

IN THE MATTER OF
THE SECURITIES ACT, R.S.O. 1990, CHAPTER S. 5, AS AMENDED (THE ACT)
AND
IN THE MATTER OF
BLOOMBERG TRADING FACILITY LIMITED

ORDER

(Section 147 of the Act)

WHEREAS Bloomberg Trading Facility Limited (**Applicant**) has filed an application dated ● (**Application**) with the Ontario Securities Commission (**Commission**) requesting an order for the following relief (collectively, the Requested Relief):

- (a) exempting the Applicant from the requirement to be recognized as an exchange under subsection 21(1) of the Act pursuant to section 147 of the Act; and
- (b) exempting the Applicant from the requirements in National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) pursuant to section 15.1(1) of NI 21-101, the requirements of National Instrument 23-101 *Trading Rules* (**NI 23-101**) pursuant to section 12.1 of NI 23-101 and the requirements of National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* (**NI 23-103**) pursuant to section 10 of NI 23-103;

AND WHEREAS on December 22, 2017, the Commission issued an interim order under section 147 of the Act exempting the Applicant on an interim basis from the requirement in subsection 21(1) of the Act to be recognized as an exchange (**Interim Order**), terminating on the earlier of (i) January 3, 2019 and (ii) the effective date of a subsequent order exempting the Applicant from the requirement to be recognized as an exchange (**Subsequent Order**);

AND WHEREAS on December 14, 2018, the Commission issued an order (**First Variation Order**) under section 144 of the Act varying the Interim Order so that it terminated on the earlier of (i) July 3, 2019 and (ii) the effective date of a Subsequent Order;

AND WHEREAS on June 27, 2019, the Commission issued a further order (**Second Variation Order**) under section 144 of the Act varying the Interim Order so that it terminated on the earlier of (i) December 31, 2019 and (ii) the effective date of a Subsequent Order;

AND WHEREAS on December 13, 2019, the Commission issued a further order (**Third Variation Order**) under section 144 of the Act varying the Interim Order so that it terminates on the earlier of (i) December 31, 2020 and (ii) the effective date of a Subsequent Order;

AND WHEREAS pursuant to the terms of a settlement agreement approved by the Commission on December 18, 2020 (the **Settlement Agreement**):

- (a) (i) the Applicant admitted that it breached Ontario securities laws by, among other things failing to prevent, or otherwise permitting, trading in fixed income securities by Ontario participants in contravention of the terms of the Interim Order and subsequent variations of the Interim Order, and (ii) the Applicant's affiliate, Bloomberg Trading Facility B.V. (**BTF BV**), admitted that it breached Ontario securities laws by, among other things failing to prevent, or otherwise permitting, trading by Ontario participants without being recognized as an exchange by the Commission or obtaining an exemption from the requirement to be recognized;
- (b) each of the Applicant and BTF BV was required to file a full application for subsequent decisions to allow for the trading of swaps and fixed income securities by January 31, 2021 (the **Subsequent Decisions**);

AND WHEREAS on December 18, 2020, the Commission issued a further order (**Restated Interim Order**) under sections 144 and 147 of the Act revoking and restating the Interim Order as follows:

- (a) to include BTF BV in the scope of the Restated Interim Order to exempt the Applicant and BTF BV on an interim basis from the requirement in subsection 21(1) of the Act to be recognized as an exchange;
- (b) to allow for the trading of swaps as defined in section 1a(47) of the United States Commodity Exchange Act as amended (but without regard to any exclusions from the definition) and fixed income securities;
- (c) to extend the termination date of the Restated Interim Order so that it terminates on the earlier of (i) June 30, 2021 and (ii) the effective date of the Subsequent Decisions in respect of the Applicant or BTF BV, as the case may be;

AND WHEREAS the Restated Interim Order will therefore terminate upon the issuance of this order;

AND WHEREAS the Applicant has represented to the Commission that:

1. The Applicant is a limited company organized under the laws of England and Wales, and is a wholly owned direct and indirect subsidiary of Bloomberg L.P., a Delaware limited partnership;
2. On July 23, 2015, the U.K. Financial Conduct Authority (the **FCA** or **Foreign Regulator**), a financial regulatory body in the United Kingdom (**U.K.**), authorized the Applicant to act as the operator of a multilateral trading facility (**MTF**) for interest rate swaps and credit default swaps under Part 4A of the U.K. *Financial Services and Markets Act 2000*. On June 10, 2016, the FCA granted the Applicant a Variation of Permission that expanded the Applicant's authorization to additional financial instruments;
3. The Applicant operates a marketplace for trading over-the-counter (**OTC**) derivative instruments and certain securities (the **MTF Instruments**). The Applicant's MTF supports request-for-quote and request-for-trade functionality for interest rate swaps, credit default

swaps, government and corporate bonds and similar fixed-income instruments, foreign exchange derivatives (e.g., foreign exchange forwards, non-deliverable forwards and options), securities financing transactions (including repurchase transactions, buy-sell and sell-buy back transactions), exchange-traded funds, equity swaps and OTC equity options. The Applicant may add other types of financial instruments in the future, subject to obtaining required regulatory approvals;

4. Pursuant to a marketplace conduit arrangement with the Applicant's Canadian alternative trading system affiliate, Bloomberg Tradebook Canada Company (**Tradebook Canada**), the Applicant also provides transaction execution services for debt securities issued by (i) an issuer incorporated, formed or created under the laws of Canada or a jurisdiction of Canada, or (ii) the Government of Canada or the government of a jurisdiction of Canada, including:
 - (a) debt securities issued or guaranteed by the Government of Canada or the government of a jurisdiction of Canada (including agencies or instrumentalities thereof);
 - (b) debt securities issued or guaranteed by a municipal corporation in Canada;
 - (c) debt securities issued or guaranteed by Canadian corporate or other non-governmental issuers; and
 - (d) asset-backed securities (including mortgage backed securities) and collateralized mortgage obligations issued or guaranteed by a Canadian issuer, denominated in the Canadian dollar;
5. The Applicant is subject to regulatory supervision by the FCA and is required to comply with the FCA's Handbook, which includes, among other things, rules on (i) the conduct of business (including rules regarding client categorization, communication with clients and other investor protections and client agreements), (ii) market conduct (including rules applicable to firms operating an MTF), and (iii) systems and controls (including rules on outsourcing, governance, record-keeping and conflicts of interest). The FCA requires the Applicant to comply at all times with a set of threshold conditions for authorization, including requirements that the Applicant is "fit and proper" to be authorized and that it has appropriate resources for the activities it carries on. The Applicant is subject to prudential regulation, including minimum regulatory capital requirements, and is capitalized in excess of regulatory requirements. The Applicant is required to maintain a permanent and effective compliance function, which is headed by the Applicant's Chief Compliance Officer, an FCA-approved person. The Applicant's Compliance Department is responsible for implementing and maintaining adequate policies and procedures designed to ensure that the Applicant (and all of its employees) comply with their obligations under the FCA rules;
6. An MTF is obliged under FCA rules to have requirements governing the conduct of participants, to monitor compliance with those requirements and report to the FCA (a) significant breaches of MTF rules, (b) disorderly trading conditions, and (c) conduct that may involve market abuse. The Applicant may also notify the FCA when a participant's

access is terminated, and may notify the FCA when a participant is temporarily suspended or subject to condition(s). As required by FCA rules, the Applicant has implemented a trade surveillance program. As part of the program, the Applicant's Compliance Department conducts real-time market monitoring of trading activity on the Applicant's MTF to identify disorderly trading and market abuse or anomalies. The trade surveillance program is designed to maintain a fair and orderly market for the Applicant's MTF participants;

7. The Applicant's MTF is available to participants via an approved service provider (Bloomberg Terminal access is provided this way), via application programming interface (**API**), a non-Bloomberg API or venue Direct Portal. The Applicant currently charges trading and access fees to participants which are publicly disclosed;
8. An MTF must submit all trades that are required to be cleared to a clearing house for clearing. The Applicant provides direct connectivity to the following clearing houses for clearing interest rate swaps: LCH Limited (formerly known as LCH.Clearnet Ltd.) and Eurex Clearing AG, each of which is recognized or has obtained an exemption from recognition as a clearing agency in Ontario. The Applicant provides direct connectivity to the following clearing houses for credit default swaps: ICE Clear Credit LLC, ICE Clear Europe Limited and LCH SA. ICE Clear Credit LLC and LCH SA have each obtained an exemption from recognition as a clearing agency in Ontario. ICE Clear Europe Limited is not recognized and has not obtained an exemption from recognition as a clearing agency in Ontario. Accordingly, ICE Clear Europe Limited is not authorized to provide clearing services for credit default swaps directly to Ontario Users (as defined below);
9. The Applicant requires that its participants be "professional clients," as defined by the FCA in the FCA's Conduct of Business Sourcebook, Chapter 3 "Client categorisation" (**Professional Clients**) and as set forth in Appendix II of this Application and be either (i) authorized as a credit institution with a license in an EEA country or as an EEA investment firm, or (ii) an entity that has satisfied and will continue to satisfy the Applicant that it is fit and proper to become a participant, with adequate organizational arrangements in place and a sufficient level of trading ability and competence. Each prospective participant must: comply and ensure that its authorized traders comply, and, in each case, continue to comply, with the Applicant's MTF Rulebook and applicable law; have the legal capacity to trade in the MTF Instruments it selects to trade on the Applicant's MTF; have appropriate systems and arrangements for the orderly clearance and/or settlement, as applicable, of transactions in all MTF Instruments it selects to trade on the Applicant's MTF; have all registrations, authorizations, approvals and/or consents required by applicable law in connection with trading in MTF Instruments on the Applicant's MTF; have adequate experience, knowledge and competence to transact in the MTF Instruments; and not be a natural person, independent software provider, trading venue or unregulated organized trading platform or system;
10. All participants that are located in Ontario, including participants with their 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 (**Ontario Users**) are required to sign a user acknowledgment representing that they

meet the criteria set forth in the user acknowledgment, including that they are appropriately registered under Ontario securities laws, exempt from registration or not subject to registration requirements. The user acknowledgment requires an Ontario User to make an ongoing representation each time it uses the Applicant's MTF that it continues to meet the criteria set forth in the user acknowledgment. An Ontario User is required to immediately notify the Applicant if it ceases to meet any of the above criteria represented by it on an ongoing basis;

11. Because the Applicant's 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;
12. Because the Applicant has participants that are Ontario Users, it is considered by the Commission to be carrying on business as an exchange in Ontario and is required to be recognized as such or exempted from recognition pursuant to section 21 of the Act;
13. The Applicant has no physical presence in Ontario and does not otherwise carry on business in Ontario except as described above and permitted by the Restated Interim Order; and
14. The Applicant satisfies the exemption criteria as described in Appendix I to Schedule "A";

AND WHEREAS the products traded on the Applicant's MTF are not commodity futures contracts as defined in the *Commodity Futures Act* (Ontario) and the Applicant is not considered to be carrying on business as a commodity futures exchange in Ontario;

AND WHEREAS the Commission will monitor developments in international and domestic capital markets and the Applicant's activities on an ongoing basis to determine whether it is appropriate for the Requested Relief to continue to be granted subject to the terms and conditions set out in Schedule "A" to this order;

AND WHEREAS the Applicant has acknowledged to the Commission that the scope of the Requested Relief and the terms and conditions imposed by the Commission set out in Schedule "A" to this order may change as a result of the Commission's monitoring of developments in international and domestic capital markets or the Applicant's activities, or as a result of any changes to the laws in Ontario affecting trading in derivatives or securities;

AND WHEREAS based on the Application, together with the representations made by and acknowledgments of the Applicant to the Commission, the Commission has determined that the Applicant satisfies the criteria set out in Appendix I to Schedule "A" and that the granting of the Requested Relief would not be prejudicial to the public interest;

IT IS HEREBY ORDERED by the Commission that, (i) pursuant to section 147 of the Act, the Applicant is exempt from recognition as an exchange under subsection 21(1) of the Act, and by the regulator that (ii) pursuant to sections 15.1(1) of NI 21-101, 12.1 of NI 23-101 and 10 of NI 23-103, the Applicant is exempt from the requirements in NI 21-101, NI 23-101 and NI 23-103,

PROVIDED THAT the Applicant complies with the terms and conditions contained in Schedule "A".

DATED ●

SCHEDULE “A”

TERMS AND CONDITIONS

Meeting Criteria for Exemption

1. The Applicant will continue to meet the criteria for exemption included in Appendix I to this Schedule.

Regulation and Oversight of the Applicant

2. The Applicant will maintain its registration as a multilateral trading facility (**MTF**) with the U.K. Financial Conduct Authority (**FCA**) and will continue to be subject to the regulatory oversight of the FCA.

3. The Applicant will continue to comply with the ongoing requirements applicable to it as an MTF registered with the FCA.

4. The Applicant will promptly notify the Commission if its registration as an MTF has been revoked, suspended, or amended by the FCA, or the basis on which its registration as an MTF has been granted has significantly changed.

5. The Applicant must do everything within its control, which includes cooperating with the Commission as needed, to carry out its activities as an exchange exempted from recognition under subsection 21(1) of the Act in compliance with Ontario securities law.

Access

6. The Applicant will not provide direct access to a participant in Ontario including 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 (**Ontario User**) unless the Ontario User is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements, and qualifies as a “professional client”, as defined by the FCA in the FCA’s Conduct of Business Sourcebook, Chapter 3 “Client Categorisation.”

7. For each Ontario User provided direct access to its MTF, the Applicant will require, as part of its application documentation or continued access to the MTF, the Ontario User to represent that it is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements.

8. The Applicant may reasonably rely on a written representation from the Ontario User that specifies either that it is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements, provided the Applicant notifies such Ontario

User that this representation is deemed to be repeated each time it enters an order, request for quote or response to a request for quote or otherwise uses the Applicant's MTF.

9. The Applicant will require Ontario Users to notify the Applicant if their registration as applicable under Ontario securities laws has been revoked, suspended, or amended by the Commission or if they are no longer exempt from or become subject to those requirements and, following notice from the Ontario User and subject to applicable laws, the Applicant will promptly restrict the Ontario User's access to the Applicant's MTF if the Ontario User is no longer appropriately registered or exempt from those requirements.

Trading by Ontario Users

10. The Applicant will not provide access to an Ontario User to trading in products other than swaps, as defined in section 1a(47) of the United States *Commodity Exchange Act* as amended (but without regard to any exclusions from the definition) or debt securities, as defined in subsection 1(1) of the Act, without prior Commission approval.

11. With respect to debt securities:

- (a) the Applicant will only permit Ontario Users to trade a debt security that is a foreign security or a debt security that is denominated in a currency other than the Canadian dollar as such terms are defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, including:
 - (i) debt securities issued by the United States (U.S.) government (including agencies or instrumentalities thereof);
 - (ii) debt securities issued by a foreign government;
 - (iii) debt securities issued by corporate or other non-governmental issuers (U.S. and foreign); and
 - (iv) asset-backed securities (including mortgage backed securities), denominated in either U.S. or foreign currencies; and
- (b) the Applicant will only provide transaction execution services in accordance with the terms and conditions of Bloomberg Tradebook Canada Company's registration as an alternative trading system in Ontario with respect to a debt security that is a Canadian security or a debt security of a Canadian issuer that is denominated in the Canadian dollar, including:
 - (i) debt securities issued or guaranteed by the Government of Canada or the government of a jurisdiction of Canada (including agencies or instrumentalities thereof);
 - (ii) debt securities issued or guaranteed by a municipal corporation in Canada;

- (iii) debt securities issued or guaranteed by Canadian corporate or other non-governmental issuers; and
- (iv) asset-backed securities (including mortgage backed securities) and collateralized mortgage obligations issued or guaranteed by a Canadian issuer, denominated in the Canadian dollar.

12. The Applicant will only permit Ontario Users to trade those securities which are permitted to be traded in the U.K. under applicable securities laws and regulations.

Submission to Jurisdiction and Agent for Service

13. With respect to a proceeding brought by the Commission arising out of, related to, concerning or in any other manner connected with the Commission's regulation and oversight of the activities of the Applicant in Ontario, the Applicant will submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario.

14. The Applicant will maintain with the Commission a valid and binding appointment of an agent for service in Ontario upon whom the Commission may serve a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of, related to, concerning or in any other manner connected with the Commission's regulation and oversight of the Applicant's activities in Ontario.

Prompt Reporting

15. The Applicant will notify staff of the Commission promptly of:

- (a) any authorization to carry on business granted by the FCA is revoked or suspended or made subject to terms or conditions on the Applicant's operations;
- (b) the Applicant institutes a petition for a judgment of bankruptcy or insolvency or similar relief, or to wind up or liquidate the Applicant or has a proceeding for any such petition instituted against it;
- (c) a receiver is appointed for the Applicant or the Applicant makes any voluntary arrangement with creditors;
- (d) the Applicant marketplace is not in compliance with this Order or with any applicable requirements, laws or regulations of the FCA where it is required to report such non-compliance to the FCA;
- (e) any known investigations of, or disciplinary action against, the Applicant by the FCA or any other regulatory authority to which it is subject; and
- (f) the Applicant makes any material change to the eligibility criteria for Ontario Users.

Semi-Annual Reporting

16. The Applicant will maintain the following updated information and submit such information in a manner and form acceptable to the Commission on a semi-annual basis (by July 31 for the first half of the calendar year and by January 31 of the follow year for the second half), and at any time promptly upon the request of staff of the Commission:

(a) a current list of all Ontario Users and whether the Ontario User is registered under Ontario securities laws or is exempt from or not subject to registration, and, to the extent known by the Applicant, other persons or companies located in Ontario trading on the Applicant's MTF as customers of participants (**Other Ontario Participants**);

(b) the legal entity identifier assigned to each Ontario User, and, to the extent known by the Applicant, to Other Ontario Participants in accordance with the standards set by the Global Legal Entity Identifier System;

(c) a list of all Ontario Users whom the Applicant has referred to the FCA, or, to the best of the Applicant's knowledge, whom have been disciplined by the FCA with respect to such Ontario Users' activities on the Applicant's MTF and the aggregate number of all participants referred to the FCA since the previous report by the Applicant;

(d) a list of all active investigations since the last report by the Applicant relating to Ontario Users and the aggregate number of active investigations since the last report relating to all participants undertaken by the Applicant;

(e) a list of all Ontario applicants for status as a participant who were denied such status or access to the Applicant since the last report, together with the reasons for each such denial; and

(f) for each product,

(i) the total trading volume and value originating from Ontario Users, and, to the extent known by the Applicant, from Other Ontario Participants, presented on a per Ontario User or per Other Ontario Participant basis; and

(ii) the proportion of worldwide trading volume and value on the Applicant's MTF conducted by Ontario Users, and, to the extent known by the Applicant, by Other Ontario Participants, presented in the aggregate for such Ontario Users and Other Ontario Participants;

provided in the required format.

Information Sharing

17. The Applicant will provide such information as may be requested from time to time by, and otherwise cooperate with, the Commission or its staff, subject to any applicable privacy or other

laws (including solicitor-client privilege) governing the sharing of information and the protection of personal information.

APPENDIX I

CRITERIA FOR EXEMPTION OF A FOREIGN EXCHANGE TRADING OTC DERIVATIVES FROM RECOGNITION AS AN EXCHANGE

PART 1 REGULATION OF THE EXCHANGE

1.1 Regulation of the Exchange

The exchange is regulated in an appropriate manner in another jurisdiction by a foreign regulator (**Foreign Regulator**).

1.2 Authority of the Foreign Regulator

The Foreign Regulator has the appropriate authority and procedures for oversight of the exchange. This includes regular, periodic oversight reviews of the exchange by the Foreign Regulator.

PART 2 GOVERNANCE

2.1 Governance

The governance structure and governance arrangements of the exchange ensure:

- (a) effective oversight of the exchange,
- (b) that business and regulatory decisions are in keeping with its public interest mandate,
- (c) fair, meaningful and diverse representation on the board of directors (Board) and any committees of the Board, including:
 - (i) appropriate representation of independent directors, and
 - (ii) a proper balance among the interests of the different persons or companies using the services and facilities of the exchange,
- (d) the exchange has policies and procedures to appropriately identify and manage conflicts of interest for all officers, directors and employees, and
- (e) there are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors, officers and employees of the exchange.

2.2 Fitness

The exchange has policies and procedures under which it will take reasonable steps, and has taken such reasonable steps, to ensure that each director and officer is a fit and proper person and past conduct of each officer or director affords reasonable grounds for belief that the officer or director will perform his or her duties with integrity.

PART 3 REGULATION OF PRODUCTS

3.1 Review and Approval of Products

The products traded on the exchange and any changes thereto are submitted to the Foreign Regulator, and are either approved by the Foreign Regulator or are subject to requirements established by the Foreign Regulator that must be met before implementation of a product or changes to a product.

3.2 Product Specifications

The terms and conditions of trading the products are in conformity with the usual commercial customs and practices for the trading of such products.

3.3 Risks Associated with Trading Products

The exchange maintains adequate provisions to measure, manage and mitigate the risks associated with trading products on the exchange that may include, but are not limited to, daily trading limits, price limits, position limits, and internal controls.

PART 4 ACCESS

4.1 Fair Access

- (a) The exchange has established appropriate written standards for access to its services including requirements to ensure
 - (i) participants are appropriately registered as applicable under Ontario securities laws, or exempted from these requirements,
 - (ii) the competence, integrity and authority of systems users, and
 - (iii) systems users are adequately supervised.
- (b) The access standards and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.
- (c) The exchange does not unreasonably prohibit, condition or limit access by a person or company to services offered by it.
- (d) The exchange does not
 - (i) permit unreasonable discrimination among participants, or
 - (ii) impose any burden on competition that is not reasonably necessary and appropriate.
- (e) The exchange keeps records of each grant and each denial or limitation of access, including reasons for granting, denying or limiting access.

PART 5 REGULATION OF PARTICIPANTS ON THE EXCHANGE

5.1 Regulation

The exchange has the authority, resources, capabilities, systems and processes to allow it to perform its regulation functions, whether directly or indirectly through a regulation services provider, including setting requirements governing the conduct of its participants, monitoring their conduct, and appropriately disciplining them for violations of exchange requirements.

PART 6 RULEMAKING

6.1 Purpose of Rules

- (a) The exchange has rules, policies and other similar instruments (**Rules**) that are designed to appropriately govern the operations and activities of participants and do not permit unreasonable discrimination among participants or impose any burden on competition that is not reasonably necessary or appropriate.
- (b) The Rules are not contrary to the public interest and are designed to
 - (i) ensure compliance with applicable legislation,
 - (ii) prevent fraudulent and manipulative acts and practices,
 - (iii) promote just and equitable principles of trade,
 - (iv) foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in the products traded on the exchange,
 - (v) provide a framework for disciplinary and enforcement actions, and
 - (vi) ensure a fair and orderly market.

PART 7 DUE PROCESS

7.1 Due Process

For any decision made by the exchange that affects a participant, or an applicant to be a participant, including a decision in relation to access, exemptions, or discipline, the exchange ensures that:

- (a) parties are given an opportunity to be heard or make representations, and
- (b) it keeps a record of, gives reasons for, and provides for appeals or reviews of its decisions.

PART 8 CLEARING AND SETTLEMENT

8.1 Clearing Arrangements

The exchange has or requires its participants to have appropriate arrangements for the clearing and settlement of transactions for which clearing is mandatory through a clearing house.

8.2 Risk Management of Clearing House

The exchange has assured itself that the clearing house has established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls.

PART 9 SYSTEMS AND TECHNOLOGY

9.1 Systems and Technology

Each of the exchange's critical systems has appropriate internal controls to ensure completeness, accuracy, integrity and security of information, and, in addition, has sufficient capacity and business continuity plans to enable the exchange to properly carry on its business. Critical systems are those that support the following functions:

- (a) order entry,
- (b) order routing,
- (c) execution,
- (d) trade reporting,
- (e) trade comparison,
- (f) data feeds,
- (g) market surveillance,
- (h) trade clearing, and
- (i) financial reporting.

9.2 System Capability/Scalability

Without limiting the generality of section 9.1, for each of its systems supporting order entry, order routing, execution, data feeds, trade reporting and trade comparison, the exchange:

- (a) makes reasonable current and future capacity estimates;
- (b) conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;
- (c) reviews the vulnerability of those systems and data centre computer operations to internal and external threats, including physical hazards and natural disasters;
- (d) ensures that safeguards that protect a system against unauthorized access, internal failures, human errors, attacks and natural catastrophes that might cause improper disclosures, modification, destruction or denial of service are subject to an independent and ongoing audit which should include the physical environment, system capacity, operating system testing, documentation, internal controls and contingency plans;

(e) ensures that the configuration of the system has been reviewed to identify potential points of failure, lack of back-up and redundant capabilities;

(f) maintains reasonable procedures to review and keep current the development and testing methodology of those systems; and

(g) maintains reasonable back-up, contingency and business continuity plans, disaster recovery plans and internal controls.

9.3 Information Technology Risk Management Procedures

The exchange has appropriate risk management procedures in place including those that handle trading errors, trading halts and respond to market disruptions and disorderly trading.

PART 10 FINANCIAL VIABILITY

10.1 Financial Viability

The exchange has sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

PART 11 TRADING PRACTICES

11.1 Trading Practices

Trading practices are fair, properly supervised and not contrary to the public interest.

11.2 Orders

Rules pertaining to order size and limits are fair and equitable to all market participants and the system for accepting and distinguishing between and executing different types of orders is fair, equitable and transparent.

11.3 Transparency

The exchange has adequate arrangements to record and publish accurate and timely information as required by applicable law or the Foreign Regulator. This information is also provided to all participants on an equitable basis.

PART 12 COMPLIANCE, SURVEILLANCE AND ENFORCEMENT

12.1 Jurisdiction

The exchange or the Foreign Regulator has the jurisdiction to perform member and market regulation, including the ability to set rules, conduct compliance reviews and perform surveillance and enforcement.

12.2 Member and Market Regulation

The exchange or the Foreign Regulator maintains appropriate systems, resources and procedures for evaluating compliance with exchange and legislative requirements and for disciplining participants.

12.3 Availability of Information to Regulators

The exchange has mechanisms in place to ensure that the information necessary to conduct adequate surveillance of the system for supervisory or enforcement purposes is available to the relevant regulatory authorities, including the Commission, on a timely basis.

PART 13 RECORD KEEPING

13.1 Record Keeping

The exchange has and maintains adequate systems in place for the keeping of books and records, including, but not limited to, those concerning the operations of the exchange, audit trail information on all trades, and compliance with, and/or violations of exchange requirements.

PART 14 OUTSOURCING

14.1 Outsourcing

Where the exchange has outsourced any of its key services or systems to a service provider, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices.

PART 15 FEES

15.1 Fees

(a) All fees imposed by the exchange are reasonable and equitably allocated and do not have the effect of creating an unreasonable condition or limit on access by participants to the services offered by the exchange.

(b) The process for setting fees is fair and appropriate, and the fee model is transparent.

PART 16 INFORMATION SHARING AND OVERSIGHT ARRANGEMENTS

16.1 Information Sharing and Regulatory Cooperation

The exchange has mechanisms in place to enable it to share information and otherwise co-operate with the Commission, self-regulatory organizations, other exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.

16.2 Oversight Arrangements

Satisfactory information sharing and oversight agreements exist between the Commission and the Foreign Regulator.

PART 17 IOSCO PRINCIPLES

17.1 IOSCO Principles

To the extent it is consistent with the laws of the foreign jurisdiction, the exchange adheres to the standards of the International Organisation of Securities Commissions (IOSCO) including those set out in the “Principles for the Regulation and Supervision of Commodity Derivatives Markets” (2011).

APPENDIX II

DEFINITION OF PROFESSIONAL CLIENTS

This Appendix II provides the definition of a “Professional Client,” as defined by the FCA in the FCA’s Conduct of Business Sourcebook, Chapter 3 “Client categorisation.”

3.5 Professional clients

3.5.1 A *professional client* is a *client* that is either a *per se professional client* or an *elective professional client*.

[Note: article 4(1)(11) of *MiFID*]

Per se professional clients

3.5.2 Each of the following is a *per se professional client* unless and to the extent it is an *eligible counterparty* or is given a different categorisation under this chapter:

- (1) an entity required to be authorised or regulated to operate in the financial markets. The following list includes all authorised entities carrying out the characteristic activities of the entities mentioned, whether authorised by an *EEA State* or a third country and whether or not authorised by reference to a directive:
 - (a) a *credit institution*;
 - (b) an *investment firm*;
 - (c) any other authorised or regulated financial institution;
 - (d) an insurance company;
 - (e) a collective investment scheme or the management company of such a scheme;
 - (f) a pension fund or the management company of a pension fund;
 - (g) a commodity or commodity derivatives dealer;
 - (h) a local;
 - (i) any other institutional investor;
- (2) in relation to *MiFID* or equivalent third country business a large undertaking meeting two of the following size requirements on a company basis:
 - (a) balance sheet total of EUR 20,000,000;
 - (b) net turnover of EUR 40,000,000;

- (c) own funds of EUR 2,000,000;
- (3) in relation to business that is not *MiFID or equivalent third country business* a large undertaking meeting any of the following conditions:
- (a) a *body corporate* (including a *limited liability partnership*) which has (or any of whose *holding companies* or *subsidiaries* has) (or has had at any time during the previous two years) called up share capital or net assets of at least £5 million (or its equivalent in any other currency at the relevant time);
 - (b) an undertaking that meets (or any of whose *holding companies* or *subsidiaries* meets) two of the following tests:
 - (i) a balance sheet total of EUR 12,500,000;
 - (ii) a net turnover of EUR 25,000,000;
 - (iii) an average number of employees during the year of 250;
 - (c) a *partnership* or unincorporated association which has (or has had at any time during the previous two years) net assets of at least £5 million (or its equivalent in any other currency at the relevant time) and calculated in the case of a limited *partnership* without deducting loans owing to any of the *partners*;
 - (d) a trustee of a trust (other than an *occupational pension scheme*, *SSAS*, *personal pension scheme* or *stakeholder pension scheme*) which has (or has had at any time during the previous two years) assets of at least £10 million (or its equivalent in any other currency at the relevant time) calculated by aggregating the value of the cash and *designated investments* forming part of the trust's assets, but before deducting its liabilities;
 - (e) a trustee of an *occupational pension scheme* or *SSAS*, or a trustee or *operator* of a *personal pension scheme* or *stakeholder pension scheme* where the scheme has (or has had at any time during the previous two years):
 - (i) at least 50 members; and
 - (ii) assets under management of at least £10 million (or its equivalent in any other currency at the relevant time);
 - (f) a local authority or public authority.
- (4) a national or regional government, a public body that manages public debt, a central bank, an international or supranational institution (such as the World Bank, the IMF, the ECP, the EIB) or another similar international organisation;
- (5) another institutional investor whose main activity is to invest in *financial instruments* (in relation to the *firm's MiFID or equivalent third country business*)

or *designated investments* (in relation to the firm's other business). This includes entities dedicated to the securitisation of assets or other financing transactions.

[**Note:** first paragraph of section I of annex II to MiFID]

3.5.2A In relation to MiFID or *equivalent third country business* a local authority or a public authority is not likely to be a regional government for the purposes of ■ COBS 3.5.2 R (4). In the FCA's opinion, a local authority may be a *per se professional client* for those purposes if it meets the test for large undertakings in ■ COBS 3.5.2 R (2).

Elective professional clients

3.5.3 A *firm* may treat a client as an *elective professional client* if it complies with (1) and (3) and, where applicable, (2):

- (1) the *firm* undertakes an adequate assessment of the expertise, experience and knowledge of the *client* that gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the *client* is capable of making his own investment decisions and understanding the risks involved (the "qualitative test");
- (2) in relation to *MiFID or equivalent third country business* in the course of that assessment, at least two of the following criteria are satisfied:
 - (a) the *client* has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters;
 - (b) the size of the *client's financial instrument* portfolio, defined as including cash deposits and *financial instruments*, exceeds EUR 500,000;
 - (c) the *client* works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged;

(the "quantitative test"); and
- (3) the following procedure is followed:
 - (a) the *client* must state in writing to the *firm* that it wishes to be treated as a *professional client* either generally or in respect of a particular service or transaction or type of transaction or product;
 - (b) the *firm* must give the *client* a clear written warning of the protections and investor compensation rights the *client* may lose; and
 - (c) the *client* must state in writing, in a separate document from the contract, that it is aware of the consequences of losing such protections.

[**Note:** first, second, third and fifth paragraphs of section II.1 and first paragraph of section II.2 of annex II to *MiFID*]

3.5.4 If the *client* is an entity, the qualitative test should be performed in relation to the person authorised to carry out transactions on its behalf.

[**Note:** fourth paragraph of section II.1 of annex II to *MiFID*]

3.5.5 The fitness test applied to managers and directors of entities licensed under directives in the financial field is an example of the assessment of expertise and knowledge involved in the qualitative test.

[**Note:** fourth paragraph of section II.1 of annex II to *MiFID*]

3.5.6 Before deciding to accept a request for re-categorisation as an *elective professional client* a *firm* must take all reasonable steps to ensure that the *client* requesting to be treated as an *elective professional client* satisfies the qualitative test and, where applicable, the quantitative test.

[**Note:** second paragraph of section II.2 of annex II to *MiFID*]

3.5.7 An *elective professional client* should not be presumed to possess market knowledge and experience comparable to a *per se professional client*

[**Note:** second paragraph of section II.1 of annex II to *MiFID*]

3.5.8 *Professional client* are responsible for keeping the *firm* informed about any change that could affect their current categorisation.

[**Note:** fourth paragraph of section II.2 of annex II to *MiFID*]

3.5.9 (1) If a *firm* becomes aware that a *client* no longer fulfils the initial conditions that made it eligible for categorisation as an *elective professional client*, the *firm* must take the appropriate action.

(2) Where the appropriate action involves re-categorising that client as a *retail client*, the *firm* must notify that *client* of its new categorisation.

[**Note:** fourth paragraph of section II.2 of annex II to *MiFID* and article 28(1) of the *MiFID implementing Directive*]