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CIRCULAR 033-17

March 13, 2017

REQUEST FOR COMMENTS

MANIPULATIVE OR DECEPTIVE METHODS OF TRADING AMENDMENTS TO ARTICLE 6306 OF RULE SIX OF BOURSE DE MONTREAL INC.

The Rules and Policies Committee and the Special Committee of Bourse de Montréal Inc. (the “**Bourse**”) has approved amendments to Article 6306 of Rule Six of the Bourse with respect to manipulative or deceptive methods of trading.

Comments on the proposed amendments must be submitted within 30 days following the date of publication of this notice. Please submit your comments to:

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Legal Counsel
Office of the General Counsel
Bourse de Montréal Inc.
Tour de la Bourse
800 Victoria Square, P.O. Box 61
Montréal, Québec H4Z 1A9
Email: legal@tmx.ca

A copy of these comments must 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
E-mail: consultation-en-cours@lautorite.qc.ca

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.

Appendices

You will find in the appendices an analysis as well as the text of the proposed amendments. 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).

Regulatory Amendment Process

The Bourse is authorized to carry on business as an exchange and is recognized as a self-regulatory organization ("SRO") 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).

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.



**MANIPULATIVE OR DECEPTIVE METHODS OF TRADING
AMENDMENTS TO ARTICLE 6306 OF RULE SIX OF BOURSE DE MONTREAL INC.**

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I. SUMMARY

Bourse de Montréal Inc. (the “Bourse”) has undertaken a project to update and modernize its Rules. This project seeks to review the structure of the Rules, unify procedures into the Rules, remove outdated articles, align the Rules with current practices, and recommend substantive amendments as appropriate to adapt the Rules to the evolution of the market. The proposed amendments presented in this file seek to provide legal certainty to market participants as to various prohibited trading practices and clarify the liability standard applicable to these prohibited practices. The proposed amendments are based on a benchmarking with the rules and practices of other exchanges. In addition, the Bourse has sought preliminary and informal comments from industry stakeholders before drafting the proposed amendments.

II. ANALYSIS

a. Background

The initial step of this project was to create an internal Working Group to discuss and issue recommendations on the scope of the project and to identify particular articles that needed to be amended or modernized. In the course of its deliberations, the Working Group identified a number of articles and issues to be addressed. This document discusses amendments pertaining to prohibited trading practices. The proposed amendments are analyzed separately below, with additional detail included in the Appendixes.

b. Description and Analysis of Market Impacts

Article 6306 (Manipulative or Deceptive Methods of Trading)

The proposed amendments update the regulatory framework for manipulative and deceptive methods of trading. The proposed amendments make clear that article 6306 applies only to the purchase or sale of derivatives listed on the Bourse or subject to the Rules of the Bourse. Currently, this rule is violated only when a person acts with intent. The proposed amendments add “recklessness” and “willful blindness” as standards of liability in addition to “intent”. These amendments will bring the Bourse’s Rules in closer alignment with the rules of other exchanges and Canadian regulations.

In addition to the general prohibition regarding manipulative and deceptive methods of trading, the rule includes a number of specific examples of inappropriate conduct. These include, for example, manipulating the price of a Listed Product, entering an order or effecting a transaction to mislead other market participants, or engaging in “wash trading.” These amendments will provide greater transparency and guidance to market participants on prohibited forms of trading. This clarity will also assist the Regulatory Division’s enforcement efforts.

c. Comparative Analysis

Please see Appendix 1 which provides further details on other exchange’s practices and the benchmarking made by the Bourse.

d. Proposed Amendments

Please see Appendix 2 for the proposed amendments.

III. AMENDMENT PROCESS

The Bourse undertook this project to align its Rules with international best practices and provide its clients with more certainty with regard to its regulations. Prior to undertaking these amendments, the Bourse consulted informally with market participants' associations to receive their preliminary comments on the proposed amendments.

IV. IMPACTS ON TECHNOLOGICAL SYSTEMS

The proposed amendments to article 6306 have no impact on the technological systems of the Bourse or those of its approved participants.

V. OBJECTIVES OF THE PROPOSED ADMENDMENTS

The proposed amendments seek to:

- Provide greater legal certainty to market participants as to various permitted or prohibited practices;
- Clarify the liability standard applicable to prohibited forms of trading; and
- Align the Rules with other exchanges' practices as appropriate.

In striving to achieve these goals, the work of the Regulatory Division in enforcing current exchange rules was considered. Providing greater clarity as to prohibited trading practices and ensuring that the Rules are in alignment with market practice will also assists the Regulatory Division in its mission and in the application of the Rules.

VI. PUBLIC INTEREST

It is in the public interest that the Rules of the Bourse be clear and provide certainty to market participants regarding their application. The proposed amendments aim at making the Rules more transparent and ensuring there is no ambiguity in their application thereof. These amendments are intended to bring market practice in alignment with international best practices. This should create greater uniformity of practice for market participants and assist in their compliance efforts.

VII. EFFICIENCY

The proposed amendments will enhance market efficiency by clarifying prohibited practices.

VIII. PROCESS

The proposed amendments 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. ATTACHED DOCUMENTS

- Appendix 1: Recommendations and benchmarking;
- Appendix 2: Proposed amendments.

MX RULE ANALYSIS, BENCHMARK REVIEW AND RECOMMENDATION

6306- Manipulative and Deceptive Methods of Trading

Rule	Issue	Current Rule Text	Recommendation	Benchmarking
<p>6306 Prohibition on Manipulative, Deceptive or other Abusive Practices</p>	<p>Take a fresh look at MX rules on manipulation to determine whether updating is necessary and appropriate.</p>	<p>6306 Manipulative or Deceptive Methods of Trading (10.10.91, 31.01.05)</p> <p>No approved participant, person employed by or acting on behalf of an approved participant, person associated with an approved participant or restricted trading permit holder may use or knowingly participate in the use of any manipulative or deceptive methods of trading in connection with the purchase or sale of any securities or derivative instruments listed on the Bourse.</p>	<p>We recommend that the introductory paragraph of Rule 6306 be amended to make clear that it applies only to the purchase or sale of derivatives on or subject to the rules of the Bourse; that the standard is intention, reckless deceptive or willful blindness.</p>	<p>CME: - Rule 575</p> <p>CBOE: - Rule 4.7</p>
<p>6306 Manipulative & Deceptive Methods.</p>			<p>We further recommend that the rule include specific examples of such prohibited conduct including wash trades, accommodation trades and affecting the price on the close.</p>	<p>NYSE Arca: - Rule 11.5 - Rule 11.20</p>
<p>6306 Article 6306, Manipulative & Deceptive Methods.</p>	<p>Should rule be updated to reflect the role of algorithms and to include orders disruptive to the market?</p>	<p>Without in any way limiting the generality of the foregoing, the following shall be deemed manipulative or deceptive methods of trading :</p> <p>a) effecting a transaction or a series of transactions or posting purchase or sale orders on securities or on derivative instruments traded on the Bourse alone or with one or more persons, intentionally or repeatedly and with the objective of unfairly influencing the market price of securities or derivatives instruments to make a profit from such action;</p> <p>b) creating a false or misleading appearance of trading in such securities or derivative instruments;</p> <p>c) entering orders or effecting transactions whose execution does not result in any change in the beneficial or economic ownership of the relevant securities or derivative instruments;</p> <p>d) effecting a transaction which creates an artificial price or new highs or new lows in such securities or derivative instruments during the same trading session without being justified by market conditions;</p>	<p>Current Rule 6306(b) is ambiguous as to whether “spoofing” or “layering” constitutes creating false appearance in trading. MX will clarify this rule and use language broad enough to encompass both practices.</p>	<p>ICE Futures US: - Rule 4.02</p> <p>CFTC: - Concept Release of automated systems potential risk controls - CEA section 4c(a)(5) - Regulation 180.1 - Regulation 180.2</p> <p>NFA: - Rule 2.2 - Rule 2.4</p> <p>SEC: - Regulation Systems Compliance and Integrity - Mary Jo White Keynote Address - Regulation 240.10b-1</p>

Rule	Issue	Current Rule Text	Recommendation	Benchmarking
		<p>e) entering orders or effecting a transaction with the purpose of transferring funds, assets or liabilities in contravention of legal or regulatory requirements.</p>		<ul style="list-style-type: none"> - Regulation 240.10b-5 - Securities Exchange Act of 1934, section 9(a), 10(b) <p>FINRA:</p> <ul style="list-style-type: none"> - Regulatory Notice 15-06 - Rule 2010 - Rule 2020 - Rule 5210 <p>IROC:</p> <ul style="list-style-type: none"> - UMIR 2.1 - UMIR 2.2 - UMIR 4.1 - UMIR 10.4 <p>ICE Futures Europe:</p> <ul style="list-style-type: none"> - Rule G.20 - Rule G.21 <p>Canadian Legislation:</p> <ul style="list-style-type: none"> - Article 150, 151 Derivatives Act - Article 382, Criminal Code - Articles 195.2, 199.1, Securities Act

6306 Manipulative or Deceptive Methods of Trading

(10.10.91, 31.01.05, 00.00.00)

~~No approved participant, person employed by Person may directly or acting on behalf of an approved participant, person associated indirectly, whether intentionally, recklessly or with an approved participant or restricted trading permit holder may willful blindness, use or knowingly participate in the use of any manipulative or deceptive methods of trading in connection with the purchase or sale of any securities or derivative instruments listed on the on the marketplace of the Bourse. All orders must be entered for the purpose of executing bona fide transactions.~~

~~Without in any way limiting the generality of the foregoing, the following shall be deemed manipulative Manipulative or deceptive methods of trading include, but are not limited to:~~

- ~~a) — effecting a transaction or a series of transactions or posting purchase or sale orders on securities or on derivative instruments traded on the Bourse alone or with one or more persons, intentionally or repeatedly and with the objective of unfairly influencing the market price of securities or derivatives instruments to make a profit from such action;~~
- ~~b) — creating a false or misleading appearance of trading in such securities or derivative instruments;~~
- ~~c) — entering orders or effecting transactions whose execution does not result in any change in the beneficial or economic ownership of the relevant securities or derivative instruments;~~
- ~~d) — effecting a transaction which creates an artificial price or new highs or new lows in such securities or derivative instruments during the same trading session without being justified by market conditions;~~
- ~~e) entering orders or effecting a transaction a) manipulating the price of any Listed Product;~~
- ~~b) entering an order or effecting a transaction:~~
 - ~~i) to mislead other market participants;~~
 - ~~ii) to overload, delay, or disrupt the systems of the Bourse or other market participants;~~
 - ~~iii) to disrupt the orderly conduct of trading or the fair execution of transactions;~~
 - ~~iv) to engage in wash trading, accommodation trading money passes, or other forms of fraudulent trading; or~~

v) with the purpose of transferring funds, assets or liabilities in contravention of legal or regulatory requirements.

6306 Manipulative or Deceptive Methods of Trading

(10.10.91, 31.01.05, 00.00.00)

No Person may directly or indirectly, whether intentionally, recklessly or with willful blindness, use any manipulative or deceptive methods of trading on the marketplace of the Bourse. All orders must be entered for the purpose of executing *bona fide* transactions.

Manipulative or deceptive methods of trading include, but are not limited to:

- a) manipulating the price of any Listed Product;
- b) entering an order or effecting a transaction:
 - i) to mislead other market participants;
 - ii) to overload, delay, or disrupt the systems of the Bourse or other market participants;
 - iii) to disrupt the orderly conduct of trading or the fair execution of transactions;
 - iv) to engage in wash trading, accommodation trading money passes, or other forms of fraudulent trading; or
 - v) with the purpose of transferring funds, assets or liabilities in contravention of legal or regulatory requirements.