



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

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M<sup>e</sup> 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<sup>e</sup> Jannelle and M<sup>e</sup> Beaudoin,

**Re: Bourse de Montréal Inc. – Request for Comments:  
Amendments to Article 4002 of the Rules of Bourse de Montreal Inc. – Non-compliance report  
(Circular 072-18)**

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 Montreal Inc. regarding non-compliance reporting as per Circular 072-18 published on May 22, 2018.

The IIAC is the national association representing the position of 123 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 wish to remind Bourse de Montreal that this comment letter, in its entirety, can be published on the Bourse's website.

### The Possibility Standard

The circular notes, in the "Description and Analysis of Market Impacts" section, that: *"The Bourse recommends the adoption of a possibility standard because an approved participant is not always in a position to determine or conclude whether a rule was really violated..."*.

The IIAC wishes to remind the Bourse that its members, as previously confirmed to the Regulatory Division, have been filing non-compliance reports for potential violations as well as violations for many years. Therefore, we do not believe the "possibility standard" to be a new addition to the rule.

### Industry Views – Further Need for Harmonization

The "Background" section of the proposal mentions that *"In the course of formal and informal meetings, the Bourse discussed the obligations contained in Article 4002 and industry practices with the approved participants (or their representatives). This analysis is the result of that collaborative approach"*.

The current proposal does not contain, despite many discussions on the topic, full harmonization with the Investment Industry Regulatory Organization of Canada (IIROC)'s gatekeeper obligations. Such harmonization has been the main industry request on the topic of non-compliance reporting.

The Bourse states that: *"...the new version of Article 4002 is closer to the principles established and the vocabulary used in Policy 10.16 of the Universal Market Integrity Rules ("UMIR") established by the IIROC"*. Industry members do believe that the Bourse moving closer to Policy 10.16 of the Universal Market Integrity Rules is a step in the right direction. However, the IIAC wishes that the Bourse could harmonize further with the rules of IIROC. The industry would once again request that:

- the delay for submitting a non-compliance report be harmonized with the IIROC rules;
- the record retention period be harmonized with the IIROC rules.

We fail to see the added-value for the Bourse in having a filing deadline and retention period that differs from IIROC's. The IIAC strongly supports a harmonized filing deadline and retention period for the Bourse and for IIROC in order to simplify the reporting and retention process for our members.

Previous Communications Regarding Non-Compliance Reporting: Timing and Industry's Understanding:

The IIAC and its members have provided comments regarding non-compliance reporting prior to the issuance of the Bourse's proposal. The industry's views remain unchanged.

On August 31, 2016, the IIAC issued a comment letter to the Bourse in response to the Request for Comments published under Circular 087-16. A portion of the comments provided is included below:

*"The IIAC is taking this opportunity to comment on the proposed revisions to Article 4002 pursuant to Circular 087-16. In particular, we would like to comment on the proposal to amend the standard under which a participant is required to file a non-compliance report..."*

*Furthermore, the deadline of ten days to file a gatekeeper report once a member determines that "it is likely" that a violation of the Rules of the Bourse occurred should be aligned with the Investment Industry Regulatory Organization of Canada ("IIROC") rule 10.16 regarding Gatekeeper Obligations. As per IIROC rules, members must report the findings of an internal investigation to the IIROC Market Regulator if the finding of the investigation is that a violation of an applicable provision of UMIR has occurred. Such report shall be made not later than the 15th day of the month following the month in which the findings are made. The IIAC believes that the gatekeeper deadline should be aligned between the Bourse and IIROC."*

Furthermore, the IIAC also mentioned on several occasions that the industry's understanding of Article 4002 has remained unchanged from previous years. The understanding of Article 4002 by the Regulatory Division however seemed to have changed recently. We would like to make sure that the industry's understanding and the Regulatory Division's understanding is the same.

At the 2017 CADC Compliance User Group meeting, the IIAC confirmed to the Regulatory Division that all members understood Article 4002 in the same way:

- Violation: the firm will file a non-compliance report;
- Potential Violation: an internal review will be done. If the firm concludes that:
  - there was no violation: the firm will not file a non-compliance report;
  - there was a violation: the firm will file a non-compliance report;
  - there may have been a violation: the firm will file a non-compliance report.

If the Industry's understanding explained above is inaccurate, we request the Regulatory Division reach out to the undersigned for further discussions on the topic.

Conclusion:

The IIAC requests that the Bourse harmonizes its non-compliance report rule to IIROC's Policy 10.16 contained in the Universal Market Integrity Rules. Harmonization between both regulators in regard to filing deadline and retention period would greatly simplify the administration of this process for our members.

Furthermore, we would request that the Bourse, going forward, includes a clean version of the amendments in its Requests for comments along with a blacklined version. Having both versions of the amended rule would greatly simplify the industry's review process.

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

Yours sincerely,



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