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

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

Dear Sir/Madame,

**RE: Nodal Clear, LLC application for exemption from recognition as a clearing agency**

TMX Group Limited (“**TMX Group**”) appreciates the opportunity to comment on the Nodal Clear, LLC (“**Nodal**”) 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 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”, we would submit that: (i) in conducting a comparison of regulatory and oversight regimes, the Commission’s comparison should be broader than Parts 3 and 4 of NI 24-102 and PFMI compliance as this does not fully reflect the regulatory regime to which Ontarian and other Canadian clearing agencies are subject; and (ii) in making its decision, the Commission should also ensure that it is generally regulating the clearing industry in a fair manner that does not unreasonably disadvantage certain entities.

### **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 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.

(i) Clearing Regulation Comparisons

Ontarian and other Canadian clearing agencies are subject to all Parts of NI 24-102 and they are subject to numerous additional terms and conditions in their recognition orders. To truly determine to what extent a foreign clearing agency is subject to comparable regulations, the regulatory regime of a foreign clearing agency should be compared against all Parts of NI 24-102 and the recognition order requirements of clearing agencies regulated in Ontario. NI 24-102 only encompasses a piece of Ontario clearing agency regulations as so many additional conditions exist only in the recognition orders. It is unclear why the Commission would only conduct a comparison of a portion of the regulatory regime rather than the entire regime. Many of the provisions that are most burdensome on an ongoing basis to Ontarian and other Canadian clearing agencies are contained in Part 2 of NI 24-102 and their recognition orders, most notably provisions relating to rule and fee reviews and approvals, which are substantially more burdensome than Commodity Futures Trading Commission (“**CFTC**”) regulations.

(ii) Clearing Industry Regulation

TMX Group has two concerns with respect to fairness in clearing agency regulation in Ontario as demonstrated by the Commission’s approach to the Application: (a) because foreign clearing agencies, such as Nodal, are permitted to make significant changes and fee changes pursuant to their less onerous home jurisdiction regulations, other Canadian clearing agencies based in or carrying on business in Ontario cannot keep up with market changes and innovate at the same pace, putting them at a competitive disadvantage; and (b) it is unreasonable to grant greater deference to a foreign regulator than another Canadian provincial securities commission.

(a) Canadian Clearing Agencies at a Competitive Disadvantage

In its review, the Commission did not compare Nodal’s home regulatory regime against Part 2 of NI 24-102. The requirements of Part 2 and related recognition order requirements that relate to rule and fee changes create significant delays to the business of Canadian clearing agencies. Subjecting Canadian clearing agencies to these delays, but not subjecting foreign clearing agencies such as Nodal to them puts Canadian clearing agencies on an uneven playing field relative to foreign clearing agencies. In Nodal’s home jurisdiction, requirements relating to fee and rule changes are substantially different and the timelines involved for most such changes are much shorter. So, neither US nor Canadian regulators subject Nodal to the sort of fee and rule oversight that clearing agencies recognized in Ontario are subject to.



The following documents and changes requiring 45 days advance notification under Part 2 of NI 24-102 would not even require notification pursuant to CFTC rules:

- amendments to user guides or manuals;
- amendments to certain operating procedures;
- many material changes to the design, operation or functionality of the clearing agency's operations or services; and
- the establishment or removal of a link (unless it requires a rule change).

Under CFTC Rule 40.6, a derivatives clearing organization must self-certify most rule changes no later than 10 business days before implementation. Certain rule changes including those relating to transfers of memberships, administrative procedures, administration, securities indices, option contract terms and trading months do not require notification or certification to the CFTC.

In comparison, although the Canadian Derivatives Clearing Corporation ("**CDCC**") is based and regulated in Quebec by the Autorité des marchés financiers ("**AMF**"), pursuant to its recognition order from the Commission (the "**CDCC RO**"), CDCC must file, among other things, its Rules (defined in the CDCC RO to include CDCC's rulebook, operating procedures or manuals, user guides or similar documents governing rights and obligations between CDCC and its clearing members or among clearing members) with the Commission for review and, where appropriate, approval and publication. The Commission requires approval where (i) the proposed CDCC changes are required to be subject to public consultation in CDCC's home jurisdiction, and (ii) the proposed changes pertain to the fixed income CCP service or any CCP service for the clearing and settlement of derivatives trades. This process generally adds at least 45 days to a rule change process and longer if any issues are raised. Even where Rule changes are not subject to approval by the Commission, CDCC must still file any documents that it files with its home regulator to the Commission related to that Rule change and provide a clear description of any new products or any legislative changes the Rule change relates to.

While this letter has not focused on a comparison against requirements to which clearing agencies based in Ontario are subject, we note that The Canadian Depository for Securities Limited faces even more rigorous oversight with respect to rule and fee changes, including public consultation on all rule and fee changes, and has faced significant delays in making certain rule and fee changes.

While Nodal's volumes may currently be small in Ontario, its services may be offered to any entity meeting its admission criteria in Ontario and, like any business, its intention is to grow. If the Commission believes that clearing agencies regulated in other provinces should be subject to the requirements of Part 2 of NI 24-102 and the rule and fee notification and approval requirements to which CDCC is subject, there is no reason why



it should not provide the same degree of oversight over a foreign clearing agency. Investors should receive the same level of regulatory protection whether they are clearing through a foreign or a Canadian clearing agency.

(b) Clearing Agencies Regulated in Other Canadian Provinces

Clearing agencies regulated in other Canadian provinces should not be subject to higher standards than clearing agencies recognized in foreign countries. The Application sets out how Nodal complies with regulations similar to Parts 3 and 4 of NI 24-102 in its home jurisdiction and in large part on the basis of this analysis, the Commission will exempt Nodal from recognition and the regulatory requirements associated with this. CDCC not only complies with regulations comparable to Parts 3 and 4 of NI 24-102, but actually complies with the entirety of NI 24-102 and is overseen by another Canadian regulator that developed this instrument together with the Commission, yet the Commission determined that CDCC still required a recognition order from the Commission containing additional terms and conditions.

Additionally, the Commission has signed a Memorandum of Understanding (the “MOU”) Respecting the Oversight of Clearing Agencies, Trade Repositories and Matching Service Utilities with the AMF and other Canadian provincial securities commissions which “outlines the manner in which the Parties intend to cooperate and coordinate their efforts in respect of the oversight of Regulated Entities [including CDCC]” and which is among other things intended to ensure “that the burden imposed on Applicant Entities and Regulated Entities under a multiple regulator system is reduced, and the duplication of efforts by the Parties is minimized.” The MOU sets out a protocol through which the Commission could rely on another provincial regulator as a lead authority.

Pursuant to the CDCC RO, CDCC must, in addition to complying with the rule and fee change requirements set out above, comply with further provisions relating to governance, access, due process, risk management, systems and technology, financial viability and reporting, operational reliability, protection of assets, outsourcing and information sharing and regulatory cooperation. CDCC must also demonstrate how it meets its public interest responsibility. It must have its risk model reviewed every four years by an independent qualified party, make available to the Commission on request, any data and information in CDCC’s possession which the Commission may need, file unaudited quarterly financial statements, file its annual budget, meet financial ratio tests, notify on systems failures and tests, and file statistical, financial, risk management and product information. Additionally, CDCC must provide a governance and fee review every three years. All of these requirements take business time and create costs.

Very few of the requirements listed above are imposed on Nodal Clear. If such conditions are seen as necessary to apply to clearing agencies regulated in other Canadian provinces, they should also be applied to clearing agencies regulated in foreign countries. Given the existence of the MOU and the greater regulatory similarities between provinces than between Canada and other countries, it is unclear why the



Commission would impose substantially lighter terms and conditions upon a clearing agency regulated in another country than one regulated in another province.

TMX Group appreciates the opportunity to provide comments with respect to this Application. We hope that you will consider our concerns and suggestions and would be happy to discuss these at greater length. Please feel free to contact Jennifer Oosterbaan, Legal Counsel, TMX Group at [Jennifer.oosterbaan@tmx.com](mailto:Jennifer.oosterbaan@tmx.com) if you have any questions regarding our comments.

Yours truly,

A handwritten signature in blue ink, appearing to read "Deanna Dobrowsky". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Deanna Dobrowsky  
Vice President, Regulatory