



CIRCULAR 052-22

May 6, 2022

REQUEST FOR COMMENTS

**AMENDMENTS TO THE RULES OF BOURSE DE MONTREAL INC. RELATING TO THE INTRODUCTION OF A MARKER
AT ORDER ENTRY FOR PREARRANGED TRANSACTIONS**

The Rules and Policies Committee of Bourse de Montréal Inc. (the “**Bourse**”) and the Special Committee of the Regulatory Division of the Bourse approved amendments of the Rules of the Bourse in order to introduce a new order marker at order entry for each order entered into the Trading System.

Comments on the proposed amendments must be submitted at the latest on **JUNE 6, 2022**. 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:

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Corporate Secretary and
Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640 Laurier boulevard, suite 400
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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.

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).

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 ("**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 (the "**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.



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I. DESCRIPTION

The Regulatory Division (the “Division”) of Bourse de Montréal Inc. (the “Bourse”) proposes to introduce a new order marker (the “Proposed Marker”) at order entry for each order entered into the Trading System under Article 6.202¹ or Article 6.205² of the Rules of the Bourse (the “Rules”). This proposal will enhance the Division’s overall efficiency to the Division when carrying out its core regulatory functions in accordance with Article 2.101³ of the Rules. The Proposed Marker will improve regulatory data and, as a result, strengthen the surveillance and regulatory activities of the Division while facilitating the recordkeeping requirements for all Canadian and Foreign Approved Participants (collectively, the “Approved Participants”) as it pertains to the identification of an order entered into the Trading System.⁴

The target date for the implementation of the Proposed Marker is scheduled for December 31, 2022, at the latest.

II. PROPOSED AMENDMENTS

The Division proposes to amend Article 6.115⁵ of the Rules by adding the following requirement for the Proposed Marker:⁶

“Approved Participants must include the “prearranged transaction marker” for each order entered into the Trading System under Article 6.202 or Article 6.205. This requirement does not apply to paragraph (c), sub-paragraph (d)(i) or paragraph (e) of Article 6.205.”

For clarity, this requirement applies to all privately negotiated orders entered into the central limit order book, whether involving only one Approved Participant or more than one Approved Participant, and regardless of whether the order is successfully executed or not, either in whole or in part.

Committed orders⁷ entered into the Trading System under paragraph (c) or sub-paragraph (d)(i) of Article 6.205 will not require the Proposed Marker as these orders are already identified by the Bourse with a specific “committed order” marker.

Also, option strategy transactions prearranged in accordance with paragraph (e) of Article 6.205 are excluded from the Proposed Marker requirement as they require the intervention of a

¹ [Article 6.202 Trading Against Customer Orders \(Cross-Trades\)](#)

² [Article 6.205 Prearranged Transactions](#)

³ [Article 2.101 Functions of the Regulatory Division](#)

⁴ [Article 6.118 Record Keeping Requirements Regarding Orders \(Paragraphs \(b\) and \(f\)\)](#)

⁵ [Article 6.115 Order Identification](#)

⁶ See Annex 1 for the proposed amendments.

⁷ [Article 6.110 Orders \(Sub-paragraph \(b\)\(vii\)\)](#)

Market Supervisor of the Bourse and, as such, are not directly entered into the Trading System by the Approved Participants.

III. ANALYSIS

a. Background

In June 2021, the Division published a consultation paper⁸ proposing to introduce a new client identifier and other markers at order entry (known as the “Client Identifier initiative”). Originally, the Client Identifier initiative included the Proposed Marker discussed in this analysis. As part of the Client Identifier initiative, the Division created a Client Identifier Working Group⁹ to establish a forum for the Division, Participants and other stakeholders to exchange ideas, insights and perspectives.

At the end of 2021, the Proposed Marker was removed from the Client Identifier initiative to advance the target date for implementation of the Proposed Marker to December 31, 2022, at the latest. As for the Client Identifier initiative, the scheduled implementation date is December 31, 2023.

b. Objectives

The introduction of the Proposed Marker will:

- 1) Improve regulatory data;
- 2) Strengthen the surveillance activities and regulatory functions of the Division;
- 3) Facilitate recordkeeping requirements¹⁰ for all Approved Participants as they pertain to the identification of an order entered into the Electronic Trading System; and
- 4) Ensure alignment with existing recordkeeping requirements for marketplaces located in Canada.¹¹

c. Comparative analysis

Based on our comparative analysis, the Bourse concludes that the identification of permissible prearranged transactions on various international derivatives exchanges¹² is a common practice,

⁸ [Consultation Paper: Introduction of a New Client Identifier and Other Markers at Order Entry](#)

⁹ [Client Identifier Working Group](#)

¹⁰ [Article 6.118 Record Keeping Requirements Regarding Orders \(Paragraphs \(b\) and \(f\)\)](#)

¹¹ [Regulation 21-101 respecting Marketplace Operation \(Part 11 - Recordkeeping Requirements for Marketplaces\)](#)

¹² Australian Securities Exchange, CME Group and ICE Futures U.S.

with each exchange having its own protocols that allow for the identification of different types of eligible prearranged transactions.

d. Analysis of Impacts

i. Impacts on market

The proposed amendments will have no direct impact on the derivatives markets, other than enabling the Bourse and the Division to better regulate market activities by enhancing the surveillance and regulatory functions of the Division.

ii. Impacts on technology

The Proposed Marker will require technological changes to the protocol of the Bourse. Approved Participants will have to migrate to the new protocol. Approved Participants and vendors will have to adapt the functionality to allow for traders to meet the new requirement, where applicable. The technical requirements are scheduled to be announced to all Approved Participants in the second quarter of 2022 (by June 30). Final requirements are expected to be communicated in the third quarter of 2022 (by September 30) with testing scheduled for the last quarter of 2022 (starting October 1) for an implementation date of December 31, 2022, at the latest.

iii. Impacts on regulatory functions

The proposed change will enhance the surveillance activities of the Division. Procedures will be updated and the surveillance system will be adjusted (including by the creation of a new alert) to benefit from the proposed change. The Proposed Marker will provide more information for the analysis of prearranged transactions and as a result, will reduce analysis time and the number of requests for information from the Division to Approved Participants.

iv. Public interest

The Bourse is of the view that the proposed amendments are not contrary to the public interest. They will enable the Bourse and the Division to promote market integrity by enhancing the surveillance and regulatory functions of the Division.

IV. PROCESS

The proposed amendments are subject to the approval of the Special Committee of the Division and of the Rules and Policies Committee of the Bourse. They will also be submitted to the Autorité des marchés financiers in accordance with the self-certification procedure and to the Ontario Securities Commission for information purposes.

V. ATTACHED DOCUMENTS

Annex 1 - Proposed amendments

ANNEX 1 - PROPOSED AMENDMENTS

AMENDED VERSION

Article 6.115 Order Identification

- (a) Approved Participants must ensure the proper identification of orders when entered into the Trading System in order to ensure compliance with the provisions of Article 6.114 regarding management of priorities.
- (i) “Order for the account of a customer” means an order for a Security or a Derivative Instrument entered for the account of a customer of any Approved Participant or of a customer of a Related Firm of an Approved Participant, but does not include an order entered for an account in which an Approved Participant, a Related Firm of an Approved Participant or an Approved Person has a direct or indirect interest, other than an interest in a commission charged;
- (ii) “Order for the account of a professional” means an order for a Security or a Derivative Instrument for an account in which a director, Officer, partner, employee or agent of an Approved Participant or of a Related Firm of the Approved Participant or an Approved Person has a direct or indirect interest, other than an interest in a commission charged. The Bourse may designate any order as being an order for the account of a professional if, in its opinion, circumstances justify it;
- (iii) “Order for the account of the firm” means an order for a Security or a Derivative Instrument for an account in which the Approved Participant or a Related Firm of the Approved Participant has a direct or indirect interest, other than an interest in a commission charged;
- (iv) “Order for an insider or significant shareholder” means an order for a Security or a Derivative Instrument for the account of a client, a professional or a firm who is an insider and/or significant shareholder of the issuer of the underlying Security which is the subject of the order. If such client, professional or firm is both an insider and a significant shareholder, the significant shareholder designation must be used.
- (b) Approved Participants must include the “prearranged transaction marker” for each order entered into the Trading System under Article 6.202 or Article 6.205. This requirement does not apply to paragraph (c), sub-paragraph (d)(i) or paragraph (e) of Article 6.205.
- ~~(c)(b)~~ For the purposes of this Article :
- (i) “insider” means a Person who is an insider, pursuant to applicable Securities legislation, of the issuer of the Security underlying the Security or the Derivative Instrument traded;

- (ii) “significant shareholder” means any Person holding separately, or jointly with other Persons, more than 20% of the outstanding Voting Securities of the issuer whose Security is underlying the Security or the Derivative Instrument traded; and
- (iii) “Related Firm” has the meaning given to that term in the definitions in Article 1.101 of the Rules.

CLEAN VERSION

Article 6.115 Order Identification

- (a) Approved Participants must ensure the proper identification of orders when entered into the Trading System in order to ensure compliance with the provisions of Article 6.114 regarding management of priorities.
- (i) “Order for the account of a customer” means an order for a Security or a Derivative Instrument entered for the account of a customer of any Approved Participant or of a customer of a Related Firm of an Approved Participant, but does not include an order entered for an account in which an Approved Participant, a Related Firm of an Approved Participant or an Approved Person has a direct or indirect interest, other than an interest in a commission charged;
- (ii) “Order for the account of a professional” means an order for a Security or a Derivative Instrument for an account in which a director, Officer, partner, employee or agent of an Approved Participant or of a Related Firm of the Approved Participant or an Approved Person has a direct or indirect interest, other than an interest in a commission charged. The Bourse may designate any order as being an order for the account of a professional if, in its opinion, circumstances justify it;
- (iii) “Order for the account of the firm” means an order for a Security or a Derivative Instrument for an account in which the Approved Participant or a Related Firm of the Approved Participant has a direct or indirect interest, other than an interest in a commission charged;
- (iv) “Order for an insider or significant shareholder” means an order for a Security or a Derivative Instrument for the account of a client, a professional or a firm who is an insider and/or significant shareholder of the issuer of the underlying Security which is the subject of the order. If such client, professional or firm is both an insider and a significant shareholder, the significant shareholder designation must be used.
- (b) Approved Participants must include the “prearranged transaction marker” for each order entered into the Trading System under Article 6.202 or Article 6.205. This requirement does not apply to paragraph (c), sub-paragraph (d)(i) or paragraph (e) of Article 6.205.
- (c) For the purposes of this Article :
- (i) “insider” means a Person who is an insider, pursuant to applicable Securities legislation, of the issuer of the Security underlying the Security or the Derivative Instrument traded;

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- (iii) “Related Firm” has the meaning given to that term in the definitions in Article 1.101 of the Rules.