CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

Notice of Approval

National Instrument 24-102 *Clearing Agency Requirements*
and
Companion Policy 24-102CP to National Instrument 24-102 *Clearing Agency Requirements*

- and –

Notice and Request for Comments

Proposed Amendments to Companion Policy 24-102CP to National Instrument 24-102 *Clearing Agency Requirements*

December 3, 2015

Part I – Introduction

1. Adoption of Instrument and Companion Policy

The Canadian Securities Administrators (the **CSA** or **we**) are adopting National Instrument 24-102 *Clearing Agency Requirements* (**Instrument**) and Companion Policy 24-102CP to National Instrument 24-102 *Clearing Agency Requirements* (**Companion Policy**). The main objective of the Instrument is to impose new requirements on *recognized* clearing agencies that operate as a central counterparty (**CCP**), central securities depository (**CSD**) or securities settlement system (**SSS**). The requirements are based on international standards applicable to financial market infrastructures (**FMIs**) described in the April 2012 report *Principles for financial market infrastructures* (as the context requires, the "**PFMIs** " or "**PFMI Report**") published by the Committee on Payments and Market Infrastructures (**CPMI**)[1] and the International Organization of Securities Commissions (**IOSCO**).[2] Implementation of the international standards is intended to enhance the safety and efficiency of clearing agencies, limit systemic risk, and foster financial stability.

The adopted Instrument and Companion Policy are being published in Annexes C and D, respectively, to this Notice,[3] and are also available on websites of CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
www.gov.ns.ca/nssc
www.fcnb.ca
www.osc.gov.on.ca
www.fcaa.gov.sk.ca
www.msc.gov.mb.ca

In some jurisdictions, government ministerial approvals and/or proclamation of certain amendments to local securities legislation are required for the implementation of the Instrument.[4] Subject to obtaining all necessary

[1] Prior to September 2014, CPMI was known as the Committee on Payment and Settlement Systems (**CPSS**).
[2] The PFMI Report is available on the Bank for International Settlements' website (www.bis.org) and the IOSCO website (www.iosco.org).
[3] In Ontario, the final adopted versions of the Instrument and Companion Policy are published in Chapter 5 of the Ontario Securities Commission's Bulletin (**OSCB**). More precisely, this Notice and all its Annexes are being published in (2015), 38 OSCB Supplement 5. Annex G to this Notice in relation to the Proposed CP Amendments (discussed above) is also being published as a stand-alone document in OSCB Chapter 6 *Request for Comments*, with an editor's note to refer to this Notice in the Supplement for the details of the request for comments.
[4] In Ontario, the OSC delivered the Instrument, Companion Policy and other relevant material to the Ontario Minister of Finance on December 2, 2015. The Minister may approve or reject the Instrument or return it for further consideration. If the Minister approves the Instrument or does not take any further action by February 2,

approvals, the Instrument will come into force on February 17, 2016, subject to transitional provisions for certain aspects of the Instrument.

2. Proposed new guidance in Companion Policy

With this Notice, we are also publishing for a 60 day comment period proposed amendments (**Proposed CP Amendments**) to the final version of the Companion Policy that is being adopted by the CSA and published concurrently with this Notice. The Proposed CP Amendments consist of new supplementary guidance jointly developed by the CSA and the Bank of Canada in interpreting and applying the international standards described in the PFMI Report. The text of the Proposed CP Amendments is contained in Annex G to this Notice. It is also available on websites of CSA jurisdictions, including those set forth above.

3. Structure of this Notice

This Notice is organized into three general parts:

- Part I – Introduction
- Part II – Adoption of Instrument and Companion Policy
- Part III – Proposed CP Amendments.

It also includes the following Annexes:

- Annex A: List of commenters on proposed National Instrument 24-102 *Clearing Agency Requirements* and related Companion Policy 24-102CP (as published in the **2014 Documents**, as defined below)
- Annex B: Summary of comments on proposed National Instrument 24-102 *Clearing Agency Requirements* and related Companion Policy 24-102CP (as published in the 2014 Documents), and CSA general responses to comments
- Annex C: Final adopted National Instrument 24-102 *Clearing Agency Requirements*
- Annex D: Final adopted Companion Policy 24-102CP to National Instrument 24-102 *Clearing Agency Requirements*
- Annex E: Blackline version of final adopted National Instrument 24-102 *Clearing Agency Requirements* reflecting revisions made to proposed Instrument in the 2014 Documents
- Annex F: Blackline version of final adopted Companion Policy 24-102CP to National Instrument 24-102 *Clearing Agency Requirements* reflecting revisions made to proposed Companion Policy in the 2014 Documents
- Annex G: Proposed amendments to final adopted Companion Policy 24-102CP to National Instrument 24-102 *Clearing Agency Requirements*

Part II – Adoption of Instrument and Companion Policy

1. Background

Earlier versions of the Instrument and Companion Policy were published for comment in December 2013 and again in November 2014.

2013 Public Consultation

On December 18, 2013, the Autorité des marchés financiers (**AMF**), Manitoba Securities Commission (**MSC**) and Ontario Securities Commission (**OSC**) each published for comment a uniform proposed local rule 24-503 and related companion policy regarding clearing agency requirements.[5] The regulators collectively received nine

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2016, the Instrument will come into force on February 17, 2016, subject to transitional provisions for certain aspects of the Instrument. See below "4. Summary of Amendments to 2014 Documents – (e) Parts 5, 6 and 7".

[5] The proposed local rules that were published for comment are the following: AMF *Regulation 24-503 Respecting Clearing House, Central Securities Depository and Settlement System Requirements;* MSC Rule 24-503 *Clearing Agency Requirements*; and OSC Rule 24-503 *Clearing Agency Requirements* (see Notice and Request for Comment *Proposed OSC Rule 24-503 Clearing Agency Requirements and Related Companion Policy*, December 19, 2013 (2013), 36 OSCB 12209. The OSC's local rule 24-503 and related materials are also available on the OSC's website at: http://www.osc.gov.on.ca/en/SecuritiesLaw_rule_20131218_24-503_rfc-clearing-agency-requirements.htm). At the same time as these local rules were published for comment, other CSA jurisdictions had expressed an intention to publish similar local rules and companion policies at a later date. See Multilateral Staff Notice 24-309 at: https://www.bcsc.bc.ca/Securities_Law/Policies/Policy2/24-

comment letters.[6] Partially in response to comments received, the CSA agreed to take a unified approach to implementing the PFMIs, and further developed the local rules as a national instrument.

2014 Public Consultation

The CSA published for comment on November 27, 2014 the Instrument and Companion Policy, together with a Notice and Request for Comments (the "**2014 Notice**", and collectively with the Instrument and Companion Policy, the "**2014 Documents**").[7] The 2014 Notice described a number of important policy matters on which we were seeking stakeholder input. We received five comment letters on the 2014 Documents.[8] A list of the commenters is attached in Annex A to this Notice. We have considered these comments and thank all the commenters. We have provided a summary of the comments, together with our responses, in Annex B to this Notice.

2. Substance and Purpose of Instrument and Companion Policy

As noted in the PFMI Report,[9] clearing agencies that facilitate the clearing and settlement of financial transactions can strengthen the markets they serve and play a critical role in fostering financial stability. If not properly managed, they can pose significant risks to the financial system and be a potential source of contagion, particularly in periods of market stress. The PFMI Report strengthens previous international standards for clearing agencies. The main purpose of the Instrument and Companion Policy is to implement the international standards described in the PFMIs as clearing agency rule requirements in Canada.

Overall, the Instrument and Companion Policy are intended to enhance the regulatory framework for recognized clearing agencies operating or seeking to operate in a jurisdiction of Canada. As discussed in the 2014 Notice, this regulatory framework will facilitate ongoing observance by a recognized clearing agency of international minimum standards applicable to FMIs. The CSA believe that the Instrument will support resilient and cost-effective clearing agency operations.

3. Summary of Instrument and Companion Policy

The Instrument is divided into seven parts and includes the following attachments:

- Form 24-102F1 – *Clearing Agency Submission to Jurisdiction and Appointment of Agent for Service of Process*
- Form 24-101F2 – *Cessation of Operations Report for Clearing Agency*

The Companion Policy is divided into six parts and includes an Annex I – *Joint Supplementary Guidance Developed by the Bank of Canada and Canadian Securities Administrators*.

We highlight the key features of the Instrument and Companion Policy below.

(a) Part 1 – Definitions, Interpretation and Application

Part 1 of the Instrument contains definitions and interpretive provisions, as well as application provisions that clarify the scope of certain parts of the Instrument. The Instrument uses specialized terminology related to the clearing and settlement area. Not all such terminology is defined in the Instrument, but instead may be defined or explained in the PFMI Report.[10]

309_Publication_of_Clearing_Agency_Requirements_in_Ontario__Quebec_and_Manitoba__CSA_Multilateral_Staff_Notice_/.

[6] The regulators published a summary of the comments in CSA Notice 24-310 on July 17, 2014. See CSA Staff Notice 24-310 *Status Update on Proposed Local Rules 24-503 Clearing Agency Requirements and Related Companion Policies*, July 17, 2014, (2014), 37 OSCB 6677 (**CSA Notice 24-310**). The summary was republished, together with regulators' responses to the comments, on November 27, 2014. See *infra* next footnote.

[7] See CSA Notice and Request for Comment *Proposed NI 24-102 Clearing Agency Requirements and Related Companion Policy 24-102CP*, November 27, 2014; (2014), 37 OSCB 10483. The 2014 Documents are also available on the OSC's Website at: http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20141127_24-102_proposed-clearing-agency.htm.

[8] The comment letters are available of the OSC's Website at: http://www.osc.gov.on.ca/en/47352.htm.

[9] See par. 1.1 of the PFMI Report under "Introduction".

[10] Regard should be given to the PFMI Report in understanding such terminology, including Annex H: *Glossary*. See Section 3.1 of the Companion Policy, and discussion further below in this Notice.

(b) Part 2 – Clearing Agency Recognition and Exemption from Recognition

Part 2 of the Instrument sets out certain requirements in connection with the application process for recognition as a clearing agency under securities legislation or for an application to be exempt from the recognition requirement. The Companion Policy describes the CSA's approach towards recognition and exemption applications.[11] An entity that is carrying on, or proposing to carry on, business in Canada as a clearing agency and that is systemically important to our capital markets, or that is not subject to comparable regulation by another regulatory body elsewhere, will generally be recognized by a Canadian securities regulatory authority. An application for recognition or exemption must include the applicant's most recently completed PFMI Disclosure Framework Document,[12] a document substantially in a form prescribed in the December 2012 CPMI-IOSCO report *Principles for financial market infrastructures: Disclosure framework and Assessment methodology*.[13]

Part 2 requires a recognized clearing agency to notify a securities regulatory authority in writing before implementing any *significant change*.[14] It also requires an exempt clearing agency to notify in writing the securities regulatory authority of any material change to the information in its PFMI Disclosure Framework Document.[15] However, these requirements apply only to the extent such matters are not otherwise governed by the terms and conditions of a decision of the securities regulatory authority that recognizes the clearing agency or that exempts it from a recognition requirement.[16] Certain recognition decisions, for example, may require prior regulatory approval before a recognized clearing agency can make a significant change or a fee change.

(c) Part 3 – PFMI Principles Applicable to Recognized Clearing Agencies

Part 3 of the Instrument incorporates into securities regulatory law the principles set out in the PFMI Report, including applicable key considerations, (the **PFMI Principles**) that apply to CCPs, CSDs and SSSs. The term "PFMI Principles" is defined in the Instrument to include the principles and applicable key considerations set out in the PFMI Report. Specifically, section 3.1 of the Instrument requires a recognized clearing agency that operates as a CCP, CSD or SSS[17] to establish, implement and maintain rules, procedures, policies or operations designed to ensure that it meets or exceeds the PFMI Principles with respect to its clearing, settlement or depository activities. Section 3.1 excludes the application of specific PFMI Principles to certain types of recognized clearing agencies. Part 3 also excludes the application of key consideration 9 of PFMI Principle 20 for all recognized clearing agencies.

Requiring clearing agencies to implement rules, procedures, policies or operations to meet or exceed the PFMI Principles is consistent with a flexible and principles-based approach to regulation. This principles-based approach anticipates that a clearing agency's rules, procedures, policies and operations will need to evolve over time so that it can adequately respond to changes in technology, legal requirements, the needs of its participants and their customers, trading volumes, trading practices, linkages between financial markets, and the financial instruments traded in the markets that a clearing agency serves.[18]

Part 3 of the Companion Policy explains our views on how to interpret and apply the PFMI Principles. In interpreting and implementing the PFMI Principles, regard is to be given to the explanatory notes in the PFMI Report, as appropriate.[19] We have also developed, together with the Bank of Canada, supplementary guidance (**Joint Supplementary Guidance**) to provide additional clarity on certain PFMI Principles within the Canadian context. The Joint Supplementary Guidance is directed at recognized *domestic* clearing agencies that are also overseen as systemically important clearing and settlement systems by the Bank of Canada pursuant to its authority under the *Payment Clearing and Settlement Act* (Canada) (**PCSA**). The Joint Supplementary Guidance is included in separate text boxes in Annex I to the Companion Policy under the relevant headings of the PFMI Principles.

(d) Part 4 – Other Requirements of Recognized Clearing Agencies

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[11] See section 2.0 of the Companion Policy.
[12] See par. 2.1(1)(a) of the Instrument.
[13] See definition "PFMI Disclosure Framework Document" in section 1.1 of the Instrument.
[14] See subsection 2.2(2) of the Instrument. The term "significant change" is defined in subsection 2.2(1) of the Instrument.
[15] See subsection 2.2(5) of the Instrument.
[16] See subsection 1.5 (3) and (4) of the Instrument and section 2.2 of the Companion Policy.
[17] See subsection 1.5(1) of the Instrument.
[18] See subsection 3.0(2) of the Companion Policy. See also discussion below under "4. Summary of Amendments to 2014 Documents".
[19] See section 3.1 of the Companion Policy.

Part 4 of the Instrument sets out certain other requirements that complement, or are in addition to, the PFMI Principles. These requirements apply to a recognized clearing agency, whether or not it operates as a CCP, CSD or SSS.[20] They include requirements in relation to the composition of the board of directors, the designation and functions of a chief risk officer and chief compliance officer, and the formation of one or more committees on risk management, finance and audit.[21] Furthermore, Part 4 includes a principles-based "skin-in-the-game" requirement that applies to a recognized clearing agency that operates as a CCP.[22] Finally, Part 4 of the Instrument contains rules pertaining to IT systems, outsourcing arrangements, and participant access that are substantially similar to requirements found in National Instrument 21-101 *Marketplace Operations* (**NI 21-101**).[23]

(e) Part 5 – Books and Records and Legal Entity Identifier

Part 5 of the Instrument sets out a general books and records requirement for both recognized and exempt clearing agencies.[24] It also requires a clearing agency to identify itself by means of a single *legal entity identifier*.[25]

(f) Part 6 – Exemptions

Like most CSA national instruments, Part 6 of the Instrument authorizes a regulator or securities regulatory authority, as the case may be, to grant an exemption from any provision of the Instrument. As Part 3 of the Instrument adopts a principles-based approach to incorporating the PFMIs into the Instrument, we have sought to minimize any substantive duplication or material inefficiency due to cross-border regulation. However, we acknowledge that, where a recognized foreign-based clearing agency does face some conflict or inconsistency between certain requirements of Parts 2 and 4 of the Instrument and the requirements of the regulatory regime in its home jurisdiction, and such a conflict or inconsistency causes a hardship for the clearing agency, an exemption from a provision of the Instrument may be considered by a securities regulatory authority.[26]

(g) Part 7– Effective Dates

The Instrument will be in force by February 17, 2016, subject to ministerial approvals in certain jurisdictions, and, in some jurisdictions, proclamation of certain amendments to their local securities legislation. However, because the PFMIs represent a strengthening of the previous CPMI-IOSCO standards on SSSs and CCPs, recognized clearing agencies, working together with their regulators (the CSA and Bank of Canada), need more time to implement certain PFMI Principles. Therefore, as we discuss below under "4. Summary of Amendments to 2014 Documents – (e) Parts 5, 6 and 7", we are providing for a later coming-into-force date of December 31, 2016 for certain PFMI Principles.

4. Summary of Amendments to 2014 Documents

We have revised the 2014 Documents in response to comments from stakeholders, as well as to clarify and simplify the rules in the Instrument and include certain guidance in the Companion Policy that we had expressed as our policy views in the 2014 Notice. Apart from adding new Joint Supplementary Guidance to the Companion Policy described in Part III of this Notice (which we are publishing for comment concurrently with this Notice), none of the revisions are material. Therefore, the Instrument and Companion Policy are being published with this Notice as a final approved rule and policy. Blacklined versions of the adopted Instrument and Companion Policy, reflecting the changes made to the 2014 Documents, are set forth in Annexes E and F, respectively, to this Notice. We summarize below the notable revisions made to the 2014 Documents.

The Instrument has been amended to implement the PFMI Principles directly rather than referencing them in Appendix A of the Instrument in the 2014 Documents. This will allow the CSA to adopt future amendments to the PFMI Principles without having to go through the process of amending the Instrument. Because of this change, there are a number consequential non-material changes throughout the Instrument and Companion Policy. None of these amendments has any impact on the substance of the Instrument or Companion Policy.

(a) Part 1 – Definitions, Interpretation and Application

[20] See subsection 1.5(2) of the Instrument. An example of a clearing agency that would not be considered to be operating as a CCP, CSD or SSS would be an entity that performs or offers to perform a centralized trade affirmation-confirmation (matching) and allocation service for a vast array of market participants.
[21] See sections 4.1, 4.3 and 4.4 of the Instrument.
[22] See section 4.5 of the Instrument.
[23] See sections 4.6 to 4.11 of the Instrument.
[24] See section 5.1 of the Instrument.
[25] See section 5.2 of the Instrument.
[26] See section 6.1 of the Companion Policy.

We deleted definitions that were defined by reference to National Instrument 52-110 *Audit Committee* (**NI 52-110**), which were no longer needed considering the removal of subsections 4.1(5) to (9). See our comments on Part 4 below. We have clarified the scope provisions in section 1.5 of the Instrument with respect to sections 2.2 and 2.5 of the Instrument and its potential interaction with certain terms and conditions that may be contained in clearing agency recognition or exemption decisions. See discussion below.

(b) Part 2 – Clearing Agency Recognition and Exemption from Recognition

The main revisions to Part 2 of the Instrument are in relation to the regulatory treatment of *significant changes* made by a clearing agency.[27] Pursuant to section 2.2 of the Instrument, a recognized clearing agency is not permitted to implement a significant change unless it has filed a written notice of the significant change with the securities regulatory authority at least forty-five days before implementing the change. This is a lesser regulatory requirement than the proposed requirement of the Instrument in the 2014 Documents, which would have prohibited a recognized clearing agency from implementing a material change without obtaining the prior written approval of the securities regulatory authority. However, as noted above under "3. Summary of Instrument and Companion Policy", by virtue of the scope provisions in section 1.5 of the Instrument, the requirements of sections 2.2 and 2.5 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, and describes our general regulatory approach to these matters more clearly.

In addition, we modified Part 2 of the Companion Policy to clarify our approach to recognition of foreign-based clearing agencies that propose to carry on business in a jurisdiction of Canada. New subsection 2.0(3) confirms that a securities regulatory authority may require a foreign-based clearing agency to be recognized if the clearing agency's proposed business activities in the local jurisdiction are systemically important to the jurisdiction's capital markets, even if it is already subject to comparable regulation in its home jurisdiction.[28] We are including this additional guidance to the final version of the Companion Policy because it is not a material change and largely reflects current regulatory practice that has previously been made public.[29]

(c) Part 3 – PFMI Principles Applicable to Recognized Clearing Agencies

As noted previously, the Instrument has been amended to implement the PFMI Principles directly rather than referencing them in Appendix A of the Instrument in the 2014 Documents. As a result, because Appendix A is no longer needed, it has been removed from the Instrument.

In the 2014 Notice, we had discussed ongoing policy matters that we were assessing in relation to certain PFMI Principles.[30] Because we are continuing to assess aspects of PFMI Principle 14: *Segregation and portability*,

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[27] The definition "significant change" in subsection 2.2(1) of the Instrument remains unchanged from the 2014 Documents, except that the defined term "material change" in the 2014 Documents has been replaced by "significant change".

[28] The Companion Policy further notes that, in such circumstances, the recognition decision would focus on key areas that pose material risks to the jurisdiction's market and rely, where appropriate, on the current regulatory requirements and processes to which the entity is already subject in its home jurisdiction. Terms and conditions of a recognition decision that require a foreign clearing agency to report information to a Canadian securities regulatory authority may vary among foreign clearing agencies. Among other factors, they will depend on whether Canadian securities regulatory authorities have entered into an agreement or memorandum of understanding with the home regulator for sharing information and cooperation. See subsection 2.0(3) of the Companion Policy.

[29] See, for example, LCH.Clearnet Limited – Application for Recognition – Notice of OSC Order, September 19, 2013; (2013) 36 OSCB 9267, also available at: http://www.osc.gov.on.ca/documents/en/Marketplaces/ca_20130919_nco-lch-clearnet-app-recognition.pdf; and Chicago Mercantile Exchange Inc. – Notice of OSC Order – Application for Exemptive Relief, July 4, 2013, also available at: http://www.osc.gov.on.ca/documents/en/Marketplaces/ca_20130704_cme_nco-app-exemptive-relief.pdf.

[30] See pages 10485 to 10489 of the 2014 Notice. The policy matters were in relation to a clearing agency's recovery or orderly wind-down plans (see key consideration 4 of PFMI Principle 3: *Framework for the comprehensive management of risks* and key consideration 3 of PFMI Principle 15: *General business risk*); a clearing agency's segregation and portability arrangements for customer positions and collateral (see PFMI Principle 14: *Segregation and portability*); the resumption of operations of a clearing agency's critical information technology systems within two hours following disruptive events (see key consideration 6 of PFMI Principle 17: *Operational risks*); and tiered participation arrangements in using a clearing agency's services (see PFMI Principle 19: *Tiered participation arrangements*).

PFMI Principle 19: *Tiered participation arrangements*, and PFMI Principle 3: *Framework for the comprehensive management of risks* together with PFMI Principle 15: *General business risk* as the latter two relate to a clearing agency's recovery or orderly wind-down plans (see further below in this Notice), the Instrument delays the required implementation of these PFMI Principles until December 31, 2016.

We note that, apart from moving the text of the Joint Supplementary Guidance in the Companion Policy into a new "Annex I" to the Companion Policy, we have not made any material changes to the Joint Supplementary Guidance published in the 2014 Documents.

We have made revisions to Part 3 of the Companion Policy to clarify our guidance or confirm our policy approaches described in the 2014 Notice. We discuss these revisions briefly below, as well as certain ongoing policy matters with respect to the implementation of PFMI Principle 14 in the Canadian domestic context that continue to be considered by regulators.

(i) Principles-based approach to the PFMI Principles

We added new subsection 3.0(2) to the final version of the Companion Policy to confirm our policy view expressed in the 2014 Notice that Part 3 of the Instrument, together with the PFMI Principles, is intended to be consistent with a flexible and principles-based approach to regulation. The text of this new subsection is substantially the same as the policy statement contained in the 2014 Notice.

(ii) Letters of credit as acceptable collateral

Guidance on applying PFMI Principle 5: *Collateral* to a clearing agency's particular circumstances can be found in the explanatory notes for that principle, as supplemented by the Joint Supplementary Guidance on PFMI Principle 5 in Annex I to the Companion Policy. This guidance would suggest that, in general, guarantees are not acceptable collateral. In response to concerns expressed by commenters, the CSA has clarified its view that, for the purposes of PFMI Principle 5, letters of credit may be permitted as collateral by a recognized clearing agency operating as a domestic CCP serving the derivatives markets. See our response to comment 10 in Annex B to this Notice. We express this policy guidance in new section 3.2 of the final version of the Companion Policy. However, this guidance does not apply to a recognized clearing agency that is also overseen by the Bank of Canada under the PCSA. In such cases, section 3.2 is not applicable.

(iii) Segregation and portability

(A) Alternate approach for CCPs serving cash markets

In the 2014 Notice, we had discussed our policy view that the current regulatory and customer protection regime applicable to investment dealers meets the criteria for the "alternate approach" to PFMI Principle 14 for CCPs serving certain domestic cash markets.[31] The comments we received on this discussion supported our view. Accordingly, we have added new section 3.3 in the final version of the Companion Policy to govern reliance on the alternate approach for domestic CCPs serving cash markets. The text of this new subsection is substantially similar to our policy view expressed in the 2014 Notice.

(B) PFMI Principle 14 for domestic CCPs serving futures and other exchange-traded derivatives markets – ongoing policy considerations

In the 2014 Notice, we said that CSA regulators were reviewing the implications of requiring enhanced CCP-level customer segregation and portability rules and procedures for CCPs serving the exchange-traded derivatives markets, particularly on CCPs, investment dealers, the IIROC-CIPF regime, and the pro rata distribution scheme of Part XII of the BIA.[32] This review is ongoing and involves discussions with various stakeholders. PFMI Principle 14 will not come into force until December 31, 2016. See discussion below under "(e) Parts 5, 6 and 7".

(C) PFMI Principle 14 for CCPs serving the OTC derivatives markets

As we had mentioned in the 2014 Notice, the CSA Derivatives Committee is separately developing a regulatory framework that will implement PFMI Principle 14 for CCPs serving the global OTC derivatives markets. We expect that a proposed revised rule governing segregation and other customer protection measures in the OTC derivatives area will require such CCPs to have detailed segregation and portability rules and arrangements.

[31] See pages 10486 and 10487 of the 2014 Notice.
[32] We discuss the "IIROC-CIPF regime" and "Part XII of the BIA" in detail in the 2014 Notice.

(d) Part 4 – Other Requirements of Recognized Clearing Agencies

In addition to clarifying certain provisions and harmonizing others with recent amendments made to NI 21-101, we amended Part 4 of the Instrument generally by removing some granular rules and placing them instead as guidance only in Part 4 of the Companion Policy.

(i) Division 1 – Governance

Subsections 4.1(5) to (9) of the Instrument in the 2014 Documents had enumerated the types of relationships that an individual can have with a clearing agency that would constitute a "material relationship" for the purposes of determining whether the individual is independent of the clearing agency. We have removed these provisions from the Instrument. Instead, we have added guidance on the types of relationships that could constitute a material relationship with a clearing agency in new subsection 4.1(4) of the Companion Policy.[33] In general, this new subsection in the final version of the Companion Policy mirrors the provisions in former subsections 4.1(5) to (9) of the Instrument.[34] The concept of independence remains consistent with NI 52-110 and other foreign regulatory regimes, without narrowing the definition to specific types of relationships which are more suited for a clearing agency that is also reporting issuer under Canadian securities legislation.

Section 4.3 of the Instrument, which governs the designation and functions of a chief risk officer and a chief compliance officer (**CCO**) of a clearing agency, is unchanged from the 2014 Documents. However, we added a clarification in subsection 4.3(3) of the Companion Policy that the role of a CCO may, in certain circumstances, be performed by the Chief Legal Officer or General Counsel of the clearing agency, where the individual has sufficient time to properly carry out his or her duties and there are appropriate safeguards in place to avoid conflicts of interest.

Section 4.4 of the Instrument in the 2014 Documents, which had required a recognized clearing agency to establish and maintain one or more committees on risk management, finance, audit and executive compensation, has been amended in several ways. The reference to an executive compensation committee has been removed. Instead, section 4.4 of the Companion Policy has been revised to outline the CSA's view that a recognized clearing agency should consider forming a compensation committee. Moreover, section 4.4 of the Instrument has been revised to remove paragraphs (a) to (e) that would have prescribed minimum requirements for the scope of the mandates of such committees. We have included, instead, guidance on the scope of such mandates in section 4.4 of the final version of Companion Policy, which generally mirrors former paragraphs 4.4(a) to (e) of the Instrument.

(ii) Division 2 – Default management

The CCP skin-in-the-game (**SITG**) rule in section 4.5 of the Instrument has been slightly amended to remove the reference to where in the default waterfall the CCP's own SITG capital should be used. However, we have retained our view in section 4.5 of the Companion Policy (in the form of guidance) that a CCP's own capital contribution should be used in the default waterfall immediately after a defaulting participant's contributions to margin and default fund resources have been exhausted, and prior to non-defaulting participants' contributions. As we had emphasized in the 2014 Notice, while not a requirement of the PFMIs, the SITG rule represents international best practice, particularly for CCPs that are operated on a for-profit basis. It promotes risk culture and is a positive signal to the clearing agency's participants that the owners of a CCP have an equal stake in ensuring the robustness of the CCP's risk management. However, as there is no international consensus yet on an optimal CCP SITG approach,[35] we believe that it may be premature at this time to require a specific calculation for the amount of SITG. We will monitor international developments in this area, and will determine whether additional rule-making or guidance on SITG should be provided in 2016.

(iii) Division 3 – Operational risk

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[33] As a result of these revisions, former subsections 4.1(2) and (3) of the Companion Policy in the 2014 Documents were no longer needed.

[34] We did, however, reduce the period during which a former employee or executive officer of the clearing agency or any of its affiliates would still be considered having a material relationship with the clearing agency from three years to one year after leaving his or her position.

[35] See, for example, "A Financial System Perspective on Central Clearing of Derivatives", remarks by Jerome H. Powell, Member, Board of Governors of the Federal Reserve System, at "The New International Financial System: Analyzing the Cumulative Impact of Regulatory Reform", 17th Annual International Banking Conference, sponsored by the Federal Reserve Bank of Chicago and the Bank of England, Chicago, Illinois, November 6, 2014; available at: http://www.federalreserve.gov/newsevents/speech/powell20141106a.pdf.

The systems requirements of sections 4.6 to 4.9 of the Instrument have largely been modified to harmonize with recent amendments made to similar provisions in NI 21-101.[36] In the 2014 Notice, we had expressed our view that certain of the amendments in NI 21-101 may be equally applicable to recognized clearing agencies due to their criticality to our capital markets.[37]

(iv) Division 4 – Participation requirements

We clarified the access and due process provisions of section 4.11 of the Instrument. In particular, subsection (2) specifies that a participant's, or potential participant's, right to be heard and make representations applies to a clearing agency's decision that terminates, suspends or restricts a participant's membership in the clearing agency or that declines entry to membership to an applicant that applies to become a participant.

(e) Parts 5, 6 and 7

No key changes were made to Parts 5 and 6 of the Instrument. We have included a Part 6 to the final version of the Companion Policy to clarify the circumstances when a securities regulatory authority may consider granting an exemption from a provision of the Instrument. This guidance generally reflects the views we expressed in the 2014 Notice.

We have inserted the effective coming-into-force dates in Part 7 of the Instrument and have changed its structure to meet the legislative drafting standards applicable in some jurisdictions. As mentioned above, most of the provisions in the Instrument will come into force on February 17, 2016. However, the following provisions of the Instrument will come into force on December 31, 2016 only:

- The requirement in section 3.1 to implement rules, procedures, policies or operations designed to ensure that a recognized clearing agency meets or exceeds PFMI Principle 14: *Segregation and portability*

- The requirement in section 3.1 to implement rules, procedures, policies or operations designed to ensure that a recognized clearing agency meets or exceeds key consideration 4 of PFMI Principle 3: *Framework for the comprehensive management of risks* and key consideration 3 of PFMI Principle 15: *General business risk* with respect to a clearing agency's recovery or orderly wind-down plans

- The requirement in section 3.1 to implement rules, procedures, policies or operations designed to ensure that a recognized clearing agency meets or exceeds PFMI Principle 19: *Tiered participation arrangements*

We have already discussed above under "(c) Part 3 – PFMI Principles Applicable to Recognized Clearing Agencies – (iii) Segregation and portability" the ongoing policy work with respect to the implementation of PFMI Principle 14. Regarding the other PFMI Principles above that come in force on December 31, 2016, we are proposing new Joint Supplementary Guidance in respect of recovery and orderly wind-down planning, and are assessing policy considerations in respect of tiered participation arrangements. This new guidance is the subject of the Proposed CP Amendments discussed further below in Part III of this Notice.

5. Authority for Instrument

In those jurisdictions in which the Instrument is adopted, the securities legislation provides the securities regulatory authority with rule-making or regulation-making authority in respect of the subject matter of the Instrument.[38]

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[36] See CSA Notice of Approval – Final Amendments to National Instrument 21-101 Marketplace Operations; and National Instrument 23-101 Trading Rules; June 25, 2015, (2015) 38 OSCB (Supp-2); also available at: http://www.osc.gov.on.ca/documents/en/Securities-Category2/ni_20150625_21-101_23-101_notice-approval-amd.pdf. In particular, see the amendments to Part 12 – *Marketplace Systems and Business Continuity Planning* of NI 21-101, as well as Annex A to the Notice of Approval – *Description of Notable Changes to the Proposed Amendments*.

[37] See p. 10489 of the 2014 Notice.

[38] In Ontario, the Instrument was made under the following provisions of the *Securities Act* (Ontario) (Act): (i) paragraph 11 of subsection 143(1) of the Act allows the OSC to make rules regulating the listing or trading of publicly traded securities or the trading of derivatives, including rules relating to clearing and settling trades; and (ii) paragraph 12 of subsection 143(1) of the Act allows the OSC to make rules regulating recognized clearing agencies, including prescribing requirements in respect of the review or approval by the OSC of any by-law, rule, procedure, interpretation or practice and prescribing restrictions on its ownership, control and direction.

6. Alternatives to Instrument Considered

As noted in the 2014 Notice, the CSA considered, as general alternatives, adopting the PFMI Principles in a policy, or including them on a case-by-case basis as terms and conditions to a recognition order of a clearing agency. We have decided against these alternatives because we believe the PFMI Principles should be contained in a rule to provide for greater transparency of clearing agency requirements and to promote consistency across all recognized clearing agencies that operate as a CCP, CSD or SSS in carrying on business in a jurisdiction of Canada.

7. Unpublished Materials

In proposing and adopting the Instrument and Companion Policy, the CSA did not rely on any significant unpublished study, report, or other material.

8. Anticipated Costs and Benefits

As mentioned in CSA Notice 24-310 and the 2014 Notice, the Instrument will enhance the regulatory framework for recognized clearing agencies operating or seeking to operate in a jurisdiction of Canada. This regulatory framework will facilitate ongoing observance by recognized clearing agencies of international minimum standards applicable to FMIs. We believe that the Instrument will support resilient and cost-effective clearing agency operations. It will promote transparency and support confidence among market participants in the ability of clearing agencies to provide efficient and safe clearance and settlement services, which in turn will facilitate capital formation, limit systemic risk, and foster financial stability. Also, the Instrument will further facilitate the efforts of Canadian CCPs to meet the "qualifying CCP" (**QCCP**) status under the Basel III and Canadian banking guidelines. Canadian and foreign banks that have certain counterparty exposures to Canadian CCPs would be subject to higher capital requirements if these CCPs do not meet the QCCP status.[39]

We also believe the clearing agency regulatory framework should enhance confidence in the market and better serve market participants. With the adoption of the Instrument, clearing agencies may be better positioned to withstand market volatility and evolve with market developments and technological advancements. Establishing rules that are consistent with current practice and international standards provides a good starting point for promoting appropriate risk management practices.

Finally, the adoption of the PFMI Principles is intended to support the initiatives of the Group of Twenty Finance Ministers and Central Bank Governors (**G20**) and the Financial Stability Board to strengthen core financial infrastructures and markets. To promote consistent global enforcement, the PFMIs are considered minimum requirements, and it is expected that members of CPMI and IOSCO apply the PFMI Principles to the fullest extent possible.[40] The global and uniform implementation of the PFMIs is considered to be crucial to meeting the G20 commitments for derivative markets regulatory reforms, including requirements for centralized clearing and data reporting.

We acknowledge that implementing the PFMI Principles will entail costs for the industry. Recognized clearing agencies in Canada are continuing to transition to the new PFMI Principles. They have conducted detailed self-assessments against the PFMI Principles and identified their gaps in observance. They have developed plans to address these gaps, and are currently meeting many of the PFMI Principles. As noted previously, more time is needed to meet all of the PFMI Principles, and therefore we are providing for longer implementation dates for meeting the remaining PFMI Principles.

9. Regulations or Other Instruments to be Amended or Revoked (Ontario only)

OSC Staff Notice 24-702 *Regulatory Approach to Recognition and Exemption from recognition of Clearing Agencies* has been withdrawn as a result of the implementation of the Instrument and Companion Policy.

10. Questions

[39] See CSA Multilateral Staff Notice 24-311 Qualifying Central Counterparties, July 28, 2014, at http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20140728_24-311_sn-qualifying-central-counterparties.htm.

[40] CPMI and IOSCO have stated that they expect full, timely and consistent implementation of the PFMIs by the authorities in all member-jurisdictions. In this regard, they have established an international task force to monitor implementation of the PFMIs by relevant authorities. Reports on PFMI implementation by CPMI and IOSCO members, including the OSC, AMF, BCSC and Bank of Canada, are available on the Bank for International Settlements' website (http://www.bis.org/cpss/index.htm) and the IOSCO website (http://www.iosco.org/library/index.cfm?section=pubdocs).

Please refer any of your questions to the CSA staff listed below in this Notice under "Part III – Proposed CP Amendments – 3. Comment Process".

Part III – Proposed CP Amendments

1. Background to, and Purpose of, Proposed CP Amendments

As noted in the 2014 Documents, the Companion Policy consists largely of the Joint Supplementary Guidance developed by the CSA and the Bank of Canada. The Joint Supplementary Guidance is intended to provide additional clarity on certain PFMI Principles within the Canadian context. It is directed at recognized *domestic* clearing agencies that are also overseen by the Bank of Canada under the PCSA. It is included in separate text boxes in Annex I to the Companion Policy under the relevant headings of the PFMI Principles.

The adopted Companion Policy contains Joint Supplementary Guidance related to governance standards (PFMI Principle 2), collateral (PFMI Principle 5), liquidity risk (PFMI Principle 7), general business risk (PFMI Principle 15), custody and investment risk (PFMI Principles 16), and disclosure of a clearing agency's rules, key procedures and market data (PFMI Principle 23). Such guidance was also included in the Companion Policy published for comment in the 2014 Documents. We had noted in the 2014 Documents that, over time, the CSA and Bank of Canada would propose Joint Supplementary Guidance on certain other PFMI Principles as well.

With this Notice, we are publishing, together with the Bank of Canada, the Proposed CP Amendments, which consist solely of additional Joint Supplementary Guidance. The new Joint Supplementary Guidance is intended to provide additional clarity on certain aspects of PFMI Principles 3 and 15 with respect to a clearing agency's recovery and orderly wind-down plans. The Proposed CP Amendments will be incorporated into Annex I of the Companion Policy in a text box under the relevant heading of the PFMI Principles. See Annex G to this Notice. We are seeking comment on any aspect of the Proposed CP Amendments. Please see below under "3. Comment Process" for information on how to provide comments.

2. Summary of Proposed CP Amendments

Key consideration 4 of PFMI Principle 3: *Framework for the comprehensive management of risks* requires a clearing agency to identify scenarios that may potentially prevent it from being able to provide its critical operations and services as a going concern, and assess the effectiveness of a full range of options for recovery or orderly wind-down. It also notes that the clearing agency should prepare appropriate plans for its recovery or orderly wind-down based on the results of that assessment. Moreover, where applicable, the clearing agency is expected to provide relevant authorities with the information needed for purposes of resolution planning. Key consideration 3 of PFMI Principle 15: *General business risk* requires a clearing agency, among other things, to maintain a viable recovery or orderly wind-down plan and hold sufficient liquid net assets funded by equity to implement the plan.

The new Joint Supplementary Guidance clarifies expectations regarding key components of recovery plans; the selection and implementation of recovery tools; additional considerations for recovery planning; implementation; review of recovery plans; orderly wind-down; and practical aspects of designing a recovery plan, such as the organization and structure of content.

3. Comment Process

Please submit your comments in writing on or before February 1, 2016. If you are not sending your comments by email, please include a CD containing the submissions. Address your submission to the following CSA member commissions:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Nova Scotia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Office of the Attorney General, Prince Edward Island
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Yukon
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

Please deliver your comments only to the addresses that follow. Your comments will be forwarded to the remaining CSA member jurisdictions.

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
E-mail: comments@osc.gov.on.ca

M^{e} Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 22^{e} étage
C.P. 246, tour de la Bourse
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Fax: 514-864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

Please note that comments received will be made publicly available and posted on the Websites of certain CSA jurisdictions. We cannot keep submissions confidential because securities legislation requires that a summary of the written comments received during the comment period be published. In this context, you should be aware that some information which is personal to you, such as your e-mail and address, may appear in the websites. It is important that you state on whose behalf you are making the submission.

Additionally, because your comments will pertain specifically to the Joint Supplementary Guidance, we request that your comments also be sent to the Bank of Canada at the following email address:

PFMI-consultation@bankofcanada.ca

Questions with respect to this Notice, the final approved Instrument and Companion Policy, and the Proposed CP Amendments may be referred to:

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