

CSA Notice**Amendments to National Instrument 24-102 *Clearing Agency Requirements*
and Changes to Companion Policy 24-102 *Clearing Agency Requirements*****March 19, 2020****Introduction**

The Canadian Securities Administrators (the **CSA** or **we**) are adopting amendments to National Instrument 24-102 *Clearing Agency Requirements* (**Instrument**) and changes to Companion Policy 24-102 *Clearing Agency Requirements* (**Companion Policy** or **CP**), together referred to as the **Amendments**. The Instrument and the Companion Policy are collectively referred to as **NI 24-102**.

The Amendments are expected to be adopted by each member of the CSA. In some jurisdictions, Ministerial approvals are required for the implementation of the Amendments. Provided all necessary ministerial approvals are obtained, the Amendments will come into force on June 19, 2020. Further details can be found in Annex G of this Notice.

The purpose of the Amendments is described in the “Substance and Purpose” section below.

This Notice contains the following annexes:

- **Annex A** – List of commenters
- **Annex B** – Summary of comments and CSA responses
- **Annex C** – Amendments to National Instrument 24-102 *Clearing Agency Requirements*
- **Annex D** – Changes to Companion Policy 24-102CP to National Instrument 24-102 *Clearing Agency Requirements*
- **Annex E** – Blacklined Amendments to National Instrument 24-102 *Clearing Agency Requirements* (showing the changes under the Amendments to the Instrument)
- **Annex F** – Blacklined Changes to Companion Policy 24-102CP to National Instrument 24-102 *Clearing Agency Requirements* (showing the changes under the Changes to the CP)
- **Annex G** – Adoption of the Instrument
- **Annex H** – Local Matters

This Notice, including its annexes, is available on websites of CSA jurisdictions, including:

www.albertasecurities.com
www.besc.bc.ca
www.fcaa.gov.sk.ca
www.fcnb.ca
www.lautorite.qc.ca
www.mbsecurities.ca
nssc.novascotia.ca
www.osc.gov.on.ca

Background

The Instrument sets out ongoing requirements for regulated clearing agencies, including requirements that are based on international standards applicable to financial market infrastructures (**FMI**s) operating as a central counterparty (**CCP**), central securities depository (**CSD**) or securities settlement system (**SSS**). The Companion Policy includes an annex (**Annex I**) with supplementary guidance (**Joint Supplementary Guidance**) that was developed jointly by the Bank of Canada and CSA regulators to provide additional clarity on the PFMI principles for domestic recognized clearing agencies that are also overseen by the Bank of Canada. The Instrument also sets forth certain requirements for clearing agencies intending to apply for recognition as a clearing agency under securities legislation, or for an exemption from the recognition requirement.

We published proposed amendments to the Instrument and the Companion Policy for comment on October 18, 2018 (the **October 2018 Proposal**).

Summary of Comments Received by the CSA

In response to the October 2018 Proposal, we received submissions from 3 commenters. We have considered the comments received and thank all of the commenters for their input. A list of those who submitted comments and a summary of the comments and our responses are attached to this Notice at Annexes A and B respectively. Copies of the comment letters are available at www.osc.gov.on.ca.

Substance and Purpose

1. Purposes of Amendments

The Amendments seek to enhance operational system requirements, align aspects of NI 24-102 more closely with similar provisions in National Instrument 21-101 *Marketplace Operation* (**NI 21-101**), and reflect the latest developments and findings of the Committee on Payments and Market Infrastructures of the Bank for International Settlements and the International Organization of Securities Commissions (**CPMI-IOSCO**) with relevance for the Canadian market. They also incorporate certain comments we received on the October 2018 Proposal.

Specifically, the Amendments:

- enhance the systems-related requirements in Part 4, Division 3, of the Instrument and related provisions in the Companion Policy by aligning them more closely with similar provisions in NI 21-101, emphasizing the importance of cyber resilience, and clarifying testing and reporting expectations;
- update NI 24-102 to include a general reference in the Companion Policy to CPMI-IOSCO guidance reports that have been published on various aspects of the PFMI Principles since the publication of the PFMI Report;
- adopt findings made by the CPMI-IOSCO PFMI implementation monitoring assessment, including substantially simplifying the Joint Supplementary Guidance; and
- make other non-substantive changes, corrections and clarifications to NI 24-102.

2. *Summary of Amendments*

We have set out below a brief summary of the key changes and policy rationales for the Amendment.

a. Financial reporting

Under subsection 2.5(2) of the October 2018 Proposal, we had proposed to clarify that an interim period for financial statements had the same meaning as under National Instrument 51-102 *Continuous Disclosure Obligations (NI 51-102)*. To avoid potential confusion arising from the reference to NI 51-102 and the applicability of exemptions from that instrument, we have removed this language from the Amendments. Instead, we have clarified in the CP our expectation that exempt clearing agencies should file interim financial statements in accordance with the interim filing requirements of their home regulator, as our intention is not to require such entities to produce and file additional financial statements. We have also clarified in the CP the content of interim financial statements required to be filed by exempt and recognized clearing agencies under the Instrument.

b. Systems requirements

(i) Cyber resilience has been added to subparagraph 4.6(a)(ii) as one of the controls a recognized clearing agency must develop and maintain. While cyber resilience should already be covered by an entity's general controls, its explicit addition to the Instrument reflects its increasing importance, as discussed in the June 2016 CPMI-IOSCO *Guidance on cyber resilience for financial market infrastructures*.¹

(ii) The concept of "security breach" in relation to the notifications that must be provided by a recognized clearing agency pursuant to subsection 4.6(c) has been broadened to "security incident". The change extends the concept beyond actual breaches, as we are of the view that a material event may include one where a breach has not necessarily occurred. We describe "security incidents" in the CP with reference to the general definition used by the National

¹The guidance is available at <https://www.bis.org/cpmi/publ/d146.pdf>.

Institute of Standards and Technology (U.S. Department of Commerce) (NIST),² a recognized standard also followed by CPMI-IOSCO.

(iii) We have adopted a requirement in the Instrument under section 4.6 that recognized clearing agencies must keep records of any systems failures, malfunctions, delays or security incidents and identify whether they are material. In response to concerns raised in the comments, and to avoid placing an undue burden on recognized clearing agencies, we have not proceeded with additional related reporting requirements that were included in the October 2018 Proposal. However, as noted in the revised CP language, in circumstances where we consider it appropriate we may nonetheless request additional information from a recognized clearing agency. We have also clarified the CP language and aligned it with the revised Instrument.

(iv) A new section 4.6.1 regarding auxiliary systems has been adopted. An auxiliary system of a recognized clearing agency is a system that is operated by or on behalf of the clearing agency that, if breached, would pose a security threat to one or more of the systems operated by or on behalf of the agency that support its clearing, settlement and depository functions. We have made minor changes to the definition of auxiliary system in the October 2018 proposal to clarify its intended scope. Consistent with section 4.6, section 4.6.1 includes requirements relating to auxiliary systems with respect to controls and records, and notifications in connection with security incidents.

(v) Amended section 4.7 states that a recognized clearing agency must engage a “qualified external auditor” to conduct and report on its independent systems reviews. We expect the clearing agency to discuss with us its choice of qualified external auditor and the scope of the systems review mandate.

c. Additional CPMI-IOSCO guidance reports

The Companion Policy states that, in interpreting and implementing the PFMI Principles, regard is to be given to the explanatory notes in the PFMI Report unless otherwise indicated in section 3.1 or Part 3 of the CP. Since the publication of the PFMI Report, CPMI-IOSCO has published related documents and additional guidance on certain specific aspects of the PFMI Principles.³ We have therefore adopted an addition to the CP that these and other future CPMI-IOSCO reports should be used as guidance in interpreting and implementing the PFMI Principles.

d. CPMI-IOSCO implementation monitoring assessment for Canada

The CPMI-IOSCO implementation monitoring assessment⁴ noted that a reporting line from the chief compliance officer and the chief risk officer to the chief executive officer may result in insufficient independence of the risk and audit functions unless there are adequate safeguards in place that address potential conflicts of interest. In the October 2018 Proposal, proposed amendments to subsection 4.3(1) could have been interpreted as removing the ability of a

² The NIST definition of “security incident” is available at <https://csrc.nist.gov/Glossary>.

³ Links to this material are presently available at https://www.bis.org/cpmi/info_pfmi.htm.

⁴ See *Implementation monitoring of PFMI: Level 2 assessment report for Canada*, August 2018 at <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD608.pdf>.

recognized clearing agency's board of directors to determine that the chief risk officer and chief compliance officer should report directly to the chief executive officer. In response to the comments we received regarding the October 2018 Proposal, we decided not to proceed with this change. Instead, we have clarified in the CP that dual line reporting is permitted if there are adequate safeguards in place to ensure that the chief risk officer and chief compliance officer are sufficiently independent from the other members of management.

Also in response to the CPMI-IOSCO assessment, we have simplified and clarified the Joint Supplementary Guidance with respect to the application of the PFMI Principles to domestic recognized clearing agencies that are also overseen by the Bank of Canada.

e. Additional non-substantive changes

Lastly, a number of non-substantive changes, corrections and clarifications were adopted, including modernizing the drafting of NI 24-102 in accordance with recently revised CSA rule-making drafting guidelines. By their nature, none of the non-substantive changes should have any impact on the application of NI 24-102 to market participants.

Questions

Please refer questions to any of the following:

Aaron Ferguson
Manager, Market Regulation
Ontario Securities Commission
Tel: 416-593-3676
Email: aferguson@osc.gov.on.ca

Stephanie Wakefield
Senior Legal Counsel
Market Regulation
Ontario Securities Commission
Tel: 416-595-8771
Email: swakefield@osc.gov.on.ca

Claude Gatien
Director, Global Initiatives
Autorité des marchés financiers
Tel: 514-395-0337, ext. 4341
Toll free: 1-877-525-0337
Email: claud.gatien@lautorite.qc.ca

Anna Tyniec
Senior Policy Advisor, Clearing Houses
Autorité des marchés financiers
Tel: 514-395-0337, ext. 4345
Toll free: 1-877-525-0337
Email: anna.tyniec@lautorite.qc.ca

Marta Zybko
Director, Clearing Houses
Autorité des marchés financiers
Tel: 514-395-0337, ext. 4391
Toll free: 1-877-525-0337
Email: marta.zybko@lautorite.qc.ca

Michael Brady
Manager, Capital Markets Regulation
British Columbia Securities Commission
Tel: 604-899-6561
Email: mbrady@bcsc.bc.ca

Katrina Prokopy
Senior Legal Counsel
Alberta Securities Commission
Tel: 403-297-7239
Email: katrina.prokopy@asc.ca

Paula White
Deputy Director, Compliance and Oversight
Manitoba Securities Commission
Tel: 204-945-5195
Email: paula.white@gov.mb.ca

Liz Kutarna
Deputy Director, Capital Markets, Securities Division
Financial and Consumer Affairs Authority of Saskatchewan
Tel: 306-787-5871
Email: liz.kutarna@gov.sk.ca