

PROVINCE OF BRITISH COLUMBIA

RULE OF THE BRITISH COLUMBIA SECURITIES COMMISSION

*Securities Act*

The British Columbia Securities Commission

- (a) orders that, effective June 19, 2020, National Instrument 24-102 Clearing Agency Requirements, B.C. Reg. 27/2016, is amended as set out in the attached Schedule A, and
- (b) pursuant to sections 10 and 11 of the Regulations Regulation, B.C. Reg. 394/83, approves the revisions of National Instrument 24-102 Clearing Agency Requirements, B.C. Reg. 27/2016, set out in the attached Schedule B.

DEPOSITED

June 18, 2020

B.C. REG. 136/2020



June 18, 2020

Date

British Columbia Securities Commission

*(This part is for administrative purposes only and is not part of the Order.)*

Authority under which Order is made:

Act and section: Securities Act, R.S.B.C. 1996, c. 418, s. 184

Other: Regulations Regulation, B.C. Reg. 394/83, s. 9

## SCHEDULE A

1. *National Instrument 24-102 Clearing Agency Requirements, B.C. Reg. 27/2016, is amended as set out in this Schedule.*

2. *Section 1.3 is repealed and replaced with the following:*

### **Interpretation - meaning of “affiliate” for the purposes of the PFMI principles**

**1.3** 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 subsequently referred to in this section as a “party”, if any of the following apply:

- (a) a party holds, otherwise than by way of a security interest only, voting securities of the other party carrying more than 20% of the votes for the election of directors of the other party;
- (b) a party holds, otherwise than by way of a security interest only, an interest in the other party that allows it to direct the management or operations of the other party;
- (c) financial information in respect of both parties is consolidated for financial reporting purposes.

3. *Section 2.1 (1) (b) is repealed and replaced with the following:*

- (b) sufficient information to demonstrate that the applicant is
  - (i) in compliance with applicable provincial and territorial securities legislation, or
  - (ii) subject to and in compliance with the regulatory requirements of the foreign jurisdiction in which the applicant’s head office or principal place of business is located that are comparable to the applicable requirements under this Instrument; .

4. *Section 2.2 (1) is amended*

- (a) *by adding “any of the following:” immediately after “in relation to a clearing agency,” and*
- (b) *in paragraph (h) by replacing “recognition terms and conditions.” with “terms and conditions of a decision to recognize the clearing agency under securities law.”.*

5. *Section 2.2 (3) is repealed and 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.

6. *Section 2.3 (1) is repealed and 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.
7. **Section 2.5 (2) is amended by adding** “of the recognized clearing agency’s or exempt clearing agency’s financial year” **immediately after** “each interim period”.
8. **Section 3.1 is amended**
- (a) **by replacing** “PFMI Principles 1 to 3, 10, 13, 15 to 19, 20 other than key consideration 9, 21 to 23” **with** “PFMI Principles 1 to 3, 10, 13 and 15 to 23, other than key consideration 9 of PFMI Principle 20”, **and**
- (b) **by deleting** “and” **at the end of paragraph (b).**
9. **Section 4.1. is amended in paragraph (2) (b) by replacing** “not employees or executive officers of a participant or” **with** “neither employees nor officers of a participant nor”.
10. **Section 4.3. is amended**
- (a) **in subsection (1) by deleting** “or, if determined by the board of directors, to the chief executive officer”, **and**
- (b) **by repealing subsection (2) (a) and substituting the following:**
- (a) have responsibility and authority to implement, maintain and enforce the risk management framework established by the clearing agency, .
11. **Section 4.4 is amended**
- (a) **in paragraph (4) (b) by replacing** “not employees or executive officers of a participant or” **with** “neither employees nor officers of a participant nor”, **and**
- (b) **by adding the following subsection:**
- (5) For the purpose of this section, an individual is independent of a clearing agency if the individual has no relationship with the agency that could, in the reasonable opinion of the clearing agency’s board of directors, be expected to interfere with the exercise of the individual’s independent judgment.
12. **Section 4.6. is amended**
- (a) **in paragraph (a)**
- (i) **in subparagraph (i) by replacing** “an adequate system of internal controls” **with** “adequate internal controls”, **and**
- (ii) **in subparagraph (ii) by adding** “cyber resilience and” **immediately before** “information technology”,

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

(c) *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 to the regulator or, in Québec, the securities regulatory authority regarding the following:

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

(ii) the resumption of service, if applicable;

(iii) the results of any internal review by the clearing agency of the failure, malfunction, delay or security incident, and , *and*

(d) *by adding the following paragraph:*

(d) keep a record of any systems failure, malfunction, delay or security incident and whether or not it is material.

**13. The following section is added:**

#### **Auxiliary systems**

**4.6.1 (1)** In this section, “**auxiliary system**” means a system, other than a system referred to in section 4.6, operated by or on behalf of a recognized clearing agency that, if breached, poses a security threat to another system operated by or on behalf of the recognized clearing agency that supports the recognized clearing agency’s clearing, settlement or depository functions.

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

(a) develop and maintain adequate information security controls that address the security threats posed by the auxiliary system to the system that supports the clearing, settlement or 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 to the regulator or, in Québec, the securities regulatory authority on

(i) a change in the status of the incident,

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

(iii) the results of any internal review, by the clearing agency, of the security incident, and

(c) keep a record of any security incident and whether or not it is material.

**14. Section 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, that assesses the clearing agency's compliance with paragraphs 4.6 (a) and 4.6.1 (2) (a) and section 4.9, and

- (b) on a reasonably frequent basis and, in any event, at least annually, engage a qualified party to perform assessments and testing to identify any security vulnerability and measure the effectiveness of information security controls that assess the clearing agency's compliance with paragraphs 4.6 (a) and 4.6.1 (2) (a).

**15. Section 4.7 (2) is amended by replacing “subsection (1)” with “paragraph (1) (a)”.**

**16. Section 4.10 (g) is amended by replacing “an appropriate” with “a reasonable”.**

**17. Section 5.2 is amended**

**(a) by repealing subsection (1) and replacing it 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”,**

**(c) by adding the following subsection:**

**(2.1)** During the period that a clearing agency is a recognized 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). , **and**

**(d) by repealing subsection (3).**

**18. Section 6.1 (3) is amended by adding “Alberta and” immediately before “Ontario”.**

## SCHEDULE B

1. *National Instrument 24-102 Clearing Agency Requirements, B.C. Reg. 27/2016, is revised as set out in this Schedule.*
2. *Section 1.2 is replaced with the following:*

### **Interpretation - Affiliated Entity, Controlled Entity and Subsidiary Entity**

- 1.2** (1) In this Instrument, a person or company is considered to be an affiliated entity of another person or company if one is a subsidiary entity of the other or if both are subsidiary entities of the same person or company, or if each of them is a controlled entity of the same person or company.
- (2) In this Instrument, a person or company is considered to be controlled by a person or company if any of the following apply:
- (a) in the case of a person or company,
    - (i) voting securities of the first-mentioned person or company carrying more than 50% of the votes for the election of directors are held, otherwise than by way of a security interest only, by or for the benefit of the other person or company, and
    - (ii) the votes carried by the securities are entitled, if exercised, to elect a majority of the directors of the first-mentioned person or company;
  - (b) in the case of a partnership that does not have directors, other than a limited partnership, the second-mentioned person or company holds more than 50% of the interests in the partnership;
  - (c) in the case of a limited partnership, the general partner is the second-mentioned person or company.
- (3) In this Instrument, a person or company is considered to be a subsidiary entity of another person or company if either of the following applies:
- (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;

(b) it is a subsidiary entity of a person or company that is the other's subsidiary entity.

**3. Section 2.1 (2) is replaced with the following:**

(2) In addition to the requirement set out in subsection (1), an applicant that has a head office or principal place of business located in a foreign jurisdiction must

(a) certify that it will assist the securities regulatory authority in accessing the applicant's books, records and other documents and in undertaking an onsite inspection and examination at the applicant's premises, and

(b) certify that it will provide the securities regulatory authority, if requested by the authority, with an opinion of legal counsel that the applicant has, as a matter of law, the power and authority to

(i) provide the securities regulatory authority with prompt access to its books, records and other documents, and

(ii) submit to onsite inspection and examination by the securities regulatory authority.

**4. Section 2.1 (4) is replaced with the following:**

(4) An applicant must inform the securities regulatory authority in writing of any change to the information provided in its application that is material, or if any of the information becomes materially inaccurate for any reason, as soon as the change occurs or the applicant becomes aware of any inaccuracy.

**5. Section 4.3 is revised**

**(a) by replacing subsection (2) (a) with the following:**

(a) have full responsibility and authority to maintain, implement and enforce the risk management framework established by the clearing agency, , **and**

**(b) by replacing subsection (3) (f) with the following:**

(f) concurrently with submitting a report under paragraphs (c), (d) or (e), file

a copy of the report with the securities regulatory authority.

**6. Section 5.1 (1) is replaced with the following:**

- (1) A recognized clearing agency or exempt clearing agency must keep books, records and other documents as are necessary to account for the conduct of its clearing, settlement and depository activities, business transactions and financial affairs.

**7. Form 24-102F1 Clearing Agency Submission to Jurisdiction and Appointment of Agent for Service of Process is revised**

**(a) by replacing paragraph 7 with the following:**

7. The Clearing Agency designates and appoints the Agent as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of or relating to or concerning the activities of the Clearing Agency in \_\_\_\_\_ [name of local jurisdiction]. The Clearing Agency hereby irrevocably waives any right to challenge service upon its Agent as not binding upon the Clearing Agency. ,

**(b) by replacing paragraph 10 with the following:**

10. Until six years after it has ceased to be recognized or exempted by the securities regulatory authority, the Clearing Agency must file an amended submission to jurisdiction and appointment of agent for service of process at least 30 days before any change in the name or above address of the Agent. , **and**

**(c) by replacing the text that follows “Consent to Act as Agent for Service” with the following:**

I, \_\_\_\_\_ [name of Agent in full; if a corporation, full corporate name] of \_\_\_\_\_ [business address], hereby accept the appointment as agent for service of process of \_\_\_\_\_ [name of Clearing Agency] and hereby consent to act as agent for service pursuant to the terms of the appointment executed by \_\_\_\_\_ [name of Clearing Agency] on \_\_\_\_\_ [date].

DATED: \_\_\_\_\_



\_\_\_\_\_  
SIGNATURE OF AGENT

\_\_\_\_\_  
PRINT NAME OF PERSON SIGNING AND, IF  
AGENT IS NOT AN INDIVIDUAL, THE TITLE  
OF THE PERSON .

8. ***Form 24-102F2 Cessation of Operations Report for Clearing Agency is revised***

***(a) by replacing Exhibits B, C and D with the following:***

***Exhibit B***

A list of all participants in Canada during the last 30 days prior to ceasing to carry on business as a clearing agency.

***Exhibit C***

A description of the alternative arrangements available to participants in respect of the services offered by the clearing agency immediately before ceasing to carry on business as a clearing agency.

***Exhibit D***

A description of all links the clearing agency had immediately before ceasing to carry on business as a clearing agency with other clearing agencies or trade repositories. , ***and***

***(b) by replacing the text that follows “CERTIFICATE OF CLEARING AGENCY” with the following:***

The undersigned certifies that the information given in this report is true and correct.

DATED at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

\_\_\_\_\_  
Name of clearing agency

\_\_\_\_\_  
Name of director, officer or partner (please type or print)

\_\_\_\_\_  
Signature of director, officer or partner

\_\_\_\_\_  
Official capacity (please type or print) .