



CIRCULAR 098-20

May 28, 2020

REQUEST FOR COMMENTS

**SPECIAL COMMITTEE OF THE REGULATORY DIVISION - TENURE LIMIT
AMENDMENTS TO ARTICLE 2.202 OF THE RULES OF BOURSE DE MONTREAL INC.**

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 Article 2.202 of the Rules of the Bourse in order to add a tenure limit of 12 years for the members of the Special Committee of the Regulatory Division.

Comments on the proposed amendments must be submitted at the latest on **June 28, 2020**. Please submit your comments to:

Martin Janelle
Senior Legal Counsel
Bourse de Montréal Inc.
1800-1190 av des Canadiens-de-Montréal
P.O. Box 37
Montreal, Quebec H3B 0G7
E-mail: legal@tmx.com

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

M^e Philippe Lebel
Corporate Secretary and
Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640 Laurier boulevard, suite 400
Québec (Québec) G1V 5C1
Fax : (514) 864-8381
E-mail: consultation-en-cours@lautorite.qc.ca

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

Appendices

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

Process for Changes to the Rules

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

In its SRO capacity, the Bourse assumes market regulation and supervision responsibilities of its approved participants. The responsibility for regulating the market and the approved participants of the Bourse comes under the 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.



**SPECIAL COMMITTEE OF THE REGULATORY DIVISION - TENURE LIMIT
AMENDMENTS TO ARTICLE 2.202 OF THE RULES OF BOURSE DE MONTREAL INC.**

Table of Contents

DESCRIPTION	2
PROPOSED AMENDMENTS	2
ANALYSIS	2
Background	2
Objectives	2
Comparative Analysis	3
Analysis of Impacts	3
Impacts on Market	3
PROCESS	3
ATTACHED DOCUMENTS	4

I. DESCRIPTION

Bourse de Montréal Inc. (the “Bourse”) wishes to update the Rules of the Bourse (the “Rules”) to confirm a tenure limit of 12 years for the members of the Special Committee of the Regulatory Division (the “Special Committee”). Such tenure limit was approved by the Board of Directors of the Bourse on March 24, 2020.

II. PROPOSED AMENDMENTS

Please refer to the proposed amendments described in the attached Annex 1.

III. ANALYSIS

a. Background

The Bourse is recognized by the Autorité des marchés financiers (the “Autorité”) as an exchange and a self-regulatory organization ([Recognition Order 2012-PDG-0075](#)). The Regulatory Division (the “Division”) is a separate business unit of the Bourse responsible for carrying out the Bourse’s regulatory functions and operations. The Special Committee, appointed by the Board of Directors of the Bourse, is mandated with the overseeing of the Division’s functions and activities. The Special Committee reports to the Board of Directors of the Bourse on the Division’s execution of its regulatory functions. The Rules provide that the members of the Special Committee shall be appointed by resolution of the Board of Directors for a term of two years. Such appointment may be renewed at the discretion of the Board of Directors, no specific tenure limit is imposed.

The Special Committee must consist of at least 50% of persons who are Québec residents at the time of their appointment and for the duration of their term, at least 50% of persons who satisfy the independence conditions that are applicable to the directors of the Bourse (in terms of [Recognition Order 2012-PDG-0075](#) issued by the Autorité) and at least 50% of persons having expertise in derivatives.

b. Objectives

On March 24, 2020, the Governance Committee of the TMX Board and the Bourse’s Board of Directors adopted a tenure limit of 12 years for the appointed members of the Special Committee which are to be served in two-year terms. This adoption was made further to the introduction in early 2019 of a tenure limit of 12 years for directors of the TMX Board. Therefore, the Bourse wishes to incorporate such tenure limit in its Rules, more specifically in article 2.202.

The Bourse considers that the introduction of a tenure limit is a way to renew the Special Committee composition on a regular basis by requiring mandatory member changes. It also creates opportunities to bring in new skill sets, and to allow the Bourse to address issues such as diversity in a meaningful way. Finally, tenure limits may prevent calling into question the independence of a member who has served on the Special Committee for a long period or the independence of the committee where no new members have been appointed for a long period of time.

Article 2.202

The Rules currently state that a member of the Special Committee whose term has expired shall remain in office as long as necessary to permit the completion of any matter on which such member was sitting prior to the expiry of the term. The Bourse is of the view that the Rules should also incorporate a tenure limit of 12 years and provide that the Board of Directors of the Bourse may, at its discretion, renew the term of a member of the Special Committee whose tenure limit has been reached for an additional two-year period. The Board of Directors should be able to exercise such discretion when necessary to comply with regulatory requirements, to ensure a specific area of expertise is represented on the Special Committee, or if it is otherwise in the best interests of the Bourse and the Division. This is consistent with the tenure limits that apply to the Board of Directors.

c. Comparative Analysis

Given the nature of the rule change, an alignment with the governance requirement applicable to the Board of Directors of the Bourse, no comparative analysis has been performed by the Bourse.

d. Analysis of Impacts

i. Impacts on Market

The proposed amendments will have no impact on the derivatives market.

ii. Impacts on Technology

The proposed amendments will have no impact on the technological systems of the Bourse, its Participants or CDCC.

iii. Impacts on regulatory functions

The proposed amendments will have no impact on the regulatory functions.

iv. Impacts on clearing functions & on trading functions

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

v. Public Interest

The Bourse is of the view that the proposed amendments are not contrary to the public interest.

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

Proposed amendments.

ANNEX 1 - PROPOSED AMENDMENTS
AMENDED VERSION

Article 2.202 Appointment of Special Committee

The members of the Special Committee shall be appointed by resolution of the Board of Directors to serve for a term of two years with a tenure limit of twelve years. ~~The~~~~Such~~ appointment of a member of the Special Committee whose tenure limit has been reached may be renewed at the discretion of the Board of Directors for an additional two-year term. A member of the Special Committee whose term has expired shall remain in office as long as necessary to permit the completion of any matter on which such member was sitting prior to the expiry of the term.

CLEAN VERSION

Article 2.202 Appointment of Special Committee

The members of the Special Committee shall be appointed by resolution of the Board of Directors to serve for a term of two years with a tenure limit of twelve years. The appointment of a member of the Special Committee whose tenure limit has been reached may be renewed at the discretion of the Board of Directors for an additional two-year term. A member of the Special Committee whose term has expired shall remain in office as long as necessary to permit the completion of any matter on which such member was sitting prior to the expiry of the term.