



# GUIDELINES - OFF EXCHANGE TRANSFERS

This document is a reference work of the Regulatory Division (the "Division") of Bourse de Montréal Inc. (the "Bourse") in its role administering [Article 6.200](#) the Rules of the Bourse (the "Rules"). The content of this document does not supersede the Rules or any other applicable regulation.

The objective of this document is to provide Approved Participants and Foreign Approved Participants ("Participants" collectively) with guidelines regarding what constitutes a permissible off-exchange transfer, the requirements applicable to specific situations, and the off-exchange transfer process.

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## **What constitutes an off-exchange transfer?**

[Article 6.2](#) and [Article 6.3](#) of the Rules establish that all transactions on Listed Products<sup>1</sup> must take place on or through the electronic trading system of the Bourse during a trading session. However the Rules provide for specific exceptions, for instance prearranged transactions such as Exchange of Futures for Related Products (“EFRP”).

Additionally, the Rules set out specific situations where existing positions in Listed Products can be transferred without trading through the electronic trading system of the Bourse. This constitutes an off-exchange transfer.

In order for an off-exchange transfer to qualify under the Rules, certain requirements must be satisfied.

## **Under what circumstances is an off-exchange transfer permissible?**

Pursuant to [Article 6.200](#), an off-exchange transfer of existing positions in Listed Products is permitted if the off-exchange transfer relates to one of the following scenarios:

### **(i) Correction of an error**

Pursuant to subparagraph 6.200(a)(i), an off-exchange transfer is permissible if it is executed to correct an error in clearing and/or an error in the recording of Transactions in a Participant’s books.

#### Example:

Participant ABC requests that the Clearing Corporation correct the allocation of existing positions in Listed Products in account 123 in the name of X to account 789 in the name of Y. An employee of Participant ABC realizes that a human error occurred when allocating positions in Listed Products at the end of the day. Participant ABC could request a transfer in connection with the correction of a bona fide error, so that the positions in the Listed Products are recorded in the originally intended account (account 789), provided that the original trade documentation confirms the error.

### **(ii) No change in beneficial ownership**

Pursuant to subparagraph 6.200(a)(ii), an off-exchange transfer is permissible if there is no change in the beneficial ownership of the positions being transferred. For the purposes of this subparagraph, no change of ownership will be deemed to have occurred with respect to:

- A. an off-exchange transfer between Persons which are 100% owned by the same Person; or
- B. an off-exchange transfer between any Person and another Person or entity owned 100% by such Person.

Therefore, it is important that the Participant facilitating the off-exchange transfer ensures that existing positions remain under the same beneficial ownership in accordance with subparagraph 6.200(a)(ii) following the transfer. Furthermore, the off-exchange transfer under this subparagraph must not create a concurrent long and short position (i.e. an offsetting position) as per [Article 6.8](#) and must not result in the creation of new positions.

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<sup>1</sup> **Listed Products** is defined under [Article 1.101](#) of the Rules as “any derivative instrument listed for trading on the Bourse”

Example 1: different accounts but same beneficial owner

A client has existing positions in Listed Products in account 123 with Participant ABC. The client opens another account, account 789, with the same Participant. Participant ABC could proceed with the transfer of the Listed Products from account 123 to account 789 as long as the transfer does not create concurrent long and short positions pursuant to [Article 6.8](#).

Example 2: different entities but same beneficial owner

Bank ABC has a long position of 50 BAXH22 contracts in its account held at its affiliated firm MNO. MNO is a wholly owned subsidiary of Bank ABC. MNO wants to buy 50 BAXH22 contracts to add to its existing long position of 100 contracts. No offset would result from the transfer and there are sufficient existing positions to transfer. Since the accounts are for the same beneficial owner, the off-exchange transfer of 50 BAXH22 contracts from Bank ABC to MNO would be permissible.

Example 3: different trading desks but same beneficial owner

Participant DEF has a swap desk holding 100 CGBM21 contracts in account 123 and its cash desk wishes to buy 100 CGBM21 contracts in account 789. Since the accounts are for the same beneficial owner, no concurrent long and short positions would result from the transfer, in compliance with [Article 6.8](#) and no new positions would be created as a result of the transfer, the off-exchange transfer would be permissible.

Example 4: different Participants but same beneficial owner

Participant ABC and Participant FGH are wholly owned by Enterprise Inc. As such, trading in their accounts is for the same beneficial owner and the existing positions can be transferred off-exchange if they do not create concurrent long and short positions pursuant to [Article 6.8](#).

Example 5: different beneficial owner

Account 123, under the name of Enterprise Inc., is held at Participant ABC. Enterprise Inc. is owned 50% by X and 50% by Y. Participant ABC receives a request from X to transfer the existing positions from account 123 to account 789, under the name Company Ltd., also held at Participant ABC. Company Ltd. is owned 20% by X and 80% by Z. This transfer would not be permitted since the beneficial owners of the accounts are not the same.

Example 6: non-existing positions

Bank ABC has a long position of 50 BAXH22 contracts in its account held at its affiliated firm MNO. MNO is wholly owned by Bank ABC. MNO wants to buy 100 BAXH22 contracts. Since the accounts are for the same beneficial owner, the 50 BAXH22 contracts could be transferred if no concurrent long and short positions are created.. Since there are insufficient existing positions at Bank ABC to transfer to MNO, MNO would need to buy the remaining 50 BAXH22 contracts on the Bourse.

Example 7: concurrent long and short positions

Bank ABC has a long position of 50 BAXH22 contracts in its account held at its affiliated firm MNO. MNO is wholly owned by Bank ABC. MNO wants to buy 100 BAXH22 contracts to close its short position. While the accounts are for the same beneficial owner, such a transfer would create a concurrent long and short position and would therefore not be permitted.

### **(iii) Restructuring or consolidation**

Subparagraphs (d)(i) and (d)(ii) of [Article 6.200](#) provide for situations where the Division may allow a corporation or similar entity undergoing a restructuring or consolidation to carry out an off-exchange transfer. Such a transfer may be either on the books of a Participant or from the books of one Participant to another.

Pursuant to subparagraph 6.200(d)(i), an off-exchange transfer request for approval must be in connection with a merger, asset purchase, consolidation, or similar transaction between two or more entities. An entity can be either a client holding existing positions or a Participant requesting to move the existing positions to another entity as a consequence of a merger, asset purchase consolidation, or similar transaction. Such transactions must be considered non-recurring.

The purpose of subparagraph 6.200(d)(ii) is to address circumstances relating to the restructuring or consolidation of a Partnership, investment fund, or commodity pool. An off-exchange transfer could be authorized in this particular scenario subject to the following conditions:

1. the managing partner or pool operator remains the same;
2. the transfer should not result in the liquidation of any existing positions; and
3. the prorated allocation of interests in the consolidated account does not result in more than a *de minimis* change in the value of the interest of any party.

#### Example: asset purchase

Account 123, under the name of Enterprise Inc., is held at Participant ABC. Enterprise Inc. is owned 50% by X and 50% by Y. Participant ABC receives a request from X to transfer the existing positions in Listed Products from account 123 to account 789 under the name Company Ltd. as a result of an asset purchase transaction related to Enterprise Inc.'s dissolution. Account 789 is also held at Participant ABC and Company Ltd. is wholly owned by Y. The Bourse could authorize the off-exchange transfer under the specific circumstances of the dissolution and Company Ltd.'s purchase of Enterprise Inc.'s assets.

### **(iv) Best interest of the market**

There may be other situations that justify an off-exchange transfer not specifically covered under paragraph (a) or subparagraphs (d)(i) and (d)(ii) of [Article 6.200](#). The Division could approve such transfers in accordance with subparagraph 6.200(d)(iii) where it is concluded to be in the best interest of the market and the situation so requires it. In evaluating a request for an off-exchange transfer under this subparagraph, the Division will look at the following criteria:

- a. Whether the situation is a non-recurring event;
- b. If there is an economic rationale as to why the transaction not occur by liquidating and reestablishing the position through a regular market execution;
- c. Whether the off-exchange transfer will benefit the market or prevent an adverse impact on the market from occurring; and
- d. Whether the off-exchange transfer will give an advantage to a particular category of Participants over another category of Participants and, if so, whether such an advantage is necessary to address a market need.

The criteria listed above are not exhaustive and the Division may consider other criteria when evaluating requests.

Example: best interest of the market

An accounting-standard setting body changes its definition of hedging and henceforth requires that hedges be carried on the books of the entity with the risk exposure and not consolidated at a group level. In order to comply with the new definition, the parent corporation of a Participant wants to transfer existing positions to the books of the appropriate subsidiary. This scenario does not fit under paragraph 6.200(a) or subparagraphs 6.200(d)(i) and 6.200(d)(ii). However, in these circumstances, it would be in the market's best interest to permit an off-exchange transfer.

**Is the approval of the Division required?**

For all situations listed under paragraph 6.200(a), where (i) the off-exchange transfer is to correct an error in clearing and/or an error in the recording of Transactions of a Participant or (ii) there is no change in beneficial ownership of the existing positions after the transfer, no prior approval of the Division is required. However, pursuant to paragraph 6.200(b), Participants shall maintain and shall without delay provide to the Division, upon request, all orders, records, memoranda, or other documentary evidence pertaining to the off-exchange transfer.

All off-exchange transfers not qualifying under the two situations described above will require the prior approval of the Division before the transfer request is submitted to the Canadian Derivatives Clearing Corporation ("CDCC") as provided under paragraph 6.200(c). The Division can only consider a request for approval under paragraph 6.200(d) if the off-exchange transfer is (i) a transfer in connection with, or which results from, a merger, asset purchase, consolidation or similar non-recurring transaction between two or more entities; (ii) a transfer involving a Partnership, investment fund, or commodity pool and the purpose of the transfer is to facilitate a restructuring or consolidation of such Partnership, investment fund, or pool, provided that the managing partner or pool operator remains the same, the transfer does not result in the liquidation of any existing positions, and the pro rata allocation of interests in the consolidating account does not result in more than a de minimis change in the value of the interest of any party; or (iii) a transfer that is in the best interests of the market and the situation so requires.

**Who can request an off-exchange transfer?**

Depending on the situation, the beneficial owner or the Participant may request an off-exchange transfer.

If the request originates from a beneficial owner pursuant to subparagraph 6.200(a)(ii), the beneficial owner must first submit the request to the Participant and the Participant must subsequently submit the request to the Division. In all situations, the Participant must submit the requests to the Division.

**What information should be included in an off-exchange transfer request?**

For the Division to effectively assess the circumstances surrounding the requested off-exchange transfer under paragraph 6.200(d), the request should include, at a minimum, the following information:

- a. Reference to the applicable subparagraph of paragraph 6.200(d) under which a request is being submitted;

- b. The reason for requesting an off-exchange transfer and a detailed description of the circumstances leading to the requested transfer. The description should articulate how the applicable circumstances meet the requirements of the cited subparagraph of paragraph 6.200(d);
- c. The name of all parties involved;
- d. An indication as to whether the requested transfer is in part or in full;
- e. The details of the existing positions requested to be transferred;
- f. The proposed transfer date; and
- g. All supporting documents in light of the information submitted or in support of the request (such as current and new organizational structures in the case of a merger).

While reviewing a request for approval, the Division reserves the right to ask for additional information and supporting documentation. The Division will process any request in a timely manner but cannot guarantee an approval before the proposed transfer date. The Division therefore recommends that requests for approval be made well in advance.

**What other requirements should the Participant be aware of?**

The Participants should at all times maintain all records relating to the orders, records, memoranda, or other documentary evidence such as confirmation notes, copies of electronic confirmations (e.g. emails and instant messages), blotters, or statements as applicable. The Participants must be able to promptly produce these when requested by the Division.

In addition, information evidencing the terms of all off-exchange transfers must be submitted to CDCC. For off-exchange transfers where prior approval of the Bourse is required, the Participant should first seek the approval of the Division. During the review process additional information or supporting documentation may be requested and the Participant is expected to provide those in a timely manner. Once the request has been approved, the Participant will be informed of the decision and the transfer can then be submitted to CDCC.