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British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Securities Administration Branch, New Brunswick
Securities Office, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Nunavut
Registrar of Securities, Yukon Territory

c/o Mr. John Stevenson, Secretary
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Re: Discussion Paper 24-401 on Straight-Through Processing and Proposed National Instrument 24-101 and Proposed Companion Policy 24-101CP on Post-Trade Matching and Settlement

Dear Mr. Stevenson:

The TD Bank Financial Group (TDBFG) appreciates the opportunity to review and comment on the proposed National Instrument 24-101 and proposed Companion Policy 24-101CP and the discussion document 24-401.

Response to Questions

Question 1: If the CSA were to implement mandatory STP readiness certificates, what should be the subject matter of such certificates?

No, an STP readiness certificate is not required to move forward with STP. The potential cost in money and resources of preparing and certifying STP readiness, assuming that it could be easily defined, initially and on an ongoing basis outweighs any potential benefit. The resources would be more effectively spent invested in reviewing and preparing for STP.

Question 2: Is it important to the competitiveness of the Canadian capital markets to reach STP at the same time as the U.S.? Please provide reasons for your answer. Are there any factors or challenges unique to the Canadian capital markets?

Yes, it is imperative that Canada reaches STP at the same time as the U.S. to avoid Canadian capital markets from being in a disadvantageous position. The U.S. would benefit by being able to trade inter-listed securities with reduced risk and consistent trading processes offered by STP. There is the strong possibility that Canadian investors would seek the benefits and efficiencies of STP by transferring some of their order flow through the US markets.

We look forward to the Capco report to bring clarity to the Canadian versus U.S. status.

The U.S. currently has a trade match system via the DTC ID confirm system that links Investment Managers, Custodians and Broker/Dealers. While several vendors claim to be developing MSUs for the Canadian marketplace, there is no confirmation as to availability, commonality of requirements or mandate for interoperability. There is an assumption that the vendors will follow the best practices and standards that were developed and approved by the CCMA Institutional Trade Processing Working Group.

In the U.S., statistics show approximately 25 % of trades are matched on T and 88 % on T+1. In Canada recent CCMA figures show 3.03 % of trades are matched on T, with 47.07 % matched on T+1. We believe the U.S. figure is higher due to the NYSE trade rule.

Question 3: Should it be one of the CCMA's tasks to identify the critical path to reach specific STP goals? If so, what steps and goals should be included?

Yes. The CCMA has created an organized structure for discussion and planning of Canada's move towards STP. The CCMA Institutional Trade Processing Working Group should identify and publish the critical path. The introduction of institutional trade processing rules, T and T+1 requirements are the most significant issues to be addressed.

Question 4: Should the CSA require market participants to match institutional trades on trade date? Would amending SRO rules to require trade matching on T be more effective than the proposed Instrument? Is the effective date of July 1, 2005 achievable?

At this point in time, regulation is perceived as the best way to move forward with ensuring compliance and accelerating implementation of the institutional trading best practices and standards. It is noted that amending the SRO rules has already begun. Recently the IDA made changes to Regulation 800 mandating the matching of broker to broker DP trades, to be effective June 2005. Where possible regulation should flow through the SROs, but as all market participants are not members of the same SROs, a non-prescriptive National Instrument or revisions made to existing National Instruments, as applicable, could be considered by the CSA to ensure industry and jurisdictional consistency.

Furthermore, it is our recommendation that a detailed business case should be built around the implementation of institutional trade processing and matching. This would enable the benefits to be fully defined for each party (Broker/Dealer, Custodian, Investment Manager and Agent), estimate technology build costs and savings due to more automation in the institutional trade flow to be calculated.

We do not believe that the July 2005 is achievable.

Question 5: Is a close of business definition required? If so, what time should be designated as close of business?

Yes, we support a close of business definition for the Canadian markets. This will enable all market participants to focus on completion of their daily processes by a set time. It will allow system providers to focus future development and enhancements to meet the timeframe and allow market participants to meet the CCMA's best practices and standards for institutional trading.

We recommend that the close of business for institutional trading be set at 5pm EST, under present market conditions, to coincide with extended trading deadlines. This would ensure that sufficient lead-time is provided to meet a 'hard' T requirement for confirmation and affirmation. A later close would result in extended staffing requirements and unnecessary overtime.

Question 6: Should the Proposed Instrument expressly identify and require matching of each trade data element, or is it sufficient for the Proposed Instrument to impose a general requirement to match on T and rely on industry best practices and standards to address the details?

No, we don't support detailed trade data element matching but we support general trade matching on T. We are in agreement with the importance of the trade data elements that are

detailed in the CCMA ITPWG best practices and standards. We do not support any regulation that would limit the process by expressly identifying and require matching of each trade data element on T. It will be sufficient to impose the general requirement to match on T but only at such time when the market participants are in a position to meet the requirement. We also anticipate that if trade data elements change over time and, if the proposed instrument had expressly identified and mandated matching of each trade data element, further revisions to the regulations would be required if and when changes occur. With the general requirement to match on T, any future changes will be incorporated through the interaction of the market participants.

Question 7: Should the CSA rely on the best practices and standards established by the CCMA ITPWG?

Yes, we support the use of the best practices and standards for institutional trade processing established by the CCMA. These were developed, published, reviewed and approved by the industry representatives from Investment Managers, Broker/Dealers, Custodians, Depositories and Transfer Agents. With standards set by the industry rather than through Regulators, the best practices and standards can be amended to support any future changes in market conditions rather than through regulatory amendments.

In the move towards STP, these standards will also require a review and updating as market conditions change, product development and enhancements occur and clearing and settlement technologies improve.

Question 8: The CSA seek comments on the scope of the proposed Instrument. Have we captured the appropriate transactions and types of securities that should be governed by requirements to effect trade comparison and matching by the end of T and settlement by the end of T + 3? Have we appropriately limited the rule to *public* secondary market trades?

Yes, the CSA appears to have captured all the appropriate transactions and types of securities. We are in agreement that the rule to match on T should be limited to public secondary market trades.

Question 9: Is the contractual method the most feasible way to ensure that all or substantially all of the buy side of the industry will match their trades by the end of T?

While the contractual method is one option that could encourage the buy side to match their trades by the end of T, we would support a review of alternatives. As well, any contractual agreement referred to in the national instrument does not appear to refer to the Settlement Agent or Custodian.

In our review of the CCMA best practices and standards for institutional trade processing, we noted that the industry participants would have to be mandated to meet the requirements for matching on T. Therefore, if we are contemplating mandating all market participants, we foresee no reason to document the requirement on individual contracts.

Question 10: Should an exception to the requirement to match a trade on T be allowed when parties are unable to agree to trade details before the end of T and are required, as a result, to correct the trade date elements before matching?

Yes, provision will need to be made to allow an exception for those trades over which there is a disagreement. Consideration should be given to balancing the interests of STP timelines and legitimate resolution of errors.

Caution should be taken to ensure that accommodation for matching exceptions after T does not provide a loophole for wholesale processing of transactions outside the established timeframes.

Question 11: Should registrants be required to report all exceptions from matching by the close of business on T? If so, who should receive the report (e.g. recognized clearing agency, SROs, and/or securities regulatory authorities)?

No, we see no need to build an additional level of reporting at an individual firm level to any regulatory body for the exceptions from matching by the close of business on T. Each firm should monitor their own matching statistics. Firms will then have the ability to monitor specific transactions and customers and take action as required.

Question 12: Is it necessary to mandate the use of a matching service utility in Canada? If so, how would the appropriate centralized trade matching system be identified? Are there institutional investors or investment managers that may not benefit from being forced into an automated centralized trade matching system? Can STP trade matching be achieved without a matching service utility?

No, we do not support mandating the use of a matching service utility in Canada. While this may be cost effective and a more efficient option for larger firms, we are concerned that small and mid size firms do not have the resources or funding to support this option. To mandate the use of the MSU may be cost prohibitive for such firms. We are aware that there are other options including proprietary system links that would support meeting the best practices and standards. To mandate the use of an MSU would eliminate options that are effective today or could meet the standards with enhancements.

We also do not support the mandating of a single centralized trade matching system to service the Canadian markets. However, we would support setting basic regulations and standards, including inter-operability for any MSU development underway, including a certification process by the relevant regulators.

Question 13: Should the scope of functions of a matching service utility be broader?

We agree with the recommendations with the following exception:

'Provide reporting of statistics on matching effectiveness to allow participants and regulators to determine bottlenecks by security type and by participant for possible enforcement measures and other regulatory purposes"

We do not support the requirement to provide regulators with detailed statistics on matching effectiveness.

It is our recommendation that the following functions should be added to the list:

- The matching service utility should not be limited to equities but support all types of securities transactions
- When there is a discrepancy in a transaction, provide real-time or near real-time advice of the particulars of the discrepancy to all parties.
- Systems should be inter-operable with both the Canadian and U.S. markets

Question 14: Are the filing and reporting requirements set out in the Proposed Instrument for a matching service utility sufficient, or should a matching service utility be required to be recognized as a clearing agency under provincial securities legislation?

Yes, we agree that all matching service utilities have the requirement to follow the same rules and regulations and that they be subject to on going scrutiny by the appropriate Regulators.

Question 15: Can the Canadian Capital markets support more than one matching service utility? If so, what should be the inter-operability requirements?

While we support the option for more than one matching service utility for the Canadian Capital markets, the Canadian marketplace, however, may not be big enough to support more than one MSU. Having multiple products allows for competition on the basis of price, service and architecture. Multiple MSUs would also mitigate the risk of a single point of failure in the market as well as prevent monopoly pricing practices.
Any MSU should be totally inter-operable and must be able to take in and recognize data from all sources without any additional customer intervention.

Question 16: Should the CSA mandate a T + 3 settlement cycle? Should the CSA mandate a T + 1 settlement cycle when the U.S. moves to T + 1 and the SEC amends its T + 3 Rule?

No, we do not support the mandating of a T+3 settlement cycle at this time. The migration from T+5 to T+3 was efficiently handled by all Canadian industry participants without regulation from the CSA. Based on the success of this implementation, we do not believe that regulation is required to support a move to T+1.

Question 17: Should the CSA require the reporting of corporate actions into a centralized hub? If not, is it more appropriate for exchanges and other marketplaces to impose this requirement through listing or other requirements? Who should pay for the development and maintenance of the central hub?

If a centralized HUB is developed, it is unlikely that it would succeed without mandating that all corporate actions be entered into the HUB. Further analysis is required to identify the appropriate authorities that could effectively mandate all parties to comply with the standards of the HUB. The use of a centralized HUB would provide a standard template for Issuers and Agents. Without the development of the centralized HUB, we will be faced with the same challenges that exist today in achieving compliance from the Issuers and Agents in using the standard template. However, we do not believe it to be a priority item.

While the CCMA's best practices and standards for entitlements states that they can be implemented without the HUB it is evident that it would be critical to the delivery of the recommendations. Consideration needs to be given to the cost of development and the administration of the technology required to support this initiative. Further, an analysis of the cost benefits associated with this development needs to be completed prior to a decision to proceed. Undertaking a detailed cost benefits analysis would allow an equitable development and maintenance cost distribution among all industry participants. Prior to the completion of a cost benefit analysis, a clear understanding of the functionality and the mandating of the requirements to file through the HUB it is difficult to estimate the potential cost impact for the HUB development and who should pay for it.

Question 18: Should the CSA wait until a hub has been developed by the industry before it imposes any requirements?

While it is unclear at this point in time that the CSA would be the appropriate regulatory body to impose any requirements, for a HUB to be effective, reporting requirements would need to be mandated. We would recommend not to impose any requirements at this time.

Question 19: Should the CSA require issuers and offerors to make their entitlement payments by means of the LVTS?

Yes, all payments over a certain amount should be mandated through LVTS. Payments made by LVTS are final and irrevocable, which is essential for reducing risk in the system.

Question 20: If there is a CSA requirement to make entitlement payments in LVTS funds, should the requirement apply only to payments in excess of a certain minimum value? If so, what should that minimum value be?

In the present environment, under CPA rules, all payments over $25 million are required to be processed through LVTS. Based on analysis done by the CCMA Entitlements Working Group, it would appear that payments over $5 million account for between 80 and 90% of the transactions. We would support a transition to this level and review the remaining payments after completion of this phase.

Question 21: Should the CSA consider implementing any additional rules to encourage and facilitate the investment funds industry to move towards an STP business model? If so, what issues should be addressed by the CSA?

The discussion paper has provided an accurate and detailed overview of the issues that have been identified by the CCMA Retail Trade Processing Working Group. We anticipate that mandating and changes to regulations will be required, in time, given the potential financial impact for system enhancements and major process changes that will be required to address the recommendations. It is uncertain, at this point in time, as to whether other regulatory and government agencies will also be involved in the required rules or amendments to present regulations to meet the STP requirements.

We look forward to the publishing for comment of the proposed technical amendment to NI 81-102 and CP 81-102CP. We also welcome the OSC and ASC proposal to remove the requirement for certain unincorporated closed-end investment funds to issue certificates to their security holders.

Question 22: Should the CSA develop rules that require the immobilization and, to the extent permitted by corporate and other law, dematerialization of publicly traded securities in Canada?

We strongly support any cost efficient initiatives that will decrease the number of physical certificates that are processed daily. However, we cannot support any initiative that would promote confusion rather than complement the client holding positions directly with intermediaries. Holding the positions in the nominee name with their broker(s)/dealer(s) should always be the preferred and the promoted option. The nominee system has facilitated the North American marketplace to become the most competitive, the largest and arguably the most efficient market in the world. Any solutions for direct registrations must reduce the current costs and risks in the market by providing finality of transfer to the intermediary through direct access from the Broker community.

We cannot support any initiative that would require clients who presently hold certificates to transfer their positions to a registration directly with the Transfer Agent. This would be a costly process and would lead to client confusion and dissatisfaction, replacing one piece of paper with another (the stock certificate with the DRS statement). The U.S. experience confirms that the option will not remove certificates from the marketplace. Any immobilization or dematerialization should be driven by the Issuers **and** the Investors.

Question 23: To the extent DRS systems operate in Canada, should a securities regulatory authority regulate transfer agents that are operating or using such DRS systems?

Further investigation is required to understand if DRS systems are needed in Canada. In light of the less than successful implementations with DRS in other markets, we need to establish the impact of such an implementation on Canadian market participants and the investing public. If after this review, it is accepted that DRS systems are required in the Canadian marketplace, we would support a securities regulatory authority to regulate transfer agents for the use of a DRS systems.

Question 24: Should there be separate DRS systems and should they be required to be inter-operable?

Notwithstanding our comments in questions 22 and 23, we would support the option for separate DRS systems only if they have a common access interface, protocol and process. We question the cost impact of multiple systems and how this will be passed on to the end client and other industry participants.

Question 25: Is it sufficient for the Canadian capital markets to rely solely on existing SRO segregation rules? Or, given the growing reliance on the indirect holding system, should the CSA consider an active role in developing comprehensive rules on segregation of customer assets?

If the question is exploring the need for additional regulation dealing with securities segregation, we believe that the current regulation is sufficient to ensure the protection of customers' assets and no changes are required.

Additional BCSC Questions:

Question 1: Is the Rule necessary?

The Rule as outlined is not necessary to achieve STP. However, we do support the implementation of regulations by the appropriate authorities that will require trade matching on T. This is the only means to ensure that all market participants adhere to the requirement.

Question 2: Can industry achieve STP without regulatory intervention?

We do not believe that the industry can achieve STP without regulatory intervention subject to the limitations outlined in the response to question 1. Regulation will ensure that all market participants are moving towards the same goals, under the same rules and within the set timeframe.

Question 3: If the Commission adopts the Rule, should the Rule include filing and reporting requirements for matching service providers?

We agree that all matching service providers follow the same rules and regulations and that they be subject to on going scrutiny by the appropriate regulators.

We thank you for the opportunity to provide our comments.

Sincerely,

Mr. Gerry O'Mahoney
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Chief Operating Officer TD Waterhouse