



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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Citation: Bloomberg Trading Facility Limited (Re), 2020 ONSEC 31

Date: 2020-12-18

File No.: 2020-39

**IN THE MATTER OF
BLOOMBERG TRADING FACILITY LIMITED and
BLOOMBERG TRADING FACILITY B.V.**

**REASONS FOR APPROVAL OF A SETTLEMENT
(Sections 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5)**

Hearing: December 18, 2020

Decision: December 18, 2020

Panel: Wendy Berman Vice-Chair and Chair of the Panel
M. Cecilia Williams Commissioner
Frances Kordyback Commissioner

Appearances: Rikin Morzaria For Staff of the Commission
Lawrence Ritchie For Bloomberg Trading Facility
Seth Whitmore Limited and Bloomberg Trading
Facility B.V.

REASONS FOR APPROVAL OF A SETTLEMENT

I. OVERVIEW

- [1] Staff of the Ontario Securities Commission (**Staff** of the **Commission**), Bloomberg Trading Facility Limited (**BTFL**) and Bloomberg Trading Facility B.V. (**BV**) (collectively the **Respondents**) have jointly submitted that it would be in the public interest for us to approve a settlement agreement among the parties dated December 14, 2020 (the **Settlement Agreement**) and to issue the requested order.
- [2] This matter concerns allegations against the Respondents described in the Statement of Allegations dated December 14, 2020 relating to the Respondents operating a marketplace in Ontario, and in particular an exchange, without being recognized or exempted by the Commission contrary to subsection 21(1) of the *Securities Act*¹ (the **Act**).
- [3] After considering the Settlement Agreement and the submissions of the parties, we concluded that it would be in the public interest to approve the Settlement Agreement. These are our reasons.

II. SUMMARY OF THE FACTS

- [4] The underlying facts and the specific breaches of Ontario securities laws are fully set out in the Settlement Agreement, which has been filed with the Commission and is publicly available. Accordingly, we need not repeat them in detail here.
- [5] In summary, both Respondents operate multilateral trading facilities (**MTFs**) that facilitate the buying and selling of securities and derivatives and admit that they engaged in conduct that contravened Ontario securities laws and was contrary to the public interest as follows:
 - a. prior to obtaining recognition or an exemptive order, the Respondents each carried on business as an exchange in Ontario by failing to prevent, or otherwise permitting, fixed income trading by Ontario participants on their MTFs contrary to subsection 21(1) of the Act;
 - b. after BTFL obtained an exemptive order, it failed to prevent, or otherwise permitted, fixed income trading by Ontario participants on its MTF contrary to the terms and conditions of the exemptive order and it filed quarterly reports with the Commission that failed to accurately and completely disclose such fixed income trading;
 - c. over a 15-month period, BTFL provided 18 institutional Ontario participants with access to trade in fixed income securities and 11 of the 18 Ontario participants conducted fixed income trading on BTFL's MTF in the principal amount of approximately \$228.5 billion USD;
 - d. over a 12-month period, BV provided 16 institutional Ontario participants with access to trade in fixed income securities and that two of the 16 Ontario participants conducted fixed income trading on BV's MTF in the principal amount of approximately \$4.4 billion USD;

¹ RSO 1990, c S.5

- e. the Respondents provided inaccurate and incomplete information with their applications to the Commission requesting exemptive relief from the requirement to be recognized as an exchange;
 - f. BTFL earned fees relating to the fixed income securities trading by Ontario participants on BTFL's MTF totaling approximately \$663,305.20 CAD (excluding fees of \$25,191.08 CAD related to limited trading conducted by traders located in Quebec and limited trading on behalf of an entity located in Quebec); and
 - g. BV earned fees relating to its exchange activities totaling approximately \$13,440.50 USD.
- [6] As part of the Settlement Agreement, the parties agreed to various sanctions as follows:
- a. the Respondents will disgorge to the Commission the amount of \$663,305.20;
 - b. the Respondents will pay an administrative penalty in the amount of \$2,506,011.80; and
 - c. the Respondents will each conduct an internal review of their compliance practices and procedures relating to ensuring compliance with Ontario securities laws, and institute any necessary changes in accordance with the process set forth in Schedule "A" to the draft order.
- [7] The Respondents agreed to pay the disgorgement and administrative penalty, in the total amount of \$3,169,317, in advance of this hearing. Staff confirmed that the Respondents have done so.

III. LAW AND ANALYSIS

- [8] The Commission's role at a settlement hearing is to determine whether the terms of the settlement fall within a range of reasonable outcomes and whether the approval of the settlement is in the public interest.²
- [9] The Settlement Agreement is the result of lengthy negotiations between Staff and the Respondents, all ably represented by counsel. The Commission respects the negotiation process and accords significant deference to the resolution reached by the parties.³
- [10] Settlements serve the public interest in resolving regulatory proceedings promptly, efficiently and with certainty. Settlements avoid the significant resources that would be incurred in a contested proceeding and promote timely statements regarding regulatory requirements and standards to all capital market participants.
- [11] We have reviewed the Settlement Agreement in detail and considered the submissions of counsel for the parties. We also conducted a confidential settlement conference with counsel for the parties during which we reviewed the

² *Research in Motion Limited (Re)*, 2009 ONSEC 19, (2009) 32 OSCB 4434 (**Research in Motion**) at paras 44-46

³ *Katanga Mining Limited (Re)*, 2018 ONSEC 59, (2018) 41 OSCB 9987 at para 18; *Research in Motion* at para 45

proposed settlement agreement, asked questions of counsel and heard their submissions.

- [12] In assessing whether it is in the public interest to approve the settlement, we considered various aggravating and mitigating factors.
- [13] The breaches of Ontario securities law in this matter are serious and occurred over a lengthy time period. The requirements that foreign and domestic marketplaces obtain authorization from the Commission to operate in Ontario, comply with any terms and conditions of such authorization and have robust systems of control to ensure compliance with Ontario securities laws are critical to ensuring investor protection, addressing systemic risk and maintaining confidence in the integrity of the Ontario capital markets.
- [14] The Respondents are experienced and sophisticated market participants. However, Staff does not allege dishonest conduct or intentional misconduct by the Respondents. Further, the Respondents have accepted responsibility for their actions through detailed admissions without the need for protracted proceedings and proactively took steps to promptly remediate their non-compliance in cooperation with Staff.
- [15] We considered the following mitigating factors to be particularly relevant:
- a. the Respondents provided exemplary cooperation throughout Staff's investigation and the resolution of this matter;
 - b. the Respondents identified and reported the issues in this matter to Staff;
 - c. the Respondents proactively initiated a counsel-led internal investigation, shared the results of the internal investigation with Staff and provided non-privileged relevant documents as well as information learned during numerous witness interviews to Staff;
 - d. the Respondents proactively developed and implemented a compliance remediation program and have continued to make investments in their compliance program and technological controls; and
 - e. the Respondents had a good faith belief that they were not carrying on a business as an exchange in Ontario based on legal advice.
- [16] We note that Staff relied upon a four-step methodology for calculating disgorgement and the administrative penalty which is detailed in Schedule B to the Settlement Agreement. Staff advised that this methodology has been utilized in certain prior settlement agreements which were approved by the Commission.⁴
- [17] We reviewed the methodology in detail, asked questions of Staff and considered their responses. We did not find this formulaic approach helpful in establishing a foundation for the quantum of the administrative penalty in this matter. We did not rely on this methodology in determining whether the monetary sanctions were within a range of reasonable outcomes.
- [18] As outlined above, we considered the totality of the circumstances, including seriousness of the misconduct, the Respondents' sophistication and experience,

⁴ *The Toronto-Dominion Bank (Re)*, 2019 ONSEC 29, (2019) 42 OSCB 7273; *Royal Bank of Canada (Re)*, 2019 ONSEC 30, (2019) 42 OSCB 7275

