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<input checked="" type="checkbox"/>	Trading - Equity and Index Derivatives	<input checked="" type="checkbox"/>	Technology
<input checked="" type="checkbox"/>	Back-office - Futures	<input checked="" type="checkbox"/>	Regulation

**CIRCULAR 156-16**  
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## **DISCIPLINARY SANCTIONS PUBLICATION OF GUIDELINES**

The Regulatory Division of the Bourse de Montréal Inc. (the Bourse) has developed Guidelines on Disciplinary Sanctions that establish the principles and factors to be considered when setting penalties as part of disciplinary complaints. The purpose of these guidelines is to allow the determination of sanctions that are fair and appropriate so that they may have, among other things, a deterrent effect. The Regulatory Division’s Guidelines on Disciplinary Sanctions do not set specific penalties and will not prevail over the Rules of the Bourse or any other applicable regulation.

In developing these guidelines, the Regulatory Division considered the factors identified by the International Organization of Securities Commissions (IOSCO) in its document of June 2015 entitled “Credible Deterrence in the Enforcement of Securities Regulation,” the Sanction Guidelines of the Investment Industry Regulatory Organization of Canada (IIROC) dated February 2, 2015, the guides and guidelines of other regulatory authorities and self-regulatory organizations, as well as recent jurisprudence, both national and international.

The Regulatory Division intends to refer to these guidelines when evaluating whether an offer of settlement is reasonable and appropriate and when presenting requested penalties to a Disciplinary Committee. Publication of this document also allows participants to know the underlying principles favoured by the Division when it determines disciplinary sanctions.

Please note that the Guidelines on Disciplinary Sanctions may be consulted on the website of the Regulatory Division of the Bourse [here](#).

For any further question or comment, please contact Ms. Julie Rochette, Director and Legal Counsel, Enforcement and Investigations, Regulatory Division, at 514-871-3516 or by email at [julie.rochette@tmx.com](mailto:julie.rochette@tmx.com).

Brian Z. Gelfand  
Vice President and Chief Regulatory Office



**Regulatory Division**

**Guidelines  
on Disciplinary Sanctions**

**November 24, 2016**

## Notes to Readers

This document serves as a reference for the Regulatory Division (the “Division”) of Bourse de Montréal Inc. (the “Bourse”). The content of this document does not prevail over the Rules of the Bourse or any other applicable regulation.

According to the International Organization of Securities Commissions (“IOSCO”)<sup>1</sup>, some of the factors that are likely to deter unwanted behaviour on the markets include: the predictability of consequences, the severity of sanctions, efficient and proportionate sanctions, and their dissuasive effect. It is therefore important for the Division to apply objective criteria in a consistent manner when recommending penalties in disciplinary matters.

The objective of these guidelines is to establish the principles and factors that should be considered in order to arrive at fair and appropriate penalties in response to disciplinary complaints without establishing predetermined penalties. This document has three sections: the first itemizes the intended penalties included in the Rules of the Bourse, the second lists the underlying principles, and the third contains a list of factors that must be considered when assessing a fair and appropriate penalty, given the specific circumstances of a case.

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<sup>1</sup> “Credible Deterrence in the Enforcement of Securities Regulation,” OICV-IOSCO, June 2015

## Penalties

Article 4105 of the Rules of the Bourse lists potential penalties in the case of an offence to one or more of the Rules of the Bourse. These penalties are:

- a reprimand
- a fine not exceeding \$1,000,000
- the suspension or revocation of the rights as an approved participant<sup>2</sup> (“participant”) or an approved person (“person”) for such period and upon such conditions, including conditions of reinstatement, as the Committee may determine
- the expulsion of the participant
- the making of restitution to any person who has suffered a loss as a result of the acts or omissions of a person under the jurisdiction of the Bourse
- the obligation to take one or more courses given by CSI Global Education Inc. or any other course deemed appropriate
- the reimbursement in whole or in part of the costs and expenses (including professional fees) paid or incurred by the Bourse in connection with the complaint and the matters out of which it arose including all investigations, hearings, appeals and other proceedings before or after the complaint

## Principles

### **1. Penalties shall be imposed to prevent future offences and maintain a high standard of business conduct with the aim of protecting the public**

A penalty must have a deterrent effect in order to prevent future offences, with the aim of protecting the public. To this end, a penalty must be sufficient and proportionate to the seriousness of the offence. Among other things, the penalty must be greater than the cost of the misconduct. So in order to have a deterrent effect, a penalty must not be less than the profit generated by committing the offence.

### **2. Penalties shall be specific and proportionate to the facts of the alleged offence**

The penalties must be tailored to all the specific facts and circumstances of the matter at hand. For example, for an offence related to exceeding prescribed position limits, it is important to consider the nature of the transactions (speculative or hedging) that have led to the limits being exceeded as well as whether or not the transactions generated a profit.

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<sup>2</sup> The concept of approved participant includes all foreign approved participants.

### **3. Penalties shall be more severe for repeat offenders**

One or more offences committed by a participant or a person following a prior, similar disciplinary penalty must result in a more severe penalty. The recurrence of an offence or the occurrence of a similar offence indicates that the prior penalty was insufficient in serving its purpose as a deterrent, so a more severe penalty is justified.

To the extent that the new offence is not comparable to the prior offence, it is important to determine whether, independent of the nature of the offence *per se*, it reveals that the participant or the person has shown indifference to complying with the Rules of the Bourse.

Furthermore, consideration must be given to the amount of time that has passed between the prior disciplinary penalty and the date of the current offence. The longer this period of time, the less influence this prior disciplinary offence should have in determining the new penalty.

### **4. Preferably, separate penalties shall be imposed for each offence**

When dealing with multiple offences, the imposition of a separate penalty for each offence must be favored. The goals of this principle are to allow participants to differentiate between the offences and to ensure that the penalties have a deterrent effect. However, under certain circumstances, a comprehensive penalty, i.e. a penalty that covers all the offences, may be more appropriate.

### **5. It may be appropriate to recommend the suspension, revocation or expulsion of a participant or a person**

The suspension, revocation or expulsion of a participant or a person must be considered if the behaviour at issue significantly impairs the integrity of markets or the reputation of the Bourse or if there is reason to believe that the conduct in question will be repeated. In particular, this principle is invoked if the participant or the person has committed several offences or has a record of numerous offences (disciplinary or judicial), acted deliberately, has demonstrated gross negligence, or has ignored the Bourse's interventions.

## **Factors for Consideration**

### **1. The disciplinary record of the participant or the person**

The penalty must take into account the participant's or the person's disciplinary record with the Bourse or with other securities or derivatives self-regulatory organizations. A participant's or a person's disciplinary record includes any decision by the Disciplinary Committee of the Bourse in which the participant or the person was found responsible for the offence (independent of whether this decision was rendered following a contested hearing or a settlement with the Division) or any decision by another regulator or self-regulatory organization. Even though reminder letters and

letters of warning issued by the Regulatory Division are not part of a disciplinary record *per se*, they may be relevant circumstances to a matter and may therefore be taken into consideration.

**2. The participant or the person has acknowledged their own responsibility or that of an employee, where applicable**

Admission of responsibility by a participant or a person must be taken into account when determining the penalty. The sooner in the process that responsibility is acknowledged, the more this element must be given evidential value.

**3. The participant informed the Bourse of the offence**

In accordance with the obligations set out in the Rules of the Bourse (in particular, Article 4002), all participants must inform the Division of any offence. If the participant knew or should have known that an offence was committed, it must notify the Division. Consideration must be given to the circumstances of this disclosure, meaning the quality of the information sent by the participant, the time taken for such disclosure (meaning the time between the relevant events and the participant's detection of the offence) and the circumstances around such detection (before the Division's detection). Timely detection of the incident and prompt and complete disclosure to the Division are mitigating factors and must be taken into consideration. In contrast, an offence that goes undetected, disclosure that is late or incomplete, and the absence of disclosure are all issues that may be considered aggravating factors.

**4. The participant has implemented corrective measures**

This factor takes into account measures taken by the participant to avoid recurrence of the offence. Such corrective measures may take different forms. For example, a process may be changed, the changes may be communicated to the affected employees, supervision activities may be improved, or employees may receive better training.

Consideration must be given to identifying the root cause of the non-compliance and whether the participant has taken appropriate corrective measures, as well as the diligence with which these measures are implemented. The root cause as identified by the participant can be used to determine, for example, whether the offence represents an isolated event or a systemic problem. The implementation of appropriate corrective measures allows the Division to evaluate whether the offence could be repeated and, if it is repeated, whether it will be detected.

**5. The gains generated, losses avoided or costs saved by the participant or the person**

The gains generated, losses avoided or costs saved by committing the wrongful act must be taken into account, since the penalty must be greater than the cost of the misconduct. So in order to have a deterrent effect, a penalty must not be less than the profit generated or the costs saved by committing the offence. Such costs may include registration, renewal, transaction or other fees and costs.

#### **6. The participant or the person has compensated the aggrieved person**

One of the factors that must be considered is whether the participant or the person who committed the offence has compensated the aggrieved person. Voluntary compensation, prior to any intervention by the Bourse or the Division, must be perceived more favourably than the absence of compensation. Similarly, compensation made voluntarily before any intervention by the Bourse or the Division will be considered preferable to that made after the Division has issued a request for information or opened an investigation.

#### **7. The number of orders or transactions and the trading volume**

Depending on the offence, it may be appropriate to take into account the number of orders or transactions entered and the trading volume. For example, this information will be considered when a participant ignores the Rules of the Bourse when it gives people access to automated trading. For this offence, a fair and appropriate penalty needs to take into consideration not only the number of people given such access and the length of time of the offence, but also the number of orders entered and the trading volumes. A large number of orders entered and high trading volumes must result in a more severe penalty than would be imposed if few or no orders were entered or the trading volume was nil.

#### **8. The consequences of the offence for the Bourse's reputation and the integrity of markets**

An offence to the Rules of the Bourse may have more far-reaching effects than a simple financial gain or loss. The reputation of the Bourse and the integrity of the market may be affected. In such cases, the penalty must take into account the consequences of the offence in order to protect the reputation of the Bourse and not discredit the Division's activities.

#### **9. The nature and seriousness of the offence**

The penalty must be proportionate to the nature and seriousness of the offense. A more serious offence must lead to a more severe penalty. The seriousness of an offence is assessed on the basis of all the consequences of the offending act. The Division believes that any behaviour that impairs the integrity of the market or the reputation of the Bourse is inherently more serious.

#### **10. The risk of re-offence**

The risk of re-offence may be a crucial factor when assessing the appropriate penalty. A potential for re-offence may exist even in the absence of a disciplinary record. For example, the payment of a penalty combined with a suspension may, in certain circumstances, be more appropriate than the payment of a penalty alone, independent of the amount.

#### **11. Similar or identical behaviour**

Any pattern of similar behaviour must be taken into consideration when determining a penalty. A pattern may generally be found in the disciplinary record of the participant or the person or in a repetition of similar facts. It should be noted that an isolated incident is not sufficient to conclude that a pattern of behaviour exists. The presence of a pattern in one participant or one person may suggest that the offence is not an isolated event. In such cases, the penalty must be more severe.

#### **12. The length of the offending conduct**

The length of the offending conduct is one of the factors indicating the seriousness of an offence. The longer that the offence lasts, the more severe must be the penalty.

#### **13. The participant or the person tried to conceal the offence or failed to send relevant information to the Division**

All participants and persons are required to cooperate with the Division, particularly in its investigations. So if a participant or a person has tried to conceal the offence or has failed to send relevant information to the Division, this represents an aggravating factor. Furthermore, persons at higher management levels must receive higher penalties.

#### **14. The misconduct by the participant or the person is intentional**

Planning an act or a transaction that the participant or the person knew, or should have known, was in violation of one or more of the Rules of the Bourse constitutes an aggravating factor. In such circumstances, the penalty must be more severe.

#### **15. Internal penalties imposed by the participant on an employee**

If the participant has imposed a penalty on its offending employee, this must be considered a mitigating factor when determining the penalty.

#### **16. The level of cooperation with the Division demonstrated by the participant or the person**

The level of cooperation demonstrated by the participant or the person must be taken into consideration, since it may indicate the importance accorded to compliance and regulations. When determining the penalty, favourable consideration must be given to a high level of cooperation from the participant or the person. In contrast, if the participant or the person unduly delayed the work of the investigation or provided inaccurate, erroneous or misleading documents, this constitutes an aggravating factor.