

**IN THE MATTER OF**

**THE SECURITIES ACT, R.S.N.S. 1989, CHAPTER C.418, AS AMENDED (THE ACT)**

**AND**

**IN THE MATTER OF**

**BLOOMBERG TRADING FACILITY LIMITED**

**ORDER**

**(Section 151A)**

WHEREAS Bloomberg Trading Facility Limited (the **Applicant**) has filed an application on behalf of its multilateral trading facility, known as BMTF (the **Facility**), dated June 4, 2021 (the **Application**) with the Nova Scotia Securities Commission (**Commission**) requesting an order for the following relief (collectively, the **Requested Relief**):

- (a) exempting the Facility from the requirement to be recognized as an exchange and as a derivatives trading facility under section 30J of the Act pursuant to section 151A of the Act; and
- (b) exempting the Facility 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 in National Instrument 23-101 – *Trading Rules* (**NI 23-101**) pursuant to Section 12.1 of NI 23-101 and the requirements of National Instrument 23-103 – *Electronic Trading and Direct Electronic Access to Marketplaces* (**NI 23-103**) pursuant to section 10 of NI 23-103;

AND WHEREAS the Applicant has represented to the Commission that:

1. The Applicant is a limited company organized under the laws of England and Wales, and is a wholly owned direct and indirect subsidiary of Bloomberg L.P., a Delaware limited partnership;
2. On July 23, 2015, the U.K. Financial Conduct Authority (the **FCA** or **Foreign Regulator**), a financial regulatory body in the United Kingdom (**U.K.**), authorized the Applicant to act as the operator of a multilateral trading facility (**MTF**) for interest rate swaps and credit default swaps under Part 4A of the U.K. *Financial Services and Markets Act* 2000. On June

10, 2016, the FCA granted the Applicant a Variation of Permission that expanded the Applicant's authorization to additional financial instruments;

3. The Applicant operates a marketplace for trading over-the-counter (**OTC**) derivative instruments and certain securities (the **MTF Instruments**). The Facility supports request-for-quote and request-for-trade functionality for interest rate swaps, credit default swaps, government and corporate bonds and similar fixed-income instruments, foreign exchange derivatives (e.g., foreign exchange forwards, non-deliverable forwards and options), securities financing transactions (including repurchase transactions, buy-sell and sell-buy back transactions), exchange-traded funds, equity swaps and OTC equity options. The Applicant may add other types of financial instruments in the future, subject to obtaining required regulatory approvals;
4. Pursuant to a marketplace conduit arrangement with the Applicant's Canadian alternative trading system affiliate, Bloomberg Tradebook Canada Company (**Tradebook Canada**), the Applicant 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, including:
  - (a) debt securities issued or guaranteed by the Government of Canada or the government of a jurisdiction of Canada (including agencies or instrumentalities thereof);
  - (b) debt securities issued or guaranteed by a municipal corporation in Canada;
  - (c) debt securities issued or guaranteed by Canadian corporate or other non-governmental issuers; and
  - (d) asset-backed securities (including mortgage backed securities) and collateralized mortgage obligations issued or guaranteed by a Canadian issuer, denominated in the Canadian dollar;
5. The Applicant is subject to regulatory supervision by the FCA and is required to comply with the FCA's Handbook, which includes, among other things, rules on (i) the conduct of business (including rules regarding client categorization, communication with clients and other investor protections and client agreements), (ii) market conduct (including rules applicable to firms operating an MTF), and (iii) systems and controls (including rules on outsourcing, governance, record-keeping and conflicts of interest). The FCA requires the Applicant to comply at all times with a set of threshold conditions for authorization, including requirements that the Applicant is "fit and proper" to be authorized and that it has appropriate resources for the activities it carries on. The Applicant is subject to prudential regulation, including minimum regulatory capital requirements, and is capitalized in excess of regulatory requirements. The Applicant is required to maintain a permanent and effective compliance function, which is headed by the Applicant's Chief Compliance Officer, an FCA-approved person. The Applicant's Compliance Department is responsible for implementing and maintaining adequate policies and procedures

designed to ensure that the Applicant (and all of its employees) comply with their obligations under the FCA rules;

6. An MTF is obliged under FCA rules to have requirements governing the conduct of participants, to monitor compliance with those requirements and report to the FCA (a) significant breaches of MTF rules, (b) disorderly trading conditions, and (c) conduct that may involve market abuse. The Applicant may also notify the FCA when a participant's access is terminated, and may notify the FCA when a participant is temporarily suspended or subject to condition(s). As required by FCA rules, the Applicant has implemented a trade surveillance program. As part of the program, the Applicant's Compliance Department conducts real-time market monitoring of trading activity on the Facility to identify disorderly trading and market abuse or anomalies. The trade surveillance program is designed to maintain a fair and orderly market for the Facility's participants;
7. The Facility is available to participants via an approved service provider (Bloomberg Terminal access is provided this way), via application programming interface (API), a non-Bloomberg API or venue Direct Portal. The Applicant currently charges trading and access fees to participants which are publicly disclosed;
8. An MTF must submit all trades that are required to be cleared to a clearing house for clearing. The Applicant provides direct connectivity to the following clearing houses for clearing interest rate swaps: LCH Limited (formerly known as LCH.Clearnet Ltd.) and Eurex Clearing AG. The Applicant provides direct connectivity to the following clearing houses for credit default swaps: ICE Clear Credit LLC, ICE Clear Europe Limited and LCH SA;
9. The Applicant requires that its participants be "professional clients," as defined by the FCA in the FCA's Conduct of Business Sourcebook, Chapter 3 "Client categorisation" (**Professional Clients**) and be either (i) authorised as a credit institution with a license in an EEA country or as an EEA investment firm, or (ii) an entity that has satisfied and will continue to satisfy the Applicant that it is fit and proper to become a participant, with adequate organizational arrangements in place and a sufficient level of trading ability and competence. Each prospective participant must: comply and ensure that its authorized traders comply, and, in each case, continue to comply, with the Facility's Rulebook and applicable law; have the legal capacity to trade in the MTF Instruments it selects to trade on the Facility; have appropriate systems and arrangements for the orderly clearance and/or settlement, as applicable, of transactions in all MTF Instruments it selects to trade on the Facility; have all registrations, authorizations, approvals and/or consents required by applicable law in connection with trading in MTF Instruments on the Facility; have adequate experience, knowledge and competence to transact in the MTF Instruments; and not be a natural person, independent software provider, trading venue or unregulated organized trading platform or system;
10. All participants that are located in Nova Scotia, including participants with their headquarters or legal address in Nova Scotia (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-Nova Scotia branches of Nova Scotia legal entities), as well as any trader physically located in Nova Scotia who conducts transactions

on behalf of any other entity (**Nova Scotia Participants**) are required to sign a user acknowledgment representing that they meet the criteria set forth in the user acknowledgment, including that they are appropriately registered under Nova Scotia securities laws, exempt from registration or not subject to registration requirements. The user acknowledgment requires a Nova Scotia Participant to make an ongoing representation each time it uses the Facility that it continues to meet the criteria set forth in the user acknowledgment. A Nova Scotia Participant is required to immediately notify the Applicant if it ceases to meet any of the above criteria represented by it on an ongoing basis;

11. The Applicant intends to offer direct access to Nova Scotia Participants that satisfy the criteria for a Professional Client and the criteria specified in the user acknowledgment;
12. Nova Scotia Participants may include financial institutions, asset managers, dealers, government entities, pension funds and other well-capitalized entities that meet the criteria described above;
13. The Facility provides certain Nova Scotia Participants with significant access to liquidity for which, at least for certain types of transactions, there is no appropriate alternative platform;
14. Because the Facility 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. The Facility is also considered by the Commission to be a derivatives trading facility;
15. Because the Applicant seeks to provide Nova Scotia Participants with direct access to trading on the Facility, the Facility is considered by the Commission to be “carrying on business as an exchange or a derivatives trading facility” in Nova Scotia and is required to be recognized as such or exempted from recognition pursuant to section 151A of the Act;
16. The Facility has no physical presence in Nova Scotia and does not otherwise carry on business in Nova Scotia except as described herein;

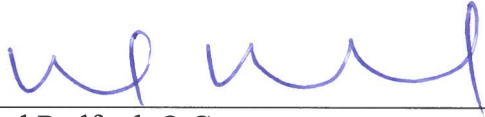
AND WHEREAS the Applicant has acknowledged to the Commission that the scope of the Requested Relief and the terms and conditions imposed by the Commission set out in Schedule “A” to this order may change as a result of the Commission’s monitoring of developments in international and domestic capital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

AND WHEREAS based on the Application, together with the representations made by and acknowledgments of the Applicant to the Commission, the Commission has determined that the granting of the Requested Relief would not be prejudicial to the public interest;

IT IS HEREBY ORDERED by the Commission that, (a) pursuant to section 151A of the Act, the Facility is exempt from the requirement to be recognized as an exchange and as a derivatives trading facility under section 30J of the Act; and (b) pursuant to sections 15.1(1) of NI 21-101, 12.1 of NI 23-101 and 10 of NI 23-103, the Facility is exempt from the requirements in NI 21-101, NI 23-101 and NI 23-103;

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

DATED at Halifax, Nova Scotia this 7th day of July, 2021



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Paul Radford, Q.C.

Chair

Nova Scotia Securities Commission

## **SCHEDULE “A”**

### **TERMS AND CONDITIONS**

#### **Regulation and Oversight of the Applicant**

1. The Applicant will maintain its registration as the operator of a multilateral trading facility (MTF) with the U.K. Financial Conduct Authority (FCA) and will continue to be subject to the regulatory oversight of the FCA.
2. The Applicant will continue to comply with the ongoing requirements applicable to it as the operator of an MTF registered with the FCA.
3. The Applicant will promptly notify the Commission if its registration as the operator of an MTF has been revoked, suspended, or amended by the FCA, or the basis on which its registration as the operator of an MTF has been granted has significantly changed.
4. The Applicant must do everything within its control, which includes cooperating with the Commission as needed, to carry out its activities as an exchange exempted from recognition under section 30J of the Act in compliance with Nova Scotia securities law.

#### **Access**

5. The Applicant will not provide direct access to a participant in Nova Scotia including a participant with its headquarters or legal address in Nova Scotia (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-Nova Scotia branches of Nova Scotia legal entities), as well as any trader physically located in Nova Scotia who conducts transactions on behalf of any other entity (**Nova Scotia User**) unless the Nova Scotia User is appropriately registered as applicable under Nova Scotia securities laws or is exempt from or not subject to those requirements, and qualifies as a “professional client”, as defined by the FCA in the FCA’s Conduct of Business Sourcebook, Chapter 3 “Client Categorisation.”
6. For each Nova Scotia User provided direct access to its MTF, the Applicant will require, as part of its application documentation or continued access to the MTF, the Nova Scotia User to represent that it is appropriately registered as applicable under Nova Scotia securities laws or is exempt from or not subject to those requirements.
7. The Applicant may reasonably rely on a written representation from the Nova Scotia User that specifies either that it is appropriately registered as applicable under Nova Scotia securities laws or is exempt from or not subject to those requirements, provided the Applicant notifies such Nova Scotia User that this representation is deemed to be repeated each time it enters an order, request for quote or response to a request for quote or otherwise uses the Applicant’s MTF.
8. The Applicant will require Nova Scotia Users to notify the Applicant if their registration as applicable under Nova Scotia securities laws has been revoked, suspended, or amended by the Commission or if they are no longer exempt from or become subject to those requirements and, following notice from the Nova Scotia User and subject to applicable laws, the Applicant will

promptly restrict the Nova Scotia User's access to the MTF if the Nova Scotia User is no longer appropriately registered or exempt from those requirements.

### **Trading by Nova Scotia Users**

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

10. With respect to debt securities, the Applicant will only permit Nova Scotia Users to trade a debt security that is a foreign security or a debt security that is denominated in a currency other than the Canadian dollar as such terms are defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, including:

- (a) debt securities issued by the United States (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.

11. The Applicant will only provide transaction execution services in accordance with the terms and conditions of Bloomberg Tradebook Canada Company's registration as an alternative trading system in Nova Scotia with respect to a debt security issued by (i) an issuer incorporated, formed or created under the laws of Canada or a jurisdiction of Canada, or (ii) the Government of Canada or the government of a jurisdiction of Canada, including:

- (a) debt securities issued or guaranteed by the Government of Canada or the government of a jurisdiction of Canada (including agencies or instrumentalities thereof);
- (b) debt securities issued or guaranteed by a municipal corporation in Canada;
- (c) debt securities issued or guaranteed by Canadian corporate or other non-governmental issuers; and
- (d) asset-backed securities (including mortgage backed securities) and collateralized mortgage obligations issued or guaranteed by a Canadian issuer, denominated in the Canadian dollar.

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

### **Submission to Jurisdiction and Agent for Service**

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

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

### **Prompt Reporting**

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

(a) any authorization to carry on business granted by the FCA is revoked or suspended or made subject to terms or conditions on the Applicant's operations;

(b) the Applicant institutes a petition for a judgment of bankruptcy or insolvency or similar relief, or to wind up or liquidate the Applicant or has a proceeding for any such petition instituted against it;

(c) a receiver is appointed for the Applicant or the Applicant makes any voluntary arrangement with creditors;

(d) the Applicant marketplace is not in compliance with this Order or with any applicable requirements, laws or regulations of the FCA where it is required to report such non-compliance to the FCA;

(e) any known investigations of, or disciplinary action against, the Applicant by the FCA or any other regulatory authority to which it is subject; and

(f) the Applicant makes any material change to the eligibility criteria for Nova Scotia Users.

### **Semi-Annual Reporting**

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

(a) a current list of all Nova Scotia Users and whether the Nova Scotia User is registered under Nova Scotia securities laws or is exempt from or not subject to registration, and, to the extent known by the Applicant, other persons or companies located in Nova Scotia



trading on the Applicant's MTF as customers of participants (**Other Nova Scotia Participants**);

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

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

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

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

(f) for each product,

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

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

provided in the required format.

### **Information Sharing**

17. The Applicant will provide such information as may be requested from time to time by, and otherwise cooperate with, the Commission or its staff, subject to any applicable privacy or other laws (including solicitor-client privilege) governing the sharing of information and the protection of personal information.