CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

Notice and Request for Comment on Draft *Regulation 24-102 respecting Clearing Agency Requirements* Draft *Policy Statement to Regulation 24-102 respecting Clearing Agency Requirements*

November 27, 2014

I. Introduction

The Canadian Securities Administrators (the CSA or we) are publishing the following documents for a 75 day comment period:

- Draft *Regulation 24-102 respecting Clearing Agency Requirements* (Regulation), and
- Draft *Policy Statement to Regulation 24-102 respecting Clearing Agency Requirements* (Policy Statement).

The comment period will end on February 10, 2015. The Regulation and Policy Statement are revised versions of the Local Regulations and Local Policy Statements published last year in the provinces of Québec, Manitoba and Ontario described below under "II. *Background*".

The texts of the Regulation (including Forms 24-102F1 and F2) and Policy Statement are published with this Notice and are also available on websites of CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
www.gov.ns.ca/nssc
www.fcnb.ca
www.osc.gov.on.ca
www.fcaa.gov.sk.ca
www.msc.gov.mb.ca

II. Background

On December 18, 2013, the Autorité des marchés financiers (AMF), Manitoba Securities Commission (MSC) and Ontario Securities Commission (OSC) each published for comment the following documents, in substantially similar form, in their respective jurisdictions:

- a proposed local regulation 24-503 regarding clearing agency requirements (Local Regulation);[1]
- a related proposed local policy statement 24-503CP (Local Policy Statement); and
- a notice and request for comments on the proposed Local Regulation and Local Policy Statement (Local Request Notice).

In addition, concurrent to the publication of the Local Request Notices and proposed Local Regulations and Policy Statements, provincial securities regulatory authorities in Alberta, British Columbia, New Brunswick, Nova Scotia and Saskatchewan published *Multilateral Staff Notice 24-309* (the Multilateral Notice).[2] The purpose of the Multilateral Notice was to inform the public that such authorities had also begun the development of, and intended to publish at a later date, a proposed multilateral regulation and policy statement (Multilateral Regulation and Policy Statement) substantially similar to the Local Regulations and Policy Statements.

The Local Regulations and Policy Statements had several purposes. They had set out certain requirements in connection with the application process for recognition as a clearing agency under securities legislation, or for an application to be exempt from the recognition requirement. The Local Policy Statements contained guidance on the regulatory approaches to applications for recognition or exemption. The Local Regulations had also set forth on-going requirements for *recognized* clearing agencies that operate as a central counterparty (CCP), central securities depository (CSD) or securities settlement system (SSS). These requirements were based largely on international standards applicable to financial market infrastructures (FMIs) described in the April 2012 report *Principles for financial market infrastructures* (as the context requires, the "PFMIs" or "PFMI report") published by the Committee on Payments and Market Infrastructures (CPMI)[3] and the International Organization of Securities Commissions (IOSCO).[4] A key objective of the proposed Local Regulations and Policy Statements was to adopt, in Canada, the CPMI-IOSCO international standards governing FMIs set out in the PFMI report. Implementation of the standards was intended to enhance the safety and efficiency of FMIs, limit systemic risk, and foster financial stability. It was also intended to complement the work of the CSA Derivatives Committee to develop a comprehensive regulatory framework for the trading and clearing of derivatives in Canada.

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[1] The proposed Local Regulations that were published for comment are the following: AMF *Regulation 24-503 respecting Clearing House, Central Securities Depository and Settlement System Requirements;* MSC Rule 24-503 *Clearing Agency Requirements*; and OSC Rule 24-503 *Clearing Agency Requirements* (see *Notice and Request for Comment on Proposed Regulation 24-503 respecting Clearing House, Central Securities Depository And Settlement System Requirements – Proposed Policy Statement to Regulation 24-503 respecting Clearing House, Central Securities Depository And Settlement System Requirements*, December 19, 2013, Bulletin de l'Autorité des marchés financiers, Vol. 10, n° 50, p. 3084).

[2] The Multilateral Notice can be found on certain websites of such authorities. For example, see on the Website of the British Columbia Securities Commission (BCSC) at: https://www.bcsc.bc.ca/Securities_Law/Policies/Policy2/24-309_Publication_of_Clearing_Agency_Requirements_in_Ontario__Quebec_and_Manitoba__CSA_Multilateral_Staff_Notice_/

[3] Prior to September, 2014, CPMI was known as the Committee on Payment and Settlement Systems (CPSS).

[4] The PFMI report is available on the Bank for International Settlements' website (www.bis.org) and the IOSCO website (www.iosco.org).

We received nine comment letters and published a summary of the comments in *CSA Staff Notice 24-310* on July 17, 2014 (Notice 24-310).[5] As discussed in Notice 24-310, stakeholders requested that provincial securities regulators take a unified approach to implementing the PFMIs. As a result, the CSA have developed the Regulation and Policy Statement to achieve essentially the same objectives as the Local Regulations and Policy Statements and Multilateral Regulation and Policy Statement. We have provided general responses to the comments summarized in Notice 24-310 in Appendix "A" to this Notice.

III. Substance and Purpose of Regulation and Policy Statement

As with the Local Regulations and Policy Statements, the main purpose of the Regulation and Policy Statement is to implement the PFMIs as clearing agency rule requirements in Canada. Chapter 3 of the Regulation generally incorporates the text of the PFMI report's relevant principles and their key considerations. Chapter 4 of the Regulation separately sets out certain other requirements that are in addition to the PFMIs. The Policy Statement largely contains supplementary guidance (Joint Supplementary Guidance) jointly developed by the CSA and the Bank of Canada in interpreting and applying the PFMIs.

Overall, the Regulation and Policy Statement are intended to enhance the regulatory framework for recognized clearing agencies operating or seeking to operate in a Canadian jurisdiction. As discussed more fully below under "VIII. *Anticipated Costs and Benefits*", this regulatory framework will facilitate ongoing observance by a recognized clearing agency of international minimum standards applicable to FMIs. The CSA believe that the Regulation will support resilient and cost-effective clearing agency operations.

We discuss key elements of the Regulation and Policy Statement below under "IV. *Summary of Regulation and Policy Statement and Ongoing Policy Matters"*. We also discuss certain ongoing policy matters that may need to be clarified in the Regulation or Policy Statement. We are seeking comment on any aspect of the Regulation and Policy Statement and the ongoing policy matters. Please see below under "IX. *Comment Process*" for information on how to provide comments.

IV. Summary of Regulation and Policy Statement and Ongoing Policy Matters

The Regulation is divided into seven chapters.

(a) Chapter 1 – Definitions, Interpretation and Application

We have removed certain defined terms in the Local Regulations from Chapter 1 of the Regulation. We believe that terms defined in the Local Regulations that were derived almost verbatim from the PFMI report's glossary of terms do not need to be defined in the Regulation. As noted in the Policy Statement, regard should be had to the PFMI report in interpreting and applying the Regulation. This includes how the PFMI report

[5] See *CSA Staff Notice 24-310 Status Update on Draft Regulation 24-503 respecting Clearing House, Central Securities Depository and Settlement System Requirements and Related Draft Policy Statement*, July 17, 2014, http://www.lautorite.qc.ca/files/pdf/reglementation/valeurs-mobilieres/0-avis-acvm-staff/2014/2014juillet17-24-310-avis-acvm-en.pdf.

defines or describes the specialized terminology it uses, which are also used in the Regulation.

Chapter 1 of the Regulation contains additional interpretive provisions, such as the typical meanings of affiliated entity, controlled entity and subsidiary entity that are based on the notion of *de jure* control of an entity. Consistent with the PFMIs,[6] there is also an extended *de facto*-control meaning of "affiliate" for limited purposes. These provisions will ensure that the terms are interpreted uniformly in all CSA jurisdictions.

We have included additional provisions in Chapter 1 of the Regulation that clarify the scope of various chapters of the Regulation. For example, Chapter 3 of the Regulation applies to a recognized clearing agency that operates as a CCP, CSD or SSS, while Chapter 4 of the Regulation generally applies to a recognized clearing agency whether or not it operates as a CCP, CSD or SSS.

Subsection 1.4(2) of the Local Regulations has been removed in the Regulation. The intent of the provision was to address any potential conflict or inconsistency between Chapter 3 of the Local Regulations and a provision of proposed *Model Provincial Rule on Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* published for comment on January 16, 2014 in CSA Staff Notice 91-304 (Model Rule 91-304). At this time, we do not believe that such a conflict provision will be necessary. The CSA Derivatives Committee is currently revising proposed Model Rule 91-304 (Revised Model Rule 91-304), which is expected to be republished for comment subsequent to the date of this Notice. Revised Model Rule 91-304 will include requirements on clearing agencies operating as a CCP for the clearing and settlement of trades in over-the-counter (OTC) derivatives, including requirements governing a CCP's segregation and portability arrangements to protect customer positions and associated collateral in the event of a participant's failure. See the discussion below under "(c) Chapter 3 – *International Standards Applicable to Recognized Clearing Agencies – (iii) Segregation and portability*".

(b) Chapter 2 – Clearing Agency Recognition and Exemption from Recognition

Chapter 2 of the Regulation is mostly unchanged from the Local Regulations. We have modified some of the requirements governing the filing of financial statements by clearing agencies, including allowing statements that are prepared in accordance with the generally accepted accounting principles of the foreign jurisdiction in which the clearing agency is incorporated, organized or located.

[6] See footnote 39 of the PFMI report, at p. 38.

(c) Chapter 3 – International Standards Applicable to Recognized Clearing Agencies

(i) Implementation of the PFMIs as rule requirements

We have significantly modified Chapter 3 of the Local Regulations, by dividing it into two chapters in the Regulation:

- Chapter 3 - *International Standards Applicable to Recognized Clearing Agencies*, and
- Chapter 4 - *Other Requirements of Recognized Clearing Agencies.*

Chapter 3 of the Regulation incorporates by way of an appendix to the Regulation (Appendix A to the Regulation) clearing agency standards (Standards) that are substantially similar to the PFMI report's 23 principles (Principles) and their respective key considerations (Key Considerations) that are relevant to CCPs, SSSs and CSDs. Specifically, section 3.1 of the Regulation requires recognized clearing agencies to establish, implement and maintain rules, procedures, policies or operations designed to ensure that they meet or exceed the Standards in Appendix A to the Regulation with respect to their clearing, settlement and depository activities. Requiring clearing agencies to implement rules, procedures, policies or operations to meet or exceed the Standards is consistent with a flexible and principles-based approach to regulation. Among other reasons, a principles-based approach anticipates that a clearing agency's rules, procedures, policies and operations will need to evolve over time so that it can adequately respond to changes in technology, legal requirements, the needs of its participants and their customers, trading volumes, trading practices, linkages between financial markets, and the financial instruments traded in the markets that a clearing agency serves.

The Standards in Appendix A to the Regulation generally reproduce the text of the 23 Principles and their respective Key Considerations. Differences between the text of the Standards and the Principles and Key Considerations are minimal. In particular, terminology and drafting changes were made to the French version[7] of Appendix A to the Regulation in order to adapt the French terminology of the PFMI report's 23 Principles and their respective Key Considerations to the Canadian context and French terminology in use in Canada. We include in Appendix "B" of this Notice a black-lined version of the Standards that reflects the changes that we have made to the text of the Principles and Key Considerations in drafting the Standards. We also discuss below the following Standards (including ongoing policy matters):

- a clearing agency's recovery or orderly wind-down plans (see section 3.4 of Standard 3: *Framework for the comprehensive management of risks* and section 15.3 of Standard 15: *General business risk*);
- a clearing agency's segregation and portability arrangements for customer positions and collateral (see Standard 14: *Segregation and portability*);

[7] The French-language version of the PFMI report indicated that the report was a translation and included a note inviting the reader to consult the English version of the PFMI report in the case of doubt or ambiguity.

- the resumption of operations of a clearing agency's critical information technology systems within two hours following disruptive events (see section 17.6 of Standard 17: *Operational risks*); and
- tiered participation arrangements in using a clearing agency's services (see Standard 19: *Tiered participation arrangements*).

(ii) Recovery or orderly wind-down plans

Section 3.4 of Standard 3: *Framework for the comprehensive management of risks* requires a clearing agency to identify scenarios that may potentially prevent it from being able to provide its critical operations and services as a going concern, and assess the effectiveness of a full range of options for recovery or orderly wind-down. It also notes that the clearing agency should prepare appropriate plans for its recovery or orderly wind-down based on the results of that assessment. Moreover, where applicable, the clearing agency is expected to provide relevant authorities with the information needed for purposes of resolution planning. Section 15.3 of Standard 15: *General business risk* requires a clearing agency, among other things, to maintain a viable recovery or orderly wind-down plan and hold sufficient liquid net assets funded by equity to implement the plan.

The CSA, together with the Bank of Canada, have decided to defer the implementation of these Standards because additional guidance on these Standards has only recently been published by the CPMI and IOSCO,[8] and we have not yet completed proposed Joint Supplementary Guidance on such Standards. We will be expecting clearing agencies to develop recovery plans in two stages, due to the complexity of recovery planning and the need to assess what recovery tools are appropriate for Canadian FMIs. Canadian authorities will expect a clearing agency's first-generation recovery plan to identify critical services, recovery triggers, stress scenarios, structural weaknesses and processes for orderly wind-down. Second-generation plans, due from clearing agencies by the end of 2016, should additionally specify the concrete recovery tools the clearing agency plans to deploy in specific recovery scenarios. We will update stakeholders on proposed transitional dates for implementing the various stages of these Standards in 2015.

(iii) Segregation and portability

Standard 14: *Segregation and portability* requires a CCP to have rules and procedures that enable the segregation and portability[9] of positions and related collateral of a CCP participant's customers, particularly to protect the customers from the default or insolvency of the participant. Standard 14 mirrors Principle 14 and its Key Considerations in the PFMI report.

The CSA and Bank of Canada are continuing to assess certain policy considerations in implementing Standard 14 for our domestic CCPs serving cash and exchange-traded

[8] See the CPMI-IOSCO's October 2014 report *Recovery of financial market infrastructures*, which is available on the Bank for International Settlements' website (www.bis.org) and the IOSCO website (www.iosco.org).

[9] Portability refers to the operational aspects of the transfer of contractual positions, funds, or securities from one party to another party. See paragraph 3.14.3 of the PFMI report.

derivatives markets.[10] Currently, the vast majority of participants in such CCPs, who clear for customers, are investment dealers and members of the Investment Industry Regulatory Organization of Canada (IIROC).[11] IIROC dealer-members holding client assets are required to contribute to the Canadian Investor Protection Fund (CIPF), an investor compensation protection fund that is sponsored by IIROC and approved by the CSA. We are having ongoing discussions with stakeholders, particularly domestic CCPs, IIROC and CIPF, to determine the scope of implementing Standard 14 for domestic CCPs serving exchange-traded derivatives markets. As a result, we have decided, together with the Bank of Canada, to defer the implementation of this Standard. The CSA will update stakeholders on a proposed transitional period for implementing Standard 14 in 2015. We discuss some of the ongoing policy matters below.

(A) Alternate approach for CCPs serving cash markets

As discussed in the Local Request Notices, the explanatory notes in the PFMI report offer an "alternate approach" to meeting Principle 14. The report notes that, in certain jurisdictions, cash market CCPs operate in legal regimes that facilitate segregation and portability to achieve protection of customer assets by alternate means that offer the same degree of protection as the approach in Principle 14.[12] We highlighted the features of the alternate approach in the Local Request Notices,[13] and sought feedback on how to apply Principle 14 and the alternate approach. We stated that, particularly for certain cash market CCPs, such as the continuous net settlement (CNS) service offered by CDS Clearing and Depository Services Inc. (CDS), once netting and novation have been completed, the CCP is unable to track customer positions directly. To do otherwise would require fundamental changes to the operations, and potentially the effectiveness of, these CCPs, as well as impact the market structure more broadly. We said that imposing a prescriptive CCP-level segregation and portability model on cash-market CCPs may have, in certain circumstances, unintended consequences for existing customer protection frameworks. Many stakeholders agreed with this view, noting in particular that the customer asset protection regime applicable to investment dealers (IIROC-CIPF regime) is an appropriate alternative framework for customers of investment dealers who are direct participants of a cash-market CCP.

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[10] As discussed above, the CSA Derivatives Committee is separately developing a regulatory framework that will implement Principle 14 for CCPs serving the OTC derivatives markets.

[11] Investment dealers are firms registered in the category of "investment dealer" under provincial securities legislation. Investment dealers are required to be members of IIROC. See section 9.1 of *Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

[12] See paragraph 3.14.6 of the PFMI report, at p. 83.

[13] Features of such legal regimes are that, if a participant fails, (a) the customer positions can be identified in a timely manner, (b) customers will be protected by an investor protection scheme designed to move customer accounts from the failed or failing participant to another participant in a timely manner, and (c) customer assets can be restored. As an example, the PFMIs suggest that domestic law may subject participants to explicit and comprehensive financial responsibility and customer protection requirements that obligate participants to make frequent determinations (for example, daily) that they maintain possession and control of all customers' fully paid and excess margin securities and to segregate their proprietary activities from those of their customers. Under these types of regimes, pending securities purchases do not belong to the customer; thus there is no customer trade or position entered into the CCP. As a result, participants who provide collateral to the CCP do not identify whether the collateral is provided on behalf of their customers regardless of whether they are acting on a principal or agent basis, and the CCP is not able to identify positions or the assets of its participants' customers.

We believe that the IIROC-CIPF regime meets the criteria for the alternate approach for CCPs serving certain domestic cash markets, such as CDS' CNS service, because:

- IIROC's requirements governing, among other things, an investment dealer's books and records, capital adequacy, internal controls, client account margining, and segregation of client securities and cash help ensure that customer positions and collateral can be identified timely,
- customers of an investment dealer are protected by CIPF, and
- through a combination of IIROC's member rules and oversight powers, CIPF's role in the administration of the bankruptcy of a dealer, and the overarching policy objectives of Part XII of the federal *Bankruptcy and Insolvency Act* (BIA) (discussed below), customer accounts can be moved from a failing dealer to another dealer in a timely manner and customers' assets can be restored.

Part XII of the BIA sets out a special bankruptcy regime for administering the insolvency of a securities firm. The regime generally provides for all cash and securities of a bankrupt securities firm, whether held for its own account and for its customers, to vest in the appointed trustee in bankruptcy. The trustee, in turn, is directed to pool such assets into a "customer pool fund" for the benefit of the customers, which are entitled to a pro rata share of the customer pool fund according to their respective "net equity" claims as a priority claim before the general creditors are paid. To the extent there is a shortfall in customer recovery from the customer pool fund and any remaining assets in the insolvent estate, the assets are allocated among the customers on a pro rata basis. CIPF, which works in conjunction with IIROC and the bankruptcy trustee,[14] provides protection to eligible customers for losses up to $1 million per account.[15]

We have not added any provision in the Regulation or Policy Statement to explicitly govern the use of the alternate approach for CCPs serving cash markets to meet the requirements of Standard 14. The CSA are considering the need for an explicit rule provision in the Regulation, or for special guidance in the Policy Statement, to accommodate and govern the availability of the alternate approach in the cash markets. We agree with commenters' views that a rule provision or special guidance should not be framed as an exemption to the requirements of Standard 14. This is because the PFMIs acknowledge that the outcomes of the Principles can generally be achieved using different means.[16] Moreover, the Policy Statement expressly states that regard is to be given to the explanatory notes in the PFMI report, as appropriate, in interpreting and implementing the Standards. This would include paragraph 3.14.6 of the PFMI report, which describes the alternate approach for CCPs serving certain cash markets as a means to meet Principle 14.

[14] CIPF is a "customer compensation body" for the purposes of Part XII of the BIA. Where the accounts of a securities firm are protected (in whole or in part) by CIPF, the trustee in bankruptcy is required to consult with CIPF on the administration of the bankruptcy, and CIPF may designate an inspector to act on its behalf. See section 264 of the BIA.

[15] The losses must be in respect of a claim for the failure of the dealer to return or account for securities, cash balances, commodities, futures contracts, segregated insurance funds or other property received, acquired or held by the dealer in an account for the customer.

[16] See paragraph 1.19 of the PFMI report, at p. 12.

(B) Standard 14 for domestic CCPs serving futures and other exchange-traded derivatives markets – Policy considerations

The PFMI report does not contemplate the availability of the alternate approach in respect of CCPs serving non-cash markets, such as futures and other exchange-traded markets. CSA regulators are considering the need to require enhanced CCP-level segregation and portability frameworks for customer positions and collateral held in omnibus customer account structures in such markets, such as requiring the CCP to collect customer margin on a gross basis.[17] According to the PFMI report, gross margining enhances the feasibility of portability for the CCP.[18] A number of commenters on the Local Regulations and Policy Statements raised concerns about the application of Principle 14 on CCPs serving the futures markets.

CSA regulators are continuing to review the implications of requiring enhanced CCP-level customer segregation and portability rules and procedures for CCPs serving the exchange-traded derivatives markets, particularly on CCPs, investment dealers, the IIROC-CIPF regime, and the pro rata distribution scheme of Part XII of the BIA.[19]

(C) Standard 14 for CCPs serving the OTC derivatives markets

As we note above under "(a) Chapter 1 – *Definitions, Interpretation and Application*", the CSA Derivatives Committee is separately developing a regulatory framework that will implement Principle 14 for CCPs serving the OTC derivatives markets. Proposed Revised Model Rule 91-304 is expected to require such CCPs to have detailed segregation and portability rules and arrangements that are more stringent than the Key Considerations of Principle 14.

(iv) Resumption of operations within two hours of disruptive events

Section 17.6 of Standard 17: *Operational risks* requires a recognized clearing agency to have a business continuity plan that addresses events posing a significant risk of disrupting operations, including events that could cause a wide-scale or major disruption. The plan should incorporate the use of a secondary site and should be designed to ensure that critical information technology (IT) systems can resume operations within two hours following disruptive events. In the Local Request Notices we had recognized that,

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[17] Collecting margin on a gross basis means that the amount of margin a participant must post to the CCP on behalf of its customers is the sum of the amounts of margin required for each such customer. See footnote 123 of the PFMI report, at p. 84. ICE Clear Canada has recently implemented a gross customer margin segregation and portability framework to enhance customer protection and its ability to port customer positions and collateral in the event of a participant default in accordance with Principle 14. It collects gross margin on futures positions held in dealer customer accounts, a process which requires clearing participants to submit customer level position data daily to the clearing agency. ICE Clear Canada, Inc is a wholly-owned subsidiary of, and designated clearinghouse for ICE Futures Canada, Inc., an electronic trading facility for agricultural futures and options contracts on canola, milling wheat, durum wheat and barley.

[18] For a discussion of the benefits and costs of gross margining of customer positions at the CCP level, see the explanatory notes at paragraphs 3.14.7 to 3.14.13 of the PFMI report.

[19] The IIROC-CIPF regime and insolvency law for investment dealers provide a customer asset protection regime that applies on a "universal" basis. That is, the IIROC-CIPF regime and Part XII of the BIA protect customers against losses arising from an investment dealer's insolvency in respect of client assets that are both cash products and derivatives products which IIROC members are permitted to hold on behalf of customers.

currently, a two hour timeframe for resuming operations from a disruptive event may pose operational difficulties for certain clearing agencies. However, we also noted that a recognized clearing agency that performs any of the services of a CCP, CSD or SSS should maintain a reasonable business continuity plan that is designed to meet the two hour resumption period, in line with the emerging industry objective. We had sought feedback on a clearing agency's current abilities and future prospects to meet the objective of recovering and resuming critical systems and processes within two hours of a disruptive event. One commenter suggested that the proposed timeframe appears arbitrary and may not be the appropriate recovery objective in Canada.

We continue to believe that a CCP, CSD or SSS should maintain a reasonable business continuity plan that is designed to meet the two hour resumption period, in line with the emerging industry trend. The Regulation maintains this requirement, but as a principles-based rule. Section 3.1 of the Regulation requires a clearing agency to have rules, procedures, policies or operations designed to ensure that the clearing agency meets or exceeds Standard 17 (including section 17.6 of the Standard).

(v) Tiered participation arrangements

Standard 19: *Tiered participation arrangements* requires a recognized clearing agency to identify, monitor, and manage the material risks to the clearing agency arising from any tiered participation arrangements. A tiered participation arrangement occurs when firms (indirect participants) rely on the services provided by other firms – who are direct participants of a clearing agency – to use the clearing agency's services. In the Local Request Notices, we had asked, among other questions, to what extent can a CCP identify and gather information about a tiered (indirect) participant. Stakeholders generally responded by saying that it is challenging for Canadian clearing agencies to identify or gather meaningful information pertaining to indirect/tiered participants, due to the lack of legal or other contractual relationship between the clearing agency and the indirect participant. Currently, clearing agencies utilize omnibus account structures which enable the clearing agency to distinguish proprietary and client assets, but more granular detail would be needed to permit the clearing agency to identify and measure the activity of indirect participants. Clearing agencies currently have limited recourse to require the necessary information disclosures from indirect participants.

Owing to the significant work that remains for clearing agencies to obtain meaningful information on tiered participation arrangements, the CSA, together with the Bank of Canada, have decided to defer the implementation of Standard 19. We are proposing to develop Joint Supplementary Guidance on the Standard, and will update stakeholders on a proposed transitional period for implementing the Standard in 2015.

(d) Chapter 4 – Other Requirements of Recognized Clearing Agencies

Some commenters raised concerns about certain requirements in the Local Regulations and Policy Statements that appeared different from, or were supplementary to, the PFMIs' Principles and Key Considerations. They noted that it was unclear how and where *other* requirements in the Local Regulations went beyond, modified, or replaced the PFMI requirements.

We have moved these other requirements into a separate Chapter 4 of the Regulation, as well as clarified and simplified them. Provisions in the Local Regulations that were substantially derived from the PFMIs' explanatory notes only (i.e., not based on a Principle or Key Consideration) have been removed from the Regulation. Other requirements, which are not derived from the PFMIs, such as rules that are based on other CSA instruments,[20] have been retained in the Regulation.

We discuss below a number of the provisions in Chapter 4 of the Regulation.

(i) Independent director

Section 4.1 of the Regulation requires that a recognized clearing agency's board of directors include appropriate representation by individuals who are independent of the clearing agency, and are not employees or executive officers of a participant or their immediate family members. Paragraph 3.2(4)(b) of the Local Regulations contained a similar provision. We have added provisions in the Regulation (subsections 4.1(3) to (9)) that describe when an individual is considered to be "independent" of a clearing agency, which are generally consistent with its meaning in securities legislation and in the PFMIs.

(ii) Provisions modelled on Regulation 21-101

A number of provisions in the Local Regulations that were modelled on Regulation 21-101 were maintained in the Regulation, and are contained in Chapter 4. They are the following sections: 4.6 – *Systems requirements* (formerly subsection 3.17(5) of the Local Regulations); 4.7 – *Systems reviews* (formerly subsections 3.17(6) and (7) of the Local Regulations); 4.8 – *Clearing agency technology requirements and testing facilities* (formerly subsections 3.17(8) to (11) of the Local Regulations); 4.9 – *Testing of business continuity plans* (formerly paragraph 3.17(12)(d) of the Local Regulations); and 4.10 – *Outsourcing* (formerly subsection 3.17(15) of the Local Regulations).

In April 2014 the CSA proposed amendments to update Regulation 21-101 to reflect developments that have occurred since 2012, including updating the requirements applicable to marketplaces' systems and business continuity planning (BCP).[21] The proposed amendments relating to systems and BCP requirements are intended to help ensure that marketplace systems are reliable, robust and have adequate controls. We are

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[20] For example, *Regulation 21-101 respecting Marketplace Operation* (Regulation 21-101) and *Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting*.

[21] See *CSA Notice and Request for Comment – Proposed Amendments to Regulation 21-101 respecting Marketplace Operation and Regulation 23-101 respecting Trading Rules*, April 24, 2014, Bulletin de l'Autorité des marchés financiers, Vol. 11, n° 16, p. 356.

of the view that certain of these amendments may be equally applicable to recognized clearing agencies due to their criticality to our capital markets, specifically:

- Business continuity testing – clarification that testing of BCPs should be conducted according to prudent business practices; and an expectation that the clearing agency facilitates and participates in industry-wide BCP tests;
- Security breaches – new requirement to notify regulators of any material security breach; and
- Expansion of scope of independent systems reviews (ISRs) – a requirement that the scope of the annual ISRs include review of the information security controls of the entity's auxiliary systems.

The CSA are currently reviewing comments received on the proposed amendments to Regulation 21-101. To the extent the above requirements are finalized and included in Regulation 21-101, we will consider including equivalent requirements for this Regulation and Policy Statement as well.

(iii) CCP skin-in-the-game requirement

Section 4.5 of the Regulation requires a recognized clearing agency that operates as a CCP to dedicate and use a reasonable portion of its own capital to cover losses resulting from one or more participant defaults prior to applying the collateral of, or other prefunded financial resources contributed by, the non-defaulting participants. A similar provision was contained in subsection 3.13(8) of the Local Regulations. A commenter expressed the view that, while the proposed Local Regulation would require "skin in the game" to motivate a clearing agency to act in a manner that would minimize loss and risk to all, given the reputational risk the clearing agency has at stake as the market watches its response to a default, it is unnecessary to add any additional motivating factor.

While this is not a requirement of the PFMIs, we believe that this skin-in-the-game requirement represents international best practice, particularly for CCPs that are operated on a for-profit basis. It promotes risk culture and is a positive signal to the clearing agency's participants that the owners of the CCP have an equal stake in ensuring the robustness of CCP's risk management. The Policy Statement provides some guidance on section 4.5 of the Regulation.

(e) Chapter 5 – Books and Records and Legal Entity Identifier

Section 5.1 of the Regulation is new. While it largely reflects requirements that are, for the most part, already contained in securities legislation, not all books and records requirements in securities legislation of CSA jurisdictions apply necessarily to recognized and exempt clearing agencies.

Section 5.2 of the Regulation, which requires a clearing agency to identify itself by means of a single legal entity identifier, was moved from Chapter 2 in the Local Regulations.

(f) Chapter 6 – Exemption

Chapter 6 of the Regulation contains the usual provisions in a CSA national regulation authorizing a regulator or securities regulatory authority, as the case may be, to grant an exemption from any provision of the Regulation.

(g) Chapter 7 – Effective Dates and Transition

The dates and transition periods proposed in the Local Regulations have not been retained in the Regulation, due in large part to the time required to develop the Regulation, and the time that will be required for clearing agencies to address risk management and other gaps to meet the Standards.

We expect that the Regulation will be in force by October 2015. However, the PFMIs represent a substantial strengthening of the previous CPMI-IOSCO standards on SSSs and CCPs. We recognize that clearing agencies may need more time to implement certain aspects of the Standards. Therefore, as discussed above under "(c) Chapter 3 – *International Standards Applicable to Recognized Clearing Agencies*"**,** we are proposing longer transition periods for implementing certain Standards. The CSA will update stakeholders on proposed transitional periods for implementing these Standards at a later time.

(h) Policy Statement

In developing the Policy Statement, the CSA have substantially modified the Local Policy Statements. The Local Policy Statements had contained most of the text comprising the PFMI report's explanatory notes. We have removed such text, as we believe that reproducing the PFMI report's explanatory notes in the Policy Statement is unnecessary. However, the removal of such text does not mean that the explanatory notes do not play an important role in interpreting and applying the Standards in the Regulation. On the contrary, as noted in section 3.1 of the Policy Statement, regard is to be given to the explanatory notes in the PFMI report, as appropriate, in interpreting and implementing the Standards. Therefore, the CSA is not intending any policy change by not reproducing the explanatory notes.

Given the above, the content of the Policy Statement has been significantly reduced compared to the Local Policy Statements. The Policy Statement now consists mostly of the Joint Supplementary Guidance developed by the CSA and the Bank of Canada. The Joint Supplementary Guidance is intended to provide additional clarity on certain aspects of some of the Standards within the Canadian context. It is directed at recognized *domestic* clearing agencies that are also regulated by the Bank of Canada. It is included in separate text boxes in the Policy Statement under the relevant headings of the Standards. We note that other recognized domestic clearing agencies should assess the applicability of the Joint Supplementary Guidance to their respective operations as well.

Joint Supplementary Guidance related to governance standards (Standard 2) was published for comment in the Local Policy Statements. The CSA and Bank of Canada have developed further Joint Supplementary Guidance related to the Standards governing collateral (Standard 5), liquidity risk (Standard 7), general business risk (Standard 15), investment risk (Standard 16), and disclosure of an FMI's rules, key procedures and

market data (Standard 23). Over time, the CSA and Bank of Canada will propose Joint Supplementary Guidance on certain other Standards as well, such as on recovery and orderly wind down plans (Standards 3 and 15) and tiered participation (Standard 19).

V. Authority for Regulation

In those jurisdictions in which the Regulation is to be adopted, the securities legislation provides the securities regulatory authority with rule-making or regulation-making authority in respect of the subject matter of the Regulation.

VI. Alternatives to Regulation Considered

The CSA considered, as general alternatives, adopting the Principles and Key Considerations in a policy, or including them on a case-by-case basis as terms and conditions to a recognition order of a clearing agency. The CSA decided against these alternatives because they believe the PFMIs should be contained in a rule to provide for greater transparency of clearing agency requirements and to promote consistency across all recognized clearing agencies that operate as a CCP, CSD or SSS in carrying on business in a jurisdiction in Canada.

VII. Unpublished Materials

In proposing the Regulation and Policy Statement, the CSA did not rely on any significant unpublished study, report, or other material.

VIII. Anticipated Costs and Benefits

As mentioned in Notice 24-310, the Regulation will enhance the regulatory framework for recognized clearing agencies operating or seeking to operate in a Canadian jurisdiction. This regulatory framework will facilitate ongoing observance by recognized clearing agencies of international minimum standards applicable to FMIs. The CSA believe that the Regulation will support resilient and cost-effective clearing agency operations. It will promote transparency and support confidence among market participants in the ability of clearing agencies to provide efficient and safe clearance and settlement services, which in turn will facilitate capital formation, limit systemic risk, and foster financial stability. Also, the Regulation will further facilitate the efforts of Canadian CCPs to meet the "qualifying CCP" (QCCP) status under the Basel III and Canadian banking guidelines. Canadian and foreign banks that have certain counterparty exposures to Canadian CCPs would be subject to higher capital requirements if these CCPs do not meet the QCCP status.[22]

The CSA also believe the proposed clearing agency regulatory framework should enhance confidence in the market and better serve market participants. With the adoption of the Regulation, clearing agencies may be better positioned to withstand market volatility and evolve with market developments and technological advancements.

[22] See *CSA Multilateral Staff Notice 24-311 Qualifying Central Counterparties*, July 28, 2014, at http://www.lautorite.qc.ca/files/pdf/bulletin/2014/vol11no30/vol11no30_7-1.pdf.

Establishing rules that are consistent with current practice and international standards provides a good starting point for promoting appropriate risk management practices.

Finally, the Standards are intended to support the initiatives of the Group of Twenty Finance Ministers and Central Bank Governors (G20) and the Financial Stability Board (FSB) to strengthen core financial infrastructures and markets. To promote consistent global enforcement, the PFMIs are considered minimum requirements, and it is expected that members of CPMI and IOSCO apply the PFMI standards to the fullest extent possible.[23] The global and uniform implementation of the PFMIs is considered to be crucial to meeting the G20 commitments for derivative markets regulatory reforms, including requirements for centralized clearing and data reporting.

The CSA acknowledge that implementing the Standards will entail costs for the industry. Recognized clearing agencies in Canada have begun the transition to the new Standards by conducting detailed self-assessments against the Principles and Key Considerations and identifying their current gaps in observance. They are currently developing plans to address those gaps, but it will take some time for them to meet all the Standards. As noted previously, we are therefore proposing longer transition periods for implementing certain Standards.

IX. Comment Process

Please submit your comments in writing on or before February 10, 2015. If you are not sending your comments by email, please include a CD containing the submissions. Address your submission to the following CSA member commissions:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Nova Scotia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Office of the Attorney General, Prince Edward Island
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Yukon
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

Please deliver your comments only to the addresses that follow. Your comments will be forwarded to the remaining CSA member jurisdictions.

[23] CPMI and IOSCO have stated that they expect full, timely and consistent implementation of the PFMIs by the authorities in all member-jurisdictions. In this regard, they have established an international task force to monitor implementation of the PFMIs by relevant authorities. Reports on PFMI implementation by CPMI and IOSCO members, including the OSC, AMF, BCSC and Bank of Canada, are available on the Bank for International Settlements' website (http://www.bis.org/cpss/index.htm) and the IOSCO website (http://www.iosco.org/library/index.cfm?section=pubdocs).

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
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E-mail: consultation-en-cours@lautorite.qc.ca

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416 593-2318
E-mail: comments@osc.gov.on.ca

Please note that comments received will be made publicly available and posted on the Websites of certain CSA jurisdictions. We cannot keep submissions confidential because securities legislation requires that a summary of the written comments received during the comment period be published. In this context, you should be aware that some information which is personal to you, such as your e-mail and address, may appear in the websites. It is important that you state on whose behalf you are making the submission.

Additionally, where comments pertain specifically to the Joint Supplementary Guidance (as presented in text boxes within the Policy Statement), we request that these particular comments also be sent to the Bank of Canada at the following email address:

PFMI-consultation@bankofcanada.ca

Questions with respect to this Notice, or the Regulation and Policy Statement, may be referred to:

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Autorité des marchés financiers
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APPENDIX "A"

Summary of comments to draft *Regulation 24-503 respecting Clearing House, Central Securities Depository and Settlement System Requirements* and related draft Policy Statement, and CSA general responses to comments[1]

1. Theme/question[2]	2. Summary of comments	3. General responses
General		
Purposes of the proposed Local Regulation and approach to drafting	One commenter disagrees with the drafting approach chosen to achieve the purposes of the proposed Local Regulation (i.e. adopting the PFMIs in a regulation). The commenter feels that differences, however modest, between the PFMIs and the proposed Local Regulation would require complex, time consuming and costly analyses of such differences (including what, if any, non-PFMI provisions have been added to the proposed Local Regulation). The commenter enumerates several possible consequences resulting from the approach (which necessitates analyses of possible differences from the PFMIs): • it may deter participants and clearing agencies from entering/expanding in the Canadian market, leading to less competition, liquidity and stability as a whole; • clearing agencies that have begun self-assessments according to PFMI standards would have to reconsider the proposed Local Regulation requirements; • domestic clearing agencies held to more rigorous provincial requirements than those based in foreign jurisdictions would be disadvantaged by an uneven playing field; • CPMI-IOSCO implementation monitoring efforts of the PFMIs	We have addressed this concern. See "IV. Summary of Regulation and Policy Statement" in the Notice.

[1] Columns 1 and 2 are reproduced from Appendix "B" to Notice 24-310. Column 3 is new.
[2] A reference to a provision (i.e., section, subsection, paragraph, etc.) is a reference to a provision of the proposed Local Regulation, unless otherwise indicated.

1. Theme/question[2]	2. Summary of comments	3. General responses
	would be confused by potentially different standards imposed on Canadian clearing agencies; • foreign regulators would have difficulty assessing equivalency of the proposed Local Regulation to their own PFMIs-based requirements; and • assessment as a "qualifying CCP" (QCCP) could be made more difficult and uncertain, should the Local Regulation's requirements be seen as different from, or potentially imposing lower standards than, the PFMIs. The commenter expresses that the stated purposes of the proposed Local Regulation could be achieved by requiring direct compliance with the international standards, and only adding to a proposed Local Regulation the additional requirements that would be unique to a province.	
Unified approach to rule-drafting	A commenter is concerned that the complexity of analyzing the differences between the proposed Local Regulation and the PFMIs would be magnified by the impact of each jurisdiction enacting its own rule. The commenter calls for a unified approach to drafting and implementing the proposed Local Regulation amongst the provincial/territorial regulators.	We have addressed this concern by proposing a national Regulation.
Requirements pursuant to existing terms and conditions	One commenter says that it was unclear whether certain recognized/exempt clearing agencies would be required to continue to comply with an existing term and condition that requires compliance with the PFMIs, possibly in addition to the proposed Local Regulation.	We note that Chapter 3 of the Regulation, which implements the Standards/PFMIs, will apply to recognized clearing agencies only. For the most part, we would exempt foreign clearing agencies carrying on business in Canada. As such, we would rely on the regulations governing, and the oversight of, the clearing agency in its home jurisdiction, including the local regulations or policies that implement the PFMIs. Where a foreign clearing agency is recognized by us because, for example, we judge it to be systemically important to our capital markets, Chapter 3 of the Regulation will apply. However, in view of the principles-based approach and drafting of

1. Theme/question[2]	2. Summary of comments	3. General responses
		the Standards that mirror the Principles and Key Considerations, we do not believe that compliance with Chapter 3 will be a burden. As such, a foreign clearing agency should not experience duplication and inefficiency of cross-border regulation. To the extent that a recognized foreign clearing agency faces a conflict or inconsistency between the requirements of sections 2.2, 2.5 and Chapter 4 of the Regulation and the terms and conditions of its existing order, Chapter 6 of the Regulation provides that the securities regulatory authority may grant an exemption from a provision of the Regulation, in whole or in part, subject to appropriate conditions or restrictions.
Foreign-based entities' compliance with proposed Local Regulation, and equivalence and mutual recognition approaches	A commenter is concerned that the proposed Local Regulation is not clear whether foreign-based clearing agencies that are recognized in a province will be required to comply with all new provisions, or may continue to abide by terms and conditions in their existing recognition orders. The commenter notes that adhering to the proposed Local Regulation's Part 3 provisions would be duplicative and inefficient when considering the regulation in a home jurisdiction, whereas current terms and conditions already address the balance with the home jurisdiction's regulation.	See response above.
	Two commenters highlight a need for access to third-country markets / clearing agencies under the concepts of equivalence and mutual recognition. One commenter suggests that an equivalence test be based on transparent, proportionate, fair and objective grounds, and should be judged on an outcome-determinative basis that looks to the PFMIs for guidance, so as to recognize the differences in legal and regulatory structures around the world. The commenters advocate for a process similar to the EMIR scheme for the recognition of third country CCPs, which relies on an equivalence assessment of the home country's legal and regulatory structure and an MOU between	See response above. We do not believe that an equivalency regime and process similar to the EMIR regime is necessary at this time. Chapter 3 of the Regulation, which implements the Standards/PFMIs, will apply to recognized clearing agencies only. For the most part, we would exempt foreign clearing agencies carrying on business in Canada. As such, we would rely on the regulations governing, and the oversight of, the clearing agency in its home jurisdiction, including the local regulations or policies that implement the PFMIs. Where a foreign clearing agency is recognized by us because, for example, we judge it to be systemically important to our capital markets, Chapter 3 of the Regulation will apply. However, in view of the principles-based approach and drafting of the Standards that mirror the Principles and Key Considerations, we do not believe that compliance with Chapter 3 will be a

1. Theme/question[2]	2. Summary of comments	3. General responses
	ESMA and the relevant regulator. The commenters also note that terms and conditions would have to be appropriate in light of the supervision and oversight being carried out in multiple jurisdictions, and that reliance should be placed on the regulations in the home jurisdictions to implement the PFMIs in place of direct application of CSA requirements on third country CCPs.	burden.
Part 2: Clearing house, central securities depository and settlement system recognition or exemption from recognition		
Request Notice question 1: Are there other factors that could be considered in determining systemic importance of a clearing agency to the relevant province? If so, please describe such factors and your reasons for including them. Subsections 2.0(2)-(5) of the proposed CP – systemic importance	A commenter notes that the proposed definition should include (a) the extent to which failure of a clearing agency would require the use of public funds to maintain the stability of Canada's financial infrastructure, and (b) the impact a clearing agency failure would have on Canada's financial infrastructure.	The Policy Statement describes a broad range of guiding factors in determining the systemic importance of a clearing agency. These factors are non-exhaustive. They inherently would include scenarios described by the commenter.
	A commenter notes that it would be useful to view the criteria within the context of the currencies in which an FMI's obligations are denominated, since any effects in Canada may depend on the value of an FMI's CDN dollar-denominated transactions.	See response above.
	A commenter suggests that the linkages between the clearing agency and other CCPs should be considered, including instances in which they assume exposure to one or more CCPs, as well as how such exposures are managed.	See response above.
	A commenter suggests that any risk exposure of the clearing agency to counterparties that are not residents of a relevant province but are systemically important to those residents should be considered.	See response above.
	A commenter highlights the absence of an appeal mechanism for parties	Canadian securities legislation generally provides for appeal mechanisms for

1. Theme/question[2]	2. Summary of comments	3. General responses
	who wish to have their determination of systemic importance reviewed.	reviewing a decision made by a regulator or securities regulatory authority.[3]
Significant changes and other changes in information Section 2.2	A commenter notes that the advanced approval requirement for significant changes and notification of fee changes is inconsistent with international regulations and thus puts domestic clearing agencies on an uneven playing field relative to foreign-based clearing agencies, who may make such changes more quickly. The commenter describes that CFTC regulations for derivatives clearing agencies, for example, require only self-certification of rule changes with the CFTC ten business days in advance of the change. The commenter requests aligning the requirements with those of the CFTC.	Subsection 2.2(2) of the Regulation prohibits a recognized clearing agency from implementing a "material change" without obtaining the prior written approval of the securities regulatory authority. However, the provision does not contain any timeline or process for obtaining such approval. We note that, typically, the terms and conditions of a recognition decision will contain provisions governing the process and timelines for obtaining prior approval of a material change. To the extent possible, the securities regulatory authority will consider the rule approval or self-certification process of another jurisdiction's regulations to which the clearing agency is subject when imposing the terms and conditions. This consideration may be carried out in concert with Chapter 6 of the Regulation, which provides that a securities regulatory authority may grant an exemption from a provision of the Regulation, in whole or in part, subject to appropriate conditions or restrictions.
Filing of initial audited financial statements Section 2.4	A commenter notes that while it plans to adopt the use of IFRS in the near future, it currently prepares its financial statements in accordance with UK GAAP, as per its home regulator's requirements. It requests confirmation that the provincial/territorial regulators will flexibly implement s. 2.4 to allow conformation with local regulatory requirements and that the provision will not negatively impact its operations in the relevant province.	We have addressed this concern. See section 2.4 of the Regulation.
Filing of annual audited and interim financial statements Section 2.5	A commenter urges the provincial/territorial regulators to extend the approach taken under s. 2.2 – to allowing alternate means to meeting the provision's requirement for foreign-based entities, as specified in its recognition/exemption order – to the requirements of s. 2.5. The commenter notes that some home	See subsection 2.5(2) of the Regulation.

[3] In Ontario, see sections 8 and 9 of the OSA. In Quebec, see sections 169.1 and 322 of the *Securities Act* (Quebec) and sections 14 and 113 of the *Derivatives Act* (Quebec).

1. Theme/question[2]	2. Summary of comments	3. General responses
	country regimes do not require interim financial statements to be audited.	
Part 3: On-going requirements applicable to recognized clearing houses, central securities depositories and settlement systems		
Section 3.2 – Governance		
Joint Supplementary Guidance Box 2, Item 1 Subsection 3.2(2) of the proposed CP	A commenter felt that the statement "the FMI functions should be legally separated from other functions performed by the consolidated entity in order to maximize bankruptcy remoteness of the FMI functions" does not align with the PFMIs paragraph 3.2.6. The commenter interprets that the PFMIs describe legal separation as a consideration when services present a distinct risk profile from, or pose additional risks to, its existing functions. So, whereas legal separation may be effective for multi-functional risks on a case-by-case basis, it is just one mechanism, in addition to, for example, effective governance and containment of risk through contractual terms.	The Joint Supplementary Guidance has been amended. It now provides for an option: where an FMI is part of a larger consolidated entity, it must either: (i) legally separate FMI-related functions from non-FMI-related functions performed by the consolidated entity in order to maximize bankruptcy remoteness of the FMI-related functions; or (ii) have satisfactory policies and procedures in place to manage additional risks resulting from the non-FMI-related functions appropriately to ensure the FMI's financial and operational viability.
Role of the chief compliance officer Paragraph 3.2(7)(d)	A commenter feels that the requirement could impose significant effort and cost on a clearing agency registered in multiple jurisdictions. Alternatively, the commenter proposes that recognized foreign clearing agencies be able to leverage similar information/reports provided to other regulators or information in its CPMI-IOSCO FMI Disclosure Framework Document.	This provision has been substantially retained in section 4.3 of the Regulation, which governs the requirements for having a Chief Risk Officer and Chief Compliance Officer. To the extent a recognized foreign clearing agency is subject to requirements of its home jurisdiction that achieve equivalent regulatory outcomes, Chapter 6 of the Regulation provides that a securities regulatory authority may grant an exemption from a provision of the Regulation, in whole or in part, subject to appropriate conditions or restrictions.
Transparency of major decisions Subsection 3.2(13)	A commenter proposes that, before a major decision that has a potential broad market impact is published, the clearing agency should be permitted to make a case for non-publication on the grounds of possible negative impact to financial stability in any of the jurisdictions in which it operates. Also, the publication should be made only with the approval of a relevant home-jurisdiction regulator and/or	This requirement is essentially retained in section 2.7 of Standard 2. We believe that a principles-based approach to this standard would provide the flexibility to the clearing agency to make a case for non-publication on the grounds of possible negative impact to financial stability, and to consult with, and seek the approval of, its home-jurisdiction regulator and/or the regulator of any other impacted jurisdiction.

1. Theme/question[2]	2. Summary of comments	3. General responses
	regulator of any other impacted jurisdiction.	
	A commenter also notes that it would make sense that ss. 3.2(13) should only apply to determinative decisions of a clearing agency's Board, since other (more preliminary or interim) resolutions may be confusing, misleading or inappropriately market-moving.	We agree that section 2.7 of Standard 2 applies only to major decisions made by the board of directors of the clearing agency.
Section 3.5 – Collateral and Section 3.7 – Liquidity risk		
Collateral – general principle Subsection 3.5(1)	A commenter says it is essential that letters of credit be perceived as permitted collateral, notwithstanding that the wording of the provision does not specifically suggest otherwise. The commenter requests positive clarity that letters of credit are intended to be included.	Consistent with footnote 63 of the PFMI report, in general we do not believe that letters of credit or other forms of guarantees are acceptable collateral. However, guarantees that are fully backed by collateral may be acceptable in rare circumstances, subject to regulatory approval. See also the Joint Supplementary Guidance on collateral.
Collateral and liquidity risk Sections 3.5, 3.7	A commenter requests flexibility in the eligible collateral a clearing agency can accept, as certain financial industries, such as the life insurance industry, tend to hold long-dated corporate securities to support the long-term nature of their activities. The commenter suggests that such participants would incur significant costs in obtaining more liquid assets to post as collateral with a clearing agency. It requests that long term assets, such as high grade corporate bonds, be considered eligible.	See the Joint Supplementary Guidance on collateral. However, we note that such guidance is applicable to recognized *domestic* clearing agencies only. If a foreign clearing agency is unwilling to accept long-dated Canadian corporate bonds and other securities, we do not believe it is appropriate for us to intervene to encourage them to accept such types of securities if they are not acceptable from a risk-management perspective.
Qualifying liquid resources Subsections 3.7(8) and (9)	With respect to par. 3.7(8)(a), a commenter notes that there is minimal liquidity risk with respect to major currencies and any potential concerns could be addressed through a foreign haircut allowance, if necessary. The commenter interprets that PFMIs paragraph 3.7.10 contemplates holding liquid resources in more than one currency, but does not strictly require that the currency of liquid resources must exactly match the currency of the obligations. Further, if highly marketable collateral held in investments are permitted, given the standardization and marketability of major	We do not agree. The Joint Supplementary Guidance on liquidity risk makes it clear that an FMI must have qualifying liquid resources for liquidity exposures *denominated in the same currency* as the resources.

1. Theme/question[2]	2. Summary of comments	3. General responses
	currencies, it does not seem reasonable to require that cash must be held in the same currency of the obligation.	
	With respect to par. 3.7(8)(b), a commenter requests that committed lines of credit be expanded to include letters of credit, as they are committed obligations of an underwriting bank.	If a particular letter of credit would be considered a committed line of credit by an underwriting bank, it would qualify.
	With respect to par. 3.7(8)(e) and the posting of bonds as collateral, a commenter notes that it is not clear what is included as "highly marketable collateral" or what funding arrangements would qualify as prearranged and highly reliable. The commenter is concerned that should customers not be able to post bonds as collateral with clearing members, because they in turn cannot post bonds to a clearing agency, customers or clearing members will be required to enter into repurchase transactions to raise cash to post, which may impose additional costs without reducing systemic risk.	See the Joint Supplementary Guidance on collateral. See also, above, our comment on the acceptability of long-dated Canadian corporate bonds and other securities by a foreign clearing agency.
Section 3.13 – Participant default rules and procedures		
Use and sequencing of financial resources Subsection 3.13(3)	A commenter asserts that it is not practical for a clearing agency to pre-commit to use particular liquidity resources in a specific order; rather the use of various resources to meet time-sensitive needs will depend on the details of a default situation. Also, the inclusion of such a hierarchy in publicly disclosed rules (or only to members) could make the clearing agency vulnerable to gaming by market participants. Accordingly, any plan for using liquidity resources should remain confidential, or at least disclosed only at a high level.	This provision in the Local Regulations has not been retained in the Regulation. We note, however, that the requirement was consistent with the explanatory note in par. 3.13.3 of the PFMI report.
Testing of default procedures Subsection 3.13(6)	A commenter requests that only entities that clear positions for their clients' futures commission merchant (FCM) services or that are involved in loss mutualization be involved as the required participants and stakeholders for the testing of a	We believe this concern is addressed through the explanatory notes of the PFMIs. Paragraph 3.13.7 of the PFMI report expressly contemplates that tests should include all "relevant parties or an appropriate subset" that would likely be involved in the default procedures, such as

1. Theme/question[2]	2. Summary of comments	3. General responses
	clearing agency's default rules and procedures. The commenter explains that for clearing members of a private, non-mutualized clearing agency, clearing members are clearing for their own accounts, and do not provide services typically afforded by FCMs. Accordingly, in the event of a default and close out, non-defaulting participants are neither impacted nor included in the process. As such, these members are unwilling to, and see little value in being involved in the testing and review of relevant procedures.	members of the appropriate board committees, participants, linked or interdependent FMIs, relevant authorities, and any related service providers. Moreover, a principles-based approach to applying section 13.4 of Standard 13 would provide some flexibility in determining the relevant "stakeholders" for the testing of a clearing agency's default rules and procedures.
Use of own capital Subsection 3.13(8)	A commenter expresses that, while the PFMIs contemplate that an FMI using its own resources is an option for the management of a default, it is not actually required. Further, while the proposed Local Regulation may require 'skin in the game' to motivate a clearing agency to act in a manner that would minimize loss and risk to all, given the reputational risk the clearing agency has at stake as the market watches its response to a default, it is unnecessary to add any additional motivating factor.	See the discussion in the Notice on section 4.5 of the Regulation under "IV. Summary of Regulation and Policy Statement and Ongoing Policy Matters, (d) Chapter 4 – Other Requirements of Recognized Clearing Agencies, (iii) CCP skin-in-the-game requirement".
Section 3.14 – Segregation and portability		
General comments	A commenter expresses concern that, in the context of a securities firm insolvency, the application of Principle 14 to all markets may impede or negate the ability of a trustee in bankruptcy, as well as investor protection funds, from returning the firm's client funds, and will only move the Canadian framework closer to the US model, in spite of the well-received Canadian performances to date. Whereas collateral would have to be held on a gross basis by the CCP, CIPF coverage would be impacted because assets held at the CCP would not vest with the CIPF trustee. Indeed, the principle of pooling assets for pro-rata distribution – the cornerstone of Part XII of the *Bankruptcy and Insolvency Act* – would no longer be	See the discussion in the Notice on segregation and portability under "IV. Summary of Regulation and Policy Statement and Ongoing Policy Matters, (c) Chapter 3 – International Standards Applicable to Recognized Clearing Agencies, (iii) Segregation and portability".

1. Theme/question[2]	2. Summary of comments	3. General responses
	applied to all clients.	
	A commenter notes that in the particularly complex area of open futures positions, the application of Principle 14 would negatively affect the ability of CIPF to provide customer protection, if the CCP has custody of clients' assets and it does not vest in a trustee.	See response above.
	A commenter expresses concern about the impact to IIROC members when applying Principle 14. Such members would not have the same degree of collateral available to them for their use, where there is a different margin requirement by the CCP vs. the clearing member.	See response above.
	A commenter expresses concern about the operational issues and impacts related to a CCP undertaking the responsibility to move client assets, especially because the CCP may not have client account information which is held by a clearing member.	See response above.
Customer account structures and transfer of positions and collateral Subparagraph 3.14(4)(a)(ii)	A commenter suggests to replace "or" with "and/or" to accommodate clearing members who clear for a combination of clients that include both individual and omnibus accounts.	See the discussion in the Notice under "IV. Summary of Regulation and Policy Statement and Ongoing Policy Matters, (c) Chapter 3 – International Standards Applicable to Recognized Clearing Agencies, (i) Implementation of the PFMIs as rule requirements". The Standards in Appendix A to the Regulation are largely a reproduction of the text of the 23 Principles and their respective Key Considerations.
Request Notice question 2: Do you agree with the current drafting approach of section 3.14 of the Regulation, i.e., requiring all CCPs to meet Principle 14 in its entirety (without referencing the alternate approach), and granting exemptions on a case-by-case basis to those CCPs for which the alternate	Three commenters argue that CCPs serving the cash markets should not be required to obtain an "exemption" from section 3.14, as the wording of Principle 14 should be understood to allow, as a matter of course, the application of its "alternate approach" to cash market CCPs that provide the same protections as those envisioned by the Principle (as explained in PFMIs paragraph 3.14.6). The commenters express that an "exemption" may imply that the CCP employs a weaker approach to investor protection than that which is otherwise required by the PFMIs.	See the discussion in the Notice on segregation and portability under "IV. Summary of Regulation and Policy Statement and Ongoing Policy Matters, (c) Chapter 3 – International Standards Applicable to Recognized Clearing Agencies, (iii) Segregation and portability".

1. Theme/question[2]	2. Summary of comments	3. General responses
approach is appropriate?		
	A commenter is unsure whether timely portability could be achieved without supporting legislation to ensure a release of funds within a certain period.	See response above.
Request Notice question 3: Should all CCPs serving the Canadian cash markets be able to avail themselves of the alternate approach to implementation of Principle 14? How could such CCPs demonstrate that customer assets and positions are protected to the same degree envisioned by Principle 14?	Three commenters conclude that cash market CCPs should be able to demonstrate how they fit within the alternate approach, if they satisfy the criteria set out in paragraph 3.4.16 of the PFMIs. The combination of IIROC rules, CIPF customer protection (that extends to all assets held in a customer's account, including securities, cash balances, commodities, futures contracts, segregated insurance funds or other property) and the Part XII *Bankruptcy and Insolvency Act* scheme, in the Canadian regulatory environment should be conducive to satisfying this alternate approach. At least one commenter feels that the alternate approach should extend to all CCPs not serving the OTC derivatives markets.	See response above.
	Two commenters argue that unintended consequences would be severe if CCPs serving markets other than the OTC derivatives markets were not able to avail themselves of the alternate approach.	See response above.
	A commenter describes several consequences that might arise if the alternate approach is unavailable for non-OTC market CCPs: (1) the efficiencies achieved by netting trades would be lost as segregation and portability requirements would force CCPs to decompose netted trades, thereby increasing costs to the CCP and reducing the risk reduction provided by netting; (2) costly changes would be required to the CCP's margining system, in order to margin positions at a gross level; (3) for CCPs without cross-product margining, the introduction of portability could result in higher margin requirements for legitimate market activity; (4) CCPs would	See response above.

1. Theme/question[2]	2. Summary of comments	3. General responses
	have to develop a communication mechanism to inform investors of their collateral/positions in the event of a CCP participant insolvency; and (5) market participants would be negatively impacted by having to undertake significant reconciliation efforts, as each trade would have to be individually inspected to note the client and its corresponding collateral.	
	A commenter suggests that CCPs could demonstrate their protection of customer assets and positions through disclosure of: (i) the nature of the information held in respect of individual clients; (ii) the roles and responsibilities of surviving participants under default scenarios; and (iii) the processes and procedures to be followed by the CCP and its surviving participants in these circumstances. It is also suggested that for CCPs obligated to test default management processes, the processes enabling portability of positions and collateral should also be tested.	See response above.
Section 3.15 – General business risk		
Determining sufficiency of liquid net assets Subsection 3.15(3)	A commenter requests that the last sentence of PFMI key consideration 15.3 be included in section 3.15(3) in order to avoid duplicate capital requirements by permitting the inclusion of equity held under international risk-based capital standards, where appropriate.	We have added such sentence in section 15.3 of Standard 15 in Appendix A to the Regulation.
Section 3.16 – Custody and investment risks		
Investment strategy Subsection 3.16(4)	A commenter is concerned that public disclosure of its investment strategies could negatively impact its ability to invest large amounts of cash on a daily basis. It requests that investment strategies only be disclosed at a high level and only to participants.	Section 16.4 of Standard 16 in Appendix A to the Regulation says that a clearing agency should "fully disclose" its investment strategy to its participants. We do not believe that the same type of disclosure would be required for the public. See also Standard 23, which governs certain types of public disclosures.
Section 3.17 – Operational risks		
Operational capacity, systems requirements, and incident management	A commenter suggests that an alternative should be available for foreign-based recognized clearing agencies. It requests that this alternative be provided in the	This requirement is now contained in Chapter 4 of the Regulation, which applies only to recognized clearing agencies. To the extent that a recognized foreign clearing agency is subject to requirements in its

1. Theme/question[2]	2. Summary of comments	3. General responses
Paragraph 3.17(5)(e)	clearing agency's recognition order or 'notice and approval protocol'.	home jurisdiction that achieve equivalent regulatory outcomes, Chapter 6 of the Regulation provides that a securities regulatory authority may grant an exemption from a provision of the Regulation, in whole or in part, subject to appropriate conditions or restrictions.
Operational capacity, systems requirements, and incident management Subsections 3.17(8), (9)	A commenter requests that public disclosure under these subsections not include detailed proprietary information.	We have clarified this in section 4.8 of the Policy Statement.
Operational capacity, systems requirements, and incident management Subsection 3.17(11):	In respect of paragraph (b), one commenter suggests that the provision should allow a foreign-based recognized clearing agency to meet the requirement in a manner described in the terms and conditions of its recognition order or 'notice and approval protocol'. In respect of paragraph (c), one commenter expresses concern that the scope of this disclosure requirement is too broad. It suggests that it be narrowed to only include non-sensitive information that is not proprietary in nature.	See previous two responses above.
Request Notice question 4: What are a clearing agency's current abilities and future prospects to meet the objective of recovering and resuming critical systems and processes within two hours of a disruptive event? Should recovery and resumption-time objectives differ according to critical importance of markets? Subparagraph 3.17(12)(c)(i)	A commenter requests further clarity with respect to whether (i) the ability of a clearing agency to meet the two hour requirement would impact how the requirement is applied, and (ii) whether more than two hours may be permitted, if necessary. The commenter notes that the proposed timeframe appears arbitrary and may not be the appropriate recovery objective in Canada.	See the discussion in the Notice under "IV. Summary of Regulation and Policy Statement and Ongoing Policy Matters, (c) Chapter 3 – International Standards Applicable to Recognized Clearing Agencies, (iv) Resumption of operation within two hours after disruptive events".
	A commenter notes that recovery and resumption time objectives should not differ from market to market, based on critical importance.	See response above.
Section 3.19 – Tiered participation arrangements		
Request Notice question 5: To what	A commenter requests further clarity as to whether (i) the ability of	See the discussion in the Notice under "IV. Summary of Regulation and Policy

1. Theme/question[2]	2. Summary of comments	3. General responses
extent can a CCP identify and gather information about a tiered (indirect) participant? Section 3.19	the clearing agency to meet the requirement would impact how the requirement is applied, and (ii) the type and extent of the information that would be required to be gathered.	Statement and Ongoing Policy Matters, (c) Chapter 3 – International Standards Applicable to Recognized Clearing Agencies, (v) Tiered participation arrangements".
	A commenter submits that it is challenging for Canadian CCPs to identify or gather meaningful information pertaining to indirect/tiered participants, due to the lack of legal or other contractual relationship between the CCP and the indirect participant, and more generally, because Canadian clearing models are founded on the 'principal model'. The model utilizes omnibus account structures which enable the CCP to distinguish proprietary and client assets, but more granular detail would be needed to permit the CCP to identify and measure the activity of indirect participants. CCPs have limited recourse to require the necessary information disclosures from indirect participants.	See response above.
	A commenter notes that CCPs are able to gather sufficient information about their indirect participants to be able to manage the risks they pose.	See response above.
Request Notice question 6: In Canada, what types of risks (such as credit, liquidity, and operational risks) arise in tiered participation arrangements between customers and direct participants or between customers and other intermediaries that provide clearing services to such customers?	A commenter agreed that all cited risks are present in tiered participation arrangements.	See response above.
Request Notice question 7: How can a clearing agency	A commenter described that the control, mitigation and management of risks would require, at a	See response above.

1. Theme/question[2]	2. Summary of comments	3. General responses
properly manage the risks posed by tiered participation arrangements?	minimum, the disclosure of client accounts and/or securities positions by direct CCP participants. Doing so would allow the CCP to meet the minimum standards of Principle 14 and would allow a CCP to modify or calibrate its risk model towards the effective management of the credit and liquidity risks that tiered participants introduce to the clearing system.	
	A commenter suggests two layers of controls to help manage risks posed by tiered participation arrangements: (i) require the clearing agency to gather detailed information on the direct participant's customer activity in order to identify relationships and positions at the indirect participant level, and (ii) require the clearing agency to act on the information within a risk policy framework that identifies, signals and monitors risks and risk concentrations and which, where appropriate, provides incentives for participants to reduce these risks and concentrations.	See response above.
Section 3.23 – Transparency		
Changes to rules and procedures Subsection 3.23(5)	A commenter requests that a clearing agency's disclosure of changes to its rules and procedures be limited to only what is required by its recognition order or 'notice and approval protocol'. It also expresses its belief that disclosure should be limited to services over which the regulatory authority possesses jurisdiction.	While this provision has not been retained in the Regulation, section 23.1 of Standard 23 in Appendix A to the Regulation requires a recognized clearing agency to adopt clear and comprehensive rules and procedures that are fully disclosed to participants. It also requires that relevant rules and key procedures be publicly disclosed. We note, however, that the requirement was consistent with the explanatory note in par. 3.23.3 of the PFMI report, which says that a clearing agency should have a clear and fully disclosed process for proposing and implementing changes to its rules and procedures and for informing participants and relevant authorities of these changes.
Part 5: Effective dates and transition		
Section 5.1	A commenter requests that, where a clearing agency has already carried out preparatory work or has dedicated resources to PFMIs	Effective dates and transition periods have been significantly modified in the Regulation. See the discussion in the Notice under "IV. Summary of Regulation and

1. Theme/question[2]	2. Summary of comments	3. General responses
	implementation plans (that have been approved by its regulators), the transition periods should take such efforts into account. The commenter also requests that where the CSA's implementation of the PFMIs differ from CPMI-IOSCO, that the CSA provide a mechanism through which PFMI requirements that are substantively similar to the CSA requirements be grandfathered under the proposed Local Regulation.	Policy Statement and Ongoing Policy Matters, (g) Chapter 7 – Effective Dates and Transition".
	In respect of the interaction of CSA Staff Notices 91-303 and 91-304, one commenter notes that there are significant operational implications and unknowns for customers, in terms of setting up procedures to deal with derivatives clearing agencies (DCAs) and clearing members. Accordingly, there will need to be transition time once DCAs are established and before all clearing requirements are implemented. The commenter also expresses concern that it is unclear how many DCAs will exist and how they will be differentiated, leading to the possibility that transactions that would otherwise net to zero may be required to clear at different derivatives clearing agencies, thereby resulting in exposures that are not being offset.	This comment has been referred to the CSA Derivatives Committee, which is working on Revised Model Rule 91-304.
Subsection 5.1(2)	A commenter suggests that sections 3.4-3.7 should have the same effective date as CSA Staff Notices 91-303 and 91-304 in order to ensure customers have the protection of risk management tools when clearing trades.	We will raise this comment with the CSA Derivatives Committee.
Request Notice question 8: Are the above transition periods appropriate? If yes, please give your reasons. If not, what alternative transition periods would balance the CPMI-IOSCO's expectation of timely	A commenter notes that successful implementation under the proposed timeline may be difficult.	See the discussion in the Notice under "IV. Summary of Regulation and Policy Statement and Ongoing Policy Matters, (g) Chapter 7 – Effective Dates and Transition".

1. Theme/question[2]	2. Summary of comments	3. General responses
implementation of the PFMIs and the practical implementation needs of our markets? Subsection 5.1(3)		

APPENDIX "B"

Comparison of the Standards in Appendix A to Regulation 24-102 and text of the Principles and Key Considerations in PFMI report

Disclaimer

This document provides a comparison between the Standards in Appendix A to Regulation 24-102 and the text of the 23 relevant Principles and their respective Key Considerations in the PFMI report. It is intended to assist readers of the Standards in understanding where the CSA have amended the text of the Principles and their Key Considerations in drafting the Standards. An automated process was used in generating the comparison. While the CSA have used due care in preparing this document, it is possible that the comparison contains errors, omissions and inaccuracies introduced through use of the automated process. This document should therefore be used as an aid only. Readers should refer directly to the text of the Standards and the Principles and Key Considerations in order to fully understand the requirements of and differences between the two.

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~~Principles for financial market infrastructures~~
Appendix A

Risk Management Standards Applicable to Recognized Clearing Agencies

~~*Principle*~~**Standard 1:** *Legal basis*~~An FMI should have~~ - A recognized clearing agency has a well-founded, clear, transparent, and enforceable legal basis for each material aspect of its activities in all relevant jurisdictions.

~~**Key considerations**~~

> ~~*1.*~~ 1.1 The legal basis ~~*should provide*~~provides a high degree of certainty for each material aspect of ~~*an FMI*~~the clearing agency's activities in all relevant jurisdictions.
>
> ~~*2. An FMI should have*~~ 1.2 The clearing agency has rules, procedures~~,~~ and contracts that are clear, understandable~~,~~ and consistent with relevant laws and regulations.
>
> ~~*3. An FMI should be able to articulate*~~1.3 The clearing agency articulates the legal basis for its activities to relevant authorities, participants, and, where relevant, participants' customers, in a clear and understandable way.
>
> ~~*4. An FMI should have*~~1.4 The clearing agency has rules, procedures~~,~~ and contracts that are enforceable in all relevant jurisdictions. There ~~*should be*~~is a high degree of certainty that actions taken by the ~~*FMI*~~clearing agency under ~~*such*~~its rules and procedures will not be voided, reversed~~,~~ or subject to stays.
>
> ~~*5. An FMI conducting*~~1.5 If the clearing agency conducts business in multiple jurisdictions~~ *should identify*~~, it identifies and ~~*mitigate*~~mitigates the risks arising from any potential ~~*conflict*~~conflicts of laws across jurisdictions.

~~*Principle*~~**Standard 2:** *Governance* ~~An FMI should have~~– A recognized clearing agency has governance arrangements that are clear and transparent, promote the safety and efficiency of the ~~FMI, and~~clearing agency, support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders.

~~**Key considerations**~~

~~*1. An FMI should have*~~ 2.1 The clearing agency has objectives that place a high priority on the safety and efficiency of the ~~*FMI*~~clearing agency and explicitly support financial stability and other relevant public interest considerations.

~~*2. An FMI should have*~~2.2 The clearing agency has documented governance arrangements that provide clear and direct lines of responsibility and accountability. These arrangements ~~*should be*~~are disclosed to owners, relevant authorities, participants, and, at a more general level, the public.

~~*3.*~~ 2.3 The roles and responsibilities of ~~*an FMI*~~the clearing agency's board of directors ~~*(or equivalent) should be*~~are clearly specified, and there ~~*should be*~~are documented governance procedures for its functioning, including procedures to identify, address~~,~~ and manage member conflicts of interest. The board ~~*should review*~~of directors reviews both its overall performance and the performance of its individual board members regularly.

~~*4.*~~ 2.4 The board ~~*should contain*~~of directors contains suitable members with the appropriate skills and incentives to ~~*fulfil*~~fulfill its multiple roles. This typically requires the inclusion of non-executive board member(s).

~~*5.*~~ 2.5 The roles and responsibilities of management ~~*should be*~~are clearly specified. ~~*An FMI*~~The clearing agency's management ~~*should have*~~has the appropriate experience, a mix of skills, and the integrity necessary to discharge ~~*their*~~its responsibilities for the operation and risk management of the ~~*FMI*~~clearing agency.

~~*6.*~~ 2.6 The board ~~*should establish*~~of directors establishes a clear, documented risk-management framework that includes the ~~*FMI*~~clearing agency's risk-tolerance policy, assigns responsibilities and accountability for risk decisions, and addresses decision making in crises and emergencies. Governance arrangements ~~*should*~~ ensure that the risk-management and internal control functions have sufficient authority, independence, resources, and access to the board~~.~~ of directors.

2.7 ~~*7.*~~ The board ~~*should ensure*~~of directors ensures that the ~~*FMI*~~clearing agency's design, rules, overall strategy, and major decisions reflect appropriately the legitimate interests of its direct and indirect participants and other relevant stakeholders. Major decisions ~~*should be*~~are clearly disclosed to relevant stakeholders and, where there is a broad market impact, the public.

~~*Principle*~~**Standard 3:** *Framework for the comprehensive management of risks*~~An FMI should have~~ – A recognized clearing agency has a sound risk-management framework for comprehensively managing legal, credit, liquidity, operational~~,~~ and other risks.

~~**Key considerations**~~

~~*1. An FMI should have*~~3.1 The clearing agency has risk-management policies, procedures, and systems that enable it to identify, measure, monitor~~,~~ and manage the range of risks that arise in or are borne by ~~*the FMI. Risk*~~it. The risk-management ~~*frameworks should be*~~framework is subject to periodic review.

~~*2. An FMI should provide*~~3.2 The clearing agency provides incentives to participants and, where relevant, their customers to manage and contain the risks they pose to the ~~*FMI.*~~ clearing agency.

~~*3. An FMI should*~~3.3 The clearing agency regularly ~~*review*~~reviews the material risks it bears from and poses to other entities (such as other ~~*FMIs*~~clearing agencies, payments systems, trade repositories, settlement banks, liquidity providers~~,~~ and service providers) as a result of interdependencies and ~~*develop*~~develops appropriate risk-management tools to address these risks.

~~*4. An FMI should identify*~~3.4 The clearing agency identifies scenarios that may potentially prevent it from being able to provide its critical operations and services as a going concern and ~~*assess*~~assesses the effectiveness of a full range of options for recovery or orderly wind-down. ~~*An FMI should prepare*~~The clearing agency prepares appropriate plans for its recovery or orderly wind-down based on the results of that assessment. Where applicable, ~~*an FMI should*~~the clearing agency also ~~*provide*~~provides relevant authorities with the information needed for purposes of resolution planning.

~~*Principle*~~**Standard 4:** *Credit risk* ~~An FMI should~~ – A recognized clearing agency that operates as a central counterparty or securities settlement system effectively ~~measure, monitor~~measures, monitors, and ~~manage~~manages its credit exposures to participants and those arising from its ~~payment,~~ clearing~~,~~ and settlement processes. ~~An FMI should maintain~~The clearing agency maintains sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence. In addition, ~~a CCP~~the clearing agency, if it operates as a central counterparty, that is involved in activities with a more-complex risk profile or that is systemically important in multiple jurisdictions ~~should maintain~~maintains additional financial resources sufficient to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the two participants and their affiliates that would potentially cause the largest aggregate credit exposure to the ~~CCP~~clearing agency in extreme but plausible market conditions. All other ~~CCPs should~~clearing agencies that operate as a central counterparty maintain additional financial resources sufficient to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would potentially cause the largest aggregate credit exposure to the ~~CCP~~clearing agency in extreme but plausible market conditions.

~~**Key considerations**~~

~~1. An FMI should establish~~4.1 The clearing agency establishes a robust framework to manage its credit exposures to its participants and the credit risks arising from its payment, clearing, and settlement processes. Credit exposure may arise from current exposures, potential future exposures, or both.

~~2. An FMI should identify~~4.2 The clearing agency identifies sources of credit risk, routinely ~~measure~~measures and ~~monitor~~monitors its credit exposures, and ~~use~~uses appropriate risk-management tools to control these risks.

~~3. A payment system or SSS should cover~~4.3 The clearing agency, if it operates as a securities settlement system, covers its current exposures and, where they exist, potential future exposures to each participant fully with a high degree of confidence using collateral and other equivalent financial resources~~ (see Principle 5 on collateral). In the case of a DNS payment system or DNS SSS~~. Where the clearing agency operates as a deferred net settlement system, in which there is no settlement guarantee but where its participants face credit exposures arising from its payment, clearing~~,~~ and settlement processes, ~~such an FMI should maintain~~the clearing agency maintains, at a minimum, sufficient resources to cover the exposures of the two participants and their affiliates that would create the largest aggregate credit exposure in the system.

~~4. A CCP should cover~~4.4 The clearing agency that operates as a central counterparty covers its current and potential future exposures to each participant fully with a high degree of confidence using margin and other prefunded financial resources~~ (see Principle 5 on collateral and Principle 6 on margin)~~. In addition, ~~a CCP~~the clearing agency that operates as a central counterparty and that is involved in activities with a more-complex risk profile or ~~that~~ is systemically important in multiple jurisdictions ~~should maintain~~maintains additional financial resources to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the two participants and their affiliates that would potentially cause the largest aggregate credit exposure ~~for~~to the ~~CCP~~clearing agency in extreme but plausible market conditions. All other ~~CCPs should~~clearing agencies that operate as a central counterparty maintain additional financial resources sufficient to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would potentially cause the largest aggregate credit exposure for the ~~CCP~~clearing agency in extreme but plausible market conditions. In all cases, ~~a CCP should document~~the clearing agency that operates as a central counterparty documents its supporting rationale for, and ~~should have~~has appropriate governance arrangements relating to, the amount of total financial resources it maintains.

~~5. A CCP should determine~~4.5 The clearing agency that operates as a central counterparty determines the amount and regularly ~~test~~tests the sufficiency of its total financial resources available in the event of a default or multiple defaults in extreme but plausible market conditions through rigorous stress testing. ~~A CCP should have~~The clearing agency has clear procedures to report the results of its stress tests to appropriate decision makers at the ~~CCP~~clearing agency and to use

these results to evaluate the adequacy of and adjust its total financial resources. Stress tests ~~*should be*~~are performed daily using standard and predetermined parameters and assumptions. On at least a monthly basis, ~~*a CCP should perform*~~the clearing agency performs a comprehensive and thorough analysis of stress testing scenarios, models, and underlying parameters and assumptions used to ensure they are appropriate for determining the ~~*CCP*~~clearing agency's required level of default protection in light of current and evolving market conditions. ~~*A CCP should perform*~~The clearing agency performs this analysis of stress testing more frequently when the products cleared or markets served display high volatility, become less liquid, or when the size or concentration of positions held by ~~*a CCP*~~the clearing agency's participants increases significantly. A full validation of ~~*a CCP*~~the clearing agency's risk~~-~~ management model ~~*should be*~~is performed at least annually.

~~*6.*~~ 4.6 In conducting stress testing, ~~*a CCP should consider*~~the clearing agency that operates as a central counterparty considers the effect of a wide range of relevant stress scenarios in terms of both defaulters' positions and possible price changes in liquidation periods. Scenarios ~~*should*~~ include relevant peak historic price volatilities, shifts in other market factors such as price determinants and yield curves, multiple defaults over various time horizons, simultaneous pressures in funding and asset markets, and a spectrum of forward-looking stress scenarios in a variety of extreme but plausible market conditions.

~~*7. An FMI should establish*~~4.7 The clearing agency establishes explicit rules and procedures that address fully any credit losses it may face as a result of any individual or combined default among its participants with respect to any of their obligations to the ~~*FMI*~~clearing agency. These rules and procedures ~~*should*~~ address how potentially uncovered credit losses would be allocated, including the repayment of any funds ~~*an FMI*~~the clearing agency may borrow from liquidity providers. These rules and procedures ~~*should*~~ also indicate the ~~*FMI*~~clearing agency's process to replenish any financial resources that the ~~*FMI*~~clearing agency may employ during a stress event, so that the ~~*FMI*~~clearing agency can continue to operate in a safe and sound manner.

~~*Principle*~~**Standard 5:** *Collateral* ~~An FMI that~~ A recognized clearing agency that operates as a central counterparty or securities settlement system and requires collateral to manage its or its participants' credit exposure ~~should accept~~, accepts collateral with low credit, liquidity, and market risks. ~~An FMI should~~The clearing agency also ~~set~~sets and ~~enforce~~enforces appropriately conservative haircuts and concentration limits.

~~**Key considerations**~~

~~*1. An FMI should*~~5.1 The clearing agency generally ~~*limit*~~limits the assets it (routinely) accepts as collateral to those with low credit, liquidity~~,~~ and market risks.

~~*2. An FMI should establish*~~5.2 The clearing agency establishes prudent valuation practices and ~~*develop*~~develops haircuts that are regularly tested and take into account stressed market conditions.

~~3.~~ 5.3 In order to reduce the need for procyclical adjustments, ~~*an FMI should establish*~~the clearing agency establishes stable and conservative haircuts that are calibrated to include periods of stressed market conditions, to the extent practicable and prudent.

~~*4. An FMI should avoid*~~5.4 The clearing agency avoids concentrated holdings of certain assets where this would significantly impair the ability to liquidate such assets quickly without significant adverse price effects.

~~*5. An FMI that*~~5.5 Where the clearing agency accepts cross-border collateral ~~*should mitigate*~~, it mitigates the risks associated with its use and ~~*ensure*~~ensures that the collateral can be used in a timely manner.

~~*6. An FMI should use*~~5.6 The clearing agency uses a collateral management system that is well-designed and operationally flexible.

~~*Principle*~~**Standard 6:** *Margin* ~~A CCP should cover~~ – A recognized clearing agency that operates as a central counterparty covers its credit exposures to its participants for all products through an effective margin system that is risk-based and regularly reviewed.

~~**Key considerations**~~

~~*1. A CCP should have*~~6.1 The clearing agency has a margin system that establishes margin levels commensurate with the risks and particular attributes of each product, portfolio~~,~~ and market it serves.

~~*2. A CCP should have*~~6.2 The clearing agency has a reliable source of timely price data for its margin system. ~~*A CCP should*~~The clearing agency also ~~*have*~~has procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable.

~~*3. A CCP should adopt*~~6.3 The clearing agency adopts initial margin models and parameters that are risk-based and generate margin requirements sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default. Initial margin ~~*should meet*~~meets an established single-tailed confidence level of at least 99 percent with respect to the estimated distribution of future exposure. For a ~~*CCP*~~clearing agency that calculates margin at the portfolio level, this requirement applies to each portfolio's distribution of future exposure. For a ~~*CCP*~~clearing agency that calculates margin at more-granular levels, such as at the subportfolio level or by product, the requirement ~~*must be*~~is met for the corresponding distributions of future exposure. The model ~~*should*~~ (a) ~~*use*~~uses a conservative estimate of the time horizons for the effective hedging or close out of the particular types of products cleared by the ~~*CCP*~~clearing agency (including in stressed market conditions), (b) ~~*have*~~has an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products, and (c) to the extent practicable and prudent, ~~*limit*~~limits the need for destabilising, procyclical changes.

*4. A CCP should mark*6.4 The clearing agency marks participant positions to market and *collect*collects variation margin at least daily to limit the build-up of current exposures. *A CCP should have*The clearing agency has the authority and operational capacity to make intraday margin calls and payments, both scheduled and unscheduled, to participants.

6.5 *5.* In calculating margin requirements, *a CCP*the clearing agency may allow offsets or reductions in required margin across products that it clears or between products that it and another *CCP*central counterparty clear, if the risk of one product is significantly and reliably correlated with the risk of the other product. Where *two or more CCPs are authorised*the clearing agency is authorized to offer cross-margining*, they must* with one or more other central counterparties, it and the other central counterparties have appropriate safeguards and harmonised overall risk-management systems.

*6. A CCP should analyse*6.6 The clearing agency analyses and *monitor*monitors its model performance and overall margin coverage by conducting rigorous daily backtesting and at least monthly, and more *frequent* frequently where appropriate, sensitivity analysis. *A CCP should*The clearing agency regularly *conduct*conducts an assessment of the theoretical and empirical properties of its margin model for all products it clears. In conducting sensitivity analysis of the model's coverage, *a CCP should take*the clearing agency takes into account a wide range of parameters and assumptions that reflect possible market conditions, including the most volatile periods that have been experienced by the markets it serves and extreme changes in the correlations between prices.

*7. A CCP should*6.7 The clearing agency regularly *review*reviews and *validate*validates its margin system.

*Principle***Standard 7:** *Liquidity risk*An FMI should effectively measure, monitor – A recognized clearing agency that operates as a central counterparty or securities settlement system effectively measures, monitors, and managemanages its liquidity risk. An FMI should maintainThe clearing agency maintains sufficient liquid resources in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would generate the largest aggregate liquidity obligation for the FMIclearing agency in extreme but plausible market conditions.

Key considerations

*1. An FMI should have*7.1 The clearing agency has a robust framework to manage its liquidity risks from its participants, settlement banks, *nostro* agents, custodian banks, liquidity providers, and other entities.

*2. An FMI should have*7.2 The clearing agency has effective operational and analytical tools to identify, measure, and monitor its settlement and funding flows on an ongoing and timely basis, including its use of intraday liquidity.

~~3. A payment~~7.3 The clearing agency that performs the services of a securities settlement system~~ or SSS~~, including one ~~employing a DNS~~that employs a deferred net settlement mechanism, ~~should maintain~~maintains sufficient liquid resources in all relevant currencies to effect same-day settlement, and where appropriate intraday or multiday settlement, of payment obligations with a high degree of confidence under a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would generate the largest aggregate payment obligation in extreme but plausible market conditions.

~~4. A CCP should maintain~~7.4 The clearing agency that operates as a central counterparty maintains sufficient liquid resources in all relevant currencies to settle securities-related payments, make required variation margin payments, and meet other payment obligations on time with a high degree of confidence under a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would generate the largest aggregate payment obligation to the ~~CCP~~clearing agency in extreme but plausible market conditions. In addition, ~~a CCP~~the clearing agency that operates as a central counterparty, and that is involved in activities with a more-complex risk profile or ~~that~~ is systemically important in multiple jurisdictions~~ should consider~~, considers maintaining additional liquidity resources sufficient to cover a wider range of potential stress scenarios that should include, but not be limited to, the default of the two participants and their affiliates that would generate the largest aggregate payment obligation to the ~~CCP~~clearing agency in extreme but plausible market conditions.

7.5 ~~5.~~ For the purpose of meeting its minimum liquid resource requirement, ~~an FMI~~the clearing agency's qualifying liquid resources in each currency include cash at the central bank of issue ~~and~~or at creditworthy commercial banks, committed lines of credit, committed foreign exchange swaps, and committed ~~repos~~repurchase agreements, as well as highly marketable collateral held in custody and investments that are readily available and convertible into cash with prearranged and highly reliable funding arrangements, even in extreme but plausible market conditions. If ~~an FMI~~the clearing agency has access to routine credit at the central bank of issue, the ~~FMI~~clearing agency may count such access as part of the minimum requirement to the extent it has collateral that is eligible for pledging to, ~~(~~or for conducting other appropriate forms of transactions with~~)~~, the relevant central bank. All such resources ~~should be~~are available when needed.

~~6. An FMI~~7.6 The clearing agency may supplement its qualifying liquid resources with other forms of liquid resources. If the ~~FMI~~clearing agency does so, then these liquid resources ~~should be~~are in the form of assets that are likely to be saleable or acceptable as collateral for lines of credit, swaps, or ~~repos~~repurchase agreements on an ad hoc basis following a default, even if this cannot be reliably prearranged or guaranteed in extreme market conditions. Even if ~~an FMI~~the clearing agency does not have access to routine central bank credit, it ~~should~~ still ~~take~~takes account of what collateral is typically accepted by the

relevant central bank, as such assets may be more likely to be liquid in stressed circumstances. ~~*An FMI should*~~The clearing agency does not assume the availability of emergency central bank credit as a part of its liquidity plan.

~~*7. An FMI should obtain*~~7.7 The clearing agency obtains a high degree of confidence, through rigorous due diligence, that each provider of its minimum required qualifying liquid resources, whether a participant of the ~~*FMI*~~clearing agency or an external party, has sufficient information to understand and to manage its associated liquidity risks, and that it has the capacity to perform as required under its commitment. Where relevant to assessing a liquidity provider's performance reliability with respect to a particular currency, a liquidity provider's potential access to credit from the central bank of issue may be taken into account. ~~*An FMI should*~~The clearing agency regularly ~~*test*~~tests its procedures for accessing its liquid resources at a liquidity provider.

~~*8. An FMI*~~7.8 The clearing agency with access to central bank accounts, payment services, or securities services ~~*should use*~~uses these services, where practical, to enhance its management of liquidity risk.

~~*9. An FMI should determine*~~7.9 The clearing agency determines the amount and regularly ~~*test*~~tests the sufficiency of its liquid resources through rigorous stress testing. ~~*An FMI should have*~~The clearing agency has clear procedures to report the results of its stress tests to appropriate decision makers at the ~~*FMI*~~clearing agency and to use these results to evaluate the adequacy of and adjust its liquidity risk-management framework. In conducting stress testing, ~~*an FMI should consider*~~the clearing agency considers a wide range of relevant scenarios. Scenarios ~~*should*~~ include relevant peak historic price volatilities, shifts in other market factors such as price determinants and yield curves, multiple defaults over various time horizons, simultaneous pressures in funding and asset markets, and a spectrum of forward-looking stress scenarios in a variety of extreme but plausible market conditions. Scenarios ~~*should*~~ also take into account the design and operation of the ~~*FMI*~~clearing agency, include all entities that ~~*might*~~may pose material liquidity risks to the ~~*FMI*~~clearing agency (such as settlement banks, *nostro* agents, custodian banks, liquidity providers, and linked ~~*FMIs*~~clearing agencies, trade repositories and payment systems), and where appropriate, cover a multiday period. In all cases, ~~*an FMI should document*~~the clearing agency documents its supporting rationale for, and ~~*should have*~~has appropriate governance arrangements relating to, the amount and form of total liquid resources it maintains.

~~*10. An FMI should establish*~~7.10 The clearing agency establishes explicit rules and procedures that enable the ~~*FMI*~~clearing agency to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations on time following any individual or combined default among its participants. These rules and procedures ~~*should*~~ address unforeseen and potentially uncovered liquidity shortfalls ~~*and should*~~which aim to avoid unwinding, revoking, or delaying the same-day settlement of payment obligations. These rules and procedures ~~*should*~~ also indicate the ~~*FMI*~~clearing agency's process to replenish any liquidity

resources it may employ during a stress event, so that it can continue to operate in a safe and sound manner.

~~*Principle*~~**Standard 8:** *Settlement finality*~~An FMI should provide~~ – A recognized clearing agency that operates as a central counterparty or securities settlement system provides clear and certain final settlement, at a minimum by the end of the value date. Where necessary or preferable, ~~an FMI should provide~~the clearing agency provides final settlement intraday or in real time.

~~**Key considerations**~~

~~*1. An FMI*~~8.1 The clearing agency's rules and procedures ~~*should*~~ clearly define the point at which settlement is final.

~~*2. An FMI should complete*~~8.2 The clearing agency completes final settlement no later than the end of the value date, and preferably intraday or in real time, to reduce settlement risk. ~~*An LVPS or SSS should consider adopting RTGS*~~The clearing agency that operates as a securities settlement system generally considers adopting real-time gross settlement or multiple-batch processing during the settlement day.

~~*3. An FMI should*~~8.3 The clearing agency clearly ~~*define*~~defines the point after which unsettled payments, transfer instructions, or other obligations may not be revoked by a participant.

~~*Principle*~~**Standard 9:** *Money settlements*~~An FMI should conduct~~ – A recognized clearing agency that operates as a central counterparty or securities settlement system conducts its money settlements in central bank money, where practical and available. If central bank money is not used, ~~an FMI should minimise~~the clearing agency minimizes and strictly ~~control~~controls the credit and liquidity risk arising from the use of commercial bank money.

~~**Key considerations**~~

~~*1. An FMI should conduct*~~9.1 The clearing agency conducts its money settlements in central bank money, where practical and available, to avoid credit and liquidity risks.

9.2 ~~*2.*~~ If central bank money is not used, ~~*an FMI should conduct*~~the clearing agency conducts its money settlements using a settlement asset with little or no credit or liquidity risk.

~~*3.*~~ 9.3 If ~~*an FMI*~~the clearing agency settles in commercial bank money, it ~~*should monitor, manage*~~monitors, manages, and ~~*limit*~~limits its credit and liquidity risks arising from the commercial settlement banks. In particular, ~~*an FMI should establish and monitor*~~the clearing agency establishes and monitors adherence to strict criteria for its settlement banks that take account of, among other things, their regulation and supervision, creditworthiness, capitalisation, access to liquidity, and operational reliability. ~~*An FMI should*~~The clearing agency

also ~~*monitor*~~monitors and ~~*manage*~~manages the concentration of credit and liquidity exposures to its commercial settlement banks.

~~*4.*~~ 9.4 If ~~*an FMI*~~the clearing agency conducts money settlements on its own books, it ~~*should minimise*~~minimizes and strictly ~~*control*~~controls its credit and liquidity risks.

~~*5. An FMI*~~9.5 The clearing agency's legal agreements with any settlement banks ~~*should*~~ state clearly when transfers on the books of individual settlement banks are expected to occur, that transfers are to be final when effected, and that funds received ~~*should*~~are to be transferable as soon as possible, at a minimum by the end of the day and ideally intraday, in order to enable the ~~*FMI*~~clearing agency and its participants to manage credit and liquidity risks.

~~*Principle*~~**Standard 10:** *Physical deliveries*~~An FMI should~~ – A recognized clearing agency clearly ~~state~~states its obligations with respect to the delivery of physical regulations or commodities and ~~should identify, monitor, and manage~~identifies, monitors and manages the risks associated with such physical deliveries.

~~**Key considerations**~~

~~*1. An FMI*~~10.1 The clearing agency's rules ~~*should*~~ clearly state its obligations with respect to the delivery of physical regulations or commodities.

~~*2. An FMI should identify, monitor,*~~10.2 The clearing agency identifies, monitors and ~~*manage*~~manages the risks and costs associated with the storage and delivery of physical regulations ~~*or*~~and commodities.

~~*Principle*~~**Standard 11:** *Central securities depositories*~~A CSD should have~~ – A recognized clearing agency that operates as a central securities depository has appropriate rules and procedures to help ensure the integrity of securities issues and ~~minimise~~minimizes and ~~manage~~manages the risks associated with the safekeeping and transfer of securities. ~~A CSD should maintain~~The clearing agency maintains securities in an ~~immobilised or dematerialised~~immobilized or dematerialized form for their transfer by book entry.

~~**Key considerations**~~

~~*1. A CSD should have*~~11.1 The clearing agency has appropriate rules, procedures~~,~~ and controls, including robust accounting practices, to safeguard the rights of securities issuers and holders, prevent the unauthorised creation or deletion of securities, and conduct periodic and at least daily reconciliation of securities issues it maintains.

~~*2. A CSD should prohibit*~~11.2 The clearing agency prohibits overdrafts and debit balances in securities accounts.

*3. A CSD should maintain*11.3 The clearing agency maintains securities in an *immobilised*immobilized or dematerialised form for their transfer by book entry. Where appropriate, *a CSD should provide*the clearing agency provides incentives to *immobilise*immobilize or dematerialise securities.

*4. A CSD should protect*11.4 The clearing agency protects assets against custody risk through appropriate rules and procedures consistent with its legal framework.

*5. A CSD should employ*11.5 The clearing agency employs a robust system that ensures segregation between *the CSD's*its own assets and the securities of its participants and segregation among the securities of participants. Where supported by the legal framework, the *CSD should*clearing agency also *support*supports operationally the segregation of securities belonging to a participant's customers on the participant's books and *facilitate*facilitates the transfer of customer holdings.

*6. A CSD should identify, measure, monitor*11.6 The clearing agency identifies, measures, monitors, and *manage*manages its risks from other activities that it may perform; additional tools may be necessary in order to address these risks.

*Principle***Standard 12:** *Exchange-of-value settlement systems*If an FMI – Where a recognized clearing agency operates as a central counterparty or securities settlement system and settles transactions that involve the settlement of two linked obligations (for example, securities or foreign exchange transactions), it should eliminateeliminates principal risk by conditioning the final settlement of one obligation upon the final settlement of the other.

Key consideration

*1. An FMI*12.1 The clearing agency that is an exchange-of-value settlement system *should eliminate*eliminates principal risk by ensuring that the final settlement of one obligation occurs if and only if the final settlement of the linked obligation also occurs, regardless of whether the *FMI*clearing agency settles on a gross or net basis and when finality occurs.

*Principle***Standard 13:** *Participant- default rules and procedures*An FMI should have – A recognized clearing agency has effective and clearly defined rules and procedures to manage a participant default. These rules and procedures should beare designed to ensure that the FMIclearing agency can take timely action to contain losses and liquidity pressures and continue to meet its obligations.

Key considerations

*1. An FMI should have*13.1 The clearing agency has default rules and procedures that enable the *FMI*clearing agency to continue to meet its obligations in the event of a participant default and that address the replenishment of resources following a default.

*2. An FMI should be*13.2 The clearing agency is well prepared to implement its default rules and procedures, including any appropriate discretionary procedures provided for in its rules.

*3. An FMI should*13.3 The clearing agency publicly *disclose*discloses key aspects of its default rules and procedures.

*4. An FMI should involve*13.4 The clearing agency involves its participants and other stakeholders in the testing and review of the *FMI*clearing agency's default procedures, including any close-out procedures. Such testing and review *should be*is conducted at least annually or following material changes to the clearing agency's rules and procedures to ensure that they are practical and effective.

*Principle***Standard 14:** *Segregation and portability*A CCP should have – A recognized clearing agency that operates as a central counterparty has rules and procedures that enable the segregation and portability of positions of a participant's customers and the collateral provided to the *CCP*clearing agency with respect to those positions.

Key considerations

*1. A CCP should*14.1 The clearing agency has, at a minimum, *have* segregation and portability arrangements that effectively protect a participant's customers' positions and related collateral from the default or insolvency of that participant. If the *CCP*clearing agency additionally offers protection of such customer positions and collateral against the concurrent default of the participant and a fellow customer, the *CCP should take*clearing agency takes steps to ensure that such protection is effective.

*2. A CCP should employ*14.2 The clearing agency employs an account structure that enables it readily to identify positions of a participant's customers and to segregate related collateral. *A CCP should maintain*The clearing agency maintains customer positions and collateral in individual customer accounts or in omnibus customer accounts.

*3. A CCP should structure*14.3 The clearing agency structures its portability arrangements in a way that makes it highly likely that the positions and collateral of a defaulting participant's customers will be transferred to one or more other participants.

*4. A CCP should disclose*14.4 The clearing agency discloses its rules, policies, and procedures relating to the segregation and portability of a participant's customers' positions and related collateral. In particular, the *CCP should disclose*clearing agency discloses whether customer collateral is protected on an individual or omnibus basis. In addition, *a CCP should disclose* the clearing agency discloses any constraints, such as legal or operational constraints, that may impair its ability to segregate or port *a*the participant's customers' positions and related collateral.

~~*Principle*~~**Standard 15:** *General business risk*~~An FMI should identify, monitor~~ – A recognized clearing agency identifies, monitors, and ~~manage~~manages its general business risk and ~~hold~~holds sufficient liquid net assets funded by equity to cover potential general business losses so that it can continue operations and services as a going concern if those losses materialise. Further, liquid net assets ~~should~~are at all times ~~be~~ sufficient to ensure a recovery or orderly wind-down of critical operations and services.

~~**Key considerations**~~

> ~~*1. An FMI should have*~~15.1 The clearing agency has robust management and control systems to identify, monitor, and manage general business risks, including losses from poor execution of business strategy, negative cash flows, or unexpected and excessively large operating expenses.
> ~~*2. An FMI should hold*~~15.2 The clearing agency holds liquid net assets funded by equity (such as common stock, disclosed reserves, or other retained earnings) so that it can continue operations and services as a going concern if it incurs general business losses. The amount of liquid net assets funded by equity ~~*an FMI should hold should be*~~the clearing agency holds is determined by its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken.
>
> ~~*3. An FMI should maintain*~~15.3 The clearing agency maintains a viable recovery or orderly wind-down plan and ~~*should hold*~~holds sufficient liquid net assets funded by equity to implement this plan. At a minimum, ~~*an FMI should hold*~~the clearing agency holds liquid net assets funded by equity equal to at least six months of current operating expenses. These assets are in addition to resources held to cover participant defaults ~~*or*~~and other risks required to be covered under the financial resources ~~*principles*~~Standards. However, equity held under international risk-based capital standards can be included where relevant and appropriate to avoid duplicate capital requirements.
>
> ~~*4.*~~ 15.4 Assets held to cover general business risk ~~*should be*~~are of high quality and sufficiently liquid in order to allow the ~~*FMI*~~clearing agency to meet its current and projected operating expenses under a range of scenarios, including in adverse market conditions.
>
> ~~*5. An FMI should maintain*~~15.5 The clearing agency maintains a viable plan for raising additional equity should its equity fall close to or below the amount needed. This plan ~~*should be*~~is approved by the board of directors and updated regularly.

~~*Principle*~~**Standard 16:** *Custody and investment risks*~~An FMI should safeguard~~ – A recognized clearing agency safeguards its own and its participants' assets and ~~minimise~~minimizes the risk of loss on and delay in access to these assets. ~~An FMI~~The clearing agency's investments ~~should be~~are in regulations with minimal credit, market, and liquidity risks.

Key considerations

*1. An FMI should hold*16.1 The clearing agency holds its own and its participants' assets at supervised and regulated entities that have robust accounting practices, safekeeping procedures, and internal controls that fully protect *these*such assets.

*2. An FMI should have*16.2 The clearing agency has prompt access to its assets and the assets provided by participants, when required.

*3. An FMI should evaluate and understand*16.3 The clearing agency evaluates and understands its exposures to its custodian banks, taking into account the full scope of its relationships with each.

*4. An FMI*16.4 The clearing agency's investment strategy *should be*is consistent with its overall risk-management strategy and fully disclosed to its participants, and investments *should be*are secured by, or *be* claims on, high-quality obligors. These investments *should* allow for quick liquidation with little, if any, adverse price effect.

*Principle***Standard 17:** *Operational risk*An FMI should identify*risks* – A recognized clearing agency identifies the plausible sources of operational risk, both internal and external, and mitigatemitigates their impact through the use of appropriate systems, policies, procedures, and controls. Systems should beare designed to ensure a high degree of security and operational reliability and should have adequate, scalable capacity. Business continuity management should aimaims for timely recovery of operations and fulfilmentfulfillment of the FMIclearing agency's obligations, including in the event of a wide-scale or major disruption.

Key considerations

*1. An FMI should establish*17.1 The clearing agency establishes a robust operational risk-management framework with appropriate systems, policies, procedures, and controls to identify, monitor, and manage operational risks.

*2. An FMI*17.2 The clearing agency's board of directors *should* clearly *define*defines the roles and responsibilities for addressing operational risk and *should endorse*endorses the *FMI*clearing agency's operational risk-management framework. Systems, operational policies, procedures, and controls *should be*are reviewed, audited, and tested periodically and after significant changes.

*3. An FMI should have*17.3 The clearing agency has clearly defined operational reliability objectives and *should have*has policies in place that are designed to achieve those objectives.

*4. An FMI should ensure*17.4 The clearing agency ensures that it has scalable capacity adequate to handle increasing stress volumes and to achieve its service-level objectives.

*5. An FMI should have*17.5 The clearing agency has comprehensive physical and information security policies that address all potential vulnerabilities and threats.

*6. An FMI should have*17.6 The clearing agency has a business continuity plan that addresses events posing a significant risk of disrupting operations, including events that could cause a wide-scale or major disruption. The plan *should incorporate*incorporates the use of a secondary site and *should be*is designed to ensure that critical information technology (IT) systems can resume operations within two hours following disruptive events. The plan *should be*is designed to enable the *FMI*clearing agency to complete settlement by the end of the day of the disruption, even in *case of* extreme circumstances. The *FMI should*clearing agency regularly *test*tests these arrangements.

*7. An FMI should identify, monitor*17.7 The clearing agency identifies, monitors, and *manage*manages the risks that key participants, other *FMIs*clearing agencies, trade repositories, payment systems, and service and utility providers might pose to its operations. In addition, *an FMI should identify, monitor, and manage*the clearing agency identifies, monitors, and manages the risks its operations might pose to other *FMIs*clearing agencies, trade repositories, and payment systems.

*Principle***Standard 18:** *Access and participation requirements* An FMI should have– A recognized clearing agency has objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access.

Key considerations

1. An FMI should allow 18.1 The clearing agency allows for fair and open access to its services, including by direct and, where relevant, indirect participants and other *FMIs*clearing agencies, payment systems and trade repositories, based on reasonable risk-related participation requirements.

*2. An FMI*18.2 The clearing agency's participation requirements *should be*are justified in terms of the safety and efficiency of the *FMI*clearing agency and the markets it serves, *be*are tailored to and commensurate with the *FMI*clearing agency's specific risks, and *be*are publicly disclosed. Subject to maintaining acceptable risk control standards, *an FMI should endeavour*the clearing agency endeavours to set requirements that have the least-restrictive impact on access that circumstances permit.

*3. An FMI should monitor*18.3 The clearing agency monitors compliance with its participation requirements on an ongoing basis and *have*has clearly defined and publicly disclosed procedures for facilitating the suspension and

orderly exit of a participant that breaches, or no longer meets, the participation requirements.

*Principle***Standard 19:** *Tiered participation arrangements*An FMI should identify, monitor – A recognized clearing agency identifies, monitors, and managemanages the material risks to the FMIclearing agency arising from any tiered participation arrangements.

Key considerations

*1. An FMI should ensure*19.1 The clearing agency ensures that its rules, procedures, and agreements allow it to gather basic information about indirect participation in order to identify, monitor, and manage any material risks to the *FMI*clearing agency arising from such tiered participation arrangements.

*2. An FMI should identify*19.2 The clearing agency identifies material dependencies between direct and indirect participants that might affect the *FMI.* clearing agency.

*3. An FMI should identify*19.3 The clearing agency identifies indirect participants responsible for a significant proportion of transactions processed by the *FMI*clearing agency and indirect participants whose transaction volumes or values are large relative to the capacity of the direct participants through which they access the *FMI*clearing agency in order to manage the risks arising from these transactions.

*4. An FMI should*19.4 The clearing agency regularly *review*reviews risks arising from tiered participation arrangements and *should take*takes mitigating action when appropriate.

Principle 20: FMI links

An FMI**Standard 20**: *Links with other financial market infrastructures* – A recognized clearing agency that establishes a link with one or more FMIs should identify, monitor, and manageclearing agencies or trade repositories identifies, monitors, and manages link-related risks.

Key considerations

1. 20.1 Before entering into a link *arrangement* and on an ongoing basis once the link is established, *an FMI should identify, monitor, and manage*the clearing agency identifies, monitors, and manages all potential sources of risk arising from the link *arrangement. Link arrangements should be*. Links are designed such that *each FMI*the clearing agency is able to observe the other *principles in this report*Standards.

2. 20.2 A link *should have*has a well-founded legal basis, in all relevant jurisdictions, that supports its design and provides adequate protection to the *FMIs*clearing agencies and trade repositories involved in the link.

20.3 ~~3.~~ Linked ~~*CSDs should*~~central securities depositories measure, monitor, and manage the credit and liquidity risks arising from each other. Any credit extensions between ~~*CSDs should be*~~central securities depositories are covered fully with high-quality collateral and ~~*be*~~are subject to limits. ~~*4.*~~

20.4 Provisional transfers of securities between linked ~~*CSDs should be*~~central securities depositories are prohibited or, at a minimum, the retransfer of provisionally transferred securities ~~*should be*~~are prohibited prior to the transfer becoming final.

~~*5.*~~ 20.5 An investor ~~*CSD should*~~central securities depository only ~~*establish*~~establishes a link with an issuer ~~*CSD*~~central securities depository if the ~~*arrangement*~~link provides a high level of protection for the rights of the investor ~~*CSD*~~central securities depository's participants.

20.6 ~~*6.*~~ An investor ~~*CSD*~~central securities depository that uses an intermediary to operate a link with an issuer ~~*CSD should measure, monitor, and manage*~~central securities depository measures, monitors, and manages the additional risks (including custody, credit, legal, and operational risks) arising from the use of the intermediary.

~~*7.*~~ 20.7 Before entering into a link with another ~~*CCP, a CCP should identify and manage*~~central counterparty, a central counterparty identifies and manages the potential spill-over effects from the default of the linked ~~*CCP*~~central counterparty. If a link has three or more ~~*CCPs, each CCP should identify, assess, and manage*~~central counterparties, each central counterparty identifies, assesses, and manages the risks of the collective link ~~*arrangement*~~.

~~*8.*~~ 20.8 Each ~~*CCP*~~central counterparty in a ~~*CCP*~~central counterparty link ~~*arrangement should be*~~is able to cover, at least on a daily basis, its current and potential future exposures to the linked ~~*CCP*~~central counterparty and its participants, if any, fully with a high degree of confidence without reducing the ~~*CCP*~~central counterparty's ability to ~~*fulfil*~~fulfill its obligations to its own participants at any time.

~~*9. A TR should carefully assess the additional operational risks related to its links to ensure the scalability and reliability of IT and related resources.*~~

~~*Principle*~~**Standard 21:** *Efficiency and effectiveness*~~An FMI should be~~ – A recognized clearing agency is efficient and effective in meeting the requirements of its participants and the markets it serves.

~~**Key considerations**~~

~~*1. An FMI should be*~~21.1 The clearing agency is designed to meet the needs of its participants and the markets it serves, in particular, with regard to choice of

a clearing and settlement arrangement; operating structure; scope of products cleared, settled, or recorded; and use of technology and procedures.

~~*2. An FMI should have*~~21.2 The clearing agency has clearly defined goals and objectives that are measurable and achievable, such as in the areas of minimum service levels, risk-management expectations, and business priorities.

~~*3. An FMI should have*~~21.3 The clearing agency has established mechanisms for the regular review of its efficiency and effectiveness.

~~*Principle*~~**Standard 22:** *Communication procedures and standards*~~An FMI should use~~ – A recognized clearing agency uses, or at a minimum ~~accommodate~~accommodates, relevant internationally accepted communication procedures and standards in order to facilitate efficient payment, clearing, settlement, depository, and recording.

~~**Key consideration**~~

~~*1. An FMI should use*~~22.1 The clearing agency uses, or at a minimum ~~*accommodate*~~accommodates, internationally accepted communication procedures and standards.

~~*Principle*~~ **Standard 23:** *Disclosure of rules, key procedures, and market data*~~An FMI should have~~ – A recognized clearing agency has clear and comprehensive rules and procedures and ~~should provide~~provides sufficient information to enable participants to have an accurate understanding of the risks, fees, and other material costs they incur by participating in the ~~FMI~~clearing agency. All relevant rules and key procedures ~~should be~~are publicly disclosed.

~~**Key considerations**~~

~~*1. An FMI should adopt*~~23.1 The clearing agency adopts clear and comprehensive rules and procedures that are fully disclosed to participants. Relevant rules and key procedures ~~*should*~~are also ~~*be*~~ publicly disclosed.

~~*2. An FMI should disclose*~~23.2 The clearing agency discloses clear descriptions of the ~~*system's*~~clearing agency's systems' design and operations, as well as the ~~*FMI's and participants'*~~ rights and obligations of the clearing agency and its participants, so that participants can assess the risks they would incur by participating in the ~~*FMI.*~~ clearing agency.

~~*3. An FMI should provide*~~23.3 The clearing agency provides all necessary and appropriate documentation and training to facilitate participants' understanding of the ~~*FMI*~~clearing agency's rules and procedures and the risks they face from participating in the ~~*FMI*~~clearing agency.

~~*4. An FMI should*~~23.4 The clearing agency publicly ~~*disclose*~~discloses its fees at the level of individual services it offers as well as its policies on any available discounts. The ~~*FMI should provide*~~clearing agency provides clear descriptions of priced services for comparability purposes.

~~*5. An FMI should complete*~~23.5 The clearing agency completes regularly and ~~*disclose*~~discloses publicly responses to the ~~*CPSS-IOSCO*~~PFMI Disclosure ~~framework for financial market infrastructures. *An FMI also should*~~Framework Document. The clearing agency also, at a minimum, ~~*disclose*~~discloses basic data on transaction volumes and values.