

March 29, 2016

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 SEF LLC – Application for Exemption from Recognition as an Exchange

Dear Sirs and Mesdames,

Bloomberg SEF LLC (the “Applicant”) is requesting a decision exempting the Applicant from the requirement to be recognized as an exchange under subsection 21.(1) of the Act (the “**Exchange Relief**”) in relation to the operation of a swap execution facility (“**SEF**”) in the province. The Applicant is currently permitted to operate its SEF under an interim exemption order dated October 1, 2013 (the “**Interim Order**”).

For convenience, this application is divided into the following Parts I to V, Part III of which describes how the Applicant satisfies the criteria set by the staff of the Ontario Securities Commission (the “Commission”) for exemption of a foreign exchange trading OTC.

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PART I INTRODUCTION

1. Description of the Applicant's Services

- 1.1 The Applicant operates a SEF that is regulated by the Commodity Futures Trading Commission ("CFTC"). The Applicant provides all participants of its SEF ("Participants") access to multiple execution styles and liquidity across rates, credit, currency and commodity derivatives. The Applicant's SEF enables Participants to engage in certain transactions as described in the Applicant's SEF Rules 522.A. and 522.B.
- 1.2 Rule 522.A. applies to "**Required Transactions**", which are transactions involving a swap that is subject to the trade execution requirement of Section 2(h)(8) of the *U.S. Commodity Exchange Act* (the "**CEA**"). Except for block trades, Participants must execute Required Transaction using request for quote functionality ("**RFQ**") or central limit order book ("**CLOB**") functionality for cleared swaps.
- 1.3 Rule 522.B. applies to "**Permitted Transactions**", which are transactions involving swaps that are not Required Transactions. The following execution methods are available for Permitted Transactions:

- (a) Disclosed order book for Permitted Transactions in foreign exchange and commodity swaps;
 - (b) Anonymous CLOB for Permitted Transactions in interest rate swaps and credit default swaps that are cleared swaps;
 - (c) Disclosed CLOB for Permitted Transactions in interest rate swap and credit default swaps that are non-cleared swaps;
 - (d) RFQ functionality-request for streaming quote for interest rate swaps and credit default swaps;
 - (e) RFQ functionality-request for non-streaming quote for all swaps; and
 - (f) Manual order ticket for Permitted Transaction interest rate swaps and credit default swaps that are cleared swaps.
- 1.4 Under the terms of the Interim Order, the Applicant offers direct access to trading on its SEF to Participants that are located in Ontario (“**Ontario Participants**”) and that satisfy criteria for “eligible contract participants” (“**ECPs**”) as defined in section 1a(18) of the *U.S. Commodity Exchange Act* (the “**CEA**”) and as further described in Part III below. Ontario Participants may include Canadian financial institutions, registered dealers and advisers, government entities, pension funds and other well capitalized non-regulated entities.
- 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 TO THE APPLICANT

1. Ownership of the Applicant

- 1.1 The Applicant is a limited liability company organized under the laws of the State of Delaware in the United States (“**U.S.**”) and is a wholly owned subsidiary of Bloomberg L.P., a Delaware limited partnership (“**Bloomberg**”). Bloomberg and its affiliates are privately held and ultimately controlled by trusts established by Michael R. Bloomberg.

2. Products Traded on the Applicant’s SEF

- 2.1 The Applicant provides Participants with trading and execution services for credit default interest rate, foreign exchange and commodity swaps. A full list of the products traded on the Applicant’s SEF can be found in Chapters 12-15 of the Applicant’s Rulebook, available at: <http://www.bloomberg.com/professional/sef-compliance/>.

3. SEF Participants

- 3.1 The SEF operated by the Applicant has a wide range of sophisticated Participants comprised of both buy- and sell-side institutions, including commercial and investment banks, corporations, pension funds, money managers, proprietary trading firms, hedge

funds and other institutional customers. Each Participant of the Applicant must be an ECP.

PART III APPLICATION OF EXEMPTION CRITERIA TO THE APPLICANT

The following is a discussion of how the Applicant meets the Commission Staff's criteria for exemption of a foreign exchange trading OTC derivatives from recognition as an exchange.

1. Regulation of the Exchange

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

1.1.1 On July 21, 2010, President Obama signed into law the *Dodd–Frank Wall Street Reform and Consumer Protection Act* (the “**Dodd-Frank Act**”), which amended the CEA to establish a comprehensive new regulatory framework for swaps and security-based swaps. Section 721 of the Dodd-Frank Act added Section 1a(50) of the CEA, which defines a SEF. Section 723 of the Dodd-Frank Act added Section 2(h)(8) of the CEA, which requires that the execution of certain swaps, those that are subject to the mandatory clearing requirement of CEA Section 2(h), occur on a designated contract market (“**DCM**”) or SEF, unless no DCM or SEF makes the swap available to trade. Section 733 of the Dodd-Frank Act added Section 5h of the CEA, which provides registration and core principle requirements for SEFs (“**SEF Core Principles**”).

1.1.2 On July 30, 2013, the Applicant received temporary registration to operate a SEF in the United States pursuant to the CEA and on January 22, 2016, the Applicant received permanent registration to operate a SEF in the United States. The Applicant is subject to regulatory supervision by the CFTC. The Applicant is obligated to give the CFTC access to all records. The CFTC reviews, assesses and enforces the Applicant's adherence to the CEA and the regulations thereunder on an ongoing basis, including the SEF Core Principles. The SEF Core Principles relate to the operation and oversight of the SEF, including financial resources, systems and controls, maintenance of an orderly market, execution and settlement of transactions, and rule-making.

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

1.2.1 The CFTC carries out the regulation of SEFs in accordance with certain provisions of the CEA. To implement SEF regulation, the CFTC has promulgated regulations and guidelines (“**CFTC Regulations**”) that further interpret the SEF Core Principles (described below) and govern the conduct of SEFs. The CFTC also undertakes periodic in-depth audits or “rule reviews” of the Applicant's compliance with certain of the SEF Core Principles.

1.2.2 The Applicant is required to demonstrate its compliance with the SEF Core Principles. Among other things, the SEF Core Principles and CFTC Regulations require SEFs to have a rulebook (“**SEF Rulebook**”) and a compliance program, including a Chief Compliance Officer and a compliance manual. A SEF's participant access criteria must be

impartial and transparent and must be applied in a fair and non-discriminatory manner. The CFTC requires each SEF to have certain required trading protocols. A SEF must publish on its website certain daily trading data for each swap contract listed on the SEF and must report all transactions executed on the SEF to a swap data repository. The CFTC reviews, assesses and enforces a SEF's adherence to CFTC Regulations on an ongoing basis.

- 1.2.3 A SEF is a self-regulatory organization under CFTC rules. A SEF is obliged under CFTC rules to have requirements governing the conduct of participants, to monitor compliance with those requirements and to discipline participants, including by means other than exclusion from the marketplace. The Applicant has contracted with the U.S. National Futures Association (the “NFA”) as its regulatory service provider (“**Regulatory Services Provider**”) to conduct market surveillance of its SEF trades.

2. Governance

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

(a) **effective oversight of the Exchange,**

- 2.1.1 As a limited liability corporation, the Applicant is managed by or subject to the direction of the Board and such officers as are appointed by the Board, in each case in accordance with the limited liability company agreement of the Applicant, as amended from time to time (the “**Operating Agreement**”). The Board has the power and authority to call for review, and to affirm, modify, suspend or overrule, any and all decisions and actions of standing committees or special committees of the Board or any panel of the officers.

Codes of Conduct

- 2.1.2 The Applicant’s Operating Agreement includes a Conflicts of Interest Policy (the “**Director Conflicts Policy**”) and Code of Ethics (the “**Director Code of Ethics**”) for Directors of the Applicant. The Director Conflicts Policy and Director Code of Ethics cover topics such as conflicts of interest, securities insider trading, antitrust issues, document retention policies, gift and political contribution policies, etc.

Director Nominations

- 2.1.3 A majority-in-interest of the member or members of the Applicant (currently Bloomberg L.P. is the only member of the Applicant) may increase or decrease the number of Directors from time to time; provided, however, that the Board shall always consist of at least five (5) Directors.
- 2.1.4 At all times the Board must be composed of at least 35%, but no less than two, “**Public Directors**”. To qualify as a Public Director, a Director must be found, by the Board on the record, to have no material relationship with the Applicant or any of its affiliates. A “material relationship” is one that reasonably could affect the independent judgment or decision making of such individual as a Public Director. In addition, an individual shall not be considered a “Public Director” if any of the following circumstances exist:

- (a) such Director is an officer or an employee of the Applicant, or an officer or an employee of an affiliate of the Applicant;
- (b) such Director is a Participant on the Applicant's SEF, or a director, an officer or an employee of a Participant; or
- (c) such Director, or an entity with which the Director is a partner, an officer, or a director, receives more than \$100,000 in combined annual payments for legal, accounting, or consulting services from the Applicant or any affiliate of the Applicant. Compensation for services as a director of the Applicant or as a director of an affiliate of the Applicant does not count toward the \$100,000 payment limit, nor does deferred compensation for services rendered prior to becoming a Director of the Applicant, so long as such compensation is in no way contingent, conditioned or revocable.

Director Qualifications

2.1.5 Rule 201(d) of the Applicant's SEF Rulebook requires that the members of the Board, including Public Directors, shall be of sufficiently good repute and, where applicable, have sufficient expertise in financial services. Pursuant to Rule 207 of the Applicant's SEF Rulebook, a Director must meet the qualifications set forth from time to time in the Operating Agreement. 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 a SEF. Members of the Applicant's Board have the following attributes:

- (a) sufficiently good reputation;
- (b) requisite skills and expertise to fulfill their responsibilities in the management and governance of a SEF;
- (c) a clear understanding of such responsibilities; and
- (d) the ability to exercise sound judgment regarding SEF affairs.

The Board's Role in Risk Oversight

2.1.6 The Applicant's Board has the power and authority to call for review, and to affirm, modify, suspend or overrule, any and all decisions and actions of standing committees or special committees of the Board. Also, the Applicant has established a Regulatory Oversight Committee to oversee the Applicant's regulatory program on behalf of the Board. The authority of the Regulatory Oversight Committee is described in greater detail in paragraph 2.1.8 below.

Board Committees

2.1.7 The Applicant has established a Regulatory Oversight Committee that consists only of Public Directors of the Applicant. 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 advisory committees as it may deem necessary or advisable.

2.1.8 The Regulatory Oversight Committee has the authority to:

- (a) monitor the compliance program of the SEF operated by the Applicant for sufficiency and effectiveness;
- (b) oversee all facets of the compliance program, including trade practice and market surveillance, audits, examinations conducted by the Regulatory Services Provider and other regulatory responsibilities with respect to Participants, customers and accounts (including ensuring compliance with any financial integrity, financial reporting, sales practice, recordkeeping and other requirements), and overseeing the conduct of investigations by the Regulatory Services Provider;
- (c) review the size and allocation of the regulatory budget and resources and the number, hiring and termination, and compensation of compliance personnel;
- (d) recommend changes that would ensure fair, vigorous, and effective compliance; and
- (e) review compliance proposals and advise the Board as to whether and how such changes may impact compliance.

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

2.1.9 The Applicant is committed to providing impartial access to its services by complying with CTTC Regulation 37:202 – access requirements. The Applicant must ensure the integrity of swaps traded on the SEF under Core Principle 7 – *Financial Integrity of Transactions* (“**Core Principle 7**”). The Applicant fulfills this requirement in part through compliance with other SEF Core Principles, such as Core Principle 3 – *Swaps Not Readily Subject to Manipulation* (“**Core Principle 3**”). Stability of the market infrastructure is enhanced through compliance with Core Principle 13 – *Financial Resources* (“**Core Principle 13**”). Core Principle 13 requires a SEF to maintain adequate financial resources to discharge its responsibilities and ensure orderly operation of the market. The rules, policies and activities of the Applicant are designed and focused to ensure that they maintain best practices and fulfill this public interest mandate. The Applicant operates on a basis consistent with applicable laws and regulations, and best practices of other SEFs.

- (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,**

Director Independence

2.1.10 At all times the Board must be composed of at least 35%, but no less than two, Public Directors. Currently, the Board has two Public Directors. Also, The Regulatory Oversight Committee of the Board must consist only of Public Directors. Paragraph 2.1.3 contains a discussion of the criteria for Public Director independence.

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

2.1.11 The Applicant, through its conflicts of interest rules, policies and procedures, as well as its compliance with Core Principle 12 – *Conflicts of Interest* (“**Core Principle 12**”), has established a robust set of safeguards designed to ensure that the SEF operates free from conflicts of interest or inappropriate influence as described above. The CFTC also actively enforces compliance with CFTC Regulations, including Core Principle 12.

2.1.12 The Applicant’s Chief Compliance Officer is responsible for, in consultation with the Board or the senior officer of the Applicant, resolving any conflicts of interest that may arise, including: (1) conflicts between business considerations and compliance requirements; (2) conflicts between business considerations and the requirement that the SEF operated by the Applicant provide fair, open, and impartial access as set forth in CFTC Regulation 37.202; and (3) conflicts between the Applicant’s management and members of the Board. Also, Rule 210 of the Applicant’s SEF Rulebook contains rules and requirements concerning conflicts of interest for Directors, officers or other persons authorized to exercise authority for the Applicant.

2.1.13 The Applicant’s Directors must comply with the Conflicts of Interest Policy and the Code of Ethics described in paragraph 2.1.2. In addition, the Applicant’s SEF Rulebook contains rules that address conflicts of interest in decision-making, methods to ascertain the presence of conflicts of interest and procedures for making decisions in the event of such a conflict. In addition, the Applicant has implemented a conflicts of interest policy for its employees and associated procedures designed to manage, minimize and resolve conflicts of interest (the “**Employee Conflicts Policy**”) and a code of ethics for employees (the “**Employee Code of Ethics**”). A compliance officer designated by the Applicant will review the Director Conflicts Policy, the Director Code of Ethics, the Employee Conflicts Policy and the Employee Code of Ethics at least annually, and more frequently as needed.

(e) there are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors, officers and employees of the exchange.

2.1.14 See paragraph 2.1.5 above for information on the director 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.

2.1.15 The Applicant’s Operating Agreement provides for the indemnification by the Applicant against losses or damages sustained by a person with respect to third-party actions or proceedings due to the fact that such person is a Director, officer or employee of the

Applicant. The Applicant's Rules limit the liability of the applicant with respect to the participants of the SEF operated by the Applicant.

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 An individual may not serve as a Director or serve on a committee established by the Board, a disciplinary panel of the SEF or an appeals panel of the SEF if the individual:

- (a) within the prior three (3) years has been found, by a final decision in any action or proceeding brought in a court of competent jurisdiction, the CFTC or any self-regulatory organization, to have committed a disciplinary offense as defined in CFTC Regulations 1.63;
- (b) within the prior three (3) years has entered into a settlement agreement in which any of the findings or, in the absence of such findings, any of the acts charged, included a disciplinary offense;
- (c) has been suspended or expelled from membership in a self-regulatory organization, is serving any sentence or probation, or owes any portion of a fine or penalty related to either:
 - (i) a finding of a disciplinary offense by a final decision in any action or proceeding brought in a court of competent jurisdiction, the CFTC, or any self-regulatory organization; or
 - (ii) a settlement agreement in which any of the findings or, in the absence of such findings, any of the acts charged included a disciplinary offense.
- (d) is currently subject to an agreement with the CFTC or self-regulatory organization not to apply for registration with the CFTC or for membership in the self-regulatory organization;
- (e) is currently, or within the past three (3) years has been, subject to a revocation or suspension of registration by the CFTC;
- (f) has been convicted of a felony listed in Section 8a(2)(D)(ii) through (iv) of the CEA; or
- (g) is currently subject to a denial, suspension or disqualification from serving on a disciplinary committee, arbitration or appeals panel or governing board of any self-regulatory organization.

2.2.2 The Applicant requires all potential Directors to complete a questionnaire before Applicant will appoint such Director to the Board in order to ensure that such potential Director meets the criteria set forth in paragraph 2.2.1 above.

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 When the Applicant wishes to list a swap contract for trading on its SEF, it is required to submit the swap contract to the CFTC for certification that such contract complies with the CEA and with CFTC Regulations and is not susceptible to manipulation. Copies of swap contract certifications submitted by the Applicant can be found on the Applicant's website at: <http://www.bloomberg.com/professional/sef-compliance/>.

3.1.2 CFTC Regulation § 37.301 requires a SEF, at the time it submits a new swap contract to the CFTC pursuant to Part 40 of the CFTC's Regulations, to provide information demonstrating that the swap in question is not readily susceptible to manipulation. In order to self-certify a swap contract to be traded on the Applicant's SEF platform, the CCO must determine that the swap is not readily susceptible to manipulation, and demonstrate this compliance by providing the requisite information in the swap contract certification. If the CCO is not able to determine that a new swap contract complies with CFTC requirements, the Applicant may seek prior CFTC approval of the swap contract, rather than self-certifying the swap contract.

3.1.3 As of the date of this letter, the Applicant has determined 88 swap contracts to be made available to trade by self-certification pursuant to CFTC Rule 40.6.

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 The Applicant does take into consideration customary trading practices in drafting each contracts for swaps that will be listed on the Applicant's SEF. However, conformity with usual trading customs and practices is not required for self-certification with the CFTC. Rather, among other things, the requirement that swaps listed by a SEF comply with the SEF Core Principles and Part 40 of the CFTC Regulations (which sets forth the requirements for listing a swap on a SEF) means that a SEF's applications to list a swap (called the "**Part 40 Submissions**") must contain an analysis of whether the swap is readily susceptible to manipulation. The CFTC has set forth factors for determining whether a swap is readily susceptible to manipulation in Appendix C to Part 38 of the CFTC Regulations ("**Appendix C to Part 38**"). As part of every self-certification of a new swap contract, the Applicant must provide the information set forth in Appendix C to Part 38 in order to demonstrate that the new swap is not readily susceptible to manipulation. Among the factors that the Applicant considers, as outlined in Appendix C, are:

- a) The potential for manipulation or distortion of the cash settlement price;
- b) The reliability of the cash settlement price as an indicator of market values;

- c) The commercial acceptability, public availability and timeliness of the price series that is used to calculate the cash settle price and/or cash flows of the swap; and
 - d) Whether the settlement price index is a reliable indicator of market values and condition and is highly regarded by industry/market agents.
- 3.2.2 In response to the Applicant's process for introducing a new product or changing an existing product, as described above, the CFTC has the right to follow up with questions requesting additional information on the underlying market including, but not limited to: settlement methods, reference price, number of participants and deliverable supply estimates. If a SEF is unable to provide a satisfactory answer to the CFTC's questions, the CFTC may require the SEF to withdraw the product certification for failing to comply with the SEF Core Principles and CFTC Part 40 Regulations.
- 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 Section 9.3 of this application covers the way that the Applicant measures, manages and mitigates the trading risk associated with products traded on the SEF by imposing procedures which permit the Applicant to: (i) reject orders placed on the Applicant's SEF or reject block trades reported to the Applicant's SEF in the Applicant's sole discretion; (ii) take any action to reduce the potential for market disruption, including but not limited to market restrictions that pause or halt trading in market conditions prescribed by the Applicant if such action is in the best interest of the market; and (iii) cancel trades executed at prices outside of the prescribed "no-bust range" (e.g., the price of a swap that is no more than 30% higher or lower than the prior business day's daily settlement price for such swap).
- 3.3.2 In addition, Rule 525(a) of the Applicant's Rulebook states that the Applicant will adopt position limits only as necessary and appropriate. Thus far, the Applicant has not found it necessary or appropriate to adopt position limits for any swap contract. This conclusion is based in part on a statistical study conducted by NFA in 2015 which found that accountability levels do little to reduce the potential threat of market manipulation or congestion.¹ The Applicant continues to reassess its current conclusion, and will establish position limits in the future if it finds that doing so is necessary and appropriate.

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,**

¹ NFA Swap Accountability Levels Study.

- (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 applicable law, the Applicant provides access to Participants on a fair and non-discriminatory basis. Participant status, access to, and usage of, the Applicant's SEF in such capacity is available to all market participants that meet the criteria set forth by the Applicant. Chapter 3 of the Applicant's SEF Rulebook sets out the admission and eligibility criteria that Participants must meet. Specifically, to be eligible for admission as a Participant, an applicant must demonstrate to the satisfaction of the Applicant that it:

- (a) is an ECP that is eligible to enter into the asset classes of swaps it wishes to trade on the SEF operated by the Applicant;
- (b) is of good reputation and business integrity;
- (c) is validly organized, in good standing, and authorized by its governing body and, if relevant, documents of organization, to trade swaps;
- (d) has not filed for bankruptcy;
- (e) is not a director, officer, agent or affiliate of the Applicant;
- (f) is not prohibited from using the services of the Applicant for any reason whatsoever;
- (g) holds all registrations required under applicable law, if any;
- (h) is not subject to statutory disqualification under Section 8a(2) of the CEA;
- (i) satisfies any other criteria that the Applicant may require from a Participant to perform its self-regulatory organization responsibilities, comply with applicable law or provide the SEF services; and

- (j) is not an independent software vendor or an automated trading system.
- 4.1.2 The Applicant supervises system users by conducting surveillance, as described in Section 5.1.
- 4.1.3 In addition, all Participants located in Ontario are required to sign a User Acknowledgment representing that they are appropriately registered under Ontario securities laws, exempt from such registration or not subject to those requirements.
- 4.1.4 The Applicant may deny or condition the Participant status of any person if: (i) such person is unable to satisfactorily demonstrate its ability to satisfy the eligibility criteria listed in paragraph 4.1.1 above; (ii) such person is unable to satisfactorily demonstrate its capacity to adhere to all applicable rules in the Applicant's SEF Rulebook; (iii) such person would bring the Applicant into disrepute as determined by the Applicant in its sole discretion; or (iv) for such other cause as the Applicant may reasonably determine. The Applicant keeps records of each grant and each denial or limitation of access, including reasons for granting, denying or limiting access.
- 4.1.5 If the Applicant decides to decline or condition an application for admission as a Participant, the Applicant shall promptly notify such person (the "**Affected Person**") of the denial or conditioning. The Affected Person may, within seven calendar days, request in writing that the Applicant provide the reasons for the denial or conditioning of Participant status. Within 14 calendar days after receiving such written request, the Applicant shall send in writing to the Affected Person the reasons for the denial or conditioning. Within 14 calendar days of receiving the Applicant's written response, the Affected Person may request in writing that the Applicant reconsider its determination, and may provide any relevant representations or other information. The Affected Person has no further right to appeal to the Applicant or the CFTC.
- 4.1.6 The Applicant's rules, policies and procedures are designed to ensure fair and non-discriminatory treatment consistent with the requirements contained in the SEF Core Principles. Rules pertaining to participant criteria or selection must be self-certified under CFTC Regulations. The CFTC reviews all self-certifications of rules and rule amendments for compliance with the SEF Core Principles.
- 4.1.7 Core Principle 11 requires that, unless necessary or appropriate to achieve the purposes of applicable law, a SEF should avoid (a) adopting any rules or taking any actions that result in any unreasonable restraints of trade; or (B) imposing any material anticompetitive burden on trading. As such, the Applicant does not implement rules that would impose any burden on competition that is not reasonably necessary and appropriate because such rules would not meet SEF Core Principle requirements.

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 A SEF is a self-regulatory organization under CFTC rules. A SEF is obliged under CFTC rules to have requirements governing the conduct of participants, to monitor compliance with those requirements and to discipline participants, including by means other than exclusion from the marketplace. The Applicant expends considerable human, technological and financial resources that are focused on the maintenance of fair, efficient, competitive and transparent markets, and the protection of all SEF participants from fraud, manipulation and other abusive trading practices. The Applicant has contracted with the NFA for the NFA to conduct market surveillance of its SEF trades.
- 5.1.2 Investigating and enforcing rule violations are necessary components of regulatory safeguards. The SEF's disciplinary rules, including the conducting of investigations, prosecution of violations and imposition of sanctions are described Chapter 6 (Disciplinary Rules) of the SEF Rulebook. The Applicant is dedicated to safeguarding the integrity of its SEF, and ensuring that it is free from manipulation and other abusive practices. These efforts are a necessary component of efficiently working markets, and so it is committed to ensuring that Participants are able to use the SEF with the knowledge that it remains open and transparent. The Applicant's daily activities include a broad range of interconnected efforts that include real-time market surveillance trade practice reviews and data quality assurance audits. Participants are required to comply with a significant number of rules governing trading on the SEF pursuant to the SEF Rules. The applicable SEF Rules are primarily located in Chapter 4 (Trading Practices, Reporting, Clearing and Business Conduct) of the SEF Rulebook. To fulfill its mandate to effectively monitor and enforce the SEF rules, the NFA has established an automated trade surveillance system capable of detecting potential trade practice and violations of the Applicant's SEF Rulebook. The automated trade surveillance system loads and processes daily orders and trades no later than 24 hours after the completion of the trading day. 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; compute trade gains, losses, and swap-equivalent positions; reconstruct the sequence of market activity; perform market analyses; and support system users to perform in-depth analyses and ad hoc queries of trade-related data.
- 5.1.3 Additionally, in order to determine potential market issues BSEF has built and implemented a series of alerts designed to effectuate real-time surveillance. The first automated alert involves notification to BSEF Compliance staff when (1) an instrument is traded at a new price low or high; (2) a trading price rises or falls by a designated percentage against the previous trade for the same instrument; (3) an execution takes place at a price that is a designated percentage higher or lower than the 30, 60 and/or 90 day average for the same instrument. As these alerts are based on executed trades they constitute a "Trading Alert".

The second automated alert involves notification to BSEF Compliance staff when the quoted price in an instrument moves more than three standard deviations from a mean based on 30-day historical volatility. As these alerts are based on quoted prices they constitute a "Price Alert". The Price Alert is designed to help BSEF detect and address potential pricing abnormalities.

- 5.1.4 The NFA staff are responsible for conducting trade practice surveillance and market surveillance for the Applicant. This includes reviewing messages, deals and positions on an ongoing basis to determine if there are any potential violations of the Applicant's SEF Rulebook and monitoring compliance with position limits, accountability levels, market manipulation rules and the orderly liquidation of physically delivered expiring swaps. NFA has developed an automated surveillance system known as Sophisticated Warning Analysis Profiling System, or "SWAPS". The NFA staff uses SWAPS to effectively and efficiently profile markets and Participants, query the Applicant's audit trail, generate automated trade exception reports and conduct daily monitoring of prices, volume, clearing member large trader positions and market news. In addition to the information collected automatically by SWAPS, information is gathered by NFA staff from a variety of other sources to perform surveillance. NFA investigators are grouped into Investigation Teams organized by the Applicant and by asset class to ensure that the NFA provides adequate staff with sufficient expertise to oversee the Applicant's market.
- 5.1.5 Specifically with reference to regulatory technology, the Applicant has made significant investments in this area, including staff dedicated solely to the support and continuous development of its regulatory technology infrastructure, ensuring that the Applicant's regulatory and market protection capabilities anticipate and evolve with the changing dynamics of the marketplace. The Applicant has developed an audit trail of market activity and powerful and flexible data query and analytical tools that allow its regulatory staff to examine real-time and historical order, transaction and position data, maintain profiles of markets and Participants, and to detect trading patterns potentially indicative of market abuses.

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.**

- 6.1.1 Pursuant to its obligations under the CEA and the CFTC Regulations, the Applicant has implemented rules, policies and other similar instruments that govern the operations and activities of its Participants. The Applicant's rules are covered in Chapters 1 through 9 of its SEF Rulebook, which include: Chapter 2 (SEF Governance), Chapter 3 (Participants), Chapter 4 (Obligations of Participants, Account Managers, DMA Customers, Authorized Traders and Supervised Persons), Chapter 5 (Trading Practices, Reporting, Clearing and Business Conduct), Chapter 6 (Disciplinary Rules), Chapter 7 (Arbitration) and Chapter 8 (Miscellaneous rules). The Applicant's SEF Rulebook is available on the Applicant's website at: <http://www.bloomberg.com/professional/sef-compliance/>. The Applicant believes that its rules, policies and other similar instruments that govern the operations and activities of its Participants as consistent with the rules and policies of other SEFs, and therefore do not impose any burden on competition that is not reasonably necessary or appropriate.

- (b) **The Rules are not contrary to the public interest and are designed to**
 - (i) **ensure compliance with applicable legislation,**
 - (ii) **prevent fraudulent and manipulative acts and practices,**
 - (iii) **promote just and equitable principles of trade,**
 - (iv) **foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in the products traded on the exchange,**
 - (v) **provide a framework for disciplinary and enforcement actions, and**
 - (vi) **ensure a fair and orderly market.**

6.1.2 The Applicant's SEF Rules are subject to the standards and requirements outlined by the SEF Core Principles. At a high level, the SEF Core Principles and Applicant's SEF Rules both seek to ensure fair and orderly markets accessible to all eligible Participants. This aim is accomplished by establishing rules that reflect the SEF Core Principle criteria discussed below:

The Rules are not contrary to the public interest and are designed to:

- (i) **ensure compliance with applicable legislation.** SEF Core Principle 1 – *Compliance with Core Principles* requires a SEF to comply with all applicable CFTC requirements and CEA core principles and to be designated a SEF and maintain such designation. The Applicant ensures compliance with all applicable laws and regulations, evidenced in part by its regular dialogue with the CFTC. Core Principle 2 requires SEFs to ensure that participants consent to SEF rules and jurisdiction prior to accessing its markets. Consent to the SEF's jurisdiction means that a participant is subject to the SEF's rulebook, and any execution of a swap transaction on the SEF will be governed by the SEF's rules. Chapter 3 of the Applicant's SEF Rulebook governs membership requirements and establishes compliance with the Applicant's SEF Rules that bring participants within the jurisdiction of the Applicant. In addition, the Applicant is obligated to comply with the CEA and the CFTC Regulations, including SEF Core Principles (collectively, the "**U.S. SEF Regulations**"). The U.S. SEF Regulations also require that the Applicant implement rules that require its Participants to comply with Applicant's SEF Rules.
- (ii) **prevent fraudulent and manipulative acts and practices.** Core Principle 2 requires a SEF to collect information, examine members' records, direct supervision of the market, maintain sufficient compliance staff, establish procedures for and conduct audit trail reviews, perform real-time market monitoring and market surveillance and establish an automated trade

surveillance system. The Applicant has instituted all these controls. Core Principle 3 requires a SEF to ensure the swaps it trades are not readily susceptible to manipulation. Chapter 5 of the Applicant's SEF Rulebook prescribes trading practices and trading conduct requirements, including prohibitions on fictitious trades, fraudulent activity and manipulation.

- (iii) **promote just and equitable principles of trade.** Core Principle 9 requires a SEF to promote transparency by making timely public disclosures of trading information. The Applicant conforms to this Core Principle by publishing daily information on its trading and volumes. Core Principle 7 requires a SEF to ensure the financial integrity of transactions entered into on its markets. Core Principle 11 prohibits the imposition of unreasonable restraints or uncompetitive burdens on trade. Throughout its rulebook, the Applicant has established transparent and objective standards to prevent unreasonable restraints on trade and foster competitive and open market participation.
- (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 213 of the SEF Rulebook authorizes the Applicant to enter into information-sharing arrangements as it determines necessary or advisable to obtain any necessary information, to perform any monitoring of trading or trade processing, to provide information to the CFTC upon request and to carry out such international information-sharing agreements as the CFTC may require. Furthermore, the Applicant may enter into any arrangement with any other person (including any governmental authority, trading facility or clearing organization) where the Applicant determines such person exercises a legal or regulatory function under any applicable law or considers the arrangement to be in furtherance of the operation or duties of the Applicant under applicable law.
- (v) **promote a framework for disciplinary and enforcement actions.** Core Principle 2 requires a SEF to adopt a rule enforcement program, disciplinary procedures and sanctions. In response to this requirement, Chapter 6 of the Applicant's SEF Rulebook sets out the Applicant's disciplinary rules.
- (vi) **ensure a fair and orderly market.** Core Principle 3 requires a SEF to ensure that swaps traded on the facility are not readily subject to manipulation. Core Principle 4 requires a SEF to establish procedures for monitoring of trading and trade process. The Applicant complies with these Core Principles by prescribing trading rules (see Chapter 5 of the SEF Rulebook), collecting and evaluating market activity data, by maintaining and auditing its automated real-time monitoring program, and by auditing historical data to detect trading abuses. Core Principle 9 requires timely public disclosure of trade information, which is published daily. SEF Core Principle 14 – *System Safeguards* requires a SEF to establish and maintain risk analysis, emergency procedure and periodic

systems testing programs. 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.

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.**

7.1.1 Core Principle 2 requires a SEF to adopt a rule enforcement program, disciplinary procedures and sanctions. In response to this requirement, Chapter 6 of the Applicant's SEF Rulebook sets out the Applicant's disciplinary rules.

7.1.2 The Applicant's Compliance Department investigates matters within the Applicant's disciplinary jurisdiction of which it becomes aware. Once an investigation is complete, the Compliance Department will prepare an investigation report. The Applicant maintains records of all investigations conducted by the Applicant in accordance with its recordkeeping policy.

7.1.3 The Applicant's Chief Compliance Officer reviews investigation reports and related documents. If the Chief Compliance Officer decides to commence a disciplinary proceeding based on an investigation report, the Compliance Department will prepare a notice of charges to be sent to the potential respondent. The respondent must file an answer to such notice of charges within 20 days after being served; failure to respond in a timely manner will be deemed to be an admission by the respondent to the allegations in the notice.

7.1.4 At any time after the notice of charges has been served on the respondent, but before disciplinary proceedings have been concluded, a respondent may propose in writing an offer of settlement. The Chief Compliance Officer of the Applicant will forward the offer to the Applicant's Disciplinary Panel with a recommendation on whether to accept or reject the offer. If the offer is not accepted, the matter will proceed as though the offer had not been made.

7.1.5 The Applicant has established a Disciplinary Panel to adjudicate disciplinary cases pursuant to a notice of charges. All disciplinary proceedings are conducted at a hearing before the Disciplinary Panel and such proceedings are private and confidential. The chairperson of the Disciplinary Panel will conduct the hearing and will determine all procedural and evidentiary matters. A respondent that has timely filed an answer to the relevant notice of charges is entitled to attend and participate in the hearing.

7.1.6 Each Disciplinary Panel shall be composed of three individuals selected by the Applicant's Chief Compliance Officer. Panel members are selected from a pool of candidates who have agreed in principle to serve on the Applicant's Disciplinary Panel. The following types of candidates may be members of a BSEF Disciplinary Panel:

- Attorneys now or formerly at law firms with experience in issues related to Commodity Exchange Act trading and rule enforcement protocols;
- Academics that have either industry experience or long standing relevant teaching experience;
- Former senior personnel of trading venues and market participants with backgrounds in legal, compliance or business who can bring their perspective to the Disciplinary Panel without the potential conflicts of a relevant active participant of the Applicant's SEF; and
- Former CFTC staff and personnel.

In selecting panel members, the Applicant considers whether the composition of the panel will comply with CFTC Regulations §§ 1.59, 1.63 and 1.64. Thus, sufficient different membership interests will be represented in each panel (see Rule 613). Rule 613 requires that each disciplinary panel consist of at least one individual who would not be disqualified from serving as a public director of the Applicant; such individual will be the chair of the disciplinary panel.

7.1.7 The Disciplinary Panel will issue an order rendering its decision based on the weight of evidence submitted in the hearing and will serve a copy of that order on the respondent. The order will include the notice of charges, the respondent's answer (if any), a summary of the evidence introduced at the hearing, findings of fact and conclusions concerning each charge, an indication of the rule that the respondent was found to have violated and a declaration of all sanctions imposed by the Applicant's Disciplinary Panel (if any).

7.1.8 If the respondent wishes to appeal a decision of the Disciplinary Panel, an Appeals Panel will consider an appeal. All decisions of the Appeals Panel are final.

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 SEFs can allow trading of both "cleared" and "non-cleared" swaps. A SEF must submit all trades that are intended to be cleared to a clearing house for clearing. The Applicant provides direct connectivity to the following clearing houses: Chicago Mercantile Exchange Inc., LCH.Clearnet LLC, LCH.Clearnet Limited, ICE Clear Credit LLC and ICE Clear Europe Limited. Each clearing house is registered as a derivatives clearing organization (a "DCO") with the CFTC. The Applicant expects that Ontario-based Participants will either (a) be 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.

8.1.2 If the Applicant receives a notice from a clearing house rejecting a trade for clearing, such trade is void ab initio.

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 The Applicant has agreements in place with the clearing houses to which the Applicant submits trades for clearing which include representations that the clearing houses will comply with all applicable laws and regulations. As a DCO, the clearing houses must comply with the DCO Core Principles, including CFTC Regulation 39.13 – *Risk management* (“**CFTC Regulation 39.13**”), CFTC Regulation 39.10 – *Compliance with rules* (“**CFTC Regulation 39.10**”), and CFTC Regulation 39.18 – *System safeguards* (“**CFTC Regulation 39.18**”). CFTC Rule 39.18(e) requires DCOs to maintain business continuity and disaster recovery plans, emergency procedures and physical, technological and personnel resources sufficient to enable the timely recovery and resumption of operations.

8.2.2 CFTC Regulation 39.10 mandates the appointment of a chief compliance officer (“**CCO**”) whose duties include review of the DCO’s written policies and procedures and compliance with each DCO Core Principle, including the risk management framework implemented by the CRO under CFTC Regulation 39.13. The CCO’s review of the DCO’s policies and procedures is included in an annual compliance report submitted to the CFTC.

8.2.3 CFTC Regulation 39.18(b) mandates the establishment and maintenance of a program of risk analysis and oversight with respect to the DCO’s operations and automated systems. CFTC Regulation 39.18(j) further requires that a DCO’s automated systems and business continuity and disaster recovery capabilities be tested by objective, independent and qualified professionals on a periodic basis.

9. Systems and Technology

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

- (a) **order entry,**
- (b) **order routing,**
- (c) **execution,**
- (d) **trade reporting,**
- (e) **data feeds,**
- (f) **market surveillance,**

(g) **trade clearing, and**

(h) **financial reporting.**

- 9.1.1 The Applicant's SEF 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.
- 9.1.2 The Applicant has put safeguards and security tools in place to protect the critical data and system components of its SEF (the "**Systems**"), including (i) encryption and data compression, (ii) denial of service protection, (iii) firewalls, (iv) configured routers, (v) DMZs and network segmentation; (vi) intrusion detection procedures; (vii) event logging and log analysis; and (viii) virus protection.
- 9.1.3 As discussed in paragraph 5.1.2 above, the Applicant has also established an automated trade surveillance system capable of detecting potential trade practice and violations of the Applicant's SEF Rulebook. The Applicant outsources its automated trade surveillance to the NFA, while maintaining full responsibility for compliance obligations.
- 9.1.4 The Applicant captures and retains audit trail data necessary to detect, investigate, and prevent customer and market abuses. Such data shall be sufficient to reconstruct all indications of interest, RFQs, orders, and trades within a reasonable period of time and to provide evidence of any violations of the rules of the Applicant. The Applicant has also developed risk monitoring tools and risk controls to prevent and reduce the potential risk of market disruptions, including but not limited to market restrictions that could pause or halt trading under market conditions prescribed by the Applicant.

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.

Please refer to the Applicant's response to section 9.2 below for further 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;**
- (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 The Applicant examines current and historical production loads on its SEF and the electronic trading platforms operated by affiliates of the Applicant, for the same financial instruments traded on the Applicant's SEF in order to calculate reasonable current and future capacity estimates. In connection with the Applicant's SEF, the Applicant uses technology that is substantially similar to the technology that underlies the electronic trading platforms operated by affiliates of the Applicant.

9.2.2 The Applicant supervises and conducts periodic stress testing of the system components of the Systems to ensure that the Systems have sufficient capacity to perform required operational tasks. The Applicant evaluates and monitors capacity requirements in order to anticipate capacity needs.

9.2.3 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. Testing may include one or more of the following: (i) network/host penetration testing; (ii) application penetrating testing; and (iii) web application penetration testing.

9.2.4 The Applicant and its service provider, Bloomberg L.P., periodically conduct risk audits, internal physical security procedures compliance inspections and 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.

9.2.5 Technical 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 Applicant monitors a periodic automatic redundancy test where a machine fail-over is simulated and successful startup of redundant machines are verified.

9.2.6 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 unauthorized access to the Systems; and
- (e) provide active performance monitoring of production server machines.

9.2.7 The Applicant reviews and keeps current the development and testing methodology of the Systems pursuant to procedures contained in the Applicant's Compliance Manual, Technology Handbook and Business Continuity/Disaster Recovery Plan. 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. As part of the Business Continuity/Disaster Recovery Plan, the Applicant performs period tests to verify that the resources outlined in the plan are sufficient to ensure continued fulfillment of all duties of the Applicant under the CEA or CFTC Regulations.

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 provides market integrity controls to ensure fair and efficient markets. 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) authorized trader lists and asset class limitations; (vi) trade rejection capability; and (vii) trade cancellation capability.

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. A SEF must submit financial reports to the CFTC and maintain adequate financial resources to cover its operating costs for a period of at least one year, calculated on a rolling basis. A SEF must also hold liquid financial assets equal to at least six months' operating costs. The Applicant maintains the current minimum capital amounts needed, and will maintain any future minimum capital amounts needed, to meet CFTC 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 U.S. SEF Regulations. The U.S. SEF Regulations also require that the Applicant implement rules that require compliance by its Participants with the Applicant's SEF Rules. The Applicant's SEF Rules, which address SEF trading practices, are subject to the standards and requirements outlined by the SEF Core Principles. At a high level, the SEF Core Principles and Applicant's SEF Rules both seek to ensure fair, orderly and transparent markets accessible to all eligible Participants, which is consistent with the public interest.

11.1.2 The trading practices supported by the Applicant's SEF are properly supervised by the Applicant. Chapter 5 of the Applicant's Rulebook sets forth rules with respect to trading practices, and gives the Applicant the authority to investigate and take action against Participants that do not comply with the Applicant's SEF Rules (see Rule 504). The Applicant conducts automated real-time market monitoring of the trading activity on the Applicant's SEF.

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 As noted in 11.1.1 above, the Applicant's SEF Rules are subject to the standards and requirements outlined by the SEF Core Principles. Minimum size for each financial instrument is indicated in the Applicant's contract specifications, which are published in the Applicant's Rulebook. All order types are defined in Chapter 1 of the Applicant's Rulebook. The Rulebook is available online and sets forth such minimum sizes and definitions in a transparent manner. To date, the Applicant has not implemented position limits.

11.2.2 The Applicant's system for accepting and distinguishing between and executing different types of orders operates according to the relevant SEF Core Principles, CFTC Regulations and the requirements set forth in the Applicant's Rulebook, all of which are available online in a transparent manner. As the Applicant is required by CFTC Regulations to provide Participants access to the SEF platform in a fair and non-discriminatory manner, this system must, and does, operate in a fair and equitable manner with respect to all Participants.

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 Core Principle 9 requires a SEF to make public timely information concerning swaps transactions executed on the SEF. The Applicant publishes end of day data regarding the price, trading volume and other trading data of swaps traded on the Applicant's SEF at www.data.bloombergsef.com. Additionally, the Applicant will timely transmit swap transaction and pricing data to a registered swap data repository (“**SDR**”) that accepts swap data for swaps traded on the Applicant's SEF in accordance with CFTC Regulations. SDR makes certain elements of the transaction and pricing data publically

available in the format specified by the CFTC Regulation. Currently the Applicant is connected to two SDRs: BSDR LLC and DTCC Data Repository.

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 The Applicant operates a SEF that is regulated by the CFTC. A SEF is a self-regulatory organization under CFTC rules and has certain obligations to monitor Participants' trading activity on the SEF pursuant to Part 37 of CFTC Regulations.

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 Core Principle 2 requires a SEF to collect information, examine members' records, direct supervision of the market, 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. The Applicant has instituted all of these controls and has adequate resources available to ensure that controls are properly applied. Members of the Compliance Department and Research and Development Department of the Applicant and members of the Legal Department of the Applicant's parent company, Bloomberg L.P., as well as the Applicant's key business personnel, work to evaluate and ensure the Applicant's compliance with exchange and legislative requirements. The CCO annually prepares and signs a compliance report (the "Annual Compliance Report") that includes a review of applicable CFTC regulations and each subsection and core principle of Section 5h of the CEA that, with respect to each: (1) identifies the policies and procedures that are designed to ensure compliance with each subsection and core principle, including each duty specified in Section 5h(f)(15)(B) of the CEA; (2) provides a self-assessment as to the effectiveness of these policies and procedures; and (3) discusses areas of improvement and recommends potential or prospective changes or improvements to its compliance program and resources.

12.2.2 Core Principle 2 also requires a SEF to adopt a rule enforcement program, disciplinary procedures and sanctions. In response to this requirement, Chapter 6 of the Applicant's SEF Rulebook sets out the Applicant's disciplinary rules and Chapter 7 prescribes the Applicant's arbitration procedures. Pursuant to Rule 602 of the SEF Rulebook, any disciplinary investigation undertaken by the Applicant's Compliance Department must be completed within 12 months of the date when the Compliance Department commenced its investigation unless there are mitigating factors that may reasonably justify an investigation taking longer than 12 months, including the complexity of the investigation, the number of Participants or individuals involved as potential wrongdoers, the number of potential violations to be investigated, and the volume of the documents and data to be examined and analyzed by the Compliance Department.

12.2.3 The Applicant has also adopted an internal audit function using a "co-sourced" model. The "co-sourced" provider is Deloitte. Deloitte reports through the Bloomberg L.P.

Chief Risk Office which has appointed an internal audit liaison officer to manage the relationship with Deloitte as well as to provide day-to-day oversight and manage internal audit functions.

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 paragraph 16.1.1 below.

13. Record Keeping

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

13.1.1 The Applicant collects, on a daily basis, data related to its regulated activity in compliance with Core Principle 10 – Recordkeeping and Reporting. The Applicant is required to maintain records of all activities relating to its business as a SEF, including data related to order messaging, order execution and pricing. Data is collected from across all SEF functionalities. The Applicant maintains a data history as required by CFTC Regulations 37.205, referred to as the audit trail, for every order entered and transaction executed on the SEF. 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. On a daily basis, files of all electronic order and cleared trade information are archived to non-rewritable media, and copies are stored at secure locations to ensure redundancy and critical safeguarding of the data.

13.1.2 Market participants executing transactions on the Applicant’s SEF are also required to keep certain books and records relating to their activity on the Applicant’s SEF pursuant to Rule 409.A. Such books and records must be made available upon request to the Applicant, the CFTC, the U.S. Department of Justice or any other governmental body, regulator or self-regulatory organization with jurisdiction over the Applicant.

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 Bloomberg L.P. (“BLP”), the parent company of the Applicant, provides support services, including business continuity and disaster recovery support, to the Applicant pursuant to a services agreement between the Applicant and BLP (the “**Services Agreement**”). Bloomberg Finance L.P. (“BFLP”), an affiliate of the Applicant, provides licensed items to the Applicant pursuant to a license agreement between the Applicant and BFLP (the “**License Agreement**”). The Services Agreement and the License

Agreement permit the Applicant to meet its obligations and are in accordance with industry best practices. The Applicant has the right to audit the services provided by BLP pursuant to the Services Agreement.

14.1.2 As described more fully in paragraph 5.1.4 above, the Applicant has contracted with the NFA to perform certain surveillance, investigative and regulatory functions under the Applicant's SEF Rulebook.

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 The CFTC requires that a SEF must charge the same fees for participants receiving comparable access to, or services from, the SEF. The Applicant complies with this requirement and therefore fees charged by the SEF do not create an unreasonable condition or limit on access by Participants.

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

15.1.2 The Applicant is required by CFTC Regulations to charge all Participants fees that are impartial, transparent and applied in a fair and non-discriminatory manner. The Board of Directors of the Applicant has the authority to set the times and amounts of any assessments or fees to be paid by Participants. All fee changes must be submitted to the CFTC for certification or approval under Part 40 of the CFTC Regulation prior to their implementation. The Applicant publishes its fee schedule on the Applicant's website.

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 Bloomberg SEF Compliance Department, as supervised by the CCO, processes and responds to requests from regulator regarding the Applicant in a timely manner. Rule 213 of the SEF Rulebook – *Information-Sharing Arrangements* authorizes the Applicant to enter into information-sharing agreements or other arrangements or procedures necessary to allow the Applicant to obtain any necessary information to perform any monitoring of trading and trade processing, provide information to other markets, the CFTC or any other governmental body with jurisdiction over the Applicant upon request and which allow the Applicant to carry out such international information-sharing agreements as the CFTC may require. Also, the Applicant may enter into any information-sharing arrangement with any person or body (including the CFTC, the NFA, any self-regulatory organization, any SEF, DCM, market, clearing organization or

any Governmental Body) if the Applicant (i) believes that such entity exercises a legal or regulatory function under any law or regulation, or a function comprising or associated with the enforcement of a legal or regulatory function, or (ii) considers such arrangement to be in furtherance of the purpose or duties of the Applicant and the SEF operated by the Applicant under applicable law. The Applicant has entered into an information-sharing arrangement with the NFA for purposes of conducting market surveillance of the Applicant's SEF and with the Commission. In addition, the Applicant may enter into such agreements with regulatory authorities in various other jurisdictions where the Applicant is seeking regulatory clearance.

16.1.2 The CFTC has entered into memorandum of understanding (“MOU”) arrangements for co-operative enforcements with foreign regulatory authorities in numerous jurisdictions. The MOUs typically provide for access to non-public documents and information already in the possession of the regulatory authorities, and often include undertakings to obtain documents and to take testimony of, or statements from, witnesses on behalf of a requesting regulatory authority. The CFTC and the Commission are parties to an MOU that was entered into by the parties on March 25, 2014, which is available to http://www.osc.gov.on.ca/documents/en/About/mou_20140327_nmou-covered-entities.pdf.

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

16.2.1 The CFTC has entered into an MOU with the Commission, as described in Section 16.1.2 above.

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 to the CFTC Regulations.

PART IV SUBMISSIONS BY THE APPLICANT

1. Submissions Concerning the Exchange Relief

1.1 The swaps that are traded on the Applicant's SEF fall under the definition of “derivative” set out in subsection 1(1) of the Act. The SEF operated by the Applicant falls under the definition of “marketplace” set out in subsection 1(1) of the Act because it brings together buyers and sellers of 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 or disciplines marketplace participants. A SEF is a self-regulatory organization under CFTC rules and has certain obligations to monitor participants' trading activity on the SEF. Because a SEF regulates 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 Participants with direct access to the exchange. Since the Applicant provides Ontario Participants with direct access to trading derivatives on its SEF, it is 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. The Applicant is currently permitted to operate its SEF in Ontario under the Interim Order.
- 1.4 The Applicant satisfies all the criteria for exemption from recognition as an exchange set out by Commission Staff, as described under Part III of this application. Ontario market participants that trade in swaps would benefit from the ability to trade on the Applicant’s SEF, as they would have access to a range of swaps and swap counterparties that otherwise may not be available in Ontario. Stringent CFTC oversight of the Applicant’s SEF as well as the sophisticated information systems, regulations and compliance functions that have been adopted by the Applicant will ensure that Ontario users of the SEF are adequately protected in accordance with international standards set by IOSCO.
- 1.5 Based on the foregoing, we submit that it would not be prejudicial to the public interest to grant the Requested Relief.

PART V OTHER MATTERS

1. Consent to Publication

- 1.1 The Applicant consents to the publication of this application for public comment.

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

Yours very truly,



Benjamin Macdonald
President, Bloomberg SEF LLC