



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

www.iiac.ca

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M^e Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
Tour de la Bourse, P.O. Box 246
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Montréal, Québec H4Z 1G3

Dear M^e Jannelle and M^e Beaudoin,

**Re: Bourse de Montréal Inc. – Requests for Comments:
Amendments to Article 6.200 of the rules of Bourse de Montréal Inc. relating to off-
exchange transfers**

The Investment Industry Association of Canada (the "IIAC") and its members would like to take this opportunity to express their views on the proposed amendments to the Rules of Bourse de Montréal Inc. regarding off-exchange transfers as per Circular 075-19 published on May 21, 2019.

The IIAC is the national association representing the position of 119 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.

We remind Bourse de Montréal that this comment letter, in its entirety, can be published on the Bourse's website.

Industry participants seeking clarifications and guidance

The IIAC and its members seek clear rules and guidance. As such, we welcome the current proposal on off-exchange transfers.

We agree with the Regulatory Division that such transfers should not be limited to Futures contracts. When the Bourse self-certified rule changes on December 29, 2017 (circular 187-17), Article 6005 "Off-Exchange Transactions" had been deleted which created confusion for our members. The article discussed off-exchange transfers of the Bourse's products. The Bourse, at that time, replaced Article 6005 with an amended Article 6816 "Off-Exchange Transfer of Existing Futures Positions". We agree that the non-futures information had to be added back.

Confusing wording included in the proposal

The IIAC and its members generally agree with the proposal but find some of the wording used by the Regulatory Division of the Bourse to be confusing. We would recommend using simpler and clearer wording. We provide examples below.

- The analysis portion of the circular, section ii, states:

However, the prescribed situations under paragraph (a) of Article 6.200 do not contemplate the correction of an error in clearing or recording in an Approved Participant's book in cases where a change in beneficial ownership would occur. In other words, if a correction has to be done from one client's account to another following an error, the situation does not qualify under paragraph (a) (iii) or (iv)⁴ given the restriction regarding the change in beneficial ownership. [Emphasis added]

We believe that the underlined portion above needs to be clarified and mention "to another client's account".

- In Article 6.200, paragraph (b):

In all situations described in paragraph (a), the Approved Participants involved in the off-exchange transfer shall maintain and shall without delay provide to the Bourse, upon request, all orders, records, memoranda or other documentary evidence pertaining to the off-exchange transfer. [Emphasis added]

We believe “without delay” should be removed.

- In the analysis section, under paragraph iv:

(C) Finally, a scenario of an Off-exchange transfer that could be authorized by the Division under Article 6.200 (c):

1. *Account 123, under the name of Enterprise Inc., is held at Participant ABC. Enterprise Inc. is owned 50% by Mr. X and 50% by Mr. Y. Participant ABC receives a request from Mr. X to transfer the Listed Products positions held in Account 123, to account 789, under the name Company Ltd., as a result of an asset purchase transaction in view of a dissolution of Enterprise Inc. Account 789 is also held at Participant ABC and Company Ltd. is owned 100% by Mr. Y. Such transfer could be authorized by the Division under the specific circumstances of the dissolution and asset purchase transaction between the two entities. [Emphasis added]*

We believe that the word “could” above should be changed to “would”. Using the word “could” lacks certainty.

- In Article 6.200, paragraph (d):

(d) Notwithstanding the provisions of paragraph (a) and subject to a prior written approval of the Bourse, a transfer of existing positions in a Listed Product either on the books of an Approved Participant, or from one Approved Participant to another, may be permitted at the discretion of the Bourse if the transfer:

(i) is in connection with, or results from, a merger, asset purchase, consolidation or similar non-recurring transaction between two or more entities; or

(ii) involves a Partnership, investment fund, or commodity pool and the purpose of the transfer is to facilitate a restructuring or consolidation of such Partnership, investment fund, or pool, provided that the managing partner or pool operator remains the same, the transfer does not result in the liquidation of any existing positions, and the pro rata allocation of interests in the consolidating account does not result in more than a de minimis change in the value of the interest of any party; or

(iii) is in the best interests of the market and the situation so requires. [Emphasis added]

We believe that a change in wording is needed in order to bring clarity to the section above. “May be permitted” and “at the discretion of the Bourse” is wording that does not provide clarity.

Furthermore, we would recommend using plain language. We believe that simpler wording should be used instead of “does not result in more than a de minimis change...”.

Confusing definition for Beneficial Ownership

The IIAC and its members believe that having a definition of beneficial ownership that only pertains to off-exchange transfers and not to the whole rulebook may cause confusion for members.

- The analysis portion of the circular, section iii. states:

Finally, the Division also proposes to remove the specific circumstances where an Off-exchange transfer would be permitted when there is no change of beneficial owner, as is currently the case with paragraph a) of Article 6.200 while restricting the definition of beneficial owner for the purpose of an Off-exchange transfer. To align the rules on Off-exchange transfers with other exchanges the Division proposes to expressly provide that beneficial ownership should be deemed to be 100% owned for purposes of Article 6.200. [Emphasis added]

It is beneficial for members to have greater clarity on how the Regulatory Division will determine the 100% ownership for off-exchange transfers.

The “control” aspect in a transaction

We would recommend adding additional information on the “control” aspect of a transaction. For example, if a fund manager is transferring positions between funds he or she controls, would this be done on or off-exchange? Additional examples would be beneficial.

Conclusion

The IIAC welcomes the initiative of the Bourse to ensure the extension of off-exchange transfers to instruments other than futures. Our members believe it is beneficial to provide additional clarity to the rules to ensure a level playing field for all members and for the elimination of confusion in application. We recommend a re-write using simpler wording and clarifying confusing sections identified above.

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

Yours sincerely,



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