

**June 25, 2015**

## **Introduction**

On October 31, 2014, amendments to section 67 of the *Securities Act*<sup>1</sup> (Alberta) (the **Act**) were proclaimed in force. Section 67 of the Act now prohibits a person or company from carrying on business as a clearing agency in Alberta unless it is recognized by the Alberta Securities Commission (the **Commission**) as a clearing agency.

The Commission pursuant to Blanket Order 24-502 provided a temporary exemption from the clearing recognition requirement in order that each person or company carrying on business as a clearing agency in Alberta be given sufficient time to apply for recognition. Pursuant to the Blanket Order, the clearing recognition requirement is inapplicable until October 31, 2015.

To assist market participants with this new requirement, Alberta Securities Commission Staff (**Staff**) are publishing this Notice setting out the regulatory approach that Staff will use when evaluating requests and making recommendations to the Commission regarding the appropriate level of regulation of clearing agencies that carry on business in Alberta.

We encourage all entities operating, or intending to operate, in Alberta as a clearing agency to contact Staff listed in the Notice as soon as possible with any questions regarding the new recognition requirement.

## **Regulation of clearing agencies carrying on business in Alberta**

Section 67(1) of the Act prohibits a person or company from carrying on business as a clearing agency in Alberta unless it is recognized by the Commission as a clearing agency. Section 67(3) of the Act provides that the Commission may recognize a person or company proposing to carry on business as a clearing agency in Alberta, if the Commission considers that it would not be prejudicial to the public interest to do so. The Commission may exempt a clearing agency carrying on business in Alberta from the requirement to be recognized under its general exempting power under section 213 of the Act.

Section 1(f) of the Act defines a clearing agency as follows:

1 (f) “clearing agency” means a person or company that,

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<sup>1</sup> *Securities Act* (Alberta), RSA 2000, C S-4, s. 67(1) <http://www.qp.alberta.ca/documents/Acts/s04.pdf>

- (i) in connection with trades in securities,
  - (A) acts as an intermediary in paying funds or delivering securities, or both,
  - (B) provides centralized facilities through which trades in securities are cleared, or
  - (C) provides centralized facilities as a depository of securities,or
- (ii) in connection with trades in derivatives, provides centralized facilities for the clearing and settlement of trades in derivatives and that, with respect to a contract, instrument or transaction,
  - (A) enables each party to a derivatives trade to substitute, through novation or otherwise, the credit of the clearing agency for the credit of the parties,
  - (B) arranges or provides, on a multilateral basis, for the settlement or netting of obligations resulting from a derivatives trade, or
  - (C) otherwise provides clearing services or arrangements that mutualize or transfer among participants in the clearing agency the credit risk arising from derivatives trades;

A clearing agency that carries on or seeks to carry on business in Alberta will be required to either apply for recognition under section 67 of the Act or apply for an exemption under section 213 of the Act.

Generally, Staff would recommend to the Commission that a clearing agency whose clearing activities have a real and substantial connection to the Alberta capital market be regulated by the Commission on the basis that it is carrying on business in Alberta. This will generally include a clearing agency that is systemically important to the Alberta capital market, based in Alberta, provides direct clearing services in Alberta, or provides direct or indirect clearing services for an exchange recognized in Alberta, if the Commission is the lead or joint lead regulator of the exchange.

Staff would generally recommend to the Commission that a clearing agency that is carrying on business in Alberta and is based in Alberta be recognized and subject to the Commission's full clearing agency regulation and oversight.

Depending upon the circumstances, Staff may recommend to the Commission that a clearing agency carrying on business in Alberta be granted an exemption from recognition pursuant to section 213 of the Act. For example, we may consider this approach for a clearing agency based outside of Alberta that is carrying on business or intends to carry on business in Alberta, if it is regulated and under the direct oversight of another regulatory authority with a regulatory regime comparable to Alberta's.

## **Proposed National Instrument 24-102 Clearing Agency Requirements**

A proposed framework for the regulation of clearing agencies carrying on business in Canadian jurisdictions was published for comment in proposed National Instrument 24-102 *Clearing Agency Requirements (NI 24-102)* on November 27, 2014, with the comment period closing February 10, 2015.<sup>2</sup> A clearing agency carrying on business or seeking to carry on business in Alberta should consult NI 24-102 and its related Companion Policy for guidance regarding the regulatory framework that will apply to its operations.

A recognition order issued by the Commission under section 67 of the Act, and an exemption order issued by the Commission under section 213 of the Act, will be subject to terms and conditions that are determined based on an evaluation of the requirements set out in NI 24-102, the operations of the clearing agency, and other relevant factors.

In an order exempting a clearing agency from the recognition requirement under section 213 of the Act on the basis that it is subject to a comparable regulatory and oversight regime in another Canadian or foreign jurisdiction the Commission may include the following terms and conditions:

- a. ongoing compliance with home jurisdiction regulation and oversight requirements
- b. notice to the Commission of material changes to its business, operations or information provided in the application
- c. provision of information by the applicant
- d. information sharing arrangements with the applicant's home regulator
- e. home jurisdiction's adherence to CPSS-IOSCO *Principles for financial market infrastructures*
- f. submission to non-exclusive jurisdiction

The specific terms and conditions contained in any exemption order will vary depending on the application and may include other terms and conditions not listed above.

### **Application Process**

The application process for both recognition and exemption from recognition as a clearing agency is similar. The specific requirements for applications for recognition or exemption from recognition are set out in Part 2 of NI 24-102. Where specific criteria may not be relevant to an applicant because of the nature or scope of its clearing agency activities, its specific structure, the products it clears or settles, or its regulatory environment, the application should explain in reasonable detail why the criteria are not relevant.

We encourage clearing agencies that are currently carrying on business or anticipate carrying on business in Alberta to ensure that they file their applications well in advance of the expiration of

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<sup>2</sup> See CSA Staff Notice Request for Comment - *Proposed National Instrument 24-102 Clearing Agency Requirements* available on the ASC website at [http://albertasecurities.com/industry/securities-law-and-policy/\\_layouts/Regulatory-Instruments/](http://albertasecurities.com/industry/securities-law-and-policy/_layouts/Regulatory-Instruments/)

the Blanket Order on October 31, 2015. ASC Policy 12-601 – *Applications for the ASC* sets out the requirements for filing an application in Alberta.

After discussing the application with the applicant, and the satisfactory completion of all necessary requirements, Staff will submit the recognition or exemption order to the Commission for approval.

### **ASC Staff Contact**

The following Staff may be contacted to discuss this notice or the application process:

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