

## **REGULATION TO AMEND REGULATION 24-102 RESPECTING CLEARING AGENCY REQUIREMENTS**

Securities Act

(chapter V-1.1, s. 331.1, par. (1), (2), (3), (4.1), (9.1), (11), (32.0.1) and (34))

**1.** Section 1.2 of Regulation 24-102 respecting Clearing Agency Requirements (chapter V-1.1, r. 8.01) is amended:

(1) in paragraph (2):

(a) by inserting, in the text preceding subparagraph (a) and after the word “if”, the words “any of the following applies”;

(b) by deleting, in subparagraph (b), the word “or”;

(2) in paragraph (3):

(a) by inserting, in the text preceding subparagraph (a) and after the word “if”, the words “either of the following applies”;

(b) by replacing subparagraph (a) with the following:

“(a) it is a controlled entity of any of the following:

(i) that other;

(ii) that other and one or more persons, each of which is a controlled entity of that other;

(iii) two or more persons, each of which is a controlled entity of that other;”.

**2.** Section 1.3 of the Regulation is replaced with the following:

### **“Interpretation – Extended Meaning of Affiliated Entity**

**1.3.** For the purposes of the PFMI Principles, a person is considered to be an affiliate of a participant, the person and the participant each being described in this section as a “party”, where either of the following applies:

(a) a party holds, otherwise than by way of security only, voting securities of the other party carrying more than 20% of the votes for the election of directors;

(b) in the event paragraph (a) is not applicable either of the following applies:

(i) a party holds, otherwise than by way of security only, an interest in the other party that allows it to direct the management or operations of the other party;

(ii) financial information in respect of both parties is consolidated for financial reporting purposes.”.

**3.** Section 2.1 of the Regulation is amended:

(1) by replacing, in paragraph (1), subparagraph (b) with the following:

“(b) sufficient information to demonstrate either of the following:

(i) the applicant is in compliance with provincial and territorial securities legislation;

(ii) the applicant is subject to and in compliance with comparable regulatory requirements of the foreign jurisdiction in which the applicant's head office or principal place of business is located;"

(2) in paragraph (2):

(a) by replacing, wherever they appear in subparagraph (a), the words "books and records" with the words "books, records and other documents";

(b) by replacing, in subparagraph (b), the word "such" with the word "the";

(3) by replacing, in paragraph (4), the words "material change to the information provided in its application" with the words "change to the information provided in its application that is material".

**4.** Section 2.2 of the Regulation is amended:

(1) in paragraph (1):

(a) by inserting, in the text preceding subparagraph (a) and after the words "in relation to a clearing agency," the words "any of the following";

(b) by replacing, in subparagraph (h), the words "recognition terms and conditions" with the words "terms and conditions of a decision to recognize the clearing agency under securities law";

(2) by replacing paragraph (3) with the following:

"(3) The written notice referred to in subsection (2) must include an assessment of how the significant change is consistent with the PFMI Principles applicable to the recognized clearing agency."

**5.** Section 2.3 of the Regulation is amended by replacing paragraph (1) with the following:

"(1) A recognized clearing agency or exempt clearing agency that intends to cease carrying on business in the local jurisdiction as a clearing agency must file a report on Form 24-102F2 with the securities regulatory authority at least 90 days before ceasing to carry on business."

**6.** Section 2.5 of the Regulation is amended by replacing paragraph (2) with the following:

"(2) A recognized clearing agency or exempt clearing agency must file interim financial statements for each interim period as defined in Regulation 51-102 respecting Continuous Disclosure Obligations (chapter V-1.1, r. 24) that comply with the requirements set out in paragraphs 2.4(2)(a) and (2)(b) with the securities regulatory authority no later than the 45<sup>th</sup> day after the end of each interim period of the recognized clearing agency's or exempt clearing agency's financial year."

**7.** Section 3.1 of the Regulation is amended:

(1) by replacing, in the text preceding paragraph (a), "PFMI Principles 1 to 3, 10, 13, 15 to 19, 20 other than key consideration 9, 21 to 23 and the following:" with "PFMI Principles 1 to 3, 10, 13 and 15 to 23, other than key consideration 9 in PFMI Principle 20 and any of the following:";

(2) by deleting, in paragraph (b), the word “and”.

**8.** Section 4.1 of the Regulation is amended by replacing, in subparagraph (b) of paragraph (2), the words “not employees or executive officers of a participant or” with the words “neither employees or officers of a participant nor”.

**9.** Section 4.3 of the Regulation is amended:

(1) by deleting, in paragraph (1), the words “or, if determined by the board of directors, to the chief executive officer”;

(2) by replacing, in paragraph (2), subparagraph (a) with the following:

“(a) have responsibility and authority to implement, maintain and enforce the risk management framework established by the clearing agency,”;

(3) in paragraph (3):

(a) in subparagraph (c):

(i) by replacing, in subparagraphs (i) and (ii), “,” with “;”;

(ii) by replacing, in subparagraph (iii), “, or” with “;”;

(b) by replacing, in subparagraph (f), the word “such” with the word “the”.

**10.** Section 4.4 of the Regulation is amended:

(1) by replacing, in subparagraph (b) of paragraph (4), the words “not employees or executive officers of a participant or” with the words “neither employees or officers of a participant nor”;

(2) by adding, after paragraph (4), the following:

“(5) For the purpose of subsection (3) and paragraph (4)(a), an individual is independent of a clearing agency if he or she has no direct or indirect material relationship with the clearing agency.

“(6) For the purposes of subsection (5), a “material relationship” is a relationship that 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.”.

**11.** Section 4.6 of the Regulation is replaced with the following:

**“Systems requirements**

**4.6.** (1) For each system operated by or on behalf of a recognized clearing agency that supports the clearing agency’s clearing, settlement and depository functions, the clearing agency must

(a) develop and maintain

(i) adequate internal controls over that system, and

(ii) adequate information technology general controls, including, without limitation, controls relating to information systems operations, information security, cyber resilience, change management, problem management, network support and system software support,

(b) in accordance with prudent business practice, on a reasonably frequent basis and, in any event, at least annually

(i) make reasonable current and future capacity estimates, and

(ii) conduct capacity stress tests to determine the processing capability of that system to perform in an accurate, timely and efficient manner, and

(c) promptly notify the regulator or, in Québec, the securities regulatory authority of any systems failure, malfunction, delay or security incident that is material, and provide timely updates on the following:

(i) the status of the failure, malfunction, delay or security incident;

(ii) the resumption of service;

(iii) the results of the clearing agency's internal review of the failure, malfunction, delay or security incident; and

(d) keep a record of any systems failure, malfunction, delay or security incident and, if applicable, document the reasons why the clearing agency considered that the system failure, malfunction, delay or security incident was not material.

(2) A recognized clearing agency must provide the regulator or, in Québec, the securities regulatory authority, with a report, by the 30<sup>th</sup> day after the end of the calendar quarter, containing a log and summary description of each systems failure, malfunction, delay or security incident to which paragraph (1)(d) applies.”.

**12.** The Regulation is amended by inserting, after section 4.6, the following:

**“Auxiliary systems**

**4.6.1.** (1) In this section “auxiliary system” of a recognized clearing agency means a system that shares network resources with one or more of the systems operated by or on behalf of the recognized clearing agency that supports the recognized clearing agency's clearing, settlement and depository functions and that, if breached, would pose a security threat to one or more of the previously mentioned systems.

(2) For each auxiliary system, a recognized clearing agency must

(a) develop and maintain adequate information security controls that relate to the security threats posed to any system that supports the clearing, settlement and depository functions,

(b) promptly notify the regulator or, in Québec, the securities regulatory authority of any security incident that is material and provide timely updates on

(i) the status of the incident,

(ii) the resumption of service, where applicable, and

(iii) the results of the clearing agency's internal review of the security incident, and

(c) keep a record of any security incident and, if applicable, document the reasons why the clearing agency considered that such a security incident was not material.

(3) A recognized clearing agency must provide the regulator or, in Québec, the securities regulatory authority, with a report, by the 30<sup>th</sup> day after the end of the calendar

quarter, containing a log and summary description of each security incident to which paragraph (2)(c) applies.”.

**13.** Section 4.7 of the Regulation is amended:

(1) by replacing paragraph (1) with the following:

“(1) A recognized clearing agency must

(a) on a reasonably frequent basis and, in any event, at least annually, engage a qualified external auditor to conduct an independent systems review and prepare a report in accordance with established audit standards and best industry practices to ensure that the clearing agency is in compliance with paragraph 4.6(1)(a), and sections 4.6.1 and 4.9, and

(b) on a reasonably frequent basis and, in any event, at least annually, engage one or more qualified parties to perform appropriate assessments and testing to identify security vulnerabilities and measure the effectiveness of information security controls that assess the clearing agency’s compliance with paragraphs 4.6(1)(a) and 4.6.1(2)(a).”.

(2) by replacing, in the text preceding subparagraph (a) of paragraph (2), “subsection (1)” with “paragraph (1)(a)”.

**14.** Section 4.10 of the Regulation is amended by replacing, in paragraph (g), the words “an appropriate” with the words “a reasonable”.

**15.** Section 5.1 of the Regulation is amended by deleting, in paragraph (1), the words “and must keep those other books, records and documents as may otherwise be required under securities legislation”.

**16.** Section 5.2 of the Regulation is amended:

(1) by replacing paragraph (1) with the following:

“(1) In this section, "Global Legal Entity Identifier System" means the system for unique identification of parties to financial transactions”;

(2) by replacing, in paragraph (2), the word “a single” with the word “the”;

(3) by inserting, after paragraph (2), the following:

“(2.1) Throughout the period that the clearing agency is recognized as a clearing agency or is exempt from the requirement to be recognized as a clearing agency, the clearing agency must maintain and renew the legal entity identifier referred to in subsection (2).”.

**17.** Section 6.1 of the Regulation is amended by inserting, in paragraph (3) and after the words “Except in”, the words “Alberta and”.

**18.** Form 24-102F1 of the Regulation is amended:

(1) by replacing, in paragraph 7, “[province of local jurisdiction]” with “[name of local jurisdiction]”;

(2) by replacing, in paragraph 10, the words “be a recognized” with the words “be recognized”;

(3) by deleting, wherever it appears in the text under the words “**CONSENT TO ACT AS AGENT FOR SERVICE**”, the word “insert”.

**19.** Form 24-102F2 of the Regulation is amended:

(1) by replacing, in Exhibit B, the words “ceasing business” with the words “ceasing to carry on business”;

(2) by replacing, wherever they appear in Exhibits C and D, the words “the cessation of” with the words “ceasing to carry on”;

(3) under the heading “**CERTIFICATE OF CLEARING AGENCY**”:

(a) by replacing “(Name of clearing agency)” with the words “Name of clearing agency”;

(b) by replacing “(Name of director, officer or partner – please type or print)” with “Name of director, officer or partner (please type or print)”;

(c) by replacing “(Signature of director, officer or partner)” with the words “Signature of director, officer or partner”;

(d) by replacing “(Official capacity – please type or print)” with “Official capacity (please type or print)”.

**20.** This Regulation comes into force on *(indicate here the date of coming into force of this Regulation)*.