

**CIRCULAR 072-18**  
May 22, 2018

**REQUEST FOR COMMENTS**

**AMENDMENTS TO ARTICLE 4002 OF THE RULES OF BOURSE DE MONTRÉAL INC.**

The Rules and Policies Committee of Bourse de Montréal Inc. (the “**Bourse**”) has approved amendments to article 4002 of the Rules of the Bourse in order to specify and clarify the circumstances in which an approved participant has the obligation to file a non-compliance report with the Bourse.

In the context of the Bourse’s Rule Modernizing Project, a first version of Article 4002 was submitted to the public for comment in [Circular 087-16](#) published on June 22, 2016. The Regulatory Division of the Bourse (the “**Division**”) decided to submit the drafting of this important article to an additional review, in consultation with the approved participants.

Comments on the proposed amendments must be submitted at the latest on **June 22<sup>nd</sup>, 2018**. Please submit your comments to:

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A copy of these comments shall also be forwarded to the *Autorité des marchés financiers* (the “**Autorité**”) to:

M<sup>e</sup> Anne-Marie Beaudoin  
Corporate Secretary  
*Autorité des marchés financiers*  
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P.O. Box 246, Tour de la Bourse  
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**E-mail: [consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)**

Please note that comments received by one of these recipients will be transferred to the other recipient and that the Bourse may publish a summary of such comments as part of the self-certification process concerning this file. Unless specified otherwise, comments will be published anonymously by the Bourse.

## Appendices

You will find in the appendices an analysis as well as the text of the proposed amendments. The implementation date of the proposed amendments will be determined by the Bourse, in accordance with the self-certification process as established by the *Derivatives Act* (CQLR, chapter I-14.01).

## Process for Changes to the Rules

The Bourse is authorized to carry on business as an exchange and is recognized as a self-regulatory organization (“**SRO**”) by the Autorité. The Board of Directors of the Bourse has delegated to the Rules and Policies Committee of the Bourse its powers to approve and amend the Rules, the Policies and the Procedures, which are thereafter submitted to the Autorité in accordance with the self-certification process as determined by the *Derivatives Act* (CQLR, chapter I-14.01).

In its SRO capacity, the Bourse assumes market regulation and supervision responsibilities of its approved participants. The responsibility for regulating the market and the approved participants of the Bourse comes under the Division. The Division carries on its activities as a distinct business unit separate from the other activities of the Bourse.

The Division is under the authority of a Special Committee (the “**Special Committee**”) appointed by the Board of Directors of the Bourse. The Special Committee is empowered to recommend to the Board of Directors the approval or amendment of some aspects of the Rules of the Bourse governing approved participants. The Board of Directors has delegated to the Rules and Policies Committee of the Bourse its powers to approve or amend these Rules upon recommendation from the Special Committee.



## MODERNIZATION OF THE RULES - OVERSIGHT

### AMENDMENTS TO ARTICLE 4002 OF THE RULES OF BOURSE DE MONTRÉAL INC.

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## I. SUMMARY

In 2015, Bourse de Montréal Inc. (the "Bourse") undertook a project to modernize its Rules. This project, which is coming to an end, seeks to review the structure of the Rules, integrate procedures and policies into the Rules, abrogate outdated articles, align the Rules with current practices, and recommend substantive amendments as appropriate to adapt the Rules to the evolution of the markets. The Bourse identified several amendments to update the Rules, align the Rules with current Bourse practices or institute best practices. Since then, a good number of regulatory files related to this Rules modernization project have taken effect.

In this analysis, the amendments proposed to Article 4002 Notice of Non-compliance are not only based on a comparative study with the rules and practices of the Investment Industry Regulatory Organization of Canada ("IIROC"), but are also based on exchanges and discussions held by the Regulatory Division of the Bourse with the approved participants and other industry members.

## II. ANALYSIS

### a. Background

In the context of the modernization project for the Rules of the Bourse, a first version of Article 4002 was submitted to the public for comment in [Circular 087-16](#) published on June 22, 2016. Although this version of Article 4002 has been approved in accordance with the regulatory process provided for in the *Derivatives Act*<sup>1</sup>, the Regulatory Division decided to submit the drafting of this important article to an additional review, in collaboration with the approved participants. In the course of formal and informal meetings, the Bourse discussed the obligations contained in Article 4002 and industry practices with the approved participants (or their representatives). This analysis is the result of that collaborative approach.

### b. Description and Analysis of Market Impacts

First of all, the Bourse proposes to amend Article 4002 to specify the circumstances in which an approved participant has the obligation to file a non-compliance report with the Bourse. The proposed amendments will make clear that an approved participant must file a non-compliance report with the Bourse following an internal verification or investigation, when the approved participant concludes it is possible that a violation of a rule mentioned in Article 4002 occurred.

The Bourse recommends the adoption of a possibility standard because an approved participant is not always in a position to determine or conclude whether a rule was really violated. Indeed, the Bourse, very often, is in a better position to determine whether a violation has been committed. Moreover, concluding that a rule has been violated requires the approved participant to interpret the Rules of the Bourse, which is not the responsibility of the approved participants. Consequently, the possibility standard recognizes that an approved participant does not have the same role as the Bourse in the enforcement and interpretation of the Rules of the Bourse. This

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<sup>1</sup> Chapter I-14.01

standard is also more appropriate and does not require that an approved participant be absolutely certain that a rule was violated. This amounts to saying that if an approved participant concludes that a violation possibly occurred, this participant must submit a notice of non-compliance. Otherwise, if the approved participant is satisfied after the review it conducted that there is no possible violation, it will not have to transmit a notice of non-compliance to the Bourse.

Secondly, the Bourse proposes to clarify the articles for which a possible violation must be the subject of a notice of non-compliance by the approved participants. The Bourse proposes to add Article 6366 to the list of articles whose possible violation must be reported using the non-compliance report form.

Finally, the Bourse proposes to remove from the list of violations covered by Article 4002 the violations pertaining to "the obligation to trade in compliance with equitable principles" and "any other obligation, prohibition or requirement that may be established by the Bourse from time to time". Since these requirements are not defined, it may be difficult, and even impracticable, for approved participants to have to determine whether a situation requires the filing of a notice of non-compliance with the Bourse.

Thus, in comparison with the version of Article 4002 submitted in [Circular 087-16](#), the new version of Article 4002 is closer to the principles established and the vocabulary used in Policy 10.16 of the Universal Market Integrity Rules ("UMIR") established by the IIROC. In fact, the list of violations covered by the Article is now exhaustive. Moreover, an approved participant must first conduct a review before sending a notice concerning a possible violation (other than the cases provided for in paragraph 1) to the Regulatory Division of the Bourse. Finally, the criterion of a "possible violation" retained by the Bourse in this new version of Article 4002 is closer to the expression "activity [...] that may be a violation" used by the IIROC in UMIR 10.16 (1).

However, concerning the obligation to retain the records related to a review, a minor difference will exist between the new Article 4002 of the Bourse and UMIR 10.16 (5) of the IIROC. The Bourse requires that the records be kept for a period of seven (7) years from the date of the conclusions issued in the course of the review instead of the date of creation of the documents.

### **c. Benchmarking**

In this context, our benchmarking is based exclusively on IIROC Rule 10.16 and the documentation issued by the IIROC related to this Rule:

- [Market Integrity Notice 2006-007](#)
- [Market Integrity Notice 2008-011](#)
- [UMIR 10.16](#)

### **d. Proposed Amendments**

Please refer to Appendix 1, which details the amendments to Article 4002 of the Rules of the Bourse.

### **III. AMENDMENT PROCESS**

In the first place, the Bourse undertook the Rules modernization project in 2015 to compare and align its rules with Canadian and international best practices. For the purposes of this analysis, the Bourse wishes to ensure the uniformity of the standards and vocabulary used in Article 4002 to facilitate its understanding by the approved participant and its enforcement by the Regulatory Division of the Bourse. In addition, the Bourse wanted to clarify the lists of obligations subject to the conducting of a review by the approved participant and the sending of a notice of non-compliance to the Bourse.

### **IV. IMPACTS ON TECHNOLOGICAL SYSTEMS**

None of the proposed amendments have an impact on the Bourse's technological systems or those of its approved participants.

### **V. OBJECTIVES OF THE PROPOSED AMENDMENTS TO THE PROCEDURES AND RULES OF THE BOURSE**

The objectives of the proposed amendments are to:

- Clarify the contents of Article 4002 for market participants;
- Ensure better certainty for market participants regarding this Article;
- Simplify the notice of non-compliance process;
- Align the rules as closely as possible with IROC practices;
- Clarify the record-keeping obligations of approved participants; and
- Modernize the language of Article 4002.

### **VI. PUBLIC INTEREST**

It is in the public interest that the Rules and their enforcement be clear for all market participants. The purpose of the proposed amendments is to ensure the uniformity of the standards and vocabulary used in Article 4002 to facilitate its understanding by the approved participant and its enforcement by the Regulatory Division of the Bourse. In addition, the Bourse wanted to clarify the lists of obligations subject to the conducting of a review by the approved participant and the sending of a notice of non-compliance to the Bourse.

### **VII. EFFICIENCY**

The proposed amendments will improve market efficiency by clarifying the obligations of the approved participants provided for in Article 4002 of the Rules and thus favour the absence of any ambiguity regarding its enforcement by the Regulatory Division of the Bourse.

### **VIII. PROCESS**

The proposed amendments are subject to the Special Committee and the Rules and Policies Committee of the Bourse for approval purposes. They will also be submitted to the Autorité des marchés financiers in accordance with the self-certification procedure and to the Ontario Securities Commission for information.

**IX. APPENDIX**

- Appendix 1: Proposed Amendments to Article 4002 of the Rules of the Bourse.

4002 Notice of Non-Compliance

(11.03.85, 11.03.92, 15.03.05, 02.09.11; 16.07.12, 01.12.17, 00.00.00)

1. ~~Immediate notice~~ An Approved Participant must be given in writing to immediately notify the Regulatory Division by an approved participant or approved person in in the event that such person, this Approved Participant or any other approved participant, employee or approved person of its Approved Person:

a) fails to be able to continue to meet its obligations of;

b) becomes insolvent of;

c) commits an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* (R.S.C., 1985, c. B-3); or

2. ~~Notice must be given to the Regulatory Division by an approved participant or approved person, using the prescribed form, within ten (10) business days of a finding, in the event that such person, or any other approved participant, employee or, client authorized to use the order routing system of an approved participant pursuant to article 6366 B) or approved person fails to comply with the regulations of the Bourse.~~

3. ~~Without limiting the above, approved participant(s) becomes a debtor company within the meaning of the *Companies' Creditor Arrangement Act* (R.S.C., 1985, c. C-36).~~

2. An Approved Participant must diligently conduct and complete all necessary audits and investigations, in compliance with their a review in accordance with its internal supervision policies and procedures, when they suspect upon becoming aware that, such Approved Participant, an employee, an approved person Approved Person, or a client of having contravened authorized pursuant to article 6366 B) possibly violated the Rules, Policies and trading Procedures of the Bourse pertaining to, notably:

a) the obligation to trade in compliance with equitable principles;

b) the prohibition to use any a) article 6305 respecting front running;

b) article 6306 respecting manipulative or deceptive methods of trading;

e) the prohibition to enter orders or to execute trades in an irregular manner;

d) the prohibition of front running;

e) the obligation to execute clients' orders at the best possible price;

c) article 6310 respecting best execution;

d) article 6366 respecting access to electronic trading;

e) articles 6374 and 6379 b) paragraph 2 respecting management of priorities;

f) the obligation to ensure the priority of client's orders;

g) the obligation to execute on the Bourse's market all article 6380, including 6380a to 6380f, respecting transactions on derivative instruments listed on the Bourse, subject to specific exceptions provided for in the Rules of the Bourse; and required on Bourse facilities;

h) any other obligation, prohibition or requirement that may be established by the Bourse from time to time.

g) article 6816 respecting off-exchange transfers of existing futures contracts.



3. If upon the completion of the review provided for in paragraph 2, an Approved Participant concludes to a possible violation of any of the obligations, prohibitions or requirements listed in paragraph 2, it must notify the Regulatory Division in the prescribed manner within ten (10) business days following the date on which it reached such conclusion.

4. — Any ~~verification or investigation~~review made in accordance with this article, regardless of the conclusion, must be recorded in writing and adequately documented. Records ~~so created~~ must be kept for a period of at least seven (7) years as of ~~their~~the date of ~~creation~~the conclusion of the review and must be made available to the Regulatory Division upon request.

~~5. If upon completion of the verifications and investigations provided for in paragraph 3, an approved participant concludes to a possible violation of any of the obligations, prohibitions or requirements mentioned in said paragraph, it must forward the required information to the Regulatory Division of the Bourse, using the prescribed form no later than the tenth (10<sup>th</sup>) business day following the date on which it reached such conclusion.~~

~~6. — The obligations of an approved participant~~

5. The obligations of an Approved Participant provided for in this article are in addition to the other obligations stipulated in the Rules, Policies and trading Procedures of the Bourse, notably with regards to supervision and, in any case, shall not prevent the Bourse from undertaking disciplinary measures against an ~~approved participant~~Approved Participant or an ~~approved person~~Approved Person.