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Notice of Publication

Regulation 24-102 respecting Clearing Agency Requirements

Policy Statement to Regulation 24-102 respecting Clearing Agency Requirements

Notice and Request for Comments

Proposed Amendments to *Policy Statement to Regulation 24-102 respecting Clearing Agency Requirements*

December 3, 2015

Part I – Introduction

1. Adoption of Regulation and Policy Statement

The Canadian Securities Administrators (the **CSA** or **we**) are adopting *Regulation 24-102 respecting Clearing Agency Requirements* (**Regulation**) and *Policy Statement to Regulation 24-102 respecting Clearing Agency Requirements* (**Policy Statement**). The main objective of the Regulation is to impose new requirements on *recognized* clearing agencies that operate as a central counterparty (**CCP**), central securities depository (**CSD**) or securities settlement system (**SSS**). The requirements are based 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**)[1] and the International Organization of Securities Commissions (**IOSCO**).[2] Implementation of the international standards is intended to enhance the safety and efficiency of clearing agencies, limit systemic risk, and foster financial stability.

The adopted Regulation and Policy Statement are being published with this Notice, and are also available on websites of CSA jurisdictions, including:

[1] Prior to September 2014, CPMI was known as the Committee on Payment and Settlement Systems (**CPSS**).
[2] The PFMI Report is available on the Bank for International Settlements' website (www.bis.org) and the IOSCO website (www.iosco.org).

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

In some jurisdictions, government ministerial approvals and/or proclamation of certain amendments to local securities legislation are required for the implementation of the Regulation. Subject to obtaining all necessary approvals, the Regulation will come into force on February 17, 2016, subject to transitional provisions for certain aspects of the Regulation.

2. Proposed new guidance in Policy Statement

With this Notice, we are also publishing for a 60 day comment period proposed amendments (**Proposed Policy Amendments**) to the final version of the Policy Statement that is being adopted by the CSA and published concurrently with this Notice. The Proposed Policy Amendments consist of new supplementary guidance jointly developed by the CSA and the Bank of Canada in interpreting and applying the international standards described in the PFMI Report. The text of the Proposed Policy Amendments is published with this Notice. It is also available on websites of CSA jurisdictions, including those set forth above.

3. Structure of this Notice

This Notice is organized into three general parts:

- Part I – Introduction
- Part II – Adoption of Regulation and Policy Statement
- Part III – Proposed Policy Amendments.

It also includes the following Annexes:

- Annex A: List of commenters on proposed Regulation 24-102 *Clearing Agency Requirements* and related Policy Statement 24-102 (as published in the **2014 Documents**, as defined below)
- Annex B: Summary of comments on proposed Regulation 24-102 *Clearing Agency Requirements* and related Policy Statement 24-102 (as published in the 2014 Documents), and CSA general responses to comments

Part II – Adoption of Regulation and Policy Statement

1. Background

Earlier versions of the Regulation and Policy Statement were published for comment in December 2013 and again in November 2014.

2013 Public Consultation

On December 18, 2013, the Autorité des marchés financiers (**AMF**), Manitoba Securities Commission (**MSC**) and Ontario Securities Commission (**OSC**) each published for comment a uniform proposed local rule 24-503 and related policy statement regarding clearing agency requirements.[3] The regulators collectively received nine comment letters.[4] Partially in response to comments received, the CSA agreed to take a unified approach to implementing the PFMIs, and further developed the local rules as a national instrument.

2014 Public Consultation

The CSA published for comment on November 27, 2014 the Regulation and Policy Statement, together with a Notice and Request for Comments (the "**2014 Notice**", and collectively with the Regulation and Policy Statement, the "**2014 Documents**").[5] The 2014 Notice described a number of important policy matters on which we were seeking stakeholder input. We received five comment letters on the 2014 Documents.[6] A list of the commenters is attached in Annex A to this Notice. We have considered these comments and thank all the commenters. We have provided a summary of the comments, together with our responses, in Annex B to this Notice.

2. Substance and Purpose of Regulation and Policy Statement

As noted in the PFMI Report,[7] clearing agencies that facilitate the clearing and settlement of financial transactions can strengthen the markets they serve and play a critical role in fostering financial stability. If not properly managed, they can pose significant risks to the financial system and be a potential source of contagion, particularly in periods of market stress. The PFMI Report strengthens previous international standards for clearing agencies. The main purpose of the Regulation and Policy Statement is to implement the

[3] The proposed local rules 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, No. 50, p. 3084). At the same time as these local rules were published for comment, other CSA jurisdictions had expressed an intention to publish similar local rules and companion policies at a later date. See Multilateral Staff Notice 24-309 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_/.

[4] The regulators published a summary of the comments in CSA Notice 24-310 on July 17, 2014. 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, Bulletin de l'Autorité des marchés financiers, Vol. 11, No. 28 (**CSA Notice 24-310**). The summary was republished, together with regulators' responses to the comments, on November 27, 2014. See *infra* next footnote.

[5] See *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, Bulletin de l'Autorité des marchés financiers, Vol. 11, No. 47, p. 893. The 2014 Documents are also available on the AMF's Website at: http://www.lautorite.qc.ca/en/history-regulation-24-102-pro.html.

[6] The comment letters are available of the OSC's Website at: http://www.osc.gov.on.ca/en/47352.htm.

[7] See par. 1.1 of the PFMI Report under "Introduction".

international standards described in the PFMIs as clearing agency rule requirements in Canada.

Overall, the Regulation and Policy Statement are intended to enhance the regulatory framework for recognized clearing agencies operating or seeking to operate in a jurisdiction of Canada. As discussed in the 2014 Notice, 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.

3. Summary of Regulation and Policy Statement

The Regulation is divided into seven parts and includes the following attachments:

- Form 24-102F1 – *Clearing Agency Submission to Jurisdiction and Appointment of Agent for Service of Process*
- Form 24-101F2 – *Cessation of Operations Report for Clearing Agency*

The Policy Statement is divided into six parts and includes an Annex I – *Joint Supplementary Guidance Developed by the Bank of Canada and Canadian Securities Administrators*.

We highlight the key features of the Regulation and Policy Statement below.

(a) Part 1 – Definitions, Interpretation and Application

Part 1 of the Regulation contains definitions and interpretive provisions, as well as application provisions that clarify the scope of certain parts of the Regulation. The Regulation uses specialized terminology related to the clearing and settlement area. Not all such terminology is defined in the Regulation, but instead may be defined or explained in the PFMI Report.[8]

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

Part 2 of the Regulation sets 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 Policy Statement describes the CSA's approach towards recognition and exemption applications.[9] An entity that is carrying on, or proposing to carry on, business in Canada as a clearing agency and that is systemically important to our capital markets, or that is not subject to comparable regulation by another regulatory body elsewhere, will generally be recognized by a Canadian securities regulatory authority. An application for recognition or exemption must include the applicant's most recently completed PFMI Disclosure Framework Document,[10] a document substantially in a form prescribed in the December

[8] Regard should be given to the PFMI Report in understanding such terminology, including Annex H: *Glossary*. See Section 3.1 of the Policy Statement, and discussion further below in this Notice.
[9] See section 2.0 of the Policy Statement.
[10] See par. 2.1(1)(a) of the Regulation.

2012 CPMI-IOSCO report *Principles for financial market infrastructures: Disclosure framework and Assessment methodology*.[11]

Part 2 requires a recognized clearing agency to notify a securities regulatory authority in writing before implementing any *significant change*.[12] It also requires an exempt clearing agency to notify in writing the securities regulatory authority of any material change to the information in its PFMI Disclosure Framework Document.[13] However, these requirements apply only to the extent such matters are not otherwise governed by the terms and conditions of a decision of the securities regulatory authority that recognizes the clearing agency or that exempts it from a recognition requirement.[14] Certain recognition decisions, for example, may require prior regulatory approval before a recognized clearing agency can make a significant change or a fee change.

(c) Part 3 – PFMI Principles Applicable to Recognized Clearing Agencies

Part 3 of the Regulation incorporates into securities regulatory law the principles set out in the PFMI Report, including applicable key considerations, (the **PFMI Principles**) that apply to CCPs, CSDs and SSSs. The term "PFMI Principles" is defined in the Regulation to include the principles and applicable key considerations set out in the PFMI Report. Specifically, section 3.1 of the Regulation requires a recognized clearing agency that operates as a CCP, CSD or SSS[15] to establish, implement and maintain rules, procedures, policies or operations designed to ensure that it meets or exceeds the PFMI Principles with respect to its clearing, settlement or depository activities. Section 3.1 excludes the application of specific PFMI Principles to certain types of recognized clearing agencies. Part 3 also excludes the application of key consideration 9 of PFMI Principle 20 for all recognized clearing agencies.

Requiring clearing agencies to implement rules, procedures, policies or operations to meet or exceed the PFMI Principles is consistent with a flexible and principles-based approach to regulation. This 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.[16]

Part 3 of the Policy Statement explains our views on how to interpret and apply the PFMI Principles. In interpreting and implementing the PFMI Principles, regard is to be given to the explanatory notes in the PFMI Report, as appropriate.[17] We have also developed, together with the Bank of Canada, supplementary guidance (**Joint Supplementary Guidance**) to provide additional clarity on certain PFMI Principles within the Canadian

[11] See definition "PFMI Disclosure Framework Document" in section 1.1 of the Regulation.
[12] See subsection 2.2(2) of the Regulation. The term "significant change" is defined in subsection 2.2(1) of the Regulation.
[13] See subsection 2.2(5) of the Regulation.
[14] See subsection 1.5 (3) and (4) of the Regulation and section 2.2 of the Policy Statement.
[15] See subsection 1.5(1) of the Regulation.
[16] See subsection 3.0(2) of the Policy Statement. See also discussion below under "4. Summary of Amendments to 2014 Documents".
[17] See section 3.1 of the Policy Statement.

context. The Joint Supplementary Guidance is directed at recognized *domestic* clearing agencies that are also overseen as systemically important clearing and settlement systems by the Bank of Canada pursuant to its authority under the *Payment Clearing and Settlement Act* (Canada) (**PCSA**). The Joint Supplementary Guidance is included in separate text boxes in Annex I to the Policy Statement under the relevant headings of the PFMI Principles.

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

Part 4 of the Regulation sets out certain other requirements that complement, or are in addition to, the PFMI Principles. These requirements apply to a recognized clearing agency, whether or not it operates as a CCP, CSD or SSS.[18] They include requirements in relation to the composition of the board of directors, the designation and functions of a chief risk officer and chief compliance officer, and the formation of one or more committees on risk management, finance and audit.[19] Furthermore, Part 4 includes a principles-based "skin-in-the-game" requirement that applies to a recognized clearing agency that operates as a CCP.[20] Finally, Part 4 of the Regulation contains rules pertaining to IT systems, outsourcing arrangements, and participant access that are substantially similar to requirements found in *Regulation 21-101 respecting Marketplace Operations* (**Regulation 21-101**).[21]

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

Part 5 of the Regulation sets out a general books and records requirement for both recognized and exempt clearing agencies.[22] It also requires a clearing agency to identify itself by means of a single *legal entity identifier*.[23]

(f) Part 6 – Exemptions

Like most CSA instruments, Part 6 of the Regulation authorizes a regulator or securities regulatory authority, as the case may be, to grant an exemption from any provision of the Regulation. As Part 3 of the Regulation adopts a principles-based approach to incorporating the PFMIs into the Regulation, we have sought to minimize any substantive duplication or material inefficiency due to cross-border regulation. However, we acknowledge that, where a recognized foreign-based clearing agency does face some conflict or inconsistency between certain requirements of Parts 2 and 4 of the Regulation and the requirements of the regulatory regime in its home jurisdiction, and such a conflict or inconsistency causes a hardship for the clearing agency, an exemption from a provision of the Regulation may be considered by a securities regulatory authority.[24]

(g) Part 7– Effective Dates

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[18] See subsection 1.5(2) of the Regulation. An example of a clearing agency that would not be considered to be operating as a CCP, CSD or SSS would be an entity that performs or offers to perform a centralized trade affirmation-confirmation (matching) and allocation service for a vast array of market participants.
[19] See sections 4.1, 4.3 and 4.4 of the Regulation.
[20] See section 4.5 of the Regulation.
[21] See sections 4.6 to 4.11 of the Regulation.
[22] See section 5.1 of the Regulation.
[23] See section 5.2 of the Regulation.
[24] See section 6.1 of the Policy Statement.

The Regulation will be in force by February 17, 2016, subject to ministerial approvals in certain jurisdictions, and, in some jurisdictions, proclamation of certain amendments to their local securities legislation. However, because the PFMIs represent a strengthening of the previous CPMI-IOSCO standards on SSSs and CCPs, recognized clearing agencies, working together with their regulators (the CSA and Bank of Canada), need more time to implement certain PFMI Principles. Therefore, as we discuss below under "4. Summary of Amendments to 2014 Documents – (e) Parts 5, 6 and 7", we are providing for a later coming-into-force date of December 31, 2016 for certain PFMI Principles.

4. Summary of Amendments to 2014 Documents

We have revised the 2014 Documents in response to comments from stakeholders, as well as to clarify and simplify the rules in the Regulation and include certain guidance in the Policy Statement that we had expressed as our policy views in the 2014 Notice. Apart from adding new Joint Supplementary Guidance to the Policy Statement described in Part III of this Notice (which we are publishing for comment concurrently with this Notice), none of the revisions are material. Therefore, the Regulation and Policy Statement are being published with this Notice as a final approved rule and policy. Blacklined versions of the adopted Regulation and Policy Statement, reflecting the changes made to the 2014 Documents, are published with this Notice and posted on the AMF's website. We summarize below the notable revisions made to the 2014 Documents.

The Regulation has been amended to implement the PFMI Principles directly rather than referencing them in Appendix A of the Regulation in the 2014 Documents. This will allow the CSA to adopt future amendments to the PFMI Principles without having to go through the process of amending the Regulation. Because of this change, there are a number of consequential non-material changes throughout the Regulation and Policy Statement. None of these amendments has any impact on the substance of the Regulation or Policy Statement.

(a) Part 1 – Definitions, Interpretation and Application

We deleted definitions that were defined by reference to *Regulation 52-110 respecting Audit Committee* (**Regulation 52-110**), which were no longer needed considering the removal of subsections 4.1 (5) to (9). See our comments on Part 4 below. We have clarified the scope provisions in section 1.5 of the Regulation with respect to sections 2.2 and 2.5 of the Regulation and its potential interaction with certain terms and conditions that may be contained in clearing agency recognition or exemption decisions. See discussion below.

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

The main revisions to Part 2 of the Regulation are in relation to the regulatory treatment of *significant changes* made by a clearing agency.[25] Pursuant to section 2.2 of the Regulation, a recognized clearing agency is not permitted to implement a significant change unless it has filed a written notice of the significant change with the securities regulatory authority at least forty-five days before implementing the change. This is a lesser regulatory requirement than the proposed requirement of the Regulation in the 2014 Documents, which would have prohibited a recognized clearing agency from implementing a material change without obtaining the prior written approval of the securities regulatory authority. However, as noted above under "3. Summary of Regulation and Policy Statement", by virtue of the scope provisions in section 1.5 of the Regulation, the requirements of sections 2.2 and 2.5 apply only to the extent such matters are not otherwise governed by the terms and conditions of a recognition or exemption decision of the securities regulatory authority. The Policy Statement was modified to reflect this change in the Regulation, and describes our general regulatory approach to these matters more clearly.

In addition, we modified Part 2 of the Policy Statement to clarify our approach to recognition of foreign-based clearing agencies that propose to carry on business in a jurisdiction of Canada. New subsection 2.0(3) confirms that a securities regulatory authority may require a foreign-based clearing agency to be recognized if the clearing agency's proposed business activities in the local jurisdiction are systemically important to the jurisdiction's capital markets, even if it is already subject to comparable regulation in its home jurisdiction.[26] We are including this additional guidance to the final version of the Policy Statement because it is not a material change and largely reflects current regulatory practice that has previously been made public.[27]

(c) Part 3 – PFMI Principles Applicable to Recognized Clearing Agencies

As noted previously, the Regulation has been amended to implement the PFMI Principles directly rather than referencing them in Appendix A of the Regulation in the 2014 Documents. As a result, because Appendix A is no longer needed, it has been removed from the Regulation.

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[25] The definition "significant change" in subsection 2.2(1) of the Regulation remains unchanged from the 2014 Documents, except that the defined term "material change" in the 2014 Documents has been replaced by "significant change".

[26] The Policy Statement further notes that, in such circumstances, the recognition decision would focus on key areas that pose material risks to the jurisdiction's market and rely, where appropriate, on the current regulatory requirements and processes to which the entity is already subject in its home jurisdiction. Terms and conditions of a recognition decision that require a foreign clearing agency to report information to a Canadian securities regulatory authority may vary among foreign clearing agencies. Among other factors, they will depend on whether Canadian securities regulatory authorities have entered into an agreement or memorandum of understanding with the home regulator for sharing information and cooperation. See subsection 2.0(3) of the Policy Statement.

[27] See, for example, LCH.Clearnet Limited – Application for Recognition – Notice of OSC Order, September 19, 2013; (2013) 36 OSCB 9267, also available at: http://www.osc.gov.on.ca/documents/en/Marketplaces/ca_20130919_nco-lch-clearnet-app-recognition.pdf; and Chicago Mercantile Exchange Inc. – Notice of OSC Order – Application for Exemptive Relief, July 4, 2013, also available at: http://www.osc.gov.on.ca/documents/en/Marketplaces/ca_20130704_cme_nco-app-exemptive-relief.pdf.

In the 2014 Notice, we had discussed ongoing policy matters that we were assessing in relation to certain PFMI Principles.[28] Because we are continuing to assess aspects of PFMI Principle 14: *Segregation and portability*, PFMI Principle 19: *Tiered participation arrangements*, and PFMI Principle 3: *Framework for the comprehensive management of risks* together with PFMI Principle 15: *General business risk* as the latter two relate to a clearing agency's recovery or orderly wind-down plans (see further below in this Notice), the Regulation delays the required implementation of these PFMI Principles until December 31, 2016.

We note that, apart from moving the text of the Joint Supplementary Guidance in the Policy Statement into a new "Annex I" to the Policy Statement, we have not made any material changes to the Joint Supplementary Guidance published in the 2014 Documents.

We have made revisions to Part 3 of the Policy Statement to clarify our guidance or confirm our policy approaches described in the 2014 Notice. We discuss these revisions briefly below, as well as certain ongoing policy matters with respect to the implementation of PFMI Principle 14 in the Canadian domestic context that continue to be considered by regulators.

(i) Principles-based approach to the PFMI Principles

We added new subsection 3.0(2) to the final version of the Policy Statement to confirm our policy view expressed in the 2014 Notice that Part 3 of the Regulation, together with the PFMI Principles, is intended to be consistent with a flexible and principles-based approach to regulation. The text of this new subsection is substantially the same as the policy statement contained in the 2014 Notice.

(ii) Letters of credit as acceptable collateral

Guidance on applying PFMI Principle 5: *Collateral* to a clearing agency's particular circumstances can be found in the explanatory notes for that principle, as supplemented by the Joint Supplementary Guidance on PFMI Principle 5 in Annex I to the Policy Statement. This guidance would suggest that, in general, guarantees are not acceptable collateral. In response to concerns expressed by commenters, the CSA has clarified its view that, for the purposes of PFMI Principle 5, letters of credit may be permitted as collateral by a recognized clearing agency operating as a domestic CCP serving the derivatives markets. See our response to comment 10 in Annex B to this Notice. We express this policy guidance in new section 3.2 of the final version of the Policy Statement. However, this guidance does not apply to a recognized clearing agency that is also overseen by the Bank of Canada under the PCSA. In such cases, section 3.2 is not applicable.

[28] See pages 897 to 902 of the 2014 Notice. The policy matters were in relation to a clearing agency's recovery or orderly wind-down plans (see key consideration 4 of PFMI Principle 3: *Framework for the comprehensive management of risks* and key consideration 3 of PFMI Principle 15: *General business risk*); a clearing agency's segregation and portability arrangements for customer positions and collateral (see PFMI Principle 14: *Segregation and portability*); the resumption of operations of a clearing agency's critical information technology systems within two hours following disruptive events (see key consideration 6 of PFMI Principle 17: *Operational risks*); and tiered participation arrangements in using a clearing agency's services (see PFMI Principle 19: *Tiered participation arrangements*).

(iii) Segregation and portability

(A) Alternate approach for CCPs serving cash markets

In the 2014 Notice, we had discussed our policy view that the current regulatory and customer protection regime applicable to investment dealers meets the criteria for the "alternate approach" to PFMI Principle 14 for CCPs serving certain domestic cash markets.[29] The comments we received on this discussion supported our view. Accordingly, we have added new section 3.3 in the final version of the Policy Statement to govern reliance on the alternate approach for domestic CCPs serving cash markets. The text of this new subsection is substantially similar to our policy view expressed in the 2014 Notice.

(B) PFMI Principle 14 for domestic CCPs serving futures and other exchange-traded derivatives markets – ongoing policy considerations

In the 2014 Notice, we said that CSA regulators were reviewing 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.[30] This review is ongoing and involves discussions with various stakeholders. PFMI Principle 14 will not come into force until December 31, 2016. See discussion below under "(e) Parts 5, 6 and 7".

(C) PFMI Principle 14 for CCPs serving the OTC derivatives markets

As we had mentioned in the 2014 Notice, the CSA Derivatives Committee is separately developing a regulatory framework that will implement PFMI Principle 14 for CCPs serving the global OTC derivatives markets. We expect that a proposed revised rule governing segregation and other customer protection measures in the OTC derivatives area will require such CCPs to have detailed segregation and portability rules and arrangements.

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

In addition to clarifying certain provisions and harmonizing others with recent amendments made to Regulation 21-101, we amended Part 4 of the Regulation generally by removing some granular rules and placing them instead as guidance only in Part 4 of the Policy Statement.

(i) Division 1 – Governance

Subsections 4.1(5) to (9) of the Regulation in the 2014 Documents had enumerated the types of relationships that an individual can have with a clearing agency that would constitute a "material relationship" for the purposes of determining whether the

[29] See pages 899 and 900 of the 2014 Notice.
[30] We discuss the "IIROC-CIPF regime" and "Part XII of the BIA" in detail in the 2014 Notice.

individual is independent of the clearing agency. We have removed these provisions from the Regulation. Instead, we have added guidance on the types of relationships that could constitute a material relationship with a clearing agency in new subsection 4.1(4) of the Policy Statement.[31] In general, this new subsection in the final version of the Policy Statement mirrors the provisions in former subsections 4.1(5) to (9) of the Regulation.[32] The concept of independence remains consistent with Regulation 52-110 and other foreign regulatory regimes, without narrowing the definition to specific types of relationships which are more suited for a clearing agency that is also reporting issuer under Canadian securities legislation.

Section 4.3 of the Regulation, which governs the designation and functions of a chief risk officer and a chief compliance officer (**CCO**) of a clearing agency, is unchanged from the 2014 Documents. However, we added a clarification in subsection 4.3(3) of the Policy Statement that the role of a CCO may, in certain circumstances, be performed by the Chief Legal Officer or General Counsel of the clearing agency, where the individual has sufficient time to properly carry out his or her duties and there are appropriate safeguards in place to avoid conflicts of interest.

Section 4.4 of the Regulation in the 2014 Documents, which had required a recognized clearing agency to establish and maintain one or more committees on risk management, finance, audit and executive compensation, has been amended in several ways. The reference to an executive compensation committee has been removed. Instead, section 4.4 of the Policy Statement has been revised to outline the CSA's view that a recognized clearing agency should consider forming a compensation committee. Moreover, section 4.4 of the Regulation has been revised to remove paragraphs (a) to (e) that would have prescribed minimum requirements for the scope of the mandates of such committees. We have included, instead, guidance on the scope of such mandates in section 4.4 of the final version of Policy Statement, which generally mirrors former paragraphs 4.4(a) to (e) of the Regulation.

(ii) Division 2 – Default management

The CCP skin-in-the-game (**SITG**) rule in section 4.5 of the Regulation has been slightly amended to remove the reference to where in the default waterfall the CCP's own SITG capital should be used. However, we have retained our view in section 4.5 of the Policy Statement (in the form of guidance) that a CCP's own capital contribution should be used in the default waterfall immediately after a defaulting participant's contributions to margin and default fund resources have been exhausted, and prior to non-defaulting participants' contributions. As we had emphasized in the 2014 Notice, while not a requirement of the PFMIs, the SITG rule 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 a CCP have an equal stake in ensuring the robustness of the CCP's risk management. However, as there

[31] As a result of these revisions, former subsections 4.1(2) and (3) of the Policy Statement in the 2014 Documents were no longer needed.

[32] We did, however, reduce the period during which a former employee or executive officer of the clearing agency or any of its affiliates would still be considered having a material relationship with the clearing agency from three years to one year after leaving his or her position.

is no international consensus yet on an optimal CCP SITG approach,[33] we believe that it may be premature at this time to require a specific calculation for the amount of SITG. We will monitor international developments in this area, and will determine whether additional rule-making or guidance on SITG should be provided in 2016.

(iii) Division 3 – Operational risk

The systems requirements of sections 4.6 to 4.9 of the Regulation have largely been modified to harmonize with recent amendments made to similar provisions in Regulation 21-101.[34] In the 2014 Notice, we had expressed our view that certain of the amendments in Regulation 21-101 may be equally applicable to recognized clearing agencies due to their criticality to our capital markets.[35]

(iv) Division 4 – Participation requirements

We clarified the access and due process provisions of section 4.11 of the Regulation. In particular, subsection (2) specifies that a participant's, or potential participant's, right to be heard and make representations applies to a clearing agency's decision that terminates, suspends or restricts a participant's membership in the clearing agency or that declines entry to membership to an applicant that applies to become a participant.

(e) Parts 5, 6 and 7

No key changes were made to Parts 5 and 6 of the Regulation. We have included a Part 6 to the final version of the Policy Statement to clarify the circumstances when a securities regulatory authority may consider granting an exemption from a provision of the Regulation. This guidance generally reflects the views we expressed in the 2014 Notice.

We have inserted the effective coming-into-force dates in Part 7 of the Regulation and have changed its structure to meet the legislative drafting standards applicable in some jurisdictions. As mentioned above, most of the provisions in the Regulation will come into force on February 17, 2016. However, the following provisions of the Regulation will come into force on December 31, 2016 only:

- The requirement in section 3.1 to implement rules, procedures, policies or operations designed to ensure that a recognized clearing agency meets or exceeds PFMI Principle 14: *Segregation and portability*

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[33] See, for example, "A Financial System Perspective on Central Clearing of Derivatives", remarks by Jerome H. Powell, Member, Board of Governors of the Federal Reserve System, at "The New International Financial System: Analyzing the Cumulative Impact of Regulatory Reform", 17th Annual International Banking Conference, sponsored by the Federal Reserve Bank of Chicago and the Bank of England, Chicago, Illinois, November 6, 2014; available at: http://www.federalreserve.gov/newsevents/speech/powell20141106a.pdf

[34] See *CSA Notice of Publication Regulation to amend Regulation 21-101 respecting Marketplace Operation and Regulation to amend Regulation 23-101 respecting Trading Rules*, June 25, 2105, Bulletin de l'Autorité des marchés financiers, Vol. 12, No. 25, p. 562; also available at: www.lautorite.qc.ca/files/pdf/bulletin/2015/vol12no25/vol12no25_7-2.pdf. In particular, see the amendments to Part 12 – *Marketplace Systems and Business Continuity Planning* of Regulation 21-101, as well as Annex A to the Notice of Approval – *Description of Notable Changes to the Proposed Amendments.*

[35] See p. 903 and 904 of the 2014 Notice.

- The requirement in section 3.1 to implement rules, procedures, policies or operations designed to ensure that a recognized clearing agency meets or exceeds key consideration 4 of PFMI Principle 3: *Framework for the comprehensive management of risks* and key consideration 3 of PFMI Principle 15: *General business risk* with respect to a clearing agency's recovery or orderly wind-down plans

- The requirement in section 3.1 to implement rules, procedures, policies or operations designed to ensure that a recognized clearing agency meets or exceeds PFMI Principle 19: *Tiered participation arrangements*

We have already discussed above under "(c) Part 3 – PFMI Principles Applicable to Recognized Clearing Agencies – (iii) Segregation and portability" the ongoing policy work with respect to the implementation of PFMI Principle 14. Regarding the other PFMI Principles above that come in force on December 31, 2016, we are proposing new Joint Supplementary Guidance in respect of recovery and orderly wind-down planning, and are assessing policy considerations in respect of tiered participation arrangements. This new guidance is the subject of the Proposed Policy Amendments discussed further below in Part III of this Notice.

5. Authority for Regulation

In those jurisdictions in which the Regulation is 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.

6. Alternatives to Regulation Considered

As noted in the 2014 Notice, the CSA considered, as general alternatives, adopting the PFMI Principles in a policy, or including them on a case-by-case basis as terms and conditions to a recognition order of a clearing agency. We have decided against these alternatives because we believe the PFMI Principles 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 of Canada.

7. Unpublished Materials

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

8. Anticipated Costs and Benefits

As mentioned in CSA Notice 24-310 and the 2014 Notice, the Regulation will enhance the regulatory framework for recognized clearing agencies operating or seeking to operate in a jurisdiction of Canada. This regulatory framework will facilitate ongoing observance by recognized clearing agencies of international minimum standards applicable to FMIs. We 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.[36]

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

Finally, the adoption of the PFMI Principles is intended to support the initiatives of the Group of Twenty Finance Ministers and Central Bank Governors (**G20**) and the Financial Stability Board 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 Principles to the fullest extent possible.[37] 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.

We acknowledge that implementing the PFMI Principles will entail costs for the industry. Recognized clearing agencies in Canada are continuing to transition to the new PFMI Principles. They have conducted detailed self-assessments against the PFMI Principles and identified their gaps in observance. They have developed plans to address these gaps, and are currently meeting many of the PFMI Principles. As noted previously, more time is needed to meet all of the PFMI Principles, and therefore we are providing for longer implementation dates for meeting the remaining PFMI Principles.

9. Questions

Please refer any of your questions to the CSA staff listed below in this Notice under "Part III – Proposed Policy Amendments – 3. Comment Process".

[36] 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.

[37] 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).

Part III – Proposed Policy Amendments

1. Background to, and Purpose of, Proposed Policy Amendments

As noted in the 2014 Documents, the Policy Statement consists largely 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 PFMI Principles within the Canadian context. It is directed at recognized *domestic* clearing agencies that are also overseen by the Bank of Canada under the PCSA. It is included in separate text boxes in Annex I to the Policy Statement under the relevant headings of the PFMI Principles.

The adopted Policy Statement contains Joint Supplementary Guidance related to governance standards (PFMI Principle 2), collateral (PFMI Principle 5), liquidity risk (PFMI Principle 7), general business risk (PFMI Principle 15), custody and investment risk (PFMI Principles 16), and disclosure of a clearing agency's rules, key procedures and market data (PFMI Principle 23). Such guidance was also included in the Policy Statement published for comment in the 2014 Documents. We had noted in the 2014 Documents that, over time, the CSA and Bank of Canada would propose Joint Supplementary Guidance on certain other PFMI Principles as well.

With this Notice, we are publishing, together with the Bank of Canada, the Proposed Policy Amendments, which consist solely of additional Joint Supplementary Guidance. The new Joint Supplementary Guidance is intended to provide additional clarity on certain aspects of PFMI Principles 3 and 15 with respect to a clearing agency's recovery and orderly wind-down plans. The Proposed Policy Amendments will be incorporated into Annex I of the Policy Statement in a text box under the relevant heading of the PFMI Principles. They are published with this Notice. We are seeking comment on any aspect of the Proposed Policy Amendments. Please see below under "3. Comment Process" for information on how to provide comments.

2. Summary of Proposed Policy Amendments

Key consideration 4 of PFMI Principle 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. Key consideration 3 of PFMI Principle 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 new Joint Supplementary Guidance clarifies expectations regarding key components of recovery plans; the selection and implementation of recovery tools; additional considerations for recovery planning; implementation; review of recovery plans; orderly

wind-down; and practical aspects of designing a recovery plan, such as the organization and structure of content.

3. Comment Process

Please submit your comments in writing on or before February 1, 2016. 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.

M^{e} Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 22^{e} étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Fax: 514 864-6381
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, because your comments will pertain specifically to the Joint Supplementary Guidance, we request that your comments also be sent to the Bank of Canada at the following email address:

PFMI-consultation@bankofcanada.ca

Questions with respect to this Notice, the final approved Regulation and Policy Statement, and the Proposed Policy Amendments may be referred to:

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Financial and Consumer Services Commission (New Brunswick)
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Email: ella-jane.loomis@fcnb.ca

ANNEX A

List of commenters on proposed *Regulation 24-102 respecting Clearing Agency Requirements* and related Policy Statement (as published in the 2014 Documents)

Commenters:

Canadian Bankers Association (CBA)
Canadian Investor Protection Fund (CIPF)
Investment Industry Association of Canada (IIAC)
LCH.Clearnet Group Limited (LCH.Clearnet)
TMX Group Limited (TMX)

ANNEX B

Summary of comments on draft *Regulation 24-102 respecting Clearing Agency Requirements* and related Policy Statement (as published in the 2014 Documents), and CSA general responses to comments

1. Theme/question[1]	2. Summary of comments	3. General responses
Principles-based approach	**1.** Commenters are generally pleased that the proposed rule is now a uniform rule across Canada. Certain commenters also prefer the CSA's more principles-based approach to incorporating the PFMIs into Part 3.	The CSA appreciates the comments, and agrees that taking a principles-based approach to adopting the PFMIs in the Regulation aligns better with the approaches taken in other foreign jurisdictions.
	2. A commenter argues that the Regulation does not adequately take a principles-based approach throughout the entirety of the Regulation. Rather, the commenter suggests that sections 2.2 and 2.5 and Part 4 of the Regulation impose inflexible requirements that would make it difficult for a clearing agency to evolve in a timely manner and be appropriately responsive to industry changes and participant needs. Further, the commenter asserts that such requirements are inconsistent with standards imposed in other countries.	We do not believe that sections 2.2 and 2.5 and Part 4 impose inflexible requirements or are inconsistent with standards imposed in other countries. However, as further discussed in this chart, we have removed or adjusted certain provisions, while maintaining others, to ensure that Canadian markets are appropriately regulated. Moreover, we note that each securities regulatory authority maintains the ability to impose additional requirements through terms and conditions of recognition or exemption to deal with specific circumstances.
Level playing field: exemption of foreign-based clearing agencies from recognition, and compliance by *recognized* foreign-based clearing agencies with the Regulation.	**3.** A commenter asserts that the Regulation holds domestic clearing agencies to a higher standard than foreign-based clearing agencies that may be exempted from the requirements of the Regulation that go beyond the PFMI standards. The commenter argues that subjecting foreign-based clearing agencies to different standards than their domestic counterparts would lead to a form of regulatory arbitrage, where clearing participants could choose their clearing agency based on the regime that has the most flexibility and that can more easily respond to participant needs.	The decision to exempt a foreign-based clearing agency that is carrying on business in a jurisdiction of Canada from the recognition requirement is primarily based on two factors: (i) the clearing agency is subject to comparable regulation in its home jurisdiction and (ii) the nature and scope of the clearing agency's business activities in the local jurisdiction are not systemically important to the local jurisdiction's capital markets. With respect to (i) above, both the Parts 3 and 4 requirements would be considered. We also note that many jurisdictions do impose requirements that go

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

1. Theme/question[1]	2. Summary of comments	3. General responses
	(See also comments below related to compliance by a recognized foreign-based clearing agency, and certain comments made in relation to requirements of Part 4.)	beyond the PFMIs, which are similar to provisions in Part 4. While some changes to Parts 2 and 4 are proposed, we do not believe that domestic clearing agencies are, or would be, at a competitive disadvantage by adhering to requirements in the Regulation that are similarly found in comparable international regulations.
	4. A commenter supports the revised approach to requiring recognized foreign-based clearing agencies to comply with the Regulation. It requests that the CSA's responses to comments on the Local Regulations and Local Policy Statements (as described in the 2014 Notice) on this issue be included in the Policy Statement to the Regulation, so future regulators and recognized foreign-based clearing agencies are aware of the CSA's intended flexible application of the Regulation to recognized foreign-based clearing agencies.	We have included additional explanatory guidance in the Policy Statement, which generally draws on the discussion in the 2014 Notice. In particular: • In Part 3 of the Policy Statement, we added text to confirm that Part 3is consistent with a flexible and principles-based approach to regulation. • With respect to a recognized foreign clearing agency that is subject to requirements in its home jurisdiction, we do not believe that compliance with Part 3 will be a burden because of the principles-based approach to incorporating the PFMIs. As such, a recognized foreign clearing agency should not experience duplication and inefficiency of cross-border regulation. However, to the extent that a recognized foreign clearing agency faces a conflict or inconsistency between the requirements of sections 2.2 and 2.5 and Part 4 and the requirements of the regulatory regime in its home jurisdiction, and such conflict or inconsistency causes a hardship for the clearing agency, we may consider granting an exemption from a provision of the Regulation, subject to appropriate conditions or restrictions. We added a Part 6 to the Policy Statement to include our views expressed above.

1. Theme/question[1]	2. Summary of comments	3. General responses
	5. A commenter argues that exempting a foreign-based clearing agency (both recognized and exempt) from certain requirements of the Regulation dilutes the meaning of "recognized clearing agency" and could confuse investors. The commenter also asserts that this may distort investor assumptions that clearing agencies recognized in Canada are subject to the Regulation and that they may rely upon regulators monitoring compliance with this Regulation.	There are two distinct and sequential threshold regulatory decisions that are made when a foreign-based clearing agency decides to carry on business in a local jurisdiction. First, we must decide whether to recognize the clearing agency or exempt it from the recognition requirement. As the Policy Statement describes (and as discussed above in our response to comments no. 3), the decision by a securities regulator to recognize or exempt a foreign clearing agency is based on whether it is systemically important to the jurisdiction's capital markets and whether it is subject to comparable regulation by another regulatory body. Where the entity is systemically important to a local jurisdiction's capital markets – and even though it is subject to comparable regulation in its home jurisdiction – it may nonetheless be appropriate to recognize it. The intention is that such an entity would be directly regulated in respect of matters that are *directly* relevant and important to the local jurisdiction's capital markets. Second, if we determine that a foreign clearing agency should be recognized, we must determine the scope of our regulatory oversight. We tailor the recognition order to focus on key areas that pose material risks to the jurisdiction's markets and to rely, where we can, on the current regulatory requirements and processes to which the entity is already subject in its home jurisdiction. A *recognized* foreign-based clearing agency will only be exempted from requirements of the Regulation if it is subject to home regulation that achieves a similar outcome. If it is determined that the entity is subject to a comparable regulatory regime in its home jurisdiction (including requirements that would result in similar outcomes to the requirements of Parts 3 and 4), its recognition order may require that it comply with the requirements of the foreign regime on an ongoing basis.

1. Theme/question[1]	2. Summary of comments	3. General responses
		Terms and conditions of a recognition decision that require the foreign clearing agency to report information to a Canadian securities regulatory authority may vary among foreign clearing agencies that are recognized. Among other factors, they will depend on whether we have entered into an agreement or memorandum of understanding for sharing information and cooperation with the home regulator. We have made changes to section 2.0 of the Policy Statement to reflect some of the discussion above.
	6. A commenter suggests simplifying and clarifying the process for exempting foreign-based clearing agencies, through a series of jurisdiction-level comparability determinations.	The Policy Statement sets out a general framework for determining whether we would recognize or exempt a clearing agency under securities legislation. See section 2.0 of the Policy Statement. While we agree that a simple and clear exemption process is preferable, regulators require some flexibility in considering whether to exempt a foreign-based clearing agency or not. It is likely that each application by a clearing agency will be unique and require an assessment of factors or circumstances on a case by case basis, including the regulatory regime that the clearing agency is subject to in its home jurisdiction.
Enforcement approach to Canadian clearing agencies	**7.** A commenter notes that, given that Canadian clearing agencies may be subject to regulation by one or more provincial regulators as well as the Bank of Canada (**BOC**), the regulatory approach to enforcing applicable standards should be made clear to participants, in respect of the following: • nominating a lead regulator for Canadian clearing agencies, with the BOC as lead for systemically important infrastructures; • specifying the process, objectives and outcomes of regulatory oversight, as conducted by the BOC vs. CSA; and • requiring public or private audits	The CSA regularly coordinates its activities to oversee clearing agencies, including with the BOC in respect of clearing and settlement systems that have been designated as systemically important by the BOC under the *Payment Clearing and Settlement Act* (**designated systems** or FMIs). The BOC and relevant CSA recognizing provincial securities regulators in British Columbia, Ontario and Québec have entered into a *Memorandum of Understanding Respecting the Oversight of Certain Clearing and Settlement Systems* dated March 19, 2014 (BOC-CSA MOU). The purpose of the BOC-CSA MOU is to improve the efficiency and effectiveness of the oversight of

1. Theme/question[1]	2. Summary of comments	3. General responses
	of clearing agency compliance with national or international standards.	designated systems. The BOC-CSA MOU provides a mechanism for mutual cooperation, coordination and assistance in carrying out their respective oversight responsibilities in respect of the designated systems, and formalizes current cooperative arrangements among the parties. In addition, the CSA members work cooperatively together to coordinate their oversight efforts of clearing agencies and trade repositories (TRs). The CSA is currently finalizing a memorandum of understanding (CSA MOU) among participating CSA jurisdictions that regulate clearing agencies and TRs to formalize their current cooperation arrangements using a modified lead regulator model. Clearing agencies that are under the jurisdiction of certain CSA members are already subject to periodic assessments against the requirements of the terms and conditions contained in their recognition or exemption decisions. CSA regulators intend to continue this practice. We will periodically assess compliance with the Regulation and require recognized clearing agencies to perform self-assessments against the requirements of the Regulation. Although self-assessments are generally not independently audited, securities regulatory authorities have the power to conduct on-site inspections and request any information or documentation from the clearing agency. All oversight programs will be shared and coordinated pursuant to the BOC-CSA MOU and, once finalized, the CSA MOU. Notwithstanding the above, while CSA regulators will make every effort to minimize regulatory burden for regulated entities, certain regulators may have different responsibilities under their governing legislation and respective regulatory mandates, and may need to deal with specific circumstances in a different manner which may necessitate

1. Theme/question[1]	2. Summary of comments	3. General responses
		additional direct oversight.
PFMI Disclosure Framework Document	**8.** A commenter submits that the requirements in relation to the PFMI Disclosure Framework Document, which is relevant in a number of contexts in the Regulation (see sections 1.1 (definitions), 2.1 and 2.2 and PFMI Principle 23), should be delayed until discussions are finalized and regulatory expectations with respect to the format, content and level of detail required are clear.	The CSA continues to monitor international developments related to the PFMI Disclosure Framework Document. We note that CPMI-IOSCO published in February 2015 their final report *Public quantitative disclosure standards for central counterparties* (CPMI-IOSCO Quantitative Disclosures report). We expect most CCPs will be able to meet the disclosure standards in the CPMI-IOSCO Quantitative Disclosures report. However, while the CSA expects recognized clearing agencies to meet PFMI Principle 23, including the disclosure standards in the CPMI-IOSCO Quantitative Disclosures report, we may be prepared to grant an exemption in limited circumstances to a clearing agency that identifies a specific issue for completing its required disclosures.
Section 2.2 – Material changes	**9.** A commenter believes that following the specified approval process for all matters included in the definition of "material change" will slow aspects of a domestic clearing agency's business, including its ability to adapt to market conditions and respond to market participants. This may also tie up both the clearing agency's and regulators' resources. Further, the process may introduce an uneven playing field as between domestic clearing agencies and foreign-based clearing agencies subject to less stringent requirements that allow them to be more flexible and timely in engaging new business activities, introducing new products and amending rules (including fees). It is proposed that the CSA implement a self-certification process for material changes and pare down the definition of material change such that it only includes changes that are material enough to warrant immediate regulatory review. In addition, the commenter believes the provision is overbroad, and that only those issues that truly require	The CSA does not intend section 2.2 to impose a competitive disadvantage on domestic clearing agencies, and agrees that matters that require regulatory approval should be limited to those that are important to the Canadian capital markets. Section 2.2 is generally consistent with similar requirements in Regulation 21-101, local rules 91-507 *Trade Repositories and Derivatives Data Reporting* (TR Rule), and the rules of certain foreign jurisdictions. We believe that the matters referred to in the definition "significant change" (formerly "material change") are necessarily relevant to the Canadian regulator's oversight duties. Nonetheless, we have revised section 2.2 to replace the regulatory approval requirement with a regulatory pre-notification requirement, which we consider is a lesser regulatory burden. However, by virtue of the scope provisions in section 1.5, the requirements of section 2.2 apply only to the extent such matters are not otherwise governed by the terms and conditions of a recognition or exemption decision of the securities regulatory

1. Theme/question[1]	2. Summary of comments	3. General responses
	review and approval in order to protect the Canadian marketplace from material risks should fall under the definition.	authority. The Policy Statement was modified to reflect this change in the Regulation.
PFMI Principle 5: *Collateral*	**10.** A commenter reiterates its request that letters of credit be considered permitted collateral and a qualifying liquid resource, as this would be consistent with international practice and would provide a cost effective means of meeting collateral requirements for commercial entities. The commenter argues that letters of credit are a standardized financial instrument which constitutes a committed credit facility, are widely accepted and provide substantially lower credit risk than general guarantees. In any event, any credit risk of a letter of credit can be managed.	Upon further consideration, we acknowledge that there are differences between a general commercial guarantee and a letter of credit (LC). Among other things, the payment obligation of an issuer of a LC is "documentary" in nature. That is, the presenter of the LC does not have to prove any underlying facts to the issuer to receive payment, and the LC is generally not subject to the same sorts of defenses that a guarantee would normally be subject to. Because a LC creates a documentary obligation, it is considered a "swift and certain payment mechanism". Moreover, we are satisfied that certain foreign regulators permit CCPs to use LCs as acceptable collateral in certain circumstances. However, the use of LCs by systemically important CCPs raises concerns about wrong way risk in the Canadian context. We therefore agree that, in certain circumstances, LCs may be considered permitted collateral by a CCP, provided the CCP is not a designated system. We have added some guidance in Part 3 of the Policy Statement relating to PFMI Principle 5: *Collateral* to reflect this view. Such guidance applies only to domestic CCPs that are not also designated systems. Consequently, the CSA and BOC have not altered the Joint Supplementary Guidance (Box 3) relating to PFMI Principle 5: *Collateral* in Annex I of the Policy Statement, which applies to domestic CCPs that are designated systems.
PFMI Principle 14 – *Segregation and portability*	**11.** Two commenters agree with the CSA position that the IIROC-CIPF regime meets criteria for the alternate approach for CCPs serving certain domestic cash markets, and will continue to monitor CSA developments in respect of the application of PFMI Principle 14 to exchange-traded and OTC derivatives	We have included in Part 3 of the Policy Statement guidance on PFMI Principle 14 that generally draws on the discussion in the 2014 Notice on the "alternate approach" for CCPs serving cash markets. For CCPs serving the futures and other exchange-traded derivatives markets, we are continuing our review of this

1. Theme/question[1]	2. Summary of comments	3. General responses
	markets.	policy matter, including having discussions with relevant stakeholders. Similarly, for CCPs serving the global OTC derivatives markets, the CSA Derivatives Committee is continuing its work in this area.
	12. A commenter notes that a move to gross margining would have a significant impact, and should not be made without a thorough assessment, including of key differences with other jurisdictions. The commenter notes that in the current Canadian futures model (a) IIROC record keeping requirements ensure customer positions can be identified timely, (b) customers are protected by CIPF, and (c) customer positions can be restored in the event of a participant default – all of which constitute a regime that is not present in other jurisdictions that have required gross margining. The commenter also believes the consultation process should be broadened to include participants.	As mentioned in the 2014 Notice, we are continuing to review the implications of requiring enhanced CCP-level customer segregation and portability arrangements (such as gross margining) for CCPs serving the futures and other exchange-traded derivatives markets. We agree that the consultation process should be broadened to include CCP participants and other relevant stakeholders. As we explore our options on PFMI Principle 14 and continue stakeholder consultations, we may propose further amendments to the Policy Statement later in 2016 to add guidance on PFMI Principle 14 for CCPs serving the futures and other exchange-traded derivatives markets.
Section 4.1 – Board of directors – independence	**13.** A commenter submits that the definition of independence is too narrow and granular, and is inconsistent with the existing approach taken by national and international regulators regarding director independence, and the PFMIs.	The Regulation's concept of independence with respect to board membership is generally consistent with the definition of independence found in other CSA rules or policies (e.g., Regulation 52-110) and in the regulatory regimes of other jurisdictions. As noted in subsection 4.1(3), an individual is independent of a clearing agency if he or she has no direct or indirect material relationship with the clearing agency. Subsection 4.1(4) provides that a "material relationship" is a relationship which could, in the view of the clearing agency's board of directors, be reasonably expected to interfere with the exercise of a member's independent judgment. However, we acknowledge that the provisions in subsections 4.1(5) to (9) in the 2014 Documents could have had the effect of narrowly confining the concept of "material relationship." Accordingly, we have removed subsections 4.1(5) to (9) from the Regulation. Instead,

1. Theme/question[1]	2. Summary of comments	3. General responses
		we have provided guidance in the Policy Statement on certain types of relationships which we would consider to reasonably be expected to interfere with the exercise of a board member's independent judgment. With some differences, the guidance is based on the redacted subsections 4.1(5) to (9) in the Regulation.
Section 4.3 – Chief compliance officer	**14.** A commenter asserts that the designation of Chief Compliance Officer (CCO) with the broad mandate set out in section 4.3 would create standards that are excessively high and inconsistent with the principles-based approach to compliance taken in the PFMIs.	Section 4.3 is generally consistent with similar requirements in the TR Rule and the rules of certain foreign jurisdictions. Section 4.3 also complements key consideration 5 of PFMI Principle 2, which requires a clearing agency to have an experienced management with a mix of skills and the integrity necessary to discharge its operations and risk management responsibilities.
Section 4.4 – Board or advisory committees – compensation committee	**15.** A commenter submits that a compensation committee should not strictly be required, as the PFMIs do not strictly require their use, nor do existing recognition orders. The commenter asserts that there is no clear public interest reason for such a committee, and that flexibility would allow clearing agencies that are part of bigger organizations to use expertise and resources from the larger enterprise to optimally address compensation issues.	We agree that a compensation committee should not strictly be required. We have modified section 4.4 to remove the requirement to establish and maintain an executive compensation committee. Moreover, consistent with changes that we have made elsewhere in the Regulation, we have removed the detailed provisions in paragraphs (a) to (f) of section 4.4 and placed them instead in the Policy Statement, with slight differences. Despite the above, we strongly recommended that a clearing agency consider forming a compensation committee. We note that para. 3.2.9 of the explanatory notes in the PFMI Report suggests that "[a] board would normally be expected to have, among others, a risk committee, an audit committee, and a compensation committee, or equivalents." The Policy Statement expressly states that regard is to be given to the explanatory notes, as appropriate, in interpreting and implementing the PFMI Principles.
Section 4.5 – Use of own capital	**16.** Two commenters agree with the inclusion of a "skin-in-the-game" (SITG) requirement as a method to help align the incentives of the CCP's management and shareholders with those of the participants. However,	In consultation with the BOC, the CSA has decided to retain part of section 4.5. There is general agreement that SITG is not a recovery tool, but instead a risk management tool. The CSA are of

1. Theme/question[1]	2. Summary of comments	3. General responses
	one commenter raised concerns about the SITG requirement. There is general acknowledgement that there is no international consensus on the amount of SITG capital that should be used, and the order in which it should be used as part of the "waterfall". One commenter believes the SITG requirement should not be calibrated based on the size of the default fund, but rather in relation to a CCP's capital base (as is required by ESMA under EMIR). The main drawbacks of calculating the requirement based on size of default fund are: (1) it would fundamentally change the risk profile of the CCP, creating increased risk exposure to a participant default at the very time that the CCP needs to be resilient; (2) it would create an incentive for a CCP to minimize the size of the default fund, for example, by increasing initial margin requirements which could have a negative impact on end-users; and (3) it could result in the CCP needing to raise additional capital at short notice potentially at a time of market stress. Another commenter recommends that the SITG requirement be specific and quantifiable, tied to a clearing agency's risk exposure; for example, a fixed percentage of the clearing agency's tail risk. The commenter expects that this requirement will continue to be the subject of discussion, locally and internationally. One commenter submits that at this stage, it would be inappropriate to include the provision in the Regulation, since (i) the requirement is not a PFMI-based requirement, (ii) there is still an unresolved global debate on its rationale, structure, size, and timing, among other matters, and (iii) it would be more appropriately handled by the Bank of Canada/CSA through their guidance on resolution and recovery. The commenter requests that the CSA	the view that a CCP should be required to participate in the default waterfall with its own capital contribution, to be used after a defaulting participant's contributions to margin and default fund resources have been exhausted. However, as there is no international consensus yet on an optimal CCP SITG approach, we agree that it may be premature to require at this time, from a policy perspective, a specific approach to calculate the amount of SITG. A CCP's SITG equity should be significant enough to attract senior management's attention. It should also be separately retained and not form part of the CCP's equity resources for other purposes, such as to cover general business risk. We will monitor international developments in this area and will determine whether additional guidance on SITG should be provided later in 2016.

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	engage in further discussions with impacted parties prior to incorporating this requirement. The commenter also feels that the CSA should consider the relationship between the capital placed at risk by a clearing agency, the manner in which its fees are risk-adjusted and adjusted for the cost of that capital, the risk design of the risk model to effectively protect that capital, and the design of the participant access criteria/rules that govern who can expose the capital to loss.	
Section 4.6 – Systems requirements	**17.** A commenter submits that the distinction between the requirement to notify the regulator or, in Québec, the securities regulatory authority, is confusing and should be clarified.	We do not propose any change. In Québec, all functions and powers, including "regulator functions", are assigned to the Autorité des marchés financiers (AMF) by the Québec securities and derivatives legislation, and therefore all notifications must be submitted to the "securities regulatory authority" in Québec. Such wording is consistent with Canadian securities legislation, including *Regulation 14-101 respecting Definitions*.
Section 4.8 – Clearing agency technology requirements and testing facilities	**18.** A commenter submits that there should be a materiality threshold under subsection 4.8(1), in that making the relevant information publicly available should not be required if not materially necessary, given the sensitive information involved, and the potential for malicious internet attacks.	The intention of subsection 4.8(1) is to require a clearing agency to make available technology requirements that are necessary for interfacing and accessing it, and not to require disclosure of all technology and sensitive information. We understand that clearing agencies are already disclosing relevant information to participants, potential participants and service vendors, and we do not anticipate that this will create an additional burden. Therefore, subsection 4.8(1) has been amended slightly. We note that the provision does generally accord with requirements set out in Regulation 21-101, and is necessary to ensure that participants, prospective participants and indirect participants that may need to interface or access the clearing agency, as well as service vendors, have the information they need to interface with, test and access a clearing agency. To the extent that sensitive information is involved that the

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		clearing agency does not feel is necessary to be made publicly available, the clearing agency may make an application for an exemption, in part, from the subsection.
	19. A commenter submits that the testing facilities referred to in subsection 4.8(2) are not necessary, as participants will test the technology as appropriate for themselves, and clearing agencies provide the necessary guidance and assistance to ensure that participants can make use of the system.	We do not propose any change. The CSA currently places similar requirements on marketplaces under Regulation 21-101, and such requirements are appropriate for clearing agencies as well.
Sections 4.7 and 4.10 – Independent reviews	**20.** A commenter submits that the references to independent reviews in subsection 4.7(1) and paragraph 4.10(f) require clarification, including that such a review by an affiliate would suffice. It is asserted that requiring a third party to conduct such an audit would increase costs significantly, particularly for smaller clearing agencies, and should not be necessary.	The CSA does not intend references to "independent systems reviews" to mean such reviews must be conducted by an arm's length third party to a clearing agency. Rather, it references the engagement of a "qualified" party, which need not exclude a review by a party that is an affiliate, as long as that party was not involved in the design of the systems being tested. Subsection 4.7(1) of the Policy Statement has been slightly modified to reflect this view.
Section 4.11 – Access requirements and due process	**21.** A commenter submits that section 4.11 is overbroad, a departure from the PFMIs, and would impact all aspects of a clearing agency's business. It is submitted that the requirements should only be applied to a clearing agency's key clearing and settlement services. Specific concerns are as follows: • with respect to para. 4.11(1)(b), clearing agencies do not control or have the ability to control the extent to which a participant may discriminate among its own customers; • with respect to para. 4.11(1)(c), matters relating to competition should be addressed through the *Competition Act*; and • with respect to subsection 4.11(2), the provision is overbroad, as a clearing agency may routinely make decisions that adversely affect participants; the provision should be limited to	Section 4.11 is generally consistent with similar CSA rules and policies (e.g. Regulation 21-101) and the rules of certain foreign jurisdictions. Nevertheless, we appreciate the concerns raised, and have made some changes as a result. With respect to para. 4.11(1)(b), we have replaced the words "or the customers of its participants" with "or indirect participants". The PFMI Report recognizes that FMIs may have relationships with indirect participants that affect tiered participation arrangements. See para. 3.19.1 of the explanatory notes. It is in the context of such tiered participation arrangements that clearing agencies should not unreasonably discriminate among indirect participants. With respect to para. 4.11(1)(c), we note that fostering competition in the

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	suspension or termination of membership decisions.	Canadian financial markets is contemplated as part of certain clearing agency recognition decisions. It remains a key public interest consideration and is consistent with the general objective of securities legislation, which includes fostering fair and efficient capital markets. With respect to subsection 4.11(2), we agree; the provision has been revised to relate more specifically to participant access to a clearing agency.
Effective date and transition	**22.** A commenter requests that the CSA provide adequate time between the finalization of the Regulation and its effective date to permit foreign-based recognized clearing agencies to request and obtain exemptions from sections 2.2 and 2.5 and Part 4 to the extent that the requirements of those provisions conflict or are inconsistent with the terms and conditions of existing recognition decisions.	The CSA believes it has provided adequate time.
Section 2.0 of the Policy Statement – Recognition and exemption	**23.** A commenter submits that the concept of 'carrying on business' under subsection 2.0(1) of the Policy Statement should include a materiality threshold to allow for greater regulatory flexibility and account for commercial realities.	We do not propose any change. Determining whether a clearing agency is "carrying on business" in a local jurisdiction within the meaning of securities legislation does not require a statutory determination of whether the business activity must reach a certain materiality threshold before the "carrying on business" test is triggered (e.g. a *material domestic connection* to the jurisdiction). However, a materiality threshold test is implicit in determining whether to recognize or exempt a clearing agency that is carrying or proposing to carry on business in the jurisdiction. An assessment of systemic importance would consider the *materiality* of a clearing agency's activities to a jurisdiction's capital markets. See our responses to comments nos. 3 and 5 above. Where an applicant is determined by the relevant securities regulatory authority to be not systemically important, but it is not otherwise appropriately regulated in another

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		jurisdiction, a suitable degree of oversight may be necessary. Such an oversight program would be tailored to the entity, within the terms and conditions of its recognition decision.
	24. A commenter submits that the factors for assessing systemic importance should include also consideration of the size of a market served by a clearing agency relative to the overall Canadian market.	We have not included this factor in section 2.0 of the Policy Statement. Although this criterion may be relevant to determine which regulator should be the lead or co-lead authority under a cooperative oversight arrangement among regulators, we do not believe that this criterion should be a guiding factor to determine if the clearing agency is "systemically important" in the jurisdiction. See also our responses to comments nos. 3 and 5 above.
Supplementary guidance – collateral	**25.** A commenter argues that Canadian provinces should prioritize the implementation of legislative modifications that allow Canadian entities to offer a first priority security interest in cash to their counterparties.	The CSA acknowledges the challenges in the area of personal property security legislation, and will continue to monitor work in this area and consult with the provincial and federal governments, as appropriate.
Supplementary guidance – general business risk	**26.** A commenter supports a broad definition of clearing agency liquid assets (i.e. capital), which will ensure the clearing agency has sufficient liquid assets to carry out its recovery and resolution plan. The definition should appreciate that clearing agencies perform bank-like activities and the capital should cover a full range of credit, liquidity, operational and other risks.	As noted in the Joint Supplementary Guidance, once the guidance on recovery planning has been finalized, the guidance on general business risk will be updated to provide clearing agencies with additional clarity on how to calculate the costs associated with these plans and determine the amount of liquid net assets required. We expect to make further updates later in 2016.
Supplementary guidance – disclosure of rules, key procedures and market data	**27.** A commenter notes that the CPMI-IOSCO public qualitative and quantitative disclosure frameworks (which are proposed to be the basis for clearing agency disclosures) may fall short of ISDA recommendations: • disclosures of stress test methodologies should be offered to clearing agency members; • the concept of CCP stress tests should be supported, but regulatory stress scenarios should not become the de-facto standard for CCPs' own risk management; rather, regulators should verify that a clearing agency covers	The CPMI-IOSCO standard setting bodies are continuing their work in developing additional guidance and standards to supplement the PFMIs, including in the area of CCP stress testing methodologies and transparency. The CSA, together with the BOC, will monitor international developments and may adopt more granular requirements that are in line with international standards, if appropriate. See also our responses above to comment no. 8.

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	specific risks related to the particular product classes they clear, with proper close-out period and liquidity assumptions; and • regulators should support greater transparency regarding clearing agencies' credit due diligence processes, with a focus also on the probability of default of the membership.	
Supplementary guidance (forthcoming) – resolution and recovery	**28.** A commenter requests that the CSA, together with the BOC, develop its guidance related to resolution and recovery with a sense of urgency, particularly where its adoption may entail significant changes to the risk profile of Canadian clearing agencies. Such guidance would assist the clearing agencies to build a holistic view of their risks.	We thank the commenter for these comments. As noted above in this Notice, we are publishing for comment (concurrently with finalizing the Regulation and Policy Statement) additional Joint Supplementary Guidance on recovery and orderly wind-down planning. Such guidance contains aspects of the comments raised. In particular, recovery plans will need to be specific about a clearing agency's default policies and procedures, including the setting out of clear, quantifiable and predicable loss allocation procedures and the use of recovery tools. The BOC and its federal partners have commenced developing a resolution framework specific to domestic designated FMIs. This work will include developing policy proposals for legal, governance and communications frameworks, as well as FMI-specific resolution strategies. This is expected to be a multi-year initiative.