

ANNEX A

PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 24-102 *CLEARING AGENCY REQUIREMENTS*

AMENDING INSTRUMENT

1. ***National Instrument 24-102 Clearing Agency Requirements is amended by this Instrument.***
2. ***The definition “publicly accountable enterprise” in section 1.1 is amended by italicizing “Acceptable Accounting Principles and Auditing Standards”.***
3. ***Section 1.2 is amended***
 - (a) ***in subsection (2),***
 - (i) ***by replacing “company if” with “company if any of the following applies:”,***
 - (ii) ***by replacing “fifty percent” with “50%”, wherever the words occur, and***
 - (iii) ***by deleting “or” at the end of paragraph (b), and***
 - (b) ***in subsection (3),***
 - (i) ***by replacing “company if” with “company if either of the following applies:”, and***
 - (ii) ***by replacing paragraph (a) with the following:***
 - (a) it is a controlled entity of any of the following:
 - (i) that other;
 - (ii) that other and one or more persons or companies, each of which is a controlled entity of that other;
 - (iii) two or more persons or companies, each of which is a controlled entity of that other;.
4. ***Section 1.3 is replaced with the following:***

1.3 Interpretation - Extended Meaning of Affiliated Entity - For the purposes of the PFMI Principles, a person or company is considered to be an affiliate of a participant, the person or company and the participant each being described in this section as a “party”, where either of the following applies:

 - (a) a party holds, otherwise than by way of security only, voting securities of the other party carrying more than 20% of the votes for the election of directors;
 - (b) in the event paragraph (a) is not applicable either of the following applies:
 - (i) a party holds, otherwise than by way of security only, an interest in the other party that allows it to direct the management or operations of the other party;
 - (ii) financial information in respect of both parties is consolidated for financial reporting purposes..
5. ***Paragraph 2.1(1)(b) is replaced with the following:***
 - (b) sufficient information to demonstrate either of the following:
 - (i) the applicant is in compliance with provincial and territorial securities legislation;
 - (ii) the applicant is subject to and in compliance with comparable regulatory requirements of the foreign jurisdiction in which the applicant’s head office or principal place of business is located;.
6. ***Subsection 2.1(2) is amended***
 - (a) ***by replacing “books and records” with “books, records and other documents”, wherever the words occur, and***
 - (b) ***in paragraph (b), by replacing “such” with “the”.***

7. **Subsection 2.1(3) is amended by replacing** “Submission to Jurisdiction and Appointment of Agent for Service” **with** “Clearing Agency Submission to Jurisdiction and Appointment of Agent for Service of Process”.
8. **Subsection 2.1(4) is amended by replacing** “material change to the information provided in its application” **with** “change to the information provided in its application that is material”.
9. **Subsection 2.2(1) is amended**
 - (a) **by adding** “any of the following.” **immediately after** “in relation to a clearing agency,”, **and**
 - (b) **by replacing** “recognition terms and conditions.” **with** “terms and conditions of a decision to recognize the clearing agency under securities law.”.
10. **Subsection 2.2(3) is replaced with the following:**

(3) The written notice referred to in subsection (2) must include an assessment of how the significant change is consistent with the PFMI Principles applicable to the recognized clearing agency..
11. **Subsection 2.3(1) is replaced with the following:**

(1) A recognized clearing agency or exempt clearing agency that intends to cease carrying on business in the local jurisdiction as a clearing agency must file a report on Form 24-102F2 *Cessation of Operations Report for Clearing Agency* with the securities regulatory authority at least 90 days before ceasing to carry on business..
12. **Subsection 2.5(2) is replaced with the following:**

(2) A recognized clearing agency or exempt clearing agency must file interim financial statements for each interim period as defined in National Instrument 51-102 Continuous Disclosure Obligations that comply with the requirements set out in paragraphs 2.4(2)(a) and (2)(b) with the securities regulatory authority no later than the 45th day after the end of each interim period of the recognized clearing agency’s or exempt clearing agency’s financial year..
13. **Section 3.1 is amended**
 - (a) **by replacing the first paragraph with the following:**

3.1 A recognized clearing agency must establish, implement and maintain rules, procedures, policies or operations designed to ensure that it meets or exceeds PFMI Principles 1 to 3, 10, 13 and 15 to 23, other than key consideration 9 in PFMI Principle 20 and any of the following:.
 - (b) **by deleting** “and” **at the end of paragraph (b).**
14. **Section 4.1. is amended in paragraph (2)(b), by replacing** “not employees or executive officers of a participant or” **with** “neither employees or officers of a participant nor”.
15. **Section 4.3. is amended**
 - (a) **in subsection (1), by deleting** “or, if determined by the board of directors, to the chief executive officer”,
 - (b) **in paragraph (2)(a),**
 - (i) **by deleting** “full”, **and**
 - (ii) **replacing** “maintain, implement” **with** “implement, maintain”,
 - (c) **by replacing the “,” with a “;” at the end of each of subparagraphs (3)(c)(i) and (ii),**
 - (d) **in subparagraph (3)(c)(iii), by replacing** “non-compliance, or” **with** “non-compliance;”,
 - (e) **in paragraph (3)(f), by replacing** “such” **with** “the”.
16. **Section 4.4 is amended**
 - (a) **in paragraph (4)(b), by replacing** “not employees or executive officers of a participant or” **with** “neither employees or officers of a participant nor”, **and**

(b) by adding the following subsections:

(5) For the purpose of subsection (3) and paragraph (4)(a), an individual is independent of a clearing agency if he or she has no direct or indirect material relationship with the clearing agency.

(6) For the purposes of subsection (5), a “material relationship” is a relationship that 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..

17. Section 4.6. is amended

(a) by renumbering it as subsection 4.6(1),

(b) in paragraph (a)

(i) by replacing “an adequate system of internal controls” **with** “adequate internal controls”, **and**

(ii) by adding “cyber resilience,” **immediately before** “change management”,

(c) in subparagraph (b)(ii), by replacing “ability” **with** “processing capability” **and** “process transactions” **with** “perform”,

(d) by replacing paragraph (c) with the following:

(c) promptly notify the regulator or, in Québec, the securities regulatory authority of any systems failure, malfunction, delay or security incident that is material, and provide timely updates on the following:

(i) the status of the failure, malfunction, delay or security incident;

(ii) the resumption of service;

(iii) the results of the clearing agency’s internal review of the failure, malfunction, delay or security incident; and,

(e) by adding the following paragraph:

(d) keep a record of any systems failure, malfunction, delay or security incident and, if applicable, document the reasons why the clearing agency considered that the system failure, malfunction, delay or security incident was not material., **and**

(f) by adding the following subsection:

(2) A recognized clearing agency must provide the regulator or, in Québec, the securities regulatory authority, with a report, by the 30th day after the end of the calendar quarter, containing a log and summary description of each systems failure, malfunction, delay or security incident to which paragraph (1)(d) applies..

18. The Instrument is amended by adding the following section:

Auxiliary systems

4.6.1 (1) In this section “auxiliary system” of a recognized clearing agency means a system that shares network resources with one or more of the systems operated by or on behalf of the recognized clearing agency that supports the recognized clearing agency’s clearing, settlement and depository functions and that, if breached, would pose a security threat to one or more of the previously mentioned systems.

(2) For each auxiliary system, a recognized clearing agency must

(a) develop and maintain adequate information security controls that relate to the security threats posed to any system that supports the clearing, settlement and depository functions,

(b) promptly notify the regulator or, in Québec, the securities regulatory authority of any security incident that is material and provide timely updates on

(i) the status of the incident,

(ii) the resumption of service, where applicable, and

(iii) the results of the clearing agency’s internal review of the security incident, and

(c) keep a record of any security incident and, if applicable, document the reasons why the clearing agency considered that such a security incident was not material.

(3) A recognized clearing agency must provide the regulator or, in Québec, the securities regulatory authority, with a report, by the 30th day after the end of the calendar quarter, containing a log and summary description of each security incident to which paragraph (2)(c) applies..

19. Subsection 4.7(1) is replaced with the following:

(1) A recognized clearing agency must

- (a) on a reasonably frequent basis and, in any event, at least annually, engage a qualified external auditor to conduct an independent systems review and prepare a report in accordance with established audit standards and best industry practices to ensure that the clearing agency is in compliance with paragraph 4.6(1)(a), and sections 4.6.1 and 4.9, and
- (b) on a reasonably frequent basis and, in any event, at least annually, engage one or more qualified parties to perform appropriate assessments and testing to identify security vulnerabilities and measure the effectiveness of information security controls that assess the clearing agency's compliance with paragraphs 4.6(1)(a) and 4.6.1(2)(a).

20. Subsection 4.7(2) is amended by replacing "subsection (1)" with "paragraph (1)(a)".

21. Paragraph 4.10(g) is amended by replacing "an appropriate" with "a reasonable".

22. Subsection 5.1(1) is amended by deleting "and must keep those other books, records and documents as may otherwise be required under securities legislation".

23. Section 5.2 is amended

(a) by replacing subsection (1) with the following:

(1) In this section, "Global Legal Entity Identifier System" means the system for unique identification of parties to financial transactions.

(b) in subsection (2), by replacing "a single" with "the", and

(c) by adding the following subsection:

(2.1) Throughout the period that the clearing agency is recognized as a clearing agency or is exempt from the requirement to be recognized as a clearing agency, the clearing agency must maintain and renew the legal entity identifier referred to in subsection (2).

24. Subsection 6.1(3) is amended by adding "Alberta and" immediately before "Ontario".

25. Form 24-102F1 is amended

(a) in paragraph 7, by replacing "[province of local jurisdiction]" with "[name of local jurisdiction]",

(b) in paragraph 10, by replacing "be a recognized" with "be recognized", and

(c) by deleting "insert" wherever it occurs.

26. Form 24-102F2 is amended

(a) under the heading "Exhibit B", by replacing "ceasing business" with "ceasing to carry on business",

(b) by replacing "the cessation of" with "ceasing to carry on" in Exhibit C and D, and

(c) after the heading "CERTIFICATE OF CLEARING AGENCY"

(i) by deleting the round brackets immediately before and after "Name of clearing agency",

(ii) by replacing "(Name of director, officer or partner – please type or print)" with "Name of director, officer or partner (please type or print)",

(iii) by deleting the round brackets immediately before and after "Signature of director, officer or partner", and

(iv) by replacing "(Official capacity – please type or print)" with "Official capacity (please type or print)".

27. This Instrument comes into force on •.