ANNEX B

Summary of Comments on
Proposed Changes to Companion Policy 24-102 *Clearing Agency Requirements*
and CSA Responses

1. Theme/question	2. Summary of comments	3. Responses
General Issues		
Principles-based approach	One commenter expresses support for a principles-based approach to adopting the PFMIs, but views the proposed guidance – with prescriptive language and scope – as a departure from this approach.	The Canadian authorities have amended the language regarding the use of certain recovery tools. The overarching purpose of the guidance is to provide additional clarity in the Canadian context to the PFMIs and the Recovery Report regarding a clearing agency's recovery and orderly wind-down plans. The guidance clarifies the expectations of the Canadian authorities regarding key aspects of recovery plans.
International consistency	Two commenters express the need to maintain international consistency with recovery guidance, and encourage Canadian regulators to consult with the international community and to review the proposed guidance in light of other regulators implementing their recovery regimes. One commenter further suggests delaying implementation until U.S. and EU regulators have finalized their guidance on the issue.	While being mindful of the purpose described above, we agree that we should maintain international consistency in this area. See also the cover Notice. With respect to delaying the guidance, we disagree. See the cover Notice.
Application and level playing field concerns	A commenter seeks clarity with respect to the meaning and implications of the term "designated domestic FMI" used to describe the scope of application of the guidance. In particular, the commenter seeks clarification as to whether foreign-based FMIs designated by the Bank of Canada as systemically important are, or should be, exempt from compliance. One commenter argues that applying the guidance only to designated *domestic* FMIs would lead to an unlevel playing field with designated foreign FMIs.	Section 3.1 of the Companion Policy states that the JSG in Annex 1 is applicable only to "recognized *domestic* clearing agencies that are also overseen by the [Bank of Canada]". By domestic, we mean based in Canada. While the JSG in Annex 1 to the Companion Policy is applicable only to recognized domestic clearing agencies that are also overseen by the Bank of Canada, we would expect a foreign-based recognized clearing agency that is also designated by the Bank of Canada to be subject to home-jurisdiction requirements that achieve an equivalent "outcome". If, hypothetically, a foreign-based clearing agency carrying on business in a local jurisdiction were based in a home jurisdiction that did not have similar regulatory expectations with respect to clearing agency recovery planning and we felt there was a "gap" in this area, CSA regulators could impose requirements analogous to the JSG through terms and conditions in a recognition order.

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Communication and escalation	One commenter agrees that setting a recovery scenario communication plan in advance may be appropriate, but emphasizes that a contextual approach is required to achieve balance between communication and maintaining public confidence in the markets. The commenter concludes that, while communication between regulators and an FMI's Boards of Directors is appropriate, plans ought not to require communications with any particular stakeholder.	We are of the view that the current wording of the guidance strikes an appropriate balance between transparency and public confidence. Therefore, we have not modified the text on this matter. A communications protocol between a clearing agency and its overseers can be separately agreed-upon.
	Another commenter expresses concern that the language in the guidance suggests that an FMI should obtain prior approval before implementing its recovery plan or a particular tool, which could hinder the quick response that a crisis may require. The commenter proposes that consultation with regulatory authorities regarding recovery plans should be required only where reasonably practicable, and that the guidance should only refer to a communication protocol to be agreed upon separately.	The guidance is clear that a clearing agency should inform or consult with Canadian authorities when taking recovery actions. We consider it critical to be informed to ensure that the clearing agency's decisions take account of potential systemic risk consequences. The guidance does not require prior regulatory approval before triggering the recovery plan and applying a particular recovery tool.
Transparency	One commenter argues that FMIs should be required to make their recovery plans fully available to members. An FMI wishing to keep any part of a plan confidential should be required to justify the non-disclosure. Similarly, the commenter advocates that legal opinions on the application of recovery tools solicited by the FMI be made available to its participants.	Recovery plans would normally be adopted through changes to the clearing agency's rulebook, and therefore be subject to a transparent comment and approval process. Thus, a clearing agency's recovery actions taken under its recovery plan should not surprise participants. In addition, the guidance already stresses that recovery plans must be drafted with a high degree of legal certainty, but it should be left to the clearing agency and its participants to decide how best to ensure this certainty is communicated and ensured.
Categorization and choice of recovery tools	One commenter believes that the guidance ought to define "recovery tool" in a way that accounts for the heterogeneity of FMIs. This commenter also emphasizes the importance of distinguishing between recovery and business continuity management so that recovery plans address the correct objectives.	The guidance provides flexibility in the selection of recovery tools to account for the heterogeneity of clearing agencies in terms of structure and service offering. We have amended the guidance to clarify that a recovery plan aims to facilitate recovery from threats to a clearing agency's viability and financial strength, while a business continuity plan (BCP) facilitates recovery mainly from operational events, but the two are complementary. For example, when an operational incident results in financial losses that threaten the clearing agency's viability, both the BCP and the (financial) recovery plan should be triggered so that they complement each other.
	One commenter criticizes the "recommended" / "non-recommended" binary, citing its inconsistency with international guidance, and suggests softening "non-recommended tools" to "other tools." By discouraging certain tools, the commenter argues that Canadian FMIs may end up worse equipped to manage recovery.	We have amended the language in the guidance by replacing the description of tools that are "not recommended" with "tools requiring further justification".
	The same commenter further argues that the guidance should appreciate that continued use	We agree that the continued use of pre-recovery tools in combination with recovery

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	of pre-recovery tools in combination with recovery tools may be necessary.	tools may be necessary, but the text in the guidance already encourages clearing agencies to do so: the guidance states that "tools are often already found in the pre-recovery risk-management frameworks of clearing agencies. Canadian authorities encourage their use for recovery as well, provided they are in keeping with the criteria for effective recovery tools as found in the Recovery Report and in this guidance."
Effectiveness of recovery tools	One commenter offers support for the adoption of measurable, manageable, controllable and capped recovery tools, and the discouragement of destabilizing tools, but suggests that FMI recovery plans should include criteria that measure the effectiveness of each tool so that it can be determined whether the recovery process is effective.	The guidance already establishes the following mechanisms to limit the risks of ineffective plans and undue risk to clearing agency participants: 1) Recovery plans should be reviewed, including an assessment of recovery tools, at least annually and following certain events, such as significant changes to market conditions, the clearing agency's business model, or risk exposures; 2) We note the importance of consulting with regulators when applying recovery tools; and 3) Clearing agencies should keep in mind the objective of minimizing the tools' negative impacts on participants, the clearing agency, and the broader financial system.
Application of recovery tools to tiered participants	A commenter states that ensuring recovery tool inclusiveness of all types and tiers of participants is imperative and that, where inclusiveness cannot be attained, that compensation to participating members is essential.	We see the lack of a direct contractual relationship between an indirect participant and the clearing agency as a challenge. Since indirect participant involvement depends on such contractual relationship (as well as, in the case of a CCP, the segregation and portability arrangements of the CCP), the guidance cannot expressly recommend the involvement of indirect participants. To this end, the guidance has been adjusted to note that recovery plans should respect the clearing agency's frameworks for tiered participation, segregation and portability. Also, the guidance notes that, to the extent that the costs of recovery are shared less equally under some tools (e.g., VMGH), clearing agencies could, if it is financially feasible, consider post-recovery actions to restore fairness where participants have been disproportionately affected.
Approval vs. endorsement of recovery plan by Board of Directors	A commenter notes inconsistent language between the guidance and the Recovery Report. The latter requires recovery plans to be only endorsed by an FMI's Board of Directors or equivalent body. The guidance requires formal approval by the Board.	Consistent with the Recovery Report (para. 2.3.3), we view recovery planning as an extension of the clearing agency's regular risk management. As a result, the Canadian authorities believe that there is high value in requiring that recovery plans be approved, rather than just endorsed, by the clearing agency's Board of Directors, in order to incentivize responsible recovery planning.

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Stress testing	One commenter encourages establishing minimum stress testing standards and scenarios across CCPs, the results of which ought to be shared with members as part of the FMI's recovery plan.	We note that standardized stress testing is out of scope of this guidance. Currently, the CPMI-IOSCO is examining stress testing as part of its stock-take exercise related to CCP resilience. We will monitor this work and any related developments, and assess if any Canadian specific guidance would be necessary.
Recovery tools and related issues		
Cash calls	One commenter argues that limiting the maximum cumulative value of rounds for mandatory cash calls per default event and per successive default within a period of time would allow members to prepare in advance and increase predictability.	The draft guidance noted that caps on dollar amounts should be applied and the number of rounds limited. While our position on cash calls has not changed, we believe the guidance needs to be aligned with international guidance on, and interpretations of, full allocation of losses and shortfalls for clearing agencies. As a result, we have softened the language by emphasizing the need to have measurable, manageable and controllable exposures. Clearing agencies should ensure that participant exposures to cash calls must be determinable, if not fixed, while respecting the requirements of the PFMIs to permit full allocation in recovery. The guidance has been further revised to emphasize that authorities will monitor the application of each successive round of cash calls with increased focus on systemic stability.
Variation margin gains haircutting (VMGH)	One commenter views limiting the number of rounds of VMGH available to a recovering FMI as overly restrictive. The commenter argues these limits may lead to larger cash calls, which could increase uncertainty at times of crisis. Further, this commenter argues that implementing a cap (on either time or amount) may undermine the effectiveness of this tool, and is inconsistent with international practice. Another commenter suggests that VMGH should apply to all tiers of participants, and that (contrary to the comment above) a dollar limit would be more effective than a time limit in enabling members to prepare for a major default event.	We recognize a need to acknowledge the international interpretation of the PFMI definition of full allocation while balancing participant concerns regarding predictable and manageable recovery tools. While unfettered application of VMGH is not recommended, lifting caps on VMGH is not prohibited as participant exposures to each round can be measured with reasonable confidence. In this context, cautionary language has been added to the guidance to signal to clearing agencies that participant exposures must be manageable, measurable and controllable. Moreover, the guidance highlights the need for authorities to be kept informed to allow them to monitor the application of each successive round of VMGH with increased focus on systemic stability. See also our response above regarding applying tools to all tiers of participants.
Payment haircutting	Two commenters felt that the guidance did not provide an exhaustive compendium of recovery tools—for example, there are few tools described for non-CCPs other than cash calls and contract tear-up. One commenter recommends considering "payment haircutting" more broadly than VMGH, pointing to Canadian and Australian precedents for use of payment haircutting in recovery situations.	The guidance welcomes clearing agencies to include other recovery tools, where applicable, in their recovery plans, provided that they are in keeping with the criteria for the recommended tools. Language has been added to clarify that clearing agencies can also design recovery tools not explicitly listed in the guidance, where system-specific recovery needs necessitate. We consider the concept of "payment haircutting" as too vague

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		to be explicitly included in the guidance.
Voluntary contract allocation/tear-up	One commenter supports voluntary contract allocation or tear-ups but notes that it may be difficult or impossible to apply to indirect participants. The commenter also wishes to ensure that, for tear ups, corresponding accounting/netting and capital criteria will be consistent with the Canadian bank capital framework.	With regard to indirect participants, the guidance notes the allocation of losses and shortfalls in recovery should respect the clearing agency's frameworks for tiered participation, segregation and portability. The guidance also requires recovery plans to have a strong legal basis for the relevant processes and procedures with voluntary tools to manage participant expectations.
Recovery from non-default losses	One commenter encourages Canadian authorities to strengthen the language surrounding the principle that FMIs should rely on FMI-funded resources to address recovery from non-default-related losses. The commenter proposes that the guidance explicitly state that shareholders and not members should bear all of the non-default-related losses unless members voluntarily contribute (e.g. in exchange for creditor/shareholder rights). A second commenter cautioned that unprofitable business and investment lines should always be promptly addressed by FMIs, regardless of whether or not recovery has been triggered.	We believe the guidance on non-default losses is adequate.
Orderly wind down	One commenter requests more detail on the role of wind-down plans and how they differ from an FMI resolution plan. This commenter also opines that FMIs exempted from wind down requirements should be required to disclose this exemption, and that principles of defined and limited losses to surviving participants should continue to be observed. A second commenter agrees that developing a wind-down plan may not be appropriate or feasible for some critical services. It concludes that no wind-down plan should be required in those scenarios.	We note that the guidance, together with the Recovery Report, adequately cover these points. The guidance states that "developing an orderly wind-down plan may not be appropriate or operationally feasible for some critical services". While not obligatory, the guidance further notes that clearing agencies may consider developing wind-down plans for non-critical services where this could benefit a clearing agency in recovery.
Link to resolution frameworks and resolution authority, including "no-creditor-worse-off" (NCWO) policy	One commenter suggests that due to the connections between recovery and resolution, additional comments on the guidance may be necessary once more details on FMI resolution become available. The commenter argues that the listed "non-recommended tools," with the exception of forced contract tear up, should also be seen as inappropriate for a resolution scenario.	While not within the scope of the guidance, we have briefly addressed some of these comments. See also the cover Notice. We note that the text of the guidance allows clearing agencies to justify to authorities the inclusion of certain types of tools that we characterize as "requiring further justification" (previously described as "not-recommended" tools) in recovery plans. See also our response above.
	The commenter further suggests that FMI recovery plans should include criteria that, not only measure the effectiveness of each tool so that it can be determined whether the recovery process is effective, but also when a resolution should begin. The commenter also proposes that when recovery is ineffective, FMIs should not utilize loss allocation tools to their prescribed limits. To this end, the commenter highlights that evaluative tools could be implemented, citing	The Canadian authorities believe that these comments (particularly, criteria for the non-viability of a clearing agency) are best addressed in the context of resolution and not in recovery, where determining many of these issues would be subject to a framework separate from the recovery process. The development of a clearing agency resolution framework is out of scope of this consultation process.

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	criteria for non-viability of financial institutions maintained by OSFI. The commenter also notes that recovery tools should have a high likelihood of success if their use is to respect the NCWO standard (see below), and that in certain circumstances, some recovery tools will not be appropriate. One commenter believes that NCWO protection is fundamental not only to FMI resolution but also at the recovery stage because of the ability for an FMI to allocate losses from failure in recovery. It suggests that the guidance should contain provisions stating that no FMI members should be worse off during recovery than with service closure, using this as the counterfactual for the NCWO safeguard.	We note that, while NCWO considerations are mostly applicable to gone-concern, rather than going-concern, entities, we have softened language around caps on recovery tools so that recovery does not necessarily result in a mechanistic transition to resolution (e.g., when all recovery tools have been exhausted).
Mandatory clearing suspension	One commenter notes the need to consider the link between mandatory central clearing requirements and the recovery and resolution of CCPs. The commenter argues that authorities should have the ability to suspend central clearing mandates for a product in the event of a crisis involving an important CCP that clears that product.	While suspending central clearing requirements in a CCP recovery phase is unlikely, the CSA will work with the Bank of Canada and federal authorities, as well as monitor the development of international guidance, on this topic in the context of CCP resolution frameworks.