ANNEX B

Summary of comments on proposed National Instrument 24-102 *Clearing Agency Requirements* and related Companion Policy 24-102CP (the "CP") (as published in the 2014 Documents), and CSA general responses to comments

1. Theme/question[1]	2. Summary of comments	3. General responses
Principles-based approach	**1.** Commenters are generally pleased that the proposed rule is now a uniform rule across Canada. Certain commenters also prefer the CSA's more principles-based approach to incorporating the PFMIs into Part 3.	The CSA appreciates the comments, and agrees that taking a principles-based approach to adopting the PFMIs in the Instrument aligns better with the approaches taken in other foreign jurisdictions.
	2. A commenter argues that the Instrument does not adequately take a principles-based approach throughout the entirety of the Instrument. Rather, the commenter suggests that sections 2.2 and 2.5 and Part 4 of the Instrument impose inflexible requirements that would make it difficult for a clearing agency to evolve in a timely manner and be appropriately responsive to industry changes and participant needs. Further, the commenter asserts that such requirements are inconsistent with standards imposed in other countries.	We do not believe that sections 2.2 and 2.5 and Part 4 impose inflexible requirements or are inconsistent with standards imposed in other countries. However, as further discussed in this chart, we have removed or adjusted certain provisions, while maintaining others, to ensure that Canadian markets are appropriately regulated. Moreover, we note that each securities regulatory authority maintains the ability to impose additional requirements through terms and conditions of recognition or exemption to deal with specific circumstances.
Level playing field: exemption of foreign-based clearing agencies from recognition, and compliance by *recognized* foreign-based clearing agencies with the Instrument.	**3.** A commenter asserts that the Instrument holds domestic clearing agencies to a higher standard than foreign-based clearing agencies that may be exempted from the requirements of the Instrument that go beyond the PFMI standards. The commenter argues that subjecting foreign-based clearing agencies to different standards than their domestic counterparts would lead to a form of regulatory arbitrage, where clearing participants could choose their clearing agency based on the regime that has the most flexibility and that can more easily respond to participant needs. (See also comments below related to compliance by a recognized foreign-based clearing agency, and certain comments made in relation to requirements of Part 4.)	The decision to exempt a foreign-based clearing agency that is carrying on business in a jurisdiction of Canada from the recognition requirement is primarily based on two factors: (i) the clearing agency is subject to comparable regulation in its home jurisdiction and (ii) the nature and scope of the clearing agency's business activities in the local jurisdiction are not systemically important to the local jurisdiction's capital markets. With respect to (i) above, both the Parts 3 and 4 requirements would be considered. We also note that many jurisdictions do impose requirements that go beyond the PFMIs, which are similar to provisions in Part 4. While some changes to Parts 2 and 4 are proposed, we do not believe that domestic clearing agencies are, or would be, at a competitive disadvantage by adhering to requirements in the Instrument that

[1] A reference to a provision (i.e. Part, section, subsection, paragraph, etc.) is a reference to a provision of the proposed Instrument, unless otherwise indicated. Defined terms used in this summary table, which are not otherwise defined herein, have the meanings given in the Notice.

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		are similarly found in comparable international regulations.
	4. A commenter supports the revised approach to requiring recognized foreign-based clearing agencies to comply with the Instrument. It requests that the CSA's responses to comments on the Local Rules and Local CPs (as described in the 2014 Notice) on this issue be included in the CP to the Instrument, so future regulators and recognized foreign-based clearing agencies are aware of the CSA's intended flexible application of the Instrument to recognized foreign-based clearing agencies.	We have included additional explanatory guidance in the CP, which generally draws on the discussion in the 2014 Notice. In particular: • In Part 3 of the CP, we added text to confirm that Part 3 is consistent with a flexible and principles-based approach to regulation. • With respect to a recognized foreign clearing agency that is subject to requirements in its home jurisdiction, we do not believe that compliance with Part 3 will be a burden because of the principles-based approach to incorporating the PFMIs. As such, a recognized foreign clearing agency should not experience duplication and inefficiency of cross-border regulation. However, to the extent that a recognized foreign clearing agency faces a conflict or inconsistency between the requirements of sections 2.2 and 2.5 and Part 4 and the requirements of the regulatory regime in its home jurisdiction, and such conflict or inconsistency causes a hardship for the clearing agency, we may consider granting an exemption from a provision of the Instrument, subject to appropriate conditions or restrictions. We added a Part 6 to the CP to include our views expressed above.
	5. A commenter argues that exempting a foreign-based clearing agency (both recognized and exempt) from certain requirements of the Instrument dilutes the meaning of "recognized clearing agency" and could confuse investors. The commenter also asserts that this may distort investor assumptions that clearing agencies recognized in Canada are subject to the Instrument and that they may rely upon regulators monitoring compliance with this Instrument.	There are two distinct and sequential threshold regulatory decisions that are made when a foreign-based clearing agency decides to carry on business in a local jurisdiction. First, we must decide whether to recognize the clearing agency or exempt it from the recognition requirement. As the CP describes (and as discussed above in our response to comments no. 3), the decision by a securities regulator to recognize or exempt a foreign clearing agency is based on whether it is systemically important to the

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		jurisdiction's capital markets and whether it is subject to comparable regulation by another regulatory body. Where the entity is systemically important to a local jurisdiction's capital markets – and even though it is subject to comparable regulation in its home jurisdiction – it may nonetheless be appropriate to recognize it. The intention is that such an entity would be directly regulated in respect of matters that are *directly* relevant and important to the local jurisdiction's capital markets. Second, if we determine that a foreign clearing agency should be recognized, we must determine the scope of our regulatory oversight. We tailor the recognition order to focus on key areas that pose material risks to the jurisdiction's markets and to rely, where we can, on the current regulatory requirements and processes to which the entity is already subject in its home jurisdiction. A *recognized* foreign-based clearing agency will only be exempted from requirements of the Instrument if it is subject to home regulation that achieves a similar outcome. If it is determined that the entity is subject to a comparable regulatory regime in its home jurisdiction (including requirements that would result in similar outcomes to the requirements of Parts 3 and 4), its recognition order may require that it comply with the requirements of the foreign regime on an ongoing basis. Terms and conditions of a recognition decision that require the foreign clearing agency to report information to a Canadian securities regulatory authority may vary among foreign clearing agencies that are recognized. Among other factors, they will depend on whether we have entered into an agreement or memorandum of understanding for sharing information and cooperation with the home regulator. We have made changes to section 2.0 of the CP to reflect some of the discussion above.
	6. A commenter suggests simplifying and clarifying the process for exempting foreign-based clearing agencies, through a series of jurisdiction-level comparability determinations.	The CP sets out a general framework for determining whether we would recognize or exempt a clearing agency under securities legislation. See section 2.0 of the CP.

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		While we agree that a simple and clear exemption process is preferable, regulators require some flexibility in considering whether to exempt a foreign-based clearing agency or not. It is likely that each application by a clearing agency will be unique and require an assessment of factors or circumstances on a case by case basis, including the regulatory regime that the clearing agency is subject to in its home jurisdiction.
Enforcement approach to Canadian clearing agencies	**7.** A commenter notes that, given that Canadian clearing agencies may be subject to regulation by one or more provincial regulators as well as the Bank of Canada (**BOC**), the regulatory approach to enforcing applicable standards should be made clear to participants, in respect of the following: • nominating a lead regulator for Canadian clearing agencies, with the BOC as lead for systemically important infrastructures; • specifying the process, objectives and outcomes of regulatory oversight, as conducted by the BOC vs. CSA; and • requiring public or private audits of clearing agency compliance with national or international standards.	The CSA regularly coordinates its activities to oversee clearing agencies, including with the BOC in respect of clearing and settlement systems that have been designated as systemically important by the BOC under the *Payment Clearing and Settlement Act* (**designated systems** or FMIs). The BOC and relevant CSA recognizing provincial securities regulators in British Columbia, Ontario and Québec have entered into a *Memorandum of Understanding Respecting the Oversight of Certain Clearing and Settlement Systems* dated March 19, 2014 (BOC-CSA MOU). The purpose of the BOC-CSA MOU is to improve the efficiency and effectiveness of the oversight of designated systems. The BOC-CSA MOU provides a mechanism for mutual cooperation, coordination and assistance in carrying out their respective oversight responsibilities in respect of the designated systems, and formalizes current cooperative arrangements among the parties. In addition, the CSA members work cooperatively together to coordinate their oversight efforts of clearing agencies and trade repositories (TRs). The CSA is currently finalizing a memorandum of understanding (CSA MOU) among participating CSA jurisdictions that regulate clearing agencies and TRs to formalize their current cooperation arrangements using a modified lead regulator model. Clearing agencies that are under the jurisdiction of certain CSA members are already subject to periodic assessments against the requirements of the terms and conditions contained in their recognition or exemption decisions. CSA regulators intend to continue this practice. We will periodically assess

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		compliance with the Instrument and require recognized clearing agencies to perform self-assessments against the requirements of the Instrument. Although self-assessments are generally not independently audited, securities regulatory authorities have the power to conduct on-site inspections and request any information or documentation from the clearing agency. All oversight programs will be shared and coordinated pursuant to the BOC-CSA MOU and, once finalized, the CSA MOU. Notwithstanding the above, while CSA regulators will make every effort to minimize regulatory burden for regulated entities, certain regulators may have different responsibilities under their governing legislation and respective regulatory mandates, and may need to deal with specific circumstances in a different manner which may necessitate additional direct oversight.
PFMI Disclosure Framework Document	**8.** A commenter submits that the requirements in relation to the PFMI Disclosure Framework Document, which is relevant in a number of contexts in the Instrument (see sections 1.1 (definitions), 2.1 and 2.2 and PFMI Principle 23), should be delayed until discussions are finalized and regulatory expectations with respect to the format, content and level of detail required are clear.	The CSA continues to monitor international developments related to the PFMI Disclosure Framework Document. We note that CPMI-IOSCO published in February 2015 their final report *Public quantitative disclosure standards for central counterparties* (CPMI-IOSCO Quantitative Disclosures report). We expect most CCPs will be able to meet the disclosure standards in the CPMI-IOSCO Quantitative Disclosures report. However, while the CSA expects recognized clearing agencies to meet PFMI Principle 23, including the disclosure standards in the CPMI-IOSCO Quantitative Disclosures report, we may be prepared to grant an exemption in limited circumstances to a clearing agency that identifies a specific issue for completing its required disclosures.
Section 2.2 – Material changes	**9.** A commenter believes that following the specified approval process for all matters included in the definition of "material change" will slow aspects of a domestic clearing agency's business, including its ability to adapt to market conditions and respond to market participants. This may also tie up both the clearing agency's and regulators' resources. Further, the process may introduce an	The CSA does not intend section 2.2 to impose a competitive disadvantage on domestic clearing agencies, and agrees that matters that require regulatory approval should be limited to those that are important to the Canadian capital markets. Section 2.2 is generally consistent with similar requirements in NI 21-101, local rules 91-507 *Trade Repositories and Derivatives Data Reporting* (TR Rule),

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	uneven playing field as between domestic clearing agencies and foreign-based clearing agencies subject to less stringent requirements that allow them to be more flexible and timely in engaging new business activities, introducing new products and amending rules (including fees). It is proposed that the CSA implement a self-certification process for material changes and pare down the definition of material change such that it only includes changes that are material enough to warrant immediate regulatory review. In addition, the commenter believes the provision is overbroad, and that only those issues that truly require review and approval in order to protect the Canadian marketplace from material risks should fall under the definition.	and the rules of certain foreign jurisdictions. We believe that the matters referred to in the definition "significant change" (formerly "material change") are necessarily relevant to the Canadian regulator's oversight duties. Nonetheless, we have revised section 2.2 to replace the regulatory approval requirement with a regulatory pre-notification requirement, which we consider is a lesser regulatory burden. However, by virtue of the scope provisions in section 1.5, the requirements of section 2.2 apply only to the extent such matters are not otherwise governed by the terms and conditions of a recognition or exemption decision of the securities regulatory authority. The Companion Policy was modified to reflect this change in the Instrument.
PFMI Principle 5: *Collateral*	**10.** A commenter reiterates its request that letters of credit be considered permitted collateral and a qualifying liquid resource, as this would be consistent with international practice and would provide a cost effective means of meeting collateral requirements for commercial entities. The commenter argues that letters of credit are a standardized financial instrument which constitutes a committed credit facility, are widely accepted and provide substantially lower credit risk than general guarantees. In any event, any credit risk of a letter of credit can be managed.	Upon further consideration, we acknowledge that there are differences between a general commercial guarantee and a letter of credit (LC). Among other things, the payment obligation of an issuer of a LC is "documentary" in nature. That is, the presenter of the LC does not have to prove any underlying facts to the issuer to receive payment, and the LC is generally not subject to the same sorts of defenses that a guarantee would normally be subject to. Because a LC creates a documentary obligation, it is considered a "swift and certain payment mechanism". Moreover, we are satisfied that certain foreign regulators permit CCPs to use LCs as acceptable collateral in certain circumstances. However, the use of LCs by systemically important CCPs raises concerns about wrong way risk in the Canadian context. We therefore agree that, in certain circumstances, LCs may be considered permitted collateral by a CCP, provided the CCP is not a designated system. We have added some guidance in Part 3 of the CP relating to PFMI Principle 5: *Collateral* to reflect this view. Such guidance applies only to domestic CCPs that are not also designated systems. Consequently, the CSA and BOC have not altered the Joint Supplementary Guidance (Box 3) relating to PFMI Principle 5: *Collateral* in Annex I of the CP, which applies to domestic CCPs that are

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		designated systems.
PFMI Principle 14 – *Segregation and portability*	**11.** Two commenters agree with the CSA position that the IIROC-CIPF regime meets criteria for the alternate approach for CCPs serving certain domestic cash markets, and will continue to monitor CSA developments in respect of the application of PFMI Principle 14 to exchange-traded and OTC derivatives markets.	We have included in Part 3 of the CP guidance on PFMI Principle 14 that generally draws on the discussion in the 2014 Notice on the "alternate approach" for CCPs serving cash markets. For CCPs serving the futures and other exchange-traded derivatives markets, we are continuing our review of this policy matter, including having discussions with relevant stakeholders. Similarly, for CCPs serving the global OTC derivatives markets, the CSA Derivatives Committee is continuing its work in this area.
	12. A commenter notes that a move to gross margining would have a significant impact, and should not be made without a thorough assessment, including of key differences with other jurisdictions. The commenter notes that in the current Canadian futures model (a) IIROC record keeping requirements ensure customer positions can be identified timely, (b) customers are protected by CIPF, and (c) customer positions can be restored in the event of a participant default – all of which constitute a regime that is not present in other jurisdictions that have required gross margining. The commenter also believes the consultation process should be broadened to include participants.	As mentioned in the 2014 Notice, we are continuing to review the implications of requiring enhanced CCP-level customer segregation and portability arrangements (such as gross margining) for CCPs serving the futures and other exchange-traded derivatives markets. We agree that the consultation process should be broadened to include CCP participants and other relevant stakeholders. As we explore our options on PFMI Principle 14 and continue stakeholder consultations, we may propose further amendments to the CP later in 2016 to add guidance on PFMI Principle 14 for CCPs serving the futures and other exchange-traded derivatives markets.
Section 4.1 – Board of directors – independence	**13.** A commenter submits that the definition of independence is too narrow and granular, and is inconsistent with the existing approach taken by national and international regulators regarding director independence, and the PFMIs.	The Instrument's concept of independence with respect to board membership is generally consistent with the definition of independence found in other CSA rules or policies (e.g., NI 52-110) and in the regulatory regimes of other jurisdictions. As noted in subsection 4.1(3), an individual is independent of a clearing agency if he or she has no direct or indirect material relationship with the clearing agency. Subsection 4.1(4) provides that a "material relationship" is a relationship which could, in the view of the clearing agency's board of directors, be reasonably expected to interfere with the exercise of a member's independent judgment. However, we acknowledge that the provisions in subsections 4.1(5) to (9) in the 2014 Documents could have had the effect of narrowly confining the concept of "material relationship." Accordingly, we have removed

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		subsections 4.1(5) to (9) from the Instrument. Instead, we have provided guidance in the CP on certain types of relationships which we would consider to reasonably be expected to interfere with the exercise of a board member's independent judgment. With some differences, the guidance is based on the redacted subsections 4.1(5) to (9) in the Instrument.
Section 4.3 – Chief compliance officer	**14.** A commenter asserts that the designation of Chief Compliance Officer (CCO) with the broad mandate set out in section 4.3 would create standards that are excessively high and inconsistent with the principles-based approach to compliance taken in the PFMIs.	Section 4.3 is generally consistent with similar requirements in the TR Rule and the rules of certain foreign jurisdictions. Section 4.3 also complements key consideration 5 of PFMI Principle 2, which requires a clearing agency to have an experienced management with a mix of skills and the integrity necessary to discharge its operations and risk management responsibilities.
Section 4.4 – Board or advisory committees – compensation committee	**15.** A commenter submits that a compensation committee should not strictly be required, as the PFMIs do not strictly require their use, nor do existing recognition orders. The commenter asserts that there is no clear public interest reason for such a committee, and that flexibility would allow clearing agencies that are part of bigger organizations to use expertise and resources from the larger enterprise to optimally address compensation issues.	We agree that a compensation committee should not strictly be required. We have modified section 4.4 to remove the requirement to establish and maintain an executive compensation committee. Moreover, consistent with changes that we have made elsewhere in the Instrument, we have removed the detailed provisions in paragraphs (a) to (f) of section 4.4 and placed them instead in the CP, with slight differences. Despite the above, we strongly recommended that a clearing agency consider forming a compensation committee. We note that para. 3.2.9 of the explanatory notes in the PFMI Report suggests that "[a] board would normally be expected to have, among others, a risk committee, an audit committee, and a compensation committee, or equivalents." The CP expressly states that regard is to be given to the explanatory notes, as appropriate, in interpreting and implementing the PFMI Principles.
Section 4.5 – Use of own capital	**16.** Two commenters agree with the inclusion of a "skin-in-the-game" (SITG) requirement as a method to help align the incentives of the CCP's management and shareholders with those of the participants. However, one commenter raised concerns about the SITG requirement. There is general acknowledgement that there is no international consensus on the amount of SITG capital that should be used, and the order in which it should	In consultation with the BOC, the CSA has decided to retain part of section 4.5. There is general agreement that SITG is not a recovery tool, but instead a risk management tool. The CSA are of the view that a CCP should be required to participate in the default waterfall with its own capital contribution, to be used after a defaulting participant's contributions to margin and default fund

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	be used as part of the "waterfall". One commenter believes the SITG requirement should not be calibrated based on the size of the default fund, but rather in relation to a CCP's capital base (as is required by ESMA under EMIR). The main drawbacks of calculating the requirement based on size of default fund are: (1) it would fundamentally change the risk profile of the CCP, creating increased risk exposure to a participant default at the very time that the CCP needs to be resilient; (2) it would create an incentive for a CCP to minimize the size of the default fund, for example, by increasing initial margin requirements which could have a negative impact on end-users; and (3) it could result in the CCP needing to raise additional capital at short notice potentially at a time of market stress. Another commenter recommends that the SITG requirement be specific and quantifiable, tied to a clearing agency's risk exposure; for example, a fixed percentage of the clearing agency's tail risk. The commenter expects that this requirement will continue to be the subject of discussion, locally and internationally. One commenter submits that at this stage, it would be inappropriate to include the provision in the Instrument, since (i) the requirement is not a PFMI-based requirement, (ii) there is still an unresolved global debate on its rationale, structure, size, and timing, among other matters, and (iii) it would be more appropriately handled by the Bank of Canada/CSA through their guidance on resolution and recovery. The commenter requests that the CSA engage in further discussions with impacted parties prior to incorporating this requirement. The commenter also feels that the CSA should consider the relationship between the capital placed at risk by a clearing agency, the manner in which its fees are risk-adjusted and adjusted for the cost of that capital, the risk design of the risk model to effectively protect that capital, and the design of the participant access criteria/rules that govern who can expose the capital to loss.	resources have been exhausted. However, as there is no international consensus yet on an optimal CCP SITG approach, we agree that it may be premature to require at this time, from a policy perspective, a specific approach to calculate the amount of SITG. A CCP's SITG equity should be significant enough to attract senior management's attention. It should also be separately retained and not form part of the CCP's equity resources for other purposes, such as to cover general business risk. We will monitor international developments in this area and will determine whether additional guidance on SITG should be provided later in 2016.

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Section 4.6 – Systems requirements	**17.** A commenter submits that the distinction between the requirement to notify the regulator or, in Québec, the securities regulatory authority, is confusing and should be clarified.	We do not propose any change. In Québec, all functions and powers, including "regulator functions", are assigned to the Autorité des marchés financiers (AMF) by the Québec securities and derivatives legislation, and therefore all notifications must be submitted to the "securities regulatory authority" in Québec. Such wording is consistent with Canadian securities legislation, including National Instrument 14-101 *Definitions*.
Section 4.8 – Clearing agency technology requirements and testing facilities	**18.** A commenter submits that there should be a materiality threshold under subsection 4.8(1), in that making the relevant information publicly available should not be required if not materially necessary, given the sensitive information involved, and the potential for malicious internet attacks.	The intention of subsection 4.8(1) is to require a clearing agency to make available technology requirements that are necessary for interfacing and accessing it, and not to require disclosure of all technology and sensitive information. We understand that clearing agencies are already disclosing relevant information to participants, potential participants and service vendors, and we do not anticipate that this will create an additional burden. Therefore, subsection 4.8(1) has been amended slightly. We note that the provision does generally accord with requirements set out in NI 21-101, and is necessary to ensure that participants, prospective participants and indirect participants that may need to interface or access the clearing agency, as well as service vendors, have the information they need to interface with, test and access a clearing agency. To the extent that sensitive information is involved that the clearing agency does not feel is necessary to be made publicly available, the clearing agency may make an application for an exemption, in part, from the subsection.
	19. A commenter submits that the testing facilities referred to in subsection 4.8(2) are not necessary, as participants will test the technology as appropriate for themselves, and clearing agencies provide the necessary guidance and assistance to ensure that participants can make use of the system.	We do not propose any change. The CSA currently places similar requirements on marketplaces under NI 21-101, and such requirements are appropriate for clearing agencies as well.
Sections 4.7 and 4.10 – Independent reviews	**20.** A commenter submits that the references to independent reviews in subsection 4.7(1) and paragraph 4.10(f) require clarification, including that such a review by an affiliate would suffice. It is asserted that	The CSA does not intend references to "independent systems reviews" to mean such reviews must be conducted by an arm's length third party to a clearing agency. Rather, it references the engagement of a

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	requiring a third party to conduct such an audit would increase costs significantly, particularly for smaller clearing agencies, and should not be necessary.	"qualified" party, which need not exclude a review by a party that is an affiliate, as long as that party was not involved in the design of the systems being tested. Subsection 4.7(1) of the CP has been slightly modified to reflect this view.
Section 4.11 – Access requirements and due process	**21.** A commenter submits that section 4.11 is overbroad, a departure from the PFMIs, and would impact all aspects of a clearing agency's business. It is submitted that the requirements should only be applied to a clearing agency's key clearing and settlement services. Specific concerns are as follows: • with respect to para. 4.11(1)(b), clearing agencies do not control or have the ability to control the extent to which a participant may discriminate among its own customers; • with respect to para. 4.11(1)(c), matters relating to competition should be addressed through the *Competition Act*; and • with respect to subsection 4.11(2), the provision is overbroad, as a clearing agency may routinely make decisions that adversely affect participants; the provision should be limited to suspension or termination of membership decisions.	Section 4.11 is generally consistent with similar CSA rules and policies (e.g. NI 21-101) and the rules of certain foreign jurisdictions. Nevertheless, we appreciate the concerns raised, and have made some changes as a result. With respect to para. 4.11(1)(b), we have replaced the words "or the customers of its participants" with "or indirect participants". The PFMI Report recognizes that FMIs may have relationships with indirect participants that affect tiered participation arrangements. See para. 3.19.1 of the explanatory notes. It is in the context of such tiered participation arrangements that clearing agencies should not unreasonably discriminate among indirect participants. With respect to para. 4.11(1)(c), we note that fostering competition in the Canadian financial markets is contemplated as part of certain clearing agency recognition decisions. It remains a key public interest consideration and is consistent with the general objective of securities legislation, which includes fostering fair and efficient capital markets. With respect to subsection 4.11(2), we agree; the provision has been revised to relate more specifically to participant access to a clearing agency.
Effective date and transition	**22.** A commenter requests that the CSA provide adequate time between the finalization of the Instrument and its effective date to permit foreign-based recognized clearing agencies to request and obtain exemptions from sections 2.2 and 2.5 and Part 4 to the extent that the requirements of those provisions conflict or are inconsistent with the terms and conditions of existing recognition decisions.	The CSA believes it has provided adequate time.
Section 2.0 of the CP – Recognition and exemption	**23.** A commenter submits that the concept of 'carrying on business' under subsection 2.0(1) of the CP should include a materiality threshold	We do not propose any change. Determining whether a clearing agency is "carrying on business" in a local jurisdiction within the meaning of

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	to allow for greater regulatory flexibility and account for commercial realities.	securities legislation does not require a statutory determination of whether the business activity must reach a certain materiality threshold before the "carrying on business" test is triggered (e.g. a *material domestic connection* to the jurisdiction). However, a materiality threshold test is implicit in determining whether to recognize or exempt a clearing agency that is carrying or proposing to carry on business in the jurisdiction. An assessment of systemic importance would consider the *materiality* of a clearing agency's activities to a jurisdiction's capital markets. See our responses to comments nos. 3 and 5 above. Where an applicant is determined by the relevant securities regulatory authority to be not systemically important, but it is not otherwise appropriately regulated in another jurisdiction, a suitable degree of oversight may be necessary. Such an oversight program would be tailored to the entity, within the terms and conditions of its recognition decision.
	24. A commenter submits that the factors for assessing systemic importance should include also consideration of the size of a market served by a clearing agency relative to the overall Canadian market.	We have not included this factor in section 2.0 of the CP. Although this criterion may be relevant to determine which regulator should be the lead or co-lead authority under a cooperative oversight arrangement among regulators, we do not believe that this criterion should be a guiding factor to determine if the clearing agency is "systemically important" in the jurisdiction. See also our responses to comments nos. 3 and 5 above.
Supplementary guidance – collateral	**25.** A commenter argues that Canadian provinces should prioritize the implementation of legislative modifications that allow Canadian entities to offer a first priority security interest in cash to their counterparties.	The CSA acknowledges the challenges in the area of personal property security legislation, and will continue to monitor work in this area and consult with the provincial and federal governments, as appropriate.
Supplementary guidance – general business risk	**26.** A commenter supports a broad definition of clearing agency liquid assets (i.e. capital), which will ensure the clearing agency has sufficient liquid assets to carry out its recovery and resolution plan. The definition should appreciate that clearing agencies perform bank-like activities and the capital should cover a full range of credit, liquidity, operational and other risks.	As noted in the Joint Supplementary Guidance, once the guidance on recovery planning has been finalized, the guidance on general business risk will be updated to provide clearing agencies with additional clarity on how to calculate the costs associated with these plans and determine the amount of liquid net assets required. We expect to make further updates later in 2016.

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Supplementary guidance – disclosure of rules, key procedures and market data	**27.** A commenter notes that the CPMI-IOSCO public qualitative and quantitative disclosure frameworks (which are proposed to be the basis for clearing agency disclosures) may fall short of ISDA recommendations: • disclosures of stress test methodologies should be offered to clearing agency members; • the concept of CCP stress tests should be supported, but regulatory stress scenarios should not become the de-facto standard for CCPs' own risk management; rather, regulators should verify that a clearing agency covers specific risks related to the particular product classes they clear, with proper close-out period and liquidity assumptions; and • regulators should support greater transparency regarding clearing agencies' credit due diligence processes, with a focus also on the probability of default of the membership.	The CPMI-IOSCO standard setting bodies are continuing their work in developing additional guidance and standards to supplement the PFMIs, including in the area of CCP stress testing methodologies and transparency. The CSA, together with the BOC, will monitor international developments and may adopt more granular requirements that are in line with international standards, if appropriate. See also our responses above to comment no. 8.
Supplementary guidance (forthcoming) – resolution and recovery	**28.** A commenter requests that the CSA, together with the BOC, develop its guidance related to resolution and recovery with a sense of urgency, particularly where its adoption may entail significant changes to the risk profile of Canadian clearing agencies. Such guidance would assist the clearing agencies to build a holistic view of their risks.	We thank the commenter for these comments. As noted above in this Notice, we are publishing for comment (concurrently with finalizing the Instrument and CP) additional Joint Supplementary Guidance on recovery and orderly wind-down planning. Such guidance contains aspects of the comments raised. In particular, recovery plans will need to be specific about a clearing agency's default policies and procedures, including the setting out of clear, quantifiable and predicable loss allocation procedures and the use of recovery tools. The BOC and its federal partners have commenced developing a resolution framework specific to domestic designated FMIs. This work will include developing policy proposals for legal, governance and communications frameworks, as well as FMI-specific resolution strategies. This is expected to be a multi-year initiative.