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February 22, 2019

Ontario Securities Commission
20 Queen Street West 22nd Floor
Toronto, ON M5H 3S8
By email: comments@osc.gov.on.ca

Dear Sir/Madame,

RE: FICC application for exemption from recognition as a clearing agency

TMX Group Limited (**"TMX Group"**) appreciates the opportunity to comment on the Fixed Income Clearing Corporation (**"FICC"**) 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 FICC 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 for Canadian clearing agencies.

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 FICC application is a reminder of how Canadian clearing agency regulation continues to be odds with clearing agency regulation in other key financial centres around the world. We appreciate that an appropriate regulatory system blends rules-based and principles-based regulation; however, compared to other key financial centres, Canadian clearing agency regulation is decidedly tilted toward prescriptive, rules-based regulation. For example, the Canadian Derivatives Clearing Corporation (**"CDCC"**) and the Canadian Depository for Securities (**"CDS"**) each of which is a recognized clearing agency by the Commission, are required to comply with 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"**). In addition, CDCC and CDS must comply with recognition orders from two and three provincial

regulators, respectively, 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 are resource-intensive for CDCC and CDS and go beyond international practices and NI 24-102. In contrast, not only do our global peers such as FICC 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.

Clearing Agency Rules and Procedures

To amend its own clearing member rules and procedures, including operational procedures and risk manuals among other things, CDCC and CDS must follow prescriptive requirements detailed in their recognition orders, otherwise known as the "Rule Protocol". The Rule Protocol sets out the documents that must be filed, including public notice requirements, and prescribes detailed information that must be contained in the notice of publication as well as other prescriptive requirements. Rule changes requiring regulatory approval captures virtually all rule changes, without an appropriate materiality threshold. In addition, once rule changes are filed, the Commission may require additional information and has no obligation to review the proposed amendments in a timely manner. By contrast, foreign clearing agencies such as FICC are not burdened by the same regulatory rule approval process in their home jurisdiction that CDCC or CDS face in Canada.

Cross-Border Cooperation and Cross-Jurisdiction Oversight

CP 24-102 provides that the Commission *may* grant an exemption from recognition "where it is not considered systemically important or where it does not otherwise pose significant risk to the capital markets". The CP 24-102 provides examples such as where a clearing agency intends to provide "limited services or facilities, thereby not warranting full regulation, such as a clearing agency that does not perform the functions of a CCP, CSD or SSS". These examples are not applicable to the Application given that FICC intends to offer its full scope of services to a number of important Canadian market participants, and as such, has the potential to introduce risk into the Canadian system. While CP 24-102 also provides that a foreign-based clearing agency that is subject to a comparable regulatory regime in its home jurisdiction may be granted an exemption from the recognition requirement "as full regulation may be duplicative and inefficient when imposed in addition to the regulation of the home jurisdiction", in our view, this decision should also be balanced with appropriate market oversight considerations. If an entity designated as systemically important in its home jurisdiction and that intends on offering its full range of services in Ontario is exempt, due consideration should be given to the appropriate level of oversight in the market it operates.

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. We continue to

believe that a principles-based regulatory approach would more effectively leverage this 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 FICC'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.

Kind regards,

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