

Ontario Securities Commission

National Instrument 24-101

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**NATIONAL INSTRUMENT 24-101
*INSTITUTIONAL TRADE MATCHING AND SETTLEMENT***

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PART 1
DEFINITIONS AND INTERPRETATION

Definitions

1.1 In this Instrument,

"clearing agency" means, a recognized clearing agency that operates as a "securities settlement system" as defined in section 1.1 of National Instrument 24-102 *Clearing Agency Requirements*;

"custodian" means a person or company that holds securities for the benefit of another under a custodial agreement or other custodial arrangement;

"DAP/RAP trade" means a trade in a security

- (a) executed for a client trading account that permits settlement on a delivery against payment or receipt against payment basis through the facilities of a clearing agency, and
- (b) for which settlement is completed on behalf of the client by a custodian other than the dealer that executed the trade;

"institutional investor" means a client of a dealer that has been granted DAP/RAP trading privileges by the dealer;

"marketplace" has the same meaning as in National Instrument 21-101 *Marketplace Operation*;

"matching service utility" means a person or company that provides centralized facilities for matching, but does not include a clearing agency;

"registered firm" means a person or company registered under securities legislation as a dealer or adviser;

"trade-matching agreement" means, for trades executed with or on behalf of an institutional investor, a written agreement entered into among trade-matching parties setting out the roles and responsibilities of the trade-matching parties in matching those trades and including, without limitation, a term by which the trade-matching parties agree to establish, maintain and enforce policies and procedures designed to achieve matching as soon as practical after a trade is executed;

"trade-matching party" means, for a trade executed with or on behalf of an institutional investor,

- (a) a registered adviser acting for the institutional investor in processing the trade,
- (b) if a registered adviser is not acting for the institutional investor in processing the trade, the institutional investor_ unless the institutional investor is
 - (i) an individual, or
 - (ii) a person or company with total securities under administration or management not exceeding \$10 million,
- (c) a registered dealer executing or clearing the trade, or
- (d) a custodian of the institutional investor settling the trade;

"trade-matching statement" means, for trades executed with or on behalf of an institutional investor, a signed written statement of a trade-matching party confirming that it has established, maintains and enforces policies and procedures designed to achieve matching as soon as practical after a trade is executed;

"T" means the day on which a trade is executed;

"T+1" means the next business day following T;

"T+2" means the second business day following T.

"T+3" [Repealed September 5, 2017]

Interpretation — trade matching and clearing agency

1.2 (1) In this Instrument, matching is the process by which

- (a) the details and settlement instructions of an executed DAP/RAP trade are reported, verified, confirmed and affirmed or otherwise agreed to among the trade-matching parties, and
- (b) unless the process is effected through the facilities of a clearing agency, the matched details and settlement instructions are reported to a clearing agency.

(2) For the purposes of this Instrument, in Québec, a clearing agency includes a clearing house and a settlement system within the meaning of the *Securities Act* (Québec).

PART 2 APPLICATION

2.1 This Instrument does not apply to

- (a) a trade in a security of an issuer that has not been previously issued or for which a prospectus is required to be sent or delivered to the purchaser under securities legislation,
- (b) a trade in a security to the issuer of the security,
- (c) a trade made in connection with a take-over bid, issuer bid, amalgamation, merger, reorganization, arrangement or similar transaction,
- (d) a trade made in accordance with the terms of conversion, exchange or exercise of a security previously issued by an issuer,
- (e) a trade that is a securities lending, repurchase, reverse repurchase or similar financing transaction,
- (f) a purchase governed by Part 9, or a redemption governed by Part 10, of National Instrument 81-102 *Investment Funds*,
- (g) a trade to be settled outside Canada,
- (h) a trade in an option, futures contract or similar derivative, or
- (i) a trade in a negotiable promissory note, commercial paper or similar short-term debt obligation that, in the normal course, would settle in Canada on T.

PART 3 TRADE MATCHING REQUIREMENTS

Matching deadlines for registered dealer

3.1 (1) A registered dealer must not execute a DAP/RAP trade with or on behalf of an institutional investor unless the dealer has established, maintains and enforces policies and procedures designed to achieve matching as soon as practical after such a trade is executed and in any event no later than 12 p.m. (noon) Eastern Time on T+1.

(2) [Repealed]

Pre-DAP/RAP trade execution documentation requirement for dealers

3.2 A registered dealer must not open an account to execute a DAP/RAP trade for an institutional investor or accept an order to execute a DAP/RAP trade for the account of an institutional investor unless its policies and procedures are designed to encourage each trade-matching party to

- (a) enter into a trade-matching agreement with the dealer, or
- (b) provide a trade-matching statement to the dealer.

Matching deadlines for registered adviser

3.3 (1) A registered adviser must not give an order to a dealer to execute a DAP/RAP trade on behalf of an institutional investor unless the adviser has established, maintains and enforces policies and procedures designed to achieve matching as soon as practical after such a trade is executed and in any event no later than 12 p.m. (noon) Eastern Time on T+1.

(2) [Repealed]

Pre-DAP/RAP trade execution documentation requirement for advisers

3.4 A registered adviser must not open an account to execute a DAP/RAP trade for an institutional investor or give an order to a dealer to execute a DAP/RAP trade for the account of an institutional investor unless its policies and procedures are designed to encourage each trade-matching party to

- (a) enter into a trade-matching agreement with the adviser, or
- (b) provide a trade-matching statement to the adviser.

PART 4 REPORTING BY REGISTERED FIRMS

Exception reporting requirement

4.1 A registered firm must deliver Form 24-101F1 to the securities regulatory authority no later than 45 days after the end of a calendar quarter if

- (a) less than 90 per cent of the DAP/RAP trades executed by or for the registered firm during the quarter matched within the time required in Part 3, or
- (b) the DAP/RAP trades executed by or for the registered firm during the quarter that matched within the time required in Part 3 represent less than 90 per cent of the aggregate value of the securities purchased and sold in those trades.

PART 5 REPORTING REQUIREMENTS FOR CLEARING AGENCIES

5.1 A clearing agency must deliver Form 24-101F2 to the securities regulatory authority no later than 30 days after the end of a calendar quarter.

PART 6
REQUIREMENTS FOR MATCHING SERVICE UTILITIES

Initial information reporting

- 6.1 (1)** A person or company must not carry on business as a matching service utility unless
- (a) the person or company has delivered Form 24-101F3 to the securities regulatory authority, and
 - (b) at least 90 days have passed since the person or company delivered Form 24-101F3.
- (2)** During the 90 day period referred to in subsection (1), if there is a significant change to the information in the delivered Form 24-101F3, the person or company must inform the securities regulatory authority in writing immediately of that significant change by delivering an amendment to Form 24-101F3 in the manner set out in Form 24-101F3.

Anticipated change to operations

- 6.2** At least 45 days before implementing a significant change to any item set out in Form 24-101F3, a matching service utility must deliver an amendment to the information in the manner set out in Form 24-101F3.

Ceasing to carry on business as a matching service utility

- 6.3 (1)** If a matching service utility intends to cease carrying on business as a matching service utility, it must deliver a report on Form 24-101F4 to the securities regulatory authority at least 30 days before ceasing to carry on that business.
- (2)** If a matching service utility involuntarily ceases to carry on business as a matching service utility, it must deliver a report on Form 24-101F4 as soon as practical after it ceases to carry on that business.

Ongoing information reporting and record keeping

- 6.4 (1)** A matching service utility must deliver Form 24-101F5 to the securities regulatory authority no later than 30 days after the end of a calendar quarter.
- (2)** A matching service utility must keep such books, records and other documents as are reasonably necessary to properly record its business.

System requirements

- 6.5** For all of its core systems supporting trade matching, a matching service utility must
- (a) consistent with prudent business practice, on a reasonably frequent basis, and, in any event, at least annually,
 - (i) make reasonable current and future capacity estimates,
 - (ii) conduct capacity stress tests of those systems to determine the ability of the systems to process transactions in an accurate, timely and efficient manner,
 - (iii) implement reasonable procedures to review and keep current the testing methodology of those systems,

- (iv) review the vulnerability of those systems and data centre computer operations to internal and external threats, including breaches of security, physical hazards and natural disasters, and
- (v) maintain adequate contingency and business continuity plans;
- (b) annually cause to be performed an independent review and written report, in accordance with generally accepted auditing standards, of the stated internal control objectives of those systems; and
- (c) promptly notify the securities regulatory authority of a material failure of those systems.

PART 7 TRADE SETTLEMENT

Trade settlement by registered dealer

7.1 (1) A registered dealer must not execute a trade unless the dealer has established, maintains and enforces policies and procedures designed to facilitate settlement of the trade on a date that is no later than the standard settlement date for the type of security traded prescribed by an SRO or the marketplace on which the trade would be executed.

(2) Subsection (1) does not apply to a trade for which terms of settlement have been expressly agreed to by the counterparties to the trade at or before the trade was executed.

PART 8 REQUIREMENTS OF SELF-REGULATORY ORGANIZATIONS AND OTHERS

8.1 A clearing agency or matching service utility must have rules or other instruments or procedures that are consistent with the requirements of Parts 3 and 7.

8.2 A requirement of this Instrument does not apply to a member of an SRO if the member complies with a rule or other instrument of the SRO that deals with the same subject matter as the requirement and that has been approved, non-disapproved, or non-objected to by the securities regulatory authority and published by the SRO.

PART 9 EXEMPTION

Exemption

9.1 (1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

(3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

PART 10
EFFECTIVE DATES AND TRANSITION

Effective dates

10.1 [Lapsed]

Transition

10.2 [Lapsed]