition Decision requires the Division to be independent from the other activities of the Bourse. In the context of the whole Recognition Decision and considering the functions and responsibilities of the Division, the Bourse reads the requirement as independence from the other operations of the Bourse, not from the Board itself. The independence of the Division from other operations of the Bourse is properly warranted and protected through other provisions of the Recognition Decision going to the independence of the operations of the Division. The Bourse is of the view that the principle of independence does not imply that the Special Committee be composed of non-directors of the Bourse. As a matter of sound corporate governance principles and public interest, a Special Committee which is a committee of the Board better aligns decision-making powers with responsibilities. Considering that the SRO responsibilities of the Bourse ultimately rest with the Board, the Special Committee should therefore be a committee of the Board.

Independence of the Special Committee itself is safeguarded given that at least 50% of the members of this committee shall satisfy the independence criteria for the directors of the Bourse, defined in the Recognition Decision. Managing inherent tension between business and regulatory functions and conflict of interests, real or apparent, should be the responsibility of the Board, the governing body of a corporation used to dealing with conflict issues. Moreover, directors of the Board are legally obligated by virtue of their fiduciary duties to act in the best interest of the corporation, which implies a duty to treat individual stakeholders affected by corporate actions equitably and fairly. These duties do not legally bind the members of the Special Committee who currently are not directors of the Bourse.

However, considering its recognition as an SRO, the Bourse considers that it would be appropriate to require that the Special Committee includes at least one director related to an approved participant of the Bourse. This measure, although not required under the Recognition Decision, would ensure that the perspective of the approved participants is represented within the Special Committee. The sound governance of the Special Committee, as mentioned above, remains safeguarded by the requirement that at least 50% of the members of the committee be independents within the meaning of the Recognition Decision. The Bourse proposes to amend the Rules Regarding the Special Committee – Regulatory Division in order to prescribe this additional criteria related to the composition of the committee. An amendment to the Recognition Decision to that effect is not required as it does not prevent the Bourse to determine other composition criteria in addition to those already prescribed.

c. Comparative Analysis

In Canada – The IIROC Model

The Bourse's regulatory model cannot be compared to the IIROC regulatory model.

IIROC is recognized as an SRO by securities regulators and is a separate legal entity from the exchanges operating the markets it oversees.³

As permitted under *Regulation 23-101 respecting Trading Rules*, the Bourse monitors the conduct of its approved participants and enforces its rules directly, rather than through a regulation services provider. The Division, to whom this responsibility has been assigned, is not a separate legal entity from the Bourse with a separate recognition order. The Bourse is the legal entity that the Autorité has recognized as an SRO. Therefore, the Board of the Bourse, or its proper delegate, has the obligation to oversee the Bourse's SRO activities.

The International Context

Many, if not most, jurisdictions organize the regulation of exchanges and other segments of their financial services industry through self-regulation. Self-regulation has the benefit of having those persons closest to the market carrying out its regulatory functions. It also enables governments to regulate and supervise an industry with less expenditure of government resources by "deputizing" private sector self-enforcement resources and mechanisms.

Regulators globally⁴ have grappled with determining the optimal governance structure that should apply to the self-regulatory organizations that they oversee, particularly in light of the trend of exchange demutualization. No one model has been adopted by all jurisdictions. A common thread among these structures, however, is requiring that an exchange's regulatory functions be carried out independent of the business operations of the exchange. This may be achieved by gathering the regulatory functions into a separate legal entity, or if within the same legal entity, by carrying out regulatory functions in a separate division with reporting lines directly to the board of directors. It is also a common approach for exchanges to require some degree of participation on the board of directors of independent directors.

One would argue that self-regulation raises the possibility of conflicts of interest between the commercial interests of an entity and its regulatory responsibilities. Self-regulatory organizations respond to this observation by contending that the commercial and regulatory interests of the organization are really in alignment because strong and effective regulation furthers the commercial interest of the organization.

These issues were the focus of concerted examination by international regulatory authorities during the move of many exchanges to demutualize. Observers noted that certain conflicts of interest in self-regulatory organizations might be exacerbated when exchanges become for-profit enterprises. At the beginning of the trend toward exchange demutualization, it was expected that for-profit organizations might shortchange their regulatory responsibilities in order to maximize shareholder profits absent structural changes or other regulatory requirements.⁵

³ For a full analysis of the relationship between IIROC and the markets it oversees, we refer to Re Berry, OSC Reasons for Decisions, September 23, 2009, https://www.osc.gov.on.ca/documents/en/Proceedings-RAD/rad_20090929_berryd.pdf.

⁴ While this analysis goes into more details with respect to the American context, other regulators that are dealing with these same issues include those of Brazil, Germany, Japan and United Kingdom, for example.

⁵ See, "Conflicts of Interest in Self-Regulation: Can Demutualized Exchanges Successfully Manage Them?" World Bank Policy Research Working Paper 3183 (December 2003).

In a report on these issues, International Organization of Securities Commissions (IOSCO) identified the following approaches to addresses conflicts of interest:

- governance arrangements;
- separation of functions within an exchange;
- restrictions on ownership;
- oversight arrangements (including arrangements to deal with self-listing); and
- transfer/removal of functions.⁶

All of these responses aim to separate enforcement activities from operation of the exchange, to strengthen oversight by regulatory authorities, or to insulate enforcement and market surveillance activities from commercial pressures.

The American Approach

Given Quebec's approach to derivatives self-regulation has been largely inspired by American regulators, the Bourse has taken a closer look to the governance of American SROs.

Although the SEC has not mandated that the regulatory function must be carried out by a legal entity separate from the exchange operator, the NYSE has chosen to do so.⁷ NYSE Regulation is an independent legal entity within the NYSE holding company. NYSE Regulation is responsible for enforcing compliance by the NYSE and NYSE members with exchange rules. It does so itself and through an outsourcing agreement with the Financial Industry Regulatory Authority ("FINRA").

The NYSE approach is not the only regulatory model available to U.S. equity options exchanges. Most of the U.S. equity exchanges and all U.S. options exchanges, including the Chicago Board Options Exchange ("CBOE"), Nasdaq OMX, BATS/Direct Edge, the International Securities Exchange, BOX and MIAX, have entered into Regulatory Service Agreements ("RSAs") with FINRA. Under such agreements, the exchanges outsource certain regulatory functions which may include market surveillance, financial surveillance, examinations, investigations, and disciplinary matters to FINRA as a services provider, but not the ultimate legal responsibility for self-regulatory conduct, which remains with the exchange. As a result of these arrangements, FINRA is able to conduct comprehensive, cross-market surveillance for approximately 99 percent of the listed equity market and approximately 70 percent of the listed options market.⁸ This type of regulatory services outsourcing, however, does not alter the exchanges' authority or responsibility as self-regulatory organizations. Despite contracting with FINRA to provide certain services related to regulatory operations, the exchanges continue to retain ultimate legal responsibility for, and control of, the regulation of their markets, including the rulemaking process. Ultimately, the SEC has emphasized and the exchanges themselves have recognized that entering into an RSA with

⁶ See, "Regulatory Issues Arising From Exchange Evolution, Final Report," IOSCO (November 2006).

⁷ When the NYSE demutualized, it agreed to restructure its board and operations in response to SEC concerns about conflicts of interest. NYSE Regulation was established as an independent subsidiary of NYSE in 2003. NYSE Regulation has an independent board, and its CEO reports only to that board. The board is made up of six independent directors (who have no affiliation to the NYSE Euronext board or to any listed company or member organization), three directors who are also NYSE Euronext directors, and the CEO of NYSE Regulation. This structure aims to maintain the independence of regulation within a for-profit, public corporation while preserving extensive communication and information sharing between business and regulatory activities.

⁸ Richard G. Ketchum, Chairman and CEO, FINRA, Testimony Before the Subcommittee on Securities, Insurance and Investment, United States Senate (Mar. 3, 2016).

FINRA does not shift responsibility for self-regulatory conduct or primary liability for self-regulatory failures from the exchange to FINRA.⁹

For example, the CBOE Bylaws provide for a Regulatory Oversight and Compliance Committee.¹⁰ This committee is composed of at least three directors, all of whom are non-industry directors. The charter of the ROC committee provides that the committee as an advisory role to the Board on regulatory issues.¹¹

As for futures, the CFTC rules require futures exchanges (designated contract markets or “DCMs”) to regulate their markets “effectively, impartially, and with due consideration for the public interest.”¹² DCMs are required to be especially vigilant for conflicts of interest involving “their self-regulatory responsibilities, commercial interests, and the several interests of their management, members, owners, customers” and other stakeholders. Acceptable practices for minimizing these conflicts as specified in the rules include a minimum number of public directors on the Board of Directors. In addition, the Board of Directors must establish as a standing committee, a Regulatory Oversight Committee (“ROC”), which is a committee of the board. The duties of the ROC are to¹³:

- (A) Monitor the contract market's regulatory program for sufficiency, effectiveness, and independence;*
- (B) Oversee all facets of the program, including trade practice and market surveillance; audits, examinations, and other regulatory responsibilities with respect to member firms (including ensuring compliance with financial integrity, financial reporting, sales practice, recordkeeping, and other requirements); and the conduct of investigations;*
- (C) Review the size and allocation of the regulatory budget and resources; and the number, hiring and termination, and compensation of regulatory personnel;*
- (D) Supervise the contract market's chief regulatory officer, who will report directly to the ROC;*
- (E) Prepare an annual report assessing the contract market's self-regulatory program for the board of directors and the Commission, which sets forth the regulatory program's expenses, describes its staffing and structure, catalogues disciplinary actions taken during the year, and reviews the performance of disciplinary committees and panels;*
- (F) Recommend changes that would ensure fair, vigorous, and effective regulation; and*

⁹ See, e.g., Exchange Act Release No. 53128, 71 Fed. Reg. 3550, 3556 (Jan. 23, 2006) (noting that “the Nasdaq Exchange bears the responsibility for self-regulatory conduct and primary liability for self-regulatory failures, not the SRO retained to perform regulatory functions on the Exchange’s behalf.”); CBOE rule 15.9(b) (“Notwithstanding the fact that the Exchange may enter into one or more regulatory services agreements, the Exchange shall retain ultimate legal responsibility for, and control of, its self-regulatory responsibilities, and any such regulatory services agreement shall so provide.”); BATS BZX Exchange rule 13.7 (“Notwithstanding the fact that the Exchange may enter into one or more regulatory services agreements, the Exchange shall retain ultimate legal responsibility for, and control of, its self-regulatory responsibilities, and any such regulatory services agreement shall so provide.”).

¹⁰ See, Seventh Amended and Restated Bylaws, available at:

http://wallstreet.cch.com/CBOEtools/PlatformViewer.asp?SelectedNode=chp_1_1_10&manual=/CBOE/bylaws/cboe-bylaws/

¹¹ See, Comment Letter of CBOE to CFTC, at <http://www.cftc.gov/files/foia/comment06/foicf0604c019.pdf> at page 5. That comment letter explained the role of the ROC as of 2006 as “to oversee the independence and integrity of the regulatory functions of the exchange The charter then goes on to provide for the CBOE ROC to perform the following specific functions: (i) meet regularly with the CRO and possibly other senior staff in the Regulatory Services Division to learn of new developments and issues confronting the Division and to hear their reports and concerns: (ii) review and make recommendations to the Board of Directors regarding the staffing and budget for regulatory operations, . . . , (iii) meet regularly with the internal Regulatory Auditor: (iv) review decisions by CBOE’s Business Conduct Committee not to authorize the issuance of statements of charges that were recommended by Exchange staff, and (v) make a full report no less frequently than once per year to the Board of Directors. . . .”

¹² Acceptable practice to Core Principle 16 of section 5(d) of the Commodity Exchange Act, Code of Federal Regulations, Title 17, Chapter I, Part 38, Subpart X, Appendix B, to Part 38—Guidance on, and Acceptable Practices in, Compliance With Core Principles

¹³ Idem.

(G) Review regulatory proposals and advise the board as to whether and how such changes may impact regulation.

In light of the above, the oversight of the Division by a committee of the Board of the Bourse seems consistent and aligned with the American approach.

d. Proposed Amendments

While the current rules do not prevent the Special Committee to be a committee of the Board, the Bourse proposes to modify the Rules regarding the Regulatory Division and the Rules Regarding the Special Committee – Regulatory Division in order to provide expressly that the Special Committee shall be a committee of the Board, for the sake of greater clarity.

The Bourse also proposes to amend article 3 of the Rules Regarding the Special Committee – Regulatory Division to provide the following additional composition criteria:

“d) at least one person who is a partner, director, officer or employee of a “marketplace participant” of the Corporation or an associate of a partner, director, officer or employee of a “marketplace participant” of the Corporation (with “marketplace participant” having the definition as set out in Regulation 21-101 respecting Marketplace Operation).”

As part of this process, the Bourse has identified the powers that should be carried by the Board, or a committee thereof, versus officers of the Bourse, including the Vice President of the Regulatory Division, or Bourse’s staff. Generally, where decisions must be made with respect to the management of the business and affairs of the Bourse, including the Division, such responsibility should rest with the Board. When it comes to implementing or operationalising such decisions, this responsibility rest more appropriately with the officers of the Bourse (where some judgment or discretion must be exercised) or its staff. As a result of the review, the Bourse determined that the following existing powers should be reassigned as follows:

Powers	Under current structure	Under proposed structure
To approve the applications for approved participant or designated representative status, as well as the suspension and revocation of such approvals pursuant to articles 3001 to 3960 of the Rules of the Bourse;	Special Committee ¹⁴	<u>Approved participants:</u> Application and revocation: the Bourse Suspension: the Vice President of the Division <u>Designated representative:</u> the Vice President of the Division
To approve the resignations of approved participants pursuant to articles 3701 to 3708 of the Rules of the Bourse;	Special Committee ¹⁴	The Bourse

14 Under the Rules regarding the Special Committee – Regulatory Division.

Powers	Under current structure	Under proposed structure
To approve corporate changes affecting approved participants, such as changes of control, acquisitions of major positions and reorganizations;	Special Committee ¹⁴	The Vice President of the Division
To order that a special examination or investigation be made pursuant to article 4003 of the Rules of the Bourse;	Special Committee ¹⁴	The Vice President of the Division
Should the circumstances warrant, to proceed summarily in the situations mentioned in articles 4004 and 4301 and following of the Rules of the Bourse;	Special Committee ¹⁴	The Vice President of the Division
To order a suspension for failure to provide information pursuant to article 4005 of the Rules of the Bourse;	Special Committee ¹⁴	The Vice President of the Division
To proceed to the hearing of appeals from decisions rendered by the Disciplinary Committee in regards to complaints, pursuant to articles 4101 and following of the Rules of the Bourse;	Special Committee ¹⁴	The <i>Tribunal administratif des marchés financiers</i>
To approve the fees relating to the Division;	Special Committee ¹⁴	<u>Fees imposed by the Division:</u> the Vice President of the Division <u>Market Regulation Assessments:</u> the Board, upon recommendation of the Special Committee
To set the scope, the preparation method and the form of any report that must be submitted to the Bourse by approved participants.	Special Committee ¹⁵	The Bourse

In order to further preserve the Special Committee from any actual or apparent conflict of interest, decisions of the Bourse’s Disciplinary Committee will be reviewable directly by the *Tribunal administratif des marchés financiers* (the “Tribunal”), as contemplated by the *Derivatives*

¹⁵ Under article 7002 of the Rules.

Act¹⁶. Decisions made by the staff of the Division will be reviewable by an internal Review Committee, formed by the same persons and according to the same process as a Disciplinary Committee. A decision so reviewed will then also be reviewable by the Tribunal as contemplated by the *Derivatives Act*.

No changes are made to article 1102 (definition of Special Committee) and 4103 (List of Designated Persons, which must be approved still by the Special Committee) as no changes are warranted as a result of this proposal. Article 6389A is not modified given it is proposed to be abrogated as part as a previous amendment proposal published for comments under [Circular 146-16](#). Conforming changes are however proposed to new article 4223 as proposed in such circular.

Finally, conforming changes are made throughout the Bourse's rules to reflect those substantive changes and remaining references to trading permits are removed in articles 1101, 1102 and 3009 as well as the Rules Regarding the Regulatory Division and the Rules Regarding the Special Committee – Regulatory Division given this concept is obsolete.¹⁷

III. AMENDMENT PROCESS

The Autorité has raised questions with respect to the mandate, powers and responsibilities of the Special Committee and the accountability of the Board in light of the requirements of the Recognition Decision. Ongoing dialogue with the Autorité has led the Bourse to revisit the governance structure, which has resulted in the present proposal.

IV. IMPACTS ON TECHNOLOGICAL SYSTEMS

This proposal has no impact whatsoever on technological systems of the Bourse or market participants.

V. OBJECTIVES OF THE PROPOSED AMENDMENTS

The objective of the proposed amendments is to better align the governance of the Division with the practices of other options and futures exchanges globally and to reflect fully the governance structure contemplated under the Recognition Decision.

VI. PUBLIC INTEREST

The Bourse believes that this proposal is in the public interest. The public has an interest in making sure that an SRO is governed in accordance with sound governance principles and with the Recognition Decision. The Board being accountable for the Bourse's SRO responsibilities, the Special Committee should therefore be a committee of the Board.

¹⁶ Article 113, *Derivatives Act*, chapter I-14.01.

¹⁷ Removal of the restricted trading permit concept in the remainder of the rules has been proposed as part of the file Market Making Programs Reform published for comments on May 11, 2016 – see [Circular 056-16](#).

VII. EFFICIENCY

This proposal has no impact on market efficiency.

VIII. PROCESS

The proposed amendments, including this analysis, must be approved by the Bourse's Rules and Policies Committee and submitted to the Autorité des marchés financiers, in accordance with the self-certification process, and to the Ontario Securities Commission for information purposes.

IX. OTHER CONSIDERATIONS

The Division also intends to create an Advisory Committee. This committee will be composed of no more than 8 members, 5 of which will be representatives of approved participants of the Bourse, 3 of which will comply with the independence criteria applicable to the directors of the Bourse, and at least 50% of which will be residents of the Province of Quebec. This committee will advise the Division and the Special Committee, at their request, concerning a wide range of subjects affecting the activities of the Division and its oversight, including namely the independence of the Division, its operational efficiency, its budget, the exercise of its discretionary powers, its regulatory policy and the regulatory amendments under its authority. It will also have the power to make non-binding recommendations to the Division or to the Special Committee. To assist the Division in the carrying out of its mission, this committee will constitute a forum in which the representatives of the industry will contribute to its sound governance. For information purposes, the draft Mandate of Advisory Committee is attached to this analysis.

~~IX.X.~~ ATTACHED DOCUMENTS

- Attachment A - Application to be recognized as an SRO filed by the Bourse and published by the Autorité on July 28, 2000 (in French);
- Proposed amendments;
- Draft Mandate of Advisory Committee of the Regulatory Division – for information purposes.

Attachment A

**Application to be recognized as an SRO filed by the Bourse
and published by the Autorité on July 28, 2000 (in French)**

Consultation

Les personnes intéressées ont jusqu'au **19 septembre 2000** pour présenter par écrit des observations. Les observations doivent être envoyées à l'adresse suivante :

M^e Claude St Pierre, Secrétaire
Commission des valeurs mobilières du Québec
Tour de la Bourse, 22^e étage
800, Square Victoria
C.P. 246
Montréal (Québec)
H4Z 1G3
Courriel : claud.stpierre@cvmq.com

Il faut aussi présenter une disquette contenant les observations (en format Word sur Windows). Du fait que la législation en valeurs mobilières de certaines provinces exige la publication d'un résumé des observations écrites reçues au cours de la période de consultation, le caractère confidentiel des observations ne peut être sauvegardé.

Pour de plus amples renseignements, on peut s'adresser à :

Sophie Jean
Conseillère en réglementation
Commission des valeurs mobilières du Québec
Téléphone : (514) 940-2199, poste 4578
Courriel : sophie.jean@cvmq.com

1.3 Calendrier des audiences

Le 4 août 2000 9 h 30	Jacques Quirion (demande de levée de blocage)
Le 24 août 2000 9 h 30	Planifications Plus Marcel Vachon Inc. Marcel Vachon Manon L'Anglais (pro forma)
Le 29 août 2000 14 h 00	Société nationale de l'amiante (conférence préparatoire)
Le 30 août 2000 9 h 30	Valeurs Mobilières Swift Trade Inc. (demande de révision d'une décision d'un directeur) (pro forma)

Le 5 septembre 2000
9 h 30

Michel Chevrier
Jean-Eudes Arsenault
Alexandre Cigna
Michel Caplette
Denis Duchesneau
Richard Fournier
Boyd Le Gallais
(Optec Fund Ltd.)
(pro forma)

Les 6, 7, 13, 20 et 22
septembre 2000
9 h 30

Maxima Capital Inc.
Gilles Bertrand
Pierre St-Aubin

Les 2, 3, 4, 5, 6, 16,
17, 30 et 31 octobre
2000
9 h 30

Guy Shedleur

Les dates d'audience peuvent être modifiées sans avis préalable. Veuillez vérifier auprès de la Commission quelques jours auparavant.

1.4 Liste des sociétés dont les titres sont admissibles pour fins de couverture dans le cadre du Régime d'épargne-actions du Québec

On trouvera en annexe la liste des sociétés dont les titres acquis sur le marché secondaire sont admissibles pour fins de couverture seulement dans le cadre du Régime d'épargne-actions du Québec.

1.5 Autres avis**– Demande de reconnaissance – Bourse de Montréal Inc.**

La Commission publie ci-après, en vertu de l'article 173 de la Loi, la demande de reconnaissance à titre d'organisme d'autoréglementation de la Bourse de Montréal Inc. Cette demande s'inscrit dans le cadre du projet de démutualisation de la Bourse de Montréal.

Consultation

Toute personne intéressée peut présenter ses observations à la Commission avant le **1^{er} septembre 2000**.

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Les observations doivent être transmises à la Commission des valeurs mobilières du Québec à l'adresse suivante :

Claude St Pierre, Secrétaire
Commission des valeurs mobilières du Québec
Tour de la Bourse
C.P. 246
Montréal (Québec) H4Z 1G3

Tél. : (514) 940-2199, poste 4531
Courriel : claudestpierre@cvmq.com

Les personnes qui présentent des observations sont invitées à soumettre également leur texte sur disquette (en format Windows, préférablement en Word). Ces observations pourront également être présentées lors de l'audience publique dont la date reste à être déterminée.

Pour obtenir des informations additionnelles, veuillez communiquer avec :

Monsieur Jean Lorrain
Directeur de la conformité et de l'application

Tél. : (514) 940-2199, poste 4301
Courriel : jean.lorrain@cvmq.com

Texte de la demande de reconnaissance de la Bourse de Montréal Inc.

Lors de sa réunion du 20 juin 2000, le Comité des gouverneurs a approuvé le projet de démutualisation de la Bourse de Montréal (ci-après appelée « la Bourse »). Le projet sera soumis pour approbation aux membres de la Bourse lors d'une assemblée spéciale qui se tiendra à l'automne 2000.

La présente demande de reconnaissance vous est soumise en vertu des articles 169 et 172 de la Loi sur les valeurs mobilières (Québec) pour et au nom de la Bourse de Montréal Inc., l'entité juridique qui sera créée dans le cadre de la démutualisation de la Bourse.

Comme vous le savez, la Bourse est déjà reconnue à titre d'organisme d'autorégulation par la Commission des valeurs mobilières du Québec (« la Commission »).

1. Démutualisation

La démutualisation de la Bourse a pour objet de scinder entièrement les droits d'accès à la négociation et les droits de propriété. Les membres actuels échangeront leur titre de membre pour des actions de la Bourse de Montréal Inc., une compagnie qui sera par la suite régie par la Partie 1A de la Loi sur les compagnies (Québec). Les actionnaires de la Bourse de

Montréal Inc. ne seront pas tenus d'être activement impliqués dans les activités de valeurs mobilières et de produits dérivés, et les courtiers ou tous autres participants pourront avoir accès aux systèmes de négociation de la Bourse de Montréal Inc. sans avoir à devenir actionnaire. Par le biais de cette démutualisation, la Bourse de Montréal Inc. aura accès à de nouvelles sources de financement privé ou public. De plus, la régie interne de la Bourse de Montréal Inc. sera assurée par un nouveau conseil d'administration nommé par les actionnaires de la Bourse de Montréal Inc. afin que celle-ci puisse réagir rapidement aux changements technologiques et voir au développement de nouveaux produits dans le contexte de la globalisation des marchés, lequel inclut notamment les « ATS (Automated Trading Systems) » et les « ECN (Electronic Communications Networks) ».

En vertu de ce projet, chaque membre de la Bourse recevra des actions de la Bourse de Montréal Inc. Les permis de négociation existants seront reconduits comme droits d'accès aux systèmes de négociation de la Bourse de Montréal Inc. Tout nouveau participant devra obtenir au moins un droit d'accès sans pour cela être obligé d'acquiescer des actions. Suite à la démutualisation, toute personne bénéficiant d'un droit d'accès sera reconnue à titre de « participant agréé ».

2. Principes de reconnaissance

Dans le cadre de la présente demande de reconnaissance, la Bourse soumet à la Commission que la conformité de la Bourse de Montréal Inc. avec les principes de reconnaissance suivants permet à la Commission d'accorder la reconnaissance en vertu de l'article 174 de la Loi sur les valeurs mobilières (Québec).

2.1 Structure corporative et administrative

La Bourse de Montréal Inc. assumera tous les droits et toutes les obligations de la Bourse laquelle sera éventuellement dissoute. Cette nouvelle entité juridique sera par la suite régie par la Partie 1A de la Loi sur les compagnies (Québec) que ce soit via une demande de lettres patentes supplémentaires par la Bourse en vertu de l'article 14 de la Loi sur les compagnies (Québec) et/ou l'incorporation d'une nouvelle compagnie en vertu de la Loi sur les compagnies (Québec).

Le capital autorisé de la Bourse de Montréal Inc. sera composé d'un nombre illimité d'actions ordinaires et d'un nombre illimité d'actions privilégiées, émissibles en séries. Pour l'avenir prévisible, seules des actions ordinaires seront émises.

De façon à assurer que la Bourse de Montréal Inc. continuera à s'acquitter d'un vaste mandat tenant compte des objectifs de tous les secteurs qui peuvent être intéressés à son succès économique futur et qu'elle soit perçue tant sur le plan local qu'international comme un véhicule de libre entreprise, la Bourse reconnaît qu'il serait approprié que la Commission impose qu'aucune personne ni aucun regroupement de personnes ni membres du même groupe agissant conjointement ou de concert, ne soient autorisés à être propriétaires de plus qu'un certain pourcentage (la Bourse proposerait 10 %) de toutes catégories ou séries d'actions comportant droit de vote de la Bourse de Montréal Inc., ou à exercer une emprise sur un tel pourcentage de ces actions. La Bourse de Montréal Inc. aura le droit, en vertu de ses documents constitutifs, de faire en sorte que soient vendues toutes actions détenues en contravention de cette restriction. Pour les fins de cette restriction, des personnes seront réputées agir conjointement ou de concert si elles sont liées, directement ou indirectement, ou s'il existe entre elles une convention ou une autre entente, écrite ou verbale, formelle ou non, prévoyant l'exercice concerté de droits de vote. La plupart des membres actuels de la Bourse détiennent un peu plus de 1 % de la propriété de la Bourse.

À l'exception des actions détenues en contravention de la restriction de 10 %, chaque action ordinaire confèrera à son porteur le droit à un vote à toutes les assemblées d'actionnaires, à une quote-part de tous dividendes futurs et à une quote-part de l'actif net de la Bourse de Montréal Inc. au moment de sa dissolution.

2.2 Régie interne

L'objectif de la Bourse de Montréal Inc. consiste à établir un système de régie d'entreprise qui protège tant les participants agréés que les investisseurs dans son capital et qui minimise les possibilités de conflits d'intérêts.

Le conseil d'administration de la Bourse de Montréal Inc. sera composé d'un minimum de neuf administrateurs. Il comprendra toujours un maximum de deux dirigeants de la Bourse de Montréal Inc. et au moins 50 % de ses membres ne seront pas des participants agréés ou des personnes qui ont des liens avec des participants agréés.

La direction et le conseil d'administration de la Bourse de Montréal Inc. créeront et définiront le mandat des comités et des sous-comités permanents et spéciaux, dont certains pourront, en

plus d'administrateurs, comprendre des experts reconnus dans divers domaines, des représentants du milieu des valeurs mobilières et des produits dérivés et des investisseurs.

2.3 Réglementation

Avec la démutualisation, la Bourse de Montréal Inc. verra l'ensemble de la réglementation actuelle de la Bourse (règlements, règles et politiques) adaptée à ce nouveau contexte et elle se dotera d'une division distincte et séparée qui sera responsable de la réglementation de ses participants agréés de même que de la surveillance de ses marchés.

2.3.1 Règlements, règles et politiques

La Bourse a entamé un processus de révision de l'ensemble de sa réglementation qui continuera de régir la conduite des participants agréés (enquêtes, discipline ...) par la Bourse de Montréal Inc. et les règles relatives à la négociation de ses produits. En substance, aucun changement majeur n'est prévu par rapport à la réglementation actuelle de la Bourse; les modifications consisteront principalement en adaptations au nouveau contexte de démutualisation. Enfin, ces modifications seront déposées dans les plus brefs délais à la Commission pour fins d'approbation.

2.3.2 Nouvelle division de réglementation

La Bourse reconnaît que la Bourse de Montréal Inc. doit concevoir un modèle approprié de réglementation du marché dans le contexte de sa transformation en une société à but lucratif et dans un milieu concurrentiel où d'autres formes de systèmes fournissent également des services de négociation.

C'est pourquoi la Bourse de Montréal Inc. créera une division qui sera désignée comme Division de la réglementation («la Division»), laquelle surveillera à la fois le marché et les participants agréés (réglementation et discipline). Les activités de la Division seront essentielles au maintien de l'intégrité et de l'équité des marchés.

La Division sera sous la régie d'un comité spécial nommé par le conseil d'administration de la Bourse de Montréal Inc. Un minimum de 50 % des membres du comité spécial sera formé de personnes qui sont ni des participants agréés ni des personnes qui ont des liens avec des participants agréés. Ces changements sont nécessaires pour s'assurer que la Bourse de Montréal Inc. puisse s'acquitter avec crédibilité de ses fonctions de réglementation sans être indûment influencée par sa réorientation à titre d'organisme à but lucratif.

Cette Division autonome ne constituera pas un centre de profits, aura un budget distinct, produira des rapports financiers séparés et sera autofinancée. Les utilisateurs des services de réglementation du marché assumeront leur juste part du coût de ces services. Il est prévu que la Division ne facturera que les frais réellement encourus par la Bourse de Montréal Inc. En cas de surplus, la Division verra en temps et lieu à leur utilisation et affectations à d'autres fins reliées aux activités de la Division, selon les circonstances.

Ce modèle devrait régler efficacement les préoccupations en matière de conflits d'intérêts qui existent actuellement ou qui pourraient surgir du fait que la Bourse de Montréal Inc. fonctionnera à la fois comme une entité à but lucratif et comme organisme qui exploite, réglemente et surveille un marché.

Des procédures de cloisonnement seront appliquées afin de veiller à ce que des renseignements confidentiels ne soient pas transmis de façon inappropriée par la Division aux autres secteurs d'activité de la Bourse de Montréal Inc. (ou à quelque autre organisme ou personne). Ces procédures renforceront celles qui existent déjà au niveau de la Bourse en matière de renseignements confidentiels.

La Bourse de Montréal Inc. établira de bonne foi un partage clair et équitable, sur le plan tant opérationnel que comptable, des coûts et des produits des services de réglementation de la Division et de ceux de ses autres secteurs d'activité. Dans les secteurs où le partage de services est avantageux sur le plan économique ou opérationnel, les coûts seront affectés à la Division à l'aide de méthodes clairement établies et convenues avec la Division. Dans les cas nécessitant une répartition, elle sera établie selon le rapport coût/avantages des efforts déployés, tels qu'appliqués uniformément à tous les secteurs de la Bourse de Montréal Inc. Les méthodes de répartition seront susceptibles de changer au fur et à mesure de l'évolution des besoins commerciaux et des exigences d'information, mais le principe sous-jacent décrit ci-dessus continuera de s'appliquer.

Dans leur proposition relative aux ATS et ECN, les autorités canadiennes en valeurs mobilières proposaient d'exiger des ATS et des ECN qui ne sont pas des participants agréés d'une bourse reconnue qu'ils concluent une entente avec un «agent agréé» afin d'assurer le respect des règles de négociation qu'elles ont proposées (notamment les règles applicables à la manipulation des cours, aux ventes à découvert, aux

opérations ayant une apparence fautive ou fictive, aux opérations de personnes disposant d'informations privilégiées, aux opérations d'initiés et aux opérations faites pour leur propre compte). La Division pourrait constituer un délégué approprié pour offrir des services de réglementation à ces ATS et ces ECN.

Vu ce qui précède, nous soumettons que les fonctions qui furent déléguées par la Commission à la Bourse pourront dorénavant être assumées par la Bourse de Montréal Inc. par l'intermédiaire de la Division.

2.4 Accès au marché

Les critères d'accès à la Bourse de Montréal Inc. demeureront les mêmes que maintenant, sauf pour les changements nécessités par le remplacement de la notion de membre par la notion de participants agréés. Le droit d'accès sera régi par une relation contractuelle plutôt que par une adhésion et la propriété d'un titre de membre comme c'est le cas à l'heure actuelle. Le processus actuel d'approbation des membres comprend une procédure établie de protection des requérants, ce qui demeurera le cas. Plus précisément, quiconque se verrait refuser l'accès (ou quiconque se verrait accorder l'accès à des conditions qui ne sont pas imposées à tous les autres participants agréés) aura le droit d'interjeter appel de cette décision à l'interne et en dernier ressort, auprès du conseil d'administration. Bien entendu, les décisions du conseil d'administration seront assujetties à la révision de la Commission (Article 322 de la Loi sur les valeurs mobilières (Québec)).

La démutualisation n'affectera aucunement les droits d'accès réciproques qui ont fait l'objet de l'entente de restructuration des bourses canadiennes. Tous ceux qui étaient membres de la Bourse le 15 octobre 1999 conserveront leurs droits d'accès réciproques à la négociation aux marchés du Toronto Stock Exchange et du Canadian Venture Exchange («CDNX») aux termes de la Convention de restructuration du 15 mars 1999. Les membres admissibles de ces deux bourses conserveront également leurs privilèges de négociation réciproques avec la Bourse de Montréal Inc.

Afin de continuer l'exigence de conformité des membres actuels de la Bourse à la réglementation de celle-ci, tout participant agréé devra signer une entente d'accès qui exigera les mêmes critères de conformité envers la Bourse de Montréal Inc.

Les frais imposés aux participants agréés pour accéder au marché de la Bourse de Montréal Inc. seront établis de manière à demeurer concurrentiels par rapport aux autres bourses et marchés de négociation (ATS, ECN) de façon à permettre un flux accru d'utilisateurs. +

Comme il se fait présentement à la Bourse, cette liste de frais sera publiée dans le manuel de réglementation de la Bourse de Montréal Inc.

2.5 Santé financière

La Bourse de Montréal Inc. se conformera entièrement à toutes les exigences de divulgation imposées par la Commission en ce qui a trait aux rapports intermédiaires et à la notification rapide des résultats financiers. La Bourse de Montréal Inc. soumettra des mécanismes objectifs afin d'assurer un contrôle continu de sa situation financière. Ces mesures, ajoutées à celles imposées à la Bourse de Montréal Inc. par les diverses lois auxquelles elle sera sujette et, le cas échéant, par ses actionnaires ou ses créanciers, devraient fournir un préavis suffisant de toute situation financière nécessitant une intervention ou pouvant possiblement toucher d'autres intervenants sur les marchés des capitaux.

Nous proposons l'exigence de déposer des états financiers trimestriels auprès de la Commission dans les 60 jours suivant la fin de chaque trimestre et l'exigence que la Bourse de Montréal Inc. notifie promptement la Commission de toute difficulté sur les plans des liquidités ou de la solvabilité. De plus, le dépôt d'états financiers annuels vérifiés se fera dans les 90 jours suivant la fin de l'exercice.

L'objectif de la Bourse de Montréal Inc. est d'exploiter efficacement une entreprise concurrentielle tout en conservant sa viabilité financière et à cette fin, elle compte se doter de ressources financières adéquates afin d'atteindre cet objectif.

Tel que convenu, la Commission et la Bourse s'entendront sur les mesures appropriées pour s'assurer que la Bourse de Montréal Inc. possédera, dès sa création, les ressources financières adaptées à sa mission.

2.6 Systèmes informatiques

La Bourse de Montréal Inc. informera la Commission de tout problème majeur dans ses systèmes tant au niveau de ses systèmes informatiques qu'au niveau de la divulgation de l'information.

Conclusion

Une bourse moderne doit être attrayante pour tous les intervenants du marché en tant que véhicule efficace, accessible et économique de négociation. Dans un contexte concurrentiel mondial, elle doit demeurer à la fine pointe de la technologie à évolution rapide et du développement des produits. Afin de travailler à l'atteinte de ces objectifs, et pour être ainsi reconnue, une bourse doit maintenant disposer d'un modèle d'affaires de propriété et de direction qui soit dynamique et intégré. Une structure d'entreprise moderne, diversifiée et redevable, est devenue essentielle dans un contexte où les concurrents possèdent déjà ces atouts.

La Bourse soumet à la Commission que l'ensemble des principes énoncés ci-dessus permet la reconnaissance de la Bourse de Montréal Inc. à titre d'organisme d'autoréglementation.

– Communiqué de presse - La Régie d'OPC : Les ACVM rendent publiques les recommandations du rapport Erlichman

Montréal- Le 27 juillet 2000 - Les Autorités canadiennes en valeurs mobilières (les «ACVM»), dont la Commission des valeurs mobilières du Québec (« CVMQ ») fait partie, rendent publique aujourd'hui un rapport élaboré à leur demande concernant l'établissement d'une politique de régie des organismes de placement collectif du Canada. Maître Stephen I. Erlichman, l'auteur du rapport, énonce plusieurs recommandations sur l'établissement de cette politique. Voici les principales recommandations :

1. Chaque complexe d'OPC devrait être tenu d'établir une politique de régie dont l'application relèverait d'un comité de régie qui serait indépendant du gérant des OPC.
2. Si les ACVM décident maintenant d'exiger une forme particulière de politique de régie d'OPC, chaque OPC devrait se doter d'un conseil de « style entreprise » (formé d'administrateurs, de gouverneurs ou de fiduciaires, selon le cas).
3. Chaque gérant d'OPC devrait être tenu de s'inscrire auprès des ACVM. Les conditions d'inscription devraient englober des exigences de compétence minimale, de capital minimum et d'assurance minimale, ainsi que l'établissement d'un comité de vérification et de divers contrôles internes de même que de contrôles pour surveiller les prestataires de services externes.

1101 General

(17.12.81, 21.11.85, 02.09.03, 00.00.00)

The Regulations of the Bourse as defined herein shall be binding on all approved participants, partners, shareholders, directors, officers, employees, registered representatives, investment representatives and other approved persons of approved participants ~~and on all permit holders~~. They shall apply without any territorial restrictions whatsoever.

1102 Definitions

(07.09.99, 31.01.01, 08.07.02, 02.09.03, 17.06.05, 30.07.13, 17.07.15, 01.12.17, 15.06.18, 11.07.18, 14.09.18, 05.10.18, 00.00.00)

The following is an alphabetical index of each term defined in English in this article with the corresponding French term in brackets.

Approved Lenders (Prêteurs autorisés)

Approved Participant (Participant agréé)

Approved Persons (Personnes approuvées)

Bankruptcy Act (Loi sur la faillite)

Board of Directors of the Bourse (Conseil d'administration de la Bourse)

Bond (Obligation)

Bourse Approval (Approbation de la Bourse)

Bourse or The Bourse (Bourse)

Call (Option d'achat)

CDCC (CCCPD)

CDCC Option (Option CCCPD)

Chartered Bank (Banque à charte)

Class of Options (Classe d'options)

Clearing Approved Participant (Participant agréé compensateur)

Clearing Corporation (Corporation de compensation)

Client Account (Compte client)

Closing Trade (Options and futures contracts) (Opération de liquidation-Options et contrats à terme)

Corporate Approved Participant (Participant agréé corporatif)

Current Index Value (Valeur courante de l'indice)

Cycle (Cycle)

Dealer (Négociant)

Debt (Dette)

Defaulter (Défaillant)

Delivery (Livraison)

Delivery or Settlement Month (Mois de livraison ou de règlement)

Derivatives Act (Loi sur les instruments dérivés)

Derivative Instrument (Instrument dérivé)

Designated Representative (Représentant attitré)

Director (Administrateur)

Disciplinary Committee (Comité de discipline)

Escrow Receipt (Récépissé d'entiercement)

Exchange Contract (Contrat de bourse)

Exercise (Lever)

Exercise Price (Prix de levée)

Financial Institution (Institution financière)

Firm Account or Approved Participant Account (Compte de firme ou compte de participant agréé)

Foreign Approved Participant (Participant agréé étranger)
Futures Contract (Contrat à terme)
Futures Contract on Index (Contrat à terme sur indice)
Guaranteeing (Garantissant)
Hedger (Contrepartiste)
Holding Company (Société de portefeuille)
In-the-money (En jeu)
Index Option (Option sur indice)
Index Participation Unit (IPU) (Unité de participation indicielle (UPI))
Industry Investor (Investisseur de l'industrie)
Industry Member (Membre de l'industrie)
Intercommodity Spread (futures contracts) (Position mixte inter-marchandise – contrats à terme)
Intermarket Spread (futures contracts) (Position mixte inter-marché – contrats à terme)
Introducing Broker (Courtier remisier)
Investment (Investissement)
Listed Product (Produit inscrit)
Long Position (futures contracts) (Position acheteur - contrats à terme)
Long Position (options) (Position acheteur - options)
Major Position (Position importante)
Margin (Marge)
Market Maker (Mainteneur de marché)
Market Maker Account (Compte de mainteneur de marché)
Market Maker Agreement (Convention de mainteneur de marché)
Market Maker Assignment (Assignment à titre de mainteneur de marché)
Officer (Dirigeant)
Omnibus Account (Compte omnibus)
Open Interest (Intérêt en cours)
Open Position (Position en cours)
Opening Purchase Transaction - (options and futures contracts)
(Achat initial – options et contrats à terme)
Opening Trade (Opération initiale)
Opening Writing Transaction - options and futures contracts
(Vente initiale – options et contrats à terme)
Option Contract (Contrat d'option)
Out-of-the-money (Hors jeu)
Outside Investor (Investisseur externe)
Outstanding (En cours)
Over-the-counter Trade (Opération hors bourse)
Parent Company (Société-mère)
Participating Securities (Valeurs participantes)
Partnership (Société de personnes)
Partnership Approved Participant (Participant agréé en société)
Permit Holder (~~Détenteur de permis~~)
Person (Personne)
Premium (Prime)
Professional Account (Compte professionnel)
Put (Option de vente)
Recognized Exchange (Bourse reconnue)
Regulations of the Bourse (Réglementation de la Bourse)
Related Firm (Entreprise liée)
Rules (Règles)

Rulings (Ordonnances)
Securities (Valeurs mobilières)
Securities Act (Loi sur les valeurs mobilières)
Security Deposit (Dépôt de garantie)
Series of Options (Série d'options)
Settlement Price (Prix de règlement)
Share Futures Contract (Contrat à terme sur actions)
Short Position (futures contracts) (Position vendeur - contrats à terme)
Short Position (options) (Position vendeur - options)
Special Committee (Comité spécial)
Spread Position (futures contracts) (Position mixte – contrats à terme)
Trade (Opération)
Trader (Négociateur)
Trading Day (Jour de négociation)
Trading Permit (Permis de négociation)
Uncovered (À découvert)
Underlying Index (Indice sous-jacent)
Underlying Interest (Valeur sous-jacente)
Unit of Trading (Quotité de négociation)
Voting Securities (Valeurs mobilières avec droit de vote)

Throughout the Regulations of the Bourse, unless the subject matter or context otherwise requires:

Approved Lenders means a chartered bank or any other lending institution approved as such by the Bourse.

Approved Participant means an approved participant of the Bourse, whose name is duly recorded as such on the register referred to in article 3010 of the Rules of the Bourse and who has been approved by the Bourse pursuant to its Rules for the purpose of trading products listed on the Bourse.

Approved Person means the employee of an approved participant or the employee of an affiliated corporation or subsidiary of an approved participant that has been duly approved by the Bourse in accordance with article 7403.

Bankruptcy Act means the Bankruptcy and Insolvency Act, R.S. 1985, chapter B-3 as amended from time to time.

Board of Directors of the Bourse means the Board of Directors of Bourse de Montréal Inc. as defined in the By-Laws of the Bourse and the resolutions of Directors.

Bond means a bond, debenture, note or other instrument of government or corporate indebtedness.

Bourse Approval means any approval given by the Bourse (including any committee or officer of the Bourse so authorized) under any provision of the Regulations of the Bourse.

Bourse or The Bourse means Bourse de Montréal Inc.

Call means an option by the terms of which its holder has the right, in accordance therewith, to:

in the case of a delivery settlement option, purchase from the clearing corporation the number of units of the underlying interest covered by the option;

in the case of a cash settlement option, require from the clearing corporation a cash payment corresponding to the amount by which the contract is in-the-money.

CDCC means Canadian Derivatives Clearing Corporation, a limited liability company, incorporated under the Canada Business Corporations Act, which issues and guarantees CDCC option contracts and futures contracts.

CDCC Option means a call or put option issued and guaranteed by Canadian Derivatives Clearing Corporation.

Chartered Bank means any bank incorporated under the Bank Act (Canada).

Class of Options means all options of the same style, covering the same underlying interest which are guaranteed by the same clearing corporation.

Clearing Approved Participant means, with respect to each category of listing, any approved participant which is a member of the clearing corporation.

Clearing Corporation means a corporation or other entity which provides trade reporting, confirmation and settlement services and which is designated as such by the Bourse for each category of listing.

Client Account means an account established by an approved participant which is confined to securities or futures contracts transactions executed by the approved participant and positions carried by the approved participant on behalf of his clients.

Closing Trade (options and futures contracts) means a transaction on the market which results in the reduction or elimination of a position in options or futures contract:

- a) in relation to a long position, by taking an offsetting short position in an option or futures contract having the same deliverable or cash settled underlying interest deliverable and the same expiry;
- b) in relation to a short position, by taking an offsetting long position in an option or futures contract having the same deliverable or cash-settled underlying interest and the same expiry.

Corporate Approved Participant means an Approved Participant approved as such by the Bourse and meeting the requirements set forth under article 3401 of the Rules.

Current Index Value means the current level of a particular underlying stock index established on the basis of the reported prices of the component stocks comprising such index.

Cycle means a combination of months including the expiration dates (e.g. February/May/August/November).

Dealer means a person or company that trades in options, futures contracts or options on futures contracts in the capacity of principal or agent.

Debt is an investment which provides its holder with a legal right, in specified circumstances, to demand payment of the amount owed; this term is used to include debtor-creditor relationships whether or not represented by a written instrument or security.

Defaulter means a person declared a defaulter pursuant to article 4306 of Rule Four of the Bourse.

Delivery means the voluntary transfer of possession of securities or the making of appropriate entries in respect of securities in the records of the clearing corporation.

Delivery or Settlement Month means the calendar month in which a futures contract may be settled by making or taking delivery or by making or receiving a cash settlement of the contract.

Derivatives Act means the Derivatives Act, chapter I-14.01, as amended from time to time.

Derivative Instrument means a financial instrument, the value of which derives from the value of an underlying interest. Without limiting the foregoing, this underlying interest may be a commodity or a financial instrument such as a stock, a bond, a currency, a stock or economic index or any other asset.

Designated Representative means a physical person appointed to represent an approved participant in accordance with article 3501 of the Rules.

Director means a physical person who is a member of the Board of Directors of Bourse de Montréal Inc.

Disciplinary Committee means the committee ~~constituted~~constituted by the Bourse in order to hear complaints brought under Rule Four of the Bourse.

Escrow Receipt means a document issued by a financial institution, approved by the clearing corporation, certifying that the underlying interest, or its direct substitute approved by the Bourse and the clearing corporation, is held by such financial institution to guarantee a specified option of a particular client of an approved participant-

Exchange Contract means a) any contract between approved participants for the purchase or sale of any exchange listed product and b) any contract between approved participants for delivery or payment of any listed product (or product which was listed when the contract was made) arising from settlement through the clearing corporation.

Exercise means, in the case of a call option settled by the delivery of the underlying interest, means to submit an exercise notice in order to take delivery of and pay for or, in the case of a put option, to sell and receive payment for the underlying interest which is the object of the option;

in the case of a cash settlement option, means to submit an exercise notice in order to receive the cash value amount by which the option is in-the-money.

Exercise Price means, in the case of a delivery settlement option, the specified price per unit at which the underlying interest may be purchased, in the case of a call, or sold, in the case of a put, upon exercise of the option, plus accrued interest in the case of options on debt instruments;

in the case of a cash settlement option, the specified price per unit against which the marking price is compared in the event of an exercise to determine the amount by which the contract is in-the-money.

Financial institution means any entity engaged in the banking, loan, trust, pension fund, mutual fund or life insurance businesses.

Firm Account or **Approved Participant Account** means an account established by an approved participant which is confined to securities or futures contracts transactions executed by the approved participant and positions carried by the approved participant on its own behalf.

Foreign Approved Participant means an approved participant approved as such by the Bourse, pursuant to article 3004 of the Rules.

Futures Contract means the obligation incurred to make or receive delivery or a cash settlement of the value of an underlying asset during specified months, which obligation may be satisfied by offset, by delivery or by cash settlement during such months.

Futures Contract on Index means a futures contract whose underlying interest is an index.

Guaranteeing means being liable for, ensuring the delivery of a security for or entering into an agreement (contingent or otherwise) having the effect or result of so becoming liable or ensuring the delivery of a security for a person, including any agreement to purchase an investment, property or services, to supply funds, property or services or to make an investment for the purpose of directly or indirectly enabling such person to perform its obligations in respect of such security or investment or assuring the investor of such performance.

Hedger means a person or company who carries on activities in a particular field and, as a necessary part of these activities, becomes exposed from time to time to risk attendant upon fluctuations in the price of goods which are related to such activities and offsets that risk through trading in options, futures contracts or options on futures contracts on these goods or on related goods whether or not any particular trade is effected for that purpose.

Holding company means, in respect of any corporation, any other corporation which owns more than 50% of each class of voting securities and more than 50% of each class of participating securities of the first-mentioned corporation or of any other corporation which is a holding company of the first-mentioned corporation, but an industry investor shall not be considered to be a holding company by reason of the ownership of securities in its capacity as an industry investor.

In-the-money in respect of an option means the market price of the underlying interest is above, in the case of a call, or below, in the case of a put, the exercise price of the option.

Index Option means an option contract traded on the Bourse whose underlying interest is an index. In the case of the exercise of an index option, the seller pays to the buyer via the clearing corporation a cash amount equivalent to the amount by which the exercised option contract is in-the-money on the date of exercise.

Index Participation Unit (IPU) means a unit of beneficial interest in the assets of a fund established under a trust agreement, the underlying assets of which are securities underlying an index.

Industry Investor means, in respect of any approved participant or holding company of an approved participant, any of the following who owns a beneficial interest in an investment in the approved participant or its holding company:

- i) the approved participant's full-time officers and employees;
- ii) spouses of individuals referred to in paragraph i);

- iii) a personal investment corporation, if:
 - a) a majority of each class of the voting shares is held by the persons referred to in paragraph i); and
 - b) all interests in all other equity shares of the personal investment corporation are beneficially owned by the persons referred to in paragraphs i) or ii) or by investors approved as industry investors with respect to the particular approved participant or its holding company;
- iv) a family trust established and maintained for the benefit of the children of the persons referred to in paragraph i) or ii) above, if:
 - a) these persons maintain full direction and control of the family trust, including, without limitation, its investment portfolio and the exercise of voting and other rights attaching to instruments and securities contained in the investment portfolio; and
 - b) all the beneficiaries of the family trust are children of the persons referred to in paragraph i) or ii) above or are investors approved as industry investors with respect to the particular approved participant or its holding company;
- v) a registered retirement savings plan established under the Income Tax Act (Canada) (or pursuant to equivalent provisions) by one of the persons referred to in paragraph i) if control over the investment policy of the registered retirement savings plan is held by that person and if no other person has any beneficial interest in the registered retirement savings plan;
- vi) a pension fund established by an approved participant for the benefit of its officers and employees, if the pension fund is organized so that full power over its investment portfolio and the exercise of voting and other rights attaching to instruments and securities contained in the investment portfolio is held by persons referred to in paragraph i);
- vii) the estate of one of the persons referred to in paragraph i) or ii), for a period of one year after the death of such person or such longer period as may be permitted by the applicable board of directors and the Bourse;

but, any of the foregoing is an industry investor only if an approval for purposes of this definition has been given, and not withdrawn, by:

- a) the board or directors of the approved participant or of its holding company, as the case may be; and
- b) the Bourse.

Industry Member means, in respect of any approved participant, a physical person who has been approved by the Bourse for purposes of this definition and is actively engaged in the business of the approved participant and devotes a major part of his or her time to that business; to determine whether or not a person may be approved as an industry member, the Bourse shall take into account whether the person:

- i) has experience acceptable to the Bourse as a broker or dealer in securities or futures contracts for a period of five years or such lesser period as may be approved by the Bourse;

- ii) to an extent acceptable to the Bourse, is actively engaged in the business of the approved participant and devotes the major portion of his or her time thereto; and
- iii) has successfully completed such training or such course as may from time to time be required by the Bourse.

Intercommodity Spread (futures contracts) means the purchase and sale of futures contracts with different but related underlying interests in the same or different markets in the same or different delivery months.

Intermarket Spread (futures contracts) means the purchase and sale of futures contracts with the same or substantially similar underlying interests in the same or different delivery months in two different markets.

Introducing Broker means a broker for whom clients' accounts are recorded in the books of another broker as if the clients were those of the latter.

Investment means, in respect of any person, any security or debt obligation issued, assumed or guaranteed by such person, any loan to such person, and any right to share or participate in the assets, profit or income of such person.

Listed Product means any derivative instrument listed for trading on the Bourse.

Long Position (futures contracts) means, in the case of a futures contract with a delivery feature, to take delivery of the underlying interest or, in the case of a futures contract with a cash settlement feature, to make or receive a cash settlement as per the futures contract specifications.

Long Position (options) means a person's interest as the holder of one or more option contracts.

Major Position means having the power to direct or cause the direction of the management or policies of a person whether through ownership of securities, by contract or otherwise. A person is considered to hold a major position in the capital of another person if such person, directly or indirectly:

- a) has the right to vote 10% or more of the voting securities; or
- b) is entitled to receive 10% or more of the net profits of the other person.

Margin means the minimum deposit required for each listed product in accordance with the Rules of the Bourse.

Market Maker refers to an approved participant or a client of an approved participant who has been granted a market maker assignment in accordance with the Regulations of the Bourse.

Market Maker Account means a firm account of an approved participant that is confined to transactions initiated by the approved participant acting as a market maker.

Market Maker Agreement means an agreement entered into by the Bourse and a market maker which sets out the terms and conditions of the market maker assignment.

Market Maker Assignment means an assignment granted by the Bourse to a market maker to carry out certain market making obligations with regards to specific listed products pursuant to the Regulations of the Bourse.

Officer means any person exercising the functions of a president, vice-president, chief executive officer, chief financial officer, chief operating officer, secretary, any other person designated an officer of an approved participant by law or similar authority, or any person acting in a similar capacity on behalf of an approved participant.

Omnibus Account means an account held in the name of an entity or person which may be utilized for recording and clearing the trades of two or more undisclosed customers of the account holder.

Open Interest means the total outstanding long or short positions for each series and in aggregate, in options, futures contracts or options on futures contracts relating to a particular underlying interest.

Open Position means the position of a buyer or seller of a futures contract.

Opening Purchase Transaction (options and futures contracts) means an exchange transaction in which the result is to create or increase a long position in options or futures contracts involved in such transaction.

Opening Trade means a trade in a futures contract that is not a liquidating trade.

Opening Writing Transaction (options and futures contracts) means an exchange transaction in which the result is to create or increase a short position in options or futures contracts involved in such transaction.

Option Contract means, in the case of settlement by delivery of the underlying interest, a contract guaranteed by a designated clearing corporation granting to the holder a right to sell (put) or a right to buy (call) a unit of trading of the underlying interest at a fixed price during a predetermined period, in the case of an American option or at the end of this predetermined period in the case of a European option; in the case of cash settlement, a contract guaranteed by a designated clearing corporation granting to the holder a right to receive a cash payment equivalent to the in-the-money amount of the option at the time of exercise or expiry (e.g. index options).

Out-of-the-money in respect of an option, means the market price of the underlying interest is below, in the case of a call, or above, in the case of a put, the exercise price of the option.

Outside investor means, in respect of an approved participant or a holding company of an approved participant, a person who is not:

- i) an approved lender with respect to that approved participant or holding company of an approved participant;
- ii) an industry investor with respect to that approved participant or holding company of an approved participant;

but an outside investor who becomes an industry member shall cease to be an outside investor only six months after becoming an industry member or on such earlier date as he obtains the requisite approvals to become an industry member.

Outstanding, in respect of an option, means that the option is duly recorded and guaranteed by the Clearing Corporation and has neither been exercised, assigned or the subject of a closing transaction nor has expired.

Over-the-counter Trade means a trading of a derivative instrument, or of a security, by mutual agreement between two parties without the use of an organized market.

Parent Company means a corporation that has another corporation as a subsidiary.

Participating Securities of an organization, whether incorporated or unincorporated, are those of its securities outstanding from time to time which entitle the holders thereof to a participation, limited or unlimited, in the earnings or profits of the issuing organization, either alone or in addition to a claim for interest or dividends at a fixed rate, and includes, except where the reference is to outstanding participating securities, those securities which entitle the holders thereof, on conversion, exchange, the ~~exercise~~exercise of rights under a warrant, or otherwise, to acquire participating securities.

Partnership means an enterprise in which two or more persons (the partners) put assets, their credit and their expertise in common with the view of sharing the benefits that may result from such pooling.

Partnership Approved Participant means an Approved Participant approved as such by the Bourse and meeting the requirements set forth under article 3301 of the Rules.

~~**Permit Holder** means the holder of a trading permit granted pursuant to the Regulations of the Bourse.~~

Person means an individual, a partnership, a corporation, a government or any department or agency thereof, a court, a trustee, any unincorporated organization and the heirs, executors, administrators or other legal representatives of an individual.

Premium means the price of the option, per unit of the underlying interest, agreed upon between the purchaser and seller in a transaction on the option market.

Professional Account means an account in which a direct or indirect beneficial interest is held by an approved participant, a related firm or; an approved person ~~or a permit holder~~.

Put means an option by the terms of which the holder has the right in accordance therewith, to:

in the case of a delivery settlement option, sell to the clearing corporation the number of units of the underlying interest covered by the option contract;

in the case of cash settlement option, require from the clearing corporation a cash payment corresponding to the amount by which the contract is in-the-money.

Recognized Exchange means any exchange carrying on its activities within the territory of one of the Basle Accord Countries and of the countries that have adopted the banking and supervisory rules set out in that Accord, and any other exchange or group of exchanges with whom the Bourse has entered into a collaboration agreement.

Regulations of the Bourse means the Rules, Rulings and Policies of the Bourse, and the instructions, decisions and directions of the Bourse (including those of any committee or person so authorized) as amended, supplemented and in effect from time to time.

Related Firm means a sole proprietorship, partnership or corporation which is related with an approved participant in that either of them, together with the partners and directors, officers, shareholders and employees of it, collectively have at least a 20% ownership interest in the other of them, including an

interest as a partner or shareholder, directly or indirectly, and whether or not through holding companies; which carries on as a substantial part of its business that of a broker, dealer or adviser in securities or futures contracts; which deals with or has obligations to any person other than such approved participant or for obligations to any person incurred through such approved participant; and which is under the audit jurisdiction of a self-regulatory organization which is a participant to the Canadian Investor Protection Fund.

Rules refers to those Regulations of the Bourse of general application to all approved participants or to a class of approved participants which the Bourse is empowered to adopt.

Rulings refer to those Regulations of the Bourse whose application is limited to one or more specific approved participants and which the Board of Directors of the Bourse or any other committee or person appointed by the Board is empowered to make, including without limitation all orders, decisions and adjudications.

Securities refer to forms of investment contemplated by section 1 of the Quebec Securities Act, R.S.Q., chapter V-1.1 and shall include, where the contract requires, futures contracts.

Securities Act means the Quebec Securities Act, R.S.Q. chapter V-1.1 as amended from time to time.

Security Deposit means the amount required to be deposited with a clearing corporation as security for obligations to such clearing corporation.

Series of Options means all options of the same class, the same type, covering the same quantity of an underlying interest and having the same exercise price and expiration date.

Settlement Price means the price which is used by the Bourse and the clearing corporation to determine daily the net gains or losses in the value of open positions in futures contracts;

Share Futures Contract means a futures contract whose underlying interest is a Canadian or an international stock, an exchange-traded fund or a trust unit listed on a recognized exchange.

Short Position (futures contracts) where used in relation to a futures contract, means, in the case of a futures contract with a delivery feature, to be under an obligation to make delivery of the underlying interest or, in the case of a futures contract with a cash settlement feature, to make or receive a cash payment.

Short Position (options) means a person's obligation as the writer of one or more option contracts.

Special Committee means the Special Committee of the Regulatory Division appointed by the Board of Directors of Bourse de Montréal Inc. pursuant to the rules adopted in that regard.

Spread Position (futures contracts) means the assumption of a long and a short position in futures contracts having different expiry months in the same underlying interest for the same account.

Trade means a contract for the purchase or sale of a listed product.

Trader means a person approved as such by the Bourse.

Trading Day means, with respect to each Listed Product, a business day during which trading of the Listed Product is permitted on the electronic trading systems of the Bourse, during hours determined by the Bourse from time to time, and may be composed of one or more trading sessions, as the case may be.

~~**Trading Permit** means a permit issued by the Bourse to an approved participant and entitling its holder to the rights, privileges and obligations provided in the Regulations of the Bourse.~~

Uncovered in respect of a short position in an option, means that the short position is not covered.

Underlying Index means a stock index calculated by a calculation agent on which an option, a futures contract or an option on a futures contract is listed and which reflects representative stock market values of either a broad segment of the stock market (“broad market index”) or of a particular industry or group of related industries (“sectorial index”).

Underlying interest means an asset which underlies and determines the value of a derivative instrument. The underlying interest may be a commodity, a financial instrument, such as a stock, a currency, a stock or economic index or any other asset.

Unit of Trading means in respect of any series of derivative instrument, the number of units of the underlying interest which has been designated by the clearing corporation and the Bourse as the number to be the subject of a single derivative instrument contract.

Voting securities of an approved participant or its holding company means all securities of that approved participant or its holding company outstanding from time to time that carry the right to vote for the election of directors, and includes:

- i) except where the reference is to outstanding voting securities, those securities which entitle the holders thereof, on conversion, exchange, the exercise of rights under a warrant, or otherwise, to acquire voting securities; and
- ii) preferred shares which carry the right to vote for the election of directors only upon the occurrence of a specific event if such specific event has occurred.

3001 Bourse Approval

(16.06.87, 02.10.92, 15.03.05, 30.03.10, 11.07.18, 00.00.00)

- a) Each approved participant must be approved as such by the ~~Special Committee~~Bourse at the time of admission, and must thereafter comply with the conditions required to remain an approved participant as set forth in the regulations of the Bourse in general. Approved participants may be partnerships (referred to as "partnership approved participants") or corporations (referred to as "corporate approved participants");
- b) Anyone seeking and obtaining the Bourse's approval thereby undertakes to be bound by the regulations of the Bourse;
- c) The Bourse shall give its approval where in its opinion, the approved participant or approved person, has the necessary competence and integrity. In the case of an approved participant, the Bourse must be satisfied that it has available adequate financial resources.
- d) For the purpose of this Rule, the term "approved person" also includes the designated representatives who are duly approved pursuant to article 3501.

3006 ~~Special Committee~~ Decision Regarding Admission

(02.10.92, 15.03.05, 00.00.00)

In considering whether it should approve an application for admission as an approved participant, the ~~Special Committee~~Bourse may require whatever information it deems appropriate. It may, in its discretion, require the applicant appears before it. However, before rendering a decision that unfavourably affects the applicant, the ~~Special Committee~~Bourse must give the applicant an opportunity to be heard.

3007 Re-Application or Review of Decision

(02.10.92, 15.03.05, 00.00.00)

If the ~~Special Committee~~Bourse rejects an application for admission as an approved participant, at least six months must elapse thereafter before the applicant may again submit an application.

However, if presented with a new fact during this six month period, the ~~Special Committee~~Bourse may review its decision and the provisions of article 3006 shall apply, mutatis mutandis, to the decision to review the application for admission and the review process itself.

3008 Suspension or revocation of Bourse Approval

(02.10.92, 15.03.05, 00.00.00)

An approved participant who no longer complies with the conditions to be an approved participant provided in the regulations of the Bourse may be suspended or expelled by the ~~Special Committee~~Bourse.

The Bourse's approval of any of the persons referred to in article 3001 may similarly be suspended or revoked by either the ~~Special Committee or the person or persons authorized to give such approval~~Bourse.

3009 Assessments, Fees and Charges

(02.10.92, 15.03.05, 30.03.10, 21.05.15, 00.00.00)

Each approved participant must pay such assessments, fees and charges, whether special or general, as fixed by the Bourse and which become due and payable to the Bourse at such time or times and in such

manner as the Bourse directs. Liability hereunder shall not be affected by the dissolution, winding-up, suspension, revocation ~~of any permit or~~ of any approval or expulsion of the approved participant.

Subject to article 5 of the *Rules Regarding the Regulatory Division*, the Bourse may levy fees and charges as approved from time to time by the President of the Bourse or the Senior Vice-President in respect of services or facilities provided by the Bourse.

The Bourse may require, in exceptional circumstances, reimbursement of the professional fees incurred by it for the services of its lawyers and accountants in accordance with their normal hourly rates.

3421 Major Position

(29.04.86, 16.06.87, 11.11.92, 20.09.02, 15.03.05, 30.03.10, 00.00.00)

At the time of approval and throughout the term of approval as an approved participant:

- 1) no person may hold a major position without prior notification to the Bourse, except when the holding of such a major position is part of the ordinary course of activities of the securities business or derivative instruments;
- 2) the prior approval of the ~~Special Committee~~Bourse is required where the taking of a major position results in a change of control of the approved participant which is likely to materially affect its operations.

3501 Appointment of Designated Representatives

(15.03.05, 30.03.10, 00.00.00)

Each partnership approved participant must appoint one of its partners or officer as its designated representative. Each corporate approved participant must appoint one of its directors, one of the directors of its parent company or an officer, where applicable, as its designated representative. Each designated representative at the time of his or her appointment and so long as he or she is a designated representative must be approved as such by the ~~Special Committee~~Bourse. Such approval may be revoked at any time by the ~~Special Committee~~Bourse without any formality whatsoever and shall terminate automatically if the designated representative ceases to be a partner, a director, as the case may be, of the approved participant or its parent company or an officer. Any vacancy in such appointment must be filled promptly.

3701 Application for Resignation Approval

(15.03.05, 30.03.10, 00.00.00)

No approved participant of the Bourse may resign without the prior approval of the ~~Special Committee~~Bourse.

An approved participant wishing to resign must file with the Vice-President of the Regulatory Division of the Bourse a written application signed by a partner, a director or an officer of the approved participant to obtain the ~~Special Committee~~Bourse's approval of the resignation. This application must be accompanied, as the case may be, with the payment of fees that may be requested by the Bourse in such a case.

3702 Information Required for Resignation

(15.03.05, 30.03.10, 00.00.00)

An approved participant who tenders its resignation, must, in its application, state its reasons for resigning and must file with the Vice-President of the Regulatory Division of the Bourse all financial or other information deemed relevant by the Vice-President of the Regulatory Division of the Bourse, or required by the ~~Special Committee~~Bourse.

3704 Effective date of Resignation

(15.03.05, 30.03.10, 00.00.00)

An approved participant who has tendered its resignation shall cease to be an approved participant of the Bourse on the date of its resignation approval by the ~~Special Committee~~Bourse or on any other date designated by the ~~Special Committee~~Bourse.

RULE FOUR

INVESTIGATIONS, DISCIPLINE AND ~~APPEALS~~REVIEWS

4003 Special Inspection or Investigation

(11.03.85, 11.03.92, 15.03.05, 01.12.17, 00.00.00)

Without in any way limiting the powers conferred upon the staff of the Bourse by article 4001, ~~the Special Committee~~ or the Vice-President of the Regulatory Division of the Bourse may in ~~their~~ his or her absolute discretion, at any time, direct a special examination or investigation to be made in respect of the conduct, the business or affairs of an approved participant or an approved person.

4004 Summary Proceedings

(11.03.92, 15.03.05, 00.00.00)

If, following an examination or investigation or by reason of any information otherwise obtained by the Bourse, it appears that circumstances so warrant, the Vice-President of the Regulatory Division of the Bourse~~Special Committee~~ may proceed by way of summary proceedings in accordance with the provisions of articles 4301 and following of this Rule.

4005 Failure to Provide Information or to Appear

(11.03.85, 11.03.92, 15.03.05, 01.12.17, 00.00.00)

Any approved participant or approved person who refuses or neglects to provide information in the manner prescribed in this Section I or who fails to attend a hearing after having been given notice thereof, may be suspended without any notice, hearing or formality by the Vice-President of the Regulatory Division of the Bourse~~Special Committee~~ until the required information has been provided or an attendance made as set out in the summary proceedings provided for in articles 4301 and following.

4101 Complaints

(11.03.85, 11.03.92, 15.03.05, 29.03.06, 01.12.17, 00.00.00)

a) The Bourse, an approved participant or an approved person may, in accordance with the procedures provided in articles 4151 and following, file a complaint against an approved participant or an approved person, in respect of:

- i) a breach of the regulations of the Bourse;
- ii) any act, conduct, practice or proceeding unbecoming an approved participant of the Bourse or an approved person, inconsistent with just and equitable principles of trade, or detrimental to the reputation of the Bourse or to the interests or the welfare of the public or of the Bourse,

whether or not such act, conduct or proceeding is related to dealings or transactions on the Bourse.

b) The Bourse may also file a complaint of the type described in paragraph a) above against a former approved participant or approved person, provided an originating notice is served on such person within thirty six (36) months from the date upon which the person ceased to be an approved participant or an approved person.

This provision is in addition to the powers the Bourse may hold and choose to exercise pursuant to powers delegated by a securities commission.

- c) Without in any way limiting the generality of the foregoing, the following actions of an approved participant or, approved person shall be deemed an act, conduct, practice or proceeding covered by sub-paragraph a) ii) of the present article:
- i) misleading or attempting to mislead the Bourse on any material point;
 - ii) breaching any statute or regulation related to the trading of securities or derivative instruments;
 - iii) indiscriminate or improper solicitations of orders, either by telephone or otherwise;
 - iv) using high pressure or other sales tactics of a character considered undesirable according to the standards of the industry;
 - v) using or knowingly participating in the use of any manipulative or deceptive methods of trading, including those set out in article 6306 of the Rules of the Bourse;
 - vi) breaching any provisions of the Code of Ethics and Conduct for Registered Representatives, included in the Conduct and Practices Handbook Course, published by the Canadian Securities Institute.
- d) The Disciplinary Committee ~~or the Special Committee~~ shall, in accordance with this Rule, decide whether an act, conduct, practice or proceeding is of the sort described in sub-paragraph a) ii) of the present article.

4102 Disciplinary Committee

(11.03.92, 15.03.05, 02.09.11, 00.00.00)

- a) A committee known as the Disciplinary Committee is constituted pursuant to the provisions of this article to hear complaints brought under article 4101, as well as to accept or reject offers of settlement pursuant to articles 4201 and following.
- b) The Disciplinary Committee is comprised of three persons named by the ~~Vice President, Legal Affairs (Derivatives)~~ Chief Legal Officer of the Bourse, who shall select two of them among the persons mentioned in sub-paragraph a) of article 4103 ~~or among the members of the Special Committee~~, and one among persons mentioned in sub-paragraph b) of article 4103.

4105 Disciplinary Penalties

(11.03.85, 11.03.92, 18.10.00, 15.03.05, 02.09.11, 01.12.17, 00.00.00)

In finding any approved participant or approved person guilty pursuant to a complaint therein made, or of some lesser and included offence, the Disciplinary Committee ~~or the Special Committee~~ may, with respect to each offence, impose any one or more of the following penalties or orders :

- a) a reprimand;
- b) a fine not exceeding \$ 1,000,000;

- c) the suspension or the revocation of the rights as an approved participant or approved person for such period and upon such conditions, including conditions of reinstatement, as the Committee may determine;
- d) the prohibition to obtain an approval for the time and upon such conditions determined by the Committee, including the conditions for the release of such a prohibition.
- e) the expulsion of the approved participant;
- f) the making of restitution to any person who has suffered a loss as a result of the acts or omissions of a person under the jurisdiction of the Exchange;
- g) the obligation to take one or more courses given by the CSI Global Education Inc. or any other course deemed appropriate;
- h) the reimbursement in whole or in part of the costs and expenses (including professional fees) paid or incurred by the Bourse in connection with the complaint and the matters out of which it arose including all investigations, hearings, ~~appeals~~ reviews and other proceedings before or after the complaint.

These penalties and orders shall be in addition to such other action as the Bourse may take pursuant to any other provision of its regulations.

4151 Originating Notice

(11.03.85, 11.03.92, 15.03.05, 02.09.11, 01.12.17, 00.00.00)

- a) The Bourse must serve an originating notice on any person who is directly concerned whenever, as a result of an investigation or otherwise, it:
 - i) decides to initiate disciplinary proceedings pursuant to articles 4101 and following;
 - ii) intends to deny granting an unconditional approval to a partnership or corporation as an approved participant or an unconditional approval of a person;
 - iii) proposes to revoke, suspend or amend any of the rights or privileges of an approved participant or of an approved person;
 - iv) proposes to exercise the powers delegated to it by a securities commission or other regulatory organization.
- b) The originating notice must contain:
 - i) a reference to the regulatory provisions governing the matter;
 - ii) a summary statement of the facts alleged and intended to be relied upon by the Regulatory Division and the conclusions drawn by the Regulatory Division based on the alleged facts;
 - iii) a statement of the intent of the Bourse to conduct a hearing of the matter on a date and at a place to be determined in the originating notice or, subsequently, in the notice of hearing;
 - iv) a reminder of the existence of articles 4201 and following;

- v) a warning that failure to file a reply within the prescribed delay may result in foreclosure from producing any witness at the hearing.

- c) A copy of the originating notice, together with proof of service, shall be filed with the Chief Legal Officer of the Bourse~~Vice-President, Legal Affairs (Derivatives)~~.

4152 Reply

(11.03.85, 11.03.92, 15.03.05, 02.09.11, 00.00.00)

A person served with an originating notice must, within ten (10) business days from the date of service, serve to the ~~Vice-President, Legal Affairs (Derivatives)~~Chief Legal Officer of the Bourse, a reply signed by the person or by an individual authorized to sign on behalf of the person.

The reply must set out specifically for each fact alleged in the originating notice, whether such fact is admitted or denied, and contain a statement of the person's position with regard to the conclusions drawn by the Bourse in the originating notice and a statement of any additional facts relied on by the person.

Failure to file a reply within the prescribed delay may result in foreclosure from producing any witness at the hearing.

4161 Report to the Special Committee

(11.03.85, 11.03.92, 15.03.05, abr. 00.00.00)

~~—If no appeal has been brought at the expiry of the delay to appeal, the Disciplinary Committee that has conducted the hearing must report thereon to the Special Committee.~~

4202 Form of the Offer of Settlement

(29.06.87, 11.03.92, 25.03.94, 15.03.05, 02.09.11, 00.00.00)

The offer of settlement must:

- i) be in writing in the form prescribed by the Regulatory Division;
- ii) be signed by the person proposing the settlement; and
- iii) contain the following :
 - a) the provisions of the regulations that have been breached or not complied with, according to the Regulatory Division;
 - b) a statement of the facts agreed upon by the Regulatory Division and the person proposing the offer of settlement;
 - c) the disposition of the matter, including any penalty to be imposed and the amount of costs and expenses of the Regulatory Division to be paid by the person proposing the offer of settlement;
 - d) the consent of this person to the settlement;

- e) a statement that the settlement must be approved by the Disciplinary Committee or, in the cases provided for in article 4204, by the Vice-President, Regulatory Division, failing which it shall not bind the parties involved, and the Bourse shall proceed with the hearing of the matter; and
- f) a waiver by the person of all rights under the regulations of the Bourse to a hearing or to ~~an appeal~~ review should the offer of settlement be accepted by the Disciplinary Committee or, in the cases provided for in article 4204, by the Vice-President, Regulatory Division.

4207 Acceptance of an Offer of Settlement

(11.03.92, 15.03.05, 02.09.11, 01.12.17, 00.00.00)

In the event an offer of settlement is accepted by the Disciplinary Committee of the Bourse or, in the cases provided for in article 4204, by the Vice-President, Regulatory Division:

- i) the matter becomes final and the settlement constitutes a decision;
- ii) there can be no appeal-review of the matter;
- iii) the disposition of the matter agreed upon in the settlement must be recorded in the permanent records of the Bourse; and
- iv) a notice of the decision must be sent to the complainant, distributed to the approved participants of the Bourse, filed in the records of the Bourse and made available to the public and the press.

4223 Notice of Fine for Minor Violation

(10.05.17, 00.00.00)

- a) Upon expiry of the delay provided for in article 4222, and after having considered the observations of the approved participant or the approved person, if any, the Vice-President of the Regulatory Division may impose the fine prescribed in *List of Fines for Minor Violations* on this approved participant or this approved person by serving a notice of a fine for violation or decide not to impose a fine for minor violation. In this case, a notice advising of the closing of the matter will be sent to the Approved Participant or an Approved Person.
- b) The decision by the Vice-President of the Regulatory Division to impose a fine for minor violation may be ~~appealed-reviewed to the Special Committee~~ in accordance with articles ~~4251-4262~~ and following. A defense of due diligence is neither allowed nor receivable ~~during the appeal before the Special Committee as part of the application for review~~.
- c) The fine for minor violation imposed against the approved participant or the approved person is payable within the ten business days following service of the notice of fine for minor violation.

D. Appeals/Reviews of Disciplinary Committee's Decisions

~~4251 Sole Jurisdiction of the Review by the Tribunal administratif des marchés financiers~~ Special Committee

(11.03.85, 11.03.92, 15.03.05, 00.00.00)

~~An appeal from a~~ A decision of the Disciplinary Committee, ~~any other committee of the Bourse or the staff of the Bourse~~ may be ~~brought before~~ reviewed by the Tribunal administratif des marchés financiers in accordance with the provisions of the Derivatives Act and with the rules of procedure of this tribunal ~~Special~~

~~Committee. The members of the Disciplinary Committee who participated to the hearing of the case in the first instance, can not participate to the hearing of the appeal by the Special Committee.~~

4252 Delay of Appeal to File an Application

(11.03.92, 15.03.05, 00.00.00)

~~The application for review appeal must be brought filed within ten (10) business days of the service of the decision the delay prescribed by the Derivatives Act.~~

4253 Notice of Appeal

(11.03.92, 15.03.05, 02.09.11, abr. 00.00.00)

~~—Any appeal of a decision of the Disciplinary Committee, of another committee of the Bourse, or of a member of the staff of the Bourse must be brought by filing a written notice of appeal with the Vice-President, Legal Affairs (Derivatives). The notice must contain a brief statement of the grounds for appeal and be served upon the parties.~~

4254 Security for Costs

(11.03.92, 15.03.05, abr. 00.00.00)

~~When the appeal appears abusive, dilatory, frivolous, or for some other special reason, the Special Committee may, upon request, order the appellant to furnish, within a set delay, security to guarantee, in whole or in part, the payment of the costs of appeal, the amount of the fine and the costs and expenses listed in article 4106, should the appeal be dismissed.~~

~~—If the appellant does not furnish security within the prescribed delay, the Special Committee may dismiss the appeal.~~

4255 Appeal Briefs

(11.03.92, 17.06.98, 15.03.05, 02.09.11, abr. 00.00.00)

~~—Within fifteen (15) business days of the filing of the notice of appeal, the appellant must file with the Vice-President, Legal Affairs (Derivatives), a brief containing the appellant's arguments, in nine (9) copies, and must serve another copy on the respondent.~~

~~—Within fifteen (15) business days of the receipt of the appellant's brief, the respondent must file with the Vice-President, Legal Affairs (Derivatives), nine (9) copies of the respondent's brief and serve another copy on the appellant.~~

~~—If the appellant fails to file the brief within the above mentioned delay, the appeal may be dismissed upon application to the Special Committee.~~

4256 Stay of Execution

(11.03.92, 15.03.05, 01.12.17, 00.00.00)

~~Unless otherwise ordered by the Tribunal administratif des marchés financiers Special Committee, an application for review does not appeal suspends the execution of the decision of the Disciplinary Committee or of the staff of the Bourse when such decision imposes a penalty other than those provided for under paragraphs e), d), e) and f) of article 4105.~~

~~—However, the suspension of the rights of an approved participant or approved person, the prohibition to obtain an approval, the expulsion of an approved participant and the revocation of an approval of the Bourse is executory, notwithstanding appeal, unless otherwise ordered by the Special Committee.~~

4257 ~~Hearing of the Appeal and Additional Evidence~~
(11.03.92, 15.03.05, ~~abr. 00.00.00~~)

~~The appeal is argued on the basis of the file in first instance and of the appeal briefs.~~

~~—However, in exceptional circumstances and if the ends of justice so require, the Special Committee may authorize the presentation of additional evidence.~~

4258 ~~Applicable Rules~~
(11.03.92, 15.03.05, ~~abr. 00.00.00~~)

~~—Subject to the provisions of this Subsection D, the same rules as set forth in articles 4153 and following apply to any hearing before the Special Committee, with the necessary changes.~~

4259 ~~Disqualification~~
(11.03.85, 11.03.92, 15.03.05, ~~abr. 00.00.00~~)

~~a) No officer of the Bourse is eligible to sit at a hearing in first instance or on appeal.~~

~~b) A member of the Special Committee who has any grounds for recusation pursuant to article 4104 is not eligible to sit in appeal from a decision.~~

4260 ~~Appeal Under the Derivatives Act~~
(11.03.92, 15.03.05, 02.09.11, ~~abr. 00.00.00~~)

~~Any appeal from a decision of the Special Committee is governed by the Quebec Derivatives Act.~~

4261 ~~Transitional Provisions~~
(00.00.00)

The review of a decision of the Disciplinary Committee regarding any disciplinary matter ongoing or for which the delay to apply for a revision is not expired immediately before the entry in force of the modifications to the present Subsection D will be governed by the rules applicable to appeals in force immediately before the entry in force of these modifications.

E. Reviews of the Regulatory Division's Decisions

4262 ~~Sole Jurisdiction of the Review Committee~~
(00.00.00)

Any decision of the personnel of the Regulatory Division, including a decision to impose a late filing fee or a fine, may be reviewed by the Review Committee.

4263 ~~Review Committee~~
(00.00.00)

- a) A committee known as the Review Committee is constituted pursuant to the provisions of this article to hear applications for review brought under article 4262.
- b) The Review Committee is comprised of three persons named by the Chief Legal Officer of the Bourse, who shall select two of them among the persons mentioned in sub-paragraph a) of article 4103 and one among persons mentioned in sub-paragraph b) of article 4103.

4264 Notice of Application for Review
(00.00.00)

Any application for review under article 4262 must be brought by filing a written notice with the Chief Legal Officer of the Bourse within ten (10) business days of the decision. The notice must contain a brief statement of the grounds for application and be served upon the parties.

4265 Reimbursement of Fees
(00.00.00)

In the event the application is rejected and the Review Committee deems the application abusive, dilatory, frivolous, or for some other special reason, the Review Committee may, upon request, order the reimbursement in whole or in part of the costs and expenses (including professional fees) paid or engaged by the Bourse in connection with this application for review, the payment of the fees for the hearing of the review and the payment of the costs and expenses engaged for the investigation.

4266 Briefs
(00.00.00)

Within fifteen (15) business days of the filing of the notice of application for review, the applicant must file with the Chief Legal Officer of the Bourse, a brief containing the applicant's arguments and must serve a copy on the Regulatory Division.

Within fifteen (15) business days of the receipt of the applicant's brief, the Regulatory Division must file with the Chief Legal Officer of the Bourse, its brief containing its response to the applicant's arguments and must serve a copy on the applicant.

If the applicant fails to file the brief within the above-mentioned delay, the application may be dismissed upon application to the Review Committee.

4267 Stay of Execution
(00.00.00)

Unless otherwise ordered by the Review Committee, an application for review suspends the execution of the decision under review.

4268 Hearing and Additional Evidence
(00.00.00)

The review is argued on the basis of the briefs filed by the parties.

However, in exceptional circumstances and if the ends of justice so require, the Review Committee may authorize the presentation of additional evidence.

4269 Applicable Rules
(00.00.00)

Subject to the provisions of this Subsection E, the rules governing hearings before the Disciplinary Committee apply to any hearing before the Review Committee, with the necessary changes.

4270 Review Under the Derivatives Act
(00.00.00)

A decision reviewed under article 4262 can be reviewed by the Tribunal administratif des marchés financiers, in accordance with the provisions of the Derivatives Act upon an application filed within the delay prescribed by the act. The provisions of the preceding Subsection D apply to such an application for review, with the necessary changes.

4271 Transitional Provisions
(00.00.00)

Solely the decisions of the personnel of the Regulatory Division made after the entry in force of the new provisions of this Subsection E will be subject thereto. Any decision made before the entry in force of these new provisions is governed by the rules in force at the time this decision is made.

Section III
Summary Proceedings

4301 Intervention by the Bourse
(11.03.85, 11.03.92, 15.03.05, 00.00.00)

- a) Where the ~~Special Committee~~ Vice-President of the Regulatory Division of the Bourse deems it necessary for the protection of the public and the reputation of the Bourse, ~~it he or she~~ may suspend an approved participant or suspend ~~or revoke~~ approval of any person without following the procedures set forth in articles 4151 and following, provided that the Bourse issues forthwith a notice of hearing and convene a hearing within the following fifteen (15) business days.
- b) Articles 4302 to ~~4306-4305~~ provide examples of circumstances which may cause the Vice-President of the Regulatory Division of the Bourse ~~Special Committee~~ to intervene without notice, but ~~the his or her~~ power ~~of the Special Committee~~ to intervene pursuant to paragraph a) shall not be limited to such circumstances.

4302 Conviction
(11.03.85, 11.03.92, 15.03.05, 01.12.17, 00.00.00)

- a) If any approved participant or approved person is convicted of a crime or of an infraction in connection with trading in securities or futures contracts or of an offence under any statute or regulation applicable to securities or derivative instruments, or if any approved participant or approved person has their registration or license under any such statute or regulation suspended or revoked, the Vice-President of the Regulatory Division of the Bourse ~~Special Committee~~ may, without any notice, hearing or formality whatsoever, suspend the approved participant or approved person and ~~withdraw suspend~~ the approval of such approved person pending the completion of all appeal proceedings relating to such conviction, suspension or revocation;

- b) if no appeal is launched within the prescribed delay from such conviction, suspension or revocation, or if such a conviction, suspension or revocation is made or upheld in appeal, the Vice-President of the Regulatory Division of the Bourse~~Special Committee~~ may thereupon, without any notice, hearing or formality whatsoever, suspend ~~or expel~~ such approved participant and suspend ~~or revoke~~ the approval of such approved person.

4303 Expulsion or Suspension by Another Exchange

(11.03.85, 11.03.92, 15.03.05, 01.12.17, 00.00.00)

If any approved participant or approved person is suspended, expelled or has their approval suspended, withdrawn or revoked by another exchange or self-regulatory organization, the Vice-President of the Regulatory Division of the Bourse~~Special Committee~~ may suspend ~~or expel~~ such approved participant or suspend ~~or revoke~~ the approval of such approved person, provided that the Bourse shall forthwith issue a Notice of Hearing and convene a hearing within the following fifteen business (15) days.

4304 Failure to Provide Information or to Appear

(11.03.85, 11.03.92, 15.03.05, 02.09.11, 01.12.17, 00.00.00)

If any approved participant, employee of an approved participant or approved person refuses or neglects to provide information or to appear in the manner prescribed by the regulations of the Bourse, the Vice-President of the Regulatory Division of the Bourse~~Special Committee~~ may without any notice, hearing or formality whatsoever, suspend the approved participant or approved person until the information has been provided or the appearance has been made.

4305 Interim Orders for Unsatisfactory Financial Condition or Practices

(11.03.85, 14.08.90, 11.03.92, 15.03.05, 02.09.11, 01.12.17, 00.00.00)

- a) Notwithstanding anything to the contrary contained in any other provision of the regulations of the Bourse, if following any inspection or investigation with respect to the business, affairs or conduct of an approved participant or approved person, whether made pursuant to the regulations of the Bourse, the applicable legislation or otherwise, or if, on the basis of any reliable information otherwise obtained by or given to the Regulatory Division, it is established that:
- i) such approved participant is insolvent or does not have the risk adjusted capital required under the regulations of the Bourse;
 - ii) the financial or general condition of such approved participant or approved person is such that it is or may become detrimental to the reputation of the Bourse or to the interests or welfare of the Bourse or the public;
 - iii) the system of book or record keeping or accounting used by such approved participant is unsatisfactory; or
 - iv) the methods or practices adopted by such approved participant or approved person in carrying on business may be detrimental to the reputation of the Bourse or to the interests or welfare of the Bourse or the public;

the Vice-President of the Regulatory Division of the Bourse~~Special Committee~~ may impose without any notice, hearing or formality whatsoever, one or more of the interim orders described in paragraph b) hereunder.

- b) The interim orders that may be imposed pursuant to paragraph a) are:
- i) the suspension of the approved participant or of any of the rights and privileges of the approved participant or, approved person for a period and upon the terms and conditions, if any, determined by the Vice-President of the Regulatory Division of the BourseSpecial Committee;
 - ii) the suspension or amendment of the terms and conditions of a previously granted approval;
 - iii) the imposition of any terms and conditions that must be satisfied by a person to continue as an approved participant or approved person; or
 - iv) the imposition of any other terms, conditions or instructions deemed appropriate in the circumstances including, without limitation:
 1. restricting one or more sectors of the approved participant's operations;
 2. requiring the attendance at the approved participant's premises, for the surveillance of its trading activities on the derivatives instruments listed on the Bourse, of employees or representatives of the Bourse;
 3. requiring the mailing of notices to clients in terms specified by the Regulatory Division.
- c) If interim orders are imposed pursuant to the above paragraph b), the Bourse must issue a notice of hearing to be held within fifteen (15) business days following the Vice-President of the Regulatory Division of the BourseSpecial Committee's decision unless the parties agree to an extension of the delay or to a waiver of the hearing.
- d) Interim orders imposed by the Vice-President of the Regulatory Division of the BourseSpecial Committee remain in force until the hearing is held, at which time the orders may be confirmed, set aside or modified.

4306 Defaulters

(11.03.85, 11.03.92, 13.04.99, 15.03.05, 02.09.11, 01.12.17, 00.00.00)

- a) An approved participant or, an approved person may be declared a defaulter by the Vice-President of the Regulatory Division of the BourseSpecial Committee without any notice, hearing or formality whatsoever in any of the following cases:
- i) the approved participant or the approved person fails to pay on demand any assessment, fee or charge which has become due to the Bourse pursuant to the regulations of the Bourse or its list of fees, or any other indebtedness to the Bourse, such as a fine, or the costs of a hearing, investigation or surveillance operation;
 - ii) the approved participant or the approved person fails to meet or admits or discloses his inability to meet his liabilities or obligations to the Bourse, another approved participant, or to the public;
- b) An approved participant or an approved person who is declared a defaulter by the Vice-President of the Regulatory Division of the BourseSpecial Committee who makes an assignment of his property under the applicable legislation or against whom a receiving order is issued under this same law shall automatically be suspended.

- c) If the cause of such default is not corrected to the satisfaction of the ~~Special Committee~~Bourse within ~~fourteen~~fifteen (15) business days after a person was declared a defaulter, or such other period as the ~~Special Committee~~Bourse may decide, the approved participant may be expelled, or the approval of the approved person may be suspended or revoked by the ~~Special Committee~~Bourse without any notice, hearing or formality whatsoever.
- d) No approved participant shall do business for the account of a defaulter without the written consent of the ~~Special Committee~~Bourse.

4307 Closing Out Contracts Against Defaulters and Bankrupts
(11.03.85, 11.03.92, 15.03.05, abr. 02.09.11)

4308 Reinstatement of Defaulters
(11.03.85, 11.03.92, 15.03.05, 00.00.00)

An approved participant who has been expelled may apply to the ~~Special Committee~~Bourse for reinstatement as an approved participant. No one may be reinstated as an approved participant pursuant to the present article, if:

- a) the approved participant was expelled pursuant to a provision of the regulations of the Bourse other than those covered by articles 4301 and following;
- b) the approved participant is insolvent or bankrupt;
- c) the ~~Special Committee~~Bourse is not satisfied that the approved participant is no longer in default of any of its liabilities or obligations;
- d) the application for reinstatement is not approved by the ~~Special Committee~~Bourse.

4401 Service
(11.03.85, 11.03.92, 15.03.05, 02.09.11, 11.07.18, 00.00.00)

- a) For the purposes of this Rule :
 - i) any document required to be served on the Bourse must be addressed to the attention of the ~~Chief Legal Officer of the Bourse~~Vice-President, Legal Affairs (Derivatives), and delivered by messenger or by registered mail, in either case, with proof of receipt signed by a representative of the Bourse;
 - ii) any document required to be served on any person other than the Bourse must be served by delivering it directly to the person, by messenger or by sending it by registered mail addressed to the person to their latest residence or business address shown in the records of the Bourse;
 - iii) any document required to be served on an approved person who is located outside of Canada may be served on the approved participant or, as the case may be, on a person who is a resident of Québec and appointed as agent for the service of process.
- b) If it is not possible to serve a document in accordance with the requirements of paragraph a) ii), the Bourse may use any other manner of service that is likely to bring the document to the attention of the person.

- c) An affidavit signed by an employee or representative of the Bourse attesting that the service requirements of subparagraph a) ii) have been complied with is sufficient proof of service.

5204 Court Proceedings
(15.03.05, 00.00.00)

Submission to arbitration in accordance with this section shall be a condition precedent to any legal proceedings between approved participants with reference to an exchange contract.

No approved participant shall commence legal proceedings against another approved participant with reference to an exchange contract unless and until he has given due notice thereof to the ~~Special~~ CommitteeBourse.

7002 Form of Reports

(01.04.93, 13.09.05, 22.03.10, 00.00.00)

The ~~Special Committee~~Bourse may set the scope, the preparation method and the form of any report that must be submitted to the Bourse by approved participants pursuant to the Rules of the Bourse, to the provisions of a securities legislation or pursuant to a decision, an order or a specific request of the Bourse or of one of its committees, ~~including the Special Committee~~ and the specifications of any system permitting to ensure the implementation and maintenance of books or records to be used by approved participants in connection with the carrying on of their business.

7415 Suspension or Revocation of Approval of a Person Approved by the Bourse

(01.04.93, 13.09.05, 22.03.10, 11.07.18, 00.00.00)

If an approved person no longer meets the required qualifications or any other condition or requirement that may be prescribed by the Bourse, the Bourse may suspend or revoke its approval.

In the event of a suspension or revocation of the approval of an approved person pursuant to this article ~~or pursuant to article 4105 of the Rules of the Bourse~~, unless otherwise ordered by the Vice president of the Regulatory Division of the Bourse, the approved participant, the affiliated corporation or subsidiary of the approved participant employing this person must immediately discontinue such employment as an approved person and thereafter this person must not be employed in the same capacity by any approved participant, any affiliated corporation or subsidiary of an approved participant without the permission of the Vice president of the Regulatory Division of the Bourse. Any such permission may be revoked at any time by the Vice president of the Regulatory Division of the Bourse.

The approval by the Bourse of any person shall be automatically revoked when this person, following the termination of this person employment with an approved participant, an affiliated corporation or subsidiary of an approved participant, does not reintegrate an employment requiring such an approval with another approved participant, an affiliated corporation or subsidiary of the other approved participant within a delay of ninety (90) days following the date on which this person employment was terminated.

RULES REGARDING THE REGULATORY DIVISION

1. Definitions

(24.11.00, 25.09.09, 00.00.00)

In these Rules:

“Approved participant” shall mean an approved participant of the Bourse, whose name is duly recorded as such on the register referred to in article 3010 of the Rules of the Bourse and who has been approved by the Bourse pursuant to its Rules for the purpose of trading products listed on the Bourse;

“Board” shall mean the Board of Directors of Bourse de Montréal Inc.;

“Bourse” shall mean Bourse de Montréal Inc.;

“Division” shall mean the Regulatory Division created by the Board;

~~“Restricted trading permit holder” shall mean the holder of a permit to trade specific listed products issued to a non-approved participant pursuant to articles 3951 and following of Rule Three of the Bourse which were re-adopted, by resolutions of the Board dated October 1, 2000, as forming part of the Rules and Policies of the Bourse;~~

“Special Committee” shall mean the Special Committee – Regulatory Division appointed by the Board pursuant to the rules adopted in that regard.

2. Creation of the Division

(24.11.00)

The Division is created by the Board with the aim of ensuring that the regulatory functions of the Bourse are carried out efficiently and fairly. To this end, the supervision of the regulatory duties and operations of the Bourse are entrusted to the Division, which shall operate as a distinct business unit separate from the other activities of the Bourse. The Division shall be not-for-profit and financially self-sufficient.

3. Duties

(24.11.00, 25.09.09, 00.00.00)

The Division carries on its duties in the following fields of activity:

3.1 Market analysis, including but not limited to:

3.1.1 the review and analysis of the transactions executed on the market of the Bourse to determine whether the applicable Rules and Policies of the Bourse are being complied with;

3.1.2 the review and analysis of position reports filed on a regular basis with the Division by the approved participants of the Bourse;

3.1.3 the monitoring of insider trading activities on the market of the Bourse;

3.1.4 the analysis and processing of exemption requests filed by approved participants with the Division.

- 3.2 Examinations of approved participants derivative instruments trading desks, including but not limited to:
 - 3.2.1 the verification of the compliance of the trading practices of approved participants and; their approved persons ~~and restricted trading permit holders~~ with the Rules and Policies of the Bourse;
 - 3.2.2 the issuance of reports that underline any deficiency identified in the course of an examination.
- 3.3 Investigations, including but not limited to:
 - 3.3.1 the investigation of possible violations to the Rules and Policies of the Bourse by an approved participant or; an approved person ~~or a restricted trading permit holder~~;
 - 3.3.2 the referring of any conclusive investigation to the person of the Division designated as being responsible for enforcement and disciplinary matters.
- 3.4 Enforcement and Discipline, including, but not limited to, the initiation of disciplinary procedures against an approved participant or; an approved person ~~or a restricted trading permit holder~~.
- 3.5 The development of regulatory proposals, or the formulation of recommendations with respect to such proposals, and the issuance of circulars, including, but not limited to:
 - 3.5.1 ~~the development of~~ regulatory proposals that seek to amend the Rules and Policies of the Bourse;
 - 3.5.2 ~~the preparation of~~ regulatory circulars published on a regular basis by the Bourse.
- 3.6 Registration, including, but not limited to:
 - 3.6.1 the processing of applications for admission as an approved participant;
 - 3.6.2 the processing and approving of applications and resignations as ~~SAM~~ Authorized Approved Persons or designated representatives, and ordering suspensions of Approved Persons or designated representatives;
 - 3.6.3 the processing and approval of files relating to corporate changes affecting approved participants, such as changes in control, acquisitions of major positions in an approved participant's capital and reorganization;
 - 3.6.4 the processing of resignations of approved participants pursuant to articles 3701 to 3708 of the Rules of the Bourse.

4. Supervision
(24.11.00, 21.05.15, 00.00.00)

The Division shall be subject to the supervisory powers of the Special Committee. More particularly, the Special Committee shall:

- 4.1 ensure that the Division has the resources it needs to carry out its duties;
- 4.2 ensure that the Division carries out its duties fairly, objectively and without conflicts of interest;
- 4.3 evaluate the performance of the Division ~~semi-~~ at least annually and report thereon to the Board.

5. Fees

(24.11.00, 21.05.15, 00.00.00)

The fees ~~relating to~~ imposed by the Division shall be those approved by the Vice-President – Regulatory Division and the market regulation assessments, if any, shall be those approved by the Board upon recommendation of the Special Committee.

6. Administrative Structure

(24.11.00, 25.09.09)

- 6.1 The Division shall be managed by the Vice-President – Regulatory Division.
- 6.2 Except for matters within the purview of the Special Committee or the Board, the Vice-President – Regulatory Division shall have the authority to make all decisions relating to the Division.
- 6.3 The Vice-President and all other managers of the Regulatory Division shall reside in Quebec.
- 6.4 The Vice-President – Regulatory Division or the person designated by him shall attend the meetings of the Special Committee relating to the functions and operations of the Division, unless otherwise indicated by the Special Committee, and shall provide information upon request to the Special Committee with respect to the functions and operations of the Division.
- 6.5 The Vice-President – Regulatory Division shall report to the Special Committee in regard to all regulatory and disciplinary matters.
- 6.6 With regards to day-to-day administrative matters, the Vice-President – Regulatory Division shall report to the person designated by the Bourse for that purpose.
- 6.7 The financial structure of the Division shall be separate from that of the other activities of the Bourse and will operate on a cost recovery basis. Any surplus, other than fines and other amounts specified in paragraph 6.8 below, will be redistributed to approved participants, and any shortfall shall be made up by a special assessment upon approved participants or by the Bourse upon recommendation to the Board by the Special Committee.
- 6.8 Fines and other amounts cashed in by the Division pursuant to settlement offers concluded with the Division or disciplinary procedures must be treated as follows:
 - 6.8.1 no amounts shall be redistributed to approved participants of the Bourse;
 - 6.8.2 a separate accounting shall be maintained to account separately for the revenues and expenses related to disciplinary files;
 - 6.8.3 any amount cashed in shall first be used to cover the direct costs incurred in connection with such proceedings;

- 6.8.4 any net excess shall be used, with the approval of the Special Committee, for either one of the following purposes:
 - 6.8.4.1 for the education or information of derivative products market participants and of the public in general or for the costs of research in that field;
 - 6.8.4.2 for payments made to a not for profit and tax-exempt organization whose main mission is to protect investors or carry on the activities mentioned in subparagraph 6.8.4.1 above;
 - 6.8.4.3 for educational projects;
 - 6.8.4.4 for other purposes approved by the Autorité des marchés financiers.
- 6.9 The Division may provide regulatory services to other exchanges, self-regulatory organizations, trading systems or other persons.
- 6.10 The Division may subcontract some of its work to other exchanges, self-regulatory organizations or other persons.

**RULES REGARDING THE
SPECIAL COMMITTEE - REGULATORY DIVISION**

1. Definitions

(24.11.00, 28.08.03, 25.09.09, 00.00.00)

The terms defined in Rule 1 of the Bourse and used in the present Rules have the same meaning as the one ascribed to them in Rule 1. Moreover, in these Rules:

~~“Approved participant” shall mean an approved participant of the Bourse, whose name is duly recorded as such on the register referred to in article 3010 of the Rules of the Bourse and who has been approved by the Bourse pursuant to its Rules for the purpose of trading products listed on the Bourse;~~

~~“Board” shall mean the Board of Directors of the Bourse;~~

~~“Bourse” shall mean Bourse de Montréal Inc.;~~

“Independent member” shall mean a physical person who is a member of the Special Committee and who conforms to the board of directors independence standards of the Bourse.

~~“Special Committee” shall mean the Special Committee—Regulatory Division appointed hereunder by the Board;~~

“Regulatory Division” shall mean the Regulatory Division of the Bourse established by the Board.;

~~“Restricted trading permit holder” shall mean the holder of a permit to trade specific listed products issued to a non approved participant pursuant to articles 3951 and following of Rule Three of the Bourse which were re-adopted, by resolutions of the Board dated October 1, 2000, as forming part of the Rules and Policies of the Bourse.~~

2. Binding effect

(24.11.00, 25.09.09, abr. 00.00.00)

~~These Rules regarding the Special Committee shall be binding on all approved participants, on the directors, officers and employees of approved participants and on restricted trading permit holders.~~

3. Composition of the Special Committee

(24.11.00, 20.10.04, 25.09.09, 22.03.13, 00.00.00)

The Special Committee shall be a committee of the Board and shall consist of:

- a) at least 50% of persons who are Quebec residents at the time of their appointment and for the duration of their term;
- b) at least 50% of persons who satisfy the independence conditions that are applicable to the Directors of the Bourse, ~~and~~;
- c) at least 50% of persons having expertise in derivative instruments; ~~and~~
- d) at least one person who is a partner, director, officer or employee of a “marketplace

participant” of the Corporation or an associate of a partner, director, officer or employee of a “marketplace participant” of the Corporation (with “marketplace participant” having the definition as set out in Regulation 21-101 respecting Marketplace Operation).:-

4. Appointment

(24.11.00, 25.09.09, 00.00.00)

The members of the Special Committee shall be appointed by resolution of the Board for a term of ~~two~~ one years. Such appointment may be renewed at the discretion of the Board. ~~A member of the Special Committee whose term has expired shall remain in office as long as necessary to permit the completion of any matter on which such member was sitting prior to the expiry of the term.~~

5. Quorum

(24.11.00, 20.10.04, 25.09.09)

The quorum at meetings shall be constituted of a majority of members in office of the Special Committee attending in person, by telephone or by videoconference and the majority of members so attending must be Quebec residents at the time of their nomination and for the duration of their term and must satisfy the independence criteria that are applicable to the Directors of the Bourse.

6. Powers

(24.11.00, 25.09.09, 02.09.11, 21.05.15, 00.00.00)

The Special Committee shall have the following powers and responsibilities:

- 6.1 make recommendations to the Board regarding the separate budget of the Regulatory Division;
- 6.2 supervise and control the activities of the Regulatory Division, subject to the final authority of the Board and the Autorité des marchés financiers;
- 6.3 adopt or amend the Rules and pPolicies of the Bourse ~~relating to:~~
 - ~~6.3.1 — applications for admission as approved participant;~~
 - ~~6.3.2 — the operations and standards of practice and business conduct applicable to approved participants and restricted trading permit holders;~~
 - ~~6.3.3 — investigations and disciplinary matters;~~
 - ~~6.3.4 dispute resolution.~~
- ~~6.4 — recommend to the Board the adoption or amendment of Rules and Policies of the Bourse relating to:~~
 - ~~6.4.1 — margin requirements;~~
 - ~~6.4.2 — capital requirements applicable to approved participants; and~~
 - ~~6.4.3 — market surveillance;~~

~~6.5 approve the applications for approved participant or designated representative status, as well as the suspension and revocation of such approvals pursuant to articles 3001 to 3960 of the Rules of the Bourse;~~

~~6.6 approve the resignations of approved participants pursuant to articles 3701 to 3708 of the Rules of the Bourse;~~

~~6.7 approve corporate changes affecting approved participants, such as changes of control, acquisitions of major positions and reorganizations;~~

~~6.8 suspend or revoke restricted trading permits pursuant to articles 3951 to 3960 of the Rules of the Bourse;~~

~~6.9 order that a special examination or investigation be made pursuant to article 4003 of the Rules of the Bourse;~~

~~6.10 should the circumstances warrant, proceed summarily in the situations mentioned in articles 4004 and 4301 and following of the Rules of the Bourse;~~

~~6.11 order a suspension for failure to provide information pursuant to article 4005 of the Rules of the Bourse;~~

~~6.12 proceed to the hearing of appeals from decisions rendered by the Disciplinary Committee in regards to complaints, pursuant to articles 4101 and following of the Rules of the Bourse;~~

~~6.13 proceed to the hearing of appeals from decisions rendered by any other committee of the Bourse or the staff of the Bourse;~~

~~6.14 report to the Board regarding the~~ execution by the Regulatory Division of its regulatory duties; and

~~6.15 make the decisions and take the actions it deems appropriate to carry out its mandate periodically review and approve the fees relating to the Division.~~

7. Procedure

(24.11.00, 00.00.00)

The rules of procedure applicable to the Special Committee shall be the rules of procedure provided for in the Special Committee Charter adopted by the Board of the Board, subject to such changes as may be necessary to adapt them to the circumstances.

8. Decisions and Minutes

(24.11.00, 25.09.09, 02.09.11, abr. 00.00.00)

~~Decisions of the Special Committee shall require the vote of the majority of those attending in person, by telephone or by video conference.~~

~~In disciplinary matters or summary proceedings, if a member becomes unable to act before a decision is rendered, the decision may be reached by the remaining members, provided they are at least four.~~

~~Copies of the minutes of each meeting shall be sent to all members of the Special Committee, to the Chairman of the Board, to the President of the Bourse and to the Vice President, Legal Affairs (Derivatives).~~

9. Consequential amendments
(24.11.00, 25.09.09, abr. 00.00.00)

~~Notwithstanding article 4251 of the Rules of the Bourse, the decisions of the Special Committee relating to disciplinary matters or summary proceedings can be reviewed in accordance with the law.~~

10. Transitional
(24.11.00, abr. 25.09.09)



Mandate of Advisory Committee of the Regulatory Division

1. Definitions

In these rules:

"Bourse" or "the Bourse" means Bourse de Montréal Inc.;

"Advisory Committee" means the Division's advisory committee constituted hereunder;

"Special Committee" means the committee of the Bourse's Board of Directors charged with supervising the Division's functions and activities according to the Bourse's recognition order from the Autorité des marchés financiers;

"Division" means the Bourse's Regulatory Division;

"Approved participant" means an approved participant of the Bourse whose name is duly registered in the register referred to in Article 3010 of the Rules of the Bourse and who has been approved by the Bourse pursuant to its Rules for the purpose of trading products listed on the Bourse.

General

The Advisory Committee is a committee composed of individuals who are not employees, officers or directors of the Bourse. The Advisory Committee provides advice to the Division and the Special Committee as requested and may make recommendations to the Division and the Special Committee on any issue related to, among others, the Division's independence, its operational efficiency, its budget, the exercise of its discretionary powers, its regulatory policy and regulatory amendments made under the direction of the Division. These advices and recommendations are not binding on the Division or the Special Committee.

2. Composition of the Advisory Committee

The Advisory Committee is composed of eight members, preferably with expertise in derivatives, compliance, or regulations in the financial sector, and:

- a) At least 50% of the persons are residents of Québec at the time they are appointed and

for the duration of their mandates;

- b) Three persons who satisfy the independence criteria applicable to directors of the Bourse;
- c) Five persons are representatives of approved participants of the Bourse.

3. Appointment

The Vice-President of the Division encourages anyone who is interested and, preferably, who meets one or more of the criteria set out in Article 2, to become a member of the Advisory Committee through a call for nominations for any vacant position. After consulting with the Chair of the Advisory Committee and the Chair of the Special Committee, the Vice-President of the Division appoints members of the Advisory Committee. Members of the Advisory Committee are appointed for two-year terms, and their appointment is published in a circular.

At the end of a member's term and after consulting with the Chair of the Advisory Committee and the Chair of the Special Committee, the Vice-President determines whether or not the member will be re-appointed for another term. A member of the Advisory Committee whose term has expired may remain in office as long as necessary to permit the completion of any current business.

4. Responsibilities

At the request of the Vice-President of the Division or the Special Committee, the Advisory Committee may provide advice to the Division or the Special Committee, in particular as it concerns:

- a) The Division's budget, the use of funds from fines for the purposes identified in the Bourse's recognition decision and fees imposed by the Division;
- b) The adequacy and attribution of the resources at the Division's disposal, including technological needs;
- c) Quarterly reports to be submitted to the Special Committee and the Autorité des marchés financiers;
- d) The Division's self-evaluation of the execution of its regulatory duties and proposed improvements;
- e) The Division's regulatory policy and strategic plan;
- f) The Division's execution of its regulatory duties and powers:
 - i. market surveillance;
 - ii. inspections of approved participants;
 - iii. investigations of approved participants;

- iv. application of the Rules of the Bourse;
- g) The regulatory amendments under the responsibility of the Division, as established by the Bourse's governance framework;
- h) Trends and issues in compliance or concerning self-regulatory organizations;
- i) Any other issue raised by the Vice-President of the Division or the Special Committee.

The Advisory Committee is also entitled to make recommendations to the Special Committee on the same matters. These recommendations are forwarded by the Vice-President of the Division to the Special Committee. These recommendations do not bind the Special Committee.

5. Chair of Advisory Committee

After consulting with the Chair of the Special Committee, the Vice-President of the Division appoints the Chair of the Advisory Committee from among its members. In the Chair's absence, or if the position is vacant, the Vice-President of the Division may select another member to serve as interim Chair of the Advisory Committee until a successor is appointed.

6. Meetings

The Advisory Committee shall meet at the request of the Vice-President of the Division or the Special Committee, but in any event it will meet at least four times per year. Notices calling meetings shall be sent to all Committee members by the Vice-President of the Division. After consulting with the Chair of the Advisory Committee, the Vice-President of the Division shall prepare an agenda for each meeting.

7. Quorum

A majority of members of the Advisory Committee, present in person, will constitute a quorum. Of this group, a majority of the members present shall be residents of Québec.

8. Recommendations, secretary and minutes of meeting

The recommendations of the Advisory Committee shall require the vote of the majority of the members attending the meeting.

The Vice-President of the Division shall appoint a secretary to the Advisory Committee, who may be an employee of the Division. The secretary prepares the minutes of meeting. The minutes of each meeting shall be sent to the Chair, the members of the Advisory Committee and the Vice-President of the Division. At the request of the Special Committee, the Vice-President of the Division sends a copy of the minutes to the members of the Special Committee.

9. Removal and vacancy

A member may vacate his or her position on the Advisory Committee. A member may also be vacated from these duties during his or her term by the Vice-President of the Division, after consulting with the Chair of the Advisory Committee and the Chair of the Special Committee, for any reason considered reasonable by the Vice-President of the Division. The Vice-President of the Division, after consulting with the Chair of the Advisory Committee and the Chair of the Special Committee, fills any vacancy in the Advisory Committee. The Vice-President of the Division may identify potential candidates amongst the individuals who previously submitted their candidacy or through a call for nomination. Subject to quorum requirements, if a vacancy exists on the Committee, the other members continue to exercise all responsibilities of the Advisory Committee.



June 1, 2017

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Dear M^e Chicoine and M^e Beaudoin:

Re: Request For Comments - as per Circular 038-17 issued by Bourse de Montréal Inc. (the "Bourse") on March 22, 2017 (the "Circular") – Amendments to the Rules of Bourse de Montreal inc. to clarify the governance structure of the Regulatory Division.

The Investment Industry Association of Canada (the "IIAC") would like to take this opportunity to express its views on the proposed changes via Request for Comments - as per the Circular.

The IIAC and its Mandate

The IIAC is the national association representing the position of 130 IIROC-regulated Dealer Member firms on securities regulation, public policy and industry issues. We work to foster a vibrant, prosperous investment industry driven by strong and efficient capital markets.

The Bourse's Proposed Amendments

The IIAC and its Members understand that the Bourse's proposed amendments were intended to:

- Clarify the governance structure of its Regulatory Division (the "Division")
- Better align the governance with the practices of similar exchanges
- Reflect the spirit of the governance structure contemplated under Decision no. 2012-PDG-0075 (the "2012 Decision") of the Autorité des Marchés Financiers ("AMF") recognizing the Bourse as an exchange and a self-regulatory organization ("SRO").

Furthermore, we understand that the Bourse *"wishes to modify its rules to clarify that the Special Committee within the meaning of the 2012 Decision shall be a committee of its Board of Directors ("Board")"*.

IIAC's Position on the Proposed Amendments

The IIAC and its members believe that the proposed amendments, if implemented, would be non-compliant with the 2012 Decision:

- The 2012 Decision requires that the Regulatory Division's functions and activities must be independent from the profit-making activities of the Bourse and be organizationally distinct. Independence must take place on the decision-making level and therefore at the governance level of the Regulatory Division.
- The 2012 Decision cannot be read, both in its current wording and in its spirit, as allowing the Special Committee of the Regulatory Division to be composed of members of the Board of Directors of the Bourse since such a structure would create a lack of independence.

The 2012 Decision – Main Focus: Independence

We believe that the main focus of the AMF when issuing the 2012 Decision was, as stated in the Circular, to require *“the Division to be independent from the other activities of the Bourse”*.

The IIAC and its members believe this means that there must be autonomy, independence and a lack of conflict of interest between the governance of both:

- The Regulatory Division (often referred to as “Division”), and
- The Bourse’s business unit.

The Regulatory Division performs a “regulatory function” considering the Bourse’s status as a Self-Regulatory Organization (“SRO”). This activity must be performed in the public interest, in a “not for-profit” environment.

The Bourse’s “business unit” performs, within the TMX Group, an important “business function” as the TMX Group operator of exchange-traded financial derivatives marketplaces in a “for-profit” context.

The Circular gives further details on the intent of the AMF behind the 2012 Decision and states that:

“The Recognition Decision always required the Bourse to have a Division to oversee the regulatory functions and operations of the Bourse and always provided that the Division shall be a separate business unit of the Bourse that shall be governed by the Board. The Recognition Decision provided for the Board to appoint a Special Committee to oversee the duties and operations of the Division.”

We would not necessarily go as far as to qualify the Regulatory Division as a “business unit” (because of its public-interest and market surveillance mandate) although we wholeheartedly agree it should remain a separate unit from the “business” unit of the Bourse.

The Bourse, in its Circular, seems to agree with this independence assertion of ours when it also mentions:

“The Recognition Decision requires the Division to be independent from the other activities of the Bourse.”

The IIAC and its members wholly support the original stance taken by the AMF in the 2012 Decision to create a totally separate governance structure for the Regulatory Division by mandating a separate “Special” Committee to oversee the duties and operations of the Division. We more importantly support the explicit (or at least implicit) interpretation of the 2012 Decision that requires this Special Committee to be comprised of non-Directors of the Bourse.

As previously noted, the IIAC and its members believe that the proposed amendments do not reflect “the spirit of the governance structure” contemplated by the AMF in its 2012 Decision as they create a conflict of interest and a lack of independence between the Regulatory Division and the Bourse’s for-profit marketplace activities.

We fail to see how the proposed governance structure could be expected to legitimately maintain independence between the two functions if the Division is governed by a Special Committee comprised of Board members of the Bourse.

The Industry believes that the Bourse’s proposed governance structure creates a conflict of interest and lack of independence between the Division and the Bourse and that it also creates a lack of transparency for market participants. We believe it is mandatory for the governance of the Division to:

- be independent from the Bourse’s business functions governance, and
- be fully autonomous.

Current Governance Structure: Special Committee vs. Rules and Policies Committee

(i) The Special Committee

The Bourse’s website mentions:

“The Special Committee – Regulatory Division supervises and controls the activities of the Division, subject to the final authority of the Exchange’s Board of Directors and the AMF.

The Special Committee – Regulatory Division adopts or amends Rules and Policies of the Exchange regarding in particular various matters relative to the supervision of approved participants, their approved persons and restricted trading permit holders. It makes recommendations to the Board regarding the Rules and Policies of the Exchange relative to market surveillance. [Emphasis added]

It also approves requests for approvals to become approved participants and exercises powers to suspend or revoke such approvals. It also exercises powers to order inspections and investigations and acts as an appeal forum for final decisions rendered by disciplinary committees of the Exchange or other staff committees of the Exchange.

The Special Committee – Regulatory Division is composed of at least 50% of persons who are Quebec residents, at the time of their appointment and for the duration of their term, of at least 50% of persons who satisfy the independence conditions that are applicable to the Directors of the Exchange and of at least 50% of persons having expertise in derivative instruments.”

(ii) The Rules and Policies Committee

As per the Bourse’s website:

“The Board of Directors of the Corporation (the “Board”) has established a Rules and Policies Committee (the “Committee”) for the purpose of considering and making decisions regarding rules, policies, trading procedures or other similar instruments (“Rules”) that must be submitted to the Autorité des marchés financiers (the “AMF”) for approval in accordance with Section II. e) of Part III (the “Protocol”) of the Recognition Order recognizing the Corporation as an exchange, dated May 2, 2012 (the “Recognition Order”).”

The Rules and Policies Committee is composed of Directors of the Bourse. Its mandate, particularly with respect to the approval of rules, is limited to (or should be limited to) approving rules that have an impact on the business function/commercial operations of the Bourse (as a marketplace) rather than to rules that have an impact on the regulatory function of the Regulatory Division.

Furthermore, considering that the Rules and Policies Committee is a committee comprised of Directors of the Bourse, its mandate is limited (or should be limited) to the business function of the Bourse.

Directors cannot be expected to act in conflicting roles and should therefore not be members of the Regulatory Division's Special Committee. The Rules and Policies Committee is not (and if it is, it should not be) part of the governance structure of the Division.

Governance Structure – Current and Proposed

To ensure that we properly understood the proposed governance structure, we requested that the Bourse send us organizational charts of the current and proposed governance structure of the Regulatory Division. See Appendix A for the charts (in French) provided by the Bourse's Legal department.

As the charts show, two changes are proposed by the Bourse:

- 1- The current Rules and Policies Committee would become the "new" Special Committee.

This "new" Special Committee would be comprised of "independent" Directors of the Bourse.

- 2- The current Special Committee would become an Advisory Committee. This committee, comprised of independent members, would no longer have an oversight role on the Division.

It should be noted that the members of the current Special Committee are recognized in the Industry for their knowledge and experience and are independent from the Bourse.

Should the Rules and Policies Committee become the "new" Special Committee? Blurring the Lines of Business vs. SRO

The Bourse is proposing to change the composition of the current Special Committee by that of the Bourse's Rules and Policies Committee.

We would like to point out the following comment from the Circular (page 5) which raises serious doubts in the circumstances:

"The Bourse is of the view that the principle of independence does not imply that the Special Committee be composed of non-Directors of the Bourse."

Our members have great concerns. The Bourse's view, as stated above, is that independence means that the Special Committee must be composed of Directors of the Bourse. We find this statement to be problematic, not only in the name of the principles of sound governance but also in the name of protecting the investing public. The Bourse acts as a commercial entity to increase shareholder value but must also act as a self-regulatory organization recognized by the AMF. We feel the Bourse, through its current proposal, is blurring the lines between these two functions and activities (a business function and a regulatory function) that should continue to be governed independently as required by the 2012 Decision.

We believe that a Special Committee comprised of individuals who satisfy the independence requirements applicable to the Bourse's Directors, which is the current situation, is not the equivalent of a Special Committee of "independent" Directors.

As with special committees of reporting issuers in Canada that are created when a decision of the Board of Directors raises or could raise concerns about one or more potential or actual conflicts of interest, the Special Committee must remain composed of persons whose judgment is free from any other interest or consideration which would be linked to the business function of the Bourse.

This cannot be expected if the members of the Special Committee are also Directors of the Bourse.

It appears that the Bourse implicitly recognizes that significant conflicts of interest could arise from a position that the Special Committee could be composed of Directors of the Bourse by conferring, within the governance structure proposed, new important powers to the Vice President and Chief Regulatory Officer ("VPCRO") of the Regulatory Division. Indeed, the latter is given, through the Bourse's proposed changes, important powers in regards to the suspension of an approved participant, the decision to order a special investigation and the decision to approve the fees related to the Division.

In the proposed structure, who runs the Regulatory Division's market surveillance function?

We further understand that the VPCRO of the Regulatory Division would report directly to the "new" Special Committee, comprised of Directors of the Bourse.

We wonder about the remuneration structure of the VPCRO. The industry has many questions:

- Is the remuneration of the VPCRO based in any way on the Bourse's business functions' objectives?
- Is the remuneration linked to the Bourse's volumes?
- Is the remuneration linked to the Bourse's revenues?
- Is the remuneration linked to the Bourse's profit?

Once again we fail to see the concept of independence in the proposed structure since:

- The VPCRO of the Division would report directly to the Board of the Bourse, and
- The VPCRO may be remunerated based on the Bourse's business activities.

Regulatory Division and the Concept of Independence

The Circular states that:

“The Recognition Decision requires the Division to be independent from the other activities of the Bourse.”

As previously mentioned, the industry believes that the proposed amendments would blur the lines of independence. How can the VPCRO take independent decisions when reporting to the Board of the Bourse? We also feel tremendous concerns that the VPCRO's remuneration could be perceived to be linked to the Bourse's business results.

Bourse's Proposal: In the Public Interest?

The Circular further states that:

“The Bourse believes that this proposal is in the public interest. The public has an interest in making sure that an SRO is governed in accordance with sound governance principles and with the Recognition Decision. The Board being accountable for the Bourse's SRO responsibilities, the Special Committee should therefore be a committee of the Board.”

Our members disagree with the first sentence of the above paragraph. We do not believe that the Bourse's proposal is in the public interest since it creates conflict of interests. The Industry believes that the Division's governance must, first and foremost, be independent from the Bourse's governance as independence is key for the sound governance of an SRO.

To the extent that the composition of a Board Special Committee can include non-Directors, our members do however agree that:

“The public has an interest in making sure that an SRO is governed in accordance with sound governance principles and with the Recognition Decision. The Board being accountable for the Bourse's SRO responsibilities, the Special Committee should therefore be a committee of the Board.”

Why did the Bourse propose these amendments? What needs to be fixed?

The Circular states:

“The Autorité has raised questions with respect to the mandate, powers and responsibilities of the Special Committee and the accountability of the Board in light of the requirements of the Recognition Decision. Ongoing dialogue with the Autorité has led the Bourse to revisit the governance structure, which has resulted in the present proposal.”

We respectfully submit that these objectives should not be pursued at the expense of a loss of autonomy and independence of the Regulatory Division.

We believe that some amendments to the regulatory framework are required to the mandate, powers and responsibilities of the Special Committee and the accountability of the Board in light of the requirements of the 2012 Decision but we also believe that these amendments need not be as extensive and potentially damaging as those proposed in the Circular.

Can self-certification be used to implement the Bourse's proposed changes?

Our members have serious questions on the self-certification process to implement the changes as proposed by the Bourse. We question if the self-certification process set out in Division II of the Derivatives Regulation is appropriate for the amendments proposed by the Bourse in the Circular without amending the 2012 Decision, which most likely would in turn require a more formal public consultation.

We doubt that the Bourse can self-certify the proposed changes as the self-certification process provides that only minor impact rules (Section 7), emergency rules (Section 9) and those relating to a new derivative (Section 10) are not subject to public consultation. The impacts of the Bourse's proposed changes in the Circular are major for the Bourse, the Regulatory Division, approved participants of the Bourse and the investing public.

The proposed changes would have a significant impact on the Division's functions and regulatory activities, which in the name of protecting the public and the proper functioning of the Bourse's markets, must be fully independent in performing its duties, in its decision-making process and in its governance.

The Division's functions, including compliance and market surveillance activities, must be independent of the Bourse's for-profit activities, both through its organizational structure and decision-making structure. Accordingly, the 2012 decision should be amended to allow explicit, clear and unequivocal changes to the governance structure as proposed by the Bourse. In our view, due to the importance of the potential changes, the process of self-certification does not seem appropriate.

The Industry's Proposal

Firstly, the Special Committee currently adopts and modifies the rules and policies of the Bourse on various matters relating in particular to the supervision of approved participants and their approved persons. However, under Rule 6.4 of the Special Committee Rules, the Special Committee only makes recommendations to the Bourse's Board of Directors regarding the rules and policies on margins and market surveillance.

Such a limitation on the powers of the Special Committee may be problematic as this is clearly an aspect of the Regulatory Division's regulatory function.

In our view, section 6.4 of the Special Committee Rules should be revised by the AMF specifically to provide that the Special Committee may adopt and amend the rules and policies on margins and market surveillance rather than recommend to the Board of Directors.

On this last point, we would also add that the Rules and Policies Committee should not intervene in any way to oversee matters relating to the Bourse's approved participants' compliance with the rules of the Bourse and the supervision of the Bourse's markets.

The Rules and Policies Committee must therefore be removed from the Division's governance framework because its role must be limited to the adoption and approval of rules that relate to the Bourse's business functions. Examples include the rules for a new derivative, rules which deal with the trading hours of the Exchange and the execution costs imposed on the different accredited participants.

The Special Committee, as currently composed, must remain and be confirmed as the only committee mandated to oversee all matters relating to the compliance of participants with the Rules and the oversight of the Division, including trading rules.

Secondly, to address matters of governance that are problematic, we believe that the Rules of the Division and of its Special Committee must be amended to provide that:

1. the Bourse's Board of Directors creates, mandates and appoints the Special Committee (and the Division) and delegates to the Special Committee all powers necessary to perform its duties and responsibilities arising from the relevant rules of the Bourse.
2. the Special Committee must report annually to the AMF on the performance of the division and on any material matters of importance.
3. the Special Committee has the full powers to adopt and also amend the rules concerning margins and market supervision and no longer just to make recommendations to the Bourse's Board of Directors.

These proposed changes from our industry members are relatively simple to implement through rule changes and do not require a change to the 2012 Decision. Therefore, the self-certification process can be used to implement such a structure without legal uncertainty.

Best Interest of the Corporation: Business Function vs. Regulatory Function

The Circular issued by the Bourse states:

“Managing inherent tension between business and regulatory functions and conflict of interests, real or apparent, should be the responsibility of the Board, the governing body of a corporation used to dealing with conflict issues. Moreover, directors of the Board are legally obligated by virtue of their fiduciary duties to act in the best interest of the corporation, which implies a duty to treat individual stakeholders affected by corporate actions equitably and fairly. These duties do not legally bind the members of the Special Committee who currently are not directors of the Bourse.” [Emphasis added]

The industry believes that in the unique and particular context of the Bourse which is both a for-profit and a non-profit organization, these accountability issues must be addressed but not at the expense of creating conflicts of interests at the Directors’ level. Therefore, our industry members recommended the above-mentioned changes (and only such).

With the Bourse’s proposed structure, it would be difficult for a Director to make an objective assessment of an application for approved participant status by an entity whose competency or integrity or those of its owners, Directors, officers or employees would be questioned by divisional staff. This difficulty stems from the obvious conflict between the commercial interest for the Bourse to welcome a new participant in its markets and the protection of the public and the proper functioning of the market which the Bourse must provide as a self-regulatory organization.

We also believe that “independence” to qualify as a Director of the Bourse does not guarantee the appropriate or expected level of “independence” in such a situation of conflict between the business and the regulatory functions. The protection of the investing public and the proper functioning of the market could be too often compromised if the AMF accepts the proposal of the Bourse.

As the Bourse itself states in the Circular, it is important to *"separate the implementation measures from the operating activities of the exchanges ... and to isolate the enforcement activities and market surveillance of commercial pressures."*

We strongly agree with the Bourse on this last point.

The Canadian Context: Governance Structure

Our Industry is proposing the “ICE Futures Canada” solution to any perceived governance structure concerns as it applies in the context of the Bourse and the Division.

We note that the Bourse has provided a comparative analysis which includes the Investment Industry Regulatory Organization of Canada (“IIROC”) as well as international regulatory bodies but has overlooked what the Canadian industry feels is the best comparison in this instance: ICE Futures Canada.

The IIAC and its members believe that a governance structure similar to the one of ICE Futures Canada would be appropriate to meet all AMF requirements.

Governance Structure proposed by the Industry: ICE Futures Canada

Our members believe that a governance structure similar to that of ICE Futures Canada would benefit the interests of all parties: The Bourse, the Division, the AMF and the Canadian market participants.

ICE Futures Canada Inc. has, despite being omitted in the Bourse’s comparative analysis, a governance structure that our members believe to be of particular relevance in this case. Many similarities exist between ICE Futures Canada and the Bourse.

The ICE Futures Canada structure can be summarized as follows:

- ICE Futures Canada has two distinct entities which are independent:
 - A regulatory division, and
 - A business division.
- The Regulatory Division of ICE Futures Canada is overseen by a Special Committee.

The Governance structure of the ICE Futures Canada Regulatory Division, which as been approved by the Manitoba Securities Commission, is as follows as per ICE Futures Canada - Rule 9 and Article 5 of its By-Law:

- ICE Futures Canada's Special Committee is a committee of the ICE Futures Canada Board of Directors,
- ICE Futures Canada's Special Committee consists of six members, of whom only one is a member of the ICE Futures Canada Board of Directors,
- ICE Futures Canada's Special Committee members are appointed by the Board of Directors of ICE Futures Canada,
- ICE Futures Canada's Special Committee derives its authority not only from ICE Futures Canada's recognition decision by the Manitoba Securities Commission but also from a delegation of the ICE Futures Canada Board of Directors.

It should also be noted that the Board of Directors of ICE Futures Canada has a committee that is similar to the Bourse's current Rules and Policies Committee. This Committee is not mentioned in the governance framework of ICE Futures Canada's Regulatory Division as it relates to the governance of the "business division", and not the Regulatory Division.

ICE Futures Canada's Regulatory Division governance framework only includes rules that are of interest for ICE Futures Canada's mandate as a self-regulatory organization. We believe the Bourse should also create, for its Regulatory division, a governance framework that only includes rules that are related to its SRO mandate.

Regulatory Framework - Governance Structure of the ICE Futures Canada Regulatory Division

- The ICE Futures Canada Board of Directors establishes, mandates and appoints the ICE Special Committee (and the Regulatory Division) and delegates to the ICE Special Committee all powers necessary to carry out its duties and responsibilities arising from the relevant ICE Futures Canada rules.
- The ICE Special Committee reports annually to the Manitoba Securities Commission on the performance of the Division and on any significant regulatory matters.
- The ICE Special Committee has full authority to adopt and amend the rules relating to market compliance and supervision, and not merely to make recommendations to the ICE Futures Canada Board of Directors.

With respect to this last point, the ICE Futures Canada website mentions:

*“The jurisdiction of the Special Regulatory Committee extends to **all matters respecting compliance and market surveillance** at ICE Futures Canada. This is a broad and far-reaching jurisdiction. It encompasses all the Rules of ICE Futures Canada® including trading rules, **contract rules**, delivery, shipping, financial compliance and also compliance by participants with the provisions of the CFA and the rules and regulations promulgated thereto”. [Emphasis added]*

Please note that “all the Rules” in the paragraph above only refer to matters respecting compliance and market surveillance.

We believe the ICE Futures Canada governance structure for its Regulatory Division complies with the demands of the AMF as drafted in its 2012 Recognition Decision of the Bourse as an SRO.

Recommendations from the Industry concerning the Governance Structure of the Division of the Bourse

The IIAC and its members recommend the following in regards to the Division’s governance structure in order to comply with the 2012 Decision:

- The status quo in regards of the member composition of the Special Committee;
- Amendment to the Rules of the Special Committee to provide that the Bourse’s Board of Directors establishes, mandates and appoints the Special Committee and the Division and delegates to the Special Committee all powers necessary for the accomplishment of its duties and responsibilities arising from the relevant rules of the Exchange;
- Amendment of the Rules of the Special Committee of the Regulatory Division to provide that the Special Committee shall also annually report directly to the AMF on the performance of the division and on any material regulatory matters;

- Amendment of Article 6.4 of the Rules of the Special Committee of the Regulatory Division to provide that the Special Committee has full power to adopt and amend the rules on margins and market surveillance.

Furthermore, we recommend that reference to the Rules and Policies Committee of the Bourse be removed from the Division governance structure since it relates to the Bourse's business function and not to its regulatory function.

Summary

In our opinion, the changes suggested by the Bourse in the Circular do not address the protection of the investing public and create a lack of independence for the Regulatory Division.

It is important for the AMF to seriously consider the implications that may arise from a position that the Special Committee may consist solely or predominantly of Directors of the Bourse in respect to the important mandate of overseeing the Bourse's markets in the public interest (re. regulatory function). We believe independence must exist between the Bourse and the Division so we recommend not changing the composition of the Special Committee.

If the Bourse's proposed changes to the governance structure were to nonetheless be accepted by the AMF despite our members' position, the Industry believes that the AMF will need to amend its 2012 Decision since the proposed structure would create a conflict of interest between the Division and the Bourse's commercial division. We do not believe, due to the importance of the proposed changes, that self-certification can be used by the Bourse to implement such changes to the 2012 Decision without public consultation.

The structure and governance standards of the Division must comply with the provisions and the spirit of the 2012 Decision and with the Bourse's Rules. As far as the latter rules are concerned, they require, in our opinion, only the changes proposed herein by our industry members.

As previously explained, our industry members believe that the ICE Futures Canada governance model is more appropriate in the circumstances than the one proposed by the Bourse in its Circular 038-17 dated March 22, 2017.

We would like to reiterate that these proposed changes from our industry members are relatively simple to implement through rule changes and do not require a change to the 2012 Decision. Therefore, the self-certification process can be used to implement such a structure without legal uncertainty.

Please note that the IIAC and its Members, as always, remain available for further consultations.

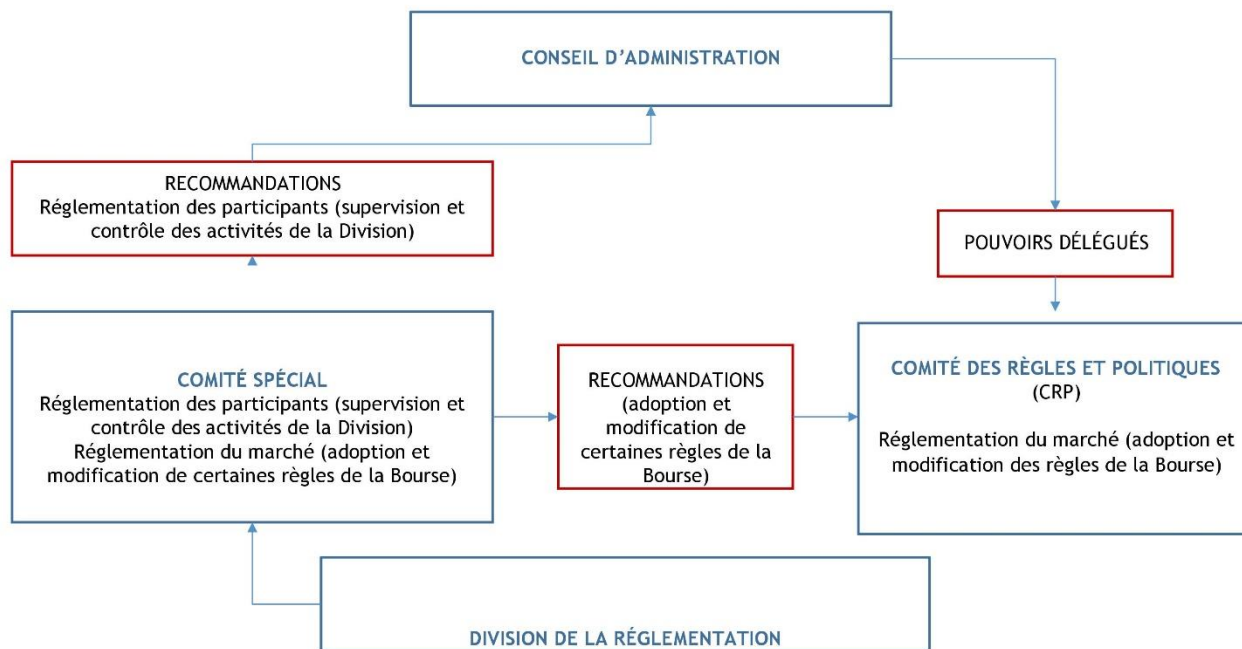
Yours sincerely,



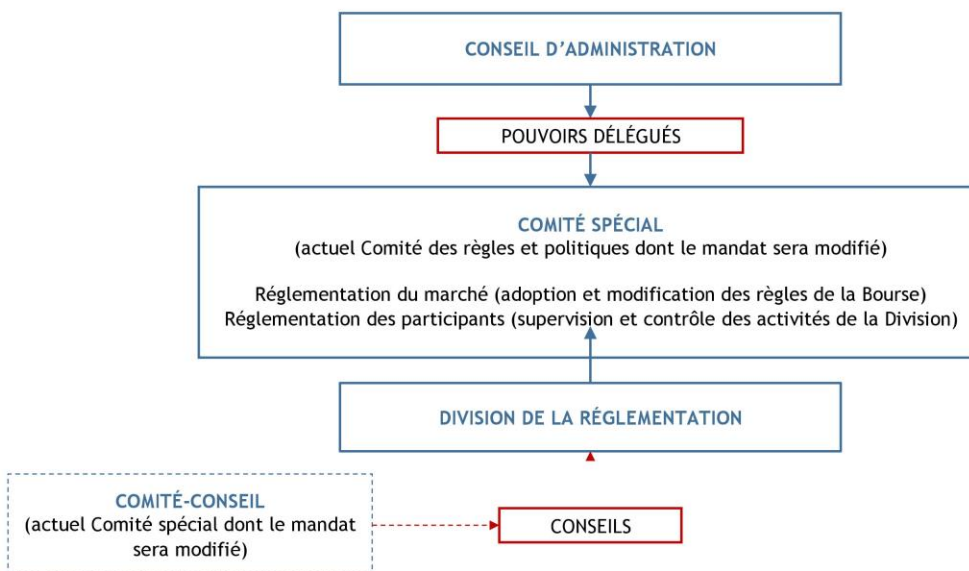
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APPENDIX A

BOURSE DE MONTRÉAL INC. ORGANISME D'AUTORÉGLÉMENTATION (OAR)



BOURSE DE MONTRÉAL INC. ORGANISME D'AUTORÉGLÉMENTATION (OAR)



Circular 038-17: Summarised comments and responses

No.	Date comment received	Commenting participant category	Comment summaries	Summary of response
1.	June 1, 2017	IIAC - Investment Industry Association Of Canada	<p>IIAC believes that the proposed amendments, if implemented, would be non-compliant with the Decision no. 2012-PDG-0075 (the “2012 Decision”) of the AMF for the following reasons:</p> <ul style="list-style-type: none"> • The 2012 Decision requires that the Regulatory Division's functions and activities must be independent from the profit-making activities of the Bourse and be organizationally distinct. Independence must take place on the decision-making level and therefore at the governance level of the Regulatory Division. • The 2012 Decision cannot be read, both in its current wording and in its spirit, as allowing the Special Committee of the Regulatory Division to be composed of members of the Board of Directors of the Bourse since such a structure would create a lack of independence. <p>IIAC believes that the main focus of the AMF when issuing the 2012 Decision was, as stated in the Circular, to require <i>“the Division to be independent from the <u>other activities</u> of the Bourse”</i>.</p> <p>IIAC believes this means that there must be autonomy, independence and a lack of conflict of interest between the governance of both the Division and the Bourse’s business unit. IIAC submits that the regulatory function of the Division must be performed in the public interest, in a “not for-profit” environment whereas the Bourse’s business unit performs, within the TMX Group, an important “business function” as the TMX Group operator of exchange-traded financial derivatives marketplaces in a “for-profit” context.</p>	<p>The Bourse thanks IIAC for providing such an extensive point of view on the Bourse’s proposal to clarify the governance structure of its Regulatory Division. The changes to the proposal in response to some comments are outlined in the cover circular and updated analysis. With respect to other comments, generally speaking, the Bourse understands the concerns of IIAC, but either believes having appropriately addressed and mitigated those or disagrees with IIAC’s interpretation of certain facts and therefore related suggestions for the reasons outlined in the detailed responses below.</p> <p>The Bourse’s position is that the proposed amendments are fully compliant with the 2012 Decision for the reasons expressed in the analysis. Most notably:</p> <ul style="list-style-type: none"> • The 2012 Decision specifically mentions that “the Division [...] shall be governed by the board of directors of the Bourse” (Section VIII, paragraph (j), subparagraph (ii)), not by a separate governing body. • The Bourse as a whole is recognized as a Self-Regulatory organization (“SRO”) by the AMF, and as such, the ultimate accountability for the Bourse’s SRO responsibilities lies within the board of directors of the Bourse. • Historically, members of the Special Committee included directors and the president of the Bourse. <p>The Bourse’s analysis published for comments in support of the proposed changes outlines how the proposed structure fosters and protects the independence of the Regulatory Division, while ensuring accountability of the Bourse as an SRO, and its directors.</p>

			<p>IIAC interprets and supports the original stance taken by the AMF in the 2012 Decision as intended to create a totally separate governance structure for the Regulatory Division by mandating a separate “Special” Committee to oversee the duties and operations of the Division, and supports the explicit (or at least implicit) interpretation of the 2012 Decision that requires this Special Committee to be comprised of non-Directors of the Bourse. IIAC further believes that the proposed amendments do not reflect “the spirit of the governance structure” contemplated by the AMF in its 2012 Decision as they create a conflict of interest and a lack of independence between the Regulatory Division and the Bourse’s for-profit marketplace activities.</p> <p>IIAC questions how the proposed governance structure could be expected to legitimately maintain independence between the two functions if the Division is governed by a Special Committee comprised of Board members of the Bourse.</p> <p>IIAC believes that the Bourse’s proposed governance structure creates a conflict of interest and lack of independence between the Division and the Bourse and that it also creates a lack of transparency for market participants. It believes it is mandatory for the governance of the Division to:</p> <ul style="list-style-type: none"> • be independent from the Bourse’s business functions governance, and • be fully autonomous. <p>IIAC mentions that the Rules and Policies Committee of the Bourse is composed of Directors of the Bourse: its mandate, particularly with respect to the approval of rules, is limited to (or should be limited to) approving rules that have an impact on the business function/commercial operations of the Bourse (as a marketplace) rather than to rules that have an impact on the regulatory function of the Regulatory Division. Furthermore, considering that the Rules and Policies Committee is a committee comprised of Directors</p>	<p>The Bourse’s interpretation of the 2012 decision differs from IIAC’s interpretation in the sense that the Bourse believes that the 2012 Decision does not explicitly or implicitly require the Special Committee to be comprised of non-Directors of the Bourse. In fact, initially and for a few years following the creation of the Regulatory Division, members of the Special Committee included directors and the president of the Bourse.</p> <p>The text of the 2012 Decision is clear to the effect that the Regulatory Division is governed by the board of directors of the Bourse, and as such, having directors of the Bourse acting as the Special Committee can only serve this purpose. The Bourse therefore disagrees with IIAC regarding the “spirit of the governance structure” contemplated by the AMF in its 2012 Decision.</p> <p>The Bourse takes note of IIAC’s position to the effect that the proposed amendments could be viewed as creating a conflict of interest and lack of independence, but respectfully disagrees: given the Bourse in its entirety is the entity recognized as an exchange and an SRO by the AMF, the ultimate accountability and authority over the Regulatory Division, as expressly acknowledged in the 2012 Decision, lies with the Board which is legally responsible for managing, or supervising the management of, the business and affairs of the corporation. This principle is acknowledged by the Recognition Decision and public interest warrants that the Board be accountable for the SRO responsibilities of the Bourse.</p> <p>Independence of the Special Committee itself is safeguarded given that at least 50% of the members of this committee shall satisfy the independence criteria for the directors of the Bourse, defined in the Recognition Decision.</p> <p>The current Rules and Policies Committee of the Bourse approves any and all rule changes, including those rule that have an impact on the regulatory function of the Regulatory Division because rules of the Bourse, to be validly adopted, need to be approved by directors of the Bourse. The current structure requires an additional approval by the current Special Committee</p>
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		<p>of the Bourse, its mandate is limited (or should be limited) to the business function of the Bourse.</p>	<p>where the rules in question are related to the activities and functions of the Regulatory Division.</p>
		<p>IIAC submits that directors cannot be expected to act in conflicting roles and should therefore not be members of the Regulatory Division’s Special Committee: the Rules and Policies Committee is not (and if it is, it should not be) part of the governance structure of the Division.</p>	<p>Managing inherent tension between business and regulatory functions and conflict of interests, real or apparent, should be the responsibility of the board of directors, the governing body of a corporation used to dealing with conflict issues. Moreover, directors of the Board are legally obligated by virtue of their fiduciary duties to act in the best interest of the corporation, which implies a duty to treat individual stakeholders affected by corporate actions equitably and fairly.</p>
		<p>IIAC refers to the proposed governance structure of the Division, which includes a “new” special committee with a broader role and to which the board of the Bourse delegates certain powers, and a “new” Advisory Committee which would be created out of the current Special Committee but with a modified mandate. IIAC submits that this new Advisory Committee would no longer have an oversight role on the Division and that current members of the Special Committee are recognized in the Industry for their knowledge and experience and are independent from the Bourse.</p> <p>In relation to the proposed modification of the composition of the current Special Committee by that of the Bourse’s Rules and Policies Committee, IIAC submits that the Bourse is blurring the lines between its function as a commercial entity to increase shareholder value and its function as a self-regulatory organization recognized by the AMF, two functions that should continue to be governed independently as required by the 2012 Decision.</p> <p>IIAC suggests that market participants have great concerns about the following sentence in the analysis: "<i>The Bourse is of the view that the principle of independence does not imply that the Special Committee be composed of non-Directors of the Bourse.</i>". Interpreting this sentence, IIAC then suggests that in the Bourse’s view, the independence means that the Special Committee must be composed of Directors of the Bourse. IIAC finds this statement to be problematic, not only in the name of the principles of sound governance but also in the name of protecting the investing public.</p> <p>IIAC believes that a Special Committee comprised of individuals who satisfy the independence requirements applicable to the Bourse’s Directors, which is the current situation, is not the equivalent of a Special Committee of “independent” Directors.</p>	<p>The bourse recognizes the extensive knowledge and experience of the current members of the Special Committee, and points out the importance to be able to rely on this knowledge and experience by creating an advisory committee.</p> <p>The Bourse further submits that the use of advisory committees is in line with what is done in other divisions of the TMX Group (TSX, TSXV) as well as within IIROC. IIROC’s advisory body is referred to as the Market Rules Advisory Committee (MRAC) and reviews and makes recommendations to IIROC regarding rules/policy initiatives (prior to submission to IIROC’s board of directors).</p> <p>The Advisory Committee, in addition to advising the Division and the Special Committee at their request, regarding a broad range of matters related to the activities of the Division and its oversight, including among others the Division’s independence, its operational efficiency, its budget, the exercise of its discretionary powers, its regulatory policy and regulatory amendments made under the direction of the Division, will also have the power to make non-binding recommendations to the Division or the Special Committee.</p> <p>The Bourse respectfully disagrees with IIAC’s position to the effect that the proposed modification to the committees would blur the lines between the Bourse’s commercial and regulatory functions, and refers IIAC to section II. b. of its analysis.</p> <p>The Bourse respectfully disagrees with IIAC’s interpretation of the Bourse’s view on the principle of independence. The Bourse considerably refers IIAC to section II. b. of its analysis where it explains how the independence of the Special Committee is safeguarded, and reiterates that initially and for a few</p>

		<p>IIAC submits that as with special committees of reporting issuers in Canada that are created when a decision of the Board of Directors raises or could raise concerns about one or more potential or actual conflicts of interest, the Special Committee must remain composed of persons whose judgment is free from any other interest or consideration which would be linked to the business function of the Bourse. This cannot be expected if the members of the Special Committee are also Directors of the Bourse.</p> <p>IIAC submits that the Bourse implicitly recognizes that significant conflicts of interest could arise from a position that the Special Committee could be composed of Directors of the Bourse by conferring, within the governance structure proposed, new important powers to the Vice President and Chief Regulatory Officer (“VPCRO”) of the Regulatory Division. Indeed, the latter is given, through the Bourse’s proposed changes, important powers in regards to the suspension of an approved participant, the decision to order a special investigation and the decision to approve the fees related to the Division.</p>	<p>years, members of the Special Committee included directors and the president of the Bourse while not required specifically by the 2000 Decision.</p> <p>The Bourse submits that modifying the governance structure to redirect certain powers to the VPCRO is not meant to circumvent potential conflicts of interest, but rather to implement a governance structure that is efficient and in line with sound governance principles. The responsibility to run and operate the Regulatory Division on a day-to-day basis lies with the VPCRO, not with the Special Committee. The Special Committee’s role is to oversee the activities of the Regulatory Division, as contemplated by the 2012 Decision.</p>
		<p>IIAC fails to see the concept of independence in the proposed structure since the VPCRO of the Division would report directly to the Board of the Bourse, and raise questions around the remuneration of VPCRO.</p>	<p>Considering under the 2012 Decision, the Board is responsible for the oversight of the Special Committee and considering the VPCRO is currently an employee and officer of the Bourse, the proposed changes do not ultimately change the overall accountability of the VPCRO towards the Board of the Bourse. The current proposal does not address or purport to make any change with respect to the remuneration of the VPCRO.</p>
		<p>IIAC does not believe that the Bourse’s proposal is in the public interest since it creates conflict of interests, and believes that the Division’s governance must, first and foremost, be independent from the Bourse’s governance as independence is key for the sound governance of an SRO.</p> <p>IIAC agrees, to the extent that the composition of a Board Special Committee can include non-Directors, that: <i>“The public has an interest in making sure that an SRO is governed in accordance with sound governance principles and with the Recognition Decision. The Board being accountable for the Bourse’s SRO responsibilities, the Special Committee should therefore be a committee of the Board.”</i></p> <p>IIAC respectfully submits that the objectives behind the Bourse proposed amendments should not be pursued at the expense of a loss of autonomy and independence of the Regulatory Division.</p>	<p>The Bourse respectfully disagrees with IIAC’s position and refers IIAC to previous responses and to its analysis regarding the Regulatory Division’s independence under the proposed governance structure. The Bourse further believes that the proposed amendments, although extensive, are not potentially damaging, but are rather more in line with the requirements of the 2012 Decision and reinforces the autonomy of the Regulatory Division by placing in the hands of the VPCRO some powers respecting day-to-day activities of the Regulatory Division.</p> <p>The question surrounding potential conflicts of interest could also be brought up with regards to the current structure of the Special Committee, which includes representatives of the industry employed by approved participants of the Bourse. This is why it is proposed in this circular to add only one member</p>

		<p>IIAC believes that some amendments to the regulatory framework are required to the mandate, powers and responsibilities of the Special Committee and the accountability of the Board in light of the requirements of the 2012 Decision but also believes that these amendments need not be as extensive and potentially damaging as those proposed in the Circular.</p>	<p>of the Board that is linked to an approved participant of the Bourse on the Special Committee, but keep a majority of independent members.</p>
		<p>IIAC questions the ability of the Bourse to implement the governance changes as proposed by the Bourse through a self-certification process without amending the 2012 Decision, which most likely would in turn require a more formal public consultation.</p> <p>IIAC doubts that the Bourse can self-certify the proposed changes as the self-certification process provided that only minor impact rules (Section 7), emergency rules (Section 9) and those relating to a new derivative (Section 10) are not subject to public consultation. IIAC further submits that the impacts of the Bourse's proposed changes in the Circular are major for the Bourse, the Regulatory Division, approved participants of the Bourse and the investing public.</p> <p>IIAC reiterates that the proposed changes would have a significant impact on the Division's functions and regulatory activities, which in the name of protecting the public and the proper functioning of the Bourse's markets, must be fully independent in performing its duties, in its decision-making process and in its governance.</p> <p>The Division's functions, including compliance and market surveillance activities, must be independent of the Bourse's for-profit activities, both through its organizational structure and decision-making structure. Accordingly, the 2012 decision should be amended to allow explicit, clear and unequivocal changes to the governance structure as proposed by the Bourse. In IIAC's view, due to the importance of the potential changes, the process of self-certification does not seem appropriate.</p>	<p>The Bourse believes that the changes to the governance structure of the Regulatory Division as outlined in the proposed amendments should be subject to the self-certification process as such governance structure is entirely built in the Bourse's rules. It is the Bourse's position that the changes proposed are in line with the 2012 Decision. As part of the self-certification process, the AMF is involved and would be in a position to challenge the Bourse or prevent the self-certification of these changes should it determine that the Bourse's position does not serve the public interest, as contemplated under the Derivatives Act.</p>
		<p>IIAC suggests that the Bourse adopts the following governance structure instead of the one proposed in its analysis and amendments:</p> <p>Firstly, the Special Committee currently adopts and modifies the rules and policies of the Bourse on various matters relating in particular to the supervision of approved</p>	<p>The Bourse respectfully thanks IIAC for its suggested approach to the governance structure of the Regulatory Division but will not implement such proposed structure in light of its previous responses and detailed analysis.</p>

			<p>participants and their approved persons. However, under Rule 6.4 of the Special Committee Rules, the Special Committee only makes recommendations to the Bourse's Board of Directors regarding the rules and policies on margins and market surveillance.</p> <p>Such a limitation on the powers of the Special Committee may be problematic as this is clearly an aspect of the Regulatory Division's regulatory function.</p> <p>In our view, section 6.4 of the Special Committee Rules should be revised by the AMF specifically to provide that the Special Committee may <u>adopt and amend</u> the rules and policies on margins and market surveillance rather than <u>recommend</u> to the Board of Directors.</p> <p>On this last point, we would also add that the Rules and Policies Committee should not intervene in any way to oversee matters relating to the Bourse's approved participants' compliance with the rules of the Bourse and the supervision of the Bourse's markets.</p> <p>The Rules and Policies Committee must therefore be removed from the Division's governance framework because its role must be limited to the adoption and approval of rules that relate to the Bourse's business functions. Examples include the rules for a new derivative, rules which deal with the trading hours of the Exchange and the execution costs imposed on the different accredited participants.</p> <p>The Special Committee, as currently composed, must remain and be confirmed as the only committee mandated to oversee all matters relating to the compliance of participants with the Rules and the oversight of the Division, including trading rules.</p> <p>Secondly, to address matters of governance that are problematic, we believe that the Rules of the Division and of its Special Committee must be amended to provide that:</p> <ol style="list-style-type: none">1. the Bourse's Board of Directors creates, mandates and appoints the Special Committee (and the Division) and delegates to the Special Committee all powers necessary to perform its duties and responsibilities arising from the relevant rules of the Bourse.2. the Special Committee must report annually to the AMF on the performance of the division and on any material matters of importance.	
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		<p>3. the Special Committee has the full powers to adopt and also amend the rules concerning margins and market supervision and no longer just to make recommendations to the Bourse’s Board of Directors.</p> <p>These proposed changes from our industry members are relatively simple to implement through rule changes and do not require a change to the 2012 Decision. Therefore, the self-certification process can be used to implement such a structure without legal uncertainty.</p> <p>IIAC reiterates that its proposed structure would, in the unique and particular context of the Bourse which is both a for-profit and a non-profit organization, address the accountability issues raised by the Bourse in its analysis, but not at the expense of creating conflicts of interests at the Directors’ level.</p> <p>IIAC recommends the following in regards to the Division’s governance structure in order to comply with the 2012 Decision:</p> <ul style="list-style-type: none"> • The status quo in regards of the member composition of the Special Committee; • Amendment to the Rules of the Special Committee to provide that the Bourse’s Board of Directors establishes, mandates and appoints the Special Committee and the Division and delegates to the Special Committee all powers necessary for the accomplishment of its duties and responsibilities arising from the relevant rules of the Exchange; • Amendment of the Rules of the Special Committee of the Regulatory Division to provide that the Special Committee shall also annually report directly to the AMF on the performance of the division and on any material regulatory matters; • Amendment of Article 6.4 of the Rules of the Special Committee of the Regulatory Division to provide that the Special Committee has full power to adopt and amend the rules on margins and market surveillance. <p>Furthermore, IIAC recommends that reference to the Rules and Policies Committee of the Bourse be removed from the Division governance structure since it relates to the Bourse’s business function and not to its regulatory function.</p> <p>IIAC believes that with the Bourse’s proposed structure, it would be difficult for a Director to make an objective assessment of an application for approved participant status by an entity whose competency or integrity or those of its owners, Directors, officers or employees would be questioned by divisional staff. This difficulty stems from the obvious</p>	<p>Under the proposed structure, the power to approve the applications for approved participant or designated representative status will lie with the Bourse, not the Special Committee. The Bourse refers IIAC to the table under section II. d. of the analysis.</p>
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		<p>conflict between the commercial interest for the Bourse to welcome a new participant in its markets and the protection of the public and the proper functioning of the market which the Bourse must provide as a self-regulatory organization.</p> <p>IIAC believes that “independence” to qualify as a Director of the Bourse does not guarantee the appropriate or expected level of “independence” in such a situation of conflict between the business and the regulatory functions. The protection of the investing public and the proper functioning of the market could be too often compromised if the AMF accepts the proposal of the Bourse.</p> <p>IIAC strongly agrees with the Bourse that it is important to <i>"separate the implementation measures from the operating activities of the exchanges ... and to isolate the enforcement activities and market surveillance of commercial pressures."</i></p>	
		<p>IIAC suggests that the Bourse adopts a governance structure similar to that of ICE Futures Canada, which would benefit the interests of all parties: The Bourse, the Division, the AMF and the Canadian market participants.</p> <p>IIAC notes that the Bourse has provided a comparative analysis which includes the Investment Industry Regulatory Organization of Canada (“IIROC”) as well as international regulatory bodies but has overlooked what the Canadian industry, and feels is the best comparison in this instance: ICE Futures Canada.</p> <p>IIAC believes that a governance structure similar to the one of ICE Futures Canada would be appropriate to meet all AMF requirements:</p> <p>ICE Futures Canada Inc. has, despite being omitted in the Bourse’s comparative analysis, a governance structure that IIAC believes to be of particular relevance in this case. IIAC points out that many similarities exist between ICE Futures Canada and the Bourse. The ICE Futures Canada structure can be summarized as follows:</p> <ul style="list-style-type: none"> • ICE Futures Canada has two distinct entities which are independent: <ul style="list-style-type: none"> ○ A regulatory division, and ○ A business division. • The Regulatory Division of ICE Futures Canada is overseen by a Special Committee. <p>IIAC states that the Governance structure of the ICE Futures Canada Regulatory Division, which has been approved by the Manitoba Securities Commission, is as follows as per ICE</p>	<p>The Bourse thanks IIAC for providing insights on ICE Futures Canada’s (“ICE”) regulatory division governance structure. The Bourse notes that since the publication of the request for comments, ICE has ceased its activities in Canada.</p> <p>Nevertheless, the Bourse believes that for the most part, the former governance structure of ICE was not different from the structure proposed by the Bourse for its own Regulatory Division: ICE Futures Canada’s Special Regulatory Committee was a committee of ICE’s board of directors and derived its authority from ICE’s board.</p> <p>The Manitoba Securities Commission’s recognition order pertaining to ICE did not explicitly address whether ICE’s Special Regulatory Committee had to be formed of directors of ICE or not. The only requirement with respect to the composition of the Special Regulatory Committee was that “a reasonable number and proportion of members of the SRC shall not be associated with a participant registered with [ICE].” This does not mean that Special Regulatory Committee members had to be or could not be directors of ICE. According to information formerly available on ICE’s website, it appeared the Special Regulatory Committee was formed as follows: “The SRC is comprised of four independent members, an independent board member of ICE Futures Canada,</p>

		<p>Futures Canada - Rule 9 and Article 5 of its By-Law:</p> <ul style="list-style-type: none"> • ICE Futures Canada's Special Committee is a committee of the ICE Futures Canada Board of Directors, • ICE Futures Canada's Special Committee consists of six members, of whom only one is a member of the ICE Futures Canada Board of Directors, • ICE Futures Canada's Special Committee members are appointed by the Board of Directors of ICE Futures Canada, • ICE Futures Canada's Special Committee derives its authority not only from ICE Futures Canada's recognition decision by the Manitoba Securities Commission but also from a delegation of the ICE Futures Canada Board of Directors. <p>IIAC mentions that it should also be noted that the Board of Directors of ICE Futures Canada has a committee that is similar to the Bourse's current Rules and Policies Committee. This Committee is not mentioned in the governance framework of ICE Futures Canada's Regulatory Division <u>as it relates to the governance of the "business division"</u>, and not the Regulatory Division.</p> <p>IIAC mentions that ICE Futures Canada's Regulatory Division governance framework only includes rules that are of interest for ICE Futures Canada's mandate as a <u>self-regulatory organization</u>, and believes that the Bourse should also create, for its Regulatory division, a governance framework that only includes rules that are related to its SRO mandate.</p> <ul style="list-style-type: none"> • The ICE Futures Canada Board of Directors establishes, mandates and appoints the ICE Special Committee (and the Regulatory Division) and delegates to the ICE Special Committee all powers necessary to carry out its duties and responsibilities arising from the relevant ICE Futures Canada rules. • The ICE Special Committee reports annually to the Manitoba Securities Commission on the performance of the Division and on any significant regulatory matters. • The ICE Special Committee has full authority to adopt and amend the rules relating to market compliance and supervision, and not merely to make recommendations to the ICE Futures Canada Board of Directors. <p>With respect to this last point, IIAC points out to ICE Futures Canada's website, which mentions:</p>	<p>and the President and COO of the Exchange, ex officio.”¹ This was the composition chosen by ICE.</p> <p>The Bourse presented in its analysis other examples of other organizations that have chosen structure more similar to the one proposed by the Bourse. The Bourse recognizes other models may be possible, but for the reasons expressed in its analysis believe the structure it as proposed is in compliance with regulatory requirements, including the 2012 Decision, and is the most appropriate to its context.</p>
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¹ Guide to the Disciplinary Processes of ICE FUTURES CANADA, INC., April 2017, p. 3 at https://www.theice.com/publicdocs/futures_canada/Futures_Canada_Disciplinary_Processes.pdf.

		<p><i>“The jurisdiction of the Special Regulatory Committee extends to all matters respecting compliance and market surveillance at ICE Futures Canada. This is a broad and far-reaching jurisdiction. It encompasses all the Rules of ICE Futures Canada[®] including trading rules, contract rules, delivery, shipping, financial compliance and also compliance by participants with the provisions of the CFA and the rules and regulations promulgated thereto”. [Emphasis added]</i></p> <p>IIAC then points out that that “all the Rules” in the paragraph above only refer to matters respecting compliance and market surveillance.</p> <p>IIAC believes the ICE Futures Canada governance structure for its Regulatory Division complies with the demands of the AMF as drafted in its 2012 Recognition Decision of the Bourse as an SRO.</p>	
		<p><u>Summary</u></p> <p>In IIAC’s opinion, the changes suggested by the Bourse in the Circular do not address the protection of the investing public and create a lack of independence for the Regulatory Division.</p> <p>IIAC believes that it is important for the AMF to seriously consider the implications that may arise from a position that the Special Committee may consist solely or predominantly of Directors of the Bourse in respect to the important mandate of overseeing the Bourse’s markets in the public interest (re. regulatory function), and believes independence must exist between the Bourse and the Division, hence recommending not to change the composition of the Special Committee.</p> <p>IIAC mentions that if the Bourse’s proposed changes to the governance structure were to nonetheless be accepted by the AMF despite its position, IIAC believes that the AMF will need to amend its 2012 Decision since the proposed structure would create a conflict of interest between the Division and the Bourse’s commercial division, and does not believe, due to the importance of the proposed changes, that self-certification can be used by the Bourse to implement such changes to the 2012 Decision without public consultation.</p> <p>The structure and governance standards of the Division must comply with the provisions and the spirit of the 2012 Decision and with the Bourse’s Rules. As far as the latter rules are concerned, they require, in IIAC’s opinion, only the changes proposed herein by our</p>	<p>The Bourse respectfully disagrees with IIAC’s conclusions to the effect that the proposed amendments do not address the protection of the investing public and create a lack of independence for the Regulatory Division for the reasons outlined in the Bourse’s analysis.</p> <p>The Bourse further submits that the AMF is directly involved in the revision of the governance structure of the Regulatory Division, and as mentioned in the Bourse’s analysis, the Bourse believes that the proposed amendments are directly in line with the 2012 Decision, hence not requiring modifications to such decision. Furthermore, the Bourse believe that such revision can be performed through a self-certification process, as outlined above. As part of this self-certification process, the AMF is directly involved as contemplated under the Derivatives Act.</p>

		<p>industry members.</p> <p>As previously explained, IIAC believes that the ICE Futures Canada governance model is more appropriate in the circumstances than the one proposed by the Bourse in its Circular 038-17 dated March 22, 2017, and reiterates that these proposed changes from our industry members are relatively simple to implement through rule changes and do not require a change to the 2012 Decision. Therefore, the self-certification process can be used to implement such a structure without legal uncertainty.</p>	
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