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| <input checked="" type="checkbox"/> | Trading – Interest Rate Derivatives | <input checked="" type="checkbox"/> | Back-office - Options |
| <input checked="" type="checkbox"/> | Trading – Equity and Index Derivatives | <input checked="" type="checkbox"/> | Technology |
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CIRCULAR
July 16, 2012

SELF-CERTIFICATION

REQUIREMENTS RELATIVE TO SUPERVISION AMENDMENTS TO ARTICLE 4002

The Special Committee — Regulatory Division of Bourse de Montréal Inc. (the Bourse) has approved amendments to article 4002 of the Rules of the Bourse (“Notice of Non-Compliance”). These amendments have been self-certified in accordance with the self-certification process as established in the *Derivatives Act* (R.S.Q., chapter I-14.01) and are effective immediately.

The amendments to article 4002 of the Rules of the Bourse are primarily intended to specify situations and obligations for which an approved participant is required to conduct an internal verification and investigation process when it suspects an employee, an approved person, a restricted trading permit holder or a client of having contravened the Rules of the Bourse, as well as the applicable deadlines.

It is important to mention some changes that have been made to the amendments that were proposed to article 4002 of the Rules of the Bourse when the initial request for comments was published on January 17, 2012 (circular no. 008-2012). These changes stem from recommendations made by the Autorité des marchés financiers (AMF) in connection with the self-certification process regarding the proposed amendments.

First, it was decided to maintain the requirement, for an approved participant, an approved person or a restricted trading permit holder, to provide immediate notice to the Regulatory Division of the Bourse in the event that such approved participant, another approved participant, employee, approved person or restricted trading permit holder fails to meet its obligation, becomes insolvent or commits an act of bankruptcy within the meaning of the Bankruptcy and Insolvency Act. The Bourse’s original proposal was to allow approved participants a period of ten (10) business days to notify the Bourse in such a case.

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The Bourse also modified the regulatory text that had been initially proposed by adding, in paragraph 2 of article 4002, a specification that an approved participant, an approved person or a restricted trading permit holder must notify the Regulatory Division, using the prescribed form, in the event of default by the approved participant itself, another approved participant, employee, approved person, restricted trading permit holder or client authorized to use the order routing system of an approved participant pursuant to paragraph B) of article 6366, to comply with the regulations of the Bourse..

Finally, the wording of new paragraph 5 of article 4002 now provides that an approved participant must transmit the prescribed information to the Regulatory Division no later than ten (10) business days after the date on which it determines that a possible violation has occurred, for the situations listed in paragraph 3. In the text that had initially been proposed in the Bourse's request for comments, it was provided that this information was to be transmitted to the Regulatory Division no later than on the fifteenth (15th) day of the month following the month during which the approved participant had reached such a conclusion.

The Bourse also wishes to reiterate that since the introduction of the gatekeeper report in August 2011, approved participants must disclose all relevant information to the Regulatory Division, pursuant to article 4002 of the Rules of the Bourse, through the portal "Gatekeeper Form". This portal is accessible through the Regulatory Division's website, within the **Complaints** section, under the **Gatekeeper Form** tab at <http://reg.m-x.ca/en/gatekeeper/login>. Upon request to the Regulatory Division, a password will be provided to the compliance officers of approved participants of the Bourse in order to allow access to the gatekeeper portal. For further information on this matter, please refer to circular no. 131-2011 published by the Bourse on August 10, 2011.

The regulatory amendments referred to in this circular were subject to a request for comments, published by the Bourse on January 17, 2012 (circular no. 008-2012). Following the publication of this circular, the Bourse received comments which are summarized in the schedule annexed to this circular (Appendix B). This schedule also presents the Bourse's responses to these comments.

For further information, please contact Mr. Francis Larin, Director and Legal Counsel, Regulatory Division, at 514 871-3516 or at flarin@m-x.ca.

Jacques Tanguay
Vice President, Regulatory Division

4002 Notice of Non-Compliance

(11.03.85, 11.03.92, 15.03.05, 02.09.11; 16-07-12)

1. Immediate notice must be given in writing to the Regulatory Division by an approved participant, approved person or restricted trading permit holder in the event that: ~~such person, or any other approved participant, employee, restricted trading permit holder or approved person fails to be able to continue to meet its obligations or becomes insolvent or commits an act of bankruptcy within the meaning of the Bankruptcy and Insolvency Act.~~

2. Notice must be given to the Regulatory Division by an approved participant, approved person or restricted trading permit holder, using the prescribed form, within ten (10) business days of a finding, in the event that such person, or any other approved participant, employee, restricted trading permit holder, client authorized to use the order routing system of an approved participant pursuant to article 6366 B) or approved person fails to comply with the regulations of the Bourse.
 - ~~a) such person, or any other approved participant, employee, restricted trading permit holder, client authorized to use the order routing system of an approved participant pursuant to article 6366 B) or approved person fails to comply with the regulations of the Bourse, or~~
 - ~~b) such person, or any other approved participant, employee, restricted trading permit holder or approved person fails to be able to continue to meet its obligations or becomes insolvent or commits an act of bankruptcy within the meaning of the Bankruptcy and Insolvency Act.~~

23. Without limiting the above, approved participants must diligently conduct and complete all necessary audits and investigations, in compliance with their internal supervision policies and procedures, when they suspect an employee, an approved person, a restricted trading permit holder or a client of having contravened the Rules of the Bourse pertaining to, notably:
 - a) the obligation to trade in compliance with equitable principles;
 - b) the prohibition to use any manipulative or deceptive methods of trading;
 - c) the prohibition to enter orders or to execute trades in an irregular manner;
 - d) the prohibition of front running;
 - e) the obligation to execute clients' orders at the best possible price;
 - f) the obligation to ensure the priority of client's orders;
 - g) the obligation to execute on the Bourse's market all transactions on derivative instruments listed on the Bourse, subject to specific exceptions provided for in the Rules of the Bourse; and
 - h) any other obligation, prohibition or requirement that may be established by the Bourse from time to time.

34. Any verification or investigation made in accordance with this article, regardless of the conclusion, must be recorded in writing and adequately documented. ~~These Records so created~~ must be kept for a period of at least seven (7) years as of their date of creation and must be made available to the Regulatory Division, upon request.

45. If upon completion of the verifications and investigations provided for in paragraph 23, an approved participant concludes to a possible violation of any of the obligations, prohibitions or requirements mentioned in said paragraph, it must forward the required information to the Regulatory Division of the Bourse, using the prescribed form no later than the tenth (10th) business day following the date on which it reached such conclusion.

APPENDIX A

56. The obligations of an approved participant provided for in this article are in addition to the other obligations stipulated in the Rules, Policies and trading Procedures of the Bourse, notably with regards to supervision and, in any case, shall not prevent the Bourse from undertaking disciplinary measures against an approved participant, an approved person or a restricted trading permit holder.

4002 Notice of Non-Compliance

(11.03.85, 11.03.92, 15.03.05, 02.09.11; 16.07.12)

1. Immediate notice must be given in writing to the Regulatory Division by an approved participant, approved person or restricted trading permit holder in the event that such person, or any other approved participant, employee, restricted trading permit holder or approved person fails to be able to continue to meet its obligations or becomes insolvent or commits an act of bankruptcy within the meaning of the Bankruptcy and Insolvency Act.
2. Notice must be given to the Regulatory Division by an approved participant, approved person or restricted trading permit holder, using the prescribed form, within ten (10) business days of a finding, in the event that such person, or any other approved participant, employee, restricted trading permit holder, client authorized to use the order routing system of an approved participant pursuant to article 6366 B) or approved person fails to comply with the regulations of the Bourse.
3. Without limiting the above, approved participants must diligently conduct and complete all necessary audits and investigations, in compliance with their internal supervision policies and procedures, when they suspect an employee, an approved person, a restricted trading permit holder or a client of having contravened the Rules of the Bourse pertaining to, notably:
 - a) the obligation to trade in compliance with equitable principles;
 - b) the prohibition to use any manipulative or deceptive methods of trading;
 - c) the prohibition to enter orders or to execute trades in an irregular manner;
 - d) the prohibition of front running;
 - e) the obligation to execute clients' orders at the best possible price;
 - f) the obligation to ensure the priority of client's orders;
 - g) the obligation to execute on the Bourse's market all transactions on derivative instruments listed on the Bourse, subject to specific exceptions provided for in the Rules of the Bourse; and
 - h) any other obligation, prohibition or requirement that may be established by the Bourse from time to time.
4. Any verification or investigation made in accordance with this article, regardless of the conclusion, must be recorded in writing and adequately documented. Records so created must be kept for a period of at least seven (7) years as of their date of creation and must be made available to the Regulatory Division upon request.
5. If upon completion of the verifications and investigations provided for in paragraph 3, an approved participant concludes to a possible violation of any of the obligations, prohibitions or requirements mentioned in said paragraph, it must forward the required information to the Regulatory Division of the Bourse, using the prescribed form no later than the tenth (10th) business day following the date on which it reached such conclusion.
6. The obligations of an approved participant provided for in this article are in addition to the other obligations stipulated in the Rules, Policies and trading Procedures of the Bourse, notably with regards to supervision and, in any case, shall not prevent the Bourse from undertaking disciplinary measures against an approved participant, an approved person or a restricted trading permit holder.

REQUIREMENTS RELATIVE TO SUPERVISION

AMENDMENTS TO ARTICLE 4002

SUMMARY OF COMMENTS RECEIVED ET RESPONSES OF THE BOURSE

| Author of comments | Comments | Response to comments |
|--|---|--|
| <p>Investment Industry Association of Canada (IIAC)</p> | <p>The approach proposed by the Bourse would be more stringent than the one adopted by the Investment Industry Regulatory Organization of Canada (IIROC), since it would imply that any internal investigation of an approved participant be transferred to the Bourse.</p> | <p>In accordance with the new wording of the first two paragraphs of article 4002, the Regulatory Division of the Bourse (the Division) still expects to receive a written notice whenever an approved participant, an approved person or a restricted trading permit holder observes one of the events stated in paragraphs 1) et 2). Such requirement already existed under article 4002, before it was amended.</p> <p>The proposed wording for the new paragraph 5 of article 4002 requires an approved participant to disclose certain information to the Division, on the prescribed form if, upon completion of the verifications and investigations provided for in the new paragraph 3 of this article, the approved participant concludes to a possible violation for any element mentioned.</p> <p>Thus, the Division does not wish to receive such information for all internal investigations conducted by an approved participant, but rather for any verification and investigation establishing the possibility of a violation under paragraphs 3 and 5.</p> |
| | <p>A few months after the publication of its circular no. 131-2011, the Bourse substantially expanded its scope without explaining the context.</p> | <p>Circular no. 131-2011, which was published on August 10, 2011, announced the commissioning of the gatekeeper report on the Division’s Website. The proposed regulatory amendments to article 4002 were subsequently published in circular no. 008-2012, dated January 17, 2012.</p> <p>In its circular no. 131-2011, the Bourse specified that the types of situations listed were not limitative, and that some information should be sent to the Bourse when an approved participant identifies an actual or potential violation.</p> |

REQUIREMENTS RELATIVE TO SUPERVISION

AMENDMENTS TO ARTICLE 4002

SUMMARY OF COMMENTS RECEIVED ET RESPONSES OF THE BOURSE

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| | <p>The concept of suspicion, which is an important element of circular no. 008-2012, is vague and undefined and could include important regulatory responsibilities which could be difficult to apply.</p> | <p>The Bourse is aware that section 10.16 of the <i>Universal Market Integrity Rules</i> (UMIR) of the Investment Industry Regulatory Organization of Canada (IIROC) imposes the reporting of the findings of an internal investigation only if there was a violation of a relevant UMIR provision.</p> <p>However, the Bourse observes that in notices issued after the implementation of section 10.16 of UMIR, including notice no. 2008-011 on market integrity (May 16, 2008), Market Regulation Services Inc. (RS) continued to encourage the reporting of this section’s prescribed information when the internal investigation of a participant reveals that a violation "may have occurred."</p> <p>The Division having similar expectations, it deems appropriate to provide in paragraph 5 of article 4002 that this requirement applies when an approved participant concludes that a violation of any of the obligations, prohibitions or requirements listed in paragraph 3 may have occurred.</p> <p>To this end, the Division is confident that after a diligently conducted internal verification and investigation process, an approved participant will be able to identify situations for which there were no violations, those for which there was an obvious violation and those for which a violation may have occurred. The Division expects to receive the required information only in the last two cases.</p> |
| <p>National Bank Financial Inc.</p> | <p>Raised concerns regarding the requirement to submit a gatekeeper report to the Bourse, when there is suspicion of a violation in cases provided for in paragraph 3.</p> | <p>As indicated above, the Division is confident that after a diligently conducted internal verification and investigation process, as per the new wording of article 4002, an approved participant will be able to identify situations for which there were no violations, those for which there was an obvious violation and those for which a violation may have occurred. The Division expects to receive the required information only in the last two cases.</p> |

REQUIREMENTS RELATIVE TO SUPERVISION

AMENDMENTS TO ARTICLE 4002

SUMMARY OF COMMENTS RECEIVED ET RESPONSES OF THE BOURSE

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| | <p>The approach proposed by the Bourse appears more stringent than the one adopted by IROC, because under subparagraph 4(d) of section 10.16 of UMIR, only situations where an actual violation occurs must be reported to IROC, and not those where there is a suspicion or an absence of such violation.</p> | <p>In accordance with the proposed text, the Division does not expect to receive a gatekeeper report from an approved participant when an investigation or verification shows that there was no violation of any of the obligations, prohibitions or requirements listed in paragraph 3.</p> <p>As indicated above, the Bourse acknowledges that in notices issued after the implementation of section 10.16 of UMIR, including notice no. 2008-011 on market integrity (May 16, 2008), Market Regulation Services Inc. (RS) continued to encourage the reporting of this section's prescribed information when the internal investigation of a participant reveals that a violation "may have occurred."</p> <p>The Division having similar expectations, it deems appropriate to provide in paragraph 5 of article 4002 that this requirement applies when an approved participant concludes that a violation of any of the obligations, prohibitions or requirements listed in paragraph 3 may have occurred.</p> |
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