

ANNEX B

Summary of Comments on Proposed Amendments to National Instrument 24-102

Clearing Agency Requirements and related Companion Policy 24-102CP and CSA Responses

1. Theme/question ¹	2. Summary of comments	3. CSA response
Records retention period	One commenter noted that while subsection 5.1(1) requires that books and records be retained for seven years, the equivalent requirement under U.S. law is five years. The commenter asked that the retention period in the Instrument be reduced to five years, or that substituted compliance be permitted.	<p>The commenter's proposal is beyond the scope of this initiative, as there are no proposed amendments to subsection 5.1(1) in the materials published for comment.</p> <p>This comment will be considered outside of the proposed amendments, for example as part of the OSC's initiative to reduce regulatory burden. A clearing agency may also choose to apply for an exemption from this requirement on the basis of substituted compliance, and the relevant CSA jurisdictions will consider any application on a case by case basis.</p>

¹ A reference to a provision (i.e. Part, section, subsection, paragraph, etc.) is a reference to a provision of the proposed Instrument, unless otherwise indicated. Defined terms used in this summary table, which are not otherwise defined herein, have the meanings given in the Notice.

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Reporting changes to PFMI Disclosure Document	One commenter requested that substituted compliance with an entity's home-country regulatory requirements be permitted for exempt clearing agencies with respect to the requirement in subsection 2.2(5). Subsection 2.2(5) requires that the securities regulatory authority be notified in writing of any material change to, or subsequent inaccuracy in, its PFMI Disclosure Framework Document and related application materials.	<p>The commenter's proposal is beyond the scope of this initiative, as there are no proposed amendments to subsection 5.1(1) in the materials published for comment.</p> <p>This comment will be considered outside of the proposed amendments, for example as part of the OSC's initiative to reduce regulatory burden. A clearing agency may also choose to apply for an exemption from this requirement on the basis of compliance with an entity's home country regulatory requirements, and the relevant CSA jurisdictions will consider any application on a case by case basis.</p>

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Chief Risk Officer (CRO) and Chief Compliance Officer (CCO) reporting line	Two commenters expressed concern that the proposed amendments to paragraph 4.3(1) could be interpreted to eliminate dual reporting lines of the CRO and CCO to both the management and Board of Directors. The commenters stated that the elimination of dual reporting would require a change in their current practices, even though such practices do not contravene the PFMI. They find the flexibility of direct reporting to the Board of Directors, while retaining administrative reporting to management, to be efficient and practical, as long as there are parallel mechanisms to ensure that the independence of the CRO and CCO functions from the management is preserved. One of the commenters also noted that dual reporting can be found in a number of foreign clearing agencies, including non-domestic clearing agencies that operate in Canada.	It is not our intention to prohibit dual reporting lines for the CRO and CCO to management and the Board of Directors. Rather, our intention is to avoid interpretations and practices that may undermine the independence of key risk and audit roles, a concern raised in the CPMI-IOSCO implementation monitoring assessment and which we share. We recognize, however, that the deletion of language referencing reporting to the CEO may have caused some confusion. We have therefore added explanatory language in a new subsection 4.3(1) to the CP to better reflect our intent.

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Filing of interim financial statements	One commenter submitted that substituted compliance should be permitted for exempt clearing agencies with respect to the interim financial statement filing requirement in subsection 2.5(2).	We have modified the amendment to subsection 2.5(2) to allow clearing agencies to file interim financial statements in CSA jurisdictions at the same intervals they are required to file them in their home jurisdictions, which is generally consistent with the approach taken in NI 51-102 and NI 71-102. We have also added clarifying language to the CP to this effect. Given that the proposed reference in subsection 2.5(2) to NI 51-102 has now been deleted, we have also amended the CP to clarify the content of interim financial statements based on IFRS IAS 34.
Independent system reviews	One commenter disagreed with the proposed amendment to paragraph 4.7(1)(a) that would require an external party, as opposed to an internal auditor, from conducting independent system reviews of recognized clearing agencies. The commenter expressed the view that the independent nature of the internal audit function provides sufficient objectivity and that the proposed amendment would not enhance the resilience of the control environment.	While the CSA recognizes the professional objectivity required of internal auditors, we are of the view that requiring independent systems reviews be conducted by a qualified external auditor at arms-length from the clearing agency both enhances and promotes confidence in the process. It is also consistent with industry best practices.
Auxiliary systems	One commenter expressed concern that the definition of “auxiliary systems” is too broad and submitted that the term should only cover systems that are part of the clearing agency ecosystem and under its control.	After careful consideration of the comments, we have modified the definition of auxiliary systems in subsection 4.6.1(1) to capture those systems operated by or on behalf of the recognized clearing agency that, if breached, would pose a security threat to the clearing agency’s critical systems i.e. systems that support the recognized clearing agency’s clearing, settlement and depository functions

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Security incidents and related reporting obligations	<p>One commenter expressed concern with the proposed change from the obligation in paragraph 4.6(c) to report material security breaches to an obligation to report material security incidents, as well as proposed new language in the CP regarding materiality. The commenter submitted that the resulting obligations would be much broader than the current requirements and would be unduly onerous without providing a clear material benefit. The commenter expressed similar concerns regarding the proposed new subsection 4.6(2), which would require clearing agencies to provide a log and explanation for any system issue or security incident regardless of its impact.</p>	<p>Given the evolving and multidimensional nature of cyber threats, a sophisticated attack on the entity's systems and controls can have serious operational, financial or even reputational impact on the entity even if a breach has yet to happen. This is a view that is shared by regulators, organizations and stakeholders globally. The definition of incidents by the National Institute of Standards and Technology (NIST) captures this reality, which is why the CSA has incorporated it into the proposed definition of security incident, in paragraph 4.6(c) to the CP.</p> <p>With regards to the issue of materiality, we find that relying on internal corporate controls for establishing the materiality threshold is a straightforward and reasonable regulatory anchor for the purpose of event reporting. We have modified paragraph 4.6(c) to clarify the guidance with respect to determining materiality.</p> <p>In addition, we have removed the proposed new subsection 4.6(2) in the Instrument which would have required a recognized clearing agency to file with the regulator quarterly reports of any all system issues and security incidents logs. Instead we have added language to the CP which reiterates the securities regulator's discretion to ask for any information related to system issues or securities incidents as part of its broader information access rights under section 5.1 of the Instrument.</p>