



Alain Miquelon
President and Chief Executive Officer
Montréal Exchange
Group Head of Derivatives Markets
TMX Group
Tour de la Bourse
P.O. Box 61
800 Victoria Square
Montréal (Québec) H4Z 1A9
T (514) 871-3525
F (514) 871-3563
Alain.Miquelon@m-x.ca

November 22, 2013

SUBMITTED BY E-MAIL:

comments@osc.gov.on.ca

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

**RE: OSC Notice and Request for Comment Regarding ICE Clear Credit LLC
Application for Exemption From Recognition as a Clearing Agency**

Dear Sir:

TMX Group Limited (“TMX Group”) welcomes the opportunity to comment on the application (the “Application”) of ICE Clear Credit LLC (“ICC”) to the Ontario Securities Commission (the “OSC”) for an order pursuant to section 147 of the *Securities Act* (Ontario) (“OSA”) to exempt ICC from the requirement to be recognized as a clearing agency in subsection 21.2(0.1) of the OSA and the proposed draft exemption order (the “Proposed Order”) which have been prepared on the basis that ICC is subject to an appropriate regulatory and oversight regime in its home jurisdiction of the United States by its regulators The Commodity Futures Trading Commission (“CFTC”) and the Securities Exchange Commission (“SEC”).

For the reasons detailed below, TMX Group believes that the Proposed Order should not be granted.

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.

ICC Application and Proposed Order

Our principal concern with respect to the Application and Proposed Order is that TMX Group believes that in evaluating applications for exemptive relief, the OSC grant no more deference to foreign regulators than (1) it grants to other Canadian provincial regulators in considering clearing agency exemptions and (2) foreign regulators grant to domestic clearing agencies. By not following this protocol, ultimately the OSC is potentially disadvantaging local capital market participants.

Unlevel Playing Field

TMX Group has previously requested that the OSC reconsider its decisions to grant exemptive relief to clearing agencies regulated in jurisdictions that do not provide similar exemptive relief to foreign clearing agencies. The OSC has responded that this is not an issue with which it is concerned as this is not one of the criteria for evaluating whether to exempt a foreign clearing agency pursuant to OSC Staff Notice 24-702 *Regulatory Approach to Recognition and Exemption from Recognition of Clearing Agencies*. TMX Group would suggest that the OSC should consider adding this factor to its criteria for recognition. As has been recognized by regulators around the world who have been working together to revise and harmonize regulations to reduce systemic risk, derivatives markets are very international. One of the objectives of the OSC is the maintenance of fair and efficient capital markets. The maintenance of fair and efficient domestic capital markets is impeded in a regulatory environment where domestic clearing agencies face barriers to growth and increased costs that their competitors (foreign clearing agencies) do not face. Limiting growth may also affect domestic clearing agencies' primary market – domestic participants – in that through limiting their growth or increasing their costs of growth relative to their foreign competitors, such clearing agencies may not realize the efficiencies and resulting cost savings or access to new markets that they may otherwise have realized in an environment with a more level regulatory playing field and that they may otherwise have passed on to the benefit of their domestic participants.

Neither the SEC nor the CFTC grant exemptive relief or lighter regulatory supervision to foreign-regulated clearing agencies. We would ask that the OSC seek to ensure that domestic clearing agencies are granted the same form of exemptive relief from clearing agency recognition in the U.S. as the OSC is seeking to provide to ICC before granting such relief to ICC or other U.S. clearing agencies.

Inter-Provincial Exemption Orders

In granting the Proposed Order to ICC, the OSC would be granting greater deference to a foreign regulator than it grants to other provincial regulators. The OSC is looking to require that certain Canadian clearing agencies regulated in other Canadian provinces

become recognized in Ontario to apply for and receive a recognition order from Ontario. It does not seem reasonable to grant exemptive relief from the requirements of registration as a clearing agency in Ontario to ICC on the basis of a clearing agency's US regulatory status, while hesitating to grant the same exemptive relief to a Canadian clearing agency regulated by another provincial securities regulator. This raises the same concerns as those resulting from an international unlevel playing field detailed above – i.e. restricted or higher cost growth, the effects of which ultimately trickle down to domestic capital market participants.

Interim Orders

TMX notes that the OSC provided ICC with an interim order granting exemptive relief from the requirement to register as a clearing agency on December 28, 2012. The conditions to which ICC was subject were quite limited and, given the recent publication of ICC's Application dated October 8, 2013, was probably granted following a quite limited review of ICC and the extent to which it may meet the criteria for exemptive relief in Ontario. The OSC has provided such interim relief to other foreign clearing agencies in the past. TMX seeks further clarity as to why a foreign clearing agency would be permitted to operate as such for nearly a year without a full regulatory review. This process raises the same concerns as those discussed above as foreign clearing agencies, even those that are large and well-established internationally, are permitted to grow with minimal regulatory burden and cost for a period of time, while domestic clearing agencies are subject to greater regulation.

In light of all of the above, TMX Group asks that the OSC reconsider granting the ICC the Proposed Order.

Regards,



Alain Miquelon