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CIRCULAR 150-17
October 24, 2017

SELF-CERTIFICATION

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**”) have approved the amendments to article 6306 of the Rule Six of Bourse. The proposed amendments seek to provide legal certainty to market participants as to various prohibited trading practices and clarify the liability standard applicable to these prohibited practices. These amendments were self-certified in accordance with the self-certification process as established in the *Derivatives Act* (CQLR, Chapter I-14.01).

The modified version of Rule Six, the relevant extracts of which are attached, will become effective on **October 30, 2017** after market close. Please note that the new Rule Six will also be available on the Bourse’s website (www.m-x.ca).

The rule changes described in the present circular were published for public comment by the Bourse on March 13, 2017 (see Circular [033-17](#)). Further to the publication of this circular, the Bourse has received comments. A summary of the comments received as well as responses from the Bourse to these comments is attached hereto.

For additional information, please contact Julie Rochette, Vice President and Chief Regulatory Officer, Regulatory Division, by telephone at 514-871-3516 or by email at julie.rochette@tmx.com.

Martin Jannelle
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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.

Circular 033-17: Summarized comments and response

No.	Date comments received	Participant Category	Summary of comment	Summary of response
1.	April. 12, 2017	Dealer Member Firm	<p><u>“Recklessness” and “Willful blindness”</u></p> <p>1. What is the Bourse’s definition of recklessness?</p> <p>2. What is the Bourse’s definition of willful blindness?</p> <p>3. Could an error be considered recklessness? If so, under what circumstances?</p> <p>4. Could an error be considered manipulation? If so, under what circumstances?</p> <p>5. What criteria will the Bourse consider when concluding on recklessness or willful blindness?</p>	<p>1) “Recklessness” could be defined as the behavior of a person who is aware that the trading methods that said person is using may not be compliant with the Bourse’s regulatory requirements, but continues using the trading methods nonetheless. This definition is provided to the participant for guidance purposes only. The Bourse and any disciplinary committee shall not be bound by such definition, which could include other factual situations not mentioned in this summary.</p> <p>2) “Willful blindness” could be defined as the behavior of a person who knows or ought to have reasonably known that the methods of trading used may not be compliant with the Bourse’s regulatory requirements. This definition is provided to the participant for guidance purposes only. The Bourse and any disciplinary committee shall not be bound by such definition, which could include other factual situations not mentioned in this summary.</p> <p>3) The notions of "manipulation" and "deceptive methods of trading" may imply some form of intention and/or some form of behavior (whether as a single act or as a pattern). Based on the foregoing, an isolated error would most likely not be considered as manipulative or deceptive.</p> <p>4) Please see response 3) above.</p> <p>5) All relevant circumstances and facts will be considered by the Bourse when determining whether or not there is recklessness or willful blindness including, without limitation, the knowledge, experience and proficiency of the person being subject to the Bourse’s investigation.</p>

			<p>6. How will the Bourse determine if orders are entered to execute <i>bona fide</i> transactions?</p>	<p>6) All relevant circumstances and facts will be considered by the Bourse when determining whether or not an order is entered to execute <i>bona fide</i> transactions including, without limitation, the explanations provided by the person who traded and the market conditions at the time of order entry.</p>
			<p><u>Person trading on the marketplace of the Bourse</u></p> <p>1. How does the Bourse intend to assert jurisdiction over persons who are not directly affiliated with the Bourse?</p> <p>2. What are the implications for members with respect to client supervision? For example, would Direct Electronic Access (“DEA”) supervision requirements decrease for Approved Participants?</p> <p>3. If a client breached article 6306 with intent, how would the Bourse view this infraction against the Approved Participant?</p> <p>4. What happens when the Approved Participant identifies the potential manipulation?</p>	<p>1) The Bourse wishes to remind all persons (including clients of Approved Participants with Direct Electronic Access) that it is forbidden to use any manipulative or deceptive methods of trading on the marketplace of the Bourse. However, as provided by article 1101, the Bourse has jurisdiction over the Approved Participants, their partners, shareholders, directors, officers, employees, registered representatives, investment representatives, as well as all Approved Persons. The Bourse is not asserting jurisdiction over persons that are not specified in article 1101 of the Rules.</p> <p>2) There is no change to the supervision requirements imposed on Approved Participants.</p> <p>3) A client’s breach of article 6306 may, subject to investigation, be considered a breach by the Approved Participant of its supervision obligations.</p> <p>4) Article 4002 states that an Approved Participant should diligently conduct and complete all necessary audits and investigations, in compliance with its internal supervision policies and procedures. If there is possible violation from a client, the Approved Participant must report its conclusion and findings to the Bourse.</p>

			<p>5. What happens when the Bourse identifies the potential manipulation? Is the member automatically at fault for the client breaching the rule?</p> <p>6. For example, clients may refuse to enter into an amended DEA agreement with an Approved Participant if the proposed changes are accepted. Did the Bourse conduct an analysis on the impact to the business?</p>	<p>5) The Approved Participant is not automatically at fault for the breach of the rule by its client. All relevant circumstances and facts will be reviewed by the Bourse to determine whether or not there is also a breach by the Approved Participants of its supervision obligations. In other words, the Bourse may investigate the Approved Participant's conduct in light of its obligation of supervision over his client's trading activities.</p> <p>6) As mentioned above, the Bourse has only jurisdiction over Approved Participants, partners, shareholders, directors, officers, employees, registered representatives, investment representatives and on all Approved Persons. Based on the responses provided above, the Bourse does not understand the comments made by the participant regarding the need for amended DEA agreements.</p>
			<p><u>Wash trades</u></p> <p>1. What does the Bourse consider to be "wash trades"?</p> <p>2. Is there a concept of economic or beneficial ownership related to "wash trading"?</p>	<p>1) "Wash trade" could be defined as a situation that occurs when a person enters into, or purports to enter into, transactions with no intent to obtain a <i>bona fide</i> market position or activity, with the false appearance of an executed transaction. The definition of wash trading also includes trades with no change of beneficial ownership. This definition is provided to the participant for guidance purposes only. The Bourse and any disciplinary committee shall not be bound by such definition, which could include other factual situations not mentioned in this summary.</p> <p>2) Yes. The concept of wash trading may relate to economic or beneficial ownership.</p>

			<ol style="list-style-type: none">3. Is the concept of “wash trade” related to “control of accounts”?4. Would affiliates be considered under same ownership?5. Would different entities of the same financial group be deemed to be “wash trading”, therefore manipulating the market, if trading against one another?	<ol style="list-style-type: none">3) The concept of wash trading may relate to control of accounts as well. It is essential to assess the intention behind the transaction to ensure it is a <i>bona fide</i> transaction.4) Affiliated corporations and subsidiaries may be considered under same ownership for the purpose of this article.5) Unintentional and isolated matching of buy and sell orders, whether by accident or inadvertently, from entities of the same financial group will not be considered a violation unless such activity causes price or volume aberrations or occurs more often than on an incidental basis.
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