



June 3rd, 2019

VIA EMAIL

M^e Anne-Marie Beaudoin
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Dear Sirs/Mesdames,

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

The Montreal Exchange (“**MX**” or “**we**”) welcomes the opportunity to respond to the invitation by the *Autorité des marchés financiers* (“**AMF**”) to present observations in connection to the application by Bloomberg Trading Facility Limited (“**Bloomberg**”) for exemption from recognition as an exchange as well as from compliance with Regulation 21-101 respecting Marketplace Operation (“**NI 21-101**”) and Regulation 23-101 respecting Trading Rules (the “**Application**”). While MX does not take any position with respect to the opportunity to grant the Application specifically, MX does believe this Application is a good opportunity to raise broader derivatives regulatory considerations with respect to developments of over-the-counter (“**OTC**”) derivatives platforms globally in the recent years and their impact in Québec and in Canada under the prevailing regime. Capitalized terms used in this letter and not otherwise defined have the meaning given to them in the Application.

MX, Canada’s leading derivatives exchange, provides a broad range of equity, index and fixed income derivatives to its participants in Canada and abroad. MX is part of TMX Group Limited (“**TMX Group**”), an integrated, multi-asset class exchange group. TMX Group’s key subsidiaries operate cash and derivatives markets for multiple asset classes, including equities and fixed income, and provide clearing facilities, data driven solutions and other services to domestic and global financial and energy markets. Toronto Stock Exchange, TSX Venture Exchange, TSX Alpha Exchange, The Canadian Depository for Securities, Montreal Exchange, Canadian Derivatives Clearing Corporation, Shorcan Brokers Limited and other TMX Group companies provide listing markets, trading markets, clearing facilities, data products and other

services to the global financial community and play a central role in Canadian capital and financial markets.

Since the 2009 G20 commitments with respect to OTC derivatives were made at the Pittsburg Summit, derivatives markets as well as the regulatory frameworks applicable thereto globally have evolved significantly. One example of this evolution is the electronification of OTC derivatives trading. In parallel, regulatory reforms around the world have either incentivized or, in some cases mandated, central clearing as well as pre-trade and/or post-trade transparency for certain OTC derivatives.

As OTC derivatives start to trade electronically on platforms, get centrally cleared and become more transparent, the traditional distinction between OTC derivatives and on-exchange derivatives become less relevant and meaningful. This distinction is even less clear when facing foreign entities like Swap Executions Facilities (“**SEFs**”) in the United-States and Multilateral Trading Facilities (“**MTFs**”) in the European Union, which formally have self-regulatory obligations under their respective regulatory regime.

As the AMF is well aware, Canada has yet to implement a regime equivalent to the SEFs or MTFs regime for OTC derivatives platforms in Canada. The Canadian Securities Administrators (the “**CSA**”) has conducted a consultation,¹ but the Canadian Derivative Trading Facilities (“**DTFs**”) regime is not yet in force. Therefore, currently in Quebec, like in Ontario, these platforms are considered exchanges and must obtain either a recognition or an exemption from recognition as an exchange if they intend to offer their services to residents of these provinces.

The AMF, similarly to the Ontario Securities Commission (“**OSC**”), has adopted the view of typically exempting from recognition as an exchange these foreign platforms if they are regulated in a comparable way in their home jurisdiction.² Specifically with respect to Bloomberg, the Application says they operate their MTF in Ontario since 2017 under an interim exemption order and that they have applied to the OSC for a permanent exemption. We intend to file a response in line with the present letter with the OSC if it publishes a similar request for comments.

We strongly encourage the AMF, as part of the CSA, to pursue the development and implementation of a DTF regime in Canada to clarify the distinctions, if any, between the regulatory regimes applicable to derivatives exchanges and OTC derivatives electronic trading platforms for the sake of clarity and regulatory certainty, to name only those two objectives among others.

¹ See « Document de consultation 92-401 des ACVM - plateformes de négociation de dérivés » at <https://lautorite.qc.ca/fileadmin/lautorite/consultations/derives/mars-2015/2015janv29-92-401-consultation-fr.pdf>

² See “Policy Statement Respecting the Authorization of Foreign-Based Exchanges” at <https://lautorite.qc.ca/fileadmin/lautorite/reglementation/valeurs-mobilieres/instr-gen-bourses-etranangeres/2005-03-30/2005mars30-ig-boursesetrangeres-en.pdf> for the AMF and “Swap Execution Facilities and Multilateral Trading Facilities” at https://www.osc.gov.on.ca/en/Marketplaces_swap-execution-facilities_index.htm for the OSC.

As part of this process, we suggest that the CSA reflect on the distinctions that may or may not still be relevant and necessary between derivatives exchanges and OTC derivatives electronic trading platforms, and to the extent relevant crypto assets trading platforms. MX reiterates the comment letters filed by TMX Group with respect to these regulatory efforts.³

More specifically with respect to the Application, we have noted differences between the standards that seem applicable to Bloomberg compared to MX. Assuming the AMF would deem the Application receivable and Bloomberg could operate in Quebec under the exemption sought, we question whether these differences would be justified and coherent, given the fading traditional distinctions between derivatives exchanges and OTC derivatives electronic trading platforms and the respective role they play in the markets they serve. For example:

Bloomberg⁴	MX
Bloomberg's board of directors is composed of 5 directors, none of which are independent.	MX's board of directors must be composed of at least 50% of independent directors and the chairman of the board must be an independent director by virtue of the MX recognition order issued by the AMF ⁵ (the "RO").
Decisions of the CCO, who is responsible for the enforcement of Bloomberg's MTF rules, may be appealed by participants in which case the CCO will escalate the issue to a panel comprised of appropriately experienced senior members of the Bloomberg's Compliance Department and product teams to determine further action, such as temporary suspension, the imposition of conditions, termination of a participant's access or the lifting of a suspension.	By virtue of the RO, MX's Regulatory Division is strictly responsible for the enforcement of rules and disciplinary actions, to the exclusion of other employees of MX, to avoid any conflict of interest with other activities of MX. The Regulatory Division must be an independent division of MX, with its own structure, and is overseen by a Special Committee. The disciplinary decision of the Regulatory Division can be appealed in accordance with the law, not in front of an internal panel of employees.

³ See TMX Group's comment letter dated March 15, 2015 regarding CSA Consultation Paper 92-401 – Derivative Trading Facilities at <https://lautorite.qc.ca/fileadmin/lautorite/consultations/commentaires/derives/2015-03-30/tmx-group-92-401.pdf> as well as TMX Group's comment letter dated May 16, 2019 regarding Joint Canadian Securities Administrators/Investment Industry Regulatory Organization of Canada Consultation Paper 21-402 – Proposed Framework for Crypto-Asset Trading Platforms at https://www.osc.gov.on.ca/documents/en/Securities-Category2-Comments/com_20190516_21-402_dobrowskyd.pdf.

⁴ Solely based on the information provided in the Application.

⁵ See Décision no. 2012-PDG-0075, dated May 2, 2012, at https://lautorite.qc.ca/fileadmin/lautorite/professionnels/structures-marche/bourses-oar-chambres/decision_2012-pdg-0075.pdf

<p>The FCA does not seem to approve changes to Bloomberg's rulebook which are approved by the CCO and, in case of a material change, by Bloomberg's executive Committee.</p>	<p>MX is subject to the self-certification process under the <i>Derivatives Act</i> and its <i>Derivatives Regulation</i> which entails significant interactions with the AMF, as well as a mandated public comment process.</p>
<p>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.</p>	<p>Under NI 21-101, MX must resume operations within two (2) hours of the Business Continuity/Disaster Recovery Plan being invoked.</p>

As mentioned at the outset of this letter, MX does not take any position on the admissibility of Bloomberg's Application. Nevertheless, MX does hope that the AMF and other regulators in Canada, are reflecting on whether the higher standards to which Canadian derivatives exchanges are subject are still justified and coherent in light of the exemptions from recognition granted to foreign OTC derivatives trading platforms.

MX suggests it is time to rethink the foundational distinctions between derivatives exchanges and OTC derivatives electronic trading platforms that up to now have justified less regulatory burden for the latter over the former. Other criteria, like the exercise of SRO responsibilities, might be a more meaningful distinction today and for the futures, for example as crypto asset trading platforms emerge.

Once the relevant distinctions are established, a review of the justified and appropriate regulatory burden for the relevant category of platforms should be undertaken. While it is important that high standards in areas like investor protection and public interest be maintained equally for all platforms in Canada, it may well be that in other areas, differences between exchanges and other platforms are no longer warranted.

In summary, MX advocates for a coherent regulatory regime adapted to the reality of today's trading practices and market structures for all derivatives trading markets. This coherent regime may require stakeholders, including regulators, to review traditional distinctions and classifications that may have lost some of their meaningfulness because of evolution in technology, regulations and market structure. Differences between regimes should be purposeful, responsive to the risks posed by each specific market, not favoring one regime over the other in areas where no meaningful differences justify to create a distinction from a policy point of view, and in line and consistent with regulatory policy regarding derivatives. This is important not only to ensure a coherent regulatory regime today, but also to set a solid foundation for the upcoming innovations to be potentially enabled by new technology and the entrance of new, non-traditional players in financial markets.

We thank the AMF for the opportunity to present these observations and we would be pleased to discuss further the points made in this letter should the AMF wish to.

Sincerely,



Sabia Chicoine

Chief Legal Officer, MX, CDCC

CC : Mr. Pascal Bancheri, *Autorité des marchés financiers*

Mr. Serge Boisvert, *Autorité des marchés financiers*