

Notice of Changes
to
Companion Policy 24-102 *Clearing Agency Requirements*

June 3, 2016

Introduction

On December 3, 2015, the Canadian Securities Administrators (the **CSA** or **we**) published National Instrument 24-102 *Clearing Agency Requirements* (**Instrument**) and Companion Policy 24-102CP to National Instrument 24-102 *Clearing Agency Requirements* (**Companion Policy**) in final adopted form. Subject to certain transition provisions, the Instrument and Companion Policy became effective in most CSA jurisdictions on February 17, 2016.¹

The main objective of the Instrument is to impose 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 a financial market infrastructure (**FMI**), which are 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**)² and the International Organization of Securities Commissions (**IOSCO**).³ Implementation of the international standards is intended to enhance the safety and efficiency of clearing agencies, limit systemic risk, and foster financial stability.

The CSA also published on December 3, 2015, for a 60-day comment period, proposed amendments to the final adopted Companion Policy. The proposed amendments consist of new supplementary guidance (**Recovery Guidance**) jointly developed by the Bank of Canada and CSA (collectively, the **Canadian authorities**) on FMI recovery and orderly wind-down planning. The Recovery Guidance is intended to provide additional clarity regarding recovery and orderly wind-down plans for domestically-based, recognized clearing agencies that are also overseen by the Bank of Canada. Canadian authorities expect such clearing agencies to meet the standards related to recovery and orderly wind-down outlined in the PFMI Report. The PFMI Report is supplemented by the October 2014 CPMI-IOSCO report *Recovery of financial market infrastructures* (**Recovery Report**), which further interprets the standards and guidance in the PFMI Report on the subject matter.⁴

The comment period for the Recovery Guidance closed on February 1, 2016. The Canadian authorities have made some modifications to the Recovery Guidance, as a result of both the comments received and emerging international trends in FMI recovery planning and FMI resolution frameworks. None of the modifications are considered material changes. Consequently, we are adopting the Recovery Guidance today as part of the Joint Supplementary Guidance (**JSG**) set forth in Annex 1 to the Companion Policy. In addition, further non-material revisions are being made to other aspects of the JSG, which are intended to simplify and enhance consistency among all the JSG. We have included a blacklined version of the revised Companion Policy in **Annex C** to this Notice, as well as a clean version of the Companion Policy in **Annex D** to this Notice.⁵ The material is also available on websites of CSA jurisdictions, including:

¹ In Saskatchewan, the effective date was February 19, 2016.

² Prior to September 2014, CPMI was known as the Committee on Payment and Settlement Systems (**CPSS**).

³ The PFMI Report is available on the Bank for International Settlements’ website (www.bis.org) and the IOSCO website (www.iosco.org).

⁴ The Recovery Report is available on the Bank for International Settlements’ website (www.bis.org) and the IOSCO website (www.iosco.org).

⁵ To clarify, the revisions made to the Companion Policy with this Notice are strictly to the JSG set forth in **Annex 1** to the Companion Policy. Therefore, Annexes C and D to this Notice reproduce the JSG in Annex 1 to the Companion Policy, but not the entirety of the Companion Policy. In addition, while the Recovery Guidance is new text added today to the JSG (new Box 3.1), we have only blacklined in Annex C the changes made to the proposed Recovery Guidance published for comment on December 3, 2015. Other blacklined changes in Annex C made to other aspects of the JSG reflect the non-material revisions that were made to such JSG (i.e., changes to Boxes 2.1, 2.2, 5.1, 7.1, 15.1, 16.1, and 23.1 – also please note that Boxes 2.1 and 2.2 are merged into a single Box 2.1).

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

This Notice includes the following Annexes:

- Annex A: List of commenters on the Recovery Guidance
- Annex B: Summary of comments and CSA responses
- Annex C: Blacklined version of Annex 1 to final Companion Policy 24-102 *Clearing Agency Requirements*
- Annex D: Clean version of Annex 1 to final Companion Policy 24-102 *Clearing Agency Requirements*

Substance and purpose of Recovery Guidance

The Recovery Guidance is intended to provide additional clarity to the PFMI and the Recovery Report regarding recovery and orderly wind-down plans in the Canadian context. It clarifies the expectations of the Canadian authorities regarding key components of recovery plans; the selection and application of recovery tools; additional considerations for recovery planning; implementation of recovery plans; review of recovery plans; orderly wind-down; and practical aspects of designing a recovery plan, such as the organization and structure of content.

Comments received on Recovery Guidance and responses

The Canadian authorities received four comment letters. We have considered these comments and thank all the commenters. We have set out the names of the commenters in **Annex A**, and summarized their comments, together with our responses, in **Annex B** to this Notice.⁶ Certain commenters suggested delaying the finalization of the Recovery Guidance. The Canadian authorities do not believe that delaying the Recovery Guidance is appropriate. The Recovery Guidance being published today is intended to help clearing agencies develop recovery plans before the end of 2016.

In developing the Recovery Guidance, the Canadian authorities have been influenced by the comments received through the consultation, the evolving international interpretations of the standards and guidance on FMI recovery planning set out in the PFMI and Recovery Report, and ongoing international policy work related to FMIs and financial stability.

Developments in these areas are having, and will continue to have, a significant global impact on FMI recovery planning and resolution frameworks. To ensure that recovery planning in the Canadian context remains in step with this evolving landscape, Canadian authorities have relaxed some of the previously restrictive language of the Recovery Guidance. Nonetheless, the principled intent of the guidance, in particular its strong emphasis on systemic stability, has not changed and is reinforced by the adjustments made. Specifically:

- references to caps on participant exposures are replaced with language echoing existing Canadian requirements that exposures be limited to fixed or determinable amounts;
- additional emphasis is added to stress the need for measureable, manageable and controllable exposures for participants;
- language is added to stress that Canadian authorities will consider the impact of each successive round of recovery tool application with increasing focus on systemic stability; and
- where certain types of tools were not recommended in the draft Recovery Guidance, language has been adjusted to instead place the onus on the FMIs to justify their use in recovery, where applicable.

It is important to note that these and other proposed changes are not intended to be a departure from the principled approach to recovery, nor do they represent a lesser focus on financial stability on the part of the Recovery Guidance or Canadian authorities. Rather they adapt the Recovery Guidance to be flexible in the fast-evolving area of FMI financial stability, and provide the FMIs, their stakeholders, and Canadian authorities the ability to respond within the principled approach that has been adopted.

⁶ We note, however, that comments that were not reasonably within scope of the consultation on the Recovery Guidance are not included in Annex B.

Effective Date

The revised Companion Policy, which includes the Recovery Guidance, is effective immediately.

Questions

Please refer any of your questions to the CSA staff listed below:

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