



Wednesday, April 12, 2017

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M^e Anne-Marie Beaudoin
Corporate Secretary
Autorité des Marchés Financiers
Tour de la Bourse
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Dear M^e Jannelle and M^e Beaudoin:

Re: Request For Comments - as per Circular 033-17 issued by Bourse de Montréal Inc. on March 13, 2017

The Investment Industry Association of Canada (the "IIAC") would like to take this opportunity to express its views on the proposed changes via Request for Comments - as per Circular 033-17 issued by Bourse de Montréal Inc. on March 13, 2017. Please note that this letter is drafted in English as per the Bourse's request dated October 15, 2015.

The IIAC is the national association representing the position of 130 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 IIAC and its Members understand that the proposed amendments were intended to:

- Seek to provide legal certainty as to prohibited trading practices, and
- Clarify the liability standard applicable to these prohibited trading practices.

We believe the transition from a standard based on the determination of “intent” to a standard that includes “reckless” or “willfully blind” behavior is a material change in the application of the rule that implies the need for additional clarity with respect to how these terms will be interpreted by the Bourse. Our specific concerns are articulated below.

“Recklessness” and “Willful blindness”

Current article 6306 “Manipulative or Deceptive Methods of Trading” states that the rule is violated when a person acts intentionally. The proposed amendments further include “reckless” and “with willful blindness” as standards of liability in addition to intent.

We believe the language requires clarification to help our members understand the scope of the amendments. The industry has questions on what constitutes manipulative or deceptive trading:

- What is the Bourse’s definition of recklessness?
- What is the Bourse’s definition of willful blindness?
- Could an error be considered recklessness? If so, under what circumstances?
- Could an error be considered manipulation? If so, under what circumstances?
- What criteria will the Bourse consider when concluding on recklessness or willful blindness?
- How will the Bourse determine if orders are entered to execute *bona fide* transactions?

To clarify the scope of this principle-based rule, we believe the Bourse should supplement its rule with guidance and examples, to align itself with the Canadian Standard implemented by the Investment Industry Regulatory Organization of Canada.

We also note the abrogation of the specific examples of manipulative behavior in favor of the standard of “manipulating the price of any Listed Product”. This is troublesome under a standard that includes recklessness and willful blindness. Virtually any transaction can be interpreted to have “manipulated” the price of the Listed Product which has traded. Consequently, certainty about the interpretation of the standard is of paramount importance.

“Person” trading on the marketplace of the Bourse

Our members also believe that “person” should be clarified. We are questioning, after review of Rule One of the Bourse, whether “person” includes all clients of Approved Participants.

In general, we question the Bourse’s expectations for the members’ obligations with respect to supervision of non-Associated Person’s under a standard of recklessness or willful blindness.

We believe that for a member to be liable, determination of negligence should be applied.

More specifically, in order to obtain clarity, we have the following questions:

- How does the Bourse intend to assert jurisdiction over persons who are not directly affiliated with the Bourse?
- What are the implications for members with respect to client supervision? For example, would Direct Electronic Access (“DEA”) supervision requirements decrease for Approved Participants?
- If a client breached article 6306 with intent, how would the Bourse view this infraction against the Approved Participant?
- What happens when the Approved Participant identifies the potential manipulation?
- What happens when the Bourse identifies the potential manipulation? Is the member automatically at fault for the client breaching the rule?

Furthermore, most clients of Approved Participants are extremely sensitive to reputational risk. With the lack of clarity in the proposed changes and the expansion of the Bourse’s jurisdiction to include “persons” in its scope, the IIAC members believe that there will be a negative impact on the business. For example, clients may refuse to enter into an amended DEA agreement with an Approved Participant if the proposed changes are accepted. Did the Bourse conduct an analysis on the impact to the business?

“Wash trades”

The Bourse is proposing to replace the language pertaining to “transactions with no change in beneficial ownership” with “wash trades”. We once again request that the wording be clarified in order to avoid confusion.

Our industry questions are:

- What does the exchange consider to be “wash trades”?
- Is there a concept of economic or beneficial ownership related to “wash trading”?
- Is the concept of “wash trade” related to “control of accounts”?
- Would affiliates be considered under same ownership?

What is ownership?

Members believe that there may be an issue, in the Bourse’s rules, regarding the concept of ownership. Article 1103 (“Affiliated Corporations and subsidiaries”) states that “a corporation shall be deemed to beneficially own securities held by its affiliates”. Would different entities of the same financial group be deemed to be “wash trading”, therefore manipulating the market, if trading against one another?

Compliance Priorities and Conclusion

In conclusion, we believe that the Bourse must provide further information to the industry to ensure proper understanding of this article.

Furthermore, we believe that clarity is extremely important since, as per Circular 023-17 issued by the Bourse on February 17, 2017:

“The Division’s mission is to promote the integrity of exchange-traded derivatives markets at the Bourse or in Canada through the development and consistent application of clear, fair rules and policies that are effectively adapted to market needs”.

The Bourse's circular also states that "Manipulative or Deceptive Methods of Trading" as well as "Participants' Compliance and Supervision Obligations" are identified as two of the Division's three 2017 Compliance Priorities. As stated in the Compliance Priorities circular:

"These priorities will guide the Division's initiatives in the development of its regulatory policy and its examination, analysis, investigation and enforcement activities".

The Bourse must therefore make sure that proposed changes regarding both compliance priorities stated above, as per its strategic planning, are clear and concise for all Approved Participants to properly implement.

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

Yours sincerely,



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