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SUBMITTED ELECTRONICALLY

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The Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8

Re: LCH.Clearnet Limited – Notice and Request for Comment – Application for Recognition as a Clearing Agency by LCH.Clearnet Limited

M./Mme. Secretary:

TMX Group Limited ("TMX Group") appreciates the opportunity to comment on the Application of LCH.Clearnet Limited ("LCH") for recognition as a clearing agency pursuant to subsection 21.2(0.1) of the Securities Act (Ontario) ("OSA") and the proposed draft recognition order (the "Draft Order").

TMX Group

TMX Group's key subsidiaries operate cash and derivative markets for multiple asset classes including equities, fixed income and energy. Toronto Stock Exchange, TSX Venture Exchange, TMX Select, Alpha Exchange, The Canadian Depository for Securities, Montréal Exchange, Canadian Derivatives Clearing Corporation, Natural Gas Exchange, Boston Options Exchange, Shorcan, Shorcan Energy Brokers, Equicom and other TMX Group companies provide listing markets, trading markets, clearing facilities, data products and other services to the global financial community. TMX Group is headquartered in Toronto and operates offices across Canada (Montreal, Calgary and Vancouver), in key U.S. markets (New York, Houston, Boston and Chicago) as well as in London, Beijing and Sydney.



Recognition of Central Counterparties

In our comments on Canadian Securities Administrators (CSA) Consultation Paper 91-406 on Derivatives: OTC Central Counterparty Clearing, the TMX Group supported the Derivatives Committee's recommendation for the recognition and regulation of central counterparty clearing houses ("CCPs") by market regulators, including the requirement that in order to be recognized a CCP must comply with the CPSS/IOSCO Principles for Financial Market Infrastructures ("PFMIs").

CCPs play a pivotal role in the financial system. Their role in the management and in many cases the mutualisation of risk also results in an inevitable concentration of risk in the CCP. Robust, properly managed and well-regulated CCPs are therefore critical to financial stability. In order for Canada to fulfill its G20 Commitments we view it as essential that Canadian regulators ensure the recognition, regulation and oversight of all CCPs, including compliance with the PFMIs where applicable. We also strongly supported the Committee's recommendation that this requirement apply to all CCPs offering clearing services to a person resident or carrying on business in Canada, especially given the international nature of OTC derivatives markets and the proportion of cross border OTC transactions conducted by Canadian counterparties.

LCH Application and Draft Order

Our principal concern with respect to the Application and Draft Order is the lack of information with respect to the regulatory framework that will be applied to LCH doing business in Canada.

The Draft Order appears to rely very heavily on the continued compliance of LCH with the U.K.'s Financial Services and Markets Act 2000 ("FSMA"), and its oversight by the UK Financial Services Authority ("FSA"). Despite this reliance, there is no discussion in either the Application or the Draft Order as to whether the UK regulatory authorities oversee LCH in a way that is comparable to that of the OSC's oversight of clearing agencies. In addition, we note that there is no Memorandum of Understanding between the OSC and the FSA on the oversight of clearing agencies which operate in both jurisdictions, which we view as an important precursor to the recognition or exemption of a dually regulated financial market infrastructure.

We believe that establishing comparability of a foreign clearing agency's regulatory regime with the Canadian regulatory regime is important when recognizing or exempting foreign clearing agencies that will be doing business in Canada. First, as we mentioned in our comments above, the TMX Group believes that Canadian regulatory authorities should recognize and oversee Systemically Important Financial Infrastructures ("SIFIs") doing business in Canada. Thorough and comprehensive rules and regulations have been adopted for the recognition and oversight of systemically important CCPs in Canada, and when relying on a foreign regulatory regime for the purpose of allowing a foreign entity to do business in Ontario we would expect to see a comparability analysis between the foreign regime and the regime in Ontario in order to ensure that similar standards are



being applied. This comparability analysis should examine legislation, regulation and the terms and conditions of any relevant recognition orders or exemptions. We would suggest that reference to opinion from legal counsel as to consistency of legislation and LCH Rules is necessary but not sufficient.

Second, a comparability analysis is required to ensure that a foreign clearing agency operates on a level playing field with Canadian clearing agencies providing similar services. We submit that the regulatory regime for clearing agencies must not favour foreign agencies that may be subject to less restrictive rules and regulations than those applied to Canadian agencies. A thorough comparability analysis will determine whether clearing agencies doing business in Canada, whether foreign or Canadian, are subject to compliance requirements and regulatory obligations that are substantially the same. Comparability must address the terms and conditions of recognition orders that are issued by Canadian authorities, including those relating to governance, compliance, capital requirements and pricing of services. Going beyond the requirements of sound and prudent regulatory principles, different regulatory burdens have a direct impact on risk management, operational and commercial outcomes. For example, the terms and conditions of recognition require LCH to provide notice of any proposed rule changes whereas domestically domiciled clearing agencies are subject to publication, public comment, and approval requirements which in practice result in rule changes often taking many months to effect. It is important to ensure that a foreign clearing agency does not have a competitive advantage over a domestic clearing agency because of differences in the rules and requirements that they must meet in order to offer similar services.

This comparability of regulatory regimes is important; it is also very difficult to achieve at the present time due to regulatory uncertainty. LCH's regulatory framework is in flux on several fronts: (1) the FSA will be transferring its oversight role to the Bank of England; (2) the European Market Infrastructure Regulation seems far from being finalized; and (3) ESMA has recently suggested that Bank Identifier Codes be used instead of legal entity identifiers (LEIs) which may raise transparency and reporting issues. In Ontario, a similar degree of uncertainty exists. The closest analog in Canada to LCH with respect to derivatives and interest rate products is the CDCC, and the terms and conditions of OSC recognition of the CDCC are not yet final. There is therefore little basis for comparing the requirements that will be applied to CDCC and LCH for recognition in Ontario.

We would add a satisfactory comparability analysis can only be conducted if there is full transparency with respect to the regulatory regime that will be applied to the clearing agency. While we have requested a copy of the multilateral Cooperation Oversight Agreement in respect of LCH to which the Bank of Canada and the Bank of England are parties, we have not yet received confirmation from the Bank of Canada as to whether its terms and conditions are viewed as classified or confidential by any of the parties to the agreement. The full extent of the rules and form of oversight that will apply to LCH in Canada are therefore not available for comparison or evaluation.



Conclusion

In conclusion, we believe that it is vitally important that the OSC ensure that clearing agencies operating in Canada are subject to sufficiently high standards of regulation and supervision, including compliance with the PFMIs. We also strongly recommend that recognition and exemption regimes ensure a level playing field in Canada for foreign and domestic clearing agencies serving Canadian market participants. More particularly, any foreign clearing agencies offering similar services in Canada to those offered by domestic clearing agencies should be subject to the same standards of governance, compliance, capital requirements and pricing of services as apply to Canadian clearing agencies under their existing and prospective recognition orders, including those resulting from the Maple Application. We are concerned that the neither the information provided in the Application and Draft Order, the level of transparency with respect to rules and form of oversight, nor the current framework for the recognition of clearing agencies in Ontario, provides enough information to determine conclusively that this is the case. We recommend that comparability of regulatory regimes and comparable treatment for foreign and domestic clearing agencies operating in Ontario be made more explicit before recognition or exemptive relief is granted.

Regards,

A handwritten signature in blue ink, appearing to read "Tom Kloet".

Thomas A. Kloet
Chief Executive Officer
TMX Group Limited

TK/bg