

2.2. Orders

2.2.1 State Street Global Markets International Limited – ss. 21, 144, 147

Headnote

Subsection 144(1) of the Securities Act (Ontario) – application for order varying and restating the Commission’s order exempting State Street Global Markets from the requirement to be recognized as an exchange in Ontario – variation required to remove references to Currenex Multilateral Trading Facility, which will cease operations as of April 30, 2022 – requested order granted.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 21, 144, 147.

**IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHAPTER S. 5, AS AMENDED
(the Act)**

AND

**IN THE MATTER OF
STATE STREET GLOBAL MARKETS INTERNATIONAL LIMITED**

**ORDER
(Sections 21, 144, and 147 of the Act)**

WHEREAS on May 10, 2019, the Ontario Securities Commission (“**Commission**”) issued an interim order under section 147 of the Act exempting State Street Global Markets International Limited (the “**Applicant**” or “**SSGMIL**”) on an interim basis from the requirement in subsection 21(1) to be recognized as an exchange in order to operate FX Connect Multilateral Trading Facility (“**FX Connect**”), terminating on the earlier of (i) May 11, 2020 and (ii) the effective date of a subsequent order exempting the Applicant from the requirement to be recognized as an exchange;

AND WHEREAS on June 21, 2019, the Commission issued an interim order under section 147 of the Act exempting the Applicant on an interim basis from the requirement in subsection 21(1) of the Act to be recognized as an exchange to operate Currenex Multilateral Trading Facility (“**Currenex**” and, together with FX Connect, the “**State Street MTFs**”), terminating on the earlier of (i) June 30, 2020 and (ii) the effective date of a subsequent order exempting the Applicant from the requirement to be recognized as an exchange;

AND WHEREAS the Commission issued an order dated April 24, 2020, which was varied on March 11, 2021, terminating the State Street MTFs’ interim orders and exempting the Applicant from the requirement to be recognized as an exchange under subsection 21(1) of the Act, pursuant to section 147 of the Act in order to operate the State Street MTFs in Ontario (“**Exemption from Recognition Order**”);

AND WHEREAS SSGMIL has notified the Commission that Currenex has announced its plans to close and is in the process of winding down its activities;

AND WHEREAS as of April 30, 2022, there will be no trading activity on Currenex and Currenex will have ceased its activities as a multilateral trading facility (“**MTF**”) in Ontario;

AND WHEREAS the Ontario participants of Currenex have been individually notified of the intention to close Currenex as of April 30, 2022;

AND WHEREAS SSGMIL has submitted an application (the “**Application**”) to the Commission requesting that the Commission make an order to vary and restate the Exemption from Recognition Order to remove Currenex from the scope of the Exemption from Recognition Order effective as of April 30, 2022 (the “**Exchange Relief**”);

AND WHEREAS the Applicant has not requested as part of the Application that any other marketplace or trading platform operated by the Applicant, or the provision of access by any such marketplace or trading platform to prospective participants in Ontario, be exempted from any provision of Ontario securities law;

AND WHEREAS the Applicant has represented to the Commission that:

- 1.1 The Applicant is authorized by the Financial Conduct Authority (“**FCA**”) in the United Kingdom to act as the operator of FX Connect, an MTF;

- 1.2 FX Connect is registered with the FCA as an MTF operated by the Applicant;
- 1.3 FX Connect offers request for quote (“**RFQ**”) trading in certain instruments related to foreign currencies (spot, deliverable and non-deliverable forwards and swaps) and related trade support services to their subscribers (“**Members**”);
- 1.4 All FX Connect Members, including Members in Ontario (“**Ontario Members**”) must qualify as an “eligible counterparty” or “professional client” under the Markets in Financial Instruments Directive 2014/65/EU (“**MiFID II**”) and the Markets in Financial Instruments Regulation (EU) No 600/2014 (“**MiFIR**”), both as amended;
- 1.5 As required by the FCA Handbook, the Applicant has implemented a trade surveillance program for FX Connect. As part of the program, the Applicant conducts real-time monitoring of trading activity on FX Connect;
- 1.6 As an MTF, FX Connect is required under the FCA Handbook to have requirements governing the conduct of its Members, to monitor compliance with those requirements and to discipline its Members, including by means other than exclusion from the FX Connect trading platform;
- 1.7 Because the Applicant regulates the conduct of the Members, it is considered by the Commission to be an exchange;
- 1.8 Because FX Connect has Members located in Ontario, the Applicant would be considered by the Commission to be carrying on business as an exchange in Ontario with respect to FX Connect and would be required to be recognized as such or exempted from recognition pursuant to section 21 of the Act to operate FX Connect;
- 1.9 FX Connect does not list or trade derivative instruments that are required to be cleared; and
- 1.10 The Applicant and FX Connect have no physical presence in Ontario and do not otherwise carry on business in Ontario except as described above.

AND WHEREAS the products traded on FX Connect are not commodity futures contracts as defined in the *Commodity Futures Act* (Ontario) and the Applicant is not considered to be carrying on business as a commodity futures exchange in Ontario with respect to FX Connect;

AND WHEREAS the Commission will monitor developments in international and domestic capital markets and the Applicant’s activities on an ongoing basis to determine whether it is appropriate for the Exchange Relief to continue to be granted subject to the terms and conditions set out in Schedule “A” to this order;

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

AND WHEREAS based on the Application and the representations made to the Commission by SSGMIL, the Commission has determined that it is not prejudicial to the public interest to grant the Exchange Relief;

IT IS ORDERED, pursuant to section 144 of the Act, that the Application to vary and restate the Exemption from Recognition Order is granted.

IT IS ORDERED, pursuant to section 147 of the Act, that the Applicant continues to be exempt from recognition as an exchange under subsection 21(1) of the Act in order to operate FX Connect,

PROVIDED THAT the Applicant, in respect of FX Connect, complies with the terms and conditions contained in Schedule “A.”

DATED this 17 day of March, 2022, to take effect April 30, 2022.

“Mary Anne De Monte-Whelan”

“Cecilia Williams”

SCHEDULE "A"
TERMS AND CONDITIONS

Meeting Criteria for Exemption

1. The Applicant will continue to meet and will cause FX Connect to continue to meet the criteria for exemption included in Appendix 1 to this Schedule.

Regulation and Oversight of the Applicant

2. The Applicant will maintain its permission to operate FX Connect as an MTF with the FCA in the United Kingdom and will continue to be subject to the regulatory oversight of the FCA.
3. The Applicant will continue to comply with the ongoing requirements applicable to it as the operator of an MTF registered with the FCA.
4. The Applicant will only operate FX Connect in Ontario.
5. The Applicant, as operator of FX Connect, must do everything within its control to ensure that, in respect of FX Connect, it carries out activities as an exchange exempted from recognition under subsection 21(1) of the Act in compliance with Ontario securities law.

Access

6. The Applicant will not provide direct access to an Ontario Member to FX Connect unless the Ontario Member is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements and qualifies as an "eligible counterparty" under MiFID II and MiFIR, both as amended.
7. For each Ontario Member provided direct access to FX Connect, the Applicant will require, as part of its application documentation or continued access to FX Connect, the Ontario Member to represent that it is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements.
8. The Applicant may reasonably rely on a written representation from the Ontario Member that specifies either that it is appropriately registered as applicable under Ontario securities laws or is exempted from or not subject to those requirements provided the Applicant notifies such Ontario Member that this representation is deemed to be repeated each time it enters an order, request for quote or response to a request for quote or otherwise uses FX Connect.
9. The Applicant will require Ontario Members to notify the Applicant if their registration as applicable under Ontario securities laws has been revoked, suspended, or amended by the Commission or if they are no longer exempt from or become subject to those requirements and, following notice from the Ontario Member and subject to applicable laws, the Applicant will promptly restrict the Ontario Member's access to FX Connect if the Ontario Member is no longer appropriately registered or exempt from those requirements.

Trading by Ontario Members

10. The Applicant, as operator of FX Connect, will not provide access to an Ontario Member to trade in products other than swaps and security-based swaps, as defined in section 1a(47) of the United States Commodity Exchange Act, as amended, without prior Commission approval.

Submission to Jurisdiction and Agent for Service

11. With respect to a proceeding brought by the Commission arising out of, related to, concerning or in any other manner connected with the Commission's regulation and oversight of the activities of the Applicant in Ontario, the Applicant will submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario.
12. The Applicant will submit to the Commission a valid and binding appointment of an agent for service in Ontario upon whom the Commission may serve a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of or relating to or, concerning the Commission's regulation and oversight of the Applicant's activities in Ontario.

Prompt Reporting

13. The Applicant will notify staff of the Commission promptly when:
- (a) any authorization to carry on business granted by the FCA is revoked or suspended or made subject to terms or conditions on the operations of FX Connect;
 - (b) the Applicant institutes a petition for a judgment of bankruptcy or insolvency or similar relief, or to wind up or liquidate the Applicant, or has a proceeding for any such petition instituted against it;
 - (c) a receiver is appointed for the Applicant, or the Applicant makes any voluntary agreement with creditors;
 - (d) the Applicant or FX Connect is not in compliance with this order or with any applicable requirements, laws or regulations of the FCA;
 - (e) any known investigations of, or disciplinary action against the Applicant by the FCA or any other regulatory authority to which it is subject;
 - (f) the Applicant makes any material change to the eligibility criteria to FX Connect for Ontario participants;

Semi-Annual Reporting

14. The Applicant will maintain the following updated information in reference to FX Connect and submit such information for FX Connect in a manner and form acceptable to the Commission on a semi-annual basis (by July 31st for the first half of the calendar year and by January 31st of the following year for the second half), and at any time promptly upon the request of staff of the Commission:
- (a) a current list of all Ontario Members and whether the Ontario Member is registered under Ontario securities laws or is exempt or not subject to registration and, to the extent known to the Applicant, of other persons or companies located in Ontario trading on FX Connect as customers of participants ("**Other Ontario Participants**");
 - (b) the legal entity identifier assigned to each Ontario Member and, to the extent known by the Applicant, to Other Ontario Participants, in accordance with the standards set by the Global Legal Entity Identifier System;
 - (c) a list of all Ontario Members against whom disciplinary action has been taken since the previous report by the Applicant or, to the best of the Applicant's knowledge, by the FCA with respect to such Ontario Members' activities on FX Connect and the aggregate number of all Members referred to the FCA since the previous report by the Applicant;
 - (d) a list of all active investigations by the Applicant relating to Ontario Members and the aggregate number of active investigations since the previous report relating to all Members;
 - (e) a list of all Ontario applicants for status as a Member who were denied such status or access to FX Connect since the previous report, together with the reasons for each such denial;
 - (f) for each product, in the required format, for FX Connect:
 - (i) the total trading volume and value originating from Ontario Members and, to the extent known by the Applicant, from Other Ontario Participants presented on a per Ontario Member or a per Other Ontario Participant basis, and
 - (ii) the proportion of worldwide trading volume and value conducted by Ontario Members and, to the extent known by the Applicant, by Other Ontario Participants presented in the aggregate for such Ontario Members and Other Ontario Participants,

presented in the required format.

Information Sharing

15. The Applicant, in reference to FX Connect, will provide and, if applicable, cause its regulation services provider to provide such information as may be requested from time to time by, and otherwise cooperate with, the Commission or its staff, subject to any applicable privacy or other laws (including solicitor-client privilege) governing the sharing of information and the protection of personal information.

Appendix 1

**CRITERIA FOR EXEMPTION OF
A FOREIGN EXCHANGE TRADING
OTC DERIVATIVES FROM
RECOGNITION AS AN EXCHANGE**

PART 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).

1.2 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.

PART 2 GOVERNANCE

2.1 Governance

The governance structure and governance arrangements of the exchange ensure:

- (a) effective oversight of the exchange,
- (b) that business and regulatory decisions are in keeping with its public interest mandate,
- (c) fair, meaningful and diverse representation on the board of directors (Board) and any committees of the Board, including:
 - (i) appropriate representation of independent directors, and
 - (ii) a proper balance among the interests of the different persons or companies using the services and facilities of the exchange,
- (d) the exchange has policies and procedures to appropriately identify and manage conflicts of interest for all officers, directors and employees, and
- (e) there are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors, officers and employees of the exchange.

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.

PART 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.

3.2 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.

3.3 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.

PART 4 ACCESS

4.1 Fair Access

- (a) The exchange has established appropriate written standards for access to its services including requirements to ensure
 - (i) participants are appropriately registered as applicable under Ontario securities laws, or exempted from these requirements,
 - (ii) the competence, integrity and authority of systems users, and
 - (iii) systems users are adequately supervised.
- (b) The access standards and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.
- (c) The exchange does not unreasonably prohibit, condition or limit access by a person or company to services offered by it.
- (d) The exchange does not
 - (i) permit unreasonable discrimination among participants, or
 - (ii) impose any burden on competition that is not reasonably necessary and appropriate.
- (e) The exchange keeps records of each grant and each denial or limitation of access, including reasons for granting, denying or limiting access.

PART 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.

PART 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.
- (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.

PART 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.

PART 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.

8.2 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.

PART 9 SYSTEMS AND TECHNOLOGY

9.1 Systems and Technology

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

- (a) order entry;
- (b) order routing;
- (c) execution;
- (d) trade reporting;
- (e) trade comparison;
- (f) data feeds;
- (g) market surveillance;
- (h) trade clearing; and
- (i) financial reporting

9.2 System Capability/Scalability

- (a) 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:
- (b) makes reasonable current and future capacity estimates;
- (c) conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;
- (d) reviews the vulnerability of those systems and data centre computer operations to internal and external threats, including physical hazards and natural disasters;
- (e) ensures that safeguards that protect a system against unauthorised 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;
- (f) ensures that the configuration of the system has been reviewed to identify potential points of failure, lack of back-up and redundant capabilities;
- (g) maintains reasonable procedures to review and keep current the development and testing methodology of those systems; and
- (h) maintains reasonable back-up, contingency and business continuity plans, disaster recovery plans and internal controls.

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.

PART 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.

PART 11 TRADING PRACTICES

11.1 Trading Practices

Trading practices are fair, properly supervised and not contrary to the public interest.

11.2 Orders

Rules pertaining to order size and limits are fair and equitable to all market participants and the system for accepting and distinguishing between and executing different types of orders is fair, equitable and transparent.

11.3 Transparency

The exchange has adequate arrangements to record and publish accurate and timely information as required by applicable law or the Foreign Regulator. This information is also provided to all participants on an equitable basis.

PART 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.

12.2 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.

12.3 Record Keeping

The exchange maintains adequate provisions for keeping books and records, including operations of the exchange, audit trail information on all trades and compliance and/or violations of exchange requirements and applicable legislation.

12.4 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.

PART 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.

PART 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.

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

PART 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 co-operate with the Commission, self-regulatory organisations, other exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.

16.2 Oversight Arrangements

Satisfactory information sharing and oversight agreements exist between the Commission and the Foreign Regulator.

PART 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).