

Chapter 13

SROs, Marketplaces and Clearing Agencies

13.3 Clearing Agencies

13.3.1 ICE Clear Credit LLC – Notice of Commission Order – Application for Exemptive Relief

ICE CLEAR CREDIT LLC (ICC)
APPLICATION FOR EXEMPTIVE RELIEF
NOTICE OF COMMISSION ORDER

On December 18, 2013, the Commission issued an order under section 147 of the *Securities Act* (Ontario) (Act) exempting LCH [OSC Web Editor's Correction Note dated 2014-02-06: LCH should have appeared as ICC] 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 ICC's application and draft exemption order for comment on October 24, 2013 on the OSC website at http://www.osc.gov.on.ca/documents/en/Marketplaces/ice-credit_20131008_app-exemption-recognition.pdf and at (2013) 36 OSCB 10403. A comment letter was received from the Montreal Exchange, a subsidiary of 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, only one non-substantive change was made to the draft order published for comment which defines the acronym DCO as a Derivatives Clearing Organisation in paragraph #3 of ICC's representations.

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 and than foreign regulators (e.g. U.S. regulators) grant to domestic 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 clearing agencies from the two countries resulting in barriers to growth and increased costs. Consequently, 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>As noted in OSC Staff Notice 24-072 <i>Regulatory Approach to Recognition and Exemption from Recognition of Clearing Agencies</i>, we are prepared to exempt a clearing agency if it does not pose significant risk to Ontario capital markets and is subject to an appropriate regulatory and oversight regime in another jurisdiction by its home regulator(s). During the review process of an application for clearing agency recognition or exemption from the recognition requirement, the OSC staff would assess the oversight regime in the home jurisdiction of the applicant and do not differentiate between non-Canadian and other Canadian provincial regulatory regimes. The existence of different regulatory regimes is acknowledged in the recent CPSS-IOSCO's <i>Principles for financial market infrastructures</i> that requires authorities to cooperate with each other in promoting the safety and efficiency of financial market infrastructures (FMIs). Our approach to recognition or exemption of a domestic clearing agency is consistent with our approach to recognition or exemption of foreign-based clearing agencies. It is based largely on whether the clearing agency poses significant risk to the Ontario capital markets.</p> <p>Consequently, the concept of reciprocity is not a relevant factor in deciding whether to recognize or exempt a clearing agency. However, staff will tailor the terms and conditions of recognition or exemption to recognize comparable oversight by a foreign regulator or another Canadian regulator, in order to minimize the potential duplication of regulatory effort and burden on a clearing agency.</p>

<p>The commenter is of the view that it does not seem reasonable for the Commission to grant exemptive relief to ICC on the basis of ICC's regulatory status while hesitating to provide 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., (a subsidiary of TMX Group Limited), 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 ICC and other foreign exempted clearing agencies.</p>
<p>The commenter seeks further clarity as to why the OSC approved an interim clearing exemption order for ICC with limited terms and conditions and allowed ICC to operate close to one year without a full regulatory review.</p>	<p>We note that this is referring to the fact that the Commission issued an interim exemption order for ICC so it can carry on business in Ontario while staff would complete a more detailed full review of the entity. The process is consistent to the past applications received from foreign clearing agencies and one Canadian clearing agency.</p>