

13.3 Clearing Agencies

13.3.1 Fixed Income Clearing Corporation – Notice of Commission Order – Application for Exemptive Relief

FIXED INCOME CLEARING CORPORATION (FICC)

APPLICATION FOR EXEMPTIVE RELIEF

NOTICE OF COMMISSION ORDER

On March 19, 2019, the Commission issued an order under section 147 of the *Securities Act* (Ontario) (**OSA**) exempting FICC from the requirement in subsection 21.2(0.1) of the OSA to be recognized as a clearing agency (**Order**), subject to terms and conditions as set out in the Order.

The Commission published FICC's application and draft exemption order for comment on January 24, 2019 on the OSC website at http://www.osc.gov.on.ca/en/Marketplaces_ficc_20190124_application-for-exemption.htm and at (2019), 42 OSCB 925. A comment letter was received from TMX Group Limited (TMX). A copy of the comment letter is posted at http://www.osc.gov.on.ca/documents/en/Marketplaces/com_20190222_tmx.pdf. 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

As a general comment, TMX states that while it does not oppose the FICC's application for exemption, the Commission should pause to consider how its rules-based approach to clearing agency regulation and granting such exemptions inadvertently undermines the interests of Canadian clearing agencies and their users.

More specifically, TMX commented that exempting foreign-based clearing agencies such as FICC combined with the Commission's embrace of prescriptive rules-based regulation of domestic financial market infrastructure providers creates a competitive disadvantage for Canadian clearing agencies. TMX notes the case of the Canadian Depository for Securities (CDS) and Canadian Derivatives Clearing Corporation (CDCC), two recognized clearing agencies that are required to adhere to NI 24-102 and CP 24-102 as well as highly prescriptive provincial recognition orders. As an example, TMX discusses the prescriptive requirements and approvals needed with regards to the CDS and CDCC rule amendments; while in contrast foreign based clearing agencies such as FICC are not burdened by the same regulatory rule approval process in their home jurisdiction.

In addition, TMX commented that if an entity designated as systemically important in its home jurisdiction and that intends on offering its full range of services in Ontario is exempt from recognition as a clearing agency, due consideration should be given to the appropriate level of oversight in the market it operates.

Response

The Commission's mandate is to provide protection to investors from unfair, improper or fraudulent practices, to foster fair and efficient capital markets and confidence in capital markets, and to contribute to the stability of the financial system and the reduction of systemic risk. The existence of different regulatory regimes is acknowledged in the CPMI-IOSCO's Principles for financial market infrastructures which requires authorities to cooperate with each other in promoting the safety and efficiency of financial market infrastructures (FMIs).

Consistent with past practices, we allow foreign-based clearing agencies (such as FICC) to enter the Ontario market under the exempted clearing agency status only when we are satisfied that doing so would not pose a significant risk to the Ontario capital market and that the foreign clearing agency is subject to a comparable regulatory oversight regime in their home jurisdiction and that the Commission has a cooperating relationship with their home regulator(s). Our approach to recognition or exemption of a foreign-based clearing agency is consistent with our approach to recognition or exemption of domestic clearing agencies. It is based largely on whether the clearing agency poses significant risk to the Ontario capital markets. To the extent the clearing agency does not pose a significant risk to the Ontario capital markets and is subject to a comparable regulatory oversight regime carried out by its home jurisdiction, we rely on the oversight of the home regulator, subject to certain terms and conditions to reduce regulatory overlap and duplication.

The scope of, and the terms and conditions imposed by, the Commission, or the determination whether it is appropriate that FICC continue to be exempted from the requirement to be recognized as a clearing agency, may change as a result of the Commission's monitoring of developments in

international and domestic capital markets, FICC's activities or regulatory status.

TMX stated that Canadian clearing agencies are sophisticated and well established. TMX continues to believe that a principles-based regulatory approach would more effectively leverage this expertise and experience, and create efficiencies in the process, while enabling regulators to maintain the necessary oversight over Canadian systemically important financial market infrastructures.

We will continue to be responsive to market evolution while ensuring that our mandate to provide protection to investors and to contribute to the stability of the financial system and the reduction of systemic risk is maintained.