



CANADIAN SECURITIES ADMINISTRATORS' REQUEST FOR COMMENT

ON PROPOSED NATIONAL INSTRUMENT 24-101 INSTITUTIONAL TRADE MATCHING AND
SETTLEMENT, AND
PROPOSED COMPANION POLICY 24-101CP TO NATIONAL INSTRUMENT 24-101
INSTITUTIONAL TRADE MATCHING AND SETTLEMENT



CSA Request for Comments

Comments and Questions

You are invited to comment on any aspect of the Instrument and Companion Policy and specifically on the questions asked in this notice.

Please submit your comments in writing before May 2, 2006.

Submissions should be sent to all Canadian securities regulatory authorities listed below in care of the Ontario Securities Commission in duplicate, as indicated below:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
New Brunswick Securities Commission
Office of the Attorney General, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland & Labrador
Registrar of Securities, Northwest Territories
Legal Registries Division, Nunavut
Registrar of Securities, Yukon Territory

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, Ontario
M5H 3S8
jstevenson@osc.gov.on.ca

Submissions should also be addressed to the *Autorité des marchés financiers (Québec)* as follows:

Madame Anne-Marie Beaudoin
Directrice du secrétariat de l'Autorité
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal (Québec) H4Z 1G3
Telephone: 514-940-2199 ext 2511
Fax: 514-864-6381
e-mail: consultation-en-cours@lautorite.qc.ca

A diskette containing the submissions should also be submitted. As securities legislation in certain provinces requires a summary of written comments received during the comment period be published, confidentiality of submissions cannot be maintained.

Questions may be referred to:

Response to CSA



CSA Request for Comments

Randee Pavalow
Director, Capital Markets
Ontario Securities Commission
(416) 593-8257
rpavalow@osc.gov.on.ca

Maxime Paré
Senior Legal Counsel, Market Regulation
Capital Markets
Ontario Securities Commission
(416) 593-3650
mpare@osc.gov.on.ca

Emily Sutlic
Legal Counsel, Market Regulation
Capital Markets
Ontario Securities Commission
(416) 593-2362
esutlic@osc.gov.on.ca

Shaun Fluker
Legal counsel
Alberta Securities Commission
(403) 297-3308
shaun.fluker@seccom.ab.ca

Serge Boisvert
Analyste en réglementation
Direction de la supervision des OAR
Autorité des marchés financiers
514-395-0558 poste 4358
serge.boisvert@lautorite.qc.ca

Sandy Jakab
Manager, Policy
Capital Markets Regulation
British Columbia Securities Commission
(604) 899-6869
sjakab@bcsc.bc.ca



CSA Request for Comments

Question	Response
Question 1: Should the definition of "institutional investor" be broader or narrower?	The definition of "institutional investor" appears to include direct participants as they are not specifically excluded. Trade matching amongst direct participants has been addressed, and consequently, it would be preferable to avoid overlapping and duplicate protocols. It is important to ensure that there is no overlap between Direct Participants and Institutional Investors.
Question 2: Does the definition of "trade-matching party" capture all the relevant entities involved in the institutional trade matching process?	Yes, the definition of "trade-matching party" captures all the relevant entities involved in the institutional trade matching process.
Question 3: The scope of the matching requirements of the Instrument is limited to DAP or RAP trades. Should the requirements be expanded to include other trades executed on behalf of an institutional investor? Should the requirements capture trades executed with or on behalf of an institutional investor settled without the involvement of a custodian?	<p>No, the scope of the matching requirements should not be expanded to include other trades executed on behalf of an institutional investor. The goal of institutional trade matching is to improve the communication and timing of transactions that occur across 3 trading matching parties (broker, client and custodian). In the case of other trades where only 2 parties are present (broker and client) the same issues do not occur and there is no industry affirmation/matching process.</p> <p>The requirements should not capture trades executed with or on behalf of an institutional investor settled without the involvement of a custodian.</p>



CSA Request for Comments

Question	Response
<p>Question 4: Are each of these methods (compliance agreement and signed written statement) equally effective to ensure that the trade-matching parties will match their trades by the end of T? Should trade-matching parties be given a choice of which method to use?</p>	<p>Neither a compliance agreement nor a signed written statement will be an effective tool to ensure trade matching on T in isolation. The agreement is merely an indication by the client of intention to comply, but it does not enforce compliance. The key will be the remedies that exist in the event of failing to comply with trade matching obligations. When it comes to legal remedies, it is not clear that a simple statement will provide any legal remedies to a broker.</p> <p>It is also not clear what the consequences or the remedies for non-compliance would be and to whom they would be applied. For example, if an institutional client fails to comply with the trade matching requirements, then any consequences should not be to the detriment of the broker/dealer alone (i.e. that broker alone cannot trade for the client for some given period of time). This may result in a competitive disadvantage or economic loss to the broker/dealer whilst the client simply moves activity. Any remedial action must be considered from a street-wide perspective.</p> <p>Also, consider the issue of what occurs when trade matching timelines are not met. For example, in a situation where trades between a given broker, client and custodian are only matched on T 95.5% of the time. For the 4.5% of the trades that are not matched on T, 1.5% is caused by the broker, 1.5% is caused by the institutional client, and 1.5% is caused by the custodian. In each case, each party will state that they achieved the CSA requirement and that the fault lies with the other two parties. However, in aggregate, the requirement was not met.</p> <p>Who is not in compliance? Who is responsible for remedial action? What would be the CSA's expectations of what should be done in this case?</p>



CSA Request for Comments

Question	Response
Question 5: Will exception reports enable practical compliance monitoring and assessment of the trade matching requirements?	<p>Theoretically, yes, exception reports would enable practical compliance monitoring but it would not provide sufficient information to determine the root causes or to enable industry monitoring. Again, the consequences of and remedies for non-compliance must be known and must encourage compliance by all parties (see response to Question 4).</p> <p>Also, we note that the proposed exception reports only monitor compliance from the perspective of registrants. While the custodial market in Canada is currently limited to a small number of large firms, the institutional client segment has a wide range of firms. It may be possible that an institutional client that is not a registrant could be failing to meet the trade matching requirements but would not appear on any exception report because their trading is small relative to the overall trading for a given broker. For example, a broker may match on T for 98.2% of all institutional trades, but 1.8% of the trades that are not matched belong to a small number of clients.</p>
Question 6: Is it necessary to require custodians to do exception reporting in order to properly monitor compliance with this Instrument?	<p>Due to the fact that there are a small number of large custodians in Canada, it is not necessary to require custodians to do exception reporting in order to properly monitor compliance with this Instrument. If there is growth in this market resulting in a group of smaller firms, then exception reporting by custodians might have to occur for the same reasons as stated in our answer to question 5.</p>



CSA Request for Comments

Question	Response
<p>Question 7: Is it feasible for trade-matching parties to achieve a 7:30 p.m. on T matching rate of 98 percent by July 1, 2008, even without the use of a matching service utility in the Canadian capital markets?</p>	<p>We feel it is unlikely that the target of 98 percent matching by 7:30 p.m. on T by July 1, 2008 will be achieved irrespective of whether a trade matching utility is implemented for the following reasons:</p> <ul style="list-style-type: none">i) We anticipate that the buy side will not be able to make the necessary investment and changes by the specified datesii) We also anticipate push back from smaller brokers. Substantial investment in technology will be required to change most brokers' batch oriented systems to a real time environment and is likely not achievable in this time frame. There is also a large dependency for many broker/dealers on service providers such as ADP to make changes to their batch processing times to facilitate meeting the reporting requirementsiii) During the same timeframe, the industry may be asked to absorb another large financial investment as a result of regulatory change to meet the TREATS requirements <p>We also note that the 7:30 p.m. deadline is significantly shorter than the equivalent US cut-off time of 1:30 a.m. the following morning. For reporting purposes, we would be in favour of an extension of the cut-off time past the current processing cycle.</p>
<p>Question 8: Are the transitional percentages outlined in Part 10 of the Instrument practical? Please provide reasons for your answer.</p>	<p>See response to Question 7.</p>