



June 14, 2013

**BY E-MAIL: [comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca).**

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Secretary of the Commission  
Ontario Securities Commission  
20 Queen Street West  
Toronto, Ontario  
M5H 3S8

**Re: Notice and Request for Comment – Chicago Mercantile Exchange Inc. –  
Application for Exemption from Recognition as a Clearing Agency**

Dear Sir:

TMX Group Limited ("TMX Group") welcomes the opportunity to comment on the application of Chicago Mercantile Exchange Inc. ("CME") for exemption from recognition as a clearing agency pursuant to section 21.2(0.1) of the *Securities Act* (Ontario) ("OSA") and the proposed draft exemption order in respect of the CME (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 ("CDCC") 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.

#### The Need for a Consistent Regulatory Approach in Ontario

#### Absence of Reciprocity Creates Unlevel Playing Field and Competitive Disadvantage

The TMX Group supports a policy of mutual recognition or substituted compliance based on the equivalence of regulatory regimes for the purposes of regulatory recognition or exemption of non-Canadian Financial Markets Infrastructures ("FMIs"). As such, non-Canadian FMIs should be eligible for recognition or exemption based on a determination that their home-country jurisdiction provides equivalent supervision and regulation to that of the jurisdiction where they are applying to do business. We also believe that regulatory authorities are best placed to assess this equivalence between their own regimes and



foreign regimes, rather than requiring each applicant to establish equivalence on a case-by-case basis. However, TMX Group favours recognition or exemption based on regulatory equivalence but only where it is applied on a reciprocal basis.

TMX Group's principal concern with respect to the CME application and draft order arises from the fact that in the United States, non U.S. clearing agencies must be designated as derivatives clearing organizations (DCOs) and be subject to full regulatory supervision by the U.S. Commodity Futures Trading Commission ("CFTC") in order to provide clearing services in the United States. It is being proposed that CME be authorized to provide clearing services in Canada without being recognized as a clearing agency under subsection 21.2(0.1) of the OSA. This creates a competitive disadvantage for TMX Group with respect to clearing *vis à vis* its foreign competitors. The OSC should, in our view, be mindful of the uneven application of such licensing regimes, and the resulting effect on domestic markets.

Given the fact that Canadian FMIs must be fully recognized as DCOs in order to operate in the US market, we submit that in the interests of fairness US-based FMIs should face a similar requirement when seeking to operate in the Canadian market.

The TMX Group also wishes to express its disagreement with the approaches that are taken in connection with non-Canadian clearing agencies doing business in Ontario compared to the approach taken with domestic non-Ontario based clearing agencies. TMX Group is of the view that it is only logical that the OSC consistently apply mutual reliance to other Canadian provincial regulators since it is proposing to do so for non-Canadian authorities.

In our March 18, 2013 comments on the LCH application and draft order, we recently voiced our concerns about the regulatory framework proposed for LCH doing business in Canada and called upon the OSC to ensure that recognition and exemption regimes ensure a level playing field in Canada for foreign and domestic clearing agencies serving Canadian market participants. TMX Group is of the view that the exemption of CME on the proposed terms also raises significant concerns with respect to a level playing field. We respectfully submit that the OSC should be applying consistency in terms of its oversight and regulatory requirements imposed.

#### Projected Volume: an Inappropriate Criterion

TMX Group understands that differences in approach by the OSC to the proposal to exempt the CME from recognition and the proposal to recognize LCH (on terms and conditions that differ in scope from the recognition of domestic clearing agencies) is based on the respective projected volumes of business. TMX Group is of the view that regulation and supervision should not be a function of projected volume, but rather a matter of applying consistent regulation to all clearing agencies carrying on business in Ontario. To regulate otherwise is inconsistent with the very principles of transparency and fairness that constitute the basis of the G-20 commitments to strengthen the international financial regulatory system.

OSC Staff Notice 24-702 *Regulatory Approach to Recognition and Exemption from Recognition of Clearing Agencies* suggests that the OSC takes different approaches on recognition depending on the level of risk that operations present to the Ontario capital markets.

TMX Group questions the correlation made by the OSC between level of volume and level of risk. In our view, volume is not an appropriate criterion for purposes of determining the level of risk. A small volume of transactions can, in some instances, represent a significant risk. Moreover, since volumes fluctuate, revisiting a regulatory structure is not practicable in the event of a sudden increase in liquidity or concentration.



Conclusion

We believe that it is vitally important that the OSC ensure that clearing agencies operating in Ontario are subject to sufficiently high standards of regulation and supervision, thus ensuring a level playing field in Ontario for foreign and domestic clearing agencies serving Canadian market participants. We are also of the view that the OSC should, as a general matter, reconsider its approach to recognition and exemption to ensure that it does not inadvertently create a situation of unfair competition. We are concerned that the inconsistency of the current framework for the recognition of clearing agencies in Ontario may give preferential treatment to non-Canadian clearing agencies.

Our strong recommendation is that the OSC engage in a full comparative analysis of foreign regulatory regimes based on objective criteria prior to granting non-Ontario based clearing agencies recognition or exemption from recognition.

In the meantime, in light of the above, we ask that the OSC reconsider granting CME an exemption from recognition in Ontario.

Regards,

A handwritten signature in black ink, appearing to read 'Thomas A. Kloet'. The signature is fluid and cursive, with the first name 'Thomas' being the most prominent.

Thomas A. Kloet  
Chief Executive Officer  
TMX Group Limited