



**CIRCULAR 074-20**

April 30, 2020

**REQUEST FOR COMMENTS**

**AMENDMENTS TO PART 4 OF THE RULES OF BOURSE DE MONTREAL INC.: INVESTIGATION PROCESS**

The Rules and Policies Committee of Bourse de Montréal Inc. (the “**Bourse**”) and the Special Committee of the Regulatory Division of the Bourse (the “**Division**”) approved amendments to Part 4 of the Rules of the Bourse in order to make the investigative process of the Division more transparent and predictable to market participants and improve efficiency during an investigation.

Comments on the proposed amendments must be submitted at the latest on **July 31, 2020**. 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<sup>e</sup> Philippe Lebel  
Corporate Secretary and  
Executive Director, Legal Affairs  
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Place de la Cité, tour Cominar  
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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 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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**INVESTIGATION PROCESS  
AMENDMENTS TO PART 4 OF THE RULES OF BOURSE DE MONTREAL INC.**

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## **I. DESCRIPTION**

The Regulatory Division (the “Division”) of Bourse de Montréal Inc. (the “Bourse”) wishes to amend the Rules of the Bourse (the “Rules”) to make the investigative process of the Division more transparent and predictable to market participants, and improve efficiency during an investigation.

## **II. PROPOSED AMENDMENTS**

Please refer to the proposed amendments described in the attached Annex 1.

## **III. ANALYSIS**

### **a. Background**

The Division has the responsibility to prohibit and counter market abuse, market manipulation, fraud and deceptive trading,<sup>1</sup> and to promote the integrity of the derivatives market. To fulfill these regulatory functions, the Division can initiate investigations for possible violations of the Rules against Approved Participants (including all clients who are given direct electronic access (“DEA client”)) or Approved Persons.<sup>2</sup> When an investigation is conclusive and the circumstances require disciplinary proceedings (to file a complaint or serve a notice of minor violation), the matter will be transferred to the Director, Enforcement and Regulatory Affairs.<sup>3</sup>

Furthermore, the Division aims to encourage collaboration with the various stakeholders in order to foster a compliance culture. Therefore the Division considers that its investigation process should be fair, while being flexible where applicable.

Part 4 of the Rules contains some provisions regarding the general obligations of a person during an investigation and enumerates some powers of the Division during an investigation. However, the Division has received questions from Approved Participants regarding powers of the Division during an investigation and obligations of those from whom information was being requested. Several of these questions are procedural in nature and in absence of express provisions in the Rules, such questions are bound to be asked.

Hence, the aim of this proposal is to make the investigative process transparent and predictable to market participants and anyone who may be involved in an investigation conducted by the personnel of the Division. The Division is of the view that such clarity is required not only from a fairness perspective, but also to ensure efficiency in the process by allowing the Division to address matters under investigation in a timely manner.

### **b. Objectives**

The Division wishes to provide market participants and anyone involved in an investigation with sufficient information to understand the scope of the process. By adding provisions into the Rules on the

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<sup>1</sup> The Derivatives Act, c. I-14.01

<sup>2</sup> Article 43 of the Derivatives Act, I-14.01 and article 2.101c)(i) of the Rules of the Bourse

<sup>3</sup> Article 2.101c)(ii) of the Rules of the Bourse

investigative process, the Division wants to ensure that everyone concerned has access to relevant details on how an investigation is conducted, as well as their rights and obligations during the investigation. The proposal will (i) set out the rights and obligations of anyone from whom information is being requested relating to matters under investigation, and (ii) provide for the powers of the Division and its personnel when asking and collecting information during an investigation.

The Division is therefore proposing to make the following amendments to the Rules.

#### **Part 4 - Inspections and Enforcement**

The title of this Part will be amended to read “Part 4 - Inspections, Investigations and Enforcement”.

#### **Article 4.1**

The title of this article will be amended to read “Article 4.1 - Obligation to Respond”.

#### **Article 4.2**

This article is currently a “*reserved*” slot of the Rules and the Division proposes to add the following provisions:

- a. Powers of the Division during an investigation: This section describes how the personnel of the Division can request information during an investigation. Such requests can be made in writing or in digital form. Information or data submitted can be in a form acceptable to the Division. For example, by providing the Division access to files and records, and by providing copies of files, records or documents. The personnel of the Division can also request an interview with any person it determines may have relevant information regarding the matter under investigation. The interviews can be recorded or transcribed.
- b. Obligations upon receiving a Request for Information (“RFI”): Any person who receives an RFI in the course of an investigation must adhere to the requirements set out under this section: (i) the obligation to cooperate and respond to the RFI from the Division; (ii) the obligation to provide the information within the time specified in the RFI; and (iii) the prohibition to withhold, destroy or falsify information relevant to the investigation.
- c. Other provisions: The rules also provide for the following :
  - (i) The right to have counsel’s assistance during an investigation and/or a representative of the Approved Participant (such as the Chief Compliance Officer or a designated compliance personnel). The presence of counsel or a representative of the Approved Participant at an interview conducted by the personnel of the Regulatory Division must not cause prejudice to the conduct of the investigation;
  - (ii) The confidentiality of an investigation and circumstances where the restriction can be waived; and
  - (iii) The failure to comply with a provision under this article.

### **c. Comparative Analysis**

To ensure it remains consistent with the practices of other exchanges and self-regulatory organizations, the Division conducted a comparative analysis. The rules and procedures of the Investment Industry Regulatory Organization of Canada, the Australian Securities Exchange, CME Group Inc., Chicago Board Options Exchange, ICE Futures U.S. and ICE Futures Europe relating to their respective investigation process were considered.

### **d. Analysis of Impacts**

#### **i. Impacts on market**

The proposed amendments will have no impact on the derivatives markets. As indicated in the earlier section, the proposal is to provide clarity on the investigative process and make it more transparent and predictable.

#### **ii. Impacts on technology**

The proposed amendments will have no impact on the technological systems of the Bourse, its Approved Participants or CDCC.

#### **iii. Impacts on regulatory functions**

The proposed amendments are initiated by the Division to promote awareness of market participants on the process when conducting an investigation. With these provisions in place the interaction with parties involved in an investigative process is expected to be more efficient.

#### **iv. Impacts on clearing functions and on trading functions**

The proposed amendments will have no impact on the trading and clearing functions.

#### **v. Public Interest**

The Bourse is of the view that the proposed amendments are not contrary to the public interest. In fact, the public and market participants generally request clear rules that are consistent with the best practices of other international derivatives exchanges and, when applicable, other self-regulatory organizations.

## **IV. PROCESS**

The proposed amendments are subject to the Special Committee and the Rules and Policies Committee of the Bourse for approval purposes. 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.

## **V. ATTACHED DOCUMENTS**

Annex 1 - Proposed amendments

## ANNEX 1 - PROPOSED AMENDMENTS

### **PART 4 – INSPECTIONS, INVESTIGATIONS AND ENFORCEMENT**

#### **Article 4.1 Obligation to Respond ~~to Inspection~~**

#### **Article 4.2 ~~Reserved~~ Conducting an investigation**

- (a) The personnel of the Regulatory Division can open an investigation on the conduct, activities or business of an Approved Participant or an Approved Person with respect to a possible breach of the Regulations of the Bourse.
- (b) In the course of an investigation, the personnel of the Regulatory Division may request, in writing or otherwise, from an Approved Participant, an Approved Person and any other person where authorized under the Rules or by law, to produce any document or information that the personnel of the Regulatory Division deems relevant to the investigation.
- (c) Without limiting the generality of paragraph (b) and Article 4.1, any person who receives a request pursuant to paragraph (c) shall:
- (i) comply with the request within the time prescribed therein;
  - (ii) give free access to and provide any records, registers, data, databases, files, documents, papers and information, in his possession or under his control, that the personnel of the Regulatory Division may require, regardless of the nature of the medium and the form in which such information, register, data, file, documents or exhibit can be accessed;
  - (iii) provide copies of files and documents referred to in paragraph (c)(ii), in the manner and form required by personnel of the Regulatory Division, including in recorded form or electronically;
  - (iv) appear in person for an interview with the personnel of the Regulatory Division, or by any other means determined by the Regulatory Division, to answer questions from the personnel of the Regulatory Division. This interview may be transcribed or recorded electronically, on audiotape or videotape, as determined by the personnel of the Regulatory Division;
  - (v) cooperate fully with the personnel of the Regulatory Division conducting the investigation. The Approved Participant is responsible for ensuring that its Approved Persons, employees, partners, directors, officers and clients cooperate fully with the personnel of the Regulatory Division and comply with any request received in the course of an investigation;

- (d) A person whom the personnel of the Regulatory Division has informed of the conduct of an investigation shall not conceal or destroy any information, record, data, file, document, exhibit or object thing that contains information that may be useful to the investigation, or request or encourage another person to do so.
- (e) Any person responding to a request in the course of an investigation pursuant to this Article may be assisted by counsel.
- (f) All requests, documents and information pertaining to an investigation shall be treated as confidential and any person who receives a request under this Article, who participate or assist in the course of an investigation, shall not disclose any information in relation to the investigation except:
- (i) to counsel providing assistance in the course of the investigation;
  - (ii) to a person responsible for compliance or supervision with the Approved Participant;
  - (iii) to a representative of the Approved Participant for purposes of supervision or to inform a partner, director or officer of the Approved Participant;
  - (iv) as required by law; or
  - (v) where the Regulatory Division provides a written authorization to disclose following a request made.
- (g) Failure to comply with any provision of this Article shall be deemed a violation of Article 4.1.
- (h) When a person fails to respond to a request in accordance with this Article, the Bourse may apply to the *Tribunal administratif des marchés financiers* for an order directing that person to comply with the request.



## ANNEX 1 - PROPOSED AMENDMENTS

### **PART 4 – INSPECTIONS, INVESTIGATIONS AND ENFORCEMENT**

#### **Article 4.1 Obligation to Respond**

#### **Article 4.2 Conducting an investigation**

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