CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Staff Notice 24-310
Status Update on Proposed Local Rules 24-503 *Clearing Agency Requirements* and Related Companion Policies

July 17, 2014

Introduction

Staff of the Canadian Securities Administrators (the CSA or we) are publishing this notice to update the public on proposed rule-making initiatives of certain CSA jurisdictions governing clearing agencies. On December 18, 2013, the Autorité des marchés financiers du Québec (AMF), Manitoba Securities Commission (MSC) and Ontario Securities Commission (OSC) each published for comment the following documents, in substantially similar form, in their respective jurisdictions:

- a proposed local rule 24-503 regarding clearing agency requirements (proposed Local Rule);[1]
- a related proposed local companion policy 24-503CP (proposed CP); and
- a notice and request for comments on the proposed Local Rule and CP (Request Notice).

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

The proposed Local Rule has several purposes. It 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). Guidance on the regulatory approaches to applications for recognition or exemption is set out in the proposed CP. The proposed Local Rule also sets out on-going requirements for *recognized* clearing agencies that act as, or perform the services of, a central counterparty (CCP), central securities depository (CSD) or securities settlement system (SSS). These requirements are based largely on international standards applicable to financial market infrastructures (FMIs) set out in the April 2012 report *Principles for financial market infrastructures* (as the context requires, the PFMIs or

[1] 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*.

[2] The Multilateral Notice can be found on certain websites of such authorities. In British Columbia, for example, see: 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_/

PFMI report) published by the Committee on Payment and Settlement Systems (CPSS) and the International Organization of Securities Commissions (IOSCO).[3]

A key objective of the proposed Local Rules is to adopt, in Canada, the CPSS-IOSCO international standards governing FMIs set out in the PFMI report. Implementation of the standards is intended to enhance the safety and efficiency of FMIs, limit systemic risk, and foster financial stability. It is also intended to support the work of the CSA Derivatives Committee to develop a comprehensive regulatory framework for the trading and clearing of derivatives in Canada.

Status Update

(a) Development of uniform Canadian requirements

In response to the Request Notices, stakeholders suggested that provincial securities regulators take a unified approach to implementing the PFMIs. The CSA had discussed the prospect of a national instrument prior to the development of the proposed Local Rules, but we determined that such an approach was not feasible at the time. The CSA have reconsidered, and agree that adoption of uniform requirements governing clearing agencies is now possible and would benefit the markets. We propose to adopt the PFMIs across the country as a national instrument (proposed National Instrument). Clearing agencies operating in Canada are national in scope, and a national instrument will therefore facilitate the implementation of uniform, consistent and transparent requirements for clearing agencies in all Canadian jurisdictions.

The CSA intend to develop the proposed National Instrument by taking into consideration the comments received on the proposed Local Rules (see below "Summary of Comments on Proposed Local Rules").We expect that the proposed National Instrument will be published for a 60 day comment period in the fall of 2014.

(b) Anticipated benefits of the proposed National Instrument

As with the proposed Local Rules, the purpose of the proposed National Instrument will be to enhance the regulatory framework for recognized clearing agencies operating or seeking to operate in a Canadian jurisdiction. This regulatory framework will facilitate ongoing observance by recognized clearing agencies of international minimum standards applicable to FMIs. The CSA believe that the proposed National Instrument 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. Also, the proposed National Instrument 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.

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

(c) Joint supplementary guidance

As with the proposed CPs, the companion policy to the proposed National Instrument will include supplementary guidance jointly developed by the CSA and the Bank of Canada (Bank) for domestic clearing agencies that are regulated by CSA jurisdictions and the Bank (Joint Supplementary Guidance). Joint Supplementary Guidance related to governance standards was published for comment in the proposed CPs. The CSA and the Bank intend to publish for comment further Joint Supplementary Guidance on other standards. The CSA intend to publish for comment such further Joint Supplementary Guidance in the companion policy to the proposed National Instrument.

Because of its importance to certain Canadian clearing agencies, the Bank has published the Joint Supplementary Guidance related to liquidity risk on its website for a 30-day comment period.[4] We are supportive of the Bank's publication of this guidance. We intend to re-publish the guidance related to liquidity risk later this fall with the proposed National Instrument and related companion policy. We would encourage prospective commenters to provide their views, if any, during the Bank's comment period, which expires on August 4, 2014[5] so that any feedback can be incorporated when we publish the proposed National Instrument and related companion policy.

Summary of Comments on Proposed Local Rules

The comment period for the proposed Local Rules and CPs ended on March 12, 2014 (for the MSC) and March 18, 2014 (for the AMF and OSC), respectively. Taken together, nine comment letters were received by the regulators. The list of commenters is attached as Appendix "A" to this Notice. We thank the commenters for taking the time to consider the proposed Local Rules and CPs.

We have provided a summary of comments received on the proposed Local Rules and CPs in Appendix "B". As noted above, the CSA intends to carefully consider the comments in developing the proposed National Instrument. The publication of the proposed National Instrument and related companion policy later this fall will include responses to such comments. The public will have an opportunity to review and comment on the proposed National Instrument.

In general, the commenters thought that adoption of the CPSS-IOSCO standards would be a positive step for the Canadian markets and the regulation of its FMIs. There was also general agreement with the proposed Local Rules' purpose and key objectives. Aside from a desire for a uniform approach – which will be dealt with through the development of the proposed National Instrument – some commenters requested that the PFMIs be incorporated into the rule framework in a more direct fashion than had been proposed in the proposed Local Rules, and that they be clearly separated from any additional requirements which are unique to the Canadian context. We will consider how best to redraft the proposed National Instrument to more directly

[4] The Bank of Canada guidance can be found at this address: http://www.bankofcanada.ca/core-functions/financial-system/oversight-designated-clearing-settlement-systems/bank-of-canada-risk-management-standards-for-designated-fmis/.
[5] See the Bank's Notice at: http://www.bankofcanada.ca/2014/07/public-consultation-policy-guidance/

incorporate the text of the PFMI principles and (where appropriate) their key considerations as rule requirements. We will also consider how best to separately identify other requirements, if any, that are in addition to the PFMIs.

The remaining comments on specific matters are summarized in the attached Appendix "B".

Questions

Questions with respect to this Notice, or the comments attached hereto, may be referred to:

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APPENDIX "A" TO CSA NOTICE 24-310

Status update on proposed Local Rules 24-503 *Clearing Agency Requirements* and related companion policies

List of Commenters

Canadian Investor Protection Fund

Canadian Life and Health Insurance Association Inc.

CME Group Inc.

IGM Financial Inc.

Investment Industry Association of Canada

LCH.Clearnet Group Ltd.

RBC Global Asset Management Inc.

TMX Group Ltd. (on behalf of all its subsidiaries)

TMX Group Ltd. (on behalf of its financial market infrastructures: Canadian Derivatives Clearing Corporation, The Canadian Depository for Securities Limited, and Natural Gas Exchange)

APPENDIX "B" TO CSA NOTICE 24-310

Status update on proposed Local Rules 24-503 *Clearing Agency Requirements* and related companion policies

Summary of Comments

Theme/question[6]	Summary of comments
General	
Purposes of the proposed Local Rule and approach to drafting	One commenter disagrees with the drafting approach chosen to achieve the purposes of the proposed Local Rule (i.e. adopting the PFMIs in a rule). The commenter feels that differences, however modest, between the PFMIs and the proposed Local Rule would require complex, time consuming and costly analyses of such differences (including what, if any, non-PFMI provisions have been added to the proposed Local Rule). The commenter enumerates several possible consequences resulting from the approach (which necessitates analyses of possible differences from the PFMIs): • it may deter participants and clearing agencies from entering/expanding in the Canadian market, leading to less competition, liquidity and stability as a whole; • clearing agencies that have begun self-assessments according to PFMI standards would have to reconsider the proposed Local Rule requirements; • domestic clearing agencies held to more rigorous provincial requirements than those based in foreign jurisdictions would be disadvantaged by an uneven playing field; • CPSS-IOSCO implementation monitoring efforts of the PFMIs would be confused by potentially different standards imposed on Canadian clearing agencies; • foreign regulators would have difficulty assessing equivalency of the proposed Local Rule to their own PFMIs-based requirements; and • assessment as a "qualifying CCP" (QCCP) could be made more difficult and uncertain, should the Local Rule's requirements be seen as different from, or potentially imposing lower standards than, the PFMIs. The commenter expresses that the stated purposes of the proposed Local Rule could be achieved by requiring direct compliance with the international standards, and only adding to a proposed Local Rule the additional requirements that would be unique to a province.
Unified approach to rule-drafting	A commenter is concerned that the complexity of analyzing the differences between the proposed Local Rule and the PFMIs would be magnified by the impact of each jurisdiction enacting its own rule. The commenter calls for a unified approach to drafting and implementing the proposed Local Rule amongst the provincial/territorial regulators.

[6] A reference to a provision (i.e., section, subsection, paragraph, etc.) is a reference to a provision of the proposed Local Rule, unless otherwise indicated.

Theme/question[6]	Summary of comments
Requirements pursuant to existing terms and conditions	One commenter says that it was unclear whether certain recognized/exempt clearing agencies would be required to continue to comply with an existing term and condition that requires compliance with the PFMIs, possibly in addition to the proposed Local Rule.
Foreign-based entities' compliance with proposed Local Rule, and equivalence and mutual recognition approaches	A commenter is concerned that the proposed Local Rule is not clear whether foreign-based clearing agencies that are recognized in a province will be required to comply with all new provisions, or may continue to abide by terms and conditions in their existing recognition orders. The commenter notes that adhering to the proposed Local Rule's Part 3 provisions would be duplicative and inefficient when considering the regulation in a home jurisdiction, whereas current terms and conditions already address the balance with the home jurisdiction's regulation.
	Two commenters highlight a need for access to third-country markets / clearing agencies under the concepts of equivalence and mutual recognition. One commenter suggests that an equivalence test be based on transparent, proportionate, fair and objective grounds, and should be judged on an outcome-determinative basis that looks to the PFMIs for guidance, so as to recognize the differences in legal and regulatory structures around the world. The commenters advocate for a process similar to the EMIR scheme for the recognition of third country CCPs, which relies on an equivalence assessment of the home country's legal and regulatory structure and an MOU between ESMA and the relevant regulator. The commenters also note that terms and conditions would have to be appropriate in light of the supervision and oversight being carried out in multiple jurisdictions, and that reliance should be placed on the regulations in the home jurisdictions to implement the PFMIs in place of direct application of CSA requirements on third country CCPs.
Part 2: Clearing agency recognition or exemption from recognition	
Request Notice question 1: Are there other factors that could be considered in determining systemic importance of a clearing agency to the relevant province? If so, please describe such factors and your reasons for including them. Subsections 2.0(2)-(5) of the proposed CP – systemic importance	A commenter notes that the proposed definition should include (a) the extent to which failure of a clearing agency would require the use of public funds to maintain the stability of Canada's financial infrastructure, and (b) the impact a clearing agency failure would have on Canada's financial infrastructure.
	A commenter notes that it would be useful to view the criteria within the context of the currencies in which an FMI's obligations are denominated, since any effects in Canada may depend on the value of an FMI's CDN dollar-denominated transactions.
	A commenter suggests that the linkages between the clearing agency and other CCPs should be considered, including instances in which they assume exposure to one or more CCPs, as well as how such exposures are managed.
	A commenter suggests that any risk exposure of the clearing agency to counterparties that are not residents of a relevant province but are systemically important to those residents should be considered.

Theme/question[6]	Summary of comments
	A commenter highlights the absence of an appeal mechanism for parties who wish to have their determination of systemic importance reviewed.
Significant changes and other changes in information Section 2.2	A commenter notes that the advanced approval requirement for significant changes and notification of fee changes is inconsistent with international regulations and thus puts domestic clearing agencies on an uneven playing field relative to foreign-based clearing agencies, who may make such changes more quickly. The commenter describes that CFTC regulations for derivatives clearing agencies, for example, require only self-certification of rule changes with the CFTC 10 business days in advance of the change. The commenter requests aligning the requirements with those of the CFTC.
Filing of initial audited financial statements Section 2.4	A commenter notes that while it plans to adopt the use of IFRS in the near future, it currently prepares its financial statements in accordance with UK GAAP, as per its home regulator's requirements. It requests confirmation that the provincial/territorial regulators will flexibly implement s. 2.4 to allow conformation with local regulatory requirements and that the provision will not negatively impact its operations in the relevant province.
Filing of annual audited and interim financial statements Section 2.5	A commenter urges the provincial/territorial regulators to extend the approach taken under s. 2.2 – to allowing alternate means to meeting the provision's requirement for foreign-based entities, as specified in its recognition/exemption order – to the requirements of s. 2.5. The commenter notes that some home country regimes do not require interim financial statements to be audited.
Part 3: On-going requirements applicable to recognized clearing agencies	
Section 3.2 – Governance	
Joint Supplementary Guidance Box 2, Item 1 Subsection 3.2(2) of the proposed CP	A commenter felt that the statement "the FMI functions should be legally separated from other functions performed by the consolidated entity in order to maximize bankruptcy remoteness of the FMI functions" does not align with the PFMIs paragraph 3.2.6. The commenter interprets that the PFMIs describe legal separation as a consideration when services present a distinct risk profile from, or pose additional risks to, its existing functions. So, whereas legal separation may be effective for multi-functional risks on a case-by-case basis, it is just one mechanism, in addition to, for example, effective governance and containment of risk through contractual terms.
Role of the chief compliance officer Paragraph 3.2(7)(d)	A commenter feels that the requirement could impose significant effort and cost on a clearing agency registered in multiple jurisdictions. Alternatively, the commenter proposes that recognized foreign clearing agencies be able to leverage similar information/reports provided to other regulators or information in its CPSS-IOSCO FMI Disclosure Framework Document.
Transparency of major decisions Subsection 3.2(13)	A commenter proposes that, before a major decision that has a potential broad market impact is published, the clearing agency should be permitted to make a case for non-publication on the grounds of possible negative impact to financial stability in any of the jurisdictions in which it operates. Also, the publication should be made only with the approval of a relevant home-

Theme/question[6]	Summary of comments
	jurisdiction regulator and/or regulator of any other impacted jurisdiction.
	A commenter also notes that it would make sense that ss. 3.2(13) should only apply to determinative decisions of a clearing agency's Board, since other (more preliminary or interim) resolutions may be confusing, misleading or inappropriately market-moving.
Section 3.5 – Collateral and Section 3.7 – Liquidity risk	
Collateral – general principle Subsection 3.5(1)	A commenter says it is essential that letters of credit be perceived as permitted collateral, notwithstanding that the wording of the provision does not specifically suggest otherwise. The commenter requests positive clarity that letters of credit are intended to be included.
Collateral and liquidity risk Sections 3.5, 3.7	A commenter requests flexibility in the eligible collateral a clearing agency can accept, as certain financial industries, such as the life insurance industry, tend to hold long-dated corporate securities to support the long-term nature of their activities. The commenter suggests that such participants would incur significant costs in obtaining more liquid assets to post as collateral with a clearing agency. It requests that long term assets, such as high grade corporate bonds, be considered eligible.
Qualifying liquid resources Subsections 3.7(8) and (9)	With respect to par. 3.7(8)(a), a commenter notes that there is minimal liquidity risk with respect to major currencies and any potential concerns could be addressed through a foreign haircut allowance, if necessary. The commenter interprets that PFMIs paragraph 3.7.10 contemplates holding liquid resources in more than one currency, but does not strictly require that the currency of liquid resources must exactly match the currency of the obligations. Further, if highly marketable collateral held in investments are permitted, given the standardization and marketability of major currencies, it does not seem reasonable to require that cash must be held in the same currency of the obligation.
	With respect to par. 3.7(8)(b), a commenter requests that committed lines of credit be expanded to include letters of credit, as they are committed obligations of an underwriting bank.
	With respect to par. 3.7(8)(e) and the posting of bonds as collateral, a commenter notes that it is not clear what is included as "highly marketable collateral" or what funding arrangements would qualify as prearranged and highly reliable. The commenter is concerned that should customers not be able to post bonds as collateral with clearing members, because they in turn cannot post bonds to a clearing agency, customers or clearing members will be required to enter into repurchase transactions to raise cash to post, which may impose additional costs without reducing systemic risk.
Section 3.13 – Participant default rules and procedures	
Use and sequencing of financial resources Subsection 3.13(3)	A commenter asserts that it is not practical for a clearing agency to pre-commit to use particular liquidity resources in a specific order; rather the use of various resources to meet time-sensitive needs will depend on the details of a default situation. Also, the inclusion of such a hierarchy in publicly disclosed rules (or only to members) could make the clearing agency vulnerable to gaming by market participants. Accordingly, any plan for using

Theme/question[6]	Summary of comments
	liquidity resources should remain confidential, or at least disclosed only at a high level.
Testing of default procedures Subsection 3.13(6)	A commenter requests that only entities that clear positions for their clients' futures commission merchant (FCM) services or that are involved in loss mutualization be involved as the required participants and stakeholders for the testing of a clearing agency's default rules and procedures. The commenter explains that for clearing members of a private, non-mutualized clearing agency, clearing members are clearing for their own accounts, and do not provide services typically afforded by FCMs. Accordingly, in the event of a default and close out, non-defaulting participants are neither impacted nor included in the process. As such, these members are unwilling to, and see little value in being involved in the testing and review of relevant procedures.
Use of own capital Subsection 3.13(8)	A commenter expresses that, while the PFMIs contemplate that an FMI using its own resources is an option for the management of a default, it is not actually required. Further, while the proposed Local Rule may require 'skin in the game' to motivate a clearing agency to act in a manner that would minimize loss and risk to all, given the reputational risk the clearing agency has at stake as the market watches its response to a default, it is unnecessary to add any additional motivating factor.
Section 3.14 – Segregation and portability	
General comments	A commenter expresses concern that, in the context of a securities firm insolvency, the application of Principle 14 to all markets may impede or negate the ability of a trustee in bankruptcy, as well as investor protection funds, from returning the firm's client funds, and will only move the Canadian framework closer to the US model, in spite of the well-received Canadian performances to date. Whereas collateral would have to be held on a gross basis by the CCP, CIPF coverage would be impacted because assets held at the CCP would not vest with the CIPF trustee. Indeed, the principle of pooling assets for pro-rata distribution – the cornerstone of Part XII of the *Bankruptcy and Insolvency Act* – would no longer be applied to all clients.
	A commenter notes that in the particularly complex area of open futures positions, the application of Principle 14 would negatively affect the ability of CIPF to provide customer protection, if the CCP has custody of clients' assets and it does not vest in a trustee.
	A commenter expresses concern about the impact to IIROC members when applying Principle 14. Such members would not have the same degree of collateral available to them for their use, where there is a different margin requirement by the CCP vs. the clearing member.
	A commenter expresses concern about the operational issues and impacts related to a CCP undertaking the responsibility to move client assets, especially because the CCP may not have client account information which is held by a clearing member.
Customer account structures and transfer of positions and collateral	A commenter suggests to replace "or" with "and/or" to accommodate clearing members who clear for a combination of clients that include both

Theme/question[6]	Summary of comments
Subparagraph 3.14(4)(a)(ii)	individual and omnibus accounts.
Request Notice question 2: Do you agree with the current drafting approach of section 3.14 of the Rule, i.e., requiring all CCPs to meet Principle 14 in its entirety (without referencing the alternate approach), and granting exemptions on a case-by-case basis to those CCPs for which the alternate approach is appropriate?	Three commenters argue that CCPs serving the cash markets should not be required to obtain an "exemption" from section 3.14, as the wording of Principle 14 should be understood to allow, as a matter of course, the application of its "alternate approach" to cash market CCPs that provide the same protections as those envisioned by the Principle (as explained in PFMIs paragraph 3.14.6). The commenters express that an "exemption" may imply that the CCP employs a weaker approach to investor protection than that which is otherwise required by the PFMIs.
	A commenter is unsure whether timely portability could be achieved without supporting legislation to ensure a release of funds within a certain period.
Request Notice question 3: Should all CCPs serving the Canadian cash markets be able to avail themselves of the alternate approach to implementation of Principle 14? How could such CCPs demonstrate that customer assets and positions are protected to the same degree envisioned by Principle 14?	Three commenters conclude that cash market CCPs should be able to demonstrate how they fit within the alternate approach, if they satisfy the criteria set out in paragraph 3.4.16 of the PFMIs. The combination of IIROC rules, CIPF customer protection (that extends to all assets held in a customer's account, including securities, cash balances, commodities, futures contracts, segregated insurance funds or other property) and the Part XII *Bankruptcy and Insolvency Act* scheme, in the Canadian regulatory environment should be conducive to satisfying this alternate approach. At least one commenter feels that the alternate approach should extend to all CCPs not serving the OTC derivatives markets.
	Two commenters argue that unintended consequences would be severe if CCPs serving markets other than the OTC derivatives markets were not able to avail themselves of the alternate approach.
	A commenter describes several consequences that might arise if the alternate approach is unavailable for non-OTC market CCPs: (1) the efficiencies achieved by netting trades would be lost as segregation and portability requirements would force CCPs to decompose netted trades, thereby increasing costs to the CCP and reducing the risk reduction provided by netting; (2) costly changes would be required to the CCP's margining system, in order to margin positions at a gross level; (3) for CCPs without cross-product margining, the introduction of portability could result in higher margin requirements for legitimate market activity; (4) CCPs would have to develop a communication mechanism to inform investors of their collateral/positions in the event of a CCP participant insolvency; and (5) market participants would be negatively impacted by having to undertake significant reconciliation efforts, as each trade would have to be individually inspected to note the client and its corresponding collateral.
	A commenter suggests that CCPs could demonstrate their protection of customer assets and positions through disclosure of: (i) the nature of the information held in respect of individual clients; (ii) the roles and responsibilities of surviving participants under default scenarios; and (iii) the processes and procedures to be followed by the CCP and its surviving participants in these circumstances. It is also suggested that for CCPs obligated to test default management processes, the processes enabling portability of positions and collateral should also be tested.

Theme/question[6]	Summary of comments
Section 3.15 – General business risk	
Determining sufficiency of liquid net assets Subsection 3.15(3)	A commenter requests that the last sentence of PFMI key consideration 15.3 be included in section 3.15(3) in order to avoid duplicate capital requirements by permitting the inclusion of equity held under international risk-based capital standards, where appropriate.
Section 3.16 – Custody and investment risks	
Investment strategy Subsection 3.16(4)	A commenter is concerned that public disclosure of its investment strategies could negatively impact its ability to invest large amounts of cash on a daily basis. It requests that investment strategies only be disclosed at a high level and only to participants.
Section 3.17 – Operational risks	
Operational capacity, systems requirements, and incident management Paragraph 3.17(5)(e)	A commenter suggests that an alternative should be available for foreign-based recognized clearing agencies. It requests that this alternative be provided in the clearing agency's recognition order or 'notice and approval protocol'.
Operational capacity, systems requirements, and incident management Subsections 3.17(8), (9)	A commenter requests that public disclosure under these subsections not include detailed proprietary information.
Operational capacity, systems requirements, and incident management Subsection 3.17(11):	In respect of paragraph (b), one commenter suggests that the provision should allow a foreign-based recognized clearing agency to meet the requirement in a manner described in the terms and conditions of its recognition order or 'notice and approval protocol'. In respect of paragraph (c), one commenter expresses concern that the scope of this disclosure requirement is too broad. It suggests that it be narrowed to only include non-sensitive information that is not proprietary in nature.
Request Notice question 4: What are a clearing agency's current abilities and future prospects to meet the objective of recovering and resuming critical systems and processes within two hours of a disruptive event? Should recovery and resumption-time objectives differ according to critical importance of markets? Subparagraph 3.17(12)(c)(i)	A commenter requests further clarity with respect to whether (i) the ability of a clearing agency to meet the two hour requirement would impact how the requirement is applied, and (ii) whether more than two hours may be permitted, if necessary. The commenter notes that the proposed timeframe appears arbitrary and may not be the appropriate recovery objective in Canada. A commenter notes that recovery and resumption time objectives should not differ from market to market, based on critical importance.
Section 3.19 – Tiered participation arrangements	
Request Notice question 5: To what extent can a CCP identify and gather information about a tiered (indirect) participant? Section 3.19	A commenter requests further clarity as to whether (i) the ability of the clearing agency to meet the requirement would impact how the requirement is applied, and (ii) the type and extent of the information that would be required to be gathered. A commenter submits that it is challenging for Canadian CCPs to identify or

Theme/question[6]	Summary of comments
	gather meaningful information pertaining to indirect/tiered participants, due to the lack of legal or other contractual relationship between the CCP and the indirect participant, and more generally, because Canadian clearing models are founded on the 'principal model'. The model utilizes omnibus account structures which enable the CCP to distinguish proprietary and client assets, but more granular detail would be needed to permit the CCP to identify and measure the activity of indirect participants. CCPs have limited recourse to require the necessary information disclosures from indirect participants.
	A commenter notes that CCPs are able to gather sufficient information about their indirect participants to be able to manage the risks they pose.
Request Notice question 6: In Canada, what types of risks (such as credit, liquidity, and operational risks) arise in tiered participation arrangements between customers and direct participants or between customers and other intermediaries that provide clearing services to such customers?	A commenter agreed that all cited risks are present in tiered participation arrangements.
Request Notice question 7: How can a clearing agency properly manage the risks posed by tiered participation arrangements?	A commenter described that the control, mitigation and management of risks would require, at a minimum, the disclosure of client accounts and/or securities positions by direct CCP participants. Doing so would allow the CCP to meet the minimum standards of Principle 14 and would allow a CCP to modify or calibrate its risk model towards the effective management of the credit and liquidity risks that tiered participants introduce to the clearing system.
	A commenter suggests two layers of controls to help manage risks posed by tiered participation arrangements: (i) require the clearing agency to gather detailed information on the direct participant's customer activity in order to identify relationships and positions at the indirect participant level, and (ii) require the clearing agency to act on the information within a risk policy framework that identifies, signals and monitors risks and risk concentrations and which, where appropriate, provides incentives for participants to reduce these risks and concentrations.
Section 3.23 – Transparency	
Changes to rules and procedures Subsection 3.23(5)	A commenter requests that a clearing agency's disclosure of changes to its rules and procedures be limited to only what is required by its recognition order or 'notice and approval protocol'. It also expresses its belief that disclosure should be limited to services over which the regulatory authority possesses jurisdiction.
Part 5: Effective dates and transition	
Section 5.1	A commenter requests that, where a clearing agency has already carried out preparatory work or has dedicated resources to PFMIs implementation plans (that have been approved by its regulators), the transition periods should take such efforts into account. The commenter also requests that where the CSA's

Theme/question[6]	Summary of comments
	implementation of the PFMIs differ from CPSS-IOSCO, that the CSA provide a mechanism through which PFMI requirements that are substantively similar to the CSA requirements be grandfathered under the proposed Local Rule.
	In respect of the interaction of CSA Staff Notices 91-303 and 91-304, one commenter notes that there are significant operational implications and unknowns for customers, in terms of setting up procedures to deal with derivatives clearing agencies (DCAs) and clearing members. Accordingly, there will need to be transition time once DCAs are established and before all clearing requirements are implemented. The commenter also expresses concern that it is unclear how many DCAs will exist and how they will be differentiated, leading to the possibility that transactions that would otherwise net to zero may be required to clear at different derivatives clearing agencies, thereby resulting in exposures that are not being offset.
Subsection 5.1(2)	A commenter suggests that sections 3.4-3.7 should have the same effective date as CSA Staff Notices 91-303 and 91-304 in order to ensure customers have the protection of risk management tools when clearing trades.
Request Notice question 8: Are the above transition periods appropriate? If yes, please give your reasons. If not, what alternative transition periods would balance the CPSS-IOSCO's expectation of timely implementation of the PFMIs and the practical implementation needs of our markets? Subsection 5.1(3)	A commenter notes that successful implementation under the proposed timeline may be difficult.