



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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File No. 2020-39

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

STATEMENT OF ALLEGATIONS

(Subsection 127(1) and Section 127.1 of the *Securities Act*, RSO 1990, c S.5)

A. OVERVIEW

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

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

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

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

6. Over a 15-month period and beginning at different times, BTFL provided 18 institutional Ontario participants access to trade in fixed income securities. Over that period of time, 11 of the 18 Ontario participants conducted fixed income trading on BTFL's multilateral trading facility (**MTF**) in a principal amount of approximately \$228.5 billion USD and representing 2.93% of all fixed income trading on BTFL's MTF during that time.

7. Over a one-year period and beginning at different times, BV provided 16 institutional Ontario participants access to trade in fixed income securities. Over that period of time, two of the 16 Ontario participants conducted fixed income trading on BV's MTF in a principal amount

of approximately \$4.4 billion USD and representing 1.61% of all fixed income trading on BV's MTF during that time.

8. Before the Respondents had sought or obtained recognition or an exemption order from the Commission, they carried on business as exchanges by failing to prevent, or otherwise permitting, fixed income trading by Ontario participants on their MTFs.

9. The Respondents each filed applications with the Commission requesting orders exempting them from the requirement to be recognized as an exchange which contained inaccurate and incomplete information. Specifically, neither BTFL nor BV disclosed the fact that:

- (a) Ontario users had already been onboarded to their respective MTFs; and
- (b) Ontario users had already engaged in fixed income trading activity on their respective MTFs;
- (c) after BTFL obtained an exemption order, it failed to prevent, or otherwise permitted, fixed income trading by Ontario participants on its MTF contrary to the terms and conditions of the exemption order; and
- (d) after BTFL obtained an exemption order, it filed quarterly reports that failed to accurately and completely disclose fixed income trading by Ontario participants on BTFL's MTF.

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

B. FACTS

Staff of the Enforcement Branch of the Ontario Securities Commission (**Staff**) make the following allegations of fact:

A. Respondents

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

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

B. Overview and Background

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

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

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

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

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

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

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

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

- (c) In the case of BTFL, during Staff's four-month review of BTFL's application for exemptive relief, BTFL did not provide accurate and complete disclosure to Staff of the fact that Ontario participants had already been onboarded and had already engaged in fixed income trading activity, which rendered the disclosure misleading to Staff.

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

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

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

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

C. Carrying on Business as an Exchange Without Recognition or an Exemption

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

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

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

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

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

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

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

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

- (c) Five of the Ontario participants onboarded to BTFL's MTF had conducted fixed income trading prior to the BTFL Order.

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

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

(2) BV Carrying on Business as an Exchange

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

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

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

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

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

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

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

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

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

D. BTFL Failed to Comply With The Terms and Conditions of a Commission Order

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

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

- (a) Following December 22, 2017 and continuing through to October 25, 2018, 11 of the 15 Ontario participants onboarded to BTFL's MTF conducted fixed income trading, contrary to the terms and conditions contained in the BTFL Order. Four of

these 15 Ontario participants never conducted any fixed income trading on BTFL's MTF.

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

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

(2) Overlapping Fixed Income Trading Activity

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

(3) Requirement to File Quarterly Reports

37. Following December 22, 2017 and continuing through to Q2 2019, BTFL filed quarterly reports with the Commission that were inaccurate and incomplete as they did not accurately disclose the fixed income securities trading particulars, including those described in paragraph 36 above.

C. BREACHES OF ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

Staff allege the following breaches of Ontario securities law and conduct contrary to the public interest:

38. With respect to BTFL:

- (a) Beginning in July 2017 and continuing through to the date of the BTFL Order on December 22, 2017, BTFL carried on business as an exchange in Ontario without being recognized or exempted by the Commission, contrary to subsection 21(1) of the Act.
- (b) BTFL filed the BTFL Application with the Commission, which contained inaccurate and incomplete information insofar as BTFL did not disclose the fact that Ontario participants had already been onboarded to BTFL's MTF and that Ontario participants had already engaged in fixed income securities transactions, contrary to the public interest.
- (c) BTFL, in the course of responding to Staff's questions relating to Staff's review of the BTFL Application, provided incomplete information. Specifically, BTFL did not disclose the fact that Ontario participants had already been onboarded to BTFL's MTF and that Ontario participants had already engaged in fixed income securities transactions, contrary to the public interest.
- (d) During the time period from December 22, 2017 through to October 25, 2018, BTFL failed to administer appropriate systems and controls to prevent Ontario participants from engaging in fixed income securities transactions on BTFL's MTF, contrary to the terms and conditions of the BTFL Order.
- (e) During the time period commencing December 22, 2017 and continuing through to Q2 2019, BTFL filed quarterly reports that did not accurately and completely disclose Ontario participants' fixed income securities transactions on BTFL's MTF, contrary to the terms and conditions of the BTFL Order.

39. With respect to BV:

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

D. ORDER SOUGHT

40. Staff request that the Commission make an order pursuant to subsection 127(1) and section 127.1 of the Act to approve the settlement dated December 14, 2020 between the Respondents and Staff.

41. Staff reserve the right to amend these allegations and to make such further allegations as Staff deem fit and the Commission may permit.

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

ONTARIO SECURITIES COMMISSION

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