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United Kingdom

May 7, 2021

Sent By E-mail

Attn: Secretary of Ontario Securities Commission

Ontario Securities Commission
20 Queen Street West, 19th Floor
Toronto, Ontario M5H 3S8

Re: Bloomberg Trading Facility Limited – Application for Exemption from Recognition as an Exchange

Dear Sirs and Mesdames:

Bloomberg Trading Facility Limited (the “**Applicant**”) is requesting a subsequent order for the following relief (collectively, the “**Requested Relief**”) in relation to its operation of a multilateral trading facility (an “**MTF**”) in the province of Ontario:

- (a) exempting the Applicant from the requirement to be recognised as an exchange under subsection 21(1) of the Act pursuant to section 147 of the *Securities Act* (Ontario) (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 National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* (“**NI 23-103**”) pursuant to section 10 of NI 23-103.

The Applicant is currently permitted to operate its MTF in Ontario under an interim exemption order dated December 22, 2017, which was revoked and restated on December 18, 2020 (the “**Restated Interim Order**”).

This application is divided into the following Parts I to V. Part III describes how the Applicant satisfies the criteria for exemption of a foreign exchange that permits Ontario Users (as defined herein) to trade the financial instruments listed in Part 2 of Annex A (“**MTF Instruments**”) from recognition as an exchange set by staff of the Ontario Securities Commission (the “**Commission**”).

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|---------|--|
| Part I | Introduction |
| | 1. Description of the Applicant’s Services |
| Part II | Background of the Applicant |
| | 1. Ownership of the Applicant |
| | 2. Products Traded on the Bloomberg MTF |

3. Participants

Part III Application of Exemption Criteria to the Applicant

1. Regulation of the Exchange
2. Governance
3. Regulation of Products
4. Access
5. Regulation of Participants on the Exchange
6. Rulemaking
7. Due Process
8. Clearing and Settlement
9. Systems and Technology
10. Financial Viability
11. Transparency
12. Compliance, Surveillance and Enforcement
13. Record Keeping
14. Outsourcing
15. Fees
16. Information Sharing and Oversight Arrangements
17. IOSCO Principles

Part IV Submissions by the Applicant

1. Submissions Concerning the Requested Relief

PART I INTRODUCTION

1. Description of the Applicant's Services

- 1.1 The Applicant is the operator of an MTF, known as BMTF, (the "**Bloomberg MTF**") that is regulated and authorised by the Financial Conduct Authority of the United Kingdom (the "**FCA**" or "**Foreign Regulator**") to allow trading of the instruments set forth on Annex B (e.g., interest rate swaps, credit default swaps, government and corporate bonds and similar fixed-income instruments, securities financing transactions (including repurchase agreements and buy-sell and sell-buy back transactions) (collectively, "**SFTs**"), exchange traded funds ("**ETFs**"), equity

swaps, over-the-counter (“**OTC**”) equity options, foreign exchange derivatives (e.g., foreign exchange forwards, non-deliverable forwards and options) and commodity derivatives). The Bloomberg MTF provides the following trading protocols to Ontario Users (as defined below): (i) a request for quote (“**RFQ**”) function that allows participants to send an RFQ to other participants; and (ii) a request for trade (“**RFT**”) function that allows a participant to send an order to another participant. A full description of these trading protocols is attached as Annex C. These trading protocols can be used by participants to trade financial instruments in a way that results in a contract. Following execution of a trade, the Applicant provides each participant or its agent that is involved in a trade with a written record of the trade (a “**Confirmation**”). Such Confirmation is conclusive evidence of the counterparties’ entry into a valid, legally binding contract. Currently, participants may use the Bloomberg MTF’s RFQ and RFT trading protocols to execute transactions.

- 1.2 The Applicant is authorised by the FCA to offer the Bloomberg MTF for execution of transactions in all instruments listed on Annex B. Additional products may be made available for trading on the Bloomberg MTF by the Applicant in the future, subject to obtaining required regulatory approvals.
- 1.3 The Applicant currently makes the Bloomberg MTF available to participants 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**”) for trading swaps, as defined in section 1a(47) of the United States Commodity Exchange Act (but without regard to any exclusions from the definition), as amended from time to time (the “**CEA**”), and fixed income securities pursuant to the Restated Interim Order. The Applicant seeks the Requested Relief to include the instruments listed in Part 2 of Annex A following the termination of the Restated Interim Order on June 30, 2021. None of the instruments listed in Annex A are 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.
- 1.4 The Applicant offers direct access to trading on the Bloomberg MTF to Ontario Users that satisfy criteria for a “professional client,” as defined by the FCA Handbook (“**Professional Client**”), the criteria specified in a Canada (Ontario) User Acknowledgment, and as further described in Part III below. The FCA definition of a Professional Client is set forth in Annex D. The Applicant does not offer access to retail clients.
- 1.5 The Applicant has no physical presence in Ontario and does not otherwise carry on business in Ontario except as described herein.

PART II BACKGROUND OF THE APPLICANT

1. Ownership of the Applicant

1.1 The Applicant is a limited company organized under the laws of England and Wales, and a wholly owned direct and indirect subsidiary of Bloomberg L.P., a Delaware limited partnership (“**BLP**”).

2. Products Traded on the Bloomberg MTF

2.1 As of the date of this application, the Applicant provides access to traders other than Ontario Users with transaction execution services for all instruments listed on Annex B and provides Ontario Users with transaction execution services for all instruments listed in Part 1 of Annex A in accordance with the Restated Interim Order.

2.2 The Applicant will also provide 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 (“**Canadian Debt Securities**”), 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.

2.3 The Applicant will provide transaction execution services for Canadian Debt Securities pursuant to a marketplace conduit arrangement with its Canadian alternative trading system (“**ATS**”) affiliate, Bloomberg Tradebook Canada Company (“**Tradebook Canada**”), which will provide access to the Bloomberg MTF. Under the arrangement, Ontario Users that are participants of Tradebook Canada may execute transactions in Canadian Debt Securities on the Bloomberg MTF.

2.4 Concurrent with this application, Tradebook Canada has submitted a Form 21-101F2 *Initial Operation Report Alternative Trading System* with the Commission to become a registered ATS in Ontario.

3. Participants

3.1 Participants include a wide range of sophisticated customers, including commercial and investment banks, corporations, pension funds, money managers, proprietary trading firms, hedge funds and other institutional customers. Each Ontario User that wishes to trade on the Bloomberg MTF must qualify as a Professional Client and satisfy any other eligibility criteria that the Applicant may set from time to time, in accordance with the Bloomberg MTF Rulebook (see Rule 202 (Eligibility)) and a Canada (Ontario) User Acknowledgment, including, as discussed in paragraph PART III4.1.2, that the Ontario User is appropriately registered under Ontario securities laws, exempt from registration or not subject to registration requirements.¹ The FCA definition of a Professional Client is provided in Annex D.

3.2 Participant criteria are described in more detail in Part III, Section 4 below.

PART III APPLICATION OF EXEMPTION CRITERIA TO THE APPLICANT

The following is a discussion of how the Applicant, as a foreign exchange that allows participants to trade the MTF Instruments, meets the Commission's criteria for exemption from recognition as an exchange.

1. Regulation of the Exchange – The exchange is regulated in an appropriate manner in another jurisdiction by a foreign regulator (“Foreign Regulator”).

1.1 Bloomberg MTF is an MTF, as defined in the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018/1403, which onshored the EU Markets in Financial Instruments Regulation 600/2014 following the UK's exit from the EU (and the subsequent UK-EU Transition Period) (“**MiFID**”) and the relevant rules and regulations of the FCA, as set forth in the FCA Handbook.²

1.1.1 An MTF is a type of trading venue specified by MiFID, which defines an MTF as “*a multilateral system... which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract.*”

1.1.2 On July 23, 2015, the FCA authorised the Applicant to act as the operator of an MTF for interest rate swaps and credit default swaps under Part 4A of the *UK 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

¹ The Bloomberg MTF Rulebook is available online under “Resources” at: <https://www.bloomberg.com/professional/mtf-resources/>.

² The FCA Handbook is available online at: <https://www.handbook.fca.org.uk/>.

additional financial instruments. All financial instruments for which the Applicant is authorised by the FCA are set forth on Annex B.

1.2 MTF operators that are authorised by the FCA must comply with applicable FCA rules, particularly those in:

- a. Chapter 1 of the Market Conduct Handbook, which provides guidance on provisions in the *UK Financial Services and Markets Act 2000* that implement the EU Market Abuse Directive (as onshored into UK law);
- b. Principles for Businesses contained in Chapter 2 of the FCA Handbook, which imposes requirements related to the conduct of business;
- c. Chapter 5 of the Market Conduct Handbook, which implements part of MiFID as it relates to MTFs;
- d. The Prudential Sourcebook for Investment Firms, which implements part of the Fourth EU Capital Requirements Directive (as onshored into UK law) as it relates to investment firms (including MTF operators);
- e. The Conduct of Business Sourcebook, which implements part of MiFID as it relates to firms that carry on designated investment business (including operating an MTF); and
- f. High Level Standards and Regulatory Processes, which impose general requirements on FCA-authorized firms, such as MTF operators, and their approved persons.

1.3 **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.**

1.3.1 The Applicant is subject to regulatory supervision by the FCA in conducting its activities for which it is permitted as set out in Section 1.2 above. In undertaking those activities, the Applicant is required to comply with the FCA's Handbook, which include, 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).

1.3.2 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 authorised and that it has appropriate resources for the activities it carries on. Breach of a threshold condition could lead to enforcement action or the Applicant's authorization being revoked by the FCA.

1.3.3 In addition to complying with detailed FCA rules and guidance governing the organization and conduct of the Applicant's business, the Applicant is required to act in accordance with the FCA's high level Principles for Businesses contained in

Chapter 2 of the FCA Handbook. These include requirements for the Applicant to conduct its business with integrity, due skill, care and diligence, organize and control its affairs responsibly with adequate risk management systems, maintain adequate financial resources and observe proper standards of market conduct. The Applicant is also required to deal with the FCA in an open and cooperative way, and must disclose to the FCA appropriately anything relating to the Applicant of which the FCA would reasonably expect notice.

- 1.3.4 The Applicant is subject to prudential regulation, including minimum regulatory capital requirements, and is capitalized in excess of regulatory requirements. The Applicant is also required to prepare and submit to the FCA recovery and resolution plans.

2. Governance

2.1 Governance – The governance structure and governance arrangements of the exchange ensure:

(a) effective oversight of the Exchange,

The Board of Directors

- 2.1.2 FCA rules place considerable emphasis on the role and responsibilities of the Applicant's board of directors (the “**Board**”) and senior management. The Board has overall responsibility for the Applicant, approves and oversees implementation of the Applicant's strategic objectives, risk strategy and internal governance, ensuring the integrity of the Applicant's accounting and financial reporting systems, including financial and operational controls and overseeing the process of disclosure and communications.

- 2.1.3 The Board has responsibility for providing effective oversight of senior management, and periodically assesses the effectiveness of the Applicant's governance arrangements and will take steps to address any deficiencies. Board members are accountable to the FCA for the Applicant's business and its compliance with FCA rules.

Senior Management Functions

- 2.1.4 The Applicant is subject to the UK's Senior Managers and Certification Regime (SMCR). Individuals holding certain Senior Management Functions (“**SMFs**”) for the Applicant must be approved by the FCA. This includes the Chair, the Chief Executive Officer, the Chief Compliance Officer and the Money Laundering Reporting Officer. Individuals performing these controlled functions for the

Applicant are known as Senior Managers and appear on the FCA's Financial Services Register.³

- 2.1.5 Senior Managers are subject to the individual conduct rules and the Senior Manager conduct rules, contained in the FCA Handbook, Code of Conduct for Staff sourcebook. The individual conduct rules require individuals to act with integrity, skill, care and diligence, to deal with regulators in an open and cooperative way, to pay due regard to the interest of customers and treat them fairly and to observe proper standards of market conduct. The Senior Manager conduct rules require Senior Managers to take reasonable steps to ensure that the business of the Applicant for which they are responsible is: (i) controlled effectively, (ii) that the relevant requirements and standards of the regulatory system are complied with, (iii) that any delegation of their responsibilities is to an appropriate person and that they oversee the discharge of the delegated responsibility effectively, and (iv) they must disclose appropriately any information of which the FCA would reasonably expect notice.
- 2.1.6 If a disciplinary action is taken by the Applicant against a Senior Manager for a Conduct Rules breach, the Applicant must notify the FCA within seven (7) business days of concluding the conduct rule breach. Any conduct rules breach would need to be disclosed in a Regulatory Reference, should that individual apply for another regulated role within the subsequent six (6) year period.
- 2.1.7 Non-senior management non-executive directors (“**Non-SM NEDs**”) and “**Certified Persons**” (other individuals who can have a significant impact on customers, the firm and/or market integrity) are not required to be FCA approved. However under The Financial Services and Markets Act 2000 (a UK statute) the Applicant is required to ensure all such persons are fit and proper upon hire, and Certified Persons must be certified on an annual basis.
- 2.1.8 The Applicant is required to notify the FCA on an annual basis if any Non-SM NEDs, Certified Persons or other conduct rules staff breach conduct Rules, and if those individuals move to another firm into a Senior Manager, Non-SM NED or Certified Person role, the Applicant would need to disclose any such conduct rule breaches in the mandatory regulatory reference provided to the new employer.

Compliance Function

- 2.1.9 The Applicant is required to maintain a permanent and effective compliance function, which is headed by the Applicant’s chief compliance officer (“**CCO**”), an FCA-approved person.
- 2.1.10 The Applicant’s Compliance Department is responsible for implementing and maintaining adequate policies and procedures designed to ensure that the Applicant

³ Please refer to the “Individuals” section of the Applicant’s record at the FCA’s Financial Services Register at: <https://register.fca.org.uk/s/firm?id=001b000000aQ6QKAA0>.

(and all of its employees) comply with their obligations under the FCA rules. The Applicant's Compliance Department is responsible for training employees on relevant compliance matters.

- 2.1.11 The Applicant's Compliance Department is also responsible for identifying steps which the Applicant must take to comply with FCA rules, including ensuring that all required notifications are made to the FCA, and for maintaining a breaches register that records any FCA Rule breaches.

Board Composition and Qualifications

- 2.1.12 The Applicant's Board consists of seven (7) directors, six (6) of whom are non-executive directors (i.e., directors who have no responsibility for implementing the decisions or the policies of the governing body of the Applicant, as defined by the FCA). The Applicant's directors are Peter T. Grauer, Nicholas Bean, Jean-Paul Zammit, Jose Ribas, Constantin Cotzias, Arlene McCarthy, and Benjamin Macdonald. Messrs. Grauer, Ribas, Cotzias, Macdonald and Zammit and Ms. McCarthy are non-executive directors. None of the Applicant's directors would be considered "independent" directors under the tests in National Instrument 52-110 *Audit Committees*.

- 2.1.13 As part of its FCA-authorization process, the Applicant was required to provide details of its governance arrangements to the FCA for the FCA to ensure that these arrangements met the FCA's threshold conditions for authorization, including the requirement that the Applicant is "fit and proper." Factors to which the FCA may have regard when assessing whether a firm is fit and proper include whether the firm's governing body is made up of individuals with an appropriate range of skills and experience to understand, operate and manage the firm's regulated activities and whether, where appropriate, the firm's governing body includes non-executive representation.

- 2.1.14 The Applicant is required to satisfy itself that directors are "fit and proper" to perform their roles. Directors that are Senior Managers (the Chair and CEO) must be assessed as fit and proper on an annual basis. All directors are required to comply with the individual Conduct Rules. As mentioned above, Senior Managers are also required to comply with the Senior Manager Conduct Rules. Non-SM NEDs are also required to comply with the Senior Manager Conduct Rule to disclose appropriately any information of which the FCA would reasonably expect notice. If applicable, Conduct Rule breaches of Non-SM NEDs need to be notified to the FCA on an annual basis and included in any future regulatory reference requests within a six (6) year period.⁴

⁴ Senior Managers are listed on the FCA's Financial Services Register. In the near future non-SMF non-executive directors will be listed on a new Financial Services Directory.

- 2.1.15 Pursuant to the Applicant's Articles of Association, the Applicant's directors may, and the Applicant may by resolution, appoint a person who is willing to act as a director and is permitted by law to do so, in accordance with the provisions of Article 20 of the Model Articles for Public Companies as set out in Schedule 3 to the Companies (Model Articles) Regulations (SI 2008/3229) ("Model Articles"), which Model Articles are incorporated into the Applicant's Articles of Association as permitted by UK law.
- 2.1.16 A director may be removed by the Applicant upon the occurrence of any of the events listed in Article 22 of the Model Articles. These events include the following:
- (a) that person ceases to be a director by virtue of any provision of the *Companies Act 2006 (UK)* or is prohibited from being a director by law;
 - (b) a bankruptcy order is made against that person;
 - (c) a composition is made with that person's creditors generally in satisfaction of that person's debts;
 - (d) a registered medical practitioner who is treating that person gives a written opinion to the Applicant stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months; or
 - (f) notification is received by the Applicant from the director that the director is resigning from office as director, and such resignation has taken effect in accordance with its terms.
- 2.1.17 A director may also be removed from office by the Applicant if he or she becomes, in the opinion of all the other directors, incapable by reason of illness (including, without limitation, mental illness or disorder) or injury of managing or administering any property or affairs of his or her own or of the Applicant and the directors resolve that his or her office be vacated. The appointment of any person to any office pursuant to Article 20 of the Model Articles may at any time be revoked by the directors, without prejudice to any rights of the holder of such office in respect of such revocation.

The Board's Role and Risk Oversight

- 2.1.18 The Applicant's Board has overall responsibility for the Applicant, approves and oversees implementation of the Applicant's strategic objectives, risk strategy and internal governance, ensuring the integrity of its accounting and financial reporting systems, including financial and operational controls and overseeing the process of disclosure and communications. The Board has responsibility for providing effective oversight of senior management and periodically assesses the effectiveness of the Applicant's governance arrangements and takes steps to address any deficiencies.
- 2.1.19 The Board is responsible for the following:

- (a) setting, reviewing and approving the terms of reference (and any amendments thereto) of each of the committees of the Board;
- (b) appointing the Chairman of the Applicant's Board and of each of the committees of the Board;
- (c) appointing the Chief Executive Officer and the CCO; and
- (d) receiving and considering updates from each committee of the Board.

2.1.20 The Board is ultimately responsible for the Applicant's overall risk management and for maintaining an appropriate internal control framework. Risk issues are addressed as needed at quarterly Board meetings.

Board Committees

2.1.21 The Board has delegated certain responsibilities and duties to the Applicant's Executive Committee, Risk Committee and Remuneration Committee. Each committee is subject to the authority of the Board, and the Board retains the authority to overrule the decisions of each committee.

- (a) *The Executive Committee:* The Executive Committee manages the day-to-day business and operations of the Applicant and escalates significant items to the Board. The Executive Committee performs oversight of financial reporting and disclosure and other functions normally associated with an audit committee for the Applicant. It comprises senior executive stakeholders of the Applicant.
- (b) *The Risk Committee:* The Risk Committee oversees the Applicant's risk exposure and future risk strategy and advises the Executive Committee, the Chief Executive Officer and the Board on the Applicant's overall risk strategy. It comprises executives from Risk, Engineering and Compliance. The heads of individual business units are responsible for identifying and analyzing the risks relevant to their business unit and reporting to the Risk Committee.
- (c) *The Remuneration Committee:* The purpose of the remuneration committee is to formalise the mechanisms by which the Applicant develops, implements and reviews its remuneration policies and procedures.

2.1.22 The Board may from time to time constitute and appoint additional standing committees as it may deem necessary or advisable. The Applicant may also from time to time establish one or more special committees as it may deem necessary or advisable.

- (b) **that business and regulatory decisions are in keeping with its public interest mandate,**

2.1.23 The Applicant is committed to ensuring the integrity of the Bloomberg MTF and the stability of the financial system, and that its business and regulatory decisions align with its public interest mandate. The rules, policies and activities of the Applicant incorporate FCA rules, which are designed to ensure best practices and fulfill this public interest mandate. Also, the Applicant has adopted rules and surveillance systems which are designed to ensure that trading by participants is conducted in a manner consistent with applicable law to avoid manipulation and disorderly trading conditions. As described above, the Applicant's Board consists of highly qualified individuals whose responsibilities are to oversee the Applicant and its compliance with its rules, policies and procedures, which are designed to ensure the Applicant continues to operate in a manner that fulfills this 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,

2.1.24 The Applicant considers several factors in determining the composition of the Board, including whether directors, both individually and collectively, possess the required integrity, experience, judgment, commitment, skills and expertise to exercise their obligations of oversight and guidance over an MTF. The Applicant has also appointed six (6) non-executive directors (i.e., directors who have no responsibility for implementing the decisions or the policies of the governing body of the Applicant, as defined by the FCA) to its Board. The Applicant's non-executive directors have broad experience in various industries and some serve and have served on the boards of various affiliates and many other companies, including public companies.

(d) the exchange has policies and procedures to appropriately identify and manage conflicts of interest for all officers, directors and employees, and

2.1.25 The Applicant, must manage conflicts of interest fairly, both interest between itself and its customers and between a customer and another client (FCA PRIN 8). The Applicant, through its conflict of interest rules, policies and procedures, has established a robust set of safeguards designed to identify, prevent, manage and monitor actual and potential conflicts of interest, which apply to the Applicant's Board, officers and employees.

2.1.26 The Applicant's Board has overall responsibility for the prevention and management of conflicts of interest. The Risk Committee is responsible for the management of actual and potential conflicts of interest and for advising the

Executive Committee of any changes which it considers are required to the Applicant's Conflicts of Interest Policy.

- 2.1.27 The Applicant's CCO is responsible for keeping and regularly updating a record of the kinds of service or activity carried out by or on behalf of the Applicant in which a conflict of interest entailing a material risk of damage to the interests of one or more participants has arisen, or, in the case of an ongoing service or activity, may arise. It is the responsibility of all staff to identify real and potential conflicts and to notify the CCO so that any conflicts are recorded. The Conflicts of Interest Policy and Map are reviewed by the Risk Committee on an annual basis.⁵
- 2.1.28 The Applicant's senior management is responsible for notifying the Applicant's CCO in a timely manner of any proposed changes or new developments in the services and activities of the Bloomberg MTF to enable the Applicant's CCO to determine whether any conflicts may arise and/or whether any disclosure to participants is required.
- (e) **there are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors, officers and employees of the exchange.**
- 2.1.29 *Qualifications:* See the preceding paragraphs of Section 2 above for information on the Applicant's directors' qualifications. Members of the Applicant's management team are recruited for their particular position based upon their skills and expertise. Their individual goals and performance are regularly assessed by their direct manager as part of the Applicant's performance management process.
- 2.1.30 *Remuneration:* The Applicant's remuneration system aims to incentivize high-level performance and promote sound risk management. See Section 2.2.21 for information on the Remuneration Committee's role in overseeing remuneration systems and policies.
- 2.1.31 *Limitation of liability:* Pursuant to the Bloomberg MTF Rulebook, the liability of the Applicant, its directors, officers and employees to any person in connection with the Applicant's operation of Bloomberg MTF is limited to the fullest extent permitted under applicable law.
- 2.1.32 *Indemnity:* The Applicant's Articles of Association provide that the Applicant may (i) indemnify any director against all losses and liabilities which he or she may sustain or incur in the execution of (or in relation to) the duties of his or her office; and (ii) purchase and maintain insurance for any director against any liability attaching to him or her in connection with any negligence, default, breach of duty or breach of trust by him or her in relation to the Applicant, in each case, to the

⁵ The Conflicts Map is a record of the kinds of service or activity carried out by or on behalf of the Applicant in which a conflict of interest entailing a material risk of damage to the interests of one or more participants has arisen.

extent permitted by applicable law. The indemnification and insurance provisions in the Articles of Association do not apply to employees.

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.

2.2.1 Senior Managers are approved by the FCA, as further described in Section 2.1 above. The FCA grants such approval only if it is satisfied that the candidate is a “fit and proper person” to perform the relevant controlled function. Responsibility lies with the Applicant to satisfy itself and the FCA that the relevant individual is fit and proper to perform the controlled function applied for. The Applicant must also assess the fitness and propriety of Senior Managers on an annual basis and notify the FCA if it becomes aware of information which would reasonably be material to the assessment of Senior Manager’s (or candidate’s) fitness and propriety. Similarly, whilst not approved by the FCA, the Applicant must ensure that Non-SM NEDs are fit and proper before they commence their appointment. Also, see the description of Board composition and information on the Applicant’s director qualifications above.

2.2.2 As described at Section 2.1 above, Senior Managers and Non-SM NEDs are directly subject to obligations under the FCA’s regulatory regime and must comply with the Conduct Rules.

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.

3.1.1 As an MTF operator, the Applicant requires specific permission from the FCA to offer the Bloomberg MTF in respect of each type of financial instrument (“specified investments”, as defined in The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001)) traded on the Bloomberg MTF. FCA permission is granted either through an initial authorization process or through a subsequent “variation of permission” process.

3.1.2 As part of its initial authorization, the FCA granted permission on July 23, 2015 for the Applicant to offer the Bloomberg MTF in respect of interest rate swaps and credit default swaps. On June 10, 2016, the FCA subsequently granted a variation of permission, allowing the Applicant to offer the Bloomberg MTF in respect of additional instruments listed on Annex B (i.e., bonds, SFTs, ETFs, equity swaps,

OTC equity options, FX derivatives (non-deliverable forwards and options), FX forwards and swaps settled by physical delivery and commodity derivatives).

- 3.1.3 The Applicant is therefore currently authorised by the FCA to offer Bloomberg MTF in relation to all instruments listed on Annex B. To the extent that the Applicant wishes to make available for trading additional classes of financial instruments on the Bloomberg MTF, it would require prior FCA approval via a “variation of permission” process.
- 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.**
 - 3.2.1 As part of the Applicant’s MTF authorization from the FCA, the Applicant identified to the FCA types of instruments that it intended to make available for trading. The FCA has authorised the Applicant to provide the Bloomberg MTF for all types of instruments listed on Annex B. The Bloomberg MTF Rulebook designates the instruments which the Applicant’s participants may trade. Any changes to the Bloomberg MTF Rulebook must be approved by the Applicant’s CCO. In addition, any material changes to the Applicant’s Rulebook are also approved by the Applicant’s Executive Committee.
 - 3.2.2 The FCA's requirements for authorisation of MTF operators do not make reference to usual commercial customs and practices. Instead, the FCA rules (which reflect requirements under MiFID) focus on maintaining and implementing transparent and non-discriminatory rules, based on objective criteria. The Bloomberg MTF Rulebook is drafted in accordance with these criteria, which aims to give participants a clear understanding of the lifecycle of a trade. It is the Applicant’s experience that the terms and conditions of the instruments that trade on the Bloomberg MTF are generally accepted and understood by participants.
 - 3.2.3 In accordance with MiFID, the Bloomberg MTF is required to provide the FCA with reference data for all financial instruments that are admitted to trading or that are traded each trading day.
- 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.**
 - 3.3.1 The Applicant’s Compliance Department is responsible for ensuring that surveillance systems monitor trading by participants to identify and prevent violations of the Bloomberg MTF rules, manipulation, price distortion, disorderly trading conditions and conduct that may involve market abuse.

- 3.3.2 The Applicant's Compliance Department assesses participants' compliance with the Bloomberg MTF Rulebook on an ongoing basis. In addition, the Applicant has carried out a market abuse risk assessment and conducts electronic surveillance of orders and transactions carried out by participants to monitor for potential breaches of the Bloomberg MTF's rules, disorderly trading conditions and conduct that may involve market abuse. The Applicant's Compliance Department has the capability to suspend all trading on the Bloomberg MTF during emergency situations via a "kill switch." The Compliance Department also has the ability to suspend trading of specific instruments or instruments of a specific asset class during a trading day, either in response to an emergency situation or by order of a regulator.
- 3.3.3 Consistent with other MTFs, the Applicant will comply with position limits or other limits established by the FCA if and when any such limits are communicated to the Applicant. The Applicant does not currently impose any trading or price limits.

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.**
- 4.1.1 Consistent with the FCA's Code of Market Conduct of the FCA Handbook (Rule 5.3.1(4)), the Applicant provides access to participants on a fair, non-discriminatory

and open basis. Participant status, access to, and usage of, the Bloomberg MTF is available to all market participants that meet the criteria set forth by the Applicant. The Applicant vets prospective participants against the Applicant's eligibility criteria as part of its new participant onboarding procedures. Chapter 2 (Participants) of the Bloomberg MTF Rulebook sets out the admission and eligibility criteria that participants must meet.⁶ Specifically, to be eligible for admission as a participant, a participant applicant must demonstrate to the satisfaction of the Applicant that it:

- (a) is a Professional Client (as provided in Annex D);
- (b) is (A) authorised as an EEA credit institution or EEA investment firm or (B) 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;
- (c) complies, and will ensure that its authorised traders comply, and, in each case, will continue to comply, with the Bloomberg MTF Rulebook and applicable law;
- (d) has the legal capacity to trade in the instruments it selects to trade on the Bloomberg MTF;
- (e) has appropriate systems and arrangements for the orderly clearance and/or settlement, as applicable, of transactions in all instruments it selects to trade on the Bloomberg MTF;
- (f) has all registrations, authorizations, approvals and/or consents required by applicable law in connection with trading in instruments on the Bloomberg MTF;
- (g) has adequate experience, knowledge and competence to transact in the instruments; and
- (h) is not a natural person, an independent software provider, a trading venue or an unregulated organized trading platform or system.

4.1.2 In addition to the requirements set forth above, all Ontario Users are required to sign a Canada User Acknowledgment representing that they meet the criteria set forth in a Canada User Acknowledgment, including that they are appropriately registered under Ontario securities laws, exempt from registration or not subject to registration requirements. The Canada User Acknowledgement requires an Ontario User to make an ongoing representation that each time it uses the Bloomberg MTF

⁶ The Bloomberg MTF Rulebook is available online under "Resources" at: <https://www.bloomberg.com/professional/mtf-resources/>.

that it continues to meet the criteria set forth in the Canada User Acknowledgement. An Ontario User is also required to immediately notify the Applicant if it ceases to meet any of the above criteria represented by it on an ongoing basis.

- 4.1.3 With respect to the regulatory status of the Applicant's participants to trade in the MTF Instruments on the Bloomberg MTF, the Applicant expects that Ontario Users will be (i) registered under Ontario securities laws, (ii) exempt from registration under Ontario securities laws, or (iii) not subject to registration requirements under Ontario securities laws. The following chart outlines the regulatory status of Ontario Users and their counterparties and the principal exemptions from the dealer registration requirement under Ontario securities law that may be relied on by Ontario Users and their counterparties with respect to the classes of MTF Instruments traded on Bloomberg MTF.

MTF Instrument	Ontario User and Applicable Registration, Exemption or Not Required to be Registered Status	Counterparty to Ontario User and Applicable Registration, Exemption or Not Required to be Registered Status
Swaps, as defined in section 1a(47) of the United States Commodity Exchange Act (but without regard to any exclusions from the definition): interest rate swaps, credit default swaps, foreign exchange swaps, foreign exchange derivatives	<ul style="list-style-type: none"> • Dealer registration under section 25 of the Act: applicable to Ontario Users that are in the business of trading; • Dealer exemption under section 35.1 of the Act: applicable to Ontario Users that are prescribed financial institutions; • Not subject to dealer registration requirements currently under section 25 of the Act: applicable to Ontario Users that are not in the business of trading. 	<ul style="list-style-type: none"> • Dealer registration under section 25 of the Act: applicable to Counterparties that are in the business of trading; • Not subject to dealer registration requirements currently under section 25 of the Act: applicable to Counterparties that are not in the business of trading.
Fixed income securities: a debt security that is a foreign security or a debt security that is denominated in a currency other than the Canadian dollar as	<ul style="list-style-type: none"> • Dealer registration under section 25 of the Act: applicable to Ontario Users that are in the business of trading; • Dealer exemption under section 35.1 of the Act: 	<ul style="list-style-type: none"> • Dealer registration under section 25 of the Act: applicable to Counterparties that are in the business of trading; • Dealer exemption under section 8.5 [<i>Trades through</i>

<p>such terms are defined in National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i> (“NI 31-103”)</p>	<p>applicable to Ontario Users that are prescribed financial institutions;</p> <ul style="list-style-type: none"> • Dealer exemption under 8.21 [<i>Specified debt</i>] of NI 31-103: applicable to any Ontario User trading debt securities that qualify as “specified debt” with a Counterparty; • Not subject to dealer registration requirements currently under section 25 of the Act: applicable to Ontario Users that are not in the business of trading. 	<p><i>or to a registered dealer</i>] of NI 31-103: applicable to registered or unregistered Counterparties that trade through or to an Ontario User that is a registered dealer;</p> <ul style="list-style-type: none"> • Dealer exemption under 8.18 [<i>International dealer</i>] of NI 31-103: applicable to Counterparties that are foreign dealer firms⁷; • Dealer exemption under 8.21 [<i>Specified debt</i>] of NI 31-103: applicable to any Counterparty trading debt securities that qualify as “specified debt” with an Ontario User; • Not subject to dealer registration requirements currently under section 25 of the Act: applicable to Counterparties that are not in the business of trading.
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4.1.4 The Applicant is committed to fair and robust competition. The Bloomberg MTF Rulebook complies with the requirements of FCA Handbook MAR 5.3 (Trading Process Requirements), which includes (among others) requirements for:

- transparent and non-discretionary rules and procedures for fair and orderly trading;
- objective criteria for the efficient execution of orders;

⁷ Under section 8.18(2)(b)(ii) of NI 31-103, a foreign dealer firm relying on the international dealer exemption may trade with a permitted client Canadian dollar denominated Canadian debt securities that are or were originally offered primarily in a foreign jurisdiction and a prospectus has not been filed with a Canadian securities regulatory authority for the distribution with a permitted client.

- transparent rules regarding the criteria for determining the financial instruments that can be traded under its systems; and
- transparent rules, based on objective criteria, governing access to its facility.

The Bloomberg MTF Rulebook incorporates the requirements of MAR 5.3, and participants explicitly agree to abide by and comply with the Bloomberg MTF Rulebook through the Participant Agreement, which all participants are required to sign.

- 4.1.5 The Applicant may deny the grant of trading privileges or prevent a person from becoming or remaining a participant, if in the Applicant's sole discretion, the person does not satisfy the eligibility criteria listed above or if the Applicant considers that accepting that person as a participant may prevent the Applicant from complying with applicable law. The Applicant keeps records of each grant and each denial or limitation of access, including reasons for granting, denying or limiting access.

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.**

- 5.1.1 As required by the FCA Handbook, the Bloomberg MTF Rulebook sets out transparent and non-discretionary rules and procedures for fair and orderly trading by participants and objective criteria for efficient execution of orders. Participants are required to comply with a significant number of rules that govern trading on the Bloomberg MTF. The applicable rules are primarily located in Chapter 3 (Trading) of the Bloomberg MTF Rulebook.⁸

- 5.1.2 The Applicant is dedicated to safeguarding the integrity of the Bloomberg MTF, and has policies and procedures that are designed to ensure that the Bloomberg MTF is free from manipulation and other abusive practices. These efforts are a necessary component of efficiently working markets, and the Applicant is committed to ensuring that participants are able to use the Bloomberg MTF with the knowledge that it remains open and transparent.

- 5.1.3 The Applicant's Compliance Department operates a real-time electronic market surveillance system which is designed to identify potential disorderly market conditions and the risk of market abuse. The trade surveillance system is capable of detecting potential market abuse scenarios and violations of the Bloomberg MTF

⁸ The Bloomberg MTF Rulebook is available online under "Resources" at: <https://www.bloomberg.com/professional/mtf-resources/>.

Rulebook. The automated trade surveillance system has the capability to detect and flag specific trade execution patterns and trade anomalies, compute, retain, and compare trading statistics, reconstruct the sequence of market activity, perform market analyses to perform in-depth analyses and ad hoc queries of trade and order-related data.

- 5.1.4 The Applicant has made significant investments in regulatory technology, including staff dedicated solely to the support and continuous development of its regulatory technology infrastructure, enabling the Applicant's regulatory and market protection capabilities to anticipate and evolve with the changing dynamics of the marketplace. The Applicant has also developed an audit trail of market activity and flexible data query and analytical tools that allow its regulatory staff to examine real-time and historical order and transaction data, maintain profiles of markets and participants, and detect trading patterns potentially indicative of market abuses.
- 5.1.5 The Applicant performs anti-money laundering and counter-terrorist finance checks as part of its participant onboarding procedures. Where there are reasonable grounds to suspect or where there is a suspicion of money laundering or terrorist financing which arises in the course of participant onboarding, this will be reported to the National Crime Agency, a national law enforcement and policy agency in the United Kingdom, which investigates and prosecutes money laundering, terrorist financing and related offenses.
- 5.1.6 The Applicant has a wide range of tools for enforcing participants' compliance with the Bloomberg MTF Rulebook. These tools include issuing written warning letters, temporarily suspending access, imposing conditions on access or terminating a participant's ability to access the Bloomberg MTF. Please see Rule 208 (Suspension or Termination) of the Bloomberg MTF Rulebook.
- 5.1.7 If the Compliance Department identifies a breach of the Bloomberg MTF rules or behavior or an issue that presents an immediate threat to market integrity or orderliness, it will (i) notify the CCO as soon as practicable and (ii) conduct an investigation into the alleged behavior or issue. If the CCO determines that the breach is not significant, in the first instance the Participant will be contacted regarding the breach. In case of multiple repeating incidents, the CCO may issue a *written warning letter*. No further action is required if the breach is remedied and no further breaches are committed. Otherwise, the CCO will issue a *final written warning*. If the breach is still not remedied, the CCO may impose conditions on a Participants' or Authorised Trader's access to the Bloomberg MTF, temporarily suspend the Participant involved, pending further investigation and notification of the relevant product manager, or permanently terminate a Participant's or an Authorised Trader's access to the Bloomberg MTF where the act or omission is deemed to be a serious. Participants may appeal a decision in writing within seven (7) business days of receiving notice of any of the aforementioned actions. In such cases an appeals panel (the Rule 208 Panel) is convened.

- 5.1.8 If the CCO determines that the breach is significant and poses an immediate threat to the stability or integrity of the MTF, the CCO may *temporarily suspend* the participant involved, pending further investigation, or permanently terminate a Participant's or an Authorised Trader's access to the Bloomberg MTF where the act or omission is deemed to be serious. Participants may appeal a decision in writing within seven (7) business days of receiving notice of any of the aforementioned actions. In such cases, an appeals panel (the Rule 208 Panel) is convened.
- 5.1.9 Pursuant to the FCA's Market Conduct Rules (Rule 5.6.1), the Applicant will report to the FCA (a) significant breaches of Bloomberg MTF Rules, (b) disorderly trading conditions, and (c) conduct that may involve market abuse. The Applicant may 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). The FCA has power to investigate and impose unlimited fines for market abuse, and has the power to prosecute for market manipulation. A participant may be referred to a regulator in another jurisdiction with which the FCA has entered into a memorandum of understanding ("MOU"). See Section 16.2 for details regarding the MOU that exists between the FCA, the Bank of England and the Commission.

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.**

- 6.1.2 The Applicant's rules are covered in Chapters 1 through 4 of its Rulebook, which include: Chapter 2 (Participants), Chapter 3 (Trading), Chapter 4 (Miscellaneous) and the Bloomberg MTF Market Annexes. In particular, the participant eligibility criteria in Rule 202 (Eligibility) of the Bloomberg MTF Rulebook and ongoing participant obligations in Rule 203 (Continuing Obligations of Participants) of the Bloomberg MTF Rulebook are transparent, objective and set reasonable minimum standards applicable to all Bloomberg MTF participants. The Applicant believes that its rules and policies that govern the activities of participants are consistent with its regulatory obligations, including the FCA Handbook and are consistent with all applicable standards of compliance with competition law.

- (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.**

6.1.3 The Bloomberg MTF Rulebook is subject to the standards and requirements outlined by the FCA rules. At a high level, the Bloomberg MTF Rulebook seeks to ensure fair and orderly markets accessible to all eligible participants that meet the criteria listed in Chapter 2 of the Bloomberg MTF Rulebook and a Canada User Acknowledgment. This aim is accomplished by establishing rules that reflect the FCA rules, criteria that are not contrary to the public interest, and are designed to:

- (i) ensure compliance with applicable legislation.** Chapter 2 (Participants) of the Bloomberg MTF Rulebook governs participant requirements and includes a representation and warranty from each person applying to become a participant that it and its authorised traders comply and will continue to comply with the Bloomberg MTF Rulebook and applicable law.⁹ The Applicant is obligated to comply with FCA rules, and must implement rules that require compliance with FCA rules by its participants. The Applicant proactively monitors its participants' compliance with applicable law and regulation, evidenced in part by its market surveillance systems designed to identify market abuse and prevent disorderly trading conditions.
- (ii) prevent fraudulent and manipulative acts and practices.** Chapter 3 (Trading) of the Bloomberg MTF Rulebook specifically prescribes trading practices and trading conduct requirements, including prohibited trading activities, and prohibits fictitious trades, fraudulent activity and manipulation. The Applicant has instituted procedures to collect information, examine participants' records, directly supervise the market, maintain sufficient compliance staff, conduct audit trail reviews, perform real-time market monitoring and market surveillance and establish an automated trade surveillance system.

⁹ See Rule 202(d) of the Bloomberg MTF Rulebook. The Bloomberg MTF Rulebook is available online under "Resources" at: <https://www.bloomberg.com/professional/mtf-resources/>.

- (iii) **promote just and equitable principles of trade.** All systems of the Bloomberg MTF are available to all participants on a non-discretionary basis. Throughout the Bloomberg MTF Rulebook, the Applicant has established transparent and objective standards for access to and trading on the Bloomberg MTF to foster competitive and open market participation. The Applicant believes that compliance with the Bloomberg MTF Rulebook and related compliance procedures 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.** Rule 404 (Compliance with Applicable Law; Cooperation with Regulatory Authorities) of the Bloomberg MTF Rulebook authorizes the Applicant to provide full assistance and information to the FCA, and any other regulatory authority (e.g., the Commission), as required by applicable law in connection with any investigation and prosecution of or enforcement action regarding any actual or suspected prohibited trading practice on the Bloomberg MTF. Each participant is also required by Bloomberg MTF Rule 404 to provide full assistance, information or documents to the FCA and any other regulatory authority in connection with (i) any actual or suspected breach of applicable law; and/or (ii) any investigation or prosecution of or enforcement action regarding any actual or suspected prohibited trading practice related to the participant's activity on the MTF.

A Bloomberg MTF participant is bound to comply with the rules of a clearing house to which the Applicant provides direct connectivity pursuant to Bloomberg MTF Rule 308 (Execution, Clearing and Settlement), and must represent that it has appropriate systems and arrangements for the orderly clearance and/or settlement of transactions in all instruments it selects to trade on the Bloomberg MTF, pursuant to Bloomberg MTF Rule 202(d). Bloomberg MTF Rule 405 (Confidentiality) also authorizes the Applicant to provide any material non-public information provided by a participant or an authorised trader to (i) a clearing house of which such participant is a member or in connection with the clearing of a participant's trade cleared by such clearing house, and (ii) to other participant(s) to facilitate a participant's trading on the Bloomberg MTF.

- (v) **promote a framework for disciplinary and enforcement actions.** Under Chapter 2 (Rules 207 and 208) of the Bloomberg MTF Rulebook, the Applicant may take action against a participant or its authorised trader(s) in circumstances including, but not limited to,

where the participant or its authorised trader(s): (a) materially breaches any rule of the Bloomberg MTF Rulebook, applicable law or the Bloomberg MTF participant agreement; (b) commits any action set forth in Bloomberg MTF Rule 208 (Suspension or Termination); (c) engages in conduct indicative of disorderly trading or any other conduct which may involve market abuse; or (d) engages in any activities specified in Bloomberg MTF Rule 304 (Prohibited Trading Practices). Under Bloomberg MTF Rule 306 (Risk Controls), the Applicant may also suspend, postpone or extend all trading on the MTF, or in respect to one or more instruments on the MTF, where the Applicant reasonably considers it is necessary to (i) maintain the stability or integrity of the Bloomberg MTF, (ii) ensure fair and orderly trading, (iii) avoid violation of applicable law, (iv) prevent erroneous execution of trades, and/or (v) as otherwise required by applicable law or a regulatory authority or court.

- (vi) **ensure a fair and orderly market.** The Applicant prescribes trading rules, collects and evaluates market activity data, maintains and audits its real-time monitoring program, and audits historical data to detect trading abuses. The Applicant periodically reviews its programs and procedures, including risk analysis, emergency planning, and systems testing. The Applicant regularly audits systems and technology tests both for technical and regulatory compliance. The Applicant's Compliance Department has the capability to suspend all trading on the Bloomberg MTF during emergency situations via a "kill switch." The Compliance Department also has the ability to suspend trading of specific instruments or instruments of a specific asset class during a trading day, either in response to an emergency situation or by order of a regulator. The Applicant believes that these measures and its rules are designed to ensure a fair and orderly market.

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.**

- 7.1.2 The Applicant may prevent a person from becoming a Bloomberg MTF participant, if in the Applicant's sole discretion, the person does not satisfy the eligibility criteria listed in Section 4 or if the Applicant considers that accepting that person as a participant may prevent the Applicant from complying with applicable law. Under Rule 208 (Suspension or Termination) of the Bloomberg MTF Rulebook, the Applicant may also, in its sole discretion, issue a written warning, suspend, impose conditions on or terminate a participant's or authorised trader's ability to access the Bloomberg MTF for any of the circumstances, violations or events listed in Bloomberg MTF Rule 208(a).
- 7.1.3 The Applicant's Compliance Department maintains a surveillance program to monitor transactions undertaken by participants to identify breaches of the Bloomberg MTF Rulebook, disorderly trading conditions and conduct that may involve market abuse. If the Compliance Department identifies a breach of the Bloomberg MTF rules or behavior or an issue that presents an immediate threat to market integrity or orderliness, it will (i) notify the CCO as soon as practicable and (ii) conduct an investigation into the alleged behavior.
- 7.1.4 If the CCO determines that the breach is not significant, in the first instance the participant will be contacted regarding the breach. In case of multiple repeating incidents, the CCO may issue a *written warning letter*. No further action is required if the breach is remedied and no further breaches are committed. Otherwise, the CCO will issue a *final written warning*. If the breach is still not remedied or if the CCO determines that the breach is significant and/or poses an immediate threat to the stability or integrity of the Bloomberg MTF, then the CCO may take the following actions:
- impose conditions on a participant's or authorised trader's access to the Bloomberg MTF;
 - temporarily suspend a participant's or an authorised trader's access to the Bloomberg MTF, pending further investigation and notification of the relevant product manager;
 - This suspension is imposed where there is deemed to be an immediate threat to the orderliness or integrity of the Bloomberg MTF. A temporary suspension will be put into place until an investigation has been completed. A temporary suspension may be extended for a defined duration upon conclusion of an investigation.
 - permanently terminate a participant's or an authorised trader's access to the Bloomberg MTF where the act or omission is deemed to be a serious breach of the Bloomberg MTF Rulebook or regulatory obligation.
- 7.1.5 A participant may appeal any decision taken by the CCO to impose conditions or to suspend or terminate access of any participant or its authorised trader(s), giving its reasons for appealing and any information relevant to the appeal. Any appeal

must be made in writing (providing sufficient particulars of the basis for the appeal) and submitted to a panel comprised of appropriately experienced senior members of the Applicant's senior management to discuss further actions (**Rule 208 Panel**) within seven (7) business days of receiving notice from the CCO of a decision made by the CCO. The Rule 208 Panel shall consider the decision of the CCO, which is the subject of the appeal, and shall notify the participant of its decision within 15 business days of reaching a decision. If the decision of the CCO is upheld by the Rule 208 Panel, then no further action will be taken. If the decision of the CCO is overruled, the Rule 208 Panel may eliminate conditions imposed on access, lift a suspension and/or reinstate the access of a participant or its authorised trader to the Bloomberg MTF. The decision of the Rule 208 Panel shall be final. The participant will be notified of the Rule 208 Panel's decision in writing.

- 7.1.6 If a participant's access is terminated, the FCA may be notified of such termination by the Applicant. The participant will then be subject to the FCA's internal investigative process. The Applicant will comply with its regulatory obligations and supply data and information to the FCA when required, and will assist the FCA in any investigation conducted regarding trading on the Bloomberg MTF.
- 7.1.7 As a MiFID firm, the Applicant is also subject to a complaints regime under MiFID when it provides MiFID services to its participants (e.g., making available an MTF). MiFID services encompass all of the activities for which the Applicant has FCA authorisation, as well as ancillary services. As such, all complaints that relate to the operation of the Bloomberg MTF fall within the scope of the MiFID complaints regime. Pursuant to this regime, the Applicant is required to maintain and update effective and transparent complaints handling policies and procedures for the prompt handling of and management of participant complaints. As such, the Applicant maintains a Complaints Policy, which is available to Bloomberg MTF participants upon request, as indicated on the Applicant's website.¹⁰
- 7.1.8 Bloomberg MTF participants may raise a complaint regarding a variety of matters including, but not limited to, Bloomberg MTF Rulebook violations, any potential fraudulent acts, dishonorable or dishonest conduct, access to the Bloomberg MTF or the ability (or inability) to interact with other Bloomberg MTF participants. Once received, any complaints must be promptly referred to the Compliance Department of the Applicant. In the event that a compliance officer is involved in the subject matter of the complaint, the complaint is referred to the Applicant's CCO.
- 7.1.9 The Applicant will promptly acknowledge a participant complaint in writing within five (5) business days. In this acknowledgement, the Compliance Department will provide the name and title of an individual in the Compliance Department who will handle the complaint. The Compliance Department will investigate the complaint competently, diligently and impartially, and will promptly assess the specific

¹⁰ Please see the "Complaints" section of the Applicant's website, which is accessible at: <https://www.bloomberg.com/professional/product/multilateral-trading-facility/>

circumstances surrounding a complaint by reviewing all appropriate records and speaking to the individuals involved, with a view to deciding whether the complaint should be upheld and whether any remedial action and/or redress may be appropriate.

7.1.10 The Applicant will keep any complainant participant informed of the progress of the measures that are been taken to resolve their complaint. Once the Compliance Department has completed its investigation by fully considering the subject matter of the complaint and whether the complaint should be upheld, the Compliance Department will write to the complainant participant. This communication will:

- reiterate the understanding of the complaint, noting the issues raised by the complainant participant;
- provide an assessment of the complaint issue by issue;
- provide a clear expression of whether the Applicant has accepted or rejected the complaint;
- provide an offer for redress or remedial action (where applicable); and
- inform the complainant participant about their options, including (where applicable) the ability to refer the complaint to an Alternative Dispute Resolution service or civil action.

7.1.11 The Applicant will act promptly if a complainant participant accepts any offer of redress or remedial action that the Applicant has offered. The Applicant keeps records of each grant and each denial or limitation of access, including reasons for granting, denying or limiting access, along with a record of any breaches of the Bloomberg MTF rules by participants for at least five years.

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.

8.1.1 Neither the Applicant nor any of its affiliates provides clearing, settlement or custodial facilities to participants for trades executed on the Bloomberg MTF. Clearing and settlement requirements and arrangements vary according to the instrument traded on the Bloomberg MTF. Bloomberg MTF participants are required to have in place appropriate arrangements for the orderly clearance and/or settlement of trades. Bloomberg MTF participants must comply with any clearing obligation that applies to them under applicable law, including the laws of the

province of Ontario. The Applicant will present any trade required to be cleared to a clearing house for clearing on behalf of a Bloomberg MTF participant.¹¹

- 8.1.2 For transactions in financial instruments that are intended to be cleared, participants must mutually select a clearing house through which the transaction will be cleared, and must have clearing arrangements with a clearing member of that clearing house or be a member of that clearing house. The rules of the relevant clearing house will govern the clearing of the transaction, and the Applicant will notify the participants involved in the transaction about the status of the trade once the clearing house has informed the Applicant about the status of the relevant trade. Settlement of transactions that are not intended to be cleared will take place between the participants involved in accordance with arrangements agreed between them.
- 8.1.3 It is the Applicant's expectation that Ontario Users either (a) are clearing members of a clearing house and clear directly (provided such clearing house has obtained recognition as a clearing agency in Ontario or an exemption or interim exemption from recognition as a clearing agency in Ontario) or (b) have a relationship with a clearing member on whom the participant relies for clearing.
- 8.1.4 If a clearing house rejects a trade for clearing, the relevant participants must process the trade in accordance with the applicable trading arrangements governing the performance and settlement of the trade.
- 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.**
- 8.2.1 An MTF must submit all trades that are required to be cleared to a clearing house for clearing. The Applicant provides direct connectivity to a number of clearing houses for derivative financial instruments. The clearing houses for clearing interest rate swaps are: LCH Limited (formerly known as LCH.Clearnet Ltd.) and Eurex Clearing AG, each of which is recognised or has obtained an exemption from recognition as a clearing agency in Ontario. The clearing houses for credit default swaps are: ICE Clear Europe Limited, ICE Clear Credit LLC 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.
- 8.2.2 Eurex Clearing AG is authorised under the European Markets Infrastructure Regulation (“**EMIR**”) as a central counterparty (each, a “**CCP**”), and temporarily recognised in the United Kingdom under the Temporary Recognition Regime

¹¹ Please see Rule 202 and Rule 308(a)(i) of the Bloomberg MTF Rulebook, which is available at: <https://data.bloomberglp.com/professional/sites/10/BMTF-Rulebook-August-2018-Final.pdf>

established by the Central Counterparties (Amendments, etc., and Transitional Provision) (EU Exit) Regulations 2018, as amended, and regulated by the Bank of England.¹² ICE Clear Credit LLC is recognised by ESMA as a CCP,¹³ and registered as a designated clearing organization (“**DCO**”) with the U.S. Commodity Futures Trading Commission (“**CFTC**”), and subject to the regulation and jurisdiction of ESMA and the CFTC.¹⁴

- 8.2.3 As a DCO, ICE Clear Credit LLC must comply with the “DCO Core Principles,” established in Section 5b of the CEA, including CFTC Regulation 39.13 – *Risk management*, CFTC Regulation 39.10 – *Compliance with core principles*, and CFTC Regulation 39.18 – *System safeguards*. As a DCO registered with the CFTC, a DCO is required to have adequate and appropriate risk management capabilities, systems safeguards, emergency procedures and plan for disaster recovery.
- 8.2.4 As CCPs recognised by ESMA, the clearing houses must comply with applicable regulatory technical standards (RTS) (which prescribe capital requirements etc.) and implementing technical standards (ITS)¹⁵ (which prescribe records to be maintained by CCPs) by ESMA and other requirements imposed by Regulation (EU) No 648/2012 of the European Parliament and of the Council and supplementing regulations.¹⁶ Each CCP is required to have adequate and appropriate risk management capabilities, systems safeguards, emergency procedures and plan for disaster recovery.

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,**

¹² Please see ESMA’s “List of Central Counterparties authorised to offer services and activities in the Union,” which is available at: https://www.esma.europa.eu/sites/default/files/library/ccps_authorized_under_emir.pdf.

¹³ Please see ESMA’s “List of third-country central counterparties recognised to offer services and activities in the Union” which is available at: https://www.esma.europa.eu/sites/default/files/library/third-country_ccps_recognised_under_emir.pdf.

¹⁴ Please see the CFTC’s list of Derivatives Clearing Organizations, which is available at: <https://sirt.cftc.gov/sirt/sirt.aspx?Topic=ClearingOrganizations>.

¹⁵ Please see “Technical Standards” for an overview of all technical standards which are applicable to CCPs, which is available at: <https://www.esma.europa.eu/convergence/guidelines-and-technical-standards>.

¹⁶ Please see Regulation (EU) No 648/2012 of the European Parliament and of the Council, which is available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012R0648>.

- (c) **execution,**
- (d) **trade reporting,**
- (e) **trade comparison,**
- (f) **data feeds,**
- (g) **market surveillance,**
- (h) **trade clearing, and**
- (i) **financial reporting.**

9.1.1 The Bloomberg MTF has appropriate internal controls (that cover all of the critical functions listed above) designed to ensure completeness, accuracy, integrity and security of information, and, in addition, has sufficient capacity and a business continuity plan to enable Bloomberg MTF to properly carry on its business.

9.1.2 The Applicant has put safeguards and security tools in place at varying levels across the Bloomberg MTF to protect the critical data and system components of the Bloomberg MTF (the “**Systems**”), including (i) denial of service protection, (ii) firewalls, (iii) configured routers, (iv) demilitarized zones (“**DMZs**”)¹⁷ and network segmentation; (v) intrusion detection procedures; (vi) event logging and log analysis; and (vii) virus protection.

9.1.3 The Applicant has established procedures for configuration management, software change management, patch management and event and problem management. Additionally, the Applicant has established a Business Continuity/Disaster Recovery plan with respect to the Systems. Pursuant to this plan, the Applicant has the ability to respond to and address both small-scale and wide-scale service disruptions to the Systems.

9.1.4 Please refer to the Applicant’s response in Section 9.2 below for additional information.

9.2 **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;**

¹⁷ A DMZ is used in a computing context to refer to a physical or logical subnetwork that separates an internal local area network from other untrusted networks. DMZs are sometimes known as perimeter networks or screened subnetworks.

- (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.**

9.2.1 makes reasonable current and future capacity estimates;

The Applicant examines current and historical production loads on the Bloomberg MTF, and the electronic trading platforms operated by affiliates of the Applicant, for the same financial instruments as traded on the Bloomberg MTF to calculate reasonable current and future capacity estimates.

9.2.2 conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;

The Applicant supervises and conducts periodic stress testing of the System components, which are designed to ensure that the Systems have sufficient capacity to perform required operational tasks. The Applicant evaluates and monitors capacity requirements to anticipate capacity needs.

The Applicant verifies the Systems' ability to function as intended by conducting regression testing, stress testing, and redundancy testing of the Systems. In addition, the Applicant arranges for penetration tests to be conducted on the Systems from time to time to identify and eliminate any vulnerabilities.

9.2.3 **reviews the vulnerability of those systems and data centre computer operations to internal and external threats, including physical hazards and natural disasters;**

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;

The Applicant and its service provider, BLP, periodically conduct risk audits, internal physical security procedures, compliance inspections and arrange for covert physical intrusion tests with independent security firms. Such tests are designed to periodically assess the operating effectiveness of physical security controls, as well as to monitor internal compliance with security policies and procedures.

Engineering staff review and test the Systems periodically to estimate and plan for future system capacity, identify potential weak points and reduce the risk of system failures and threats to system integrity. The Systems are comprised of several servers in an application cluster comprised of “execution machines” (the “**Application Cluster**”) and a database cluster, each running discrete instances of operating software. The Application Cluster runs in a “hot-warm” configuration. A “hot-warm” configuration means that in addition to a server on which a specific task is running, there is a backup server that receives regular updates on the task and is standing by ready to take over in the event of a failover after a brief “switching” process. A specific software instance on an Application Cluster machine is live at any point of time for a given trade. In the event of a server malfunction, a server is typically marked as “offline,” at which point subsequent requests are diverted to the other servers.

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

The Applicant has established configuration management controls and procedures that have the following objectives:

- (a) maintain centralized control for all hardware during the testing and rollout phases of new equipment;
- (b) ensure that hardware has sufficient capacity for both present and future operating requirements;
- (c) limit access to the operating system on a need-to-know, job function-related basis;

- (d) prevent unauthorised access to the Systems; and
- (e) provide active performance monitoring of production server machines.

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

The Applicant reviews and keeps current development and testing procedures for the Systems pursuant to the Applicant's Technology Handbook.

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

The Applicant's Business Continuity/Disaster Recovery Plan is designed to allow for the recovery and resumption of operations and the fulfillment of the duties and obligations of the Applicant following a disruption. The Applicant anticipates six (6) hours for resumption of operations if the Business Continuity/Disaster Recovery Plan is invoked. As part of the Business Continuity/Disaster Recovery Plan, the Applicant performs periodic tests to verify that the resources outlined in the plan are designed to ensure continued fulfillment of all relevant duties of the Applicant under FCA rules. The Applicant's databases are backed-up to tape daily, and the back-up tapes are stored at an on-site location for 30 days. Monthly back-up tapes are stored at an off-site location pursuant to the Applicant's Business Continuity/Disaster Recovery Plan for five years.

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.

9.3.1 The Applicant uses risk monitoring tools and risk controls to prevent and reduce the potential risk of market disruptions, including the following: (i) price outlier detection tool; (ii) pricing change monitoring tool; (iii) trading kill switch; (iv) notional outlier size limitations; (v) authorised trader lists and asset class limitations; (vi) trade rejection capability; and (vii) trade cancellation capability.

9.3.2 Bloomberg MTF Rule 307 (Trade Cancellation and Amendment) provides procedures that apply in the event of a trading error caused by either a participant or a system error. Pursuant to Rule 307, the Applicant may cancel a trade executed on the Bloomberg MTF if a trade was the result of a clerical or operational error by a participant. The Applicant may also require the parties to a trade to cancel any trade executed on the Bloomberg MTF if the Applicant determines that the trade resulted from a system error, the trade appears to be market abuse, otherwise manipulative, deceptive or fraudulent or if the cancellation is necessary to maintain fairly and orderly trading.

- 9.3.3 The Applicant may at any time suspend, postpone or extend trading on the Bloomberg MTF as a whole, or in respect of one or more instruments, where the Applicant considers such action necessary (i) to maintain the stability or integrity of the Bloomberg MTF; (ii) to ensure fair and orderly trading; (iii) to avoid violation of applicable law; (iv) to prevent erroneous execution of trades; and/or (v) as otherwise required by applicable law or pursuant to an order or request of a regulatory authority or court of competent jurisdiction.

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.

10.1.1 The Applicant has adequate financial and staff resources to carry on its activities in full compliance with its regulatory requirements and with best practices. The Applicant is subject to prudential regulation, including minimum regulatory capital requirements, and must submit financial reports to the FCA.

10.1.2 To assess its regulatory capital requirements, the Applicant has implemented a bottom-up and a top-down approach to identify risks that are relevant and material to its business as a whole. The Applicant assesses whether it is appropriate to hold capital against those risks either on a base case or under stressed scenarios. The Applicant separately calculates the wind-down cost for the business under stressed scenarios. The Applicant's overall regulatory capital requirement has been determined as the wind-down requirement since it is the higher of the amount required against business risks and the wind-down requirement.

10.1.3 The Applicant is capitalized in excess of regulatory requirements and will maintain any future minimum capital amounts needed to meet FCA requirements.

11. Transparency

11.1 Trading Practices - Trading Practices are fair, properly supervised and not contrary to the public interest.

11.1.1 The Applicant is obligated to comply with FCA rules and requirements which require trading practices that are fair, properly supervised and not contrary to the public interest. Specifically, the FCA Handbook, which the Applicant adheres to, includes the Code of Market Conduct (“**MAR**”) and provides:

- (a) **Fair trading practices:** MAR 5.3.1R(1) requires the Applicant to have “transparent and non-discretionary rules and procedures for fair and orderly trading.”
- (b) **Properly supervised trading practices:** MAR 5.5.1R requires the Applicant to: “(1) have effective arrangements and procedures, relevant to the MTF, for the regular monitoring of the compliance by its users with its

rules and (2) monitor the transactions undertaken by its users under its systems to identify breaches of those rules, disorderly trading conditions or conduct that may involve market abuse.” In addition, the Applicant is required under EU Market Abuse Regulation (in the equivalent form onshored into UK law) Article 16(1) to “establish and maintain effective arrangements, systems and procedures aimed at preventing and detecting insider dealing, market manipulation and attempted insider dealing and market manipulation.”

- (c) **Trading practices that are not contrary to the public interest:** Under MAR 5.6.1R, the Applicant is required to report to the FCA where (a) there is a significant breach of the Applicant's rules; (b) there are disorderly trading conditions or (c) the Applicant identifies conduct that may involve market abuse. Also, under MAR 5.3.1R (4), there must be transparent rules governing access to the MTF restricting participants to fit and proper persons. As noted above, Bloomberg MTF is required under the EU Market Abuse Regulation (in the equivalent form onshored into UK law) Article 16(1) to “establish and maintain effective arrangements, systems and procedures aimed at preventing and detecting insider dealing, market manipulation and attempted insider dealing and market manipulation.”

11.1.2 Chapter 3 (Trading) of the Bloomberg MTF Rulebook addresses MTF trading practices, incorporates MAR requirements outlined above and is designed to ensure fair and orderly markets accessible to all eligible participants, which markets are properly supervised and operated in a manner consistent with 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.**

11.2.1 All order types and all order trading protocols are available to all participants. The Applicant has only one type of participant, and all of the Applicant’s requirements apply to all participants equally.

11.3 **Transparency – The exchange has adequate arrangements to record and publish accurate and timely trade and order information. This information is provided to all participants on an equitable basis.**

11.3.1 The Bloomberg MTF publishes pre- and post-trade transparency data as required by MiFID.

11.3.2 The pre-trade transparency requirement applies to current bid and offer prices and the depth of trading interests at those prices which are advertised through Bloomberg MTF, and to “actionable indications of interest” (“**AIOIs**”) entered on the Bloomberg MTF. Article 2(33) of the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018/1403 defines an AIOI as “a message

from one member or participant to another within a trading system in relation to available trading interest that contains all necessary information to agree on a trade.” The pre-trade transparency requirement applies to all Bloomberg MTF trading protocols, which are described in Annex C.

- 11.3.3 Under Articles 4 and 9 of the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018/1403, competent authorities may permit the waiver of pre-trade transparency information in respect of (a) orders that are large in scale compared with normal market size (for all instrument types), (b) orders related to a financial instrument for which there is not a liquid market (for non-equity instruments only), and (c) AIOIs in the Bloomberg MTF RFQ system that are above a size specific to a financial instrument which would expose liquidity providers to undue risk (for non-equity instruments only). A condition of (c) above is that the initiator of an RFQ on the Bloomberg MTF has pre-trade transparency from the sum of responses to an RFQ. In compliance with this condition, Bloomberg MTF presents an arithmetic average of all received responses to an RFQ. The FCA, as Bloomberg MTF’s competent authority, permits the full range of pre-trade transparency waivers and has granted Bloomberg MTF permission to apply all of them.
- 11.3.4 The Bloomberg MTF’s post-trade transparency requirement applies to the price, volume and time of the transactions executed on the Bloomberg MTF. The post-trade transparency requirement applies to all Bloomberg MTF trading protocols.
- 11.3.5 Under Articles 7 and 11 of the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018/1403, competent authorities may permit deferred publication of post-trade transparency information in respect of transactions that are (a) large in scale (for all instrument types), (b) related to a financial instrument for which there is not a liquid market (for non-equity instruments only), or (c) above a size specific to a financial instrument which would expose liquidity providers to undue risk (for non-equity instruments only). The FCA permits the full range of post-trade transparency deferrals and has granted Bloomberg MTF permission to apply all of them. The deferral period ranges from 48 hours to four weeks, depending on the deferral and instrument type.
- 11.3.6 All waiver and deferral thresholds are determined by the FCA. In accordance with Article 13 of the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018/1403, the Bloomberg MTF’s pre- and post-trade transparency data is made available to the public free of charge 15 minutes after publication. It may be accessed in machine-readable format at any time at <https://data.bloombergmft.com/transparency>.
- 11.3.7 Trade reporting obligations for reporting derivatives transactions pursuant to Ontario law or UK EMIR¹⁸ reside with a participant. For purposes of compliance

¹⁸ UK EMIR refers to the UK Legislation onshoring the European Market Infrastructure Regulation (EMIR).

with Ontario law, dealer counterparties may satisfy the reporting requirements imposed by reporting to an entity that is designated as a trade repository. Non-Ontario dealer counterparties may satisfy the reporting requirements imposed by UK EMIR by reporting derivatives transactions to a trade repository, which will publish per-trade anonymized data to its website within 48 hours of a trade. This information is publicly available to all participants.

- 11.3.8 Trade reporting obligations for reporting debt securities transactions pursuant to Ontario law reside with participants that are registered dealers and members of the Investment Industry Regulatory Organization of Canada.

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.

- 12.1.1 An MTF is required under the FCA Handbook to set rules, conduct compliance reviews, monitor participants' trading activity and take enforcement action against participants when appropriate.

- 12.1.2 Pursuant to MAR 5.6.1, the Applicant is required to report to the FCA (a) significant breaches of Bloomberg MTF Rules, (b) disorderly trading conditions, and (c) conduct that may involve market abuse; and (d) system disruptions in relation to a financial instrument. 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). The FCA may choose to take further action against a participant in its discretion.

- 12.1.3 The Applicant will comply with its regulatory obligations and supply data and information to the FCA when required, and will also assist the FCA in any investigation conducted regarding trading on the MTF. Please also see Section 5.

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.

- 12.2.1 The Applicant has instituted procedures and controls to collect information, examine participants' records, supervise trading on the Bloomberg MTF, maintain sufficient Compliance staff, establish procedures for and conduct audit trail reviews, perform automated real-time market monitoring and market surveillance and establish an automated trade surveillance system to evaluate participants' compliance with the Bloomberg MTF Rulebook and applicable law. Members of the Applicant's Compliance and Engineering Departments, and members of BLP's Legal Department, as well as the Applicant's key business personnel, also work to

evaluate and ensure the Applicant's compliance with relevant Bloomberg MTF and legislative requirements.

12.2.2 Sections 5 and 7 of this application describe the resources available to the Applicant to investigate breaches of the Bloomberg MTF Rulebook and to enforce its rules.

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.

12.3.1 Please see Section 16 below.

13. 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.

13.1 The FCA rules require the Applicant to keep orderly records of its business and internal organization, including all services and transactions undertaken by it to enable the FCA to monitor it. The Applicant implemented policies designed to ensure that the FCA has ready access to the Applicant's records that it is required to maintain under MiFID, from which the FCA should be able to reconstruct each key stage of a transaction on the Bloomberg MTF if required.

13.2 The Applicant collects data related to its regulated activity on a daily basis. The Applicant maintains an "audit trail" for every order entered and transaction executed on the Bloomberg MTF. Audit trail information for each transaction includes the order instructions, entry time, modification time, execution time, price, quantity, account identifier and parties to the transaction, as well as the firm number connected with an RFQ and the date and time when an RFQ is sent, modified, expired or cancelled. On a daily basis, files of all electronic order and cleared trade information are archived in a non-rewritable non-erasable format, and multiple copies are stored for redundancy and critical safeguarding of the data for five years.

13.2.1 The Applicant also keeps records of each grant and each denial or limitation of access, including reasons for granting, denying or limiting access, along with a record of any breaches of the Bloomberg MTF rules by its participants.

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.

- 14.1.1 Pursuant to a License and Services Agreement (the “**Services Agreement**”), the Applicant outsources the provision of software, hardware, intellectual property and certain support services to its parent, BLP. These support services include systems support, administration, office space, telecommunications, accounting and financial services, legal and other support. BLP seconds staff to the Applicant under the Services Agreement.
- 14.1.2 Under FCA rules, the Applicant must ensure when outsourcing critical or important operational functions that (among other things), (i) it takes reasonable steps to avoid undue additional operational risk and (ii) the outsourcing does not materially impair the quality of its internal control and the ability of the FCA to monitor its compliance with regulatory obligations. The Applicant remains fully responsible for discharging its obligations under the regulatory system and must ensure that the outsourcing does not alter its relationship and obligations towards participants. The Applicant's procedures are designed to ensure that the relevant regulatory requirements are satisfied in connection with outsourcing of critical or important operational functions. All material outsourcing agreements require Board approval.
- 14.1.3 The Services Agreement permits the Applicant to meet its obligations and is in conformance with industry best practices. The Applicant has the right to audit the services provided by BLP pursuant to the Services Agreement.
- 14.1.4 The Applicant has adopted an internal audit function that provides for internal audit review as assurances to the Boards. The Applicant's Chief Executive Officer is responsible for coordinating with BLP's Internal Audit Liaison Officer and for reporting results and status of internal audits to the Boards. KPMG LLP is Bloomberg's internal audit co-source service provider.

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.**

- 15.1.1 As an MTF regulated by the FCA and governed by FCA rules, the Applicant's fee structure, including any execution fees, ancillary fees and rebates, is required by MAR 5.3A.11 to be transparent, fair and non-discriminatory. Under MiFID, trading venues like MTFs are required to charge the same fees and provide the same conditions to all users of the same type of services based on objective criteria, and may only establish different fee structures for the same type of services where those fee structures are based on non-discriminatory, measurable and objective criteria. In accordance with FCA rules and MiFID, similarly situated Bloomberg MTF participants are charged the same fees pursuant to the Applicant's fee structure.

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

15.1.2 The Applicant is required by MiFID to ensure that its fee structure is sufficiently granular to allow users to predict the payable fees on the basis of at least the following elements: (a) chargeable services, including the activity which will trigger the fee, (b) the fee for each service, stating whether the fee is fixed or variable, and (c) rebates, incentives or disincentives. MiFID also requires the Applicant to publish objective criteria for the establishment of its fees and fee structures, together with execution fees, ancillary fees, rebates, incentives and disincentives in one comprehensive and publicly accessible document on their website. The Applicant's fees are publicly posted on its website at: <https://www.bloomberg.com/professional/product/multilateral-trading-facility/> under "BTFL Fees".

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 cooperate with the Commission, self-regulatory organizations, other exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.

16.1.1 The Applicant has established a process that enables it to respond to requests from regulators regarding the Applicant in a timely manner. It is the Applicant's policy to respond promptly and completely to any proper regulatory inquiry or request for documents. All inquiries and other communications from the Commission will be referred immediately to the BLP Legal Department and the Applicant's Compliance Department.

16.1.2 Rule 404 (Compliance with Applicable Law; Cooperation with Regulatory Authorities) of the Bloomberg MTF Rulebook authorizes the Applicant to provide full assistance and information to the FCA, and any other regulatory authority (e.g., the Commission) as required by applicable law, in connection with any investigation and prosecution of or enforcement action regarding any actual or suspected prohibited trading practice on the Bloomberg MTF. Each participant is also required by Bloomberg MTF Rule 404 to provide full assistance, information or documents to the FCA and any other regulatory authority in connection with (i) any actual or suspected breach of applicable law; and/or (ii) any investigation or prosecution of or enforcement action regarding any actual or suspected prohibited trading practice related to the participant's activity on the Bloomberg MTF. Please also see Rule 404 of the Bloomberg MTF Rulebook and Section 6.1.3(iv).

16.2 Oversight Arrangements – Satisfactory information sharing and oversight agreements exist between the Ontario Securities Commission and the Foreign Regulator.

16.2.1 The Commission is party to a memoranda of understanding with each of the FCA and the Bank of England (the “MOUs”). The MOUs came into effect on August 21, 2013. The MOUs provide a comprehensive framework for consultation, cooperation and information-sharing related to the day-to-day supervision and oversight of cross-border regulated entities.

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).**

17.1.1 The Applicant adheres to the standards of IOSCO to the extent that such standards are incorporated into the FCA Handbook.

PART IV SUBMISSIONS BY THE APPLICANT

1. Submissions Concerning the Requested Relief

1.1 The MTF Instruments that the Applicant intends to make available to trade on the Bloomberg MTF fall under the definition of “derivative” or “security” as set forth in subsection 1(1) of the Act. The Bloomberg MTF falls under the definition of “marketplace” set out in subsection 1(1) of the Act because it brings together buyers and sellers of securities and derivatives and uses established, non-discretionary methods under which orders interact with each other.

1.2 An “exchange” is not defined under the Act; however, 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. Because an MTF sets requirements for the conduct of its participants, it is considered by the Commission to be an exchange for purposes of the Act.

1.3 Pursuant to OSC Staff Notice 21-702 – *Regulatory Approach for Foreign-Based Stock Exchanges*, the Commission considers an exchange located outside Ontario to be carrying on business as an exchange in Ontario if it provides Ontario Users with direct access to the exchange. Since the Applicant provides Ontario Users with direct access to trading on the Bloomberg MTF, it is considered by the Commission to be “carrying on business as an exchange” in Ontario, and therefore must either be recognised or exempt from recognition by the Commission.

1.4 Pursuant to Canadian Securities Administrators (“CSA”) Staff Notice 21-328 – *Regulatory Approach to Foreign Marketplaces Trading Fixed Income Securities*

(“**CSA Staff Notice 21-328**”), the CSA have developed a framework for granting exemptions from the exchange recognition requirements to foreign alternative trading systems (“**ATSS**”) and foreign MTFs in respect of trading fixed income securities. With respect to foreign MTFs, the CSA states that they will consider allowing foreign MTFs to trade fixed income securities under the current exemption regime applicable to derivatives trading by foreign derivatives exchanges, swap execution facilities and MTFs, but will include additional terms and conditions where appropriate.

- 1.5 The Applicant notes that exemptive relief in respect of trading fixed income securities has been granted to the following foreign ATS applicants pursuant to the regulatory framework described in CSA Staff Notice 21-328: (i) *In the Matter of Trumid Financial, LLC* (June 8, 2020), and (ii) *In the Matter of ICE Bonds Securities Corporation* (June 19, 2020).
- 1.6 The Applicant satisfies all the criteria for exemption from recognition as an exchange set forth by Commission Staff, as described under Part III of this application, for all of the MTF Instruments. Ontario Users that trade in the MTF Instruments would benefit from the ability to trade on the Bloomberg MTF, as they would have access to trading a range of securities and derivatives with counterparties that otherwise may not be available in Ontario. Stringent FCA oversight of the Bloomberg MTF, as well as the sophisticated information systems, regulations and compliance functions that have been adopted by the Applicant are designed to ensure that Ontario Users are adequately protected in accordance with international standards set by IOSCO.
- 1.7 On December 14, 2020, the Commission published a statement of allegations (the “**Statement of Allegations**”) with respect to the Applicant and its affiliate, Bloomberg Trading Facility B.V. (“**BTF BV**”, and together with the Applicant, the “**Respondents**”), alleging that the Respondents committed certain breaches of Ontario securities law and conduct contrary to the public interest.¹⁹
- 1.8 The Respondents entered into a settlement agreement dated December 15, 2020 (the “**Settlement Agreement**”) with the Commission, in which the Respondents admitted to breaches of Ontario securities laws and/or conduct contrary to the public interest.²⁰ The Settlement Agreement was approved by the Commission pursuant to an order (the “**Settlement Order**”) issued on December 18, 2020.
- 1.9 Under the terms of the Settlement Order, the Commission ordered:
 - (a) each of the Respondents to conduct an internal review of its compliance practices and procedures relating to ensuring compliance with Ontario

¹⁹ The allegations with respect to the Applicant can be found at paragraph 38 of the Statement of Allegations.

²⁰ The admissions by the Applicant and BTF BV with respect to non-compliance with Ontario securities law and conduct contrary to the public interest can be found at Part IV of the Settlement Agreement.

securities laws, and institute any necessary changes in accordance with the process set forth in Schedule “A” to the Settlement Order;

- (b) the Respondents to disgorge to the Commission amounts obtained as a result of non-compliance with Ontario securities law in the amount of CAD\$663,305.20; and
- (c) the Respondents to pay an administrative penalty in the amount of CAD\$2,506,011.80.

- 1.10 In accordance with the Settlement Order, the Applicant has implemented, or is in the process of implementing, the following compliance controls to ensure that Ontario Participants only trade those MTF Instruments that the Applicant is authorized to trade under the terms of the subsequent order granting the Requested Relief.
- 1.11 The Applicant utilizes two technological controls to manage participant and trader access. The first control is at the ticketing phase that manages jurisdictional clearances by asset class, and checks that participant documentation requirements are satisfied, including the Canada (Ontario) User Acknowledgement and the Bloomberg MTF participant agreement. When queried by asset class, customer, and location, this control’s programming interface confirms whether an asset class is permitted in a jurisdiction and whether the Applicant has the required documentation from the participant. The second control is a client enablement tool that houses participant and trader information, classifies legal entities within a firm according to each entity’s LEI, and identifies the participant’s traders permitted to transact on behalf of each entity. This tool also allows for the imposition of trading restrictions by asset class for a participant’s traders. These controls check and restrict a participant’s trader’s eligibility to initiate a trade in a particular asset class.
- 1.12 The Applicant implemented enhancements to its technological controls prior to the date of the Settlement Order that improve processes for (a) identifying instances of natural person trader information changes (e.g., a location change to Ontario) by performing a daily automated refresh of the information in the Applicant’s client enablement tool against the natural person trader and the Applicant’s information housed in its jurisdictional clearance control, and (b) ensuring that autopricers (i.e., non-natural person traders) are subjected to similar checks and information requirements as those that are applied to a participant’s natural person traders.
- 1.13 In accordance with the Settlement Order, the Applicant has conducted an internal review of its compliance practices and procedures relating to ensuring compliance with Ontario securities laws, and instituting any necessary changes to ensure that Ontario Participants only trade those MTF Instruments that the Applicant is authorized to trade under the terms of the subsequent order granting the Requested Relief. The internal review included:

- a) creating a regulatory obligations inventory,
- b) mapping policies and procedures to the regulatory obligations,
- c) mapping controls to the regulatory obligations,
- d) testing the effectiveness of key controls through design (via walkthroughs and collecting a sample of one to validate execution) and/or performance testing (in-depth sample or scenario-based reviews), and
- e) summarizing the results of the review in a formal report.


The internal review found that the Applicant's control framework was appropriately designed and operating effectively for the nature and scale of the Applicant's operations.

1.14 Based on the foregoing, we submit that it would not be prejudicial to the public interest to grant the Requested Relief.

If you have any questions or require anything further, please do not hesitate to contact us.

Yours very truly,

BLOOMBERG TRADING FACILITY LIMITED

DocuSigned by:

E81BC9FAD954493
Name: Nicholas Bean
Title: CEO

cc: Terence Doherty, Osler, Hoskin & Harcourt LLP

ANNEX A

Part 1

The Applicant currently allows Ontario Users to trade the following instruments on the Bloomberg MTF pursuant to the Restated Interim Order, which expires on June 30, 2021:

- i. interest rate swaps, as defined in section 1a(47) of the U.S. Commodity Exchange Act;
- ii. credit default swaps, as defined in section 1a(47) of the U.S. Commodity Exchange Act;
- iii. foreign exchange swaps, as defined in section 1a(47) of the U.S. Commodity Exchange Act (but without regard to any exclusions from the definition); and
- iv. fixed income securities.

Part 2

Once the Restated Interim Order expires on June 30, 2021, the Applicant proposes to allow Ontario Users to trade the following instruments on the Bloomberg MTF, with effect from July 1, 2021:

- i. interest rate swaps, as defined in section 1a(47) of the U.S. Commodity Exchange Act;
- ii. credit default swaps, as defined in section 1a(47) of the U.S. Commodity Exchange Act;
- iii. foreign exchange swaps, as defined in section 1a(47) of the U.S. Commodity Exchange Act (but without regard to any exclusions from the definition); and
- iv. any 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:
 - a. debt securities issued by the U.S. government (including agencies or instrumentalities thereof);
 - b. debt securities issued by a foreign government;
 - c. debt securities issued by corporate or other non-governmental issuers (U.S. and foreign); and
 - d. asset-backed securities (including mortgage backed securities), denominated in either U.S. or foreign currencies.

ANNEX B

The Applicant is authorised by the FCA to allow trading of the instruments set forth in this Annex B.

- i. interest rate swaps;
- ii. credit default swaps;
- iii. government and corporate bonds and similar fixed-income instruments;
- iv. SFTs;
- v. ETFs;
- vi. equity swaps;
- vii. OTC equity options;
- viii. foreign exchange derivatives (non-deliverable forwards and options);
- ix. foreign exchange forwards and swaps settled by physical delivery; and
- x. commodity derivatives.

ANNEX C

The Bloomberg MTF's trading protocols currently include: (i) an RFQ function that allows participants to send an RFQ to other participants and (ii) an RFT function that allows a participant to send an order to another participant. The Applicant has been authorised by the FCA to provide all trading protocols listed below to its participants.

- (a) RFQ Function: A participant may use the RFQ function to send a request for quote to other participants. A participant receiving a request for quote (the “**RFQ Recipient**”) can respond to the sender (the “**RFQ Requestor**”) with a quote. Responses to the RFQ will be displayed to the RFQ Requestor. If it wishes to transact, the RFQ Requestor may send an order. If the RFQ Requestor sends an order in response to a firm quote, the Bloomberg MTF will execute the trade. If the RFQ Requestor sends an order in response to an indicative quote, the RFQ Recipient may accept or reject it. If the RFQ Recipient accepts the order, the Bloomberg MTF will execute the trade.
- (b) RFT Function: A participant (“**RFT Sender**”) can use the RFT function to send an order to another participant (“**RFT Recipient**”). If the RFT Recipient accepts the order, the Bloomberg MTF will execute the trade.

ANNEX D

This Annex D provides the definition of a “Professional Client,” as defined by the FCA in the 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*]