



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

Marcel St-Amour  
Regional Director  
514 843-8950 / mstamour@iiac.ca

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Maître François Gilbert  
Vice-président, Affaires juridiques  
Produits Dérivés  
Bourse de Montréal Inc.  
Tour de la Bourse  
800, square Victoria  
C. P. 61  
Montréal (Québec) H4Z 1A9  
Courriel : [legal@m-x.ca](mailto:legal@m-x.ca)

Maître Anne-Marie Beaudoin  
Secrétaire générale  
Autorité des marchés financiers  
800, square Victoria, 22<sup>e</sup> étage  
C.P. 246, Tour de la Bourse  
Montréal (Québec) H4Z 1G3

Courriel : [consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)

**Re: Comments on Obligations Pertaining to Supervision:  
Amendments to Article 4002.**

Dear Counselors:

The Investment Industry Association of Canada (IIAC) and its members are grateful for the opportunity offered them to comment on Circular 008-2012 (hereinafter, the "Circular"), published on January 17, 2012 by TMX/Montréal Exchange Group, entitled "Obligations Pertaining to Supervision: Amendments to Article 4002", concerning the suggested changes to Circular 131-2011 issued by the Bourse on August 10, 2011.

The IIAC is a professional association with 189 members, representing 95% of all IIROC - regulated firms. IIAC supports the growth and development of the Canadian securities industry and is a strong and proactive voice for the interests of its members and the investing public.



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The IIAC finds that, in general, the proposed amendments increase the administrative responsibilities of the Approved Participants (AP) with the launch of the new gatekeeper report (Gatekeeper Report).

**Background:**

As article 4002 of the Rules of the Bourse de Montréal (Bourse) provides, the AP must inform the Bourse in writing of any situation of actual or potential noncompliance with the regulations of the Bourse. In Circular 131-2011 published on August 10, 2011 and titled "Launch of Gatekeeper Report", the Bourse details the information that it expects to receive from the AP confronted with an actual or potential infraction, as well as the procedure for notifying it. The document also lists the types of situations that are reportable.

**Circular 008-2012**

Published on January 17, 2012, Circular 008-2012 amends the circular for the month of August 2011 described briefly in the preceding paragraph. The IIAC wishes to emphasize that a certain number of the amendments proposed in Circular 008-2012 place Approved Participants in a somewhat difficult and uncomfortable position.

We find in the additions and amendments stated in the circular that even though the Bourse draws its inspiration from IIROC's Rules and Policies, the Bourse's new requests and requirements are more constraining than Rule 10.16 of the Universal Market Integrity Rules (UMIR).

Indeed, IIROC does not require the AP to inform and notify the organization of an internal investigation that has shown that there was no infraction. In our members' opinion, the Bourse's approach is more constraining, as it requires that the information from all internal investigations be communicated to it. We think the Bourse might revise this aspect of the new rule to foster harmonization with IIROC's approach.

The second aspect of our examination concerns the lack of explanation regarding the context, reasons and considerations that justify the new amendments stated in the circular. Indeed, barely a few months after publication of Circular 131-2011, the Bourse is amending it



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considerably (addition of five paragraphs), substantially broadening the scope of its rules without explaining the context. Our members would have liked more background information.

The notion of suspicion, which is an important element of the circular, is arousing concern among our members. Many of them have emphasized that this notion, which is vague and imprecise, can involve major regulatory responsibilities; plus it would be difficult to enforce.

Consequently, we strongly suggest that the Bourse de Montréal suspend the application of Circular 008-2012, since it is raising more and more questions as members become aware of what is really at stake. As the deadline for comments was only thirty (30) days, it seems to us reasonable to extend it by a few weeks. What's more, this might help the AP realize that their opinion is important in the consultative process.

#### **Conclusion**

Thank you for your interest in our comments. We would be happy to discuss any question or comment that you may have.

Sincerely,