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

SETTLEMENT AGREEMENT

PART I – INTRODUCTION AND STAFF’S REGULATORY MESSAGE

1. This Settlement Agreement serves to emphasize that domestic and foreign marketplaces have the obligation to take all appropriate steps to comply with Ontario securities law, including any specific terms and conditions contained in orders of the Commission.
2. Before foreign and domestic marketplaces are permitted to carry on business in Ontario, they must obtain authorization from the Commission to do so and their application for such authorization must provide candid, accurate and complete information. These requirements serve to protect Ontario market participants and investors and foster fair and efficient markets.
3. In order to manage risks to Ontario investors and market participants, the Commission may also impose terms and conditions on any order issued, including exemptive relief orders. It is critical to fostering fair and efficient capital markets and confidence in capital markets that persons and companies comply with all terms and conditions of exemptive relief orders.
4. Commission and Staff rely upon the completeness and accuracy of information contained in applications made by individuals or companies seeking a recognition or exemption order to manage risks to Ontario investors and market participants. It is therefore critical that persons and companies seeking a recognition or exemption order from the Commission disclose all material

information relating to the order sought and that this information is accurate and complete. This ensures that any order that may be issued by the Commission is properly determined to be in the public interest.

5. In today's capital markets where the majority of marketplaces operate electronic trading facilities and are no longer reliant on physical floors or have moved from voice to electronic trading, a marketplace is carrying on business in Ontario if it provides direct access to an Ontario participant (whether traders are physically located in Ontario or elsewhere). Once carrying on business in Ontario, Ontario securities laws apply. Foreign marketplaces that provide access to Ontario participants must ensure that they are properly authorized to do so. They must implement a robust compliance system in recognition of the compliance risks associated with operating in multiple jurisdictions, including ensuring appropriate communications about the relevant Ontario regulatory obligations throughout the business.

6. In this case, two sophisticated corporations – Bloomberg Trading Facility Limited (**BTFL**) and Bloomberg Trading Facility B.V. (**BV**) (collectively, the **Respondents**) – failed to comply with Ontario securities law by:

- (a) operating a marketplace, and in particular, an exchange without receiving recognition or an exemption;
- (b) filing applications that contained inaccurate and incomplete information with the Commission to obtain exemptions, and therefore, to that extent, were misleading to Staff and the Commission; and
- (c) in the case of BTFL, after it was granted an exemptive relief order, it failed to comply with the terms and conditions set out in that order.

7. Over a 15-month period and beginning at different times, BTFL provided 18 institutional Ontario participants access to trade in fixed income securities. Over that period of time, 11 of the 18 Ontario participants conducted fixed income trading on BTFL's multilateral trading facility

(MTF) in a principal amount of approximately \$228.5 billion USD and representing 2.93% of all fixed income trading on BTFL's MTF during that time.

8. Over a one-year period and beginning at different times, BV provided 16 institutional Ontario participants access to trade in fixed income securities. Over that period of time, two of the 16 Ontario participants conducted fixed income trading on BV's MTF in a principal amount of approximately \$4.4 billion USD and representing 1.61% of all fixed income trading on BV's MTF during that time.

9. This Settlement Agreement reflects the Respondents' admissions that:

- (a) before the Respondents had sought or obtained recognition or an exemption order from the Commission, they carried on business as an exchange by failing to prevent, or otherwise permitting, fixed income trading by Ontario participants on their MTFs;
- (b) the Respondents each filed applications with the Commission requesting orders exempting them from the requirement to be recognized as an exchange which contained inaccurate and incomplete information. Specifically, neither BTFL nor BV disclosed the fact that:
 - i) Ontario users had already been onboarded to their respective MTFs; and
 - ii) Ontario users had already engaged in fixed income trading activity on their respective MTFs;
- (c) after BTFL obtained an exemption 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 exemption order; and
- (d) after BTFL obtained an exemption order, it filed quarterly reports that failed to accurately and completely disclose fixed income trading by Ontario participants on BTFL's MTF.

10. These are serious and unacceptable breaches of Ontario securities law. When marketplaces, including exchanges, operate without authorization in Ontario, they undermine investor confidence and the fairness and efficiency of our markets.

11. This Settlement Agreement reflects the Respondents' admissions to breaches of Ontario securities laws and/or conduct contrary to the public interest. It also reflects the fact of the Respondents' exemplary cooperation and efforts in identifying, addressing, and remediating those inadequacies, including initially reporting deficiencies to Staff.

12. The parties will jointly file a request that the Commission issue a Notice of Hearing (the **Notice of Hearing**) to announce that it will hold a hearing (the **Settlement Hearing**) to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, RSO 1980 c. s.5, as amended (the **Act**), it is in the public interest for the Commission to make certain orders against each of BTFL and BV.

13. The Respondents have also filed an application with the Commission, pursuant to sections 144 and 147 of the Act, requesting that the BTFL Order (defined in paragraph 26, below) be revoked and restated (the **Restated Order**) to exempt BTFL and BV from the requirement in subsection 21(1) of the Act to be recognized as an exchange and to allow for the trading of swaps and fixed income securities. The requested Restated Order requires that an application or filings for Subsequent Decisions (as defined in the Restated Order) to allow for the trading of swaps and debt securities be filed by January 31, 2021. The requested Restated Order will expire on June 30, 2021.

14. As part of the application or filings for the Subsequent Decisions, the Respondents must include a request for the registration and authorization of a Canadian affiliate as an alternative trading system, as that term is defined in National Instrument 21-101 *Marketplace Operation*.

PART II - JOINT SETTLEMENT RECOMMENDATION

15. Staff of the Commission (**Staff**) recommend settlement of the proceeding (the **Proceeding**) against the Respondents commenced by the Notice of Hearing, in accordance with the terms and conditions set out in Part V of this Settlement Agreement. The Respondents consent to the making of an order (the **Order**) substantially in the form attached as Schedule “A” to this Settlement Agreement based on the facts set out herein.

16. For the purposes of the Proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, the Respondents agree with the facts set out in Part III of this Settlement Agreement and the conclusion in Part IV of this Settlement Agreement.

PART III - AGREED FACTS

A. RESPONDENTS

17. BTFL is a private limited company organized under the laws of England and Wales and is a wholly owned subsidiary of Bloomberg L.P., a Delaware limited partnership (**BLP**). BTFL has no physical presence in Ontario.

18. BV is a private limited company organized under the laws of the Netherlands and is a wholly owned subsidiary of BLP. BV has no physical presence in Ontario.

B. OVERVIEW AND BACKGROUND

19. In July 2015, BTFL was authorized by the United Kingdom Financial Conduct Authority to act as the operator of an MTF for interest rate swaps and credit default swaps. In 2016, the Financial Conduct Authority varied its authorization to allow BTFL’s MTF to trade other financial instruments, including fixed income securities. Fixed income trading on BTFL’s MTF became operational or “went live” on July 20, 2017. BTFL’s MTF supports request-for-quote and request-for-trade functionality for professional client participants that onboard to BTFL’s MTF by signing a user acknowledgement with BTFL.

20. In January 2019, BV was authorized by the Netherlands Authority for the Financial Markets to act as the operator of an MTF. Trading on BV's MTF became operational or "went live" on March 25, 2019. BV's MTF supports request-for-quote and request-for-trade functionality for professional client participants that onboard to BV's MTF by signing a user acknowledgement with BV.

21. For the purposes of Ontario securities law, each of BTFL's MTF and BV's MTF falls under the definition of "marketplace" set out in subsection 1(1) of the Act because each brings together buyers and sellers of securities or derivatives and use established, non-discretionary methods under which orders interact with each other.

22. Subsection 3.1(1) of the Companion Policy to National Instrument 21-101 *Marketplace Operation* provides that a "marketplace" is considered to be an "exchange" if it, among other things, sets requirements governing the conduct of marketplace participants. An MTF has certain obligations to monitor participants' trading activity and because an MTF sets requirements for the conduct of its participants and surveils the trading activity of its participants, it is considered by the Commission to be an "exchange" for purposes of the Act.

23. OSC Staff Notice 21-702 *Regulatory Approach for Foreign-Based Stock Exchanges* provides that the Commission considers an exchange located outside Ontario to be "carrying on business as an exchange" in Ontario if it provides Ontario participants with direct access to the exchange. This includes a participant with its headquarters or legal address in Ontario (e.g., as indicated by a participant's Legal Entity Identifier (LEI)) and all traders conducting transactions on its behalf, regardless of the traders' physical location (inclusive of non-Ontario branches of Ontario legal entities), as well as any trader physically located in Ontario who conducts transactions on behalf of any other entity.

24. Subsection 21(1) of the Act provides that no person or company shall carry on business as an exchange in Ontario unless recognized by the Commission.

25. During a time when neither BTFL nor BV was recognized by the Commission to carry on business as an exchange:

- (a) Each of BTFL and BV onboarded Ontario participants to their respective MTFs and carried on business as an exchange by failing to prevent, or otherwise permitting, trading by Ontario participants, including fixed income securities transactions.
- (b) Each of BTFL and BV filed an application with the Commission requesting an order to exempt them from the requirement to be recognized as an exchange. In their respective applications, both BTFL and BV did not provide accurate and complete disclosure of the fact that Ontario participants had already been onboarded and had already engaged in fixed income trading activity, which rendered the applications misleading to Staff and the Commission.
- (c) In the case of BTFL, during Staff's 4-month review of BTFL's application for exemptive relief, BTFL did not provide accurate and complete disclosure to Staff of the fact that Ontario participants had already been onboarded and had already engaged in fixed income trading activity, which rendered the disclosure misleading to Staff.

26. On December 22, 2017, the Commission issued an interim exemptive relief order to BTFL exempting it from the requirement to be recognized as an exchange (the **BTFL Order**). The BTFL Order, which expires on December 31, 2020, included terms and conditions, including:

- (a) A condition that BTFL will not provide access to Ontario users to trading in products other than swaps, and
- (b) A condition that BTFL file quarterly reports with the Commission disclosing all trading by Ontario users of BTFL's MTF, including a breakdown by product traded and the total trading volume and value originating from Ontario participants.

27. In the time period following the date of the BTFL Order:

- (a) BTFL failed to prevent, or otherwise permitted, trading in products other than swaps, including fixed income, by Ontario participants on BTFL's MTF, and
- (b) BTFL filed quarterly reports that did not accurately and completely disclose such trading by Ontario participants on BTFL's MTF.

C. CARRYING ON BUSINESS AS AN EXCHANGE WITHOUT BEING RECOGNIZED OR EXEMPTED BY THE COMMISSION

(1) BTFL Carrying on Business as an Exchange Prior to December 22, 2017

28. On August 2, 2017, BTFL filed an application (the **BTFL Application**) with the Commission pursuant to section 147 of the Act requesting an interim order exempting BTFL from the requirement to be recognized as an exchange under subsection 21(1) of the Act. The BTFL Application included the following statements:

“17. Since the Applicant [BTFL] would provide Ontario Participants with direct access to trading of the MTF Instruments on the Bloomberg MTF, it will be considered by the Commission to be “carrying on business as an exchange” in Ontario, and therefore must either be recognized or exempt from recognition by the Commission;

18. The Applicant submits that an exemption from recognition is appropriate for the MTF because the MTF is subject to regulation by the FCA and full regulation by the Commission would be duplicative and inefficient”

29. The BTFL Application was written in a future-looking manner and conveyed that there would be Ontario participants at a future time. The BTFL Application did not disclose all material facts relating to BTFL's MTF, including the fact that Ontario participants had already been onboarded and had already engaged in fixed income transactions on BTFL's MTF, prior to the date of the BTFL Application.

30. During Staff's ensuing review of the BTFL Application – which culminated in the BTFL Order – although BTFL had corresponded and spoken with Staff frequently, BTFL did not disclose to Staff the fact that Ontario participants had already been onboarded and had already engaged in fixed income transactions on BTFL's MTF. Further, during these discussions between Staff and BTFL, Staff repeatedly advised BTFL that any interim exemptive relief order that might be considered by the Commission would exclude any authorization for BTFL's MTF to facilitate fixed income trading by Ontario participants.

31. Unbeknownst to Staff and the Commission, prior to the issuance of the BTFL Order by the Commission, BTFL had onboarded Ontario participants to its MTF and had failed to prevent Ontario participants from engaging in fixed income securities transactions on its MTF. In particular:

- (a) BTFL had onboarded 18 Ontario participants to its MTF prior to the BTFL Order, with the first onboarding of an Ontario participant occurring on September 20, 2016.
- (b) The date on which an Ontario participant first conducted a fixed income trade or request for quote on BTFL's MTF was July 20, 2017, approximately one month prior to the BTFL Application.
- (c) Five of the Ontario participants onboarded to BTFL's MTF had conducted fixed income trading prior to the BTFL Order.

32. The aggregate principal amount of the fixed income trading by these five Ontario participants on BTFL's MTF prior to the date of the BTFL Order was approximately \$57 billion USD.

33. BTFL did not earn fees or other compensation amounts respecting its exchange activities prior to the date of the BTFL Order.

(2) **BV Carrying on Business as an Exchange**

34. On March 20, 2019, BV filed an application (the **BV Application**) with the Commission pursuant to section 147 of the Act requesting an interim order exempting BV from the requirement to be recognized as an exchange under subsection 21(1) of the Act. The BV Application made express reference to BTFL and BTFL's MTF and included the following statements:

“18. Since the Applicant [BV] would provide Ontario Participants with direct access to trading of the MTF Instruments on BTFE [BV's MTF], it will be considered by the Commission to be “carrying on business as an exchange” in Ontario, and therefore must either be recognized or exempt from recognition by the Commission;

19. The Applicant submits that an exemption from recognition is appropriate for BTFE because BTFE is subject to regulation by the AFM [Netherlands Authority for the Financial Markets] and full regulation by the Commission would be duplicative and inefficient”

35. Similar to the BTFL Application, the BV Application was written in a future-looking manner and conveyed that there would be Ontario participants at a future time. The BV Application did not disclose all material facts relating to BV's MTF, including the fact that an Ontario participant had already been onboarded. During Staff's ensuing review of the BV Application, BV did not disclose to Staff the fact that Ontario participants had already been onboarded and had already engaged in fixed income securities transactions on BV's MTF.

36. The Commission has not, to date, issued any order granting any exemptive relief to BV.

37. During the time period commencing March 2019 through to Q1 2020, a total of 16 Ontario participants were onboarded to BV's MTF. In particular:

- (a) Two days prior to the date of the BV Application, BV onboarded one Ontario participant to BV's MTF. This Ontario participant never traded fixed income securities on BV's MTF.
- (b) The remaining 14 Ontario participants were onboarded to BV's MTF after the date of the BV Application.
- (c) Two Ontario participants conducted fixed income securities trading on BV's MTF over a 1-year period through to Q1 2020.

38. The aggregate principal amount of the fixed income trading by these two Ontario participants was approximately \$4.4 billion USD.

39. BV earned fees relating to its exchange activities totaling \$13,440.50 USD.

D. BTFL FAILING TO COMPLY WITH TERMS AND CONDITIONS OF A COMMISSION ORDER

(1) Prohibition on Providing Access to Ontario Participants to Trading in Products other than Swaps

40. On October 25, 2018, BTFL disclosed to Staff for the first time that it had identified "limited" fixed income trading activity on its MTF by traders physically located in Ontario on behalf of four Ontario participants. BTFL subsequently provided further details to Staff which identified the following:

- (a) Following December 22, 2017 and continuing through to October 25, 2018, 11 of the 15 Ontario participants onboarded to BTFL's MTF conducted fixed income trading, contrary to the terms and conditions contained in the BTFL Order. Four of these 15 Ontario participants never conducted any fixed income trading on BTFL's MTF.

- (b) The aggregate principal amount of the fixed income securities trading by Ontario participants on BTFL's MTF from the date of the BTFL Order (December 22, 2017) through to October 25, 2018 was approximately \$171.5 billion USD and representing 3.09% of all fixed income trading on BTFL's MTF during that time.

41. BTFL earned fees relating to the fixed income securities trading by Ontario participants on BTFL's MTF through to November 1, 2018 totaling approximately \$688,496.30 CAD.

(2) Overlapping Fixed Income Trading Activity

42. A limited amount of fixed income trading on BTFL's MTF described above was conducted by (i) a small number of traders located in Québec on behalf of two entities represented by an LEI whose legal entity address and headquarters address are located in Ontario, (ii) a small number of traders located in Ontario on behalf of an entity represented by an LEI whose legal entity address and headquarters address are located in Québec, and (iii) traders located in Ontario, Québec, and elsewhere on behalf of an entity represented by an LEI whose legal entity address is located in Québec and headquarters address is located in Ontario (the "**Overlapping Activity**"). The amount of fees attributed to the Overlapping Activity up to November 1, 2018 is \$25,191.08 CAD.

43. For the purposes of this Settlement Agreement, notwithstanding that it would otherwise fall within the scope of this Settlement Agreement, Staff and the Respondents agree to carve out the fees attributable to the Overlapping Activity. Therefore, the fees at issue are \$663,305.20 CAD.

(3) Requirement to File Quarterly Reports

44. Following December 22, 2017 and continuing through to Q2 2019, BTFL filed quarterly reports with the Commission that were inaccurate and incomplete as they did not accurately disclose the fixed income securities trading particulars, including those described in paragraph 40 above.

E. MITIGATING FACTORS

45. Staff have considered the above and certain mitigating factors in arriving at the monetary amounts set out below. The methodology is set out in **Schedule “B”** to the Settlement Agreement entitled “Calculation of Payment”. It includes the nature and seriousness of the conduct.

46. Staff acknowledges BTFL’s and BV’s exemplary cooperation in resolving this matter, as well as the following:

(1) Undertaking Internal Investigation

47. When the matters at issue in this Settlement Agreement were brought to the Respondents’ attention, the Respondents reported the issues to Staff and proactively initiated a counsel-led privileged internal investigation (the “**Internal Investigation**”) to:

- (a) assess Staff’s asserted position on non-compliance;
- (b) determine the scope and extent of the alleged non-compliant activity;
- (c) determine the cause of any determined non-compliant conduct and activity;
- (d) determine whether any non-compliance was intentional; and
- (e) begin to develop and implement a remediation program as required.

48. The Respondents shared the results of the Internal Investigation with Staff and provided Staff with non-privileged and relevant documents as well as information learned during numerous witness interviews.

49. The results of the Internal Investigation are summarized in paragraph 60 below including the finding that there was no evidence of dishonest conduct or any intention to deceive.

50. As a result of the Respondents' exemplary cooperation, this matter was able to be dealt with expeditiously, significantly limiting any enforcement costs and leading to a prompt resolution.

(2) Compliance Remediation

51. Upon identifying and confirming that traders located in Ontario were engaging in fixed income trading on its MTF, the Respondents have:

- (a) developed and implemented a new technological control designed to close the controls gap that failed to prevent traders located in Ontario from trading fixed income on the Respondents' MTFs; and
- (b) developed and implemented a new internal tool for documenting and communicating asset class restrictions by jurisdiction.

52. The Respondents continue to make investments in their compliance program and technological controls and are evaluating certain additional remedial steps to take to strengthen their compliance programs. These further steps will be detailed in the internal review referenced at paragraph 62(b).

(3) The Respondents' Intent was Bona Fide

53. The Respondents had a bona fide belief based on legal advice that they were not acting contrary to Ontario law, as described in paragraph 60 below.

F. REGULARIZATION OF ACTIVITIES

54. BTFL and BV shall file a complete and accurate application for a Subsequent Decision (as defined in the Restated Order) in accordance with the timing set out in the Restated Order. For greater certainty, going forward the Respondents shall apply the definition of Ontario participant set out at paragraph 23 in connection with their Ontario-related operations.

55. The Respondents must submit the internal review report to Staff regarding compliance practices and procedures required by paragraph 62(b) by March 31, 2021. The report must describe all changes made to BTFL or BV's policies and procedures in response to the review or any proposed changes which the Respondents are otherwise committed to implement.

56. In light of:

(a) the impending expiry of the BTFL Order on December 31, 2020;

(b) the specific facts and circumstances underlying this Settlement Agreement;

(c) the MTFs operated by BTFL and BV being important sources of liquidity to current Ontario users;

(d) the fact that an interruption of Ontario users' access to the MTFs operated by BTFL and BV could disrupt the capital markets; and

(e) the potential burden that a denial of access to trading on the MTFs operated by BTFL and BV would have on current Ontario users,

BTFL and BV have filed an application requesting the Restated Order. In addition, as described in the requested Restated Order, BTFL and BV shall take such steps as appropriate to satisfy the requirements of Staff and the Commission for offering trading of derivatives and fixed income securities to Ontario users prior to the expiry of the Restated Order.

PART IV - NON-COMPLIANCE WITH ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

57. The Settlement Agreement reflects the Respondents' admission to breaches of Ontario securities laws and/or conduct contrary to the public interest, including:

(a) Both BTFL and BV failed to prevent, or otherwise permitted, fixed income trading by Ontario participants on their respective MTFs before seeking recognition or an exemption order from the Commission.

(b) Both BTFL and BV filed inaccurate and incomplete information with their applications to the Commission requesting orders exempting them from the

requirement to be recognized as an exchange. Specifically, neither BTFL nor BV disclosed the fact that:

- i) Ontario participants had already been onboarded to their respective MTFs; and
 - ii) Ontario participants had already engaged in fixed income trading activity on their respective MTFs.
- (c) After the Commission issued an interim exemptive relief order to BTFL that exempted BTFL from the requirement to be recognized as an exchange, but prohibited BTFL from providing Ontario participants with access to trading in products other than swaps, BTFL failed to prevent, or otherwise permitted, fixed income trading by Ontario participants on BTFL's MTF.
- (d) In the period after BTFL obtained an interim exemptive relief order, BTFL filed quarterly reports with the Commission that did not accurately and completely disclose the fixed income trading by Ontario participants on BTFL's MTF.

58. BTFL acknowledges and admits that, during the time periods set out below, it engaged in the following conduct contrary to Ontario securities law and contrary to the public interest:

- (a) During the time period commencing July 2017 and continuing through to the date of the BTFL Order on December 22, 2017, BTFL carried on business as an exchange in Ontario without being recognized or exempted by the Commission, contrary to subsection 21(1) of the Act.
- (b) The BTFL Application filed with the Commission contained inaccurate and incomplete information insofar as BTFL did not disclose the fact that Ontario participants had already been onboarded to BTFL's MTF and that Ontario participants had already engaged in fixed income securities transactions, contrary to the public interest.
- (c) BTFL, in the course of responding to Staff's questions relating to Staff's review of the BTFL Application, provided incomplete information insofar as BTFL did not

disclose the fact that Ontario participants had already been onboarded to BTFL's MTF and that Ontario participants had already engaged in fixed income securities transactions, contrary to the public interest.

- (d) During the time period commencing December 22, 2017 and continuing through to October 25, 2018, BTFL failed to administer appropriate systems and controls to prevent Ontario participants from engaging in fixed income securities transactions on BTFL's MTF, contrary to the terms and conditions of the BTFL Order.
- (e) During the time period commencing December 22, 2017 and continuing through to Q2 2019, BTFL filed quarterly reports that did not accurately and completely disclose Ontario participants' fixed income securities transactions on BTFL's MTF, contrary to the terms and conditions of the BTFL Order.

59. BV acknowledges and admits that, during the time periods set out below, it engaged in the following conduct contrary to Ontario securities law and contrary to the public interest:

- (a) During the time period commencing March 2019 and continuing through to Q1 2020 BV carried on business as an exchange in Ontario without being recognized or exempted by the Commission, contrary to subsection 21(1) of the Act.
- (b) The BV Application filed with the Commission contained inaccurate and incomplete information insofar as BV did not disclose the fact that Ontario participants had already been onboarded to BV's MTF, contrary to the public interest.
- (c) BV, in the course of responding to Staff's questions relating to Staff's review of the BV Application, provided incomplete information insofar as BV did not disclose the fact that Ontario participants had already been onboarded to BV's MTF and that Ontario participants had already engaged in fixed income securities transactions, contrary to the public interest.

PART V - RESPONDENTS' POSITION

60. The Respondents intend to request, and Staff do not object, that the panel at the Settlement Hearing consider the following mitigating circumstances:

- (a) At no time did the Respondents intend to, or knowingly, act contrary to their regulatory obligations, by failing to prevent certain trading activities on the MTFs, or by providing inaccurate or incomplete information to Staff, or to mislead Staff in any way:
 - i) At all material times, the Respondents had a good faith belief that they were not carrying on business as an exchange in Ontario within the meaning of Ontario law, with respect to trading by traders located outside of Ontario, and understood that the definition of Ontario participants and Ontario users related only to traders physically located in Ontario, regardless of the entity on behalf of whom they traded.
 - ii) The Respondents' good faith understanding of their Ontario regulatory obligations and the definition of Ontario participants and Ontario users was based on legal advice from external counsel and supported by views and practices of others in the market, that the Respondents believed was correct.
 - iii) Prior to reporting the issues in October 2018 to Staff, the Respondents discovered a gap in their technological controls that failed to properly identify and prevent traders physically located in Ontario from engaging in sell-side fixed income trading on the BTFL's MTF. Prior to this discovery, the Respondents were not aware that traders physically located in Ontario were engaging in sell-side fixed income trading on BTFL's MTF. This sell-side fixed income trading was the only fixed income trading facilitated on BTFL's MTF by traders physically located in Ontario.

- iv) The control gap which failed to prevent the sell-side fixed income trading by traders located in Ontario was accompanied by a failure within the organization to appropriately communicate the relevant Ontario regulatory obligations effectively throughout the business.
 - v) The Internal Investigation found no evidence of any intention to withhold information from Staff which was required to be provided, or to provide information that was less than accurate.
- (b) The implementation of multiple significant international regulatory changes contributed to the shortcomings and non-compliance described in this Settlement Agreement.
- (c) The Respondents notified Staff on October 25, 2018 that traders located in Ontario were engaging in sell-side fixed income trading on BTFL's MTF. The Respondents subsequently worked and continue to work with Staff to resolve and remediate its breaches cooperatively and in a manner that did not disrupt the Ontario capital markets.
- (d) The Respondents demonstrated a bona fide commitment to cooperation and ongoing remediation in this matter as acknowledged by Staff at paragraphs 46 to 50.

PART VI - TERMS OF SETTLEMENT

61. The Respondents agree to the terms of settlement set forth below.

62. The Respondents consent to the Order substantially in the form attached as **Schedule "A"**, pursuant to which it is ordered that:

- (a) The Settlement Agreement be approved;

- (b) 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 Order, pursuant to paragraph 4 of subsection 127(1) of the Act;
- (c) The Respondents must submit an internal review report to Staff describing all changes made, or which they propose to make, to their compliance policies and procedures in response to their internal review by March 31, 2021.
- (d) The Respondents will disgorge to the Commission amounts obtained as a result of non-compliance with Ontario securities law in the amount of \$663,305.20, pursuant to paragraph 10 of subsection 127(1) of the Act;
- (e) The Respondents will pay an administrative penalty in the amount of \$2,506,011.80, pursuant to paragraph 9 of subsection 127(1) of the Act;
- (f) The amounts referred to in paragraphs (d) and (e) above shall be designated for allocation or use by the Commission in accordance with section 3.4(2)(b)(i) or (ii) of the Act.

63. The Respondent acknowledges that the Settlement Agreement and the Order may form the basis for orders of parallel effect in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions allow orders made in this manner to take effect in those other jurisdictions automatically, without further notice to the Respondents.

PART VII - FURTHER PROCEEDINGS

64. If the Commission approves the Settlement Agreement, Staff will not commence or continue any proceeding against the Respondents under Ontario securities law based on the misconduct described in Part III of the Settlement Agreement, unless the Respondents fail to

comply with any term in the Settlement Agreement, in which case Staff may bring proceedings under Ontario securities law against the Respondents that may be based on, among other things, the facts set out in Part III of the Settlement Agreement as well as the breach of the Settlement Agreement.

65. The Respondents acknowledge that, if the Commission approves the Settlement Agreement and the Respondents fail to comply with any term in it, Staff or the Commission are entitled to bring any proceedings necessary to, among other things, recover the amounts set out in sub-paragraphs 62(d) and 62(e), above.

66. The Respondents waive any defences to a proceeding referenced in paragraphs 58 and 59 that are based on the limitation period in the Act, provided that no such proceeding shall be commenced later than six years from the date of the occurrence of the last failure to comply with the Settlement Agreement.

PART VIII -PROCEDURE FOR APPROVAL OF SETTLEMENT

67. The parties will seek approval of the Settlement Agreement at the Settlement Hearing before the Commission, which shall be held on a date determined by the Secretary to the Commission in accordance with the Settlement Agreement and the Commission's Rules of Procedure, dated July 23, 2019.

68. The Respondents may have a representative attend the Settlement Hearing in person or have counsel attend the Settlement Hearing on their behalf.

69. The parties confirm that the Settlement Agreement sets forth all of the agreed facts that will be submitted at the Settlement Hearing, unless the parties agree that additional facts should be submitted at the Settlement Hearing.

70. If the Commission approves the Settlement Agreement:

- (a) the Respondents irrevocably waive all rights to a full hearing, judicial review or appeal of this matter under the Act; and
- (b) neither party will make any public statement that is inconsistent with the Settlement Agreement or with any additional agreed facts submitted at the Settlement Hearing.

71. Whether or not the Commission approves the Settlement Agreement, the Respondents will not use, in any proceeding, the Settlement Agreement or the negotiation or process of approval as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness or any other remedies or challenges that may be available.

PART VIII - DISCLOSURE OF SETTLEMENT AGREEMENT

72. If the Commission does not make the Order:

- (a) the Settlement Agreement and all discussions and negotiations between Staff and the Respondents before the Settlement Hearing will be without prejudice to Staff and the Respondents; and
- (b) Staff and the Respondents will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations contained in the Statement of Allegations in respect of the Proceeding. Any such proceedings, remedies and challenges will not be affected by the Settlement Agreement, or by any discussions or negotiations relating to the Settlement Agreement.

73. The parties will keep the terms of the Settlement Agreement confidential until the Settlement Hearing, unless they agree in writing not to do so or unless otherwise required by law.

PART IX - EXECUTION OF SETTLEMENT AGREEMENT

74. The Settlement Agreement may be signed in one or more counterparts which together constitute a binding agreement.

75. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

DATED at Norwich, Norfolk, United Kingdom, this 15th day of December, 2020.

"Daniel Vogel"

Witness: Daniel Vogel

BLOOMBERG TRADING FACILITY LIMITED

By: _____
"Nicholas Bean"

Name: Nicholas Bean

Title: Chief Executive Officer

BLOOMBERG TRADING FACILITY B.V.

By: _____
"Nicholas Bean"

Name: Nicholas Bean

Title: Chief Executive Officer

DATED at Toronto, Ontario, this 14th day of December, 2020.

ONTARIO SECURITIES COMMISSION

By: _____ “Jeff Kehoe”

Name: Jeff Kehoe

Title: Director, Enforcement Branch



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

22nd Floor
20 Queen Street West
Toronto ON M5H 3S8

22e étage
20, rue queen
Toronto ON M5H 3S8

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

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

File No. 2020-39

[Date]

ORDER

(Sections 127 and 127.1 of the
Securities Act, RSO 1990, c S.5)

WHEREAS on December X, 2020, the Ontario Securities Commission (the **Commission**) held a hearing by video conference to consider the request made jointly by Bloomberg Trading Facility Limited and Bloomberg Trading Facility B.V. (collectively, the **Respondents**) and Staff of the Commission (**Staff**) for approval of a settlement agreement dated December X, 2020 (the **Settlement Agreement**);

ON READING the Statement of Allegations dated December X, 2020, the Settlement Agreement and the written submissions of Staff and on hearing the submissions of Staff and the representatives for the Respondents;

IT IS ORDERED THAT:

1. the Settlement Agreement is approved;
2. the Respondents shall 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 Order, pursuant to paragraph 4 of subsection 127(1) of the *Securities Act*, RSO 1990, c S.5 (the **Act**);
3. The Respondents shall submit an internal review report to Staff describing all changes made, or which they propose to make, to their compliance policies and procedures in response to their internal review by March 31, 2021;

4. the Respondents shall disgorge to the Commission amounts obtained as a result of non-compliance with Ontario securities law in the amount of \$663,305.20, pursuant to paragraph 10 of subsection 127(1) of the Act;
5. the Respondents shall pay an administrative penalty in the amount of \$2,506,011.80 pursuant to paragraph 9 of subsection 127(1) of the Act; and
6. the amounts referred to in paragraphs 3 and 4 above shall be designated for allocation or use by the Commission in accordance with section 3.4(2)(b)(i) or (ii) of the Act.

Wendy Berman

M. Cecilia Williams

Frances Kordyback

SCHEDULE "A" TO THE ORDER



Ontario Securities ouest Commission de l'Ontario	Commission des valeurs mobilières Commission de l'Ontario	22nd Floor 20 Queen Street West Toronto ON M5H 3S8	22e étage 20, rue queen Toronto ON M5H 3S8
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IN THE MATTER OF BLOOMBERG TRADING FACILITY LIMITED and BLOOMBERG TRADING FACILITY B.V.

File No. 2020-39

Bloomberg Internal Review of MTF (BTFL and BTFE) Compliance Practices and Procedures Relating to Ensuring Compliance with Ontario Securities Laws

1. **Inventory:** Create an Inventory of all requirements within the MTFs' OSC Exemptive Orders, including the Restated Order, as defined in the Settlement Agreement, and any additional Ontario Securities Law provisions applicable to the MTFs (each, an "Ontario Legal Obligation").
2. **Document Mapping:** Map internal MTF policies, rulebook(s), manual(s), standards, and procedures ("Policy Documents") to each Ontario Legal Obligation in the Inventory, and assess to confirm sufficient coverage of each Ontario Legal Obligation within one or more Policy Documents. Enhance Policy Documents, if needed, to address any gaps in coverage.
3. **Control Mapping:** Map key controls to each Ontario Legal Obligation, including access controls across asset classes and controls for monitoring participant activity across asset classes, and assess to confirm control coverage for each Legal Obligation is appropriate.
4. **Key Control Testing:** Test effectiveness of key controls. Bloomberg Compliance Testing will test control design and/or control performance (operating effectiveness), as appropriate, for each key control.

5. **Internal Review Report:** Summarize findings and identified issues, including any recommended areas for enhancement in a Compliance Testing Report (the "Internal Review Report"). Identified issues will be tracked to completion via the Firms' standard issue management processes

DATED at _____, _____ this _____ day of December, 2020.

SCHEDULE “B”

CALCULATION OF PAYMENT

1. Staff have approached the calculation of the payment by BTFL and BV to account for certain principles, which are described below together with Staff’s analysis.

Four-Step Methodology

2. Staff have considered a four-step methodology to the calculation.

Step 1: Disgorgement

3. BTFL earned fees of \$507,463.24 USD from trading in fixed income securities by Ontario users on BTFL’s MTF through to October 25, 2018. The effective USD to CAD exchange rate on October 25, 2018 was 1.3071, bringing to BTFL’s fees from fixed income trading by Ontario users through to October 25, 2018 to \$663,305.20.

Step 2: The Seriousness of The Conduct

4. The Respondents’ conduct was serious:
 - (a) Both BTFL and BV failed to prevent, or otherwise permitted, fixed income trading by Ontario participants on their respective MTFs before seeking recognition or an exemption order from the Commission.
 - (b) Both BTFL and BV filed inaccurate and incomplete information with their applications to the Commission requesting orders exempting them from the requirement to be recognized as an exchange. Specifically, neither BTFL nor BV disclosed the fact that:
 - i) Ontario participants had already been onboarded to their respective MTFs; and
 - ii) Ontario participants had already engaged in fixed income trading activity on their respective MTFs.
 - (c) After the Commission issued an interim exemptive relief order to BTFL that exempted BTFL from the requirement to be recognized as an exchange, but prohibited BTFL from providing Ontario participants with access to trading in products other than

swaps, BTFL failed to prevent, or otherwise permitted, fixed income trading by Ontario participants on BTFL's MTF.

(d) In the period after BTFL obtained an interim exemptive relief order, BTFL filed quarterly reports with the Commission that did not accurately and completely disclose the fixed income trading by Ontario participants on BTFL's MTF.

5. At Step 2 Staff have considered a figure that reflects the seriousness of the conduct described above. Taking all of these factors into account, Staff have determined that disgorgement amount of \$663,305.20 appropriately reflects the seriousness of the Respondents' misconduct.
6. Staff have also determined that it is appropriate to apply interest to the amount of the disgorgement (\$663,305.20). The applicable interest for the period from October 25, 2018 through July 29, 2020 using the 1.75% Bank of Canada interest rate in effect as of October 25, 2018 is \$20,434.89.
7. Step 2 is therefore \$683,740.09.

Step 3: Adjustment for deterrence

8. In Step 3, Staff have considered whether the figure arrived at after Step 2 is insufficient to deter the Respondents or other market participants. Staff consider that adding the following specified amount for each of three periods of time to be appropriate.
 - (a) **Period 1** – From September 23, 2016 (when BTFL first onboarded an Ontario user without recognition or an exemption) to December 21, 2017 (when the Commission issued the BTFL Order): \$1,500,000;
 - (b) **Period 2** - From December 22, 2017 (after the Commission issued the BTFL Order) to October 25, 2018 (when BTFL first disclosed to Staff that it had identified limited fixed income trading by Ontario users on BTFL's MTF): \$1,100,000; and
 - (c) **Period 3** – From October 26, 2018 (after BTFL's first disclosure to Staff) to March 31, 2019 (when BTFL and BV filed the last quarterly report that failed to accurately and completely disclose Ontario participants' fixed income trading activity on BTFL and BV's respective MTFs): \$571,662.68.

9. The total amount for these three periods is \$3,171,662.68. Adding the total of Step 2 to this amount brings the Step 3 total to \$3,855,402.77.

Step 4: Settlement Discount

10. Staff consider that the exemplary cooperation during this investigation as well as the early settlement by BTFL and BV merit a significant discount of 35% to the amount referred to in Step 3. The application of Step 4 results in a total administrative penalty of \$2,506,011.80.
11. The total payment equals \$3,169,317, including an administrative penalty of \$2,506,011.80 and disgorgement of \$663,305.20.