



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

[www.iiac.ca](http://www.iiac.ca)

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Montréal, Québec H4Z 1G3

Dear M<sup>e</sup> Normandeau and M<sup>e</sup> Beaudoin,

**Re: Bourse de Montréal Inc. – Requests for Comments:  
Amendments to Article 6.208 of the rules of Bourse de Montréal Inc. relating to the pricing  
of EFRP transactions**

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 pricing of EFRP transactions as per Circular 079-19 published on May 22, 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 pricing of EFRP transactions and generally agree with the proposal.

### **Confusing wording**

As previously mentioned by the IIAC to the Regulatory Division of the Bourse, the members believe that the price of the futures leg in an EFRP transaction does not have to be within the daily high and low prices of the futures contract. We believe the EFRP transaction itself must be properly priced - We assume that this is what the Regulatory Division was trying to convey in the proposal.

We believe that the proposed wording creates confusion. We are including examples below:

- Article 6.208, paragraph (viii) now states:

*The price at which an EFRP Transaction is arranged and mutually agreed upon by parties to the Transaction must be "reasonable" in light of, notably: (w) the size of the Transaction; (x) currently traded prices and bid and ask prices in the same contract (y) the underlying markets; and (z) general market conditions, all at the time of the Transaction.*  
[Emphasis added]

When mentioning "the same contract" in the section above, we believe the Regulatory Division is referring to the same derivative contract. If so, wording should be amended to provide greater clarity.

Furthermore, we believe the wording may cause confusion as the futures leg does not have to be executed within the daily high and low, nor at the market price of the futures leg at the time of the EFRP. Additional confusion may exist since the following has been removed: “Although there is no requirement for an EFRP to be executed within the daily high and low prices, execution outside of that price range may result in a request by the Regulatory Division for additional information about the Transaction.” We believe that the fact that there is no requirement for the futures leg of an EFRP to be executed within the daily high and low prices should be included in the article.

- Article 6.208 also states:

*(e) Books and records of EFRP Transactions: Each party to an EFRP Transaction must maintain full and complete records and documentary evidence relating to the EFRP, including but not limited to all records relating to the purchase or sale of the cash market or OTC derivative component of the Transaction and to any transfer of funds or ownership made in connection with such Transaction. Such records include, but are not limited to, documentation customarily generated in accordance with market practice, such as cash account statements, Trade confirmation statements, ISDA® Master Agreements or other documents of title; third party documentation supporting proof of payment or transfer of title, such as canceled checks, bank statements; cash account statements and cash instruments Clearing Corporation documents. In addition, Futures Contracts order tickets (which must clearly indicate the time of execution of the EFRP Transaction) must be maintained. If the price at which the EFRP Transaction is arranged is not within the prevailing market prices at the time of the Transaction, such records must demonstrate that the price is reasonable. Records related to the Transaction must be provided to the Bourse upon request and it is the responsibility of the Approved Participant to obtain and provide on a timely basis records of their clients as requested by the Bourse. [Emphasis added]*

We believe that the proposed wording may create confusion for members solely executing the futures leg portion of the EFRP transaction for another member’s client. Such an executing broker cannot provide some of the client documentation listed above – for the cash market as an example - as it would breach privacy laws. We believe the Regulatory Division should reach out directly to the member carrying the cash leg in order to request the documentation. The wording above should be amended to cover such EFRP transactions.

We also believe that the Regulatory Division should amend the “prevailing market prices” wording as it creates confusion. Additional information should be included so that members understand which “prevailing market prices” the Regulatory Division is referring to. We assume the Regulatory Division is referring to the futures leg when mentioning prevailing market prices.

We must mention once again that the fact that there is “no requirement” for the futures leg of an EFRP to be executed within the daily high and low prices should be included in the Article.

### **Conclusion**

The IIAC and its members believe the rules should be clear and provide for a level playing field for all members. Therefore, we would recommend a re-write of certain confusing sections.

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

Yours sincerely,



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