

M.O., 2010**Order number V-1.1-2010-01 of the Minister of Finance dated 15 January 2010**

Securities Act
(R.S.Q., c. V-1.1)

CONCERNING the Regulation to amend Regulation 21-101 respecting marketplace operation and the Regulation to amend Regulation 23-101 respecting trading rules

WHEREAS subparagraphs 1, 2, 3, 8, 9.1, 32 and 34 of section 331.1 of the Securities Act (R.S.Q., c. V-1.1), amended by section 138 of chapter 58 of the statutes of 2009, stipulate that the *Autorité des marchés financiers* may make regulations concerning the matters referred to in those paragraphs;

WHEREAS the third and fourth paragraphs of section 331.2 of the said Act stipulate that a draft regulation shall be published in the *Bulletin de l'Autorité des marchés financiers*, accompanied with the notice required under section 10 of the Regulations Act (R.S.Q., c. R-18.1) and may not be submitted for approval or be made before 30 days have elapsed since its publication;

WHEREAS the first and fifth paragraphs of the said section stipulate that every regulation made under section 331.1 must be approved, with or without amendment, by the Minister of Finance and comes into force on the date of its publication in the *Gazette officielle du Québec* or any later date specified in the regulation;

WHEREAS the Regulation 21-101 respecting marketplace operation was made by decision no. 2001-C-0409 dated August 28, 2001 (*Bulletin hebdomadaire* vol. 32, no 35, dated August 31, 2001);

WHEREAS the Regulation 23-101 respecting trading rules was made by decision no. 2001-C-0411 dated August 28, 2001 (*Bulletin hebdomadaire* vol. 32, no 35, dated August 31, 2001);

WHEREAS there is cause to amend those regulations;

WHEREAS the draft Regulation to amend Regulation 21-101 respecting marketplace operation and the draft Regulation to amend Regulation 23-101 respecting trading rules were published in the *Bulletin de l'Autorité des marchés financiers*, volume 5, no. 41 of October 17, 2008;

WHEREAS, by the decisions no. 2009-PDG-0194 and no. 2009-PDG-0195 dated December 23, 2009, the *Autorité des marchés financiers* made the Regulation to

amend Regulation 21-101 respecting marketplace operation and the Regulation to amend Regulation 23-101 respecting trading rules;

WHEREAS there is cause to approve those regulations without amendment;

CONSEQUENTLY, the Minister of Finance approves without amendment the Regulation to amend Regulation 21-101 respecting marketplace operation and the Regulation to amend Regulation 23-101 respecting trading rules appended hereto.

January 15, 2010

RAYMOND BACHAND,
Minister of Finance

Regulation to amend Regulation 21-101 respecting marketplace operation*

Securities Act
(R.S.Q., c. V-1.1, s. 331.1, par. (1), (3), (8), (32) and (34); 2009, c. 58, s. 138)

1. Section 1.1 of Regulation 21-101 respecting Marketplace Operation is amended:

(1) by deleting the definition of "IDA";

(2) by replacing paragraph (b) of the definition of "recognized exchange" with the following:

"(b) in Québec, an exchange recognized by the securities regulatory authority under securities or derivatives legislation as an exchange or self-regulatory organization;"

(3) by replacing the definition of "inter-dealer bond broker" with the following:

"“inter-dealer bond broker” means a person that is approved by the IIROC under IIROC Rule 36 Inter-Dealer Bond Brokerage Systems, as amended, and is subject to IIROC Rule 36 and IIROC Rule 2100 Inter-Dealer Bond Brokerage Systems, as amended;"

* Regulation 21-101 respecting Marketplace Operation, adopted pursuant to Decision No. 2001-C-0409 dated August 28, 2001 (*Bulletin hebdomadaire* Vol. 32, No. 35 dated August 31, 2001), was only amended by the Regulation adopted pursuant to Decision No. 2002-C-0128 dated March 28, 2002 (*Bulletin hebdomadaire* Vol. 33, No. 23 dated June 14, 2002), the Regulation approved by Ministerial Order No. 2007-01 dated March 6, 2007 (2007, *G.O.* 2, 1263) and the Regulation approved by Ministerial Order No. 2008-14 dated August 22, 2008 (2008, *G.O.* 2, 4547).

(4) by inserting, after the definition of “government debt security”, the following:

““IIROC” means the Investment Industry Regulatory Organization of Canada;”;

(5) by replacing the definition of “recognized quotation and trade reporting system” with the following:

““recognized quotation and trade reporting system” means

(a) in every jurisdiction other than British Columbia and Québec, a quotation and trade reporting system recognized by the securities regulatory authority under securities legislation to carry on business as a quotation and trade reporting system;

(b) in British Columbia, a quotation and trade reporting system recognized by the securities regulatory authority under securities legislation as a quotation and trade reporting system or as an exchange; and

(c) in Québec, a quotation and trade reporting system recognized by the securities regulatory authority under securities or derivatives legislation as an exchange or a self-regulatory organization;”.

2. Section 1.4 of the Regulation is amended by adding, after paragraph (2), the following:

“(3) In Québec, the term “security”, when used in this Regulation, includes a standardized derivative as this notion is defined in the Derivatives Act (R.S.Q., c. I-14.01).”.

3. The title of part 10 of the Regulation is replaced with the following:

“PART 10 TRADING FEES FOR MARKETPLACES”.

4. The Regulation is amended by adding, after section 10.2, the following:

“10.3. Discriminatory Terms

With respect to the execution of an order, a marketplace shall not impose terms that have the effect of discriminating between orders that are routed to that marketplace and orders that are entered on that marketplace.”.

5. Section 11.5 of the Regulation is replaced with the following:

“11.5. Synchronization of Clocks

(1) A marketplace trading exchange-traded securities or foreign exchange-traded securities, an information processor receiving information about those securities, and a dealer trading those securities shall synchronize the clocks used for recording or monitoring the time and date of any event that must be recorded under this Part and under Regulation 23-101 respecting Trading Rules with the clock used by a regulation services provider monitoring the activities of marketplaces and marketplace participants trading those securities.

(2) A marketplace trading corporate debt securities or government debt securities, an information processor receiving information about those securities, a dealer trading those securities, and an inter-dealer bond broker trading those securities shall synchronize the clocks used for recording or monitoring the time and date of any event that must be recorded under this Part and under Regulation 23-101 respecting Trading Rules with the clock used by a regulation services provider monitoring the activities of marketplaces, inter-dealer bond brokers or dealers trading those securities.”.

6. Sections 12.1 to 12.3 of the Regulation are replaced with the following:

“12.1. System Requirements

For each of its systems that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, a marketplace shall

(a) develop and maintain

(i) reasonable business continuity and disaster recovery plans;

(ii) an adequate system of internal control over those systems; and

(iii) adequate information technology general controls, including without limitation, controls relating to information systems operations, information security, change management, problem management, network support and system software support;

(b) in accordance with prudent business practice, on a reasonably frequent basis and, in any event, at least annually,

(i) make reasonable current and future capacity estimates;

(ii) conduct capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner; and

(iii) test its business continuity and disaster recovery plans; and

(c) promptly notify the regulator or, in Québec, the securities regulatory authority and, if applicable, its regulation services provider, of any material systems failure, malfunction or delay.

“12.2. System Reviews

(1) For each of its systems that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, a marketplace shall annually engage a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards to ensure that it is in compliance with paragraph 12.1(a).

(2) A marketplace shall provide the report resulting from the review conducted under subsection (1) to

(a) its board of directors, or audit committee, promptly upon the report's completion, and

(b) the regulator or, in Québec, the securities regulatory authority, within 30 days of providing the report to its board of directors or the audit committee.

“12.3. Availability of Technology Requirements and Testing Facilities

(1) A marketplace shall make publicly available all technology requirements regarding interfacing with or accessing the marketplace in their final form,

(a) if operations have not begun, for at least three months immediately before operations begin; and

(b) if operations have begun, for at least three months before implementing a material change to its technology requirements.

(2) After complying with subsection (1), a marketplace shall make available testing facilities for interfacing with or accessing the marketplace,

(a) if operations have not begun, for at least two months immediately before operations begin; and

(b) if operations have begun, for at least two months before implementing a material change to its technology requirements.

(3) A marketplace shall not begin operations until it has complied with paragraphs (1)(a) and (2)(a).

(4) Subsections 12.3(1)(b) and (2)(b) do not apply to a marketplace if the change must be made immediately to address a failure, malfunction or material delay of its systems or equipment if

(a) the marketplace immediately notifies the regulator, or in Québec, the securities regulatory authority, and, if applicable, its regulation services provider of its intention to make the change; and

(b) the marketplace publishes the changed technology requirements as soon as practicable.”.

7. Section 14.5 of the Regulation is replaced with the following:

“14.5. System Requirements

An information processor shall

(a) develop and maintain

(i) reasonable business continuity and disaster recovery plans;

(ii) an adequate system of internal controls over its critical systems; and

(iii) adequate information technology general controls, including, without limitation, controls relating to information systems operations, information security, change management, problem management, network support, and system software support;

(b) in accordance with prudent business practice, on a reasonably frequent basis and in any event, at least annually,

(i) make reasonable current and future capacity estimates for each of its systems;

(ii) conduct capacity stress tests of its critical systems to determine the ability of those systems to process information in an accurate, timely and efficient manner; and

(iii) test its business continuity and disaster recovery plans;

(c) annually engage a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards to ensure that it is in compliance with paragraph (a);

(d) provide the report resulting from the review conducted under paragraph (c) to

(i) its board of directors or the audit committee promptly upon the report's completion, and

(ii) the regulator or, in Québec, the securities regulatory authority, within 30 days of providing it to the board of directors or the audit committee; and

(c) promptly notify the following of any failure, malfunction or material delay of its systems or equipment

(i) the regulator or, in Québec, the securities regulatory authority; and

(ii) any regulation services provider, recognized exchange or recognized quotation and trade reporting system monitoring trading of the securities about which information is provided to the information processor.”.

8. This Regulation comes into force on January 28, 2010.

Regulation to amend Regulation 23-101 respecting trading rules*

Securities Act

(R.S.Q., c. V-1.1, s. 331.1, par. (1), (2), (3), (8), (9.1), (32) and (34); 2009, c. 58, s. 138)

1. Section 1.1 of Regulation 23-101 respecting Trading Rules is amended:

(1) by inserting, after the introductory phrase, the following definition:

““automated functionality” means the ability to

(a) immediately allow an incoming order that has been entered on the marketplace electronically to be marked as immediate-or-cancel;

(b) immediately and automatically execute an order marked as immediate-or-cancel against the displayed volume;

* Regulation 23-101 respecting Trading Rules, adopted pursuant to Decision No. 2001-C-0411 dated August 28, 2001 (*Bulletin hebdomadaire* Vol. 32, No. 35 dated August 31, 2001), was only amended by the Regulation adopted pursuant to Decision No. 2002-C-0128 dated March 28, 2002 (*Bulletin hebdomadaire* Vol. 33, No. 23 dated June 14, 2002), the Regulation approved by Ministerial Order No. 2007-02 dated March 6, 2007 (2007, *G.O.* 2, 1269) and the Regulation approved by Ministerial Order No. 2008-15 dated August 22, 2008 (2008, *G.O.* 2, 4550).

(c) immediately and automatically cancel any unexecuted portion of an order marked as immediate-or-cancel without routing the order elsewhere;

(d) immediately and automatically transmit a response to the sender of an order marked as immediate-or-cancel indicating the action taken with respect to the order; and

(e) immediately and automatically display information that updates the displayed orders on the marketplace to reflect any change to their material terms;”;

(2) by inserting, after the definition of “best execution”, the following:

““calculated-price order” means an order for the purchase or sale of an exchange-traded security, other than an option, that is entered on a marketplace and for which the price of the security

(a) is not known at the time of order entry; and

(b) is not based, directly or indirectly, on the quoted price of an exchange-traded security at the time the commitment to execute the order was made;

“closing-price order” means an order for the purchase or sale of an exchange-traded security, other than an option, that is

(a) entered on a marketplace on a trading day; and

(b) subject to the conditions that

(i) the order be executed at the closing sale price of that security on that marketplace for that trading day; and

(ii) the order be executed subsequent to the establishment of the closing price;

“directed-action order” means a limit order for the purchase or sale of an exchange-traded security, other than an option, that,

(a) when entered on or routed to a marketplace is to be immediately

(i) executed against a protected order with any remainder to be booked or cancelled; or

(ii) placed in an order book;

(b) is marked as a directed-action order; and

(c) is entered or routed at the same time as one or more additional limit orders that are entered on or routed to one or more marketplaces, as necessary, to execute against any protected order with a better price than the order referred to in paragraph (a);

“non-standard order” means an order for the purchase or sale of an exchange-traded security, other than an option, that is entered on a marketplace and is subject to non-standardized terms or conditions related to settlement that have not been set by the marketplace on which the security is listed or quoted;

“protected bid” means a bid for an exchange-traded security, other than an option

(a) that is displayed on a marketplace that provides automated functionality; and

(b) about which information is required to be provided pursuant to Part 7 of Regulation 21-101 respecting Marketplace Operation, adopted by the Commission des valeurs mobilières du Québec pursuant to decision No. 2001-C-0409 dated August 28, 2001, to an information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider;

“protected offer” means an offer for an exchange-traded security, other than an option,

(a) that is displayed on a marketplace that provides automated functionality; and

(b) about which information is required to be provided pursuant to Part 7 of Regulation 21-101 respecting Marketplace Operation to an information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider;

“protected order” means a protected bid or protected offer; and

“trade-through” means the execution of an order at a price that is,

(a) in the case of a purchase, higher than any protected offer, or

(b) in the case of a sale, lower than any protected bid.”.

2. Section 1.2 of the Regulation is amended by deleting “, adopted by the Commission des valeurs mobilières du Québec pursuant to decision No. 2001-C-0409 dated August 28, 2001”.

3. Section 3.1 of the Regulation is amended by replacing, in paragraph (2), “the Securities Act (R.S.Q., C.V-V-1.1)” with “the Derivatives Act (R.S.Q., c. I-14.01) and the Securities Act (R.S.Q., c. V-1.1),”.

4. The title of part 6 and section 6.1 of the Regulation are replaced with the following:

“PART 6 TRADING HOURS AND LOCKED OR CROSSED ORDERS

“6.1. Trading Hours

Each marketplace shall set requirements in respect of the hours of trading to be observed by marketplace participants.

“6.2. Locked or Crossed Orders

A marketplace participant shall not intentionally

(a) enter on a marketplace a protected order to buy a security at a price that is the same as or higher than the best protected offer; or

(b) enter on a marketplace a protected order to sell a security at a price that is the same as or lower than the best protected bid.”.

5. The title of part 6 and section 6.1 of the Regulation are replaced with the following:

“PART 6 ORDER PROTECTION

“6.1. Marketplace Requirements for Order Protection

(1) A marketplace shall establish, maintain and ensure compliance with written policies and procedures that are reasonably designed

(a) to prevent trade-throughs on that marketplace other than the trade-throughs referred to in section 6.2; and

(b) to ensure that the marketplace, when executing a transaction that results in a trade-through referred to in section 6.2, is doing so in compliance with this Part.

(2) A marketplace shall regularly review and monitor the effectiveness of the policies and procedures required under subsection (1) and shall promptly remedy any deficiencies in those policies and procedures.

(3) At least 45 days before implementation, a marketplace shall file with the securities regulatory authority and, if applicable, its regulation services provider the

policies and procedures, and any significant changes to those policies and procedures, established under subsection (1).

“6.2. List of Trade-throughs

The following are the trade-throughs referred to in paragraph 6.1(1)(a):

(a) a trade-through that occurs when the marketplace has reasonably concluded that the marketplace displaying the protected order that was traded through was experiencing a failure, malfunction or material delay of its systems or equipment or ability to disseminate marketplace data;

(b) the execution of a directed-action order;

(c) a trade-through by a marketplace that simultaneously routes a directed-action order to execute against the total displayed volume of any protected order that is traded through;

(d) a trade-through if, immediately before the trade-through, the marketplace displaying the protected order that is traded through displays as its best price a protected order with a price that is equal or inferior to the price of the trade-through;

(e) a trade-through that results when executing

(i) a non-standard order;

(ii) a calculated-price order; or

(iii) a closing-price order;

(f) a trade-through that was executed at a time when the best protected bid for the security traded through was higher than the best protected offer.

“6.3. Systems or Equipment Failure, Malfunction or Material Delay

(1) If a marketplace experiences a failure, malfunction or material delay of its systems, equipment or its ability to disseminate marketplace data, the marketplace shall immediately notify

(a) all other marketplaces;

(b) all regulation services providers;

(c) its marketplace participants; and

(d) any information processor or, if there is no information processor, any information vendor that disseminates its data under Part 7 of Regulation 21-101 respecting Marketplace Operation.

(2) If executing a transaction described in paragraph 6.2(a), and a notification has not been sent under subsection (1), a marketplace that routes an order to another marketplace shall immediately notify

(a) the marketplace that it reasonably concluded is experiencing a failure, malfunction or material delay of its systems or equipment or its ability to disseminate marketplace data;

(b) all regulation services providers;

(c) its marketplace participants; and

(d) any information processor disseminating information under Part 7 of Regulation 21-101 respecting Marketplace Operation.

(3) If a marketplace participant reasonably concludes that a marketplace is experiencing a failure, malfunction or material delay of its systems or equipment or its ability to disseminate marketplace data, and routes an order to execute against a protected order on another marketplace displaying an inferior price, the marketplace participant must notify the following of the failure, malfunction or material delay

(a) the marketplace that may be experiencing a failure, malfunction or material delay of its systems or equipment or its ability to disseminate marketplace data; and

(b) all regulation services providers.

“6.4. Marketplace Participant Requirements for Order Protection

(1) A marketplace participant must not enter a directed-action order unless the marketplace participant has established, and maintains and ensures compliance with, written policies and procedures that are reasonably designed

(a) to prevent trade-throughs other than the trade-throughs listed below:

(i) a trade-through that occurs when the marketplace participant has reasonably concluded that the marketplace displaying the protected order that was traded through was experiencing a failure, malfunction or material delay of its systems or equipment or ability to disseminate marketplace data;

(ii) a trade-through by a marketplace participant that simultaneously routes a directed-action order to execute against the total displayed volume of any protected order that is traded through;

(iii) a trade-through if, immediately before the trade-through, the marketplace displaying the protected order that is traded through displays as its best price a protected order with a price that is equal or inferior to the price of the trade-through transaction;

(iv) a trade-through that results when executing

(A) a non-standard order;

(B) a calculated-price order; or

(C) a closing-price order;

(v) a trade-through that was executed at a time when the best protected bid for the security traded through was higher than the best protected offer; and

(b) to ensure that when executing a trade-through listed in paragraphs (a)(i) to (a)(v), it is doing so in compliance with this Part.

(2) A marketplace participant that enters a directed-action order shall regularly review and monitor the effectiveness of the policies and procedures required under subsection (1) and shall promptly remedy any deficiencies in those policies and procedures.

“6.5. Locked or Crossed Orders

A marketplace participant shall not intentionally

(a) enter on a marketplace a protected order to buy a security at a price that is the same as or higher than the best protected offer; or

(b) enter on a marketplace a protected order to sell a security at a price that is the same as or lower than the best protected bid.

“6.6. Trading Hours

A marketplace shall set the hours of trading to be observed by marketplace participants.

“6.7. Anti-Avoidance

No person shall send an order to an exchange, quotation and trade reporting system or alternative trading system that does not carry on business in Canada in order to avoid executing against better-priced orders on a marketplace.

“6.8. Application of this Part

In Québec, this Part does not apply to standardized derivatives.”.

6. Section 7.2 of the Regulation is amended by replacing paragraph (c) with the following:

“(c) that the recognized exchange will transmit to the regulation services provider the information required by Part 11 of Regulation 21-101 respecting Marketplace Operation and any other information reasonably required to effectively monitor:

(i) the conduct of and trading by marketplace participants on and across marketplaces, and

(ii) the conduct of the recognized exchange, as applicable; and”.

7. Section 7.4 of the Regulation is amended by replacing paragraph (c) with the following:

“(c) that the recognized quotation and trade reporting system will transmit to the regulation services provider the information required by Part 11 of Regulation 21-101 respecting Marketplace Operation and any other information reasonably required to effectively monitor:

(i) the conduct of and trading by marketplace participants on and across marketplaces, and

(ii) the conduct of the recognized quotation and trade reporting system, as applicable; and”.

8. Section 7.5 of the Regulation is amended by replacing the words “under this Part” with “under Parts 7 and 8”.

9. Section 8.3 of the Regulation is amended by replacing paragraph (d) with the following:

“(d) that the ATS will transmit to the regulation services provider the information required by Part 11 of Regulation 21-101 respecting Marketplace Operation and any other information reasonably required to effectively monitor:

(i) the conduct of and trading by marketplace participants on and across marketplaces, and

(ii) the conduct of the ATS; and”.

10. Section 9.3 of the Regulation is amended by replacing the words “IDA Policy No. 5 Code of Conduct for IDA Member Firms Trading in Domestic Debt

Markets” with the words “IIROC Rule 2800 Code of Conduct for Corporation Dealer Member Firms Trading in Wholesale Domestic Debt Markets”.

11. The provisions of paragraph (1) and paragraph (2), to the extent that it sets out the definitions of “protected bid”, “protected offer” and “protected order”, of section 1, and sections 2 to 4 and 6 to 10 of this Regulation come into force on January 28, 2010.

12. The provisions of paragraph (2), to the extent that it sets out the definitions of “calculated-price order”, “closing-price order”, “directed-action order”, “non-standard order” and “trade-through”, of section 1 and section 5 this Regulation come into force on February 1, 2011.

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