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Ontario Securities Commission  
20 Queen Street West  
22<sup>nd</sup> Floor  
Toronto, ON M5H 3S8

By email: [comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca)

Dear Sir/Madame,

**RE: LME Clear Limited application for exemption from recognition as a clearing agency**

TMX Group Limited (“**TMX Group**”) appreciates the opportunity to comment on the LME Clear Limited (“**LMEC**”) application for exemption from recognition as a clearing agency (the “**Application**”). While the Ontario Securities Commission (the “**Commission**”) has expressed the view that it is prepared to exempt LMEC because “it does not currently pose significant risk to Ontario’s capital markets and is subject to an appropriate regulatory and oversight regime in another jurisdiction by its home regulator”, we would submit that such exemptions combined with the Commission’s embrace of prescriptive rules-based regulation of domestic financial market infrastructure providers creates a competitive disadvantage.

**TMX Group**

TMX Group is an integrated, multi-asset class exchange group. TMX Group’s key subsidiaries operate cash and derivatives markets for multiple asset classes including equities and fixed income, and provide clearing facilities, data driven solutions and other services to domestic and global financial and energy markets.

The LMEC application is a reminder of how Canadian clearing agency regulation continues to be odds with clearing agency regulation in other key financial centers around the world. We appreciate that an appropriate regulatory system blends rules-based and principles-based regulation; however, compared to other key financial centers around the world, Canadian clearing agency regulation is

decidedly tilted toward rules-based regulation. For example, the Canadian Depository for Securities Limited (“**CDS**”), a recognized clearing agency by the Commission, is required to abide by National Instrument 24-102 (“**NI 24-102**”) and Companion Policy to National Instrument 24-102 (“**CP 24-102**”). These securities regulations transcribe and expand upon certain Principles for Financial Market Infrastructures (“**PFMI**”) requirements. NI 24-102 and CP 24-102 contain a mix of principles and rules. In addition, CDS must abide by recognition orders from three provincial regulators and an oversight agreement with the Bank of Canada. The provincial recognition orders are highly prescriptive and are characterized by many notification, approval, form, and reporting requirements which can be resource-intensive for CDS and go beyond international practices. In contrast, not only do our global peers such as LMEC benefit from principles-based regulation in their home jurisdiction, but they establish themselves in Canada with ease, obtaining exemptive relief from having to comply with burdensome prescriptive rules to which Canadian clearing agencies are subject. These conditions put Canadian clearing agencies and their users at a competitive disadvantage.

To illustrate, we draw the Commission’s attention to the following examples which are not exhaustive:

- a) **Fees.** Commission recognition order requirements for CDS impose prescriptive requirements for fee and rebate changes that include prior Commission approval, conditions in which re-approval of fees may be required, triennial fee reviews and benchmarking of fees and fee models in other jurisdictions. In contrast, LMEC is required to apply public disclosure principles as set out in Article 38(1) of the European Market Infrastructure Regulation (the “**EMIR**”) and follow internal governance practices described in its rulebook. The LMEC Rules stipulate that LMEC may amend its fee schedule from time to time subject to a notice to all its members published on the LMEC website.
- b) **Governance.** The Commission recognition order requirements for CDS delve into the mechanics of Board composition, clearing agency Participant committees, reporting requirements to Commission, prior approval from Commission before making changes to the structure of the Board, changes to Board committees and their mandates, prescriptive requirements around the mandate of the Risk Management and Audit Committee. In contrast, LMEC must demonstrate universal governance principles as set out in Article 26 EMIR.
- c) **Clearing Agency Rules.** To amend its own clearing member rules, among other things, CDS must follow prescriptive requirements detailed in Appendix “A” to its recognition order, otherwise known as the “Rule Protocol,” in which CDS must receive Commission approval for rule changes in a prescribed manner that identifies the type of rule as “material” or “housekeeping” and sets out the documents that must be filed, including public notice requirements, and prescribes what information must be contained in the notice of publication among other prescriptive requirements. In contrast, LMEC follows internal governance practices described in its rulebook and which have been made transparent. LMEC is not burdened by the same regulatory right of approval that CDS faces.

Canadian clearing agencies and their regulators must position themselves to respond and adapt to fast-paced, complex, global, technology-driven changes, or risk losing their relevance on the global stage. Canadian clearing agencies are sophisticated and well established. With its emphasis on partnership, a principles-based regulatory approach would more effectively leverage that expertise and experience, and create efficiencies in the process while enabling regulators to maintain necessary oversight over Canadian systemically-important financial market infrastructures.

While we do not oppose LMEC's application for exemption, we think that the Commission should pause to consider how its rules-based approach to clearing agency regulation and granting such exemptions inadvertently undermines the interests of Canadian clearing agencies and their users.

Sincerely,

A handwritten signature in blue ink, appearing to read "Deanna Dobrowsky", with a long, sweeping horizontal line extending to the right.

Deanna Dobrowsky  
Vice President, Regulatory