



Regulatory Division

**Guidelines
for Supervision and Compliance
Obligations**

September 2017

Note to Readers

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

Article 3011 of the Rules of the Bourse provides that each approved participant, at the time of its approval and so long as it remains approved, must establish and maintain a system to supervise the activities of each of its employees and agents that is reasonably designed to achieve compliance with the Rules and Policies of the Bourse and with any legislation and regulations applicable to securities and derivative instruments activities. Each approved participant must also comply with the Electronic Trading Rules, especially those regarding risk management and supervisory controls, policies and procedures, the authorization to set or adjust the risk management and supervisory controls, policies and procedures, as well as the use of automated order systems—Regulation 23-103 respecting Electronic Trading (Chapter V-1.1, r. 7.1).

The obligations relating to supervision and compliance are principle-based as there exists no one-size-fits-all. As such, the participants have the ability to design and implement a supervisory system adapted to their business model, structure and risk. The Division recognizes that participants should have the flexibility to determine what is appropriate given their needs and tailor their system accordingly.

The objective of these guidelines is for the Division to share the underlying principles and questions it considers when assessing the reasonableness of a participant’s supervisory system. This document is divided into three sections: the first itemizes the required components of a supervisory system as provided per article 3011 of the Rules of the Bourse, the second lists the principles of a reasonable supervisory system, and the third contains a list of questions that one should ask when assessing its reasonableness.

Article 3011 of the Rules of the Bourse provides that:

- “A) Each approved participant at the time of its approval and so long as it remains approved, must establish and maintain a system to supervise the activities of each employee and agent of the approved participant, that is reasonably designed to achieve compliance with the Rules and Policies of the Bourse and with any legislation and regulations applicable to securities and derivative instruments activities. Such a supervisory system must provide, at a minimum, the following:
- i) the establishment, maintenance and enforcement of written policies and procedures acceptable to the Bourse regarding the conduct of the type of business in which it engages and the supervision of each employee and agent of the approved participant that are reasonably designed to achieve compliance with the applicable legislation and regulation;
 - ii) procedures reasonably designed to ensure that each employee and agent of the approved participant understand their responsibilities under the written policies and procedures in subparagraph (i);
 - iii) procedures to ensure that the written policies and procedures of the approved participant are amended as appropriate within a reasonable time after changes in applicable laws, regulations, rules and policies and that such changes are communicated to all relevant personnel;
 - iv) sufficient personnel and resources to fully and properly enforce the written policies and procedures in subparagraph I);
 - v) the designation of supervisory personnel with the necessary qualifications and authority to carry out the supervisory responsibilities assigned to them;
 - vi) procedures for follow-up and review to ensure that supervisory personnel are properly executing their supervisory functions;
 - vii) the maintenance of adequate records of supervisory activity, compliance issues identified and the resolution of those issues.
- B) Notwithstanding any other provision in the regulations of the Bourse, each approved participant must comply with the Electronic Trading Rules, especially regarding the risk management and supervisory controls, policies and procedures, the authorization to set or adjust these risk management and supervisory controls, policies and procedures, as well as the use of automated order systems.
- C) For the purpose of this article, the term “Electronic Trading Rules” refers to Regulation 23-103 respecting Electronic Trading (Chapter V-1.1, r. 7.1) as well as any applicable policy statement or notice.”

Principles

1. A compliance culture

A compliance culture, committed to and unambiguously promoted by management is key to a strong and effective supervisory system. Without such culture, even the most well-designed system on paper is likely to be ineffective as its implementation may be difficult due to the lack of commitment from management, insufficient resources or disinterest in its enforcement.

2. The supervisory system must be reasonably designed

A supervisory system refers to all measures, means, processes, procedures and others, put in place to ensure compliance with regulatory requirements. Such system shall be aligned with the participant's type of business, structure and risks and include the supervision of the trading activities of its employees, agents and clients. A reasonably-designed system is a best-efforts obligation or an obligation to take all possible appropriate measures to comply with the Rules of the Bourse and all applicable regulation.

3. Policies and procedures must be written

A supervisory system requires policies and procedures in writing. The level of detail in the policies and procedures may vary considering the participant's type of business, structure and risks. Clear and comprehensive written policies can be an effective tool to ensure the participant's employees and agents understand regulatory requirements of the Bourse. Therefore, it is expected that the written policies and procedures either cite the relevant articles of the Rules of the Bourse or describe the regulatory obligations of any more restrictive applicable rule dictated by the participant's jurisdiction.

4. Policies and procedures must be kept up to date

To ensure accuracy, the written policies and procedures must be kept up to date with all rule amendments or modifications, a new organizational structure, etc. As such, a participant should review its policies and procedures on a regular basis considering its type of business, structure and risks, to ensure their accuracy, completeness and effectiveness. Any change must be communicated to the participant's personnel.

5. Policies and procedures must be followed

The participant's employees must follow the policies and procedures in place. Personnel should have sufficient knowledge of the participant's policies and procedures and be familiar with the Rules of the Bourse. As such, a participant should consider providing ongoing training to its personnel given their respective supervisory or compliance functions.

The day-to-day activities or practices should reflect the written policies and procedures. A participant should have sufficient personnel and resources to fully and properly apply and, when required, enforce its policies and procedures.

6. Operations and trading activities must be supervised

The participant's policies and procedures should include a process for its personnel to supervise the operations and trading activities of its employees, agents and clients. The frequency and the sample size of the supervisory activities or reviews can vary among participants. Participants may review their trading desk activity differently. Some may perform daily, weekly, monthly or quarterly verifications of their trading activity. While the assessment of the reasonableness of the frequency and sample size of the reviews is on a case-by-case basis, the Division expects that each participant's system be aligned with its specific business type, structure and risks.

7. Identified compliance issues must be reviewed and escalated and, when required, investigated

Should a compliance issue be identified, a participant must evaluate, escalate and report it (when required by article 4002 or other Rules of the Bourse). A participant may choose to have more than one process, as review and escalation may vary given the nature of the compliance issue. For example, the review of technical and operational compliance issues may not need to be handled in the same manner as an internal investigation of a potential market manipulation. Regardless, to avoid the likelihood of recurrence of a compliance issue, the Division encourages participants to have processes that identify the root cause. As a result, appropriate corrective measures can be taken.

8. Adequate records of supervisory activity must be maintained

Records of supervisory activity may assume various forms or even a combination of email exchanges, written analyses, notes, etc. Regardless of the chosen format, the Division expects a participant to maintain, and provide when requested, evidence of its supervision activities including the result of a review or investigation, the escalation of the issue and the implemented corrective actions. Such records must be kept for a period of seven years (article 4002 of the Rules of the Bourse).

9. Absence of conflict of interest or the appearance of conflict of interest

The Rules of the Bourse do not differentiate supervisory from compliance roles nor do they prescribe that certain activities be performed within specific functions. The Division is of the view that each participant, having the flexibility to design its supervisory system tailored to its business type, structure and risks, should determine roles and responsibilities as it sees fit. Nonetheless, the Division expects that each system put in place by the participant considers avoiding conflicts of interest or the appearance of conflicts of interest inherent with the functions of supervision and compliance.

Questions

The Division is sharing a sample of questions it uses to understand a participant's supervisory system and determine its reasonableness. The Division believes that these questions may also guide the Bourse's participants in designing or assessing the adequacy of their supervisory system.

1. Does the participant have a supervisory system?
2. What is the nature of the trading activities of the participant?
3. What products (and their corresponding volume) are traded by the participant and its clients?
4. What is the participant's business model and structure?
5. What are the regulatory compliance risks for the participant?
6. Do the participant's policies and procedures include the review and evaluation of compliance with the Rules of the Bourse relevant to its type of business and trading activities?
7. Do the participant's policies and procedures include the review of compliance with the Rules of the Bourse related to recordkeeping requirements?
8. Do the participant's policies and procedures include the review of compliance with the Rules of the Bourse related to LOPR requirements including accuracy and entirety of information transmitted to the Division?
9. Do the participant's policies and procedures include the review of compliance to ensure there is no manipulative or deceptive methods of trading by its employees, agents or clients?
10. Do the participant's policies and procedures include the review of compliance to ensure there is no front running by its employees?
11. Do the participant's policies and procedures include the review of compliance with the Rules of the Bourse related to the order identification requirement?
12. Does the participant have policies and procedures outlining roles and responsibilities of its personnel? Are these policies and procedures in writing?
13. Does the participant have policies and procedures detailing internal controls of the effectiveness of its supervisory system? Are these policies and procedures in writing?
14. Does the participant have policies and procedures requiring the maintaining of records or documentation of its supervisory activities? Are these policies and procedures in writing?
15. Has the participant designated an employee to supervise the trading activities of the other employees?
16. Are the supervisory functions separated based on the type of instruments traded, like

options or futures?

17. Does the participant have sufficient employees to perform all activities of its supervisory system?
18. Is the participant's supervisory system based on IIROC, or another regulator, or an SRO's requirements? If so, does it cover all trading activities on the Bourse?
19. Do the policies and procedures describe steps to be taken in order to supervise and monitor trading activities?
20. Has the participant designated an employee to be responsible for overseeing the supervisory system including ensuring it's reasonable designed to comply with the Rules of the Bourse?
21. How long would it take for the participant to identify a compliance issue, if any?
22. Does the participant have an escalation process? What is the escalation process? Is the escalation process in writing?
23. What is the participant's policies and procedures with regards to the imposition of possible disciplinary measures if an employee did not respect the Rules of the Bourse?
24. If a compliance issue is identified and escalated, does the participant have a process to identify its root cause? Is this process in writing?
25. Is the participant's escalation process documented, maintained and verifiable?
26. What is the process if a systemic issue is identified? Is this process in writing?
27. Once the root cause is identified, does the participant have a process to determine appropriate corrective measures? Is this process in writing?
28. Does the participant have a process to ensure corrective measures are implemented?
29. Does common practice of the day-to-day supervisory activities of the participant reflect the written policies and procedures?
30. How are the policies and procedures accessible to all relevant employees of the participant?
31. How often does the participant review its supervisory and compliance policies, procedures and practices?
32. What is the participant's process to communicate to its personnel any change to its policies or procedures?
33. How does the participant assess whether its policies and procedures have been effectively implemented?
34. Does the participant's supervisory and compliance personnel have the appropriate experience and qualifications for their roles and responsibilities?
35. Do the participant's employees granted access to the Bourse's trading system have the required training and approval?

36. What training have the participant's employees received in relevant supervisory or compliance functions?
37. What resources are available to employees to provide guidance relating to the participant's policies and procedures?