



**CIRCULAR 094-21**

May 25, 2021

**REQUEST FOR COMMENTS**

**AMENDMENTS TO PART 4 OF THE RULES OF BOURSE DE MONTREAL INC.  
CONDUCT OF THE REGULATORY FUNCTIONS OF THE BOURSE**

The Rules and Policies Committee of Bourse de Montréal Inc. (the “**Bourse**”) and the Special Committee of the Regulatory Division of the Bourse approved amendments to Part 4 of the Rules of the Bourse related to the conduct of the regulatory functions of the Bourse. The proposed amendments aim to promote a robust framework to ensure the regulatory functions of the Bourse continue to be carried out efficiently and fairly.

Comments on the proposed amendments must be submitted at the latest on **July 26, 2021**. 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> Philippe Lebel  
Corporate Secretary and  
Executive Director, Legal Affairs  
Autorité des marchés financiers  
Place de la Cité, tour Cominar  
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Québec (Québec) G1V 5C1  
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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 Regulatory Division of the Bourse (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.



## AMENDMENTS TO PART 4 OF THE RULES OF BOURSE DE MONTREAL INC. - CONDUCT OF THE REGULATORY FUNCTIONS OF THE BOURSE

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#### **I. DESCRIPTION**

Bourse de Montréal Inc. (the “Bourse”) and the Regulatory Division (the “Division”) of the Bourse wishes to update and modernize Part 4 of the Rules of the Bourse (the “Rules”), which sets forth the powers of the Division in the conduct of its activities and the enforcement of the Rules, to promote a robust framework to ensure the regulatory functions of the Bourse continue to be carried out efficiently and fairly.<sup>1</sup> This proposal contains a number of amendments to update the Rules by either codifying current practices or by enhancing the Rules with best practices adopted by regulatory peers. In doing so, the Bourse and the Division also seek to reorganize Part 4 and clarify the powers of the Division, rights and obligations of persons involved in trading activities on the Bourse and enumerate the steps and requirements where applicable.

The proposed amendments are based on benchmarking with the rules and practices of other regulatory authorities, self-regulatory organizations (“SROs”) and exchanges.

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<sup>1</sup> Article 2.100 Creation of the Regulatory Division

## II. PROPOSED AMENDMENTS

Please refer to the proposed amendments described in the attached Annex 1. Part 4 of the current Rules will be replaced with the proposed content of Annex 1.

In addition, the Division has made available a summary of the recommended changes in a concordance table, set out in Annex 2.

## III. ANALYSIS

### a. Background

The Division has been entrusted with the Bourse's regulatory functions and operations.<sup>2</sup> The Division is responsible, notably for (i) ensuring compliance with regulations that aim at preventing and countering market abuse, market manipulation, fraud and deceptive trading,<sup>3</sup> and (ii) promoting the integrity of the derivatives market. To fulfill these responsibilities, the Division carries out its functions in the following fields of activity: (i) regulatory proposals and registration; (ii) market analysis; (iii) examinations; (iv) investigations; and (v) enforcement.

Part 4 of the Rules sets forth the mechanisms that enable the Division to perform its activities, and defines the structure of the disciplinary process. Over time, in the Division's performance of these activities, some questions arose regarding the obligations and rights of the parties involved, and the disciplinary process. Furthermore, certain provisions of Part 4 of the Rules require modernization, such as the more favourable use of electronic communications to transfer documents or hold hearings.

To fulfill its regulatory functions efficiently, it is essential for the Division, its staff and market participants, that the Rules provide a clear framework that can be applied consistently and fairly to all Approved Participants and persons subject to the Rules.

In light of the foregoing, in 2020 the Division proposed a first set of amendments to the Rules to make the investigative process of the Division more transparent and predictable to market participants, and also improve efficiency during an investigation<sup>4</sup> (the "2020 Proposal"). The 2020 Proposal was published for comments by way of [Circular 074-20](#) on April 30, 2020. Given that the present proposal encompasses the amendments of the 2020 Proposal, the Division will withdraw that proposal and instead integrate those suggested amendments, taking into account comments received since their publication, within this proposal.

### b. Objectives

After conducting a comprehensive review of Part 4 of the Rules, the Bourse and the Division are proposing changes to revamp and modernize the provisions therein. These amendments aim to

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<sup>2</sup> [Article 2.100](#) Creation of the Regulatory Division

<sup>3</sup> The Derivatives Act, [c. I-14.01](#); [Article 7.5](#) of the Rules

<sup>4</sup> [Circular 074-20](#): Request for comments-Amendments to Part 4 of the Rules of Bourse de Montreal inc.: Investigation process

(i) establish a rigorous and clear framework within which the Division and its staff can continue carrying out the Division's regulatory functions effectively under the Rules; (b) set out the rights and obligations of persons subject to the Rules and powers of the Division and its staff when requests for information are made in any sphere of the regulatory activities; (c) revamp the enforcement process and (d) align Part 4 of the Rules with current practices.

#### Structure of Part 4 of the Rules

As part of this review exercise, Part 4 has been reorganized to have a more comprehensive structure. A definitions section has been added to highlight terms specific to Part 4 of the Rules and simplify references made throughout Part 4. The first chapter also sets the tone with a statement introducing the purpose of Part 4 and describing the jurisdiction of the Bourse for purposes of the conduct of regulatory functions. The Bourse's continuing jurisdiction over former Approved Participants, Approved Persons, and other persons subject to the Rules will be clarified under this chapter. In alignment with other Canadian SROs in the financial services sector, the period within which disciplinary proceedings can be initiated will be extended from three years to five years. For example, the Division can investigate a former Approved Participant or Approved Person regarding a potential violation to the Rules of the Bourse at the time they were still an Approved Participant or Approved Person. The Approved Participant or Approved Person is required to collaborate in full.

A provision has also been added to set out the laws of the Province of Quebec as the applicable governing laws when referring to the Rules.

Under Part 4, the Special Committee will appoint a secretary for the Disciplinary Committee, who will be responsible for a number of administrative duties that will include communicating with parties to disciplinary proceedings, constituting disciplinary committees, and keeping minutes of hearings.

#### Conduct of regulatory activities

Under this chapter, the provisions will expressly address the general powers of the Division to request information in the conduct of its regulatory functions, and obligations of persons involved with trading activities on the Bourse to respond to such requests and to cooperate fully and truthfully. The staff of the Division, with responsibilities in different fields of activity of the Division, processes information or market related data on a daily basis and may need specific details on trading activities or surrounding activities of Approved Participants, Approved Persons and their clients.

The provisions will address the obligation to respond and cooperate with a request for information. For example, participants must make reasonable efforts to ensure the cooperation of persons they deal with in relation to their trading on the Bourse, such as clients or technology providers. In the Division's view, participants can fulfil this obligation by including clauses in their agreements with third parties requiring such cooperation.

While the aforementioned provisions on the information requests and the obligation to respond also apply to an investigation, there are additional articles which apply solely in the context of an investigation. These provisions are being proposed because of the special nature of an investigation. For example, during an investigation the *Act respecting the Regulation of the Financial Sector (chapter E-6.1)* grants the Division the power to ask persons who are not

Regulated Persons (as defined in the proposed Rule modifications) to communicate any document or information that the Bourse considers useful to the investigation.

#### Enforcement process

The chapters that follow relate to the process that applies when the Division's enforcement service concludes that an offence has been committed and recommends disciplinary actions. The provisions will address the following:

- i. The steps to initiate a disciplinary proceeding and what is expected from parties involved, such as the service of notices and their content, responses and timelines. Currently, the enforcement service of the Division discloses all information and documents held as evidence as soon as it is requested. To reinforce this paramount obligation, an article will be introduced to explicitly cater for the disclosure of evidence once a disciplinary proceeding has been initiated.
- ii. The steps to make an offer of settlement and the acceptance process once an agreement is reached after negotiations.
- iii. The framework for a hearing and the mechanics, including the procedures during the hearing.
- iv. The decision-making process of the disciplinary committee and the sanctions that the committee is empowered to issue. In accordance with section 162 of Quebec's *Derivatives Act (chapter I-14.01)*, the maximum fine per infraction will be increased from \$1,000,000 to the greatest of (a) \$5,000,000, (b) four times the profit realized, or (c) four times the amounts invested in the transaction or series of transactions. In a situation where the disciplinary committee reaches a guilty decision, parties will be entitled to make representations on the penalty to be imposed during the same hearing session.
- v. The right to appeal a disciplinary decision will be modified so that a party can apply for review of the decision by the Financial Markets Administrative Tribunal instead of the Special Committee of the Regulatory Division (the "Special Committee") as is presently the case. In Quebec, the Financial Markets Administrative Tribunal was established<sup>5</sup> specifically for the purpose of providing a recourse to review a decision of an administrative body, such as the Bourse, and has the capacity<sup>6</sup> and expertise relevant for such review.
- vi. The constitution of the disciplinary committee, qualifications and the role of members. Provisions will be added to better frame the establishment of the disciplinary committee, the eligibility, nomination, termination, incapacity and governance thereof.
- vii. The minor violations regime will remain unchanged for the most part. Minor adjustments will be made to adapt the existing provisions in light of the proposed amendments to Part 4. The *List of Fines for Minor Violations* will be amended to replace the 'Reminder Letter' with a 'Reprimand' for a first offence. This modification is in line with the powers of the Vice-President and Chief Regulatory Officer of the Bourse under the current Article 4.304 (Article 4.211(b) under this proposal).

#### Summary proceedings

The section on summary proceedings has also been reviewed to make the process more comprehensive.

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<sup>5</sup> The Act respecting the regulation of the financial sector, [chapter E-6.1](#)

<sup>6</sup> The Derivatives Act, [c. I-14.01](#), chapter III

Where there exist urgent circumstances considered to be detrimental to the reputation or interests of the Bourse, or to the interests or welfare of the public (in both cases, as currently described in section 7.2 of the Rules), upon the recommendation of the Vice-President and Chief Regulatory Officer of the Bourse, the Bourse will proceed with a hearing. At that hearing, the Disciplinary Committee can consider those circumstances and take actions which may include a suspension, revocation, modification of terms of a previously-granted approval or impose new terms for that approval. The process for a hearing will be the same as that for disciplinary proceedings, with the necessary modifications.

Since such urgent circumstances can require immediate intervention, the Regulatory Division can request that the Special Committee of the Regulatory Division issue interim orders to suspend or take such other interim actions applicable to the situation that will apply pending the hearing.

On the other hand, the grounds for suspending or revoking an approval granted to an Approved Participant or Approved Person who fails to comply with the conditions of the approval have been removed from this section on summary proceedings and merged into the '*Suspension and revocation*' provisions under Part 3 of the Rules. Therefore, if any conditions of an approval are not being upheld, the Division can suspend the person or revoke their rights or privileges if the non-compliance is not rectified, and in the case of an Approved Participant, this decision will be made by the Special Committee. Any person affected by such decisions will continue to avail of the opportunity to provide observations before a decision is made. This right has been clarified with this proposal.

#### **c. Comparative Analysis**

To ensure that it continues to reflect the best practices of other exchanges and SROs, the Bourse and the Division conducted a comparative analysis. The powers and enforcement rules of the Investment Industry Regulatory Organization of Canada, the Mutual Fund Dealers Association of Canada, the *Chambre de Sécurité Financière* and the OACIQ (both self-regulatory authorities in Quebec), the Australian Securities Exchange, CME Group Inc., Chicago Board Options Exchange, ICE Futures U.S. and ICE Futures Europe were considered.

#### **d. Analysis of Impacts**

##### **i. Impacts on Market**

The proposed amendments will have no direct impact on the derivatives markets, other than enabling the Bourse and the Division to better regulate market integrity. As indicated in the earlier section, the proposal is to promote a robust framework to ensure the regulatory functions of the Bourse continue to be carried out efficiently and fairly.

##### **ii. Impacts on Technology**

The proposed amendments will have no impact on the technological systems of the Bourse, its Approved Participants or the Canadian Derivatives Clearing Corporation ("CDCC").

##### **iii. Impacts on regulatory functions**

The proposed amendments are initiated by the Division with the support of the Bourse to revamp and modernize Part 4 of the Rules, resulting in a more robust framework which will enhance the efficiency with which the Division will conduct its regulatory activities.

#### **iv. Impacts on clearing functions & on trading functions**

The proposed amendments will have no impact on the trading of the Bourse and clearing functions of CDCC.

#### **v. Public Interest**

The Bourse is of the view that the proposed amendments are not contrary to the public interest. In fact, the public and market participants generally request clear rules that are consistent with the best practices of other international derivatives exchanges and, when applicable, other SROs.

### **IV. 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.

### **V. ATTACHED DOCUMENTS**

Annex 1 - Proposed amendments

Annex 2 - Concordance table



## **ANNEX 1 - PROPOSED AMENDMENTS**

### **A. Proposed amendments to related Articles and miscellaneous**

#### **Article 1.101 Definitions**

[...]

**Defaulter** (Défaillant) means an Approved Participant or an Approved Person declared as a defaulter pursuant to Article ~~4.406~~ **4.801** of the Rules.

[...]

#### **[NEW] Article 1.104 Delegation**

(a) Unless otherwise specified and subject to compliance with any applicable law (including any order or requirement of a Securities Regulator), the following individuals may delegate the powers and obligations granted to them under these Rules to an employee of the Bourse:

- (i) The President of the Bourse;
- (ii) The Vice-President, Regulatory Division; and
- (iii) The Chief Legal Officer.

(b) For greater clarity, no delegated powers or obligations may be further sub-delegated.

#### **[NEW] Article 1.105 Governing Law and Forum**

These Rules are governed exclusively by, and are to be construed and interpreted exclusively in accordance with, the laws applicable in the Province of Quebec. Any Person subject to these Rules irrevocably attorns to the exclusive jurisdiction of the courts of the Province of Quebec, in the judicial district of Montreal.

#### **[NEW] Article 1.106 Headings**

The headings and titles used in these Rules are for reference purposes only and have no legal effect.

#### **Article 2.100 Creation of the Regulatory Division**

The Regulatory Division is created by the Board of Directors with the aim of ensuring that the regulatory functions of the Bourse are carried out efficiently and fairly. To this end, the supervision of the regulatory ~~duties~~ **functions** and operations of the Bourse are entrusted to the Regulatory Division, which shall operate as a distinct business unit separate from the other activities of the Bourse. The Regulatory Division shall be not-for-profit and financially self-sufficient.

#### **Article 2.101 ~~Duties~~ **Functions** of the Regulatory Division**

The Regulatory Division carries on its ~~duties~~ functions in the following fields of activity :

[...]

#### **Article 2.102 Supervision**

(a) The Regulatory Division shall be subject to the supervisory powers of the Special Committee, which shall:

(i) ensure that the Regulatory Division has the resources it needs to carry out its functions;

(ii) ensure that the Regulatory Division carries out its ~~duties~~ functions fairly, objectively and without conflicts of interest; and

[...]

#### **Article 2.200 Special Committee of the Regulatory Division**

The Special Committee shall be appointed by the Board of Directors to perform those ~~duties~~ functions and to exercise those powers provided in this Chapter. Its rules of procedure shall be the rules of procedure of the Board of Directors, subject to such changes as may be necessary to adapt them to the circumstances.

#### **Article 2.204 Powers of the Special Committee**

[...]

(h) order that a special examination or investigation be made pursuant to Article ~~4.3~~ 4.104 of the Rules;

(i) order a suspension for failure to provide information pursuant to Article ~~4.5~~ 4.102 of the Rules;

(j) proceed summarily in the situations mentioned in Article 4.4 and Article ~~4.401~~ Part 4, Chapter I of the Rules, as the circumstances warrant, ~~and following of the Rules;~~

~~(k) proceed to the hearing of appeals from decisions rendered by the Disciplinary Committee in regard to complaints, pursuant to Article 4.201 and following of the Rules or from decisions rendered by any other committee or staff of the Bourse;~~

(k) hear appeals from decisions rendered by the Regulatory Division;

(l) report to the Board of Directors regarding the execution by the Regulatory Division of its regulatory ~~duties~~ functions; and

[...]

#### **Article 2.205 Decisions of the Special Committee**

(a) Decisions of the Special Committee shall require the vote of the majority of those attending in Person, by telephone or by video conference. In ~~disciplinary matters or~~ summary proceedings, if a member becomes unable to act before a decision is rendered, the decision may be reached by the remaining members, provided they are at least four.

(b) Copies of the minutes of each meeting shall be sent to all members of the Special Committee, to the Chair of the Board of Directors, to the President of the Bourse and to the ~~Vice President, Legal Affairs (Derivatives)~~ Chief Legal Officer.

#### **Article 3.112 Market Makers – Options and Futures**

[...]

(g) Conditions specific to clients of an Approved Participant:

(i) Under the terms of the mandatory Market Making Agreement referred to under paragraph (f) above, a client of an Approved Participant notably agrees to the following with respect to its trading activities and conduct as a Market Maker and must (i) be subject to the jurisdiction of the Bourse, acting as a self-regulatory organization, including its Regulatory Division and any of its Committee, during the term of the Market Making Assignment and thereafter in accordance with Article 4.201 to the same extent and as if it was itself an Approved Participant and (ii) comply with all the Regulations of the Bourse as if it was itself an Approved Participant, with the necessary adaptations, including with Part 4 of the Rules, Chapter C hereof (except with respect to examinations), Articles 3.100, 3.110, 4.101, 6.3, 6.10, 6.11, 6.114, 6.115, 6.118, 6.118(j)(k), 6.119, 6.120, 6.202, 6.203, 6.204, 6.205, 6.206, 6.207, 6.209, 6.210, 6.309 and following regarding position limits, 7.5, 7.6, 7.7 and 12.7 and following regarding position limits, as these may be amended and/or replaced from time to time.

#### **Article 3.300 Process for Resignation**

~~(a) No Approved Participant may resign without the prior approval of the Special Committee.~~

(a) No Approved Participant may resign without the prior approval of the Special Committee, which may be withheld until the Special Committee determines that it is satisfied that the Approved Participant will fully comply with any investigation or proceedings that are ongoing or may arise following the Approved Participant's resignation. In making that determination, the Special Committee shall take into account anything that it deems relevant, which may include an assessment of the likelihood that the Approved Participant will maintain its existence and financial resources following its resignation. To satisfy itself as to the foregoing, the Special Committee may condition its acceptance of the resignation on the provision of such things and undertakings as it sees fit, which may include undertakings to maintain the Approved Participant's existence or financial guarantees from any Person with control over the Approved Participant.

[...]

### Article 3.302 Suspension and Revocation

- (a) An Approved Participant ~~who~~**that** no longer complies with the conditions to be an Approved Participant ~~provided~~**set forth** in the Regulations of the Bourse may be suspended or **have its Bourse Approval revoked**~~expelled~~ by the Special Committee **on the recommendation of the Vice-President, Regulatory Division.**
- (b) **Where a Person, other than an Approved Participant, no longer complies with the conditions of a Bourse Approval held by that Person, that Bourse Approval may be suspended or revoked. Suspension or revocation of Bourse Approval shall automatically preclude that Person from acting in the capacity for which the suspended or revoked Bourse Approval was required. No Approved Participant shall allow any Person to continue to act in the capacity, nor hold the position, for which Bourse Approval has been suspended or revoked.**
- (c) **Any Person who may have their Bourse Approval suspended or revoked under this Article shall be notified by the Bourse and provided the opportunity to submit observations before a suspension or revocation is recommended or confirmed.**

### Article 3.303 Effects of Suspension or Revocation

[...]

- (c) An Approved Participant **or Person who**~~that~~ is suspended shall remain subject to the jurisdiction of the Bourse. **Where the Bourse Approval of An Approved Participant or Person has been revoked they that is expelled** shall remain subject to the jurisdiction of the Bourse, in accordance with paragraph Article 4.201(c).

### ~~Article 3.304 Revocation of Approved Status of Others~~

~~Suspension or revocation of Bourse Approval of any Person other than an Approved Participant shall automatically preclude such Person from acting in the capacity for which such Bourse Approval was required. No Approved Participant shall allow any Person to continue to act in the capacity, nor hold the position, for which Bourse Approval has been suspended or revoked.~~

### Article 3.406 Suspension or Revocation Of Approval

[...]

- (b) In the event of a suspension or revocation of Bourse Approval of an Approved Person pursuant to this Article or pursuant to Article ~~4.205~~**4.400**, unless otherwise ordered by the Vice president of the Regulatory Division, the Approved Participant, the affiliated corporation or subsidiary of the Approved Participant employing this Person must immediately discontinue such Approved Person's employment, and thereafter this Person may not be employed in the same capacity by any Approved Participant, any affiliated corporation or subsidiary of an Approved Participant without permission of the Vice president of the Regulatory Division, which may be revoked at any time.

(d) An Approved Person that is suspended shall remain subject to the jurisdiction of the Bourse. An Approved Person whose Bourse Approval is revoked shall remain subject to the jurisdiction of the Bourse, in accordance with paragraph 4.201(c).

#### **Appendix 6D-2 PROCESSING REQUESTS FOR EXEMPTION FROM POSITION LIMITS**

[...]

(c) The Internal Consultation Committee include the following persons or their designees:

(i) ~~Vice-President, Legal Affairs~~ Chief Legal Officer;

**B. Proposed amendments - Part 4 of the Rules**

*[The following will replace Part 4 of the Rules in its entirety]*

**PART 4 - THE CONDUCT OF THE REGULATORY FUNCTIONS OF THE BOURSE**

**Chapter A Definitions and General Provisions**

**Article 4.1 Definitions**

The terms defined in this Chapter have the meanings, and the corresponding term in French, set out as follows for purposes of Part 4 of the Rules:

**Agent for Service** (Mandataire aux Fins de Signification) means a Person whom a Regulated Person has appointed as agent for the service of process with respect to any Notice of Proceedings or other document that the Bourse may serve on that Regulated Person.

**Disciplinary Complaint** (Plainte Disciplinaire) means a disciplinary complaint filed by the Bourse against one or more Regulated Persons.

**Document** (Document) means, without limitation, files, books, registers, accounts, data, records, whatever their storage medium and whatever the means by which they may be accessed, including all books of accounts, securities, documents, banking and investment account records, trading and supervisory records, client files and records, accounting and financial statements, audio and video recording, minutes, notes and correspondence, whether written, electronically stored or recorded by any other means.

**Immediate Family Members** (Membres de la Famille Immédiate) means, with respect to an individual, that individual's spouse (including common-law spouse), parent, child, sibling, mother or father-in-law, son or daughter-in-law, brother or sister-in-law, and anyone (other than an employee of either the individual or the individual's immediate family member) who shares the individual's home.

**Industry Representative** (Représentant du Secteur) means a Person who is, or has been, a director, Officer or partner of an Approved Participant.

**Member** (Membre) means an individual whom the Secretary has selected to sit on a Disciplinary Committee under Article 4.600 and who has accepted that selection.

**Notice of Proceedings** (Avis de Procédure) means a notice sent by the Bourse to a Respondent under Article 4.202.

**Party** (Partie) means, with respect to a given hearing, the Regulatory Division and each Respondent.

**Qualified Lawyer** (Avocat Qualifié) means a Person who has practiced law in the Province of Quebec for no fewer than 10 years and has relevant experience as the Bourse may determine.

**Regulated Persons** (Personne Réglementée) means all:

- a. Approved Persons;

- b. Approved Participants;
- c. Designated Representatives; and
- d. partners, shareholders, directors and Officers of Approved Participants.

**Regulatory Division** (Division de la Réglementation), for the purposes of Part 4 of the Rules, includes employees of the Regulatory Division or agents acting on behalf of the Regulatory Division.

**Respondent** (Intimé) means a Regulated Person subject to a proceeding under Part 4 of the Rules.

**Secretary** (Secrétaire) means the individual appointed under Article 4.601.

**Securities Regulator** (Autorité en Valeurs Mobilières) means a securities commission, securities regulatory authority or similar organization.

#### **Article 4.2 Jurisdiction**

- (a) The Bourse has jurisdiction over all Regulated Persons in the conduct of its regulatory functions.
- (b) Part 4 of the Rules sets out the powers of the Bourse to carry out its functions pursuant to Article 2.101, and the rights and obligations of Regulated Persons with respect to such regulatory functions.
- (c) A Person who has ceased to be a Regulated Person shall remain subject to the Bourse's jurisdiction as though they were a Regulated Person, but no proceedings shall be commenced under Part 4 of the Rules against a former Regulated Person unless a Notice of Proceedings has been served upon that former Regulated Person no later than five years from the date upon which they ceased to hold that status.

#### **Article 4.3 Meaning of "in writing"**

The phrase "in writing" and similar phrases when used in this Part 4 includes transmission by electronic means.

### **Chapter B - Conduct of Regulatory Activities**

#### **Article 4.100 Request for Information**

- (a) In connection with the exercise by the Bourse of its duties pursuant to Article 2.101, the Regulatory Division may request Documents or information, in writing or otherwise, from any Person, including a client of an Approved Participant.
- (b) The Regulatory Division can request Documents and information as follows:
  - (i) for the Regulatory Division to carry out its duties pursuant to Article 2.101 and ensuring that the supervision of the regulatory functions of the Bourse are carried out efficiently and fairly in accordance with Article 2.100;

- (ii) when the Bourse receives a request in connection with an investigation being carried out by any exchange, self-regulatory organization, securities commission or any similar authority, to the jurisdiction of which the Approved Participant is subject in any manner or with which the Bourse has entered into an agreement pursuant to Article 4.105 and subject to all applicable legislation relating to the protection of personal information; or
- (iii) as may otherwise be authorized or required by law.

**Article 4.101 Obligation to respond and cooperate**

- (a) Regulated Persons shall provide Documents and information as requested under Article 4.100, and shall fully cooperate in the manner determined by the Regulatory Division.
- (b) All Regulated Persons shall:
  - (i) promptly, fully and truthfully cooperate with the Regulatory Division, including by replying to all requests made, submitting and allowing free access to the Regulatory Division to any Document or information;
  - (ii) give free access to and provide any Documents and information, in their possession or under their control, that the Regulatory Division may require, regardless of the nature of the medium and the form in which such information, register, data, file, documents or exhibit can be accessed;
  - (iii) provide, on demand, copies of Documents and information, in the manner and form required by the Regulatory Division, including in recorded form or electronically; and
  - (iv) for purposes of Article 4.100(b)(ii), submit the requested information directly to the requesting exchange, self-regulatory organization, securities commission or any similar authority, in the form and manner prescribed in the request.
- (c) Approved Participants must make reasonable efforts to ensure the cooperation, in connection with the exercise by the Bourse of its authority under Part 4 of the Rules, of any Person over which they have any control or direction or with which they are in a business relationship, including their clients.
- (d) Compliance with the provisions of this Article shall not create any liability towards any other Approved Participant, employee of an Approved Participant, Approved Person, or client.

**Article 4.102 Failure to respond or cooperate**

Without limitation to any other recourse available to the Bourse under the Regulations of the Bourse or applicable law, any Regulated Person who fails to comply with their obligations under this Chapter may be subject to proceedings under this Part 4.

**Article 4.103 Conduct of investigations**

- (a) The Regulatory Division may investigate any possible violation of any of the Regulations of the Bourse.



- (b) In the course of an investigation and in accordance with Article 4.100, the Regulatory Division may require any Person to provide it with any Document or information that the Regulatory Division deems relevant to the investigation. Any such Person shall:
- (i) comply, in accordance with Article 4.101, with a request under paragraph (a) within the time prescribed in the request; and
  - (ii) appear in person for an interview with the Regulatory Division, or by any other means determined by the Regulatory Division, to answer questions from the Regulatory Division. This interview may be transcribed or recorded electronically, on audiotape or videotape, as determined by the Regulatory Division;
- (c) A Person whom the Regulatory Division has informed of the conduct of an investigation shall not conceal or destroy any information, record, data, file, document, exhibit or object thing that contains information that may be useful to the investigation, or request or encourage another person to do so.
- (d) Any Person responding to a request in the course of an investigation pursuant to this Article may be assisted by legal counsel. The Regulatory Division may, at its discretion, allow a representative of the Approved Participant to be present during an interview. The presence of legal counsel or a representative of the Approved Participant at an interview conducted by the Regulatory Division must not cause prejudice to the conduct of the investigation.
- (e) All requests, Documents and information pertaining to an investigation shall be treated as confidential and any Person who receives a request under this Article, who participate or assist in the course of an investigation, shall not disclose any information in relation to the investigation except:
- (i) to legal counsel providing assistance in the course of the investigation;
  - (ii) to a Person responsible for compliance or supervision with the Approved Participant;
  - (iii) to a representative of the Approved Participant for purposes of supervision or to inform a partner, director or officer of the Approved Participant;
  - (iv) as required by law; or
  - (v) where the Regulatory Division provides a written authorization to disclose following a request made.
- (f) Failure to comply with any provision of this Article shall be deemed a violation of Article 4.101.
- (g) When a Person fails to respond to a request in accordance with this Article, the Bourse may apply to the Financial Markets Administrative Tribunal constituted under the *Act respecting the regulation of the financial sector (Quebec)* for an order directing that person to comply with the request.

#### **Article 4.104 Special examinations and investigations**

Without limiting the powers conferred upon the Regulatory Division under this Part, the Special Committee or the Vice-President of the Regulatory Division may in their absolute discretion, at any time, direct a special examination or investigation in respect of any matter coming under the Regulatory Division's jurisdiction, including without limitation the conduct, the business or affairs of any Regulated Person.

#### **Article 4.105 Information sharing**

The Regulatory Division may, on behalf of the Bourse, enter into agreements with any exchange, central clearing counterparty, self-regulatory organization, securities regulator, financial intelligence or law enforcement agency or authority, in Québec or elsewhere, to collect and share information. Subject to the legislation relating to the protection of personal information, the Regulatory Division may at any time make available to such Persons any report, Document or information described in such agreements or upon request, pursuant to Article 4.100 (b).

#### **Article 4.106 Costs and expenses**

The following shall constitute a debt owed to the Bourse by the Regulated Person, who must pay the amount thereof upon demand:

- (a) all costs and expenses paid or incurred by the Regulatory Division, including professional fees, in connection with any investigation carried out or any proceedings initiated under Part 4 of the Rules; and
- (b) any amount charged by the Regulatory Division in accordance with the fee schedule of the Bourse in effect from time to time.

### **Chapter C — Disciplinary Proceedings**

#### **Article 4.200 Disciplinary Proceedings**

- (a) The Bourse can initiate proceedings against a Regulated Person under Part 4 of the Rules for violation of any of the Regulations of the Bourse.
- (b) The Bourse shall commence and administer a disciplinary proceeding in accordance with the provisions under this Chapter.
- (c) This provision is in addition to the powers that the Bourse may hold and choose to exercise pursuant to any powers that may be delegated by a securities commission.

#### **Sub-part 1: Proceedings**

#### **Article 4.201 Service of documents**

- (a) Any document required to be served on the Bourse must be addressed to the attention of the Chief Legal Officer, and delivered to the email address designated by the Bourse.
- (b) Any document required to be served on any Person other than the Bourse must be served by:
  - (i) delivering it directly to the Person or their legal counsel;

- (ii) in the case of an individual, delivery to an adult person at the individual's residence, place of employment or place of business or the place of business of the party's legal counsel or agent;
  - (iii) in the case of a Person that is not an individual, delivery to a director or officer, or other person holding or exercising, or appearing to hold or exercise, managerial authority at the Person's place of business; or
  - (iv) in all cases, either :
    - (i) by registered mail addressed to the Person to their last known address; or
    - (ii) by electronic means to the Person's last known email address;
  - (v) If none of the foregoing methods are possible, the Bourse may effect service by any other means that is likely to bring the document to the attention of the Person.
- (c) An affidavit signed by an employee or representative of the Bourse attesting that the foregoing service requirements have been complied with is sufficient proof of service.
- (d) A Foreign Approved Participant shall ensure that the appointment of an agent for the service of process under Article 3.3 remains valid for so long as the Foreign Approved Participant maintains that status and for a period of no fewer than five years thereafter. A Foreign Approved Participant shall immediately notify the Bourse of any change in their Agent for Service or the Agent for Service's contact information.
- (e) Any document required to be served on a Foreign Approved Participant may be served on the Foreign Approved Participant or on its Agent for Service.
- (f) Service made at the address of a Regulated Person or an Agent for Service (as the case may be) most recently provided for that purpose to the Chief Legal Officer shall be deemed to be valid.

#### **Article 4.202 Notice of Proceedings**

- (a) The Bourse shall serve a Notice of Proceedings to any Regulated Person against whom it has initiated disciplinary proceedings in accordance with Article 4.200. The Notice of Proceedings shall include the following, as applicable:
- (i) a reference (which may be in the form of an excerpt) to any Rule that the Bourse alleges that the recipient of the Notice of Proceedings has violated, along with an indication of the URL address (Web address) where the full text of the Rules may be consulted;
  - (ii) an indication that the date, time, and location of the hearing will follow in a notice of hearing;
  - (iii) a statement to the effect that a Party at a hearing is entitled to:
    - a. represent themselves or be represented by legal counsel, as per Article 4.103(d);
    - b. a pre-hearing conference, as per Article 4.303; and

- c. seek to negotiate a settlement with the Bourse, as per Article 4.210 and following;
  - (iv) a warning that failure to file a reply by the prescribed deadline may result in foreclosure from producing any evidence or witness at the hearing; and
  - (v) an indication that the evidence that will be presented at the hearing will be provided to the Respondent in accordance with the Regulations of the Bourse;
  - (vi) any other information or content that the Regulatory Division deems appropriate.
- (b) Except when a Notice of Proceedings is being sent in connection with a summary proceeding under Chapter I, a Disciplinary Complaint shall be attached to the Notice of Proceedings and include:
  - (i) a summary statement of the facts alleged and intended to be relied upon by the Regulatory Division and the conclusions drawn by the Regulatory Division based on the alleged facts; and
  - (ii) the potential sanction(s) that may be imposed as a result of the allegations.
- (c) This provision in no way affects the Bourse's ability to exercise any powers that a competent Securities Regulator may have delegated to it.

#### **Article 4.203 Reply**

- (a) A Regulated Person having received a Notice of Proceedings shall reply thereto within 20 Business Days of such receipt. The reply, which shall be signed by the Regulated Person or an individual authorized to sign on the Regulated Person's behalf, shall contain the following:
  - (i) individually, for each fact alleged in the Notice of Proceedings, an indication as to whether that fact is admitted or denied, and if denied, a summary of grounds for the denial;
  - (ii) a statement of the Person's position with regard to the conclusions drawn by the Bourse in the Disciplinary Complaint and a statement of any additional facts relied on by the Person;
  - (iii) a preliminary list of the witnesses that the Person intends to call at the hearing.
- (b) A Disciplinary Committee may accept as proven each fact alleged that is neither specifically admitted nor denied, or which are denied without the grounds being specified, under paragraph (a).
- (c) Failure to file a reply by the prescribed deadline shall result in:
  - (i) the Regulated Person being foreclosed from producing any witnesses or evidence at the hearing; and
  - (ii) the Regulatory Division holding a hearing without further notice.
- (d) Notwithstanding the foregoing, the Regulatory Division may halt the calculation of the deadline to reply set forth at paragraph (a) above if it determines, in its sole discretion:

- (i) that a Regulated Person having received a Notice of Proceedings is engaged in good-faith negotiations with the Regulatory Division in view of concluding a settlement agreement; or
- (ii) that, for reasons of procedural fairness, there exist sufficient grounds to do so with respect to any Regulated Person that has received a Notice of Proceedings.

**Article 4.204 Disclosure of evidence**

- (a) As soon as is reasonably practicable, and no later than 20 Business Days before the commencement of the hearing on the merits, the Regulatory Division must disclose to, and make available for inspection by a Respondent any evidence in the Regulatory Division's possession or control that are relevant to the proceedings.
- (b) No later than 20 Business Days before the commencement of the hearing, each Party must, unless otherwise agreed to by the Parties or decided by the chair of the Disciplinary Committee, provide each other Party with:
  - (i) any evidence that the Party intends to produce at the hearing on the merits; and
  - (ii) a final list of all witnesses that they intend to call at the hearing.
- (c) The final list of witnesses, provided under subparagraph (b) (ii), shall include a summary of the evidence that the witness is expected to give at the hearing and in the case of an expert witness, a signed copy of the expert's report.
- (d) At a hearing, a Party may not produce any evidence or call any witnesses that were not disclosed in accordance with paragraph (b) above except with the authorization of the Disciplinary Committee.
- (e) Notwithstanding the foregoing, a written report prepared by the Regulatory Division will only be disclosed in accordance with this Article if the Regulatory Division proposes to table that report at the hearing.

**Sub-part 2: Settlement Agreements**

**Article 4.210 General Principles**

- (a) The Regulatory Division may, at any time after service of a Notice of Proceedings, negotiate a settlement agreement with any or all of the Respondents. All discussions in relation with an offer of settlement are without prejudice. No part of such a discussion must be used as evidence or referred to in any proceedings whatsoever.
- (b) A settlement agreement must be in writing, in the form prescribed by the Regulatory Division, signed by the Parties, and contain the following:
  - (i) the provisions of the Regulations of the Bourse that the Respondent acknowledges having breached;
  - (ii) a statement of the facts;

- (iii) the disposition of the matter, including any sanction to be imposed and the amount of costs and expenses of the Bourse to be paid by the Respondent;
  - (iv) the Respondent's consent to the settlement;
  - (v) a provision that the settlement agreement and its terms are confidential, unless and until it has been accepted by the Disciplinary Committee;
  - (vi) a provision that the Respondent will not make any public statement that is inconsistent with the settlement agreement;
  - (vii) a provision that the Regulatory Division will not initiate any further action against the Respondent in relation to the matter addressed in the settlement agreement;
  - (viii) a statement that the settlement must be accepted by the Disciplinary Committee or the Vice-President, Regulatory Division, as the case may be, failing which it shall not bind the Parties involved and the Bourse shall proceed with the hearing of the matter;
  - (ix) a waiver by the Respondent of all rights under the Regulations of the Bourse to a hearing or to an appeal should the settlement agreement be accepted in accordance with Article 4.211; and
  - (x) any other provisions not inconsistent with the Regulations of the Bourse that the Parties agree to include in the settlement agreement.
- (c) A settlement agreement may impose any obligations on a Respondent to which the Respondent agrees, whether or not they could be imposed by a Disciplinary Committee.

**Article 4.211 Submission of Settlement Agreements**

- (a) Each settlement agreement shall be submitted for acceptance to the Disciplinary Committee, which shall proceed with a hearing to accept or reject a settlement agreement.
- (b) Notwithstanding the foregoing, a settlement agreement may be accepted by the Vice-President, Regulatory Division, without a hearing, if the sanction to be imposed is a reprimand, the sanction provided in subparagraph 4.400 (a) (viii), a fine not exceeding \$5,000 in the aggregate, or a combination of the three.
- (c) If a settlement agreement is accepted under this Article 4.211:
  - (i) the matter becomes final and the settlement constitutes a decision;
  - (ii) there can be no appeal of the matter;
  - (iii) the Secretary shall distribute a copy of the decision to the Respondents, file it in the records of the Bourse and make it available to the public on the website of the Bourse;
  - (iv) the Disciplinary Committee or the Vice-President, Regulatory Division (as the case may be) must give written reasons supporting the decision; and

- (v) the decision accepting the settlement agreement shall refer to the existence of any previous, rejected settlement agreement entered into between the Regulatory Division and that Respondent related to the same proceedings, without describing the reasons for which it was rejected.
- (d) If a settlement agreement is rejected, the Bourse must proceed with the hearing of the matter unless the Parties agree to negotiate a new settlement agreement. Any subsequent settlement agreement shall be submitted to a Disciplinary Committee that includes no Member who was a Member of the Disciplinary Committee that rejected the previous settlement agreement.

## **Chapter D — Hearing**

### **Article 4.300 General Principles**

- (a) Part 4 shall be interpreted and applied to secure a fair hearing and just determination of a proceeding on its merits as well as the most expeditious and least expensive conduct of the proceeding.
- (b) No proceeding, document, decision or hearing in a proceeding is invalid by reason of a defect or other irregularity in form.
- (c) Subject to a requirement under Part 4 of the Rules, a Disciplinary Committee has authority to control the process of a proceeding before it and may exercise any of its powers on its own initiative or at the request of a Party.
- (d) At the request of a Party, a Disciplinary Committee may provide for any procedural or evidentiary matter that is not provided for under Part 4 of the Rules by analogy thereto or by reference to the rules of procedure of another self-regulatory organization or professional association, or to the provisions of the *Code of Civil Procedure* (Quebec) or the *Civil Code of Québec*.
- (e) The Secretary shall be responsible for the administration of a hearing in accordance with the provisions in this Chapter and Article 4.601.

### **Article 4.301 Notice of Hearing**

- (a) When the Regulatory Division determines that a hearing is required, the Bourse shall, at least 30 Business Days before the hearing, serve a notice of hearing on the Persons to whom the Notice of Proceedings was served.
- (b) The notice of hearing shall include:
  - (i) the date, time and place of the hearing; and
  - (ii) a statement requiring the Person to attend the hearing, failing which the Disciplinary Committee may proceed with the hearing of the matter in that Person's absence.

### **Article 4.302 Public hearing**

- (a) All hearings are held in public, except for those pertaining to settlement agreements and pre-hearing conferences.

- (b) Notwithstanding the foregoing, the Disciplinary Committee hearing a matter may, on its own initiative or upon request by a Party, order that a hearing be held *in camera*, in part or in whole, or prohibit the publication or disclosure of specific information or documents, in the interest of good morals or public order, particularly to preserve confidential business information or privileged communications or to preserve an individual's privacy or reputation.
- (c) The Secretary shall publish an announcement of a hearing on the website of the Bourse.

**Article 4.303 Pre-hearing conference**

- (a) The chair of the Disciplinary Committee may, either on his own initiative or at the request of a Party, order a pre-hearing conference. The purpose of such a conference shall be to seek agreement between the Parties on any matter related to the proceedings such that their advancement or outcome be more just, harmonious or expeditious.
- (b) The pre-hearing conference shall be chaired by the chair of the Disciplinary Committee formed to hear the matter, who may make any order related to the proceedings or the hearing to which the Parties both consent and that is not inconsistent with these Rules. The chair shall circulate the text of any such order for comment to both Parties before signing it, upon which it shall have binding effect and be filed with the Disciplinary Committee.
- (c) The Secretary shall draft minutes of the pre-hearing conference, which the chair of the Disciplinary Committee shall sign.

**Article 4.304 Hearing procedure**

- (a) A hearing may be held either in person or, if the chair of the Disciplinary Committee deems it more appropriate in the circumstances, by videoconference. In determining whether it is more appropriate that a hearing be held by videoconference, the chair of the Disciplinary Committee shall consider any representations made by any Party.
- (b) Each Respondent is entitled to be represented by legal counsel eligible to undertake such representation under the *Act respecting the Barreau du Québec*.
- (c) The Regulatory Division may call and question a Regulated Person who is alleged to have breached a provision of the Regulations of the Bourse, as well as any other witnesses it or another Party considers useful to have them give an account of the facts of which they have personal knowledge or produce any document relating to the matter, and that Person shall be obliged to answer all questions.
- (d) Prior to testifying before the Disciplinary Committee, an individual must make a solemn declaration to tell the truth, the whole truth and nothing but the truth.
- (e) At each hearing, the sequence of events shall be as follows:
  - (i) the Regulatory Division shall make an opening address;
  - (ii) each Respondent may make an opening address;
  - (iii) the Regulatory Division shall present its evidence and call its witnesses;



- (iv) each Respondent may cross-examine any witness called by the Regulatory Division;
  - (v) each Respondent may present its evidence and call its witnesses;
  - (vi) the Regulatory Division may cross-examine any witness called by a Respondent;
  - (vii) the Regulatory Division shall make a closing address; and
  - (viii) each Respondent may make a closing address.
- (f) The Secretary shall draft minutes of the hearing, which the chair of the Disciplinary Committee shall sign.
- (g) The Disciplinary Committee may admit as evidence any documentary proof without a witness if the Disciplinary Committee is of the opinion that the rights of cross-examination would not be affected.

#### **Article 4.305 Failure to Appear**

If a Respondent fails to appear at a hearing as specified in the notice of hearing, then with respect to that Respondent the Disciplinary Committee shall proceed with the hearing and disposition of the matter on the date and at the time and place set out in the Notice of Proceedings without further notice and in the absence of that Respondent, even if that Respondent has served a reply.

### **Chapter E — Decision**

#### **Article 4.400 Sanctions**

- (a) Upon finding a Respondent guilty of one or more offences, the Disciplinary Committee may, with respect to each offence, impose any one or more of the following sanctions or Rulings:
- (i) a reprimand;
  - (ii) disgorgement of any amount obtained, including any loss avoided, directly or indirectly, as a result of the offence;
  - (iii) a fine not exceeding the greatest of (a) \$5,000,000, (b) four times the profit realized, or (c) four times the amounts invested in the transaction or series of transactions;
  - (iv) suspension or revocation of the Respondent's rights or privileges as an Approved Participant or Approved Person for such period and upon such conditions, including conditions of reinstatement, as the Disciplinary Committee may determine;
  - (v) a prohibition on obtaining or surrendering any approval required under these Rules for the time and upon such conditions determined by the Disciplinary Committee, including the conditions for the release of such a prohibition. The Disciplinary Committee may also impose such a prohibition on any affiliated corporations or subsidiaries of the Respondent;
  - (vi) revocation of the Respondent's Bourse Approval as an Approved Participant;
  - (vii) making restitution to any Person who has suffered a loss as a result of the Respondent's acts or omissions;

- (viii) appointment of a monitor to exercise powers granted by the Disciplinary Committee, which may include monitoring an Approved Participant's business and affairs;
  - (ix) an obligation, for an Approved Person, to take one or more courses or to receive any other training or education deemed appropriate; or
  - (x) reimbursement in whole or in part of the costs and expenses (including professional fees) paid or incurred by the Bourse in connection with the Disciplinary Complaint and the matters out of which it arose including all investigations, hearings, appeals and other proceedings before or after the Disciplinary Complaint.
- (b) These sanctions and Rulings shall be in addition to such other action as the Bourse may take pursuant to any other provision of the Regulations of the Bourse.

#### **Article 4.401 - Deliberations**

The deliberations of the Disciplinary Committee must be made in the absence of any other Person.

#### **Article 4.402 Decision of the Disciplinary Committee**

- (a) All decisions of the Disciplinary Committee must be made by majority vote of the Members and must be set forth in writing.
- (b) The Disciplinary Committee must provide written reasons supporting its decision.
- (c) The Secretary shall:
  - (i) give notice of the decision to each Respondent and to any other Persons designated by the Disciplinary Committee hearing the matter;
  - (ii) file the decision in the records of the Bourse; and
  - (iii) make the decision available on the website of the Bourse (except in the case of a decision rejecting a settlement agreement).
- (d) A decision of the Disciplinary Committee takes effect immediately upon the issuance of the written decision, unless otherwise specified in that decision. Any fine, cost or other financial sanction is payable within 30 days of the date of service of the written decision imposing it.

#### **Chapter F - Review Under the Derivatives Act**

##### **Article 4.500 - Review by the Financial Markets Administrative Tribunal**

A Party may submit a decision of a Disciplinary Committee for review in accordance with the *Derivatives Act* (Quebec).

## **Chapter G - Disciplinary Committee**

### **Article 4.600 Composition of Disciplinary Committee**

- (a) To be eligible to sit on a Disciplinary Committee, an individual must have been approved by the Special Committee. The Secretary shall maintain a list of such individuals. An individual's name shall be deleted from that list upon the instructions of either the individual or the Special Committee.
- (b) A Disciplinary Committee shall be composed of three Members, one of whom shall be a Qualified Lawyer who shall chair the Disciplinary Committee, and two of whom shall be Industry Representatives. None of the Members may be ineligible under Article 4.602.
- (c) The Secretary shall be responsible for selecting the Members and shall inform the individuals selected in writing, who shall accept or refuse that selection within one Business Day. Upon receipt of a refusal or in the absence of a response within one Business Day, the Secretary shall promptly select another individual. Promptly after receiving acceptance from each individual selected, the Secretary shall notify the Regulatory Division and each Respondent of the composition of the Disciplinary Committee.
- (d) If it is impossible to form a Disciplinary Committee that complies with the composition requirements set forth in the preceding paragraph, the Secretary may disregard those requirements to the extent necessary to constitute the Disciplinary Committee.
- (e) The Disciplinary Committee shall remain constituted until such time as the proceedings for which it was constituted are definitely resolved and no longer susceptible to appeal. The deletion of the name of a Member from the list maintained under paragraph (a) above has no effect on their status as a Member of any existing Disciplinary Committee.
- (f) Upon accepting their appointment, each Member shall sign an acknowledgement and undertaking to be bound by the code of ethics for Disciplinary Committee Members then in effect.

### **Article 4.601 Secretary**

- (a) The Special Committee shall appoint the Secretary and may appoint any number of assistant secretaries. An assistant secretary may perform any function of the Secretary if the latter is unable or unwilling to do so. The Secretary and each assistant secretary shall remain in office until their resignation, removal or death.
- (b) The Secretary:
  - (i) selects Members for each Disciplinary Committee;
  - (ii) schedules and arranges each hearing and pre-hearing conference;
  - (iii) transmits documents to Members and the Parties;
  - (iv) maintains a record and minutes of each hearing and pre-hearing conference;
  - (v) transmits written decisions and reasons to the Parties;

- (vi) receives and processes applications for appeal to the Special Committee under Article 4.900; and
- (vii) performs any other duties assigned to the Secretary in these Rules or otherwise determined by a Disciplinary Committee or the Special Committee.

**Article 4.602 Conflict of interest**

- (a) An individual is ineligible to act as a Member if the individual:
  - (i) is, or has been, in the three years preceding the date of the relevant Notice of Proceedings, a member of the Special Committee;
  - (ii) is or has been, in the three years preceding the date of the relevant Notice of Proceedings, a director, officer or partner of either the Bourse or of the Respondent (if the Respondent is not an individual), or any of their affiliated corporations or entities;
  - (iii) has an Immediate Family Member who is or has been, in the three years preceding the date of the relevant Notice of Proceedings, a director, officer or partner of either the Bourse or any of its affiliated corporations or subsidiaries, or of a Respondent (if the Respondent is not an individual) or any of its affiliated corporations or subsidiaries;
  - (iv) receives a consulting, advisory or other compensatory fee from the Bourse or any Respondent, other than as remuneration as a member of the board of directors or any board committee, or as a part-time chair or vice-chair of the board or any board committee, or the receipt of fixed amounts of deferred compensation for prior service with the Bourse or the Respondent that is not contingent on continued service;
  - (v) is, with respect to any Respondent or any employee of the Regulatory Division, in one of the situations described at Articles 202 or 203 of the *Code of Civil Procedure* (with the necessary modifications); or
  - (vi) has or had another relationship to a Party, or is in any other situation, that may create a reasonable apprehension of bias.
- (b) An individual who is selected for a Disciplinary Committee despite knowing that they are in one of the aforementioned situations shall decline the selection, advising the Secretary of the reasons therefor. A Member who enters, or learns that he is in, one of the aforementioned situations after accepting to sit on a Disciplinary Committee shall immediately notify the Secretary, who shall in turn notify the Special Committee. The Secretary shall also immediately notify the Special Committee if he is advised by any other Person that a Member is in one of the aforementioned situations.
- (c) The Special Committee shall promptly consider the matter and determine whether to remove the Member (in which case it shall proceed as described in accordance with Article 4.603).

**Article 4.603 Inability to Act**

- (a) Where, prior to a hearing being commenced, one or more Members are unable to act, the Secretary shall identify an equal number of new Members in accordance with the procedure and composition requirements set forth at Article 4.600.

- (b) Where, after a hearing has commenced, one of the Members is unable to act, the two remaining Members may validly proceed with the hearing and render a decision on the conviction and the sanction, provided that all of the Parties consent. Failing such consent, the Disciplinary Committee shall be dissolved and a new hearing shall be held before a new Disciplinary Committee to be constituted by the Secretary in accordance with the procedure and composition requirements set forth at Article 4.600.
- (c) Where, after a hearing has commenced, more than one Member is unable to act, the Disciplinary Committee shall be dissolved and a new hearing shall be held before a new Disciplinary Committee to be constituted by the Secretary in accordance with the procedure and composition requirements set forth at Article 4.600.

## **Chapter H - Minor violations**

### **Article 4.700 Fine for Minor Violation**

- (a) The Vice-President of the Regulatory Division may, in accordance with the procedure provided in Articles 4.702 and following, for any violation appearing in the List of Fines for Minor Violations published on the website of the Bourse, impose a predetermined fine that cannot exceed \$5,000 per violation, against an Approved Participant or an Approved Person. The violations included in the List of Fines for Minor Violations are:
  - (i) Incomplete or inaccurate report pertaining to the accumulation of positions for Derivative Instruments (Article 6.500 (a));
  - (ii) Exceeding position limits (Article 6.310);
  - (iii) Non-compliance with the time of market exposure (Article 6.205);
  - (iv) Failure to send a notice of non-compliance or a notice of exceeding position limits, within the prescribed time (Articles 3.105 and 6.500 (j));
  - (v) Prohibited use of the "hidden volume" functionality (Article 6.204);
  - (vi) Granting unapproved access to the Electronic Trading System (Articles 3.4 (a) and 3.400).
- (b) The Vice-President of the Regulatory Division may impose a fine for any violation included in the List of Fines for Minor Violations against a former Approved Participant or former Approved Person, on the condition that a notice of minor violation is served within the delay provided in article 4.2 (c).
- (c) Notwithstanding the possibility of imposing a fine for a minor violation included in the List of Fines for Minor Violations in accordance with paragraphs a) and b), the Vice-President of the Regulatory Division, may, at his discretion, choose to file a complaint in accordance with the procedure provided under Chapter C, Part 4 of the Rules.

### **Article 4.701 Notice of Minor Violation**

- (a) Before imposing a fine, the Vice-President of the Regulatory Division shall serve a notice of a minor violation to the Approved Participant or the Approved Person.
- (b) The notice of minor violation shall:

- (i) Be in writing;
- (ii) Be signed by the Vice-President of the Regulatory Division;
- (iii) Contain the following items for each violation:
  - (1) the alleged violation;
  - (2) the regulatory provision or provisions related to the alleged violation;
  - (3) the date of the violation;
  - (4) a summary statement of the facts on which the violation is based;
  - (5) the amount of the fine for the violation;
  - (6) the delay of time provided by Article 4.702 during which the Approved Participant or the Approved Person may submit observations or serve a request for the matter to be heard by a Disciplinary Committee;
  - (7) a notice that failure to submit observations or a response results in foreclosure from contesting any fine to be imposed.

#### **Article 4.702 Observations or Contestation**

- (a) Once a notice of minor violation has been served, the Approved Participant or the Approved Person may, within 20 Business Days:
  - (i) Submit observations in writing to the Vice-President of the Regulatory Division. These observations must admit or deny the facts; or
  - (ii) Contest the notice of minor violation by notifying the Vice-President of the Regulatory Division of their desire for the matter to be heard by a Disciplinary Committee in accordance with Chapter G, which notice must be accompanied by a reply as described in Article 4.203. In this instance, the notice of minor violation is deemed a complaint under Article 4.200.
- (b) A defense of due diligence is neither allowed nor receivable in connection with the process to impose a fine for a minor violation.
- (c) If observations are not submitted and the notice of minor violation is not contested within the prescribed time, the Approved Participant or the Approved Person will be deemed to have agreed to pay the fine and to have relinquished all rights under the Regulations of the Bourse concerning the hearing and contesting the violation.

#### **Article 4.703 Notice of Fine for Minor Violation**

- (a) Upon expiry of the deadline provided for in Article 4.702, and after having considered the observations of the Approved Participant or the Approved Person, if any, the Vice-President of the Regulatory Division may impose the fine prescribed in List of Fines for Minor Violations on this Approved Participant or this Approved Person by serving a notice of a fine for violation or decide not to impose a fine for minor violation. In this case, a notice advising of the closing of the matter will be sent to the Approved Participant or the Approved Person.
- (b) The fine for minor violation imposed against the Approved Participant or the Approved Person is payable within the 10 Business Days following service of the notice of fine for minor violation.

#### **Article 4.704 Publication of Information Regarding Fines Imposed for Minor Violations**

The Regulatory Division will make information publicly available on the website of the Bourse, on an anonymous basis, regarding fines imposed for minor violations, including the nature of the minor violations, the fines imposed during the period as well as any other information that the Regulatory Division considers relevant.

### **Chapter I - Summary Proceedings**

#### **Article 4.800 Grounds for Summary Proceedings**

- (a) Where the Vice-President of the Regulatory Division determine that the methods or practices adopted by an Approved Participant or Approved Person are detrimental to the reputation of the Bourse or to the interests or welfare of the Bourse or the public, the Bourse shall serve a notice of hearing on the Respondent in accordance with Article 4.802. Such methods or practices may include, without limitation:
  - (i) the Approved Participant or Approved Person is convicted of a crime or of an infraction in connection with trading in Securities or Derivative Instruments or of an offence under any statute or regulation applicable to Securities or Derivative Instruments;
  - (ii) the Approved Participant or Approved Person refuses or neglects to provide Documents and information or to appear in the manner prescribed by the Regulations of the Bourse;
  - (iii) the financial or general condition of the Approved Participant or Approved Person is such that it is or may become detrimental to the reputation of the Bourse or to the interests or welfare of the Bourse or the public; or
  - (iv) the system of book or record keeping used by the Approved Participant is unsatisfactory.
- (b) The Vice-President of the Regulatory Division may, pending the hearing, recommend to the Special Committee that it takes action by way of summary proceedings in accordance with this Chapter.
- (c) The Vice-President of the Regulatory Division may also recommend to the Special Committee that it takes action by way of summary proceedings in accordance with this Chapter if:
  - (i) the Approved Participant or Approved Person fails to pay on demand any assessment, fee or charge which has become due to the Bourse pursuant to the Regulations of the Bourse or its list of fees, or any other indebtedness to the Bourse, such as a fine, or the costs of a hearing, investigation or surveillance operation; or

- (ii) the Approved Participant or the Approved Person fails to meet or admits or discloses their inability to meet their liabilities or obligations to the Bourse, another Approved Participant or to the public.

**Article 4.801 Summary Actions**

- (a) Notwithstanding anything to the contrary contained in any other provision of the Regulations of the Bourse, in any of the circumstances described at subparagraph 4.800 (a), the Special Committee may impose without any notice, hearing or formality whatsoever, one or more of the following orders:
  - (i) the suspension of an Approved Participant or Approved Person, which may be limited to a suspension of specific rights and privileges, for a period and upon any terms and conditions determined by the Special Committee;
  - (ii) the amendment of the terms and conditions of a previously granted Bourse Approval;
  - (iii) the imposition of any terms and conditions that must be satisfied by a Person to continue as an Approved Participant or Approved Person, which may include, without limitation:
    - (1) restricting one or more sectors of the Approved Participant's operations or;
    - (2) requiring the presence of employees or representatives of the Bourse at the Approved Participant's premises for the surveillance of its trading activities on the Listed Products; or
    - (3) requiring the mailing of notices to the Approved Participant's clients, the contents of which are to be specified by the Regulatory Division.
- (b) All orders imposed by the Special Committee under subparagraph (a) are interim orders that take effect immediately upon delivery of the notification to the Approved Participant or Approved Person and remain in force until a hearing is held, at which time any such order may be confirmed, set aside or modified.
- (c) In any of the circumstances described at paragraph 4.800 (c), the Special Committee may, without any notice, hearing or formality whatsoever:
  - (i) declare an Approved Participant or Approved Person a Defaulter, upon which the Approved Participant or the Approved Person shall automatically be suspended; and
  - (ii) within 10 Business Days after being declared a Defaulter, or such other period as the Special Committee may decide, suspend or revoke the Bourse Approval of an Approved Participant or Approved Person if the cause of such default is not remedied to the satisfaction of the Special Committee.
- (d) No Approved Participant shall allow a Person declared as a Defaulter to conduct any trading activities on the Bourse without the written consent of the Special Committee.



#### **Article 4.802 Summary Proceedings Hearing**

- (a) Unless the Parties agree to an extension of the period or to a waiver of the hearing, the Bourse shall, at least 10 Business Days before the hearing, serve a notice of hearing on the Respondent.
- (b) The hearing procedures applicable to a disciplinary proceeding shall, with the necessary modifications, apply to any hearing under this Part.
- (c) Upon consideration of the grounds for proceedings invoked under Article 4.800, the Disciplinary Committee may render a decision to:
  - (i) set aside or modify an interim order imposed by the Special Committee under Article 4.801 (b);
  - (ii) suspend an Approved Participant or Approved Person, which may be limited to a suspension of specific rights and privileges, for a period and upon any terms and conditions determined by the Disciplinary Committee;
  - (iii) revoke a Bourse Approval;
  - (iv) amend of the terms and conditions of a previously granted Bourse Approval; or
  - (v) impose any terms and conditions that must be satisfied by a Person to continue as an Approved Participant or Approved Person, including, without limitation:
    - (1) restricting one or more sectors of the Approved Participant's operations; or
    - (2) requiring the presence of employees or representatives of the Bourse at the Approved Participant's premises for the surveillance of its trading activities on the Listed Products; or
    - (3) requiring the mailing of notices to the Approved Participant's clients, the contents of which are to be specified by the Regulatory Division.

#### **Chapter J - Appeal before the Special Committee**

##### **Article 4.900 Jurisdiction of the Special Committee**

An appeal from a decision of the Regulatory Division (other than of a Disciplinary Committee) may be brought before the Special Committee.

##### **Article 4.901 Time to Appeal**

The appeal must be brought within 10 Business Days of the service of the decision.

##### **Article 4.902 Application for Appeal**

Any appeal of a decision referred to at Article 4.900 must be brought by sending written notice to the Chief Legal Officer. The notice must contain a brief statement of the grounds for appeal.

#### **Article 4.903 Security for Costs**

When the appeal appears abusive, dilatory, frivolous, or for some other special reason, the Special Committee may, upon request, order the appellant to furnish, within a prescribed period, Security to guarantee, in whole or in part, the payment of the costs of appeal, the amount of the fine and the costs and expenses listed in Article 4.106, if the appeal is dismissed. If the appellant does not furnish Security within the prescribed period, the Special Committee may dismiss the appeal.

#### **Article 4.904 Stay of Decision**

Unless otherwise ordered by the Special Committee, an appeal suspends the execution of the decision of the Regulatory Division provided however, suspension of the rights of an Approved Participant or Approved Person, prohibition to obtain Bourse Approval, expulsion of an Approved Participant and revocation of Bourse Approval is executory, notwithstanding appeal, unless otherwise ordered by the Special Committee.

#### **Article 4.905 Basis of the Appeal**

The appeal is argued on the basis of the file, provided however that, in exceptional circumstances and if justice so requires, the Special Committee may authorize the presentation of additional evidence.

#### **Article 4.906 Applicable Procedures**

Subject to the provisions in this Chapter, the procedures applicable to a hearing before a Disciplinary Committee shall apply to any hearing before the Special Committee, with the necessary modifications.

#### **Article 4.907 Disqualification**

A member of the Special Committee who has any grounds for recusal pursuant to Article 4.602 (other than those set forth in subparagraph 4.602 (a) (i)) is not eligible to sit in appeal from a decision.

#### **Article 4.908 Review Under the Derivatives Act**

A Party may submit a decision of the Special Committee for review in accordance with the *Derivatives Act* (Quebec), except for an order imposed under Article 4.801.

## **ANNEX 1 - PROPOSED AMENDMENTS**

### **A. Proposed amendments to related Articles and miscellaneous**

#### **Article 1.101 Definitions**

[...]

**Defaulter** (Défaillant) means an Approved Participant or an Approved Person declared as a defaulter pursuant to Article 4.801 of the Rules.

[...]

#### **[NEW] Article 1.104 Delegation**

(a) Unless otherwise specified and subject to compliance with any applicable law (including any order or requirement of a Securities Regulator), the following individuals may delegate the powers and obligations granted to them under these Rules to an employee of the Bourse:

- (i) The President of the Bourse;
- (ii) The Vice-President, Regulatory Division; and
- (iii) The Chief Legal Officer.

(b) For greater clarity, no delegated powers or obligations may be further sub-delegated.

#### **[NEW] Article 1.105 Governing Law and Forum**

These Rules are governed exclusively by, and are to be construed and interpreted exclusively in accordance with, the laws applicable in the Province of Quebec. Any Person subject to these Rules irrevocably attorns to the exclusive jurisdiction of the courts of the Province of Quebec, in the judicial district of Montreal.

#### **[NEW] Article 1.106 Headings**

The headings and titles used in these Rules are for reference purposes only and have no legal effect.

#### **Article 2.100 Creation of the Regulatory Division**

The Regulatory Division is created by the Board of Directors with the aim of ensuring that the regulatory functions of the Bourse are carried out efficiently and fairly. To this end, the supervision of the regulatory functions and operations of the Bourse are entrusted to the Regulatory Division, which shall operate as a distinct business unit separate from the other activities of the Bourse. The Regulatory Division shall be not-for-profit and financially self-sufficient.

#### **Article 2.101 Functions of the Regulatory Division**

The Regulatory Division carries on its functions in the following fields of activity:

[...]

#### **Article 2.102 Supervision**

(a) The Regulatory Division shall be subject to the supervisory powers of the Special Committee, which shall:

(i) ensure that the Regulatory Division has the resources it needs to carry out its functions;

(ii) ensure that the Regulatory Division carries out its functions fairly, objectively and without conflicts of interest; and

[...]

#### **Article 2.200 Special Committee of the Regulatory Division**

The Special Committee shall be appointed by the Board of Directors to perform those functions and to exercise those powers provided in this Chapter. Its rules of procedure shall be the rules of procedure of the Board of Directors, subject to such changes as may be necessary to adapt them to the circumstances.

#### **Article 2.204 Powers of the Special Committee**

[...]

(h) order that a special examination or investigation be made pursuant to Article 4.104 of the Rules;

(i) order a suspension for failure to provide information pursuant to Article 4.102 of the Rules;

(j) proceed summarily in the situations mentioned in Part 4, Chapter I of the Rules, as the circumstances warrant;

(k) hear appeals from decisions rendered by the Regulatory Division;

(l) report to the Board of Directors regarding the execution by the Regulatory Division of its regulatory functions; and

[...]

#### **Article 2.205 Decisions of the Special Committee**

(a) Decisions of the Special Committee shall require the vote of the majority of those attending in Person, by telephone or by video conference. In summary proceedings, if a member becomes unable to act before a decision is rendered, the decision may be reached by the remaining members, provided they are at least four.

(b) Copies of the minutes of each meeting shall be sent to all members of the Special Committee, to the Chair of the Board of Directors, to the President of the Bourse and to the Chief Legal Officer.

### **Article 3.112 Market Makers – Options and Futures**

[...]

(g) Conditions specific to clients of an Approved Participant:

- (i) Under the terms of the mandatory Market Making Agreement referred to under paragraph (f) above, a client of an Approved Participant notably agrees to the following with respect to its trading activities and conduct as a Market Maker and must (i) be subject to the jurisdiction of the Bourse, acting as a self-regulatory organization, including its Regulatory Division and any of its Committee, during the term of the Market Making Assignment and thereafter in accordance with Article 4.2 to the same extent and as if it was itself an Approved Participant and (ii) comply with all the Regulations of the Bourse as if it was itself an Approved Participant, with the necessary adaptations, including with Part 4 of the Rules (except with respect to examinations), Articles 3.100, 3.110, 4.101, 6.3, 6.10, 6.11, 6.114, 6.115, 6.118, 6.118(j)(k), 6.119, 6.120, 6.202, 6.203, 6.204, 6.205, 6.206, 6.207, 6.209, 6.210, 6.309 and following regarding position limits, 7.5, 7.6, 7.7 and 12.7 and following regarding position limits, as these may be amended and/or replaced from time to time.

### **Article 3.300 Process for Resignation**

(a) No Approved Participant may resign without the prior approval of the Special Committee, which may be withheld until the Special Committee determines that it is satisfied that the Approved Participant will fully comply with any investigation or proceedings that are ongoing or may arise following the Approved Participant's resignation. In making that determination, the Special Committee shall take into account anything that it deems relevant, which may include an assessment of the likelihood that the Approved Participant will maintain its existence and financial resources following its resignation. To satisfy itself as to the foregoing, the Special Committee may condition its acceptance of the resignation on the provision of such things and undertakings as it sees fit, which may include undertakings to maintain the Approved Participant's existence or financial guarantees from any Person with control over the Approved Participant.

[...]

### **Article 3.302 Suspension and Revocation**

- (a) An Approved Participant that no longer complies with the conditions to be an Approved Participant set forth in the Regulations of the Bourse may be suspended or have its Bourse Approval revoked by the Special Committee on the recommendation of the Vice-President, Regulatory Division.
- (b) Where a Person, other than an Approved Participant, no longer complies with the conditions of a Bourse Approval held by that Person, that Bourse Approval may be suspended or revoked. Suspension or revocation of Bourse Approval shall automatically preclude that Person from acting in the capacity for which the suspended or revoked Bourse Approval was required. No Approved Participant shall allow any Person to continue to act in the capacity, nor hold the position, for which Bourse Approval has been suspended or revoked.

- (c) Any Person who may have their Bourse Approval suspended or revoked under this Article shall be notified by the Bourse and provided the opportunity to submit observations before a suspension or revocation is recommended or confirmed.

#### **Article 3.303 Effects of Suspension or Revocation**

[...]

- (c) An Approved Participant or Person who is suspended shall remain subject to the jurisdiction of the Bourse. Where the Bourse Approval of an Approved Participant or Person has been revoked they shall remain subject to the jurisdiction of the Bourse, in accordance with paragraph Article 4.2(c).

#### **Article 3.406 Suspension or Revocation Of Approval**

[...]

(b) In the event of a suspension or revocation of Bourse Approval of an Approved Person pursuant to this Article or pursuant to Article 4.400, unless otherwise ordered by the Vice president of the Regulatory Division, the Approved Participant, the affiliated corporation or subsidiary of the Approved Participant employing this Person must immediately discontinue such Approved Person's employment, and thereafter this Person may not be employed in the same capacity by any Approved Participant, any affiliated corporation or subsidiary of an Approved Participant without permission of the Vice president of the Regulatory Division, which may be revoked at any time.

(d) An Approved Person that is suspended shall remain subject to the jurisdiction of the Bourse. An Approved Person whose Bourse Approval is revoked shall remain subject to the jurisdiction of the Bourse, in accordance with paragraph 4.2(c).

#### **Appendix 6D-2 PROCESSING REQUESTS FOR EXEMPTION FROM POSITION LIMITS**

[...]

- (c) The Internal Consultation Committee include the following persons or their designees:
- (i) Chief Legal Officer;

**B. Proposed amendments - Part 4 of the Rules**

*[The following will replace Part 4 of the Rules in its entirety]*

**PART 4 - THE CONDUCT OF THE REGULATORY FUNCTIONS OF THE BOURSE**

**Chapter A Definitions and General Provisions**

**Article 4.1 Definitions**

The terms defined in this Chapter have the meanings, and the corresponding term in French, set out as follows for purposes of Part 4 of the Rules:

**Agent for Service** (Mandataire aux Fins de Signification) means a Person whom a Regulated Person has appointed as agent for the service of process with respect to any Notice of Proceedings or other document that the Bourse may serve on that Regulated Person.

**Disciplinary Complaint** (Plainte Disciplinaire) means a disciplinary complaint filed by the Bourse against one or more Regulated Persons.

**Document** (Document) means, without limitation, files, books, registers, accounts, data, records, whatever their storage medium and whatever the means by which they may be accessed, including all books of accounts, securities, documents, banking and investment account records, trading and supervisory records, client files and records, accounting and financial statements, audio and video recording, minutes, notes and correspondence, whether written, electronically stored or recorded by any other means.

**Immediate Family Members** (Membres de la Famille Immédiate) means, with respect to an individual, that individual's spouse (including common-law spouse), parent, child, sibling, mother or father-in-law, son or daughter-in-law, brother or sister-in-law, and anyone (other than an employee of either the individual or the individual's immediate family member) who shares the individual's home.

**Industry Representative** (Représentant du Secteur) means a Person who is, or has been, a director, Officer or partner of an Approved Participant.

**Member** (Membre) means an individual whom the Secretary has selected to sit on a Disciplinary Committee under Article 4.600 and who has accepted that selection.

**Notice of Proceedings** (Avis de Procédure) means a notice sent by the Bourse to a Respondent under Article 4.202.

**Party** (Partie) means, with respect to a given hearing, the Regulatory Division and each Respondent.

**Qualified Lawyer** (Avocat Qualifié) means a Person who has practiced law in the Province of Quebec for no fewer than 10 years and has relevant experience as the Bourse may determine.

**Regulated Persons** (Personne Réglementée) means all:

- a. Approved Persons;

- b. Approved Participants;
- c. Designated Representatives; and
- d. partners, shareholders, directors and Officers of Approved Participants.

**Regulatory Division** (Division de la Réglementation), for the purposes of Part 4 of the Rules, includes employees of the Regulatory Division or agents acting on behalf of the Regulatory Division.

**Respondent** (Intimé) means a Regulated Person subject to a proceeding under Part 4 of the Rules.

**Secretary** (Secrétaire) means the individual appointed under Article 4.601.

**Securities Regulator** (Autorité en Valeurs Mobilières) means a securities commission, securities regulatory authority or similar organization.

#### **Article 4.2 Jurisdiction**

- (a) The Bourse has jurisdiction over all Regulated Persons in the conduct of its regulatory functions.
- (b) Part 4 of the Rules sets out the powers of the Bourse to carry out its functions pursuant to Article 2.101, and the rights and obligations of Regulated Persons with respect to such regulatory functions.
- (c) A Person who has ceased to be a Regulated Person shall remain subject to the Bourse's jurisdiction as though they were a Regulated Person, but no proceedings shall be commenced under Part 4 of the Rules against a former Regulated Person unless a Notice of Proceedings has been served upon that former Regulated Person no later than five years from the date upon which they ceased to hold that status.

#### **Article 4.3 Meaning of "in writing"**

The phrase "in writing" and similar phrases when used in this Part 4 includes transmission by electronic means.

### **Chapter B - Conduct of Regulatory Activities**

#### **Article 4.100 Request for Information**

- (a) In connection with the exercise by the Bourse of its duties pursuant to Article 2.101, the Regulatory Division may request Documents or information, in writing or otherwise, from any Person, including a client of an Approved Participant.
- (b) The Regulatory Division can request Documents and information as follows:
  - (i) for the Regulatory Division to carry out its duties pursuant to Article 2.101 and ensuring that the supervision of the regulatory functions of the Bourse are carried out efficiently and fairly in accordance with Article 2.100;



- (ii) when the Bourse receives a request in connection with an investigation being carried out by any exchange, self-regulatory organization, securities commission or any similar authority, to the jurisdiction of which the Approved Participant is subject in any manner or with which the Bourse has entered into an agreement pursuant to Article 4.105 and subject to all applicable legislation relating to the protection of personal information; or
- (iii) as may otherwise be authorized or required by law.

**Article 4.101 Obligation to respond and cooperate**

- (a) Regulated Persons shall provide Documents and information as requested under Article 4.100, and shall fully cooperate in the manner determined by the Regulatory Division.
- (b) All Regulated Persons shall:
  - (i) promptly, fully and truthfully cooperate with the Regulatory Division, including by replying to all requests made, submitting and allowing free access to the Regulatory Division to any Document or information;
  - (ii) give free access to and provide any Documents and information, in their possession or under their control, that the Regulatory Division may require, regardless of the nature of the medium and the form in which such information, register, data, file, documents or exhibit can be accessed;
  - (iii) provide, on demand, copies of Documents and information, in the manner and form required by the Regulatory Division, including in recorded form or electronically; and
  - (iv) for purposes of Article 4.100(b)(ii), submit the requested information directly to the requesting exchange, self-regulatory organization, securities commission or any similar authority, in the form and manner prescribed in the request.
- (c) Approved Participants must make reasonable efforts to ensure the cooperation, in connection with the exercise by the Bourse of its authority under Part 4 of the Rules, of any Person over which they have any control or direction or with which they are in a business relationship, including their clients.
- (d) Compliance with the provisions of this Article shall not create any liability towards any other Approved Participant, employee of an Approved Participant, Approved Person, or client.

**Article 4.102 Failure to respond or cooperate**

Without limitation to any other recourse available to the Bourse under the Regulations of the Bourse or applicable law, any Regulated Person who fails to comply with their obligations under this Chapter may be subject to proceedings under this Part 4.

**Article 4.103 Conduct of investigations**

- (a) The Regulatory Division may investigate any possible violation of any of the Regulations of the Bourse.
- (b) In the course of an investigation and in accordance with Article 4.100, the Regulatory Division may require any Person to provide it with any Document or information that the Regulatory Division deems relevant to the investigation. Any such Person shall:

- (i) comply, in accordance with Article 4.101, with a request under paragraph (a) within the time prescribed in the request; and
  - (ii) appear in person for an interview with the Regulatory Division, or by any other means determined by the Regulatory Division, to answer questions from the Regulatory Division. This interview may be transcribed or recorded electronically, on audiotape or videotape, as determined by the Regulatory Division;
- (c) A Person whom the Regulatory Division has informed of the conduct of an investigation shall not conceal or destroy any information, record, data, file, document, exhibit or object thing that contains information that may be useful to the investigation, or request or encourage another person to do so.
- (d) Any Person responding to a request in the course of an investigation pursuant to this Article may be assisted by legal counsel. The Regulatory Division may, at its discretion, allow a representative of the Approved Participant to be present during an interview. The presence of legal counsel or a representative of the Approved Participant at an interview conducted by the Regulatory Division must not cause prejudice to the conduct of the investigation.
- (e) All requests, Documents and information pertaining to an investigation shall be treated as confidential and any Person who receives a request under this Article, who participate or assist in the course of an investigation, shall not disclose any information in relation to the investigation except:
  - (i) to legal counsel providing assistance in the course of the investigation;
  - (ii) to a Person responsible for compliance or supervision with the Approved Participant;
  - (iii) to a representative of the Approved Participant for purposes of supervision or to inform a partner, director or officer of the Approved Participant;
  - (iv) as required by law; or
  - (v) where the Regulatory Division provides a written authorization to disclose following a request made.
- (f) Failure to comply with any provision of this Article shall be deemed a violation of Article 4.101.
- (g) When a Person fails to respond to a request in accordance with this Article, the Bourse may apply to the Financial Markets Administrative Tribunal constituted under the *Act respecting the regulation of the financial sector* (Quebec) for an order directing that person to comply with the request.

#### **Article 4.104 Special examinations and investigations**

Without limiting the powers conferred upon the Regulatory Division under this Part, the Special Committee or the Vice-President of the Regulatory Division may in their absolute discretion, at any time, direct a special examination or investigation in respect of any matter coming under the Regulatory Division's jurisdiction, including without limitation the conduct, the business or affairs of any Regulated Person.

#### **Article 4.105 Information sharing**

The Regulatory Division may, on behalf of the Bourse, enter into agreements with any exchange, central clearing counterparty, self-regulatory organization, securities regulator, financial intelligence or law enforcement agency or authority, in Québec or elsewhere, to collect and share information. Subject to the legislation relating to the protection of personal information, the Regulatory Division may at any time make available to such Persons any report, Document or information described in such agreements or upon request, pursuant to Article 4.100 (b).

#### **Article 4.106 Costs and expenses**

The following shall constitute a debt owed to the Bourse by the Regulated Person, who must pay the amount thereof upon demand:

- (a) all costs and expenses paid or incurred by the Regulatory Division, including professional fees, in connection with any investigation carried out or any proceedings initiated under Part 4 of the Rules; and
- (b) any amount charged by the Regulatory Division in accordance with the fee schedule of the Bourse in effect from time to time.

### **Chapter C — Disciplinary Proceedings**

#### **Article 4.200 Disciplinary Proceedings**

- (a) The Bourse can initiate proceedings against a Regulated Person under Part 4 of the Rules for violation of any of the Regulations of the Bourse.
- (b) The Bourse shall commence and administer a disciplinary proceeding in accordance with the provisions under this Chapter.
- (c) This provision is in addition to the powers that the Bourse may hold and choose to exercise pursuant to any powers that may be delegated by a securities commission.

#### **Sub-part 1: Proceedings**

#### **Article 4.201 Service of documents**

- (a) Any document required to be served on the Bourse must be addressed to the attention of the Chief Legal Officer, and delivered to the email address designated by the Bourse.
- (b) Any document required to be served on any Person other than the Bourse must be served by:
  - (i) delivering it directly to the Person or their legal counsel;
  - (ii) in the case of an individual, delivery to an adult person at the individual's residence, place of employment or place of business or the place of business of the party's legal counsel or agent;
  - (iii) in the case of a Person that is not an individual, delivery to a director or officer, or other person holding or exercising, or appearing to hold or exercise, managerial authority at the Person's place of business; or

- (iv) in all cases, either :
    - (i) by registered mail addressed to the Person to their last known address; or
    - (ii) by electronic means to the Person's last known email address;
  - (v) If none of the foregoing methods are possible, the Bourse may effect service by any other means that is likely to bring the document to the attention of the Person.
- (c) An affidavit signed by an employee or representative of the Bourse attesting that the foregoing service requirements have been complied with is sufficient proof of service.
  - (d) A Foreign Approved Participant shall ensure that the appointment of an agent for the service of process under Article 3.3 remains valid for so long as the Foreign Approved Participant maintains that status and for a period of no fewer than five years thereafter. A Foreign Approved Participant shall immediately notify the Bourse of any change in their Agent for Service or the Agent for Service's contact information.
  - (e) Any document required to be served on a Foreign Approved Participant may be served on the Foreign Approved Participant or on its Agent for Service.
  - (f) Service made at the address of a Regulated Person or an Agent for Service (as the case may be) most recently provided for that purpose to the Chief Legal Officer shall be deemed to be valid.

#### **Article 4.202 Notice of Proceedings**

- (a) The Bourse shall serve a Notice of Proceedings to any Regulated Person against whom it has initiated disciplinary proceedings in accordance with Article 4.200. The Notice of Proceedings shall include the following, as applicable:
  - (i) a reference (which may be in the form of an excerpt) to any Rule that the Bourse alleges that the recipient of the Notice of Proceedings has violated, along with an indication of the URL address (Web address) where the full text of the Rules may be consulted;
  - (ii) an indication that the date, time, and location of the hearing will follow in a notice of hearing;
  - (iii) a statement to the effect that a Party at a hearing is entitled to:
    - a. represent themselves or be represented by legal counsel, as per Article 4.103(d);
    - b. a pre-hearing conference, as per Article 4.303; and
    - c. seek to negotiate a settlement with the Bourse, as per Article 4.210 and following;
  - (iv) a warning that failure to file a reply by the prescribed deadline may result in foreclosure from producing any evidence or witness at the hearing; and
  - (v) an indication that the evidence that will be presented at the hearing will be provided to the Respondent in accordance with the Regulations of the Bourse;
  - (vi) any other information or content that the Regulatory Division deems appropriate.

- (b) Except when a Notice of Proceedings is being sent in connection with a summary proceeding under Chapter I, a Disciplinary Complaint shall be attached to the Notice of Proceedings and include:
  - (i) a summary statement of the facts alleged and intended to be relied upon by the Regulatory Division and the conclusions drawn by the Regulatory Division based on the alleged facts; and
  - (ii) the potential sanction(s) that may be imposed as a result of the allegations.
- (c) This provision in no way affects the Bourse's ability to exercise any powers that a competent Securities Regulator may have delegated to it.

#### **Article 4.203 Reply**

- (a) A Regulated Person having received a Notice of Proceedings shall reply thereto within 20 Business Days of such receipt. The reply, which shall be signed by the Regulated Person or an individual authorized to sign on the Regulated Person's behalf, shall contain the following:
  - (i) individually, for each fact alleged in the Notice of Proceedings, an indication as to whether that fact is admitted or denied, and if denied, a summary of grounds for the denial;
  - (ii) a statement of the Person's position with regard to the conclusions drawn by the Bourse in the Disciplinary Complaint and a statement of any additional facts relied on by the Person;
  - (iii) a preliminary list of the witnesses that the Person intends to call at the hearing.
- (b) A Disciplinary Committee may accept as proven each fact alleged that is neither specifically admitted nor denied, or which are denied without the grounds being specified, under paragraph (a).
- (c) Failure to file a reply by the prescribed deadline shall result in:
  - (i) the Regulated Person being foreclosed from producing any witnesses or evidence at the hearing; and
  - (ii) the Regulatory Division holding a hearing without further notice.
- (d) Notwithstanding the foregoing, the Regulatory Division may halt the calculation of the deadline to reply set forth at paragraph (a) above if it determines, in its sole discretion:
  - (i) that a Regulated Person having received a Notice of Proceedings is engaged in good-faith negotiations with the Regulatory Division in view of concluding a settlement agreement;  
or
  - (ii) that, for reasons of procedural fairness, there exist sufficient grounds to do so with respect to any Regulated Person that has received a Notice of Proceedings.

#### **Article 4.204 Disclosure of evidence**

- (a) As soon as is reasonably practicable, and no later than 20 Business Days before the commencement of the hearing on the merits, the Regulatory Division must disclose to, and make available for inspection by a Respondent any evidence in the Regulatory Division's possession or control that are relevant to the proceedings.
- (b) No later than 20 Business Days before the commencement of the hearing, each Party must, unless otherwise agreed to by the Parties or decided by the chair of the Disciplinary Committee, provide each other Party with:
  - (i) any evidence that the Party intends to produce at the hearing on the merits; and
  - (ii) a final list of all witnesses that they intend to call at the hearing.
- (c) The final list of witnesses, provided under subparagraph (b) (ii), shall include a summary of the evidence that the witness is expected to give at the hearing and in the case of an expert witness, a signed copy of the expert's report.
- (d) At a hearing, a Party may not produce any evidence or call any witnesses that were not disclosed in accordance with paragraph (b) above except with the authorization of the Disciplinary Committee.
- (e) Notwithstanding the foregoing, a written report prepared by the Regulatory Division will only be disclosed in accordance with this Article if the Regulatory Division proposes to table that report at the hearing.

## **Sub-part 2: Settlement Agreements**

### **Article 4.210 General Principles**

- (a) The Regulatory Division may, at any time after service of a Notice of Proceedings, negotiate a settlement agreement with any or all of the Respondents. All discussions in relation with an offer of settlement are without prejudice. No part of such a discussion must be used as evidence or referred to in any proceedings whatsoever.
- (b) A settlement agreement must be in writing, in the form prescribed by the Regulatory Division, signed by the Parties, and contain the following:
  - (i) the provisions of the Regulations of the Bourse that the Respondent acknowledges having breached;
  - (ii) a statement of the facts;
  - (iii) the disposition of the matter, including any sanction to be imposed and the amount of costs and expenses of the Bourse to be paid by the Respondent;
  - (iv) the Respondent's consent to the settlement;
  - (v) a provision that the settlement agreement and its terms are confidential, unless and until it has been accepted by the Disciplinary Committee;

- (vi) a provision that the Respondent will not make any public statement that is inconsistent with the settlement agreement;
  - (vii) a provision that the Regulatory Division will not initiate any further action against the Respondent in relation to the matter addressed in the settlement agreement;
  - (viii) a statement that the settlement must be accepted by the Disciplinary Committee or the Vice-President, Regulatory Division, as the case may be, failing which it shall not bind the Parties involved and the Bourse shall proceed with the hearing of the matter;
  - (ix) a waiver by the Respondent of all rights under the Regulations of the Bourse to a hearing or to an appeal should the settlement agreement be accepted in accordance with Article 4.211; and
  - (x) any other provisions not inconsistent with the Regulations of the Bourse that the Parties agree to include in the settlement agreement.
- (c) A settlement agreement may impose any obligations on a Respondent to which the Respondent agrees, whether or not they could be imposed by a Disciplinary Committee.

#### **Article 4.211 Submission of Settlement Agreements**

- (a) Each settlement agreement shall be submitted for acceptance to the Disciplinary Committee, which shall proceed with a hearing to accept or reject a settlement agreement.
- (b) Notwithstanding the foregoing, a settlement agreement may be accepted by the Vice-President, Regulatory Division, without a hearing, if the sanction to be imposed is a reprimand, the sanction provided in subparagraph 4.400 (a) (viii), a fine not exceeding \$5,000 in the aggregate, or a combination of the three.
- (c) If a settlement agreement is accepted under this Article 4.211:
  - (i) the matter becomes final and the settlement constitutes a decision;
  - (ii) there can be no appeal of the matter;
  - (iii) the Secretary shall distribute a copy of the decision to the Respondents, file it in the records of the Bourse and make it available to the public on the website of the Bourse;
  - (iv) the Disciplinary Committee or the Vice-President, Regulatory Division (as the case may be) must give written reasons supporting the decision; and
  - (v) the decision accepting the settlement agreement shall refer to the existence of any previous, rejected settlement agreement entered into between the Regulatory Division and that Respondent related to the same proceedings, without describing the reasons for which it was rejected.
- (d) If a settlement agreement is rejected, the Bourse must proceed with the hearing of the matter unless the Parties agree to negotiate a new settlement agreement. Any subsequent settlement agreement shall be submitted to a Disciplinary Committee that includes no Member who was a Member of the Disciplinary Committee that rejected the previous settlement agreement.

## **Chapter D — Hearing**

### **Article 4.300 General Principles**

- (a) Part 4 shall be interpreted and applied to secure a fair hearing and just determination of a proceeding on its merits as well as the most expeditious and least expensive conduct of the proceeding.
- (b) No proceeding, document, decision or hearing in a proceeding is invalid by reason of a defect or other irregularity in form.
- (c) Subject to a requirement under Part 4 of the Rules, a Disciplinary Committee has authority to control the process of a proceeding before it and may exercise any of its powers on its own initiative or at the request of a Party.
- (d) At the request of a Party, a Disciplinary Committee may provide for any procedural or evidentiary matter that is not provided for under Part 4 of the Rules by analogy thereto or by reference to the rules of procedure of another self-regulatory organization or professional association, or to the provisions of the *Code of Civil Procedure* (Quebec) or the *Civil Code of Québec*.
- (e) The Secretary shall be responsible for the administration of a hearing in accordance with the provisions in this Chapter and Article 4.601.

### **Article 4.301 Notice of Hearing**

- (a) When the Regulatory Division determines that a hearing is required, the Bourse shall, at least 30 Business Days before the hearing, serve a notice of hearing on the Persons to whom the Notice of Proceedings was served.
- (b) The notice of hearing shall include:
  - (i) the date, time and place of the hearing; and
  - (ii) a statement requiring the Person to attend the hearing, failing which the Disciplinary Committee may proceed with the hearing of the matter in that Person's absence.

### **Article 4.302 Public hearing**

- (a) All hearings are held in public, except for those pertaining to settlement agreements and pre-hearing conferences.
- (b) Notwithstanding the foregoing, the Disciplinary Committee hearing a matter may, on its own initiative or upon request by a Party, order that a hearing be held *in camera*, in part or in whole, or prohibit the publication or disclosure of specific information or documents, in the interest of good morals or public order, particularly to preserve confidential business information or privileged communications or to preserve an individual's privacy or reputation.
- (c) The Secretary shall publish an announcement of a hearing on the website of the Bourse.

### **Article 4.303 Pre-hearing conference**



- (a) The chair of the Disciplinary Committee may, either on his own initiative or at the request of a Party, order a pre-hearing conference. The purpose of such a conference shall be to seek agreement between the Parties on any matter related to the proceedings such that their advancement or outcome be more just, harmonious or expeditious.
- (b) The pre-hearing conference shall be chaired by the chair of the Disciplinary Committee formed to hear the matter, who may make any order related to the proceedings or the hearing to which the Parties both consent and that is not inconsistent with these Rules. The chair shall circulate the text of any such order for comment to both Parties before signing it, upon which it shall have binding effect and be filed with the Disciplinary Committee.
- (c) The Secretary shall draft minutes of the pre-hearing conference, which the chair of the Disciplinary Committee shall sign.

**Article 4.304 Hearing procedure**

- (a) A hearing may be held either in person or, if the chair of the Disciplinary Committee deems it more appropriate in the circumstances, by videoconference. In determining whether it is more appropriate that a hearing be held by videoconference, the chair of the Disciplinary Committee shall consider any representations made by any Party.
- (b) Each Respondent is entitled to be represented by legal counsel eligible to undertake such representation under the *Act respecting the Barreau du Québec*.
- (c) The Regulatory Division may call and question a Regulated Person who is alleged to have breached a provision of the Regulations of the Bourse, as well as any other witnesses it or another Party considers useful to have them give an account of the facts of which they have personal knowledge or produce any document relating to the matter, and that Person shall be obliged to answer all questions.
- (d) Prior to testifying before the Disciplinary Committee, an individual must make a solemn declaration to tell the truth, the whole truth and nothing but the truth.
- (e) At each hearing, the sequence of events shall be as follows:
  - (i) the Regulatory Division shall make an opening address;
  - (ii) each Respondent may make an opening address;
  - (iii) the Regulatory Division shall present its evidence and call its witnesses;
  - (iv) each Respondent may cross-examine any witness called by the Regulatory Division;
  - (v) each Respondent may present its evidence and call its witnesses;
  - (vi) the Regulatory Division may cross-examine any witness called by a Respondent;
  - (vii) the Regulatory Division shall make a closing address; and
  - (viii) each Respondent may make a closing address.
- (f) The Secretary shall draft minutes of the hearing, which the chair of the Disciplinary Committee shall sign.

- (g) The Disciplinary Committee may admit as evidence any documentary proof without a witness if the Disciplinary Committee is of the opinion that the rights of cross-examination would not be affected.

#### **Article 4.305 Failure to Appear**

If a Respondent fails to appear at a hearing as specified in the notice of hearing, then with respect to that Respondent the Disciplinary Committee shall proceed with the hearing and disposition of the matter on the date and at the time and place set out in the Notice of Proceedings without further notice and in the absence of that Respondent, even if that Respondent has served a reply.

### **Chapter E — Decision**

#### **Article 4.400 Sanctions**

- (a) Upon finding a Respondent guilty of one or more offences, the Disciplinary Committee may, with respect to each offence, impose any one or more of the following sanctions or Rulings:
- (i) a reprimand;
  - (ii) disgorgement of any amount obtained, including any loss avoided, directly or indirectly, as a result of the offence;
  - (iii) a fine not exceeding the greatest of (a) \$5,000,000, (b) four times the profit realized, or (c) four times the amounts invested in the transaction or series of transactions;
  - (iv) suspension or revocation of the Respondent's rights or privileges as an Approved Participant or Approved Person for such period and upon such conditions, including conditions of reinstatement, as the Disciplinary Committee may determine;
  - (v) a prohibition on obtaining or surrendering any approval required under these Rules for the time and upon such conditions determined by the Disciplinary Committee, including the conditions for the release of such a prohibition. The Disciplinary Committee may also impose such a prohibition on any affiliated corporations or subsidiaries of the Respondent;
  - (vi) revocation of the Respondent's Bourse Approval as an Approved Participant;
  - (vii) making restitution to any Person who has suffered a loss as a result of the Respondent's acts or omissions;
  - (viii) appointment of a monitor to exercise powers granted by the Disciplinary Committee, which may include monitoring an Approved Participant's business and affairs;
  - (ix) an obligation, for an Approved Person, to take one or more courses or to receive any other training or education deemed appropriate; or
  - (x) reimbursement in whole or in part of the costs and expenses (including professional fees) paid or incurred by the Bourse in connection with the Disciplinary Complaint and the matters out of which it arose including all investigations, hearings, appeals and other proceedings before or after the Disciplinary Complaint.

- (b) These sanctions and Rulings shall be in addition to such other action as the Bourse may take pursuant to any other provision of the Regulations of the Bourse.

#### **Article 4.401 - Deliberations**

The deliberations of the Disciplinary Committee must be made in the absence of any other Person.

#### **Article 4.402 Decision of the Disciplinary Committee**

- (a) All decisions of the Disciplinary Committee must be made by majority vote of the Members and must be set forth in writing.
- (b) The Disciplinary Committee must provide written reasons supporting its decision.
- (c) The Secretary shall:
  - (i) give notice of the decision to each Respondent and to any other Persons designated by the Disciplinary Committee hearing the matter;
  - (ii) file the decision in the records of the Bourse; and
  - (iii) make the decision available on the website of the Bourse (except in the case of a decision rejecting a settlement agreement).
- (d) A decision of the Disciplinary Committee takes effect immediately upon the issuance of the written decision, unless otherwise specified in that decision. Any fine, cost or other financial sanction is payable within 30 days of the date of service of the written decision imposing it.

### **Chapter F - Review Under the Derivatives Act**

#### **Article 4.500 - Review by the Financial Markets Administrative Tribunal**

A Party may submit a decision of a Disciplinary Committee for review in accordance with the *Derivatives Act* (Quebec).

### **Chapter G - Disciplinary Committee**

#### **Article 4.600 Composition of Disciplinary Committee**

- (a) To be eligible to sit on a Disciplinary Committee, an individual must have been approved by the Special Committee. The Secretary shall maintain a list of such individuals. An individual's name shall be deleted from that list upon the instructions of either the individual or the Special Committee.
- (b) A Disciplinary Committee shall be composed of three Members, one of whom shall be a Qualified Lawyer who shall chair the Disciplinary Committee, and two of whom shall be Industry Representatives. None of the Members may be ineligible under Article 4.602.
- (c) The Secretary shall be responsible for selecting the Members and shall inform the individuals selected in writing, who shall accept or refuse that selection within one Business Day. Upon receipt of a refusal or in the absence of a response within one Business Day, the Secretary shall promptly select another individual. Promptly after receiving acceptance from each individual selected, the Secretary shall notify the Regulatory Division and each Respondent of the composition of the Disciplinary Committee.

- (d) If it is impossible to form a Disciplinary Committee that complies with the composition requirements set forth in the preceding paragraph, the Secretary may disregard those requirements to the extent necessary to constitute the Disciplinary Committee.
- (e) The Disciplinary Committee shall remain constituted until such time as the proceedings for which it was constituted are definitely resolved and no longer susceptible to appeal. The deletion of the name of a Member from the list maintained under paragraph (a) above has no effect on their status as a Member of any existing Disciplinary Committee.
- (f) Upon accepting their appointment, each Member shall sign an acknowledgement and undertaking to be bound by the code of ethics for Disciplinary Committee Members then in effect.

**Article 4.601 Secretary**

- (a) The Special Committee shall appoint the Secretary and may appoint any number of assistant secretaries. An assistant secretary may perform any function of the Secretary if the latter is unable or unwilling to do so. The Secretary and each assistant secretary shall remain in office until their resignation, removal or death.
- (b) The Secretary:
  - (i) selects Members for each Disciplinary Committee;
  - (ii) schedules and arranges each hearing and pre-hearing conference;
  - (iii) transmits documents to Members and the Parties;
  - (iv) maintains a record and minutes of each hearing and pre-hearing conference;
  - (v) transmits written decisions and reasons to the Parties;
  - (vi) receives and processes applications for appeal to the Special Committee under Article 4.900; and
  - (vii) performs any other duties assigned to the Secretary in these Rules or otherwise determined by a Disciplinary Committee or the Special Committee.

**Article 4.602 Conflict of interest**

- (a) An individual is ineligible to act as a Member if the individual:
  - (i) is, or has been, in the three years preceding the date of the relevant Notice of Proceedings, a member of the Special Committee;
  - (ii) is or has been, in the three years preceding the date of the relevant Notice of Proceedings, a director, officer or partner of either the Bourse or of the Respondent (if the Respondent is not an individual), or any of their affiliated corporations or entities;
  - (iii) has an Immediate Family Member who is or has been, in the three years preceding the date of the relevant Notice of Proceedings, a director, officer or partner of either the Bourse or any of its affiliated corporations or subsidiaries, or of a Respondent (if the Respondent is not an individual) or any of its affiliated corporations or subsidiaries;

- (iv) receives a consulting, advisory or other compensatory fee from the Bourse or any Respondent, other than as remuneration as a member of the board of directors or any board committee, or as a part-time chair or vice-chair of the board or any board committee, or the receipt of fixed amounts of deferred compensation for prior service with the Bourse or the Respondent that is not contingent on continued service;
  - (v) is, with respect to any Respondent or any employee of the Regulatory Division, in one of the situations described at Articles 202 or 203 of the *Code of Civil Procedure* (with the necessary modifications); or
  - (vi) has or had another relationship to a Party, or is in any other situation, that may create a reasonable apprehension of bias.
- (b) An individual who is selected for a Disciplinary Committee despite knowing that they are in one of the aforementioned situations shall decline the selection, advising the Secretary of the reasons therefor. A Member who enters, or learns that he is in, one of the aforementioned situations after accepting to sit on a Disciplinary Committee shall immediately notify the Secretary, who shall in turn notify the Special Committee. The Secretary shall also immediately notify the Special Committee if he is advised by any other Person that a Member is in one of the aforementioned situations.
- (c) The Special Committee shall promptly consider the matter and determine whether to remove the Member (in which case it shall proceed as described in accordance with Article 4.603).

#### **Article 4.603 Inability to Act**

- (a) Where, prior to a hearing being commenced, one or more Members are unable to act, the Secretary shall identify an equal number of new Members in accordance with the procedure and composition requirements set forth at Article 4.600.
- (b) Where, after a hearing has commenced, one of the Members is unable to act, the two remaining Members may validly proceed with the hearing and render a decision on the conviction and the sanction, provided that all of the Parties consent. Failing such consent, the Disciplinary Committee shall be dissolved and a new hearing shall be held before a new Disciplinary Committee to be constituted by the Secretary in accordance with the procedure and composition requirements set forth at Article 4.600.
- (c) Where, after a hearing has commenced, more than one Member is unable to act, the Disciplinary Committee shall be dissolved and a new hearing shall be held before a new Disciplinary Committee to be constituted by the Secretary in accordance with the procedure and composition requirements set forth at Article 4.600.

### **Chapter H - Minor violations**

#### **Article 4.700 Fine for Minor Violation**

- (a) The Vice-President of the Regulatory Division may, in accordance with the procedure provided in Articles 4.702 and following, for any violation appearing in the List of Fines for Minor Violations published on the website of the Bourse, impose a predetermined fine that cannot exceed \$5,000 per violation, against an Approved Participant or an Approved Person. The violations included in the List of Fines for Minor Violations are:

- (i) Incomplete or inaccurate report pertaining to the accumulation of positions for Derivative Instruments (Article 6.500 (a));
  - (ii) Exceeding position limits (Article 6.310);
  - (iii) Non-compliance with the time of market exposure (Article 6.205);
  - (iv) Failure to send a notice of non-compliance or a notice of exceeding position limits, within the prescribed time (Articles 3.105 and 6.500 (j));
  - (v) Prohibited use of the "hidden volume" functionality (Article 6.204);
  - (vi) Granting unapproved access to the Electronic Trading System (Articles 3.4 (a) and 3.400).
- (b) The Vice-President of the Regulatory Division may impose a fine for any violation included in the List of Fines for Minor Violations against a former Approved Participant or former Approved Person, on the condition that a notice of minor violation is served within the delay provided in article 4.2 (c).
- (c) Notwithstanding the possibility of imposing a fine for a minor violation included in the List of Fines for Minor Violations in accordance with paragraphs a) and b), the Vice-President of the Regulatory Division, may, at his discretion, choose to file a complaint in accordance with the procedure provided under Chapter C, Part 4 of the Rules.

#### **Article 4.701 Notice of Minor Violation**

- (a) Before imposing a fine, the Vice-President of the Regulatory Division shall serve a notice of a minor violation to the Approved Participant or the Approved Person.
- (b) The notice of minor violation shall:
- (i) Be in writing;
  - (ii) Be signed by the Vice-President of the Regulatory Division;
  - (iii) Contain the following items for each violation:
    - (1) the alleged violation;
    - (2) the regulatory provision or provisions related to the alleged violation;
    - (3) the date of the violation;
    - (4) a summary statement of the facts on which the violation is based;
    - (5) the amount of the fine for the violation;
    - (6) the delay of time provided by Article 4.702 during which the Approved Participant or the Approved Person may submit observations or serve a request for the matter to be heard by a Disciplinary Committee;
    - (7) a notice that failure to submit observations or a response results in foreclosure from contesting any fine to be imposed.

#### **Article 4.702 Observations or Contestation**

- (a) Once a notice of minor violation has been served, the Approved Participant or the Approved Person may, within 20 Business Days:
  - (i) Submit observations in writing to the Vice-President of the Regulatory Division. These observations must admit or deny the facts; or
  - (ii) Contest the notice of minor violation by notifying the Vice-President of the Regulatory Division of their desire for the matter to be heard by a Disciplinary Committee in accordance with Chapter G, which notice must be accompanied by a reply as described in Article 4.203. In this instance, the notice of minor violation is deemed a complaint under Article 4.200.
- (b) A defense of due diligence is neither allowed nor receivable in connection with the process to impose a fine for a minor violation.
- (c) If observations are not submitted and the notice of minor violation is not contested within the prescribed time, the Approved Participant or the Approved Person will be deemed to have agreed to pay the fine and to have relinquished all rights under the Regulations of the Bourse concerning the hearing and contesting the violation.

#### **Article 4.703 Notice of Fine for Minor Violation**

- (a) Upon expiry of the deadline provided for in Article 4.702, and after having considered the observations of the Approved Participant or the Approved Person, if any, the Vice-President of the Regulatory Division may impose the fine prescribed in List of Fines for Minor Violations on this Approved Participant or this Approved Person by serving a notice of a fine for violation or decide not to impose a fine for minor violation. In this case, a notice advising of the closing of the matter will be sent to the Approved Participant or the Approved Person.
- (b) The fine for minor violation imposed against the Approved Participant or the Approved Person is payable within the 10 Business Days following service of the notice of fine for minor violation.

#### **Article 4.704 Publication of Information Regarding Fines Imposed for Minor Violations**

The Regulatory Division will make information publicly available on the website of the Bourse, on an anonymous basis, regarding fines imposed for minor violations, including the nature of the minor violations, the fines imposed during the period as well as any other information that the Regulatory Division considers relevant.

### **Chapter I - Summary Proceedings**

#### **Article 4.800 Grounds for Summary Proceedings**

- (a) Where the Vice-President of the Regulatory Division determine that the methods or practices adopted by an Approved Participant or Approved Person are detrimental to the reputation of the Bourse or to the interests or welfare of the Bourse or the public, the Bourse shall serve a notice of hearing on the Respondent in accordance with Article 4.802. Such methods or practices may include, without limitation:

- (i) the Approved Participant or Approved Person is convicted of a crime or of an infraction in connection with trading in Securities or Derivative Instruments or of an offence under any statute or regulation applicable to Securities or Derivative Instruments;
  - (ii) the Approved Participant or Approved Person refuses or neglects to provide Documents and information or to appear in the manner prescribed by the Regulations of the Bourse;
  - (iii) the financial or general condition of the Approved Participant or Approved Person is such that it is or may become detrimental to the reputation of the Bourse or to the interests or welfare of the Bourse or the public; or
  - (iv) the system of book or record keeping used by the Approved Participant is unsatisfactory.
- (b) The Vice-President of the Regulatory Division may, pending the hearing, recommend to the Special Committee that it takes action by way of summary proceedings in accordance with this Chapter.
- (c) The Vice-President of the Regulatory Division may also recommend to the Special Committee that it takes action by way of summary proceedings in accordance with this Chapter if:
- (i) the Approved Participant or Approved Person fails to pay on demand any assessment, fee or charge which has become due to the Bourse pursuant to the Regulations of the Bourse or its list of fees, or any other indebtedness to the Bourse, such as a fine, or the costs of a hearing, investigation or surveillance operation; or
  - (ii) the Approved Participant or the Approved Person fails to meet or admits or discloses their inability to meet their liabilities or obligations to the Bourse, another Approved Participant or to the public.

#### **Article 4.801 Summary Actions**

- (a) Notwithstanding anything to the contrary contained in any other provision of the Regulations of the Bourse, in any of the circumstances described at subparagraph 4.800 (a), the Special Committee may impose without any notice, hearing or formality whatsoever, one or more of the following orders:
- (i) the suspension of an Approved Participant or Approved Person, which may be limited to a suspension of specific rights and privileges, for a period and upon any terms and conditions determined by the Special Committee;
  - (ii) the amendment of the terms and conditions of a previously granted Bourse Approval;
  - (iii) the imposition of any terms and conditions that must be satisfied by a Person to continue as an Approved Participant or Approved Person, which may include, without limitation:
    - (1) restricting one or more sectors of the Approved Participant's operations or;
    - (2) requiring the presence of employees or representatives of the Bourse at the Approved Participant's premises for the surveillance of its trading activities on the Listed Products; or
    - (3) requiring the mailing of notices to the Approved Participant's clients, the contents of which are to be specified by the Regulatory Division.



- (b) All orders imposed by the Special Committee under subparagraph (a) are interim orders that take effect immediately upon delivery of the notification to the Approved Participant or Approved Person and remain in force until a hearing is held, at which time any such order may be confirmed, set aside or modified.
- (c) In any of the circumstances described at paragraph 4.800 (c), the Special Committee may, without any notice, hearing or formality whatsoever:
  - (i) declare an Approved Participant or Approved Person a Defaulter, upon which the Approved Participant or the Approved Person shall automatically be suspended; and
  - (ii) within 10 Business Days after being declared a Defaulter, or such other period as the Special Committee may decide, suspend or revoke the Bourse Approval of an Approved Participant or Approved Person if the cause of such default is not remedied to the satisfaction of the Special Committee.
- (d) No Approved Participant shall allow a Person declared as a Defaulter to conduct any trading activities on the Bourse without the written consent of the Special Committee.

#### **Article 4.802 Summary Proceedings Hearing**

- (a) Unless the Parties agree to an extension of the period or to a waiver of the hearing, the Bourse shall, at least 10 Business Days before the hearing, serve a notice of hearing on the Respondent.
- (b) The hearing procedures applicable to a disciplinary proceeding shall, with the necessary modifications, apply to any hearing under this Part.
- (c) Upon consideration of the grounds for proceedings invoked under Article 4.800, the Disciplinary Committee may render a decision to:
  - (i) set aside or modify an interim order imposed by the Special Committee under Article 4.801 (b);
  - (ii) suspend an Approved Participant or Approved Person, which may be limited to a suspension of specific rights and privileges, for a period and upon any terms and conditions determined by the Disciplinary Committee;
  - (iii) revoke a Bourse Approval;
  - (iv) amend of the terms and conditions of a previously granted Bourse Approval; or
  - (v) impose any terms and conditions that must be satisfied by a Person to continue as an Approved Participant or Approved Person, including, without limitation:
    - (1) restricting one or more sectors of the Approved Participant's operations; or
    - (2) requiring the presence of employees or representatives of the Bourse at the Approved Participant's premises for the surveillance of its trading activities on the Listed Products; or
    - (3) requiring the mailing of notices to the Approved Participant's clients, the contents of which are to be specified by the Regulatory Division.

## **Chapter J - Appeal before the Special Committee**

### **Article 4.900 Jurisdiction of the Special Committee**

An appeal from a decision of the Regulatory Division (other than of a Disciplinary Committee) may be brought before the Special Committee.

### **Article 4.901 Time to Appeal**

The appeal must be brought within 10 Business Days of the service of the decision.

### **Article 4.902 Application for Appeal**

Any appeal of a decision referred to at Article 4.900 must be brought by sending written notice to the Chief Legal Officer. The notice must contain a brief statement of the grounds for appeal.

### **Article 4.903 Security for Costs**

When the appeal appears abusive, dilatory, frivolous, or for some other special reason, the Special Committee may, upon request, order the appellant to furnish, within a prescribed period, Security to guarantee, in whole or in part, the payment of the costs of appeal, the amount of the fine and the costs and expenses listed in Article 4.106, if the appeal is dismissed. If the appellant does not furnish Security within the prescribed period, the Special Committee may dismiss the appeal.

### **Article 4.904 Stay of Decision**

Unless otherwise ordered by the Special Committee, an appeal suspends the execution of the decision of the Regulatory Division provided however, suspension of the rights of an Approved Participant or Approved Person, prohibition to obtain Bourse Approval, expulsion of an Approved Participant and revocation of Bourse Approval is executory, notwithstanding appeal, unless otherwise ordered by the Special Committee.

### **Article 4.905 Basis of the Appeal**

The appeal is argued on the basis of the file, provided however that, in exceptional circumstances and if justice so requires, the Special Committee may authorize the presentation of additional evidence.

### **Article 4.906 Applicable Procedures**

Subject to the provisions in this Chapter, the procedures applicable to a hearing before a Disciplinary Committee shall apply to any hearing before the Special Committee, with the necessary modifications.

### **Article 4.907 Disqualification**

A member of the Special Committee who has any grounds for recusal pursuant to Article 4.602 (other than those set forth in subparagraph 4.602 (a) (i)) is not eligible to sit in appeal from a decision.

### **Article 4.908 Review Under the Derivatives Act**

A Party may submit a decision of the Special Committee for review in accordance with the *Derivatives Act* (Quebec), except for an order imposed under Article 4.801.

## ANNEX 2 - CONCORDANCE TABLE

<b>Article title</b>	<b>New Article</b>	<b>Current Article</b>
Delegation	1.104	N/A
Governing Law and Forum	1.105	N/A
Headings	1.106	N/A
Powers of the Special Committee - Appeal of decision rendered by the Regulatory Division	2.204 (k)	2.204 (k)
Suspension and Revocation - Approval other than Approved Participant	3.302 (b)	3.304
Part 4 - Definitions	4.1	N/A
Jurisdiction	4.2	4.201 (b)
Meaning of "in writing"	4.3	N/A
Request for Information	4.100	4.1
Obligations to respond and collaborate	4.101	4.1 (a); (d)
Failure to respond	4.102	4.5
Conducting an investigation	4.103	N/A
Special examinations and investigations	4.104	4.3
Information sharing	4.105	4.1(c); 4.7
Costs and expenses	4.106	4.6; 4.206
Disciplinary Proceedings	4.200	4.201
Service of documents	4.201	4.251
Notice of proceedings	4.202	4.251
Reply	4.203	4.252
Disclosure of evidence	4.204	N/A
Disclosure of evidence - written report prepared by the Regulatory Division	4.204 (e)	4.255(c)
Settlement Agreements - General principles	4.210	N/A
Submission of Settlement Agreements	4.211	4.301; 4.302; 4.303; 4.304; 4.305; 4.306
Hearing - General principles	4.300	N/A
Notice of Hearing	4.301	4.253
Public hearing	4.302	4. 254
Pre-hearing conference	4.303	N/A
Hearing procedure	4.304	4.255; 4.256
Failure to Appear	4.305	4.258
Sanctions	4.400	4.205

Deliberations	4.401	4.259
Decision of the Disciplinary Committee	4.402	4.260;
Review by the Financial Markets Administrative Tribunal	4.500	2.204 (k); 4.351
Composition of Disciplinary Committee	4.600	4.202; 4.203;
Secretary	4.601	N/A
Conflict of interest	4.602	4.204
Inability to Act	4.603	N/A
Chapter H - Minor violations	4.700 to 4.704	4.308 to 4.312
Chapter I - Summary Proceedings	4.800 to 4.802	4.401 to 4.407
Chapter J - Appeal before the Special Committee	4.900 to 4.908	4.351 to 4.360