



VIA E-MAIL TO: comments@osc.gov.on.ca and consultation-en-cours@lautorite.qc.ca

February 10, 2015

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité de marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, Québec H4Z 1G3

Dear Sirs/Madams:

LCH.Clearnet Group Limited (“LCH.Clearnet” or “The Group”) is pleased to file a response to the request for comment from the Canadian Securities Administrators (“the CSA”) on proposed National Instrument 24-102, *Clearing Agency Requirements* (“Instrument”) and related proposed Companion Policy 24-102CP (“Companion Policy”).

LCH.Clearnet Overview

The LCH.Clearnet Group is the leading multi-asset class and multi-national clearinghouse, serving major international exchanges and platforms as well as a range of OTC markets.¹ It clears a broad range of asset classes including securities, exchange-traded derivatives, commodities, energy, freight, foreign exchange derivatives, interest rate swaps, credit default swaps, and euro and sterling denominated bonds and repos. LCH.Clearnet works closely with market participants and exchanges to continually identify and develop innovative clearing services for new asset classes. LCH.Clearnet Limited is recognized as a clearing agency by the Ontario Securities Commission (“OSC”) and the Autorité des marchés financiers (“AMF”) Quebec. LCH.Clearnet Limited’s SwapClear service is designated as systemically important by the Bank of Canada. LCH.Clearnet LLC is permitted to clear for Ontario-based clearing members pursuant to an OSC exemption. LCH.Clearnet Group Limited is majority owned by the London Stock Exchange Group, a diversified international exchange group that sits at the heart of the world’s financial community.

¹ LCH.Clearnet Group Limited consists of three operating entities: LCH.Clearnet Limited, the UK entity, LCH.Clearnet SA, the Continental European entity, and LCH.Clearnet LLC, the US entity. Link to Legal and Regulatory Structure of the Group:

<http://www.lchclearnet.com/about-us/corporate-governance/legal-and-regulatory-structure.asp>

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General Comments

The CSA proposed the Instrument and Companion Policy to take a unified approach to: (1) prescribing the process for recognition as a clearing agency or for exemption from the recognition requirement; (2) setting out the on-going requirements for recognized clearing agencies; and (3) implementing the CPSS-IOSCO Principles for Financial Market Infrastructure (“PFMIs”).² The development of the Instrument and Companion Policy follows the proposal of Local Rules and Companion Policies (“CP”) by AMF, the Manitoba Securities Commission, and the OSC. The provisions of the Instrument and Companion Policy build on the proposed Local Rules and CPs and the comments submitted on those consultations. LCH.Clearnet submitted comment letters on the Local Rules and CPs proposed by AMF and OSC. LCH.Clearnet is pleased that CSA has taken these comments into account in developing the proposed Instrument and Companion Policy.

LCH.Clearnet strongly supports the CSA’s decision to develop a uniform Instrument and Companion Policy applicable across Canada. Taking a uniform approach to harmonising the Canadian prudential standards for clearing agencies with international standards will assist CSA in meeting its goal of making the Canadian financial markets more robust and increasing their stability. A uniform, consistent, and transparent national Instrument and Companion Policy will also make it more cost-effective and efficient for clearing agencies to apply for recognition or exemption, and to meet on-going requirements.

Comments on Part 1 of the Instrument and Companion Policy

In LCH.Clearnet’s comment letter on the proposed Local Rules and CPs, LCH.Clearnet expressed concern about the lack of clarity on whether foreign-based recognized clearing agencies were required to comply with those documents or were permitted to continue to abide by the terms and conditions in their current recognition orders or both. The comment letter argued that requiring foreign based recognized clearing houses to comply with all of the provisions of the proposed Local Rules and CPs would be duplicative and inefficient when imposed in addition to the regulation of the home jurisdiction.

LCH.Clearnet appreciates the thoughtful clarity provided on the applicability of the proposed Instrument and Companion Policy to foreign-based clearing agencies in CSA’s response to the comments on the proposed Local Rules and CPs, and in Part 1 of the proposed Instrument and Companion Policy. Part 1 of the proposed Instrument and Companion Policy state that Part 3 of the Instrument implementing the PFMIs applies to recognized clearing agencies that operate as central counterparties (“CCPs”), central securities depositories, or securities settlement systems, and that Part 4 of the Instrument encompassing other requirements applies to all recognized clearing agencies. Part 1 of the Companion Policy also makes clear that the supplementary guidance in text

² CPSS-IOSCO Principles for Financial Market Infrastructures, <http://www.bis.org/cpmi/publ/d101a.pdf>. The Committee on Payment and Settlement Systems (CPSS) changed its name to the Committee on Payment and Market Infrastructures (CPMI) on 1 September 2014. Reference to reports published before that date use the Committee’s previous name.

boxes included in Part 3 of the Companion Policy apply to recognized *domestic* clearing agencies that are also regulated by the Bank of Canada.

CSA's response to comments on the Local Rules and CPs reiterates the statements on applicability made in Part 1 of the Instrument and Companion Policy. CSA's response also states

[t]o the extent that a recognized foreign clearing agency faces a conflict or inconsistency between the requirements of sections 2.2 [Material changes and other changes in information], 2.5 [Filing of annual audited and interim financial statements] and Part 4 [Other requirements of recognized clearing agencies] of the Instrument and the terms and conditions of its existing order, Part 6 of the Instrument provides that the securities regulatory agency may grant an exemption from a provision of the Instrument, in whole or in part, subject to appropriate conditions or restrictions.

LCH.Clearnet welcomes this flexible approach towards the oversight of foreign-based recognized clearing agencies. CSA's approach appropriately balances the needs of the Canadian securities regulators to oversee a foreign-based recognized clearing agency's activities in the provinces where it is carrying on business with the strong desire of the foreign-based clearing agency to avoid duplicative or conflicting regulation. LCH.Clearnet requests that CSA include the language quoted above in Part 1 or Part 6 of the Companion Policy or both to insure that future regulators and foreign-based recognized clearing agencies are aware of the intent of the CSA.

LCH.Clearnet also appreciates CSA's flexibility of its approach to overseeing foreign-based clearing agencies carrying on business in Canada that are not designated as systemically important. Section 2.0(3) of the Companion Policy and CSA's response to comments on the proposed Local Rules and CPs make clear that CSA anticipates that these foreign-based clearing agencies will be exempt from recognition if they are subject to a comparable regulatory regime in their home jurisdiction. In this case, CSA plans to rely on the regulation of the exempt clearing agency in the home jurisdiction including the local rules implementing the PFMLs as well as terms and conditions to the exemption related to reporting and prior notification of material changes in information provided to the securities regulatory authority. This reasonable approach will conserve resources at both the relevant Canadian securities regulator and a foreign-based clearing agency that is not systemically important.

Comment on Part 4 of the Instrument and Companion Policy

Section 4.5 of the Instrument requires a recognized clearing agency that operates as a central counterparty to dedicate and use a reasonable portion of its own capital in the default waterfall ahead of the resources of non-defaulting clearing members. Section 4.5 of the Companion Policy states that the CCP "skin in the game" should be "a reasonable proportion of the size of the CCPs' total default fund that is significant enough to attract senior management's attention." LCH.Clearnet strongly supports a skin in the game requirement for CCPs as a method to help to align the incentives of the CCP's management and shareholders with those of the clearing members. LCH.Clearnet believes that that the current structure of skin in the game in each of our default waterfalls achieves this goal.

However, LCH.Clearnet disagrees that skin in the game should be calibrated based on the size of the default fund. Three main drawbacks of this method of calibration of skin in the game are: 1) it would fundamentally change the risk profile of the CCP, creating increased risk exposure to a clearing member default at the very time that the CCP needs to be resilient; 2) it would create an incentive for a CCP to minimise the size of the default fund, for example, by increasing initial margin requirements which could have a negative impact on end-users; and 3) it could result in the CCP needing to raise additional capital at short notice potentially at a time of market stress. The default fund fluctuates in size depending primarily on the amount of risk brought into the CCP by its clearing members. In LCH.Clearnet's view, skin in the game should be calculated based in relation to a CCP's capital base as is done under European Securities and Markets Authority rules implementing the European Markets Infrastructure Regulation.

Effective Date and Transition

CSA indicates that it expects that Instrument to be in force by October 2015 with a longer transition period for certain standards including recovery or orderly wind-down plans, segregation and portability arrangements for customer positions and collateral, resumption of operations of a clearing agency's critical information technology systems with two hours following disruptive events, and tiered participation arrangements. LCH.Clearnet requests that CSA provide adequate time between the finalization of the Instrument and its effective date to permit foreign-based recognized clearing agencies to request and obtain exemptions from sections 2.2, 2.5 and Part 4 of the Instrument to the extent that the requirements of those provisions conflict or are inconsistent with the terms and conditions of its existing order of recognition.

Conclusion

We hope that our comments will assist the CSA as it develops the Instrument and Companion Policy.

Please do not hesitate to contact us regarding any questions raised by this submission or to discuss our comments in greater detail.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Susan Milligan", followed by a horizontal line.

Susan Milligan
Head of US Public Affairs