

13.3 Clearing Agencies

13.3.1 Chicago Mercantile Exchange Inc. – Notice of Commission Order – Application for Exemptive Relief

CHICAGO MERCANTILE EXCHANGE INC. (CME)

APPLICATION FOR EXEMPTIVE RELIEF

NOTICE OF COMMISSION ORDER

On June 27, 2013, the Commission issued an order under section 147 of the *Securities Act (Ontario)* (Act) exempting CME from the requirement in subsection 21.2(0.1) of the Act to be recognized as a clearing agency (Order), subject to terms and conditions as set out in the Order.

The Commission published CME’s application and draft exemption order for comment on May 16, 2013 at (2013) 36 OSCB 5209 (as corrected in (2013) 36 OSCB 5270). A comment letter was received from TMX Group Limited. A copy of the comment letter is posted at www.osc.gov.on.ca. We summarize below the main comments and Staff’s responses to them. In issuing the Order, no amendments were made to the draft exemption order published for comment.

A copy of the Order is published in Chapter 2 of this Bulletin.

Comment	Response
<p>The commenter raised concerns about the need for a consistent regulatory approach in Ontario and, in particular, the absence of reciprocity between Canadian and U.S. regulators, which creates an “unlevel playing field”. The commenter submitted that, because Canadian clearing agencies must be fully recognized as derivatives clearing organizations to operate in the U.S. market, U.S.-based clearing agencies should face a similar requirement when seeking to operate in the Canadian market.</p>	<p>As noted in OSC Staff Notice 24-072 <i>Regulatory Approach to Recognition and Exemption from Recognition of Clearing Agencies</i>, we are prepared to exempt a clearing agency if it does not pose significant risk to Ontario capital markets and is subject to an appropriate regulatory and oversight regime in another jurisdiction by its home regulator(s). The existence of different regulatory regimes is acknowledged in the recent CPSS-IOSCO’s <i>Principles for financial market infrastructures</i> that requires authorities to cooperate with each other in promoting the safety and efficiency of financial market infrastructures (FMIs). Our approach to recognition or exemption of a domestic clearing agency is consistent with our approach to recognition or exemption of foreign-based clearing agencies. It is based largely on whether the clearing agency poses significant risk to the Ontario capital markets.</p>
<p>The commenter referred to the difference in approach to exempt or recognize a clearing agency and submitted that regulation and supervision should not be a function of projected volume.</p>	<p>We note that volume is not the sole or main indicator of the level of risk to the Ontario capital markets used by the OSC. Determining the systemic importance of a clearing agency based on the level of activity of a clearing agency in Ontario (by measuring indicators such as notional value and volume of transactions cleared for Ontario-based market participants) is one factor considered by the OSC together with other qualitative and quantitative factors, such as interconnectedness, size of obligations and the role and central importance of a clearing agency to a particular market.</p>