

ANNEX C

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

1. *National Instrument 24-102 Clearing Agency Requirements is amended by this Instrument.*
2. *Section 1.2 is amended*
 - (a) *in subsection (2),*
 - (i) *by replacing “company if” with “company if any of the following apply:”;*
 - (ii) *by replacing “fifty percent” with “50%” wherever the expression occurs,*
 - (iii) *by replacing “by way of security” with “by way of a security interest” in subparagraph (a)(i), and*
 - (iv) *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;.
3. *Section 1.3 is replaced with the following:*

1.3 Interpretation – meaning of affiliate for the purposes of the PFMI principles -
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..

4. ***Subparagraph 2.1(1)(b) is 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;
5. ***Subsection 2.1(2) is amended***
 - (a) ***by replacing "books and records" with "books, records and other documents", wherever the expression occurs, and***
 - (b) ***in paragraph (b) by replacing "such" with "the".***
6. ***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".***
7. ***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".***
8. ***Subsection 2.2(1) is amended***
 - (a) ***by adding "any of the following:" immediately after "in relation to a clearing agency," at the end of the first sentence, 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.".***
9. ***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. .
10. ***Subsection 2.3(1) is replaced with the following:***

2.3(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. .
11. ***Subsection 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".***
12. ***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 of PFMI Principle 20 and the following; **and**
- (b) by deleting “and” at the end of paragraph (b).**
- 13. 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”.**
- 14. 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;”, and**
- (e) in paragraph (3)(f) by replacing “such” with “the”.**
- 15. 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. .**
- 16. 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”, “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..

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

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) any 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..

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

4.7(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)..

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

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

21. *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”.*

22. *Section 5.2 is amended*

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

5.2(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) 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)..

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

24. *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) after the heading “AGENT CONSENT TO ACT AS AGENT FOR SERVICE” by deleting “insert” wherever it occurs.

25. *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 Exhibits 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)”.

26. (1) This Instrument comes into force on June 19, 2020.

(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after June 19, 2020, this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.