

13.3.3 Nodal Clear, LLC – Application for Exemptive Relief – Notice of Commission Order

NODAL CLEAR, LLC (NODAL CLEAR)

APPLICATION FOR EXEMPTIVE RELIEF

NOTICE OF COMMISSION ORDER

On July 11, 2016, the Commission issued an order under section 147 of the *Securities Act* (Ontario) (Act) exempting Nodal Clear 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 Nodal Clear's application and draft exemption order for comment on May 5, 2016 on the OSC website at http://www.osc.gov.on.ca/en/Marketplaces_xxr-nodal-exchange_20160505_nco-exemption.htm and at (2016), 39 OSCB 4382. A comment letter was received from the TMX Group Limited. A copy of the comment letter is posted at http://www.osc.gov.on.ca/documents/en/Marketplaces/com_20160602_dobrowskyd.pdf. We summarize below the main comments and Staff's responses to them. In issuing the Order, no substantive changes were made to the draft order published for comment.

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

Comment	Response
<p>TMX comments that 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, which includes compliance with the principles set out in the April 2012 final report entitled <i>Principles for financial market infrastructures</i> published by the Bank for International Settlements' Committee on Payments and Market Infrastructure (formerly the Committee on Payment and Settlement Systems) and the Technical Committee of the International Organization of Securities Commissions, as amended from time to time. The Commission should also compare Part 2 of NI 24-102 and additional terms and conditions in the recognition orders that Canadian clearing agencies are subject to.</p>	<p>When we review an application from an applicant clearing agency seeking exemption from the recognition requirement, we assess the application according to the approach outlined in the Companion Policy to NI 24-102, which includes an assessment of whether the regulation by the home regulator(s) generally results in similar outcomes in substance to the requirements of Parts 3 and 4 of NI 24-102.</p> <p>We do not compare Part 2 of NI 24-102 because both recognized and exempt clearing agencies are subject to the requirements set out in Part 2 of NI 24-102. The requirements in Part 2 of NI 24-102 for recognized clearing agencies are different from the requirements for exempt clearing agencies due to difference in the level of risk the recognized clearing agencies pose to Ontario's capital markets.</p>
<p>TMX comments that the rule and fee change requirements in Nodal Clear's home jurisdiction are less onerous and involve shorter timelines than related requirements in NI 24-102. Not subjecting foreign clearing agencies, like Nodal Clear, to the same rule and fee review and approval process to which Canadian clearing agencies are subject creates an uneven playing field causing Canadian clearing agencies to be put at a competitive disadvantage.</p>	<p>The requirements in Part 2 of NI 24-102 relating to filing of significant changes and fee changes with the Commission or other provincial securities regulatory authority only apply to recognized clearing agencies. Our approach to recognition or exemption of a clearing agency is based largely on whether the clearing agency poses significant risk to the Ontario capital markets. To the extent that the clearing agency does not pose a significant risk to the Ontario markets, and is subject to an appropriate regulatory and oversight regime in its home jurisdiction, we will generally be of the view that it is appropriate to defer day-to-day oversight to the home regulator, subject to certain terms and conditions, to reduce overlap and duplication.</p>
<p>TMX comments that it is unreasonable to grant greater deference to a foreign regulator than another Canadian provincial securities commission. In particular, TMX comments that very few of the requirements to which the Canadian Derivatives Clearing Corporation (CDCC) is subject are imposed on Nodal Clear.</p>	<p>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. The different treatments of CDCC and Nodal Clear are due to difference in the level of risk posed to our markets.</p>