



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

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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 Chicoine and M^e Beaudoin:

Re: Request For Comments - as per Circular 038-17 issued by Bourse de Montréal Inc. (the "Bourse") on March 22, 2017 (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 via Request for Comments - as per the Circular.

The IIAC and its Mandate

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 Bourse's Proposed Amendments

The IIAC and its Members understand that the Bourse's proposed amendments were 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 *"wishes to modify its rules to clarify that the Special Committee within the meaning of the 2012 Decision shall be a committee of its Board of Directors ("Board")"*.

IIAC's Position on the Proposed Amendments

The IIAC and its members believe that the proposed amendments, if implemented, would 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 take place 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 Bourse since such a structure would create a lack of independence.

The 2012 Decision – 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 a lack of conflict of interest between the governance of both:

- The Regulatory Division (often referred to as “Division”), and
- The Bourse’s business unit.

The Regulatory Division performs a “regulatory function” considering the Bourse’s status as a Self-Regulatory Organization (“SRO”). This activity must be performed in the public interest, in a “not for-profit” environment.

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

The Circular gives further details on the intent of the AMF behind 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 “business unit” (because of its public-interest and market surveillance mandate) although we wholeheartedly agree it should remain a separate unit from the “business” unit of the Bourse.

The Bourse, in its Circular, seems to agree with this independence assertion of ours when it also mentions:

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

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. We more importantly 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 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 for-profit marketplace activities.

We fail to see how the 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 Industry believes that the Bourse’s proposed governance structure creates a conflict of interest and lack of independence between the Division and the Bourse and that it 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 business functions governance, and
- be fully autonomous.

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

(i) The Special Committee

The Bourse’s website mentions:

“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.”

(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 business function of the Bourse.

Directors 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 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 are proposed by the Bourse:

- 1- The current Rules and Policies Committee would become the "new" Special Committee.

This "new" Special Committee would be comprised of "independent" Directors of the Bourse.

- 2- The current Special Committee would become an Advisory Committee. This committee, comprised of independent members, would no longer have an oversight role on the Division.

It should be noted that the members of the current Special Committee are recognized in the Industry for their knowledge and experience and are independent from the Bourse.

Should the Rules and Policies Committee become the "new" Special Committee? Blurring the Lines of Business vs. SRO

The Bourse is proposing to change the composition of the current Special Committee by that of the Bourse's Rules and Policies Committee.

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."

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. The Bourse acts as a commercial entity to increase shareholder value but must also act as a self-regulatory organization recognized by the AMF. We feel the Bourse, through its 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.

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.

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 business function of the Bourse.

This cannot be expected if the members of the Special Committee are also Directors of the Bourse.

It appears that the Bourse implicitly recognizes that significant conflicts of interest could arise from a position that the Special Committee could 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 regards 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.

We wonder about the remuneration structure of the VPCRO. The industry has many questions:

- Is the remuneration of the VPCRO based in any way on the Bourse's business functions' objectives?
- 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?

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

- The VPCRO of the Division would report directly to the Board of the Bourse, and
- The VPCRO may be remunerated based on the Bourse's business activities.

Regulatory Division and the Concept of Independence

The Circular states that:

“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 take independent decisions when reporting to the Board of the Bourse? We also feel tremendous concerns that the VPCRO's remuneration could be perceived to be linked to the Bourse's business results.

Bourse's Proposal: In the Public Interest?

The Circular further states that:

“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 conflict of interests. The Industry believes that the Division's governance must, first and foremost, be independent from the Bourse's governance as independence is key for the sound governance of an SRO.

To the extent that the composition of a Board Special Committee can include non-Directors, our members do however agree that:

"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."

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.

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 have serious questions on the self-certification process to implement the changes as proposed by the Bourse. We question if 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 most likely would in turn 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 those 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, approved participants of the Bourse 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 for-profit activities, both through its organizational structure and decision-making structure. Accordingly, 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 does not seem appropriate.

The Industry's Proposal

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 only makes 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 specifically to provide that the Special Committee may adopt and amend the rules and policies on margins and market surveillance rather than recommend 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 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 composed, 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.

Best Interest of the Corporation: Business 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 which is both a for-profit and a non-profit organization, these accountability issues must be addressed but not at the expense of creating conflicts of interests at the Directors’ level. Therefore, our industry members recommended the above-mentioned changes (and only such).

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 divisional 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.

We also believe that “independence” to qualify as a Director of the Bourse does not guarantee the appropriate or expected level of “independence” in such 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 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.

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 which includes 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 similar to the one of ICE Futures Canada would be appropriate to meet all AMF requirements.

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 participants.

ICE Futures Canada Inc. has, despite being omitted in the Bourse’s comparative analysis, a governance structure that our members believe to be of particular relevance in this case. Many similarities exist between ICE Futures Canada and the Bourse.

The ICE Futures Canada structure can be summarized as follows:

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

The Governance structure of the ICE Futures Canada Regulatory Division, which has been approved by the Manitoba Securities Commission, is 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 has a committee that is similar to the Bourse's current Rules and Policies Committee. This Committee is not mentioned in the governance framework of ICE Futures Canada's Regulatory Division as it relates to the governance of the "business division", and not the Regulatory Division.

ICE Futures Canada's Regulatory Division governance framework only includes rules that are of interest for 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 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 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 mentions:

*“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” 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 complies 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 regards 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 since it relates to the Bourse's business function and not to its regulatory function.

Summary

In our opinion, the changes suggested by the Bourse in the Circular do not address the protection of the investing public and create a lack of independence for the Regulatory Division.

It is important for the AMF to seriously consider the implications that may arise from a position that the Special Committee may consist solely or predominantly of Directors of the Bourse in respect to 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 Division so we recommend not changing the composition of the Special Committee.

If the Bourse's proposed changes to the governance structure were to nonetheless be accepted by the AMF despite our members' position, the Industry believes that the AMF will need to amend its 2012 Decision since the proposed structure would create a conflict of interest between the Division and the Bourse's commercial division. 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.

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 herein by our industry members.

As previously explained, our industry members believe that the ICE Futures Canada governance model is more appropriate in the circumstances than the one proposed by the Bourse in its Circular 038-17 dated March 22, 2017.

We would like to reiterate that 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.

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

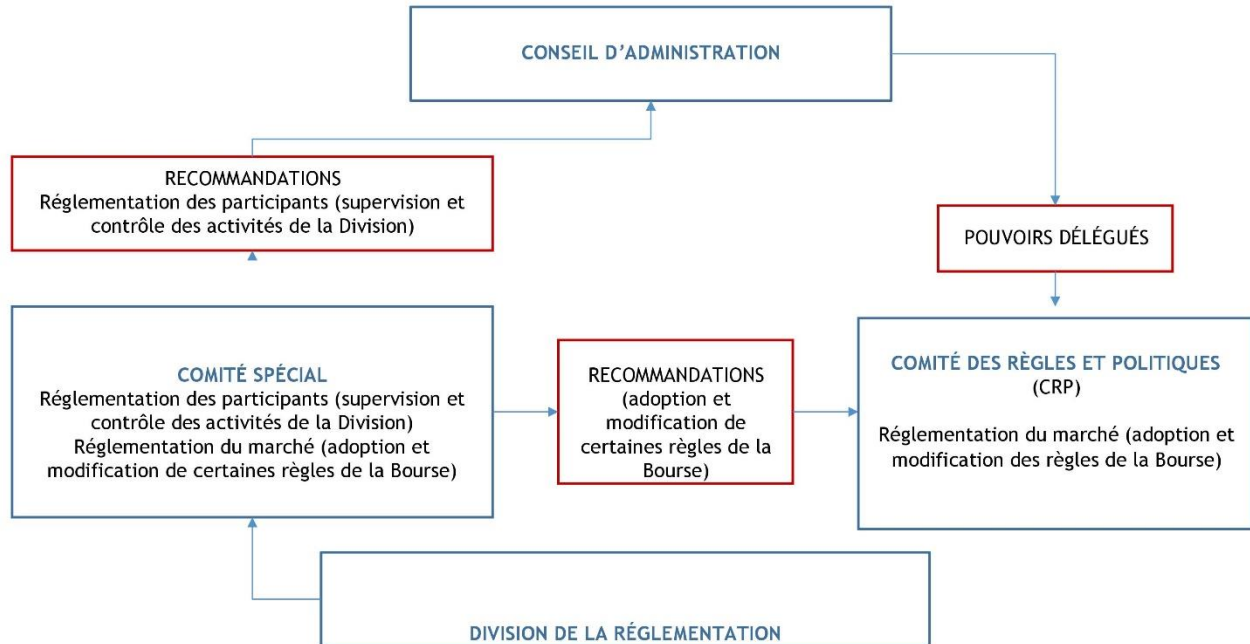
Yours sincerely,

A handwritten signature in blue ink, reading "A. Sinigaglia".

Annie Sinigaglia
Managing Director
Investment Industry Association of Canada
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APPENDIX A

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



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

