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CIRCULAR
November 22, 2013

REQUEST FOR COMMENTS

REGULATION RESPECTING ELECTRONIC TRADING AND DIRECT ELECTRONIC ACCESS TO MARKETPLACES

AMENDMENTS TO ARTICLE 6366 — ACCESS TO ELECTRONIC TRADING

The Rules and Policies Committee and the Special Committee – Regulatory Division of Bourse de Montréal Inc. (the Bourse) have approved amendments to article 6366 of the Rules of the Bourse, which deal with the obligations and requirements regarding electronic access to the Bourse, as granted by approved participants to their clients. The purpose of these amendments therefore is to include in the regulations of the Bourse obligations and requirements regarding electronic access to the Bourse, as granted by approved participants to their clients, which are similar to those provided in the *Regulation to amend Regulation 23-103 respecting Electronic Trading*.

Comments on the proposed amendments to article 6366 of the Rules of the Bourse must be submitted within 30 days following the date of publication of the present notice, at the latest on December 20, 2013. Please submit your comments to:

M^e Pauline Ascoli
Vice-President, Legal Affairs (Derivatives)
Bourse de Montréal Inc.
Tour de la Bourse
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Montréal, Quebec H4Z 1A9
E-mail: legal@m-x.ca

A copy of these comments shall also be forwarded to 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 (Quebec) H4Z 1G3
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Circular no.: 184-2013

Appendices

For your information, you will find in appendices an analysis document of the proposed rule amendments as well as the proposed regulatory text. The implementation date of the proposed amendments will be determined by the Bourse, in accordance with the self certification process as established in the Derivatives Act (2008, c.24).

Process for Changes to the Rules

Bourse de Montréal Inc. is authorized to carry on business as an exchange and is recognized as a self-regulatory organization (SRO) by the Autorité des marchés financiers (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 its Rules. The Rules of the Bourse are submitted to the Autorité in accordance to the self-certification process as established in the Derivatives Act (2008, c.24).

In its SRO capacity, the Bourse assumes market regulation and supervision responsibilities of its approved participants. The responsibility for regulating the market and the approved participants of the Bourse comes under the Regulatory Division of the Bourse (the Division). The Division carries on its activities as a distinct business unit separate from the other activities of the Bourse.

The Division is under the authority of a Special Committee appointed by the Board of Directors of the Bourse. The Special Committee is empowered to recommend to the Board of Directors the approval or amendment of some aspects of the Rules of the Bourse governing approved participants. The Board of Directors has delegated to the Rules and Policies Committee of the Bourse its powers to approve or amend these Rules upon recommendation from the Special Committee.



REGULATION RESPECTING ELECTRONIC TRADING AND DIRECT ELECTRONIC ACCESS TO MARKETPLACES

- AMENDMENTS TO SECTION 6366 - ACCESS TO ELECTRONIC TRADING

I SUMMARY

On October 25, 2012 the Canadian Securities Administrators (CSA) published amendments to Regulation 23-103 *Electronic Trading*¹ (ETR), which regulation, in its initial phase, was the subject of a Circular issued by the Bourse in January 2013² and of proposed regulatory amendments pertaining to sections 3011 and 6366 of the Rules of the Bourse.

As a result of amendments proposed to the ETR by the CSA and which are set to come into force on March 1, 2014, the title of this Regulation will be changed to *Regulation 23-103 Respecting Electronic Trading and Direct Electronic Access to Marketplaces*, seeing as the ETR establishes a uniform supervisory regime governing the granting and use of direct electronic access.

The principal objective of the proposed amendments to section 6366 (“Access to Electronic Trading”) of Rule Six of the Rules of the Bourse is to include the obligations and requirements that will now be set out in the ETR regarding electronic access to the Bourse, as granted by approved participants to their clients. Similar amendments, also set to come into force on March 1, 2014, were recently made to the Universal Market Integrity Rules (UMIR) by the Investment Industry Regulatory Organization of Canada (IIROC)³.

¹In Quebec, chapter V-1.1, r. 7.1.

²See Circular No 012-2013 issued by the Bourse on January 16, 2013.

³See IIROC Notice 13-0184 issued on July 4, 2013.

II ANALYSIS

(A) Background

As indicated in the Circular issued on January 16, 2013⁴, the marketplace of the Bourse is subject to the ETR and, as a result, all approved participants of the Bourse, including foreign approved participants, are required to comply with the applicable provisions thereof.

Subsequent amendments to the ETR relating to electronic access to marketplaces⁵ impose, as of March 1, 2014, new obligations and requirements regarding access granted to clients by approved participants of the Bourse. These amendments also apply to the Bourse, based on the definition of “direct electronic access”, which now appears in the ETR⁶.

Currently, the obligations regarding access granted to clients of approved participants are defined in section 6366 B). The Bourse therefore proposes to amend section 6366 B) to include the requirements and obligations regarding issues of electronic access now comprised in the ETR, with the necessary modifications.

The ETR now defines direct electronic access as “the access provided by a person to a client, other than a client that is registered as an investment dealer with a securities regulatory authority or, in Québec, is a foreign approved participant as defined in the Rules of the Montréal Exchange Inc....”⁷. Given that all Canadian approved participants of the Bourse are currently required to be members of IIROC and thus, be registered as investment dealers, it is clear that, as regards the Bourse, any access hitherto granted by an approved participant to another approved participant pursuant to section 6366 B) is not covered by the new provisions of the ETR, the CSA having left it up to the self-regulatory

⁴See note 2.

⁵In Quebec, see *Regulation to amend Regulation 23-103 respecting electronic trading*.

⁶*Id.*, paragraph 2(1)a).

⁷*Id.*, subsection 2(1).

organizations concerned to adopt rules that are applicable in such cases. Moreover, IIROC included in UMIR provisions relating to “routing arrangements”⁸ in similar cases, which provisions basically replicate the obligations and requirements relating to direct electronic access provided in the ETR. For the sake of uniformity, the Bourse suggests adopting a similar approach for this type of clients.

(B) Proposed Amendments

First, the Bourse proposes to amend section 6366 B) to make the wording consistent with the language used in the ETR, with the necessary modifications.

As regards definitions, the Bourse suggests that a distinction should be made between clients to whom the CSA allow “direct electronic access” under the ETR, and access granted to another approved participant, whether Canadian or foreign, of the Bourse. In the first instance, the definition will be the definition set forth in subparagraph 1 a)(i) whereas, for approved participants granting another approved participant electronic access to the Bourse, the applicable definition will be the definition set out in subparagraph 1 a)(ii).

At the same time, the Bourse suggests adding a definition of “electronic trading rules” to specify that the term refers to *Regulation 23-103 respecting electronic trading*, including any related policy statement or notice.

The main amendments being proposed are found in subparagraph 2, which sets out the applicable terms and conditions under which an approved participant may authorize a client to transmit orders electronically to the Bourse. The principal objective of these amendments is to repeal the terms and conditions hitherto set forth in the Rules of the Bourse and to insert terms and conditions in subparagraph 2 that are similar to the terms and conditions now imposed by the ETR in Chapter 2.1 entitled “Requirements Applicable to Participant Dealers Providing Direct Electronic Access”, and similar to UMIR after the equivalent

amendments recently made by IIROC. As with UMIR, the Bourse intends to specify, when required, whether an obligation or requirement regarding electronic access applies specifically to clients defined in subparagraph 6366(1) a)(i) or to clients defined in subparagraph 6366(1) a)(ii).

Thus, the Bourse first proposes that subsections 6366(2.1), (2.2) and (2.3) replicate the provisions of section 4.3 ETR which deals with the standards applicable to clients granted direct electronic access.

Subsection 2.5 establishes the same obligations as the obligations set forth in section 4.4 ETR regarding written agreements to be entered into between an approved participant and its client in connection with the granting of electronic access to the Bourse.

Subsections 6366(2.6) and (2.7) correspond to section 4.5 ETR regarding the training of the clients concerned.

Similarly, the Bourse suggests that subsections 2.8, 2.9 and 2.10 should replicate the relevant obligations set forth in section 4.6 ETR (“Client Identifier”).

As for subsections 6366(2.11), (2.12) and (2.13), these are essentially the same as section 4.7 ETR (“Trading by DEA Clients”).

Finally, as regards the new subsection 6366 (2.4), it replicates the requirements and guidelines set out in the new paragraph 7.13 UMIR and more particularly, in subparagraph (4).

The Bourse also proposes making clerical changes to subparagraph 3 in view of the amendments suggested to subparagraph 2, while maintaining the principle whereby an approved participant remains liable for compliance with the applicable requirements established by the Bourse for orders transmitted electronically by its clients under section 6366 B).

Finally, the Bourse suggests adding a subparagraph 4 entitled “Miscellaneous” in order to specify, as is specified in UMIR, that an approved participant must disclose to the Bourse

⁸See note 3

forthwith, in writing, if it has cancelled electronic access granted to a client or if it knows or has reason to believe that a client has or may have breached a material provision of a standard, or of the written agreement referred to in subparagraph 2.

(C) Effective Date

As indicated above, the relevant amendments made to the ETR are scheduled to come into force on March 1, 2014⁹.

Similarly, the related amendments made to UMIR by IIROC will come into force on March 1, 2014. However, IIROC is transitionally granting an additional period of 180 days following this date to ensure that written agreements already entered into as at March 1, 2014 are in compliance with the new applicable provisions¹⁰.

The Bourse therefore proposes that the amendments suggested herein also come into force on March 1, 2014. Furthermore, the Bourse also intends to offer approved participants an extension period of 180 days following this date to allow them to ensure that any routing arrangement already entered into with a client, as at March 1, 2014 under section 6366, is in compliance with the new provisions thereof.

(D) Public Interest

Since the purpose of the regulatory amendments proposed herein is to add obligations and requirements to the Rules of the Bourse that are similar to the obligations and requirements set out in the ETR, as a result of amendments made thereto effective March 1, 2014, the Bourse considers that these amendments are in the public interest.

(E) Impact of Proposed Amendments on Systems

Since the business model and systems used by approved participants of the Bourse may differ substantially, it is difficult to predict what impact

the proposed amendments will have on approved participants or their clients.

In this regard, the Bourse notes that the ETR has been mandatory since March 1, 2013, as indicated in its Circular issued on January 16, 2013¹¹. As the amendments to the ETR have led to the amendments proposed herein, the effective date of which is scheduled for March 1, 2014, these too shall be mandatory for the approved participants of the Bourse.

(F) Interests of the Financial Markets

For the reasons mentioned above, the Bourse is of the opinion that the regulatory amendments proposed herein will not adversely affect the interests of the financial markets.

(G) Alternatives contemplated

No alternatives were contemplated by the Bourse.

III COMMENTS

(A) Efficiency

As indicated above, the main objective of the regulatory amendments proposed to be made to section 6366 B), which are the subject of this analysis, is to introduce obligations and requirements into the Rules of the Bourse that will come into force on March 1, 2014 in accordance with the ETR and UMIR, and govern electronic access to the Bourse granted to clients by approved participants.

(B) Process

The first step in the approval process for the regulatory amendments discussed herein is to have them approved by the Special Committee – Regulatory Division. These amendments will then be submitted to the Bourse's Rules and Policies Committee.

Once approved by the Special Committee - Regulatory Division and the Rules and Policies

⁹See note 5, section 10

¹⁰See note 3

¹¹See note 2.

Committee, the proposed amendments, including this document, will be published simultaneously by the Bourse for a 30-day comment period and submitted to the *Autorité des marchés financiers* (AMF) for self-certification. The AMF will also publish the proposed amendments as well as a 30-day request for comments in its weekly bulletin.

A copy of the proposed amendments will be delivered for information purposes to the Ontario Securities Commission.

IV REFERENCES

- Section 6366 of Rule Six of Bourse de Montréal Inc.
- *Regulation 23-103 respecting electronic trading* (chapter V-1.1, r. 7.1)
- *Regulation to amend Regulation 23-103 respecting electronic trading*
- Bourse Circular No 012-2013 dated January 16, 2013
- Notice No 13-0184 issued on July 4, 2013 by the Investment Industry Regulatory Organization of Canada.
- Universal Market Integrity Rules (UMIR)

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Section 6365- 6401

Electronic Trading of Derivatives Instruments Traded on the Bourse

6366 Access to Electronic Trading

(25.09.00, 24.09.01, 19.03.02, 03.11.04, 00.00.00)

- A) Only approved participants of the Bourse and restricted permit holders of the Bourse, through their respective clearing approved participants, will have access to the electronic trading for derivatives instruments traded on the Bourse and this, at the following conditions:
- certify to the Bourse that only their designated personnel approved by the Bourse and who has received the required training has access to the said system;
 - certify to the Bourse that only the designated personnel approved by a recognized exchange or association as described in article 7452 6) b) ii) of the Rules of the Bourse and who has received the required training has access to the said system;
 - put in place an internal security procedure for access to the electronic trading system; and
 - obtain the prior approval of the Bourse.

Each approved participant and each restricted permit holder is entirely and exclusively responsible for any unauthorized access to the said system.

The approved participant must give notice to the Bourse of the termination of employment ~~of its~~ its designated personnel approved by the Bourse and this, within a delay of ten (10) business days from the date of termination of employment.

- B) ~~The a~~ Approved participants can authorize clients to transmit electronically use a computer system to route orders to the Bourse through the systems of the approved participant. In order to do so, the following conditions must be complied with:

1. Definitions

~~of clients: a)~~ For the purposes of this article, ~~a~~ a client is defined:

- as a person, other than those registered as an investment dealer with a securities regulatory authority or approved as a foreign approved participant by the Bourse, permitted to transmit electronically orders to the Bourse through the systems of an approved participant, using the approved participant's identifier; ~~having an agreement with the approved participant to route his orders to the routing system of the approved participant.~~
- as an investment dealer registered with a securities regulatory authority, or a foreign approved participant of the Bourse, having entered in a routing arrangement with an approved participant which permits the investment dealer or foreign approved participant to transmit electronically orders to the Bourse, through the systems of the approved participant, using the approved participant's identifier.

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b) For the purpose of this article, the term “Electronic Trading Rules” refers to Regulation 23-103 respecting Electronic Trading (Chapter V-1.1, r. 7.1), as well as any applicable policy statement or notice.

2. ~~Conditions for connections~~

2.1 An approved participant must:

a) establish, maintain and apply standards that are reasonably designed to manage, in accordance with prudent business practices, the approved participant’s risks associated with providing an electronic access to a client, pursuant to paragraph B), including those set out in the Electronic Trading Rules;

b) assess and document that a client meets the standards established by the approved participant, under subparagraph a).

2.2 The standards thus established by an approved participant, under subsection 2.1, shall include that a client must not have an electronic access to the Bourse, pursuant to paragraph B), unless:

a) it has sufficient resources to meet any financial obligations that may result from the use of such electronic access by that client;

b) it has reasonable arrangements in place to ensure that all individuals using such electronic access, on behalf of the client, have reasonable knowledge of and proficiency in the use of the order entry system that facilitates such electronic access;

c) it has reasonable knowledge of and the ability to comply with all applicable Bourse and regulatory requirements;

d) it has reasonable arrangements in place to monitor the entry of orders through such electronic access.

2.3 An approved participant must assess, confirm and document, at least annually, that a client continues to meet the standards established by the approved participant pursuant to subsection 2.1.

2.4 An approved participant must not allow any order to be transmitted to the Bourse, pursuant to paragraph B), unless:

a) the approved participant is maintaining and applying the standards it has established under subsections 2.1, 2.2 and 2.3;

b) the approved participant is satisfied that the client meets the standards established by the approved participant under subsections 2.1, 2.2 and 2.3;

c) the approved participant is satisfied that the client is in compliance with the written agreement entered into with the approved participant, under subsection 2.5;

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d) the order is subject to all applicable requirements pursuant to the Electronic Trading Rules, including those pertaining to the risk management and supervisory controls, policies and procedures of the approved participant.

2.5 An approved participant must not provide to a client an electronic access to the Bourse, pursuant to paragraph B), unless the client has entered into a written agreement with the approved participant, which provides that:

a) the client's trading activity shall comply with all applicable Bourse and regulatory requirements;

b) the client's trading activity shall comply with the product limits and credit or other financial limits specified by the approved participant;

c) the client shall take all reasonable steps to prevent unauthorized access to the technology that facilitates such electronic access;

d) the client shall not permit any person to use such electronic access provided by the approved participant, other than those authorized by a client as defined in subparagraph 1 a) (ii) or, in the case of a client as defined in subparagraph 1 a) (i), other than those authorized and named by the client under the provision of the agreement referred to in subparagraph h);

e) the client shall fully cooperate with the approved participant in connection with any investigation or proceeding by the Bourse with respect to trading conducted pursuant to such electronic access, including, upon request by the approved participant, providing access to the Bourse to information that is necessary for the purposes of the investigation or proceeding;

f) the client shall immediately inform the approved participant, if it fails or expects not to meet the standards set by the approved participant;

g) when trading for the accounts of another person, under subsection 2.11, the client shall ensure that the orders of the other person are transmitted through the systems of the client and shall be subject to reasonable risk management and supervisory controls, policies and procedures established and maintained by the client;

h) a client, as defined under subparagraph 1 a) (i), shall immediately provide to the approved participant, in writing, the names of all personnel acting on the client's behalf that it has authorized to enter an order, using the electronic access to the Bourse pursuant to paragraph B), as well as any changes thereof;

i) the approved participant shall have the authority, without prior notice, to reject any order, to vary or correct any order to comply with a requirement of the Bourse, to cancel any order entered on the Bourse and to discontinue accepting orders from the client.

2.6 An approved participant must not allow a client to have, or continue to have, an electronic access to the Bourse pursuant to paragraph B), unless it is satisfied that the client has

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reasonable knowledge of the applicable requirements of the Bourse, and of the standards established by the approved participant under subsections 2.1, 2.2 and 2.3.

2.7 An approved participant must ensure that a client receives any relevant amendments to the applicable requirements of the Bourse, or changes or updates to the standards established by the approved participant under subsections 2.1, 2.2 and 2.3.

2.8 Upon providing to a client an electronic access to the Bourse, pursuant to paragraph B), an approved participant must ensure the client is assigned a client identifier in the form and manner required by the Bourse.

2.9 An approved participant must ensure that an order entered by a client, using such an electronic access to the Bourse, includes the appropriate client identifier.

2.10 An approved participant must promptly inform the Bourse if a person ceases to be a client pursuant to paragraph B).

2.11 An approved participant must not provide an electronic access to the Bourse, pursuant to paragraph B), to a client as defined in subparagraph 1 a) i) that is trading for the account of another person, unless the client is:

a) registered or exempted from registration as an adviser under securities legislation; or

b) a person that

i) carries on business in a foreign jurisdiction;

ii) under the laws of the foreign jurisdiction, may trade for the account of another person, using such an electronic access; and

iii) is regulated in the foreign jurisdiction by a signatory to the International Organization of Securities Commissions' Multilateral Memorandum of Understanding.

2.12 If a client referred to in section 2.11 is using such an electronic access to the Bourse to trade for the account of another person, it must ensure that the orders of the other person are initially transmitted through the systems of the client.

2.13 An approved participant must ensure that when a client is trading for the account of another person, using an electronic access to the Bourse pursuant to paragraph B), the orders of the other person are subject to reasonable risk management and supervisory controls, policies and procedures established and maintained by the client.

~~An approved participant may transmit orders received electronically from a client directly to the electronic trading system of the Bourse provided that the approved participant has:~~

~~a) obtained prior approval of the Bourse that the order routing system of the approved participant meets the following conditions:~~

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- ~~i) supports compliance with the requirements of the Bourse dealing with the entry and trading of orders by all its clients who will use the order routing system (for example, the order routing system must support all valid order information that may be required);~~
- ~~ii) ensures security of access to the electronic trading system of the Bourse by having in place an internal security procedure;~~
- ~~iii) complies with specific requirements prescribed pursuant to article 6366 B) 2) of the Rules, including a facility to receive an immediate report of the entry or execution of orders; and~~
- ~~iv) enables the approved participant to employ order parameters or filters that will route orders to the approved participant (which parameters may be customized for each client).~~
- ~~b) executed a standard service agreement (i.e. Order Routing Agreement) with its client providing for the following terms:~~
 - ~~i) the client is authorized to connect to the approved participant's order routing system;~~
 - ~~ii) the client must enter orders in compliance with the requirements of the Bourse with regards to the entry and trading of orders and other applicable regulatory requirements;~~
 - ~~iii) specific parameters defining the orders that may be entered by the client are provided for, including restrictions to specific securities or size of orders;~~
 - ~~iv) the approved participant can reject an order for any reason;~~
 - ~~v) the approved participant can change or remove an order and has the right to cancel any trade made by the client for any reason;~~
 - ~~vi) the approved participant can discontinue accepting orders from a client at any time without notice;~~
 - ~~vii) the approved participant agrees to train its clients with regards to the requirements of the Bourse dealing with the entry and trading of orders and other applicable requirements of the Bourse; and~~
 - ~~viii) the approved participant undertakes to ensure that revisions and updates to the requirements of the Bourse relating to the entry and trading of orders are promptly communicated to its clients.~~
- ~~e) complied with all other conditions prescribed by the Bourse, being:~~
 - ~~i) the approved participant must ensure that its clients are adequately trained in the trading rules of the Bourse, as well as the use of the order routing system. The training materials regarding the above trading rules that the approved participant proposes to use will be available to the Bourse;~~

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- ~~ii) the approved participant must have the ability to receive an immediate report of the entry and execution of orders. He must have the capability of rejecting orders that do not fall within the designated parameters of authorized orders for a particular client;~~
- ~~iii) the approved participant must designate a specific person as being responsible for the order routing system. Orders executed through this routing system will be reviewed for compliance and credit purposes by such person designated by the approved participant;~~
- ~~iv) the approved participant must have procedures in place to ensure that its clients use the order routing system in compliance with the requirements of the Bourse and other applicable regulatory requirements;~~
- ~~v) the approved participant will make available for review by the Bourse, as required from time to time, copies of the Order Routing Agreements between the approved participant and its clients;~~
- ~~vi) any other condition required by the Bourse in order to protect the interests of the investors, the approved participants and the Bourse.~~

3. Responsibility

An approved participant who executes an agreement with a client to route orders in accordance with article 6366 B) 2) of the Rules is responsible for compliance with the requirements of the Bourse with respect to the entry and execution of orders routed to him by its clients.

Furthermore, the approved participant must provide the Bourse with prior written notification of the identity of the person designated as responsible for such compliance.

4. Miscellaneous

4.1 An approved participant must immediately report to the Bourse, in writing, that it has terminated the electronic access of a client pursuant to paragraph B).

4.2 An approved participant must immediately report to the Bourse, in writing, if it is aware of or has reason to believe that a client has, or may have, breached a material provision of any standard established by the approved participant, or of the written agreement between the approved participant and the client, pursuant to section 2.