



CIRCULAR 005-25

January 9, 2025

**DISCIPLINARY DECISION — SETTLEMENT AGREEMENT
MAREX CAPITAL MARKETS INC.**

The Regulatory Division of the Bourse de Montréal Inc. (the “Bourse”) filed the following complaint against Marex Capital Markets Inc. (the “Respondent”), an Approved Participant:

1. Between the period from May 23, 2019 to December 14, 2023, the Respondent contravened Article 3.4 – “Access to Electronic Trading System” and Article 3.400 – “Application for Approval” of the Rules of the Bourse (the “Rules”), by providing access to 9 of its employees, for various periods varying between 75 days to 975 days, to the electronic trading system of the Bourse (“ETS”) without having obtained the prior approval of the Bourse;
2. On February 25, 2021, the Respondent contravened Article 3.105 – “Notification of Regulatory Division of Non-Compliance” of the Rules as, having become aware on February 10, 2021, or before, of the unauthorized access to the system of the Bourse of some of its employees, it failed to notify the Regulatory Division within the 10 business days following the date on which it concluded as to the existence of the potential violation of Article 3.4 of the Rules;
3. Between the period from November 10, 2015 to December 14, 2023, the Respondent contravened Article 3.100 – “Supervision, Surveillance, and Compliance” (Article 3011 before January 1, 2019) of the Rules as it did not establish and maintain a system to supervise the activities of each employee that is reasonably designed to achieve compliance with the Rules, more specifically as it did not establish policies and procedures to ensure that only Approved Persons had access to the electronic trading system of the Bourse.

Bourse de Montréal

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Following a hearing held on November 25, 2024, a Disciplinary Committee duly constituted pursuant to the Rules accepted the settlement agreement negotiated between the Bourse and the Respondent, which includes a fine totalling \$113,000 as well as the payment of an additional amount of \$8,070 for the related costs.

The Disciplinary Committee's decision is attached.

For further information, please contact the legal affairs of the Regulatory Division of the Bourse by email at mxrlegal@tmx.com.

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**CANADA
PROVINCE OF QUEBEC
FILE NO. EN-DC-23004**

In the Matter of

Bourse de Montréal Inc.
(the “Bourse”)

and

Marex Capital Markets Inc.,
an approved participant of the Bourse
(the “Respondent”)

Panel : Me Michael Bantey, Chair
 Mme Éline C. Phénix, Member
 Mr. Pierre P. Ste-Marie, Member

DISCIPLINARY COMMITTEE REASONS FOR DECISION

I. INTRODUCTION

This panel was convened on November 25, 2024 for the purpose of deciding whether to accept – or reject – a settlement agreement dated September 27, 2024 between the parties (the “Settlement Agreement”). As detailed further below, the Respondent acknowledged breaching the Rules of the Bourse (the “Rules”) pertaining to access to the Bourse’s electronic trading system (the “ETS”), failing to timely notify the Bourse of such breaches, and failing to have the necessary systems and procedures in place to ensure compliance with the applicable rules and ensure detection of any violations. At the end of the hearing, following a brief deliberation, the panel determined that it was in order to approve the Settlement Agreement, with reasons to follow. Our reasons are set out below.

II. PROCEEDINGS

1. On or about July 2, 2024, an amended disciplinary complaint (amending the original complaint dated May 25, 2023) (the “Complaint”) was served upon the Respondent, alleging that:

(a) between the period from May 23, 2019 to December 14, 2023, the Respondent contravened article 3.4 – “Access to Electronic Trading System” and article 3.400 – “Application for Approval” of the Rules, by providing access to nine of its employees, for various periods varying between 75 days to 975 days, to the ETS of the Bourse without having obtained the prior approval of the Bourse;

(b) on February 25, 2021, the Respondent contravened article 3.105 - “Notification of Regulatory Division of Non-Compliance” of the Rules as, having become aware on February 10, 2021, or before, of the unauthorized access to the system of the Bourse of some of its employees, it failed to notify the Regulatory Division of the Bourse (the “Division”) within the 10 business days following the date on which it concluded as to the existence of the potential violation of article 3.4 of the Rules; and

(c) between the period from November 10, 2015 to December 14, 2023, the Respondent contravened article 3.100 - “Supervision, Surveillance, and Compliance” (article 3011 before January 1, 2019) of the Rules as it did not establish and maintain a system to supervise the activities of each employee that is reasonably designed to achieve compliance with the Rules, more specifically as it did not establish policies and procedures to ensure that only Approved Persons had access to the ETS of the Bourse.

2. As mentioned, the parties arrived at a Settlement Agreement on September 27, 2024, which was brought to this panel for approval.

3. At the outset of the hearing, each member of the disciplinary committee gave the requisite solemn affirmation that there was no cause for recusal. The Bourse was represented by Me Mathieu Cardinal (CDNP Avocats) and the Respondent was represented by Thomas A. Hayes, Jr., Head of Legal - Brokerage with the Respondent. The parties requested that this decision be drafted in English. We wish to thank counsel for the preparation of the joint record and their representations, which has rendered this process efficient.

III. FACTS

The facts, as agreed between the parties, are as follows:

1. The Respondent has been a foreign approved participant of Bourse since 2015.

Violation of Article 3.4 of the Rules – Access to Electronic Trading System and Article 3.400 of the Rules – Application for Approval

2. In April 2021, as revealed by a review of a 3-month sample of the Respondent’s trading blotters conducted during an examination by the Division, conducted in April 2021, two employees of the Respondent had access to the Bourse’s ETS without being duly approved by the Bourse pursuant to Article 3.400 of the Rules (“Unauthorized Access”).

3. From May 23, 2019 to November 1, 2022, as revealed by the investigation by the Division, a total of nine employees had Unauthorized Access.

4. This Unauthorized Access was due to the implementation of a new trading application access to which legacy set-ups were improperly mirrored. Thus, employees with access to another exchange were inadvertently provided with access to the Bourse's ETS without having to obtain approval from the Respondent's compliance department.

5. In addition, the Respondent provided access to the Bourse's ETS to two of these nine employees without first confirming that they were duly approved by the Bourse pursuant to Article 3.400 of the Rules ("Approved Person").

6. Furthermore, four of these nine employees had access to the Bourse's ETS through an imbedded functionality of the trading system used by the Respondent's 24-hour desk operators containing an override which, unbeknownst to the Respondent, permitted access whether or not the employees were duly approved by the Bourse.

7. During the night session of October 25, 2022, night operators of the Respondent requested access to the Bourse's ETS which was granted by the Respondent with the caveat that only an Approved Person could place an order. The four employees in question mistakenly believed that they had proper authorization as the 24-hour desk supervisor was an Approved Person.

8. The Respondent fully removed the access of six of the nine employees by October 25, 2022. The three remaining employees had already obtained approval from the Bourse prior to 2021.

9. The extent of Unauthorized Access is summarized below:

Employee	Unauthorized Access Granted	Unauthorized Access Ended	Duration (days)	Orders entered	Contracts executed
1	2019-05-23	2021-05-18	726	662	197,924
2	2019-10-08	2021-05-18	588	168	322
3	2019-10-04	2021-03-12	525	0	0
4	2020-04-08	2022-10-25	930	2	8
5	2020-04-08	2022-10-25	930	0	0
6	2020-03-20	2022-10-25	949	1	0
7	2019-08-01	2019-11-27	118	90	4,931
8	2019-10-04	2019-12-18	75	0	0
9	2019-10-08	2020-01-08	92	1	0
TOTAL	2019-05-23	2022-10-25	4,933	921	203,177

10. Between November 2022 and December 2023, as revealed during an examination of the Respondent conducted in October 2023, the Respondent provided Unauthorized Access to one of the nine above-mentioned employees for an additional period of 387 days.

11. This happened after the employee left the Respondent's employ in January 2022 and was re-employed in November 2022, at which time he was granted access to a different electronic system which did not permit him to initiate orders on the Bourse's ETS. However, unbeknownst to the Respondent, the system permitted him to modify or cancel algorithmic (algo) generated orders in which a portion of the algo order involved a Bourse trade conducted on the Bourse's electronic trading system.

12. As a result, the Respondent updated its policies and procedures in order to ensure that its employees are aware that they may not, without any exception, access the Bourse's ETS if they are not an Approved Person.

Violation of Article 3.105 of the Rules – Notification of Regulatory Division of Non-Compliance

13. On February 10, 2021, the Respondent became aware that four of its employees were provided Unauthorized Access.

14. The Respondent notified the Division of such violation on February 2, 2022, during the April 2023 Exam, in violation of Article 3.105 of the Rules which prescribes that the notification should be made within 10 business days.

Violation of Article 3.100 of the Rules – Supervision, Surveillance and Compliance (Article 3011 prior to January 1, 2019)

15. The Respondent's procedures provided that employees had to be duly approved by the Bourse before they were given access to the Bourse's ETS.

16. However, during the period under investigation, the Respondent did not have a review process in order to verify if individuals had access to the Bourse's ETS without being duly approved by the Bourse and, accordingly, provided access to individuals who were not approved by the Bourse.

17. The Respondent has since updated its procedures by implementing a trimester review of the employees accessing the Bourse's ETS to ensure that only employees who are duly approved by the Bourse pursuant to Article 3.400 of the Rules are given access.

Additional Facts

18. The Respondent has no Bourse disciplinary record.

19. The Respondent acknowledged its responsibility, as it relates to the breach of Articles 3.4, 3.400, 3.105 and 3.100 of the Rules at the first occasion and did not try to conceal the offence. There was no intentional misconduct by the Respondent.

20. The Respondent corrected the issues outlined in the Complaint and, therefore, the risk of re-offence is low.

21. Requirements relating to access to the Bourse's electronic trading system are serious in nature and are a cornerstone of market integrity and must be respected at all times. They are the means through which the Bourse is able to ensure that its electronic trading system is used by competent individuals. Comprehensive and effective supervision and compliance systems are the first line of defense to ensure the integrity of the Canadian exchange-traded derivatives market.

IV. PROVISIONS OF THE RULES THAT THE RESPONDENT ACKNOWLEDGES HAVING BREACHED

The Respondent acknowledges having breached:

1. Article 3.4 of the Rules – Access to Electronic Trading System and Article 3.400 of the Rules – Application for Approval by, from May 23, 2019 to December 14, 2023, providing access to the Bourse's electronic trading system to nine of its employees who were not duly approved by the Bourse in accordance with Article 3.400;

2. Article 3.105 of the Rules – Notification of Regulatory Division of Non-Compliance by failing to notify the Division within 10 business days following the date on which it concluded as to the existence of the potential violation of Article 3.4 of the Rules; and

3. Article 3.100 of the Rules – Surveillance and Compliance by, from November 10, 2015 to December 14, 2023, failing to establish and maintain a system to supervise the activities of each employee that is reasonably designed to achieve compliance with the Rules, more specifically to ensure that only employees who have been duly approved by the Bourse in accordance with Article 3.400 of the Rules had access to the Bourse's electronic trading system.

V. SANCTIONS

The parties have agreed to the following sanctions:

1. a fine totaling \$45,500 CAD for contravening Articles 3.4 and 3.400 of the Rules;

2. a fine totaling \$9,000 CAD for contravening Article 3.105 of the Rules;

3. a fine totaling \$58,500 CAD for contravening Article 3.100 (Article 3011 prior to January 1, 2019) of the Rules;

4. an additional amount of \$8,070 CAD as reimbursement of the related costs of this matter.

VI. ANALYSIS

1. The role of the panel is to determine whether the sanctions proposed in the Settlement Agreement fall within an appropriate range, taking account of similar cases, and that, more broadly, the Settlement Agreement is not contrary to the public interest and its acceptance would not bring the administration of justice (specifically the application of the Rules) into disrepute.

2. The parties brought to the attention of the panel a series of recent decisions¹ (the “Comparable Cases”) approving settlement agreements involving, as in this case, breaches of the Rules in relation to access to the Bourse’s ETS and failure of the participant to have proper systems and procedures in place designed to ensure compliance with such rules. Given the similar nature of these decisions, it will be useful to summarize the key facts and circumstances of such cases, including the sanctions agreed to, in tabular format, with the last row containing the factors and proposed sanctions in respect of the Respondent:

Party	Year of Decision	Period of unauthorized ETS access ²	Number of unauthorized employees accessing ETS	Number of orders placed	Number of contracts involved	Sanction with respect to unauthorized access	Sanction with respect to inadequate procedures
BNP	2021	5 years	24	44	1,167	\$30,000	\$60,000
UBS	2022	4 years	8	529	6,528	\$30,000	\$60,000
HSBC	2022	4 years	8	180	24,669	\$30,000	\$50,000
Credit Suisse	2022	9 years ³	5	4,070	120,477	\$45,000	\$50,000
Morgan Stanley	2022	2 years	16	427	22,168	\$45,000	\$50,000

¹ Re BNP Paribas Securities Corp. (August 6, 2021) (Circular 156-21), Re UBS Securities L.L.C. (April 25, 2022) (Circular 056-22), Re HSBC Securities (USA) Inc. (November 10, 2022) (Circular 151-22), Re Credit Suisse Securities (USA) LLC (December 15, 2022) (Circular 164-22), Re Morgan Stanley & Co. LLC (December 21, 2022) (Circular 005-23) and Re Citigroup Global Markets inc. (January 12, 2023) (Circular 022-23).

² The period during which the participant did not have policies and procedures in place may be longer or shorter than the period of unauthorized access.

³ Four of the five employees had unauthorized access for five years; one employee had unauthorized access for nine years.

Citigroup	2023	5 years	25	14,533	478,999	\$55,000	\$60,000
Respondent	2024	4 years	9	921	203,000	\$45,500	\$58,500

3. As the foregoing table is a summary only, it does not purport to be complete in the sense that it does not describe the subtleties of each case but only the metrics pertaining to the period of unauthorized access, the number of employees involved, the number of orders placed and the number of contracts executed. Even in relation to those metrics, it is to be noted that the period of unauthorized access may vary according to employee, the period shown is the longest period for which there was unauthorized access, and the value and the nature of the contracts executed are not specified. With those caveats, as can be seen from the above, the total fines in the Comparable Cases ranged from \$80,000 to \$115,000, exclusive of costs.

4. In this case, the proposed sanction for unauthorized access and not having the proper procedures in place totals \$104,000. In addition, in this case, the parties have agreed to an additional sanction of \$9,000 with respect to the contravention of Article 3.100 (Article 3011 prior to January 1, 2019), that is, the failure to timely notify the Bourse of a potential violation of the Rules. While the failure to inform the Bourse of an offence is, according to the guidelines of the Bourse in relation to disciplinary complaints (the “Guidelines”), among the factors to be considered in a disciplinary complaint, in this instance the Division determined to apply a separate sanction since the failure to timely inform the Bourse of a violation of the Rules is itself a violation. The disciplinary committee considers such an approach to be laudable, considering that doing so will highlight to participants the importance of the requirement to quickly (i.e., within 10 business days) inform the Bourse of potential violations and that a separate charge may result for failure to do so. Thus, the total sanction in this case is \$113,000, exclusive of costs, which is within the range of the Comparable Cases. We hasten to add that this is not a purely mathematical exercise, and that the panel has also considered the mitigating and aggravating factors in this case, as detailed below.

5. The mitigating factors in this case are that (i) the Respondent has no Bourse disciplinary record, (ii) it acknowledged its responsibility and did not conceal the offences, (iii) the misconduct of the Respondent was not intentional and (iv) it brought the needed corrections to its systems to minimize the risk of re-offence.

6. The aggravating factors in this case are that (i) it took around one year for the Respondent to notify the Division of the Unauthorized Access – however, this factor is neutralized considering that the parties have agreed to a separate sanction for this particular breach in the amount of \$9,000, (ii) the number of orders and contracts (namely, 921 and 203,000, respectively), which are not nominal, (iii) the length of time during which the misconduct occurred spans a period of years (namely four years of unauthorized access of the ETS and eight years of not having the necessary procedures in place) and (iv) the seriousness of the offence – ETS access requirements are a cornerstone of market integrity and were not respected over the relevant periods.

7. The Guidelines serve to guide us with respect to the principles and factors for consideration in a disciplinary context. One such principle is that of deterrence, the Guidelines providing:

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

8. The Guidelines also stipulate in relation to the factors to be considered:

“5. The gains generated, losses avoided or costs saved by the Regulated Person

The gains generated, losses avoided or costs saved by committing the wrongful act must be taken into account, since the sanction must be greater than the cost of the misconduct. So in order to have a deterrent effect, a sanction 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.”

9. We note that no evidence was brought as to the value of the contracts executed or gains realized. Also, no evidence was brought as to the losses or costs avoided. Based on the Comparable Cases, however, it was noted that such costs would be minimal. Still, it is somewhat of a “black box” when it comes to gains or profits.

10. The general deterrent effect of the total sanction in this instance is difficult to measure, particularly against the backdrop of the spate of recent Comparable Cases – that is, will it deter other participants from engaging in similar conduct? Noting that authorized access to the Bourse’s ETS is a cornerstone of market integrity, and that appropriate compliance systems are the first line of defense to ensuring market integrity, we would be concerned if conduct such as occurred in this case (and as has occurred in the Comparable Cases) were prevalent. Of course, we are not an investigative body and we are not in a position to draw any conclusions in this respect.

11. Nothing has been brought to our attention that any financial harm to a particular person has resulted from unauthorized access to the Bourse’s ETS in this case (thus being one of the mitigating factors), however we are nonetheless concerned about the potential for harm to market integrity in the future. It is one thing for a particular trader to have the necessary qualifications to become approved and yet not have been approved by the Bourse – which, while still a violation, is more procedural than substantive – it is quite another for a particular trader to be lacking the necessary qualifications and having unauthorized access.

12. Further, while we appreciate that the misconduct in this instance was not intentional, we must nonetheless be guarded in the protection of market integrity, of which access to the ETS of the Bourse is said to be a cornerstone, and thus deserving of more than repeated recitation. We leave

these remarks for the consideration of the Bourse, in its role as gatekeeper and vanguard in the continuous protection of market integrity.

13. All that having been said, the role of the disciplinary committee is not to make its own determination as to what it would consider to be the appropriate sanctions but rather to assess whether the sanctions proposed and agreed to by the parties fall within a reasonable range having regard to the facts and circumstances. Considering the benchmarks set forth in the Comparable Cases in particular, as well as the mitigating and aggravating factors in this case, as discussed above, we conclude in the affirmative.

FOR THESE REASONS, THE DISCIPLINARY COMMITTEE:

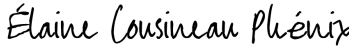
APPROVES the Settlement Agreement;


ORDERS Marex Capital Markets Inc. to pay a fine of \$45,500 for contravening articles 3.4 and 3.400 of the Rules, a fine of \$9,000 for contravening article 3.105 of the Rules and a fine of \$58,500 for contravening article 3.100 (article 3011 prior to January 1, 2019) the Rules, for a total fine of \$113,000, plus costs of \$8,070, the whole within a delay of 30 days following service of the present decision.

Montréal, December 19, 2024

Signed by:

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Michael Bantey, Chair

Signé par :

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Élaine C. Phénix, Member

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Pierre P. Ste-Marie, Member