



INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

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Dear M^e Chicoine and M^e Beaudoin:

Re: Second Request For Comments - as per Circular 166-18 issued by Bourse de Montréal Inc. (the "Bourse") on October 23, 2018 (the "Circular") – Amendments to the Rules of Bourse de Montreal inc. to clarify the governance structure of the Regulatory Division.

The Investment Industry Association of Canada (the "IIAC") would like to take this opportunity to express its views on the proposed changes to the governance structure of the Bourse's Regulatory Division as per the Circular.

The IIAC would like to thank the Bourse for analyzing our comments regarding the previous proposed amendments to the governance structure and for proposing new adjustments to the structure.

The IIAC and its Mandate

The IIAC is the national association representing the position of 120 IIROC-regulated Dealer Member firms on securities regulation, public policy and industry issues. We work to foster a vibrant, prosperous investment industry driven by strong and efficient capital markets.

The Bourse's New Proposed Amendments

The IIAC and its members understand that the Bourse's new proposed amendments are still intended to:

- Clarify the governance structure of its Regulatory Division (the "Division")
- Better align the governance with the practices of similar exchanges
- Reflect the spirit of the governance structure contemplated under Decision no. 2012-PDG-0075 (the "2012 Decision") of the Autorité des Marchés Financiers ("AMF") recognizing the Bourse as an exchange and a self-regulatory organization ("SRO").

Furthermore, we understand that the Bourse *"in light of the wording of the Recognition Decision, principles of corporate law and the Bourse's by-laws, (...) is of the view that the Special Committee should be a committee of the Board"*.

The IIAC's Position on the New Proposed Amendments

The IIAC and its members believe that the new proposed amendments, if implemented, would cause the Regulatory Division to be in a clear and significant conflict of interest with the "profit-making" unit of the Bourse.

The IIAC and its members also believe that the proposed governance structure would still be non-compliant with the 2012 Decision:

- The 2012 Decision requires that the Regulatory Division's functions and activities must be independent from the profit-making activities of the Bourse and be organizationally distinct. Independence must exist on the decision-making level and therefore at the governance level of the Regulatory Division.
- The 2012 Decision cannot be read, both in its current wording and in its spirit, as allowing the Special Committee of the Regulatory Division to be composed of members of the Board of Directors of the profit-making unit since such a structure would create a clear and significant conflict of interest detrimental to the independence of the Regulatory Division and the Canadian marketplace and its participants.

The 2012 Decision, in its original (French) version, states:

« VIII. DIVISION DE LA RÉGLEMENTATION

a) La Bourse maintiendra la Division indépendante relevant du comité spécial, désigné par le conseil d'administration de la Bourse et investi de responsabilités clairement définies de réglementation du marché et de ses participants et dotée d'une structure administrative distincte. » [Emphasis added]

As per the above, the Special Committee must be appointed by the Board of Directors and the Regulatory Division must have an independent administrative structure and be independent from the profit-making unit. We do not believe that the 2012 Decision intended for Board members of the profit-making unit to have direct control over the Regulatory Division (the not-for-profit unit). To the IIAC and its members, a structure where the not-for-profit unit would be overseen by Board members of the profit-making unit would create a clear and significant conflict of interest.

« b) La Bourse obtiendra l'approbation préalable de l'Autorité avant d'effectuer tout changement à la structure organisationnelle et administrative de la Division ou du comité spécial qui aurait une incidence importante sur les fonctions et activités de réglementation. » [Emphasis added]

We believe that the Bourse could therefore not self-certify the current proposal without prior consent of the AMF. Furthermore, if the current proposal would be approved by the AMF despite the clear and significant conflict of interest, we strongly believe that the AMF would need to amend the 2012 Decision since the not-for-profit unit would no longer be independent, being directly controlled by Board members of the profit-making unit.

« c) La Division sera pleinement autonome dans l'accomplissement de ses fonctions et dans son processus décisionnel. L'indépendance de la Division et de son personnel sera assurée et des mesures de cloisonnement strictes seront maintenues, afin d'assurer l'absence de conflits d'intérêts avec les autres activités de la Bourse, de Groupe TMX et de Maple. » [Emphasis added]

The new proposed amendments fail to meet the conditions stated above. If the not-for-profit unit would be overseen by Board members of the profit-making unit of the Bourse, the “independence” and “absence of conflict of interest” stated and intended in the 2012 Decision would not be met. Therefore, we believe the AMF would need to amend the 2012 Decision.

The AMF's Main Focus: Independence

We believe that the main focus of the AMF when issuing the 2012 Decision was, as stated in the Circular, to require “*the Division to be independent from the other activities of the Bourse*”.

The IIAC and its members believe this means that there must be autonomy, independence and an absence of conflict of interest between the governance of both:

- The Regulatory Division (often referred to as “Division”) – the not-for-profit unit of the Bourse, and
- The Bourse's profit-making unit.

The independence of the Regulatory Division, which performs a regulatory function considering the Bourse's status as a Self-Regulatory Organization (“SRO”), is key for the market and its participants. This activity must be performed in the public interest, in a not-for-profit environment, without any pressures from the profit-making unit or its directors.

The Bourse's profit-making unit performs, within the TMX Group, an important business function as the operator of an exchange-traded financial derivatives marketplace in a “for-profit” context.

The Circular gives further details on the intent of the AMF with respect to the 2012 Decision and states that:

“The Recognition Decision always required the Bourse to have a Division to oversee the regulatory functions and operations of the Bourse and always provided that the Division shall be a separate business unit of the Bourse that shall be governed by the Board. The Recognition Decision provided for the Board to appoint a Special Committee to oversee the duties and operations of the Division.”

We would not necessarily go as far as to qualify the Regulatory Division as a “separate business unit” (because of its public-interest and market surveillance mandate) although we wholeheartedly agree it should remain a separate unit from the “profit-making” unit of the Bourse.

More on Independence

The Bourse, in its Circular, seems to agree with our independence assertion when it mentions:

“The Recognition Decision requires the Division to be independent from the other activities of the Bourse.” [Emphasis added]

The IIAC and its members wholly support the original stance taken by the AMF in the 2012 Decision to create a totally separate governance structure for the Regulatory Division by mandating a separate Special Committee to oversee the duties and operations of the Division. More importantly, we support the explicit (or at least implicit) interpretation of the 2012 Decision that requires this Special Committee to be comprised of non-Directors of the Bourse.

As previously noted, the IIAC and its members believe that the new proposed amendments do not reflect the spirit of the governance structure contemplated by the AMF in its 2012 Decision as they create a conflict of interest and a lack of independence between the Regulatory Division and the Bourse’s profit-making marketplace activities.

We fail to see how the new proposed governance structure could be expected to legitimately maintain independence between the two functions if the Division is governed by a Special Committee comprised of Board members of the Bourse. The Circular states:

“In Canada, a director’s duty is owed to the corporation... [the director] must act honestly and in good faith with a view to the best interests of the corporation...”

The IIAC and its members ask: How can a Board member be, on one hand, looking for ways to increase the number of participants, volumes, revenues and profit and, on the other hand, suspending/fining participants that would decrease volumes, revenues and profit? These duties are conflicting. Therefore, a Board member of the profit-making unit having the new duty to oversee the “not-for-profit” unit would necessarily be in a conflict of interest.

The Bourse’s new proposed governance structure still creates a conflict of interest and lack of independence between the Division and the Bourse and also creates a lack of transparency for market participants. We believe it is mandatory for the governance of the Division to:

- be independent from the Bourse’s profit-making function governance, and
- be fully autonomous.

Can the Special Committee be Comprised of Members of the Board of Directors?

We believe the 2012 Decision never meant for the Special Committee to be comprised of Board members. We will, once again, quote the 2012 Decision in its original (French) version.

As per the 2012 Decision:

« ... j) Sous réserve de tout changement dont peuvent convenir la Bourse et l’Autorité, la Division doit être exploitée comme suit :

- i) Les fonctions et activités de la Division doivent être indépendantes des activités à but lucratif de la Bourse et distinctes sur le plan organisationnel. La Division doit opérer ses fonctions et activités selon le principe de l'autofinancement et doit être sans but lucratif;*
- ii) La Division doit constituer une unité d'affaires distincte de la Bourse régie par le conseil d'administration de la Bourse; et*
- iii) Le conseil d'administration doit établir un comité spécial chargé de superviser les fonctions et activités de la Division, composé :*

- 1) d’au moins 50 % de personnes qui sont des résidents du Québec au moment de leur nomination et pour la durée de leur mandat;*
 - 2) d’au moins 50 % de personnes qui satisfont aux conditions d’indépendance applicables aux administrateurs de la Bourse; et*
 - 3) d’au moins 50 % de personnes qui possèdent une expertise des produits dérivés »*
- [Emphasis added]

We must stress that the Special Committee composition states the word « person » above. We believe this is an important fact since the Rules and Policies Committee composition does not refer to “person” but refers to “directors”. As per the IIAC, this is in line with the fact that the Rules and Policies Committee is a committee of the Board, while the Special Committee is not (to maintain independence between the profit-making unit and the not-for-profit unit).

The same is true when the Bourse refers to its Board of Directors. The Bourse refers to “administrateurs” (directors) and not to “personnes” (persons):

« PARTIE III - BOURSE

(...)

II. STRUCTURE DE GOUVERNANCE

a) Les dispositions prises par la Bourse doivent assurer une représentation juste, significative et diversifiée des parties intéressées au conseil d'administration de la Bourse et aux comités du conseil de la Bourse, compte tenu de la nature et de la structure de la Bourse ainsi que le maintien d'un nombre et d'une proportion raisonnables d'administrateurs qui n'ont pas de liens avec la Bourse, ainsi que leurs participants, membres compensateurs, utilisateurs de services ou d'installations de bourse ou actionnaires, dans le but d'assurer la diversité du conseil.

b) Le conseil d'administration de la Bourse devra être composé :

i) d'un nombre d'administrateurs qui sont indépendants et qui représentent au moins 50 % du nombre total d'administrateurs candidats à l'élection;

ii) d'un nombre d'administrateurs qui sont des résidents de la province de Québec et qui représentent au moins 25 % du nombre total d'administrateurs candidats à l'élection;

iii) d'un nombre d'administrateurs qui possèdent une expertise des produits dérivés et qui représentent au moins 25 % du nombre total d'administrateurs candidats à l'élection; et

iv) d'un administrateur choisi parmi les courtiers en valeurs mobilières indépendants du Canada (pour plus de certitude, exclusion faite des courtiers en valeurs mobilières qui sont des membres du groupe de banques canadiennes de l'annexe I de la Loi sur les banques) et, tant qu'une entente de nomination de Maple est en vigueur, qui est non relié à des actionnaires initiaux de Maple. » [Emphasis added]

We believe that, if the intent of the 2012 Decision was to have a Special Committee comprised of Board members, the Decision would clearly state that fact by using the word « director » instead of « person ».

Is the Special Committee a Committee of the Board?

Other questions arose when we read the following:

“e) La Bourse veillera à publier la charte du conseil d’administration et les chartes des comités du conseil, incluant les normes et critères d’indépendance d’une personne, sur son site Internet. La Bourse obtiendra l’approbation préalable de l’Autorité avant de procéder à toute modification à la charte du conseil d’administration et aux chartes des comités du conseil. » [Emphasis added]

The Board, as well as Committees of the Board, must have their own Charter published on the Bourse’s website. The question we asked ourselves was: which committees have their own Charter on the website?

The Bourse’s website contains Charters for different committees of the Board such as the Rules and Policies Committee. It does not contain a Charter for the Special Committee. Only the *mandate* for the Special Committee is provided on the website. We believe that, if the Special Committee was intended, as per the 2012 Decision, to be comprised of Board members, and therefore be a committee of the Board, a Charter would have been drafted and would have been published on the Bourse’s website as per the 2012 Decision.

Current Governance Structure: Special Committee vs. Rules and Policies Committee

(i) The Special Committee

As per the Bourse’s website:

“The Special Committee – Regulatory Division supervises and controls the activities of the Division, subject to the final authority of the Exchange’s Board of Directors and the AMF.

The Special Committee – Regulatory Division adopts or amends Rules and Policies of the Exchange regarding in particular various matters relative to the supervision of approved participants, their approved persons and restricted trading permit holders. It makes recommendations to the Board regarding the Rules and Policies of the Exchange relative to market surveillance. [Emphasis added]

It also approves requests for approvals to become approved participants and exercises powers to suspend or revoke such approvals. It also exercises powers to order inspections and investigations and acts as an appeal forum for final decisions rendered by disciplinary committees of the Exchange or other staff committees of the Exchange.

The Special Committee – Regulatory Division is composed of at least 50% of persons who are Quebec residents, at the time of their appointment and for the duration of their term, of at least 50% of persons who satisfy the independence conditions that are applicable to the Directors of the Exchange and of at least 50% of persons having expertise in derivative instruments.”

We strongly believe that this current structure is more “independent” than the governance structure currently being proposed by the Bourse. However, we do believe minor changes should be made to provide a greater independence (see *Appendix B*).

(ii) The Rules and Policies Committee

As per the Bourse’s website:

“The Board of Directors of the Corporation (the “Board”) has established a Rules and Policies Committee (the “Committee”) for the purpose of considering and making decisions regarding rules, policies, trading procedures or other similar instruments (“Rules”) that must be submitted to the Autorité des marchés financiers (the “AMF”) for approval in accordance with Section II. e) of Part III (the “Protocol”) of the Recognition Order recognizing the Corporation as an exchange, dated May 2, 2012 (the “Recognition Order”).”

The Rules and Policies Committee is composed of Directors of the Bourse. Its mandate, particularly with respect to the approval of rules, is limited to (or should be limited to) approving rules that have an impact on the business function/commercial operations of the Bourse (as a marketplace) rather than to rules that have an impact on the regulatory function of the Regulatory Division.

Furthermore, considering that the Rules and Policies Committee is a committee comprised of Directors of the Bourse, its mandate is limited (or should be limited) to the profit-making function of the Bourse.

Directors, as previously explained, cannot be expected to act in conflicting roles and should therefore not be members of the Regulatory Division's Special Committee. The Rules and Policies Committee is not (and if it is, it should not be) part of the governance structure of the Division.

Governance Structure – Current and Proposed

To ensure that we properly understood the initial (2017) proposed governance structure, we requested that the Bourse send us organizational charts of the current and proposed governance structure of the Regulatory Division. See *Appendix A* for the charts (in French) provided by the Bourse's Legal department.

As the charts show, two changes were proposed by the Bourse in 2017:

1. The current Rules and Policies Committee would become the “new” Special Committee, which the industry thought would create a clear and significant conflict of interest. As the Bourse is now proposing, the Special Committee would be comprised of Directors of the Bourse and of at least one director who would be a representative of an Approved participant of the Bourse.
2. The Special Committee would become an Advisory Committee. The current Special Committee, comprised of independent members, would no longer have an oversight role on the Division. The new Advisory Committee, as per its proposed mandate, “...provides advice to the Division and the Special Committee as requested and may make recommendations... These advices and recommendations are not binding on the Division or the Special Committee”. [Emphasis added] Furthermore, the VPCRO would have the responsibility to appoint members of the Advisory Committee.

We fail to understand how the proposed Advisory Committee, as per the above, would have a serious governance role since the recommendations would only be made at the request of the VPCRO and would be non-binding.

Should the Rules and Policies Committee become the “new” Special Committee? Blurring the Lines of Business (profit-making unit) vs. SRO (not-for-profit unit)

In 2017, the Bourse was proposing to change the composition of the current Special Committee to that of the Bourse's Rules and Policies Committee. We believe that the current amendments to the proposed governance structure would still create a clear and significant conflict of interest.

We would like to point out the following comment from the Circular (page 5) which raises serious doubts in the circumstances:

"The Bourse is of the view that the principle of independence does not imply that the Special Committee be composed of non-Directors of the Bourse."

As previously mentioned, our members have great concerns. The Bourse's view, as stated above, is that independence means that the Special Committee must be composed of Directors of the Bourse. We find this statement to be problematic, not only in the name of the principles of sound governance, but also in the name of protecting the investing public.

As previously mentioned, the Bourse acts as a commercial entity to increase shareholder value (by increasing volumes, increasing the number of participants, increasing revenues, increasing profit) but must also act as a self-regulatory organization recognized by the AMF in a role that is fundamentally different. We feel the Bourse, in its previous and current proposal, is blurring the lines between these two functions and activities (a business function and a regulatory function) that should continue to be governed independently as required by the 2012 Decision, in order to maintain the reputation of the derivatives market in Canada.

We believe that a Special Committee comprised of individuals who satisfy the independence requirements applicable to the Bourse's Directors, which is the current situation, is not the equivalent of a Special Committee of "independent" Directors. We believe that an "independent" Director overseeing the profit-making unit of the Bourse is no longer "independent" if given the task to oversee the Regulatory functions of the Bourse. To the IIAC and industry members, the conflict of interest is clear and significant.

As with special committees of reporting issuers in Canada that are created when a decision of the Board of Directors raises or could raise concerns about one or more potential or actual conflicts of interest, the Special Committee must remain composed of persons whose judgment is free from any other interest or consideration which would be linked to the profit-making function of the Bourse.

As previously stated, this cannot be expected if the members of the Special Committee are also Directors of the profit-making unit.

It appears that the Bourse implicitly recognizes that significant conflicts of interest could arise if the Special Committee were to be composed of Directors of the Bourse by conferring, within the governance structure proposed, new important powers to the Vice President and Chief Regulatory Officer (“VPCRO”) of the Regulatory Division. Indeed, the latter is given, through the Bourse’s proposed changes, important powers in regard to the suspension of an approved participant, the decision to order a special investigation and the decision to approve the fees related to the Division.

In the proposed structure, who runs the Regulatory Division’s market surveillance function?

We further understand that the VPCRO of the Regulatory Division would report directly to the “new” Special Committee comprised of Directors of the Bourse that also oversee the for-profit unit.

We assume, due to the new important responsibility given to the VPCRO in the proposed structure, that any current and future VPCRO of the Regulatory Division would have extensive knowledge and experience with listed derivatives products in Canada and would be recognized in the industry as a leading expert in order to make regulatory decisions that may prove highly unpopular for the profit-making unit of the Bourse. We believe that the significant responsibilities proposed to be given to the VPCRO, in order to properly regulate the listed derivatives market in Canada, should not fall on one single individual. How can one individual be expected to make decisions detrimental to the profit-making unit when reporting to directors of the profit-making unit and (possibly) being remunerated as per the commercial activities of the Bourse? We once again see a clear and significant conflict of interest in this structure.

Despite receiving answers from the Bourse, we still have questions regarding the remuneration structure of the VPCRO. Does the VPCRO remuneration assist in maintaining independence between the regulatory unit and the profit-making unit of the Bourse? Is the remuneration structure of the VPCRO a hindrance to maintaining independence?

- Is the remuneration of the VPCRO based in any way on the objectives of the Bourse’s profit-making functions?
- Is the remuneration linked to the Bourse’s volumes?
- Is the remuneration linked to the Bourse’s revenues?
- Is the remuneration linked to the Bourse’s profit?

The comments provided by the Bourse in the second request for comments regarding the potential conflict of interest if the VPCRO has a remuneration linked to the profit-making unit performance do not alleviate the industry's worries regarding lack of independence. The Bourse commented that:

"...considering the VPCRO is currently an employee and officer of the Bourse, the proposed changes do not ultimately change the overall accountability of the VPCRO towards the Board of the Bourse. The current proposal does not address or purport to make any change with respect to the remuneration of the VPCRO".

Once again, we fail to see the concept of independence in the new proposed structure since:

- The VPCRO of the Division would report directly to the Board of the profit-making unit,
- The VPCRO would no longer share the responsibility of the regulatory function with members independent from the profit-making unit, and
- The VPCRO may be remunerated based on the Bourse's business activities.

Regulatory Division and the Concept of Independence

The Circular states:

"The Recognition Decision requires the Division to be independent from the other activities of the Bourse."

As previously mentioned, the industry believes that the proposed amendments would blur the lines of independence. How can the VPCRO make independent decisions when reporting to the same Board members who oversee the profit-making unit of the Bourse? We also feel tremendous concerns that the VPCRO's remuneration could be perceived to be linked to the Bourse's "commercial" results.

Bourse's Proposal: In the Public Interest?

The Circular further states:

"The Bourse believes that this proposal is in the public interest. The public has an interest in making sure that an SRO is governed in accordance with sound governance principles and with the Recognition Decision. The Board being accountable for the

Bourse's SRO responsibilities, the Special Committee should therefore be a committee of the Board."

Our members disagree with the first sentence of the above paragraph. We do not believe that the Bourse's proposal is in the public interest since it creates a clear and significant conflict of interest. The Industry believes that the Division's governance must, first and foremost, be independent from the Bourse's profit-making governance. Independence is key for the sound governance of an SRO. No "commercial pressures" should be put on the not-for-profit unit, nor on its VPCRO. We therefore believe that an independent Special Committee, with enhanced reporting obligations to the AMF, must remain.

Why did the Bourse propose these amendments? What needs to be fixed?

The Circular states:

"The Autorité has raised questions with respect to the mandate, powers and responsibilities of the Special Committee and the accountability of the Board in light of the requirements of the Recognition Decision. Ongoing dialogue with the Autorité has led the Bourse to revisit the governance structure, which has resulted in the present proposal."

We respectfully submit that these objectives should not be pursued at the expense of a loss of autonomy and independence of the Regulatory Division. A loss of independence may lead to a perception of the profit-making unit imposing its views on the regulatory function. Such a perception would be highly detrimental to the Canadian market and its participants.

We believe that some amendments to the regulatory framework are required to the mandate, powers and responsibilities of the Special Committee and the accountability of the Board in light of the requirements of the 2012 Decision, but we also believe that these amendments need not be as extensive and potentially damaging as those proposed in the Circular.

Can self-certification be used to implement the Bourse's proposed changes?

Our members still have serious questions on the self-certification process to implement the changes as proposed by the Bourse. We doubt that the self-certification process set out in Division II of the Derivatives Regulation is appropriate for the amendments proposed by the Bourse in the Circular without amending the 2012 Decision, which would most likely require a more formal public consultation.

We doubt that the Bourse can self-certify the proposed changes as the self-certification process provides that only minor impact rules (Section 7), emergency rules (Section 9) and rules relating to a new derivative (Section 10) are not subject to public consultation. The impacts of the Bourse's proposed changes in the Circular are major for the Bourse, the Regulatory Division, the approved participants of the Bourse, the Canadian market, and the investing public.

The proposed changes would have a significant impact on the Division's functions and regulatory activities, which in the name of protecting the public and the proper functioning of the Bourse's markets, must be fully independent in performing its duties, in its decision-making process and in its governance.

The Division's functions, including compliance and market surveillance activities, must be independent of the Bourse's profit-making activities, both through its organizational structure and its decision-making structure.

Accordingly, if the Bourse were to impose the proposed governance structure, the 2012 Decision should be amended to allow explicit, clear and unequivocal changes to the governance structure as proposed by the Bourse. In our view, due to the importance of the potential changes, the process of self-certification is not appropriate.

The Industry's Initial Proposal: Ensuring Best Practice

As mentioned in our comment letter dated June 1, 2017, we believe that a governance structure like the one that existed at ICE Futures Canada could be used for the Bourse's Regulatory Division. Such a structure would involve a Special Committee comprised of independent persons, with enhanced responsibilities over the not-for-profit regulatory unit of the Bourse. We believe it to be a Best Practice model.

The industry assessment of the ICE Futures Canada governance structure is included in *Appendix B* to avoid repetition. The fact that ICE Futures Canada ceased to operate in Canada is irrelevant to this discussion.

Best Interest of the Corporation: Profit-Making Function vs. Regulatory Function

The Circular issued by the Bourse states:

“Managing inherent tension between business and regulatory functions and conflict of interests, real or apparent, should be the responsibility of the Board, the governing body of a corporation used to dealing with conflict issues. Moreover, directors of the Board are legally obligated by virtue of their fiduciary duties to act in the best interest of the corporation, which implies a duty to treat individual stakeholders affected by corporate actions equitably and fairly. These duties do not legally bind the members of the Special Committee who currently are not directors of the Bourse.” [Emphasis added]

The industry believes that in the unique and particular context of the Bourse being both a profit-making and a non-profit organization, these accountability issues must be addressed, but not at the expense of creating conflicts of interest at the director level.

As previously mentioned, **a director of the profit-making unit, when having direct control over the regulatory function, is necessarily in a conflict of interest (conflicting duties between the profit-making unit and the regulatory function)**. Therefore, our industry members recommend the changes to the current governance structure that are now included in *Appendix B*.

With the Bourse’s proposed structure, it would be difficult for a Director to make an objective assessment of an application for approved participant status by an entity whose competency or integrity, or those of its owners, directors, officers or employees would be questioned by regulatory division staff. This difficulty stems from the obvious conflict between the commercial interest for the Bourse to welcome a new participant in its markets, and the protection of the public and the proper functioning of the market, which the Bourse must provide as a self-regulatory organization. It does not make sense for directors of the profit-making unit to have direct control over the regulatory function, especially if the ultimate goal is to have a Regulatory Division that is independent from the profit-making activities of the Bourse.

We also believe that “independence” to qualify as a Director of the Bourse does not guarantee the appropriate or expected level of “independence” in a situation of conflict between the business and the regulatory functions. The protection of the investing public and the proper functioning of the market could be too often compromised if the AMF accepts the current proposal of the Bourse.

As the Bourse itself states in the Circular, it is important to *"separate the implementation measures from the operating activities of the exchanges ... and to isolate the enforcement activities and market surveillance of commercial pressures."*

We strongly agree with the Bourse on this last point.

Another Industry Proposal

If the Bourse remains against implementing a governance structure similar to that of ICE Futures Canada (*Appendix B*), the industry believes that the AMF should assess whether a fully separated legal regulatory entity, similar to the FINRA model in the United States, would be better positioned to properly regulate the Canadian listed derivatives market.

As stated by the Bourse in the Circular: *"IIROC is recognized as an SRO by securities regulators and is a separate legal entity from the exchanges operating the markets it oversees"*. [Emphasis added]

In comparison, *"The Bourse monitors the conduct of its approved participants and enforces its rules directly, rather than through a regulation service provider. The Division, to whom this responsibility has been assigned, is not a separate legal entity from the Bourse with a separate recognition order. The Bourse is the legal entity that the Autorité has recognized as an SRO."*

The conflict of interest that exists in the proposed governance structure may rest in the fact that *"...the Bourse in its entirety is the entity recognized as an exchange and an SRO by the Autorité..."*. [Emphasis added]

Industry members view a regulatory body that is *"a separate legal entity from the exchanges operating the markets it oversees"* as truly independent. In contrast, the Regulatory Division of the Bourse is not viewed as fully independent from the marketplace it regulates.

Summary

Our Industry requires proper regulation and governance to maintain the reputation of the Canadian market. A lack of independence between marketplace and regulator, either real or perceived, will undoubtedly hurt such a reputation. Canadian regulators must, without any pressures from marketplaces, properly regulate our Canadian markets for the benefit of all

stakeholders (market participants and investors). A proper governance structure is essential to the proper functioning of our markets.

In the opinion of the IIAC and its members, the amendments suggested by the Bourse in the Circular do not address the protection of the investing public as they create a lack of independence for the Regulatory Division, where the regulatory function may easily be impacted by commercial pressures.

It is important for the AMF to seriously consider the implications that may arise from a position where the Special Committee may consist solely or predominantly of Directors of the Bourse in respect of the important mandate of overseeing the Bourse's markets *in the public interest* (re. regulatory function).

We believe independence must exist between the Bourse and the Regulatory Division, so we recommend:

- not changing the composition of the Special Committee, and implementing a structure similar to that of ICE Futures Canada (*Appendix B*), or
- an AMF assessment of a third party regulatory service provider model for listed derivatives products through a public consultation.

If the Bourse's proposed changes to the governance structure were to nonetheless be accepted by the AMF - in spite of our members' position regarding the clear and significant conflict of interest - the Industry believes that the AMF would need to amend its 2012 Decision since the proposed structure would create a conflict of interest between the Regulatory Division and the Bourse's profit-making activity. We do not believe, due to the importance of the proposed changes, that self-certification can be used by the Bourse to implement such changes to the 2012 Decision without public consultation and an amendment to the Decision itself.

The structure and governance standards of the Division must comply with the provisions and the spirit of the 2012 Decision, and with the Bourse's Rules. As far as the latter rules are concerned, they require, in our opinion, only the changes proposed in *Appendix B*.

As previously explained, our industry members believe that the ICE Futures Canada governance model or a third party regulatory service provider model (similar to that of the United States) are more appropriate in the circumstances than the changes proposed by the Bourse in its Circular 038-17, dated March 22, 2017, and Circular 166-18, dated October 23, 2018.

The independence of the Regulatory Division is essential for our Canadian market, market participants and investors.

Please note that the IIAC and its members, as always, remain available for further consultations.

Yours sincerely,

A handwritten signature in blue ink that reads "A. Sinigaglia". The signature is fluid and cursive.

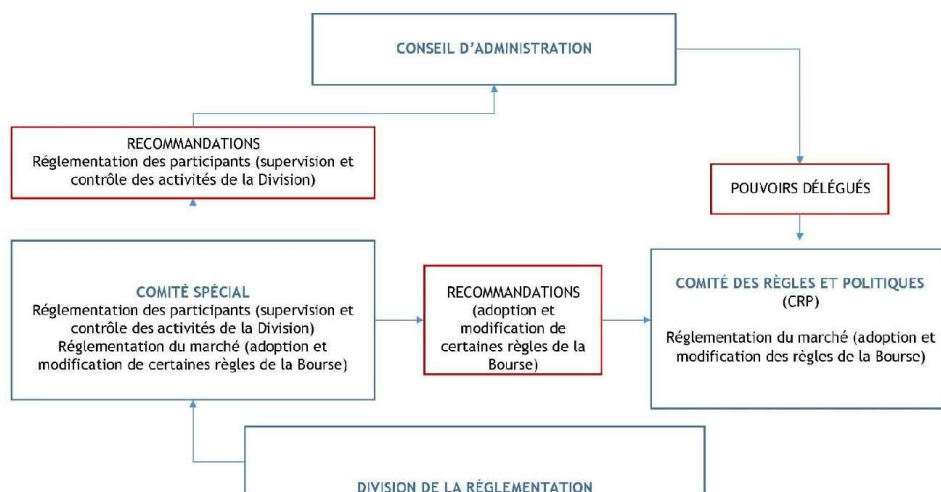
Annie Sinigaglia
Managing Director
Investment Industry Association of Canada
asinigaglia@iiac.ca

APPENDIX A



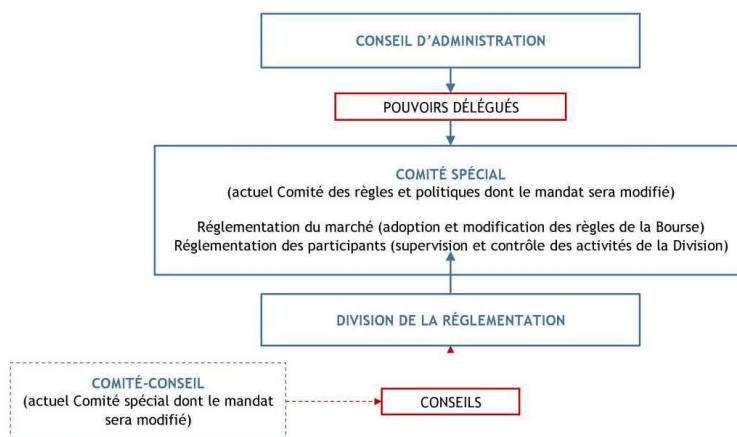
Structure actuelle
(Current Structure)

BOURSE DE MONTRÉAL INC. ORGANISME D'AUTORÉGLEMENTATION (OAR)



Nouvelle structure proposée
(Proposed Structure)

BOURSE DE MONTRÉAL INC. ORGANISME D'AUTORÉGLEMENTATION (OAR)



APPENDIX B

ICE FUTURES CANADA - GOVERNANCE STRUCTURE

Industry's Initial Proposal – Ensuring Best Practice:

As mentioned in our comment letter dated June 1, 2017, we believe that a governance structure similar to the one that existed at ICE Futures Canada could be used for the Bourse's Regulatory Division.

Firstly, the Special Committee currently adopts and modifies the rules and policies of the Bourse on various matters relating in particular to the supervision of approved participants and their approved persons. However, under Rule 6.4 of the Special Committee Rules, the Special Committee may only make recommendations to the Bourse's Board of Directors regarding the rules and policies on margins and market surveillance.

Such a limitation on the powers of the Special Committee may be problematic as this is clearly an aspect of the Regulatory Division's regulatory function.

In our view, section 6.4 of the Special Committee Rules should be revised by the AMF to specifically provide that the Special Committee may adopt and amend the rules and policies on margins and market surveillance rather than merely make recommendations to the Board of Directors.

On this last point, we would also add that the Rules and Policies Committee should not intervene in any way to oversee matters relating to the Bourse's approved participants' compliance with the rules of the Bourse and the supervision of the Bourse's markets.

The Rules and Policies Committee must therefore be removed from the Division's governance framework (if it is included) because its role must be limited to the adoption and approval of rules that relate to the Bourse's business functions. Examples include the rules for a new derivative, rules which deal with the trading hours of the Exchange and the execution costs imposed on the different accredited participants.

The Special Committee, as currently constructed, must remain and be confirmed as the only committee mandated to oversee all matters relating to the compliance of participants with the Rules and the oversight of the Division, including trading rules.

Secondly, to address matters of governance that are problematic, we believe that the Rules of the Division and of its Special Committee must be amended to provide that:

1. the Bourse's Board of Directors creates, mandates and appoints the Special Committee (and the Division) and delegates to the Special Committee all powers necessary to perform its duties and responsibilities arising from the relevant rules of the Bourse;
2. the Special Committee must report annually to the AMF on the performance of the division and on any material matters of importance;
3. the Special Committee has the full powers to adopt and also amend the rules concerning margins and market supervision and no longer just to make recommendations to the Bourse's Board of Directors.

These proposed changes from our industry members are relatively simple to implement through rule changes and do not require a change to the 2012 Decision. Therefore, the self-certification process can be used to implement such a structure without legal uncertainty.

The Canadian Context: Governance Structure

Our Industry is proposing the "ICE Futures Canada" solution to any perceived governance structure concerns as it applies in the context of the Bourse and the Division.

We note that the Bourse has provided a comparative analysis in its 2017 Circular which included the Investment Industry Regulatory Organization of Canada ("IIROC") as well as international regulatory bodies but has overlooked what the Canadian industry feels is the best comparison in this instance: ICE Futures Canada.

The IIAC and its members believe that a governance structure like the one of ICE Futures Canada would be appropriate to meet all AMF requirements. The fact that ICE Futures Canada ceased its activities is irrelevant to this discussion.

Governance Structure proposed by the Industry: ICE Futures Canada

Our members believe that a governance structure similar to that of ICE Futures Canada would benefit the interests of all parties: The Bourse, the Division, the AMF and the Canadian market and its participants.

ICE Futures Canada Inc. had, in spite of being omitted from the Bourse's initial comparative analysis, a governance structure that our members believe to have been of particular relevance in this case. Many similarities existed between ICE Futures Canada and the Bourse.

The ICE Futures Canada structure can be summarized as follows:

- ICE Futures Canada had two distinct entities which were independent:
 - A regulatory division, and
 - A business division.
- The Regulatory Division of ICE Futures Canada was overseen by a Special Committee.

The Governance structure of the ICE Futures Canada Regulatory Division, which was approved by the Manitoba Securities Commission, was as follows as per ICE Futures Canada - Rule 9 and Article 5 of its by-law:

- ICE Futures Canada's Special Committee is a committee of the ICE Futures Canada Board of Directors,
- ICE Futures Canada's Special Committee consists of six members, of whom only one is a member of the ICE Futures Canada Board of Directors,
- ICE Futures Canada's Special Committee members are appointed by the Board of Directors of ICE Futures Canada,
- ICE Futures Canada's Special Committee derives its authority not only from ICE Futures Canada's recognition decision by the Manitoba Securities Commission, but also from a delegation of the ICE Futures Canada Board of Directors.

It should also be noted that the Board of Directors of ICE Futures Canada had a committee that is similar to the Bourse's current Rules and Policies Committee. This Committee was not mentioned in the governance framework of ICE Futures Canada's Regulatory Division as it related to the governance of the "business division", and not the Regulatory Division.

ICE Futures Canada's Regulatory Division's governance framework only included rules of interest to ICE Futures Canada's mandate as a self-regulatory organization. We believe the Bourse should also create, for its Regulatory Division, a governance framework that only includes rules that are related to its SRO mandate.

Regulatory Framework - Governance Structure of the ICE Futures Canada Regulatory Division

The Regulatory Framework was as follows:

- The ICE Futures Canada Board of Directors establishes, mandates and appoints the ICE Special Committee (and the Regulatory Division) and delegates to the ICE Special Committee all powers necessary to carry out its duties and responsibilities arising from the relevant ICE Futures Canada rules.
- The ICE Special Committee reports annually to the Manitoba Securities Commission on the performance of the Regulatory Division and on any significant regulatory matters.
- The ICE Special Committee has full authority to adopt and amend the rules relating to market compliance and supervision, and not merely to make recommendations to the ICE Futures Canada Board of Directors.

With respect to this last point, the ICE Futures Canada website stated:

*“The jurisdiction of the Special Regulatory Committee extends to **all matters respecting compliance and market surveillance** at ICE Futures Canada. This is a broad and far-reaching jurisdiction. It encompasses all the Rules of ICE Futures Canada® including trading rules, **contract rules**, delivery, shipping, financial compliance and also compliance by participants with the provisions of the CFA and the rules and regulations promulgated thereto”. [Emphasis added]*

Please note that “all the Rules of ICE Futures Canada” in the paragraph above only refer to matters respecting compliance and market surveillance.

We believe the ICE Futures Canada governance structure for its Regulatory Division complied with the demands of the AMF as drafted in its 2012 Recognition Decision of the Bourse as an SRO.

Recommendations from the Industry concerning the Governance Structure of the Division of the Bourse

The IIAC and its members recommend the following in regard to the Division's governance structure in order to comply with the 2012 Decision:

- The status quo in regards of the member composition of the Special Committee;
- Amendment to the Rules of the Special Committee to provide that the Bourse's Board of Directors establishes, mandates and appoints the Special Committee and the Division and delegates to the Special Committee all powers necessary for the accomplishment of its duties and responsibilities arising from the relevant rules of the Exchange;
- Amendment of the Rules of the Special Committee of the Regulatory Division to provide that the Special Committee shall also annually report directly to the AMF on the performance of the division and on any material regulatory matters;
- Amendment of Article 6.4 of the Rules of the Special Committee of the Regulatory Division to provide that the Special Committee has full power to adopt and amend the rules on margins and market surveillance.

Furthermore, we recommend that reference to the Rules and Policies Committee of the Bourse be removed from the Division governance structure, if they are included, since it relates to the Bourse's business function and not to its regulatory function.