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VIA E-MAIL TO: consultation-en-cours@lautorite.qc.ca

March 19, 2014

Madame Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers 800
Square Victoria, 22e étage C.P. 246,
Tour de la Bourse, Montréal (Québec) H4Z 1G3

Dear Madame Beaudoin:

LCH.Clearnet Group Limited ("LCH.Clearnet" or "The Group") is pleased to file a response to the request for comment on the proposed Autorité des marchés financiers ("the AMF" or "the Authority") Regulation 24-503 respecting Clearing House, Central Securities Depository and Settlement System Requirements Regulation (Regulation") and Draft Policy Statement to Regulation 24-503 respecting Clearing House, Central Securities Depository and Settlement System Requirements ("PS").

The LCH.Clearnet Group is the leading multi-asset class and multi-national clearinghouse, serving major international exchanges and platforms as well as a range of OTC markets. It clears a broad range of asset classes including securities, exchange-traded derivatives, commodities, energy, freight, foreign exchange derivatives, interest rate swaps, credit default swaps, and euro and sterling denominated bonds and repos. LCH.Clearnet works closely with market participants and exchanges to continually identify and develop innovative clearing services for new asset classes.[1]

[1] The Group consists of three operating subsidiaries: LCH.Clearnet Limited, LCH.Clearnet LLC, and LCH.Clearnet SA.

LCH.Clearnet Limited has a temporary exemption in place from the requirement to be recognised as a clearing house, granted by the Authority to offer SwapClear and RepoClear clearing services for Québec-resident clearing members. An application for recognition as a clearing house under Section 12 of the Derivatives Act in Québec is pending.

On September 10, 2013, the Ontario Securities Commission ("OSC") issued an order recognizing LCH.Clearnet Limited as a Clearing Agency to offer SwapClear, RepoClear, EnClear and Nodal clearing services to Ontario-resident clearing members. The ForexClear service is also available to Ontario-resident clearing members. The Bank of Canada has designated the SwapClear service as systemically important. LCH.Clearnet Limited is supervised as a Recognised Clearing House by the Bank of England and is registered with the Commodity Futures Trading Commission ("CFTC") as a Designated Clearing Organisation ("DCO").

LCH.Clearnet Group Limited is majority owned by the London Stock Exchange Group (LSEG), a diversified international exchange group that sits at the heart of the world's financial community.[2]

The Authority has proposed Regulation 24-503 in order to adopt global standards for Québec clearing houses with the aim of meeting its G-20 commitments and reinforcing Canada's financial stability framework through the implementation of OTC derivatives reforms.

The proposed Regulation sets out the requirements for clearing house recognition and exemption from recognition as well as on-going requirements for recognised clearing houses that act as, or perform the services of, among other things, a Central Counterparty Clearing House ("CCP"). These requirements are largely based on international standards applicable to financial market infrastructures ("FMIs") developed jointly by the Committee on Payment and Settlement Systems (CPSS) and the Board of the International Organisation of Securities Commissions (IOSCO). In particular the proposed Regulation and PS incorporate newly strengthened international standards governing FMIs set out in the CPSS-IOSCO report *Principles for Financial Market Infrastructures (PFMIs)*[3]. The Bank of England has stated that the PFMIs form the basis for its regulatory framework, and that the requirements and rules within that framework are used to supervise LCH.Clearnet Limited and other Recognised Clearing Houses in the United Kingdom. LCH.Clearnet LLC has opted to be regulated by the CFTC under Subpart C of Part 39 of the CFTC rules. These rules, in combination with Subparts A and B of Part 39 of the CFTC Rules, implement the PFMIs.[4]

LCH.Clearnet LLC has submitted an application for recognition to the Commission. LCH.Clearnet LLC is registered with the CFTC as a DCO.

LCH.Clearnet SA is registered with the CFTC as DCO, is regulated as a credit institution by a regulatory college of the market regulators and central banks of France, the Netherlands, Belgium and Portugal, and is supervised as a Recognised Overseas Clearing House by the Bank of England. LCH.Clearnet Limited and LCH.Clearnet SA are subject to the European Markets Infrastructure Regulation ("EMIR") and have submitted applications for re-authorization. Final action on these applications is expected in the first half of 2014.

[2] LSEG is headquartered in London, United Kingdom with significant operations in Europe, North America and Asia, and operates a broad range of international equity, fixed income and derivatives markets, including: London Stock Exchange; Borsa Italiana; MTS, and Turquoise; post trade and risk management, including CC&G, the Rome headquartered CCP and Monte Titoli, the European settlement business; and is majority owner of the leading multi-asset global CCP, LCH.Clearnet Group. LSEG operates the EMIR authorised trade repository, UnaVista, and offers an extensive range of real-time and reference data products, including Sedol, Proquote and RNS, as well as access to over 200,000 international equity, bond and alternative asset class indices, through the world leading index provider, FTSE International. LSEG is also a leading developer of high performance trading platforms and capital markets software. In addition to the Group's own markets, over 30 other organisations and exchanges around the world use the Group's MillenniumIT trading, surveillance and post trade technology.

[3] The regulatory framework, and the requirements and rules within that framework used by the Bank of England to supervise LCH.Clearnet are consistent with the PFMIs. *The Bank of England's Approach to the Supervision of Financial Market Infrastructures at page 5 (April 2013).*

[4] See 7 CFR 39.40.

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Part 2 of the proposed Regulation and PS would apply to LCH.Clearnet Limited as a clearing house exempted from recognition. The proposed Regulation and PS would apply in their entirety to LCH.Clearnet Ltd if the Authority determines to grant its application for recognized clearing house status under Section 12 of the Derivatives Act.

General Comments

LCH.Clearnet strongly supports the Authority's goal of making financial markets more robust and increasing the stability of financial markets by harmonising the Canadian prudential standards for clearing houses with international standards. The proposed Regulation to harmonize the regulatory framework meets the Authority's goal of strengthening the oversight of Québec's OTC derivatives market.

A globally consistent regulatory regime will help to ensure that there are no opportunities for regulatory arbitrage as well promote a "level playing field" for FMIs globally. Based on LCH.Clearnet's initial review of the proposed Regulation, we have not identified any significant differences between the proposed Regulation and the PFMIs. However, LCH.Clearnet continues to analyze some of the more complex proposed Regulations.

LCH.Clearnet is very concerned that the proposed Regulation and PS do not provide clarity on whether foreign based recognized clearing houses are required to comply with all of the new provisions or may meet those requirements under the "notice and approval protocol"[5] adopted by the Authority for the clearing house. Requiring foreign based recognized clearing houses to comply with all of the provisions of the proposed Regulation and PS would be duplicative and inefficient when imposed in addition to the regulation of the home jurisdiction. Of course, LCH.Clearnet understands that before permitting a foreign based recognized clearing house to follow this approach, the Authority must first determine that the regulatory framework in the home jurisdiction is consistent with the PFMIs, agree a Memorandum of Understanding (MOU) with the home country regulator concerning regulatory cooperation related to the supervision and oversight of regulated entities that operate in both the home country and Canada, and, importantly, impose terms and conditions, including reporting requirements, necessary for the Authority to oversee the foreign based recognized clearing houses's activities in Québec . Adoption of this approach by the Authority would permit LCH.Clearnet Limited to meet the requirements of the proposed Regulation and PS by complying with the order of recognition once granted by the Authority since the Bank of England supervises LCH.Clearnet Limited in a manner that is consistent with the PFMIs, the Authority has an MOU with the Bank of England, and the Authority has imposed interim terms and conditions, including reporting requirements, on LCH.Clearnet Limited in its interim order and is expected to impose appropriate terms and conditions in a recognition order if it determines to issue an order recognizing LCH.Clearnet Limited as a clearing house.

[5] The term "notice and approval protocol" is defined in proposed Regulation 2.2(1) to mean "a protocol or procedure, forming part of the terms and conditions of a clearing house's, a central securities depository' s or a settlement system's recognition by the Authority, that governs, among other things, providing notice to the Authority of a significant change."

The approach that LCH.Clearnet advocates also would be consistent with the regime that will be applicable to Québec -based clearing houses that want to provide clearing services in the European Union. Article 25 of EMIR describes a process for recognition of third-country CCPs. The European Securities and Markets Authority may recognise a third country CCP where the following conditions are met:

1. The European Commission has adopted an implementing act determining:

    - that the legal and supervisory arrangements of the third country ensure that CCPs authorised in that third country comply with legally binding requirements which are equivalent to the requirements set out under Title IV of EMIR;

    - that those CCPs are subject to effective supervision and enforcement in that third country on an on-going basis; and

    - that the legal framework of that third country provides for an effective equivalent system for the recognition of CCPs authorised under third country legal regimes. The CCP is authorised in the relevant third country, and is subject to effective supervision and enforcement ensuring full compliance with the prudential requirements applicable in that third country;

2. The CCP is authorised in the relevant third country, and is subject to effective supervision and enforcement ensuring full compliance with the prudential requirements applicable in that third country;

3. Co-operation arrangements have been established with the relevant competent authorities of the third country; and

4. The CCP is established or authorised in a third country that is considered as having equivalent AML / CTF systems to the Union.

Finally, LCH.Clearnet believes the suggested regulatory approach in relation to foreign (recognised or) exempted clearing houses in Québec would function appropriately for the activity conduced with Québec -resident participants.

Specific Comments to Part 2 – Clearing House Recognition or Exemption from Recognition

Proposed Regulation 2.2 describes the requirements applicable to "significant changes" and fees changes. LCH.Clearnet appreciates the inclusion in proposed Regulation 2.2 of alternative means of compliance based on the "notice and approval protocol" of the recognized clearing house. LCH.Clearnet understands the definition of this term to include the terms and conditions in the clearing house's recognition order. This interpretation seems to be consistent with the footnote to PS 2.2(2), which states that a clearing house's recognition order can also relieve the clearing house from some of the requirements to seek prior approval for the implementation of a significant change. LCH.Clearnet urges the Authority to extend this concept to the requirement under proposed

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Regulation 2.5 on the filing of interim financial statements by aligning the Authority's requirements with those of home country regimes that do not require interim financial statements to be audited.

Comments to Part 3 – On-going requirements applicable to recognized clearing houses

Proposed Regulation 3.2(7)(d) requires a clearing house's chief compliance officer (CCO) to prepare and certify an annual report in accordance with Québec Securities legislation. LCH.Clearnet believes that the requirement could impose significant effort and cost on a clearing house registered in multiple jurisdictions. As an alternative, LCH.Clearnet suggests that the Authority craft a requirement for recognized foreign clearing houses that provides similar information and leverages existing reports such as the clearing house's PFMI disclosure document.

Proposed Regulation 3.2(13) would require a recognized clearing house to (a) clearly disclose to relevant stakeholders its major decisions; and (b) disclose on its website a major decision that has a broad market impact. Before a major decision that has a potential broad market impact is published on a clearing house's website, the clearing house should be permitted to make a case for non-publication on the grounds of possible negative impact to financial stability in any of the jurisdictions in which it operates. The publication of such a decision should be made only with the regulatory approval of the relevant home state regulator and regulators of any other impacted jurisdictions.

Additionally, as the Authority will be aware, in connection with any new enterprise, there may be several board resolutions taken, and the initial one of these is typically taken at the commencement of the enterprise, when it is often uncertain that the matter will ultimately proceed to implementation. For instance, if a clearing house intends to embark upon a corporate acquisition, or begin clearing in a new jurisdiction, the consent of the board is typically sought in order to commence exploratory negotiations, or jurisdictional due diligence. It is often only at a much later stage that one could say that a "decision" has been made by the Board that is determinative of the clearing house actually embarking on the new initiative. The publication of Board resolutions prior to such determinative decision would be confusing and potentially misleading or market-moving (especially for a clearing house that is part of a listed group), and likely to serve as a deterrent to open discussions amongst Board members as to possible initiatives. Therefore, it seems to LCH.Clearnet that in interpreting proposed Regulation 3.2(13), it would make sense that the disclosure requirement refers to the publication of the determinative decision of the Board, which in most instances is likely to be best served through a publication of the implementation details.[6]

Proposed Regulation 3.13(3) introduces a requirement for a clearing house to include in its rulea and procedures the order in which different types of financial resources would be used to cover losses, and the order in which different types of resources would be used to meet liquidity pressures. LCH.Clearnet considers that, unlike the order of the use of resources in the default waterfall to cover

[6] This would also be consistent with the section of the PFMIs relating to this requirement. Specifically, 3.2.18 of Principle 2 (*Governance*) states that "Without prejudice to local requirements on confidentiality and disclosure, the FMI should clearly and promptly inform its owners, participants, other users, and, where appropriate, the broader public, of the *outcome* of major decisions, and consider providing summary explanations for decisions to enhance transparency *where it would not endanger candid board debate or commercial confidentiality.*" [emphasis added]

losses, it is not practicable for a clearing house to pre-commit to use particular liquidity resources in a specific order. The use of various resources to meet time–sensitive liquidity needs will depend on the detail of the default situation: for instance, the choice of assets to liquidate may depend on the defaulting member's obligations, and the choice of when and how to liquidate assets may depend on market conditions.

In addition, LCH.Clearnet notes that the inclusion of a strict hierarchy in publicly-disclosed rules, or even in rules disclosed to members, could make the recognized clearing house vulnerable to gaming by market participants.

For both these reasons, LCH.Clearnet suggests that a recognized clearing house's liquidity resources and plan for use of those resources remain confidential, or be disclosed only at a very high level.

On determining the sufficiency of liquid net assets at **proposed Regulation 3.15(3),** LCH.Clearnet suggests that the Authority include the last sentence of the PFMI key consideration 15.3 in the final Regulation in order to clarify that equity held under international risk-based capital standards can be included where relevant and appropriate to avoid duplicate capital requirements.

LCH.Clearnet is concerned that the requirement of **proposed Regulation 3.16(4)** to publicly disclose investment strategies could jeopardise a recognized clearing house's ability to invest large amounts of cash on a daily basis. If participants in the market know the recognized clearing house's strategy, they could adjust their books to take advantage of the clearing house's flow. LCH.Clearnet, therefore, suggests that the investment strategy should only be required to be disclosed at a high level and, in line with the PFMIs, only to participants rather than publicly on its website.

Proposed Regulation 3.17(5)(e) would require a clearing house to promptly notify the Authority of any material systems failure, malfunction or delay or other incident disruptive to the clearing house's operations, or any breach of data security, integrity or confidentiality, and provide to the Authority a post-incident report that includes a root-cause analysis as soon as practicable. LCH.Clearnet suggests that the Authority amend proposed Regulation 3.17(5)(e) to provide that a foreign based recognized clearing house can meet this requirement in the manner described in the terms and conditions of its recognition order or "notice and approval protocol."

In relation to **proposed Regulation 3.17(8) and Regulation 3.17(9)**, LCH.Clearnet agrees that it is important for a recognized clearing house to share information or technology requirements regarding interfacing with or accessing the clearing house and testing facilities with its participants. However, LCH.Clearnet firmly believes that the requirement to publicly disclose should not apply to detailed proprietary information.

LCH.Clearnet suggests that the Authority amend **proposed Regulation 3.17(11)(b)** to provide that a foreign based recognized clearing house can meet this requirement in the manner described in the terms and conditions of its recognition order or "notice and approval protocol." LCH.Clearnet also recommends that the Authority limit the public disclosure requirement at **proposed Regulation 3.17(11)(c)** to non-sensitive information that is not proprietary in nature.

Proposed Regulation 3.23(5) requires a clearing house, amongst other things, to inform the Authority of any changes to its rules and procedures. LCH.Clearnet proposes it provide such information to the extent required by its recognition order or "notice and approval protocol" and in the manner described in that document. In any event, the requirement should be limited to services over which the Authority imposes its jurisdiction, i.e., the services of a clearing house covered by the terms and conditions of the recognition order.

LCH.Clearnet's responses to the specific questions raised in the document

Systemically Important Clearing Houses to Quebec

Question 1: Are there other factors that could be considered by the Authority in determining the systemic importance of a clearing house, central securities depository or settlement system to Québec capital markets? If so, please describe such factors and your reasons for including them.

LCH.Clearnet agrees with all the factors set out. LCH.Clearnet believes that the criteria could usefully be analyzed with reference to the currencies in which a given FMIs' obligations are denominated, not least because the effects on the wider Canadian financial system may depend, for example, on the value of an FMI's Canadian Dollar-denominated transactions.

We would also suggest that consideration is given to any linkages that clearing houses may have, including instances in which they assume exposure to one or more other CCPs, and to how the CCP manages such exposures.

In addition, LCH.Clearnet suggests that the Authority also consider any risk exposure of the clearing house to counterparties that are not Québec residents but that are systemically important to Québec residents.

LCH.Clearnet notes that the proposed Regulations do not include a process for a clearing house to appeal the Authority's determination of systemic importance, or to apply for reassessment. Reassessment may be appropriate in the event of a significant expansion or decline in business. LCH.Clearnet suggests that it would be appropriate to make a review process available to clearing houses in the proposed Regulations.

Segregation and Portability

Question 2: Do you agree with the current drafting approach of section 3.14 of the Regulation, ie, requiring all CCPs to meet Principle 14 in its entirety (without referencing the alternate approach), and granting exemptions on a case-by-case basis to those CCPs for which the alternate approach is appropriate?

LCH.Clearnet fully agrees with the current drafting approach of section 3.14 of the proposed Regulations. LCH.Clearnet's client clearing arrangements fulfil these proposed Regulations as currently written. LCH.Clearnet would like to recommend that **proposed Regulation 3.14.4(a)(ii)** be amended in the final Regulations to say "and/or" rather than "or" to allow for the possibility that a

clearing member clear for a combination of clients some of whom are in individual accounts while others are in omnibus accounts.

Question 3: Should all CCPs serving the Canadian cash markets be able to avail themselves of the alternate approach to implementation of Principle 14? How could such CCPs demonstrate that customer assets and positions are protected to the same degree envisioned by Principle 14?

LCH.Clearnet does not provide clearing services for the Canadian cash market.

In relation to how a CCP could demonstrate that customer assets and positions are protected to the same degree envisioned by Principle 14, while ultimately the protection envisioned by Principle 14 can only be proven by outcomes following a real default, CCPs can demonstrate the efficacy of their arrangements through a combination of disclosure to regulators and participants of: (i) the nature of the information held in respect of individual clients; (ii) the roles and responsibilities of surviving participants under default scenarios; and (iii) the processes and procedures to be followed by the CCP and its surviving participants in these circumstances. Further, where the CCP is obliged to conduct firedrills (testing of the default rules and procedures) which test default management processes, those enabling portability of the correct sets of positions and related collateral should also be tested.

Two Hour Timeframe for Resumption of Critical Information Technology Operations

Question 4: What are a clearing house's, central securities depository's or settlement system's current abilities and future prospects to meet the objective of recovering and resuming critical systems and processes within two hours of a disruptive event? Should recovery- and resumption-time objectives differ according to critical importance of markets?

LCH.Clearnet seeks to provide secure and efficient clearing services to clearing members and the markets in which the clearing house operates. To meet this goal, it is crucial that the highest priority be given to maintaining the continuity of clearing services. In support of this priority, LCH.Clearnet seeks to ensure the availability of its technical infrastructure, critical business applications and activities, office facilities and staff, in line with our regulatory obligations and in order to protect the interests of clearing members and its cleared markets.

LCH.Clearnet's business continuity arrangements are comprised of a set of recovery plans for key support services and critical business units.

LCH.Clearnet does not believe that recovery and resumption-time objectives should differ from market to market. This view is based on the fact that LCH.Clearnet considers all of the markets that it clears as critical to its function as a CCP. LCH.Clearnet therefore treats all of its market as critical.

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Tiered Participation

Question 5: To what extent can a CCP identify and gather information about a tiered (indirect) participant?

LCH.Clearnet primarily uses a principal-to-principal model of clearing participation, which means that LCH.Clearnet has no direct exposure to the default of a participant's client. Once authorised under EMIR, LCH.Clearnet Ltd will offer participants Individual (ISA) or Omnibus Segregated Account (OSA) accounts for their customers. LCH.Clearnet offers the CFTC-recognised Futures Commission Merchant (FCM) model of clearing participation to participants that have US-based clients. Should a clearing participant using the FCM model default, LCH.Clearnet will – under advice and approval from the CFTC – port the participant's clients to another FCM clearing participant.

CCPs generally, and LCH.Clearnet's OTC clearing services specifically, are able to gather sufficient information about their indirect participants to be able to manage the risks they pose. Under EMIR, indirect participants are referred to as clients, and there is in fact a further tier of indirect clients for whom clearing arrangements must be made available. Focussing on clients, and in the case of swaps transactions, CCPs will typically see the legal counterparty (LEI) on both sides of a transaction, and be able to route the transaction accurately into the relevant position account of any indirect participant (Client) involved. Based on the level of segregation selected by the client, this gives rise to an assessment of the liability represented by the client's positions. Under EMIR, where the client has elected for the 'individual client segregation' defined by EMIR Article 39(3), the CCP is then required to record specific collateral posted in support of that liability for its exclusive coverage. Otherwise, with omnibus arrangements, the CCP must record a value claim on a wider client collateral pool.

As a result, in respect of both collateral and positions, LCH.Clearnet has sufficient information to identify, monitor and manage risks such as position concentrations at the level of the tiered participant.

Question 6: In Canada, what types of risks (such as credit, liquidity, and operational risks) arise in tiered participation arrangements between customers and direct participants or between customers and other intermediaries that provide clearing services to such customers?

LCH.Clearnet is not aware of any risks specific to Canadian market structure that arise in tiered participation arrangements. The risks that arise in all jurisdictions under such arrangements have been addressed and mitigated through the introduction of regulation that protects CCPs, clearing members and clients from the risks involved.

Question 7: How can a clearing house, a central securities depository or a settlement system properly manage the risks posed by tiered participation arrangements?

A clearing house can properly manage the risks posed by tiered participation arrangements with two layers of controls. First, the clearing house must gather sufficiently detailed information regarding the breakdown of a direct participant's (clearing member's) customer activity so that it can identify relationships and identify positions at the indirect participant level. Second, it must act on this

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information within a risk policy framework that identifies, signals and monitors risks and risk concentrations and which, where appropriate, provides incentives (such as margin multipliers) for participants to reduce these risks and concentrations. In the period before these incentives influence member behaviour, the measures will generate additional resources to help the clearing house manage the risk.

Effective Dates and Transition

Question 8: Are the above transition periods appropriate? If yes, please give your reasons. If not, what alternative transition periods would balance the CPSS-IOSCO's expectation of timely implementation of the PFMIs and the practical implementation needs of our markets?

LCH.Clearnet believes that the transitions periods are appropriate.

Conclusion

We hope that our comments will assist the Authority in its considerations, and we would like to reaffirm our openness to further dialogue as the Authority finalizes its Regulations.

Please do not hesitate to contact us regarding any questions raised by this submission or to discuss our comments in greater detail.

Yours sincerely,

Lisa Rosen
Group Head of Compliance and Public Affairs