

13.3 Clearing Agencies

13.3.1 LCH.Clearnet LLC – Notice of Commission Order – Application for Exemptive Relief

LCH.CLEARNET LLC (LCH)
APPLICATION FOR EXEMPTIVE RELIEF
NOTICE OF COMMISSION ORDER

On April 25, 2014, the Commission issued an order under section 147 of the *Securities Act* (Ontario) (Act) exempting LCH from the requirement in subsection 21.2(0.1) of the Act to be recognized as a clearing agency (Order), subject to terms and conditions as set out in the Order.

The Commission published LCH's application and draft exemption order for comment on February 20, 2014 on the OSC website at http://www.osc.gov.on.ca/en/Marketplaces_ca_20140220_rfc-app-exempt-lch-clearnet-llc.htm and at (2014) 37 OSCB 2038. A comment letter was received from the TMX Group Limited. A copy of the comment letter is posted at www.osc.gov.on.ca. We summarize below the main comments and Staff's responses to them. In issuing the Order, no changes were made to the draft order published for comment.

A copy of the Order is published in Chapter 2 of this Bulletin.

Comment	Response
<p>The commenter's principal concern is that the Commission, in evaluating applications for exemptive relief, may grant more deference to foreign regulators than it grants to other Canadian provincial regulators (e.g. U.S. regulators) in clearing agency oversight. The commenter suggests that this absence of reciprocity between Canadian and U.S. regulators creates an unlevel playing field between Canadian based and foreign clearing agencies resulting in barriers to growth for domestic entities and increased costs to Canadian market participants. It suggests that the Commission should add reciprocity to its criteria as outlined in OSC Staff Notice 24-702 Regulatory Approach to Recognition and Exemption from Recognition of Clearing Agencies (Notice 24-702).</p>	<p>During the review process of an application for clearing agency recognition or exemption from the recognition requirement, OSC staff assess the oversight regime in the home jurisdiction of the applicant and do not differentiate between non-Canadian and other Canadian provincial regulatory regimes. Notice 24-702 makes it clear that we are prepared to exempt a clearing agency if it does not pose significant risk to the Ontario capital markets and is subject to an appropriate regulatory and oversight regime in another jurisdiction by its home regulator.</p> <p>The concept of reciprocity is not a relevant factor in deciding whether to recognize or exempt a clearing agency. We do not recommend incorporating reciprocity as part of any Ontario regulatory approaches towards financial market infrastructures (FMIs). The OSC is committed to adopting international standards governing FMIs, particularly the CPSS-IOSCO's <i>Principles for financial market infrastructures</i> (PFMIs). The PFMIs require central banks, market regulators, and other relevant authorities to cooperate with each other. Specifically, "Responsibility E" of the PFMIs requires international authorities to cooperate with each other, domestically and internationally, in promoting the safety and efficiency of FMIs. Reciprocity is not consistent with the policy intent of Responsibility E.</p>
<p>The commenter is of the view that it does not seem reasonable for the Commission to grant exemptive relief from the requirement of recognition as a clearing agency in Ontario to LCH on the basis of its US regulatory status, while hesitating to grant the same exemptive relief to a Canadian clearing agency regulated by another provincial securities regulator.</p>	<p>The Commission has issued orders in the past exempting ICE Clear Canada and the Natural Gas Exchange Inc., two Canadian clearing agencies, from the requirement to be recognised as clearing agencies. The exemptions are based on our view that they do not pose systemic risk to Ontario and based on our reliance on their primary regulators, the Manitoba Securities Commission and Alberta Securities Commission, respectively. This approach that is applied to Canadian clearing agencies is consistent with our approach to LCH and other foreign exempted clearing agencies.</p>