



CIRCULAR 120-18

July 12th, 2018

SELF-CERTIFICATION

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

The Rules and Policies Committee and the Special Committee of the Regulatory Division of Bourse de Montréal Inc. (the “**Bourse**”) have approved amendments to article 4002 of the Rules of the Bourse in order to specify and clarify the circumstances in which an approved participant has the obligation to file a non-compliance report with the Bourse. These amendments were self-certified in accordance with the self-certification process as established in the *Derivatives Act* (CQLR, Chapter I-14.01).

These amendments, as attached, will become effective on **July 19th, 2018**, after market close. Please note that the revised article will also be available on the Bourse’s website (www.m-x.ca).

The amendments described in the present circular were published for public comment by the Bourse on May 23, 2018 (see [Circular 072-18](#)). Further to the publication of this circular, the Bourse has received comments. A summary of the comments received as well as responses from the Bourse to these comments is attached hereto.

For additional information, please contact Martin Jannelle, Legal Counsel, at 514-787-6578 or by email at martin.jannelle@tmx.com.

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4002 Notice of Non-Compliance

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

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

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

b) becomes insolvent of;

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

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

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

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

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

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

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

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

d) the prohibition of front running;

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

c) article 6310 respecting best execution;

d) article 6366 respecting access to electronic trading;

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

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

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

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

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

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

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

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

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

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

4002 Notice of Non-Compliance

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

1. An Approved Participant must immediately notify the Regulatory Division in the event that this Approved Participant or any of its Approved Person:
 - a) fails to be able to continue to meet its obligations;
 - b) becomes insolvent;
 - c) commits an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* (R.S.C., 1985, c. B-3); or
 - d) becomes a debtor company within the meaning of the *Companies' Creditor Arrangement Act* (R.S.C., 1985, c. C-36).

2. An Approved Participant must diligently conduct a review in accordance with its internal supervision policies and procedures upon becoming aware that, such Approved Participant, an employee, an Approved Person, or a client authorized pursuant to article 6366 B) possibly violated the Rules, Policies and trading Procedures of the Bourse pertaining to:
 - a) article 6305 respecting front running;
 - b) article 6306 respecting manipulative or deceptive methods of trading;
 - c) article 6310 respecting best execution;
 - d) article 6366 respecting access to electronic trading;
 - e) articles 6374 and 6379 b) paragraph 2 respecting management of priorities;
 - f) article 6380, including 6380a to 6380f, respecting transactions required on Bourse facilities;
 - g) article 6816 respecting off-exchange transfers of existing futures contracts.

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

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

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

Circular 072-18: Summarized comments and responses

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

No.	Date comments received	Participant Category	Subject	Summary of comments	Summary of responses
1.	June 21, 2018	IIAC	The Possibility Standard	<p>The circular notes, in the “Description and Analysis of Market Impacts” section, that: <i>“The Bourse recommends the adoption of a possibility standard because an approved participant is not always in a position to determine or conclude whether a rule was really violated...”</i>.</p> <p>The IIAC wishes to remind the Bourse that its members, as previously confirmed to the Regulatory Division, have been filing non-compliance reports for potential violations as well as violations for many years. Therefore, we do not believe the “possibility standard” to be a new addition to the rule.</p>	The Bourse takes note of the comment.
2.	June 21, 2018	IIAC	Industry Views	<p>The “Background” section of the proposal mentions that <i>“In the course of formal and informal meetings, the Bourse discussed the obligations contained in Article 4002 and industry practices with the approved participants (or their representatives). This analysis is the result of that collaborative approach”</i>.</p> <p>The current proposal does not contain, despite many discussions on the topic, full harmonization with the Investment Industry Regulatory Organization of Canada (IIROC)’s gatekeeper obligations. Such harmonization has been the main industry request on the topic of non-compliance reporting.</p>	<p>In line with the discussion with members of the industry and as indicated in the Analysis Note published with the proposed amendment, the new version of article 4002 is closer to the principles and vocabulary used in Policy 10.16 of the Universal Market Integrity Rules (“UMIR”) established by the IIROC. While full harmonization with IIROC requirements may be the preferred choice for some participants, it is not necessarily optimal for the regulatory activities of the Regulatory Division of Bourse de Montréal (the “Division”).</p> <p>The record retention period differs slightly from UMIR in that the Division will require records to be</p>

				<p>The Bourse states that: "...the new version of Article 4002 is closer to the principles established and the vocabulary used in Policy 10.16 of the Universal Market Integrity Rules ("UMIR") established by the IIROC". Industry members do believe that the Bourse moving closer to Policy 10.16 of the Universal Market Integrity Rules is a step in the right direction. However, the IIAC wishes that the Bourse could harmonize further with the rules of IIROC. The industry would once again request that:</p> <ul style="list-style-type: none"> • the delay for submitting a non-compliance report be harmonized with the IIROC rules; • the record retention period be harmonized with the IIROC rules. <p>We fail to see the added-value for the Bourse in having a filing deadline and retention period that differs from IIROC's. The IIAC strongly supports a harmonized filing deadline and retention period for the Bourse and for IIROC in order to simplify the reporting and retention process for our members</p>	<p>kept for a period of seven years from the date of conclusion of the review instead of the date of creation of the documents. This amendment is made to take into account the different duration of reviews conducted by Approved Participants, which may largely vary. Therefore, this amendment is proposed from a fairness perspective amongst all Approved Participants. Also, it enables the Division to have access to all review files for a period of seven years independently of the duration of the reviews performed by the Approved Participants.</p>
3.	June 21, 2018	IIAC	Timing and Industry's Understanding	<p>The IIAC and its members have provided comments regarding non-compliance reporting prior to the issuance of the Bourse's proposal. The industry's views remain unchanged.</p> <p>On August 31, 2016, the IIAC issued a comment letter to the Bourse in response to the Request for Comments published under Circular 087-16. A portion of the comments provided is included below:</p>	<p>The Division confirms IIAC's understanding as described on page 3 of its comments letter. For more clarity, in the context of article 4002 of the Rules of the Bourse, the terms "potential violation", "possible violation" and "may have violated" are considered to be equivalent. Therefore, when an Approved Participant concludes that there are any indications that a violation of any of the obligations, prohibitions or requirements listed in paragraph 2 of the said article may have been committed, it</p>

			<p><i>“The IIAC is taking this opportunity to comment on the proposed revisions to Article 4002 pursuant to Circular 087-16. In particular, we would like to comment on the proposal to amend the standard under which a participant is required to file a non-compliance report...”</i></p> <p><i>Furthermore, the deadline of ten days to file a gatekeeper report once a member determines that “it is likely” that a violation of the Rules of the Bourse occurred should be aligned with the Investment Industry Regulatory Organization of Canada (“IIROC”) rule 10.16 regarding Gatekeeper Obligations. As per IIROC rules, members must report the findings of an internal investigation to the IIROC Market Regulator if the finding of the investigation is that a violation of an applicable provision of UMIR has occurred. Such report shall be made not later than the 15th day of the month following the month in which the findings are made. The IIAC believes that the gatekeeper deadline should be aligned between the Bourse and IIROC.”</i></p> <p>Furthermore, the IIAC also mentioned on several occasions that the industry’s understanding of Article 4002 has remained unchanged from previous years. The understanding of Article 4002 by the Regulatory Division however seemed to have changed recently. We would like to make sure that the industry’s understanding and the Regulatory Division’s understanding is the same.</p> <p>At the 2017 CADC Compliance User Group meeting, the IIAC confirmed to the</p>	<p>must notify the Division through a notice of non-compliance (“gatekeeper report”).</p> <p>With respect to the deadline question, please refer to answer #2 above.</p>
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				<p>Regulatory Division that all members understood Article 4002 in the same way:</p> <ul style="list-style-type: none">• Violation: the firm will file a non-compliance report;• Potential Violation: an internal review will be done. If the firm concludes that:<ul style="list-style-type: none">○ there was no violation: the firm will not file a non-compliance report;○ there was a violation: the firm will file a non-compliance report;○ there may have been a violation: the firm will file a non-compliance report. <p>If the Industry's understanding explained above is inaccurate, we request the Regulatory Division reach out to the undersigned for further discussions on the topic.</p>	
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