

REGULATION TO AMEND REGULATION 24-102 RESPECTING CLEARING AGENCY REQUIREMENTS

Securities Act

(chapter V-1.1, s. 331.1, par. (1), (3), (4.1), (9.1), (11), (19), (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 apply:”;

(b) by replacing, in subparagraph (i) of subparagraph (a), the words “by way of security” with the words “by way of a security interest”;

(c) 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 – meaning of affiliate for the purposes of the PFMI principles

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 subsequently referred to in this section as a “party”, if any of the following apply:

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

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

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

3. Section 2.1 of the Regulation is amended:

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

“(b) sufficient information to demonstrate that the applicant is

(i) in compliance with applicable provincial and territorial securities legislation, or

(ii) subject to and in compliance with the regulatory requirements of the foreign jurisdiction in which the applicant’s head office or principal place of business is located that are comparable to the applicable requirements under this Regulation;”;

(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 inserting, in paragraph (2) and after the words “each interim period”, the words “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 subparagraph (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 of PFMI Principle 20 and 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 nor 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 subparagraph (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 nor officers of a participant nor”;

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

“(5) For the purpose of this section, an individual is independent of a clearing agency if the individual has no relationship with the agency that could, in the reasonable opinion of the clearing agency’s board of directors, be expected to interfere with the exercise of the individual’s independent judgment.”.

11. Section 4.6 of the Regulation is amended:

(1) in paragraph (a):

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

“(i) adequate internal controls over that system, and”;

(b) by inserting, in subparagraph (ii) and after the word “adequate”, the words “cyber resilience and”;

(2) by replacing subparagraph (ii) of paragraph (b) with the following:

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

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

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

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

(ii) the resumption of service, if applicable;

(iii) the results of any internal review, by the clearing agency, of the failure, malfunction, delay or security incident; and”;

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

“(d) keep a record of any systems failure, malfunction, delay or security incident and whether or not it is material.”.

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

“Auxiliary systems

4.6.1. (1) In this section, “auxiliary system” means a system, other than a system referred to in section 4.6, operated by or on behalf of a recognized clearing agency that, if breached, poses a security threat to another system operated by or on behalf of the recognized clearing agency that supports the recognized clearing agency’s clearing, settlement or depository functions.

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

(a) develop and maintain adequate information security controls that address the security threats posed by the auxiliary system to the system that supports the clearing, settlement or depository functions,

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

(i) any change in the status of the incident,

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

(iii) the results of any internal review, by the clearing agency, of the security incident, and

(c) keep a record of any security incident and whether or not it is material.”.

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, that assesses the clearing agency’s compliance with paragraphs 4.6(a) and 4.6.1(2)(a) and section 4.9, and

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

(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 words “a single” with the word “the”;

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

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

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 paragraph under the title “**AGENT 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 title “**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. (1) This Regulation comes into force on 19 June 2020.

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