January 22, 2010

Via e-mail to: consultation-en-cours@lautorite.qc.ca jstevenson@osc.gov.on.ca

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorite des marches financiers
New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territories
Superintendent of Securities, Nunavut

Re: CSA Notice and Request for Comments – Proposed Amendments to NI 24-101 & 24-101CP

Dear Sirs/Madam,

Omgeo, LLC is pleased to respond to the Canadian Securities Administrators' (CSA) Request for Comments on proposed amendments to National Instrument 24-101 Institutional Trade Matching and Settlement (NI 24-101) and companion policy 24-101CP Institutional Trade Matching and Settlement (CP).

About Omgeo, LLC

Omgeo creates settlement certainty in post-trade operations through the automation and timely confirmation of the economic details of trades executed between investment managers and broker dealers. Every day Omgeo enables an efficient community of more than 6,000 financial services clients in 46 countries to manage matching and exception handling of trade allocations, confirmations, and settlement instructions. Omgeo has also extended its trade lifecycle coverage to include counterparty risk management, which supports end-to-end collateralization and reconciliation across multiple asset classes.

Leading organizations rely on Omgeo to help manage an increasingly complex investment industry by providing operational stability and solutions that complement the focus on profitability in an era of escalating trade volumes. Across borders, asset classes, and trade lifecycles, Omgeo is the global standard for operational efficiency across the investment industry.

Formed in 2001, Omgeo is jointly owned by the DTCC and Thomson Reuters.

General Comments

Before responding to the relevant specific questions asked in the Request for Comments, Omgeo would like to offer some general observations on this important subject and related topics.

Let me begin by publicly applauding the CSA for taking a leadership role in promoting greater middle and back office processing efficiency through enactment of NI 24-101. Through your efforts and the documented success to date in bringing about improved performance in Institutional Trade Matching (ITM) rates in the Canadian market, some much needed attention has been brought to this area of the post-trade processing cycle in other markets around the world.

Omgeo has long believed that meaningful change (and improved processing efficiency) in this part of the trade life cycle will not come about without a regulatory mandate to drive such change. And despite the proposed extensive delay in the timeframe for phasing in ITM on T-0, we believe that your continued commitment to ultimately achieving this goal (i.e. ITM on trade date) remains a critical driver of change for our industry.

Successful implementation of a processing change such as that proposed in 24-101 requires a myriad of changes within participating firms – be they behavioral or technological in scope. And without a concerted industry-wide effort to drive such change in a focused manner, it is often too easy to de-prioritize or otherwise delay implementation of these important processing improvements. If the events of the last few years have taught us anything, it is that we must be on a constant vigil for ways to improve processing efficiency in order to mitigate operational and settlement risk and improve audit trails. This is what our mutual clients demand and expect of us if we want to play any meaningful role as a global market participant.

Processing efficiency - Canada vs. U.S.

It is acknowledged in your request for comments that “one of the early rationales for the instrument was to close the competitive gap with the US industry in terms of STP and T+1 settlement preparedness.” It is also noted that despite NI 24-101 still being in its phase-in period, this gap with the US market has been narrowed considerably – some might even say it has been eliminated.

While this development certainly provides some strong justification for the steps taken to date in the Canadian market, I would respectfully suggest that your work in Canada is far from done. The US market is far from a global model of ITM processing efficiency and there are in fact other markets around the world that operate more efficiently (albeit not of the same size as the US market in trading capacity). Therefore, to be truly recognized as a global leader in post-trade efficiency, the CSA must keep the Canadian market focused on finding ways to reduce operational risk, lower post-trade processing costs and reduce trade fail rates.

Delayed phase-in of ITM on T-0

Postponing the effective date for ITM on T-0 is somewhat risky to the ultimate effectiveness of NI 24-101 in that it takes away some of the immediacy of the pending regulation, which, as stated above, has helped drive the positive change we've seen to date. In fact, the belief that these deadlines would be extended may also have contributed to the recent slowdown in progress in meeting the 90% matching target on T+1 as noted in the Request for Comments. Thus, the CSA and the market could find itself in a "Catch-22" in that the industry believes that more time is needed to phase in ITM on T-0, while allowing more time takes away a strong impetus for change and therefore could lead to further delays.

Despite this risk, Omgeo does believe that the overriding fact that the CSA has stayed focused on its ultimate goal of ITM on T-0 will ultimately win the day. Therefore, a clear message around the Market's commitment to ITM on T-0 is very important to the long-term success of the initiative.

ITM and CDS processing

It is noted in the Request for Comments that one of the primary reasons why ITM on T-0 cannot be fully achieved is that "Every business day at 7:30 PM…CDS clearing and settlement is shut down for batch processing. It is therefore impossible for matching to occur during this period…" The result being that precious hours are lost where matching could otherwise occur.

While we agree that batch processing is an ongoing barrier to improved processing efficiency, in the case of CDS' settlement processes, we fail to see how this directly affects ITM on T-0 as stated in NI 24-101.

It is our thought that the ITM process (i.e., confirming and affirming trades on trade date) and the subsequent CDS process leading to settlement need not be linked for purposes of compliance with NI-24-101. The exchanging of trade details such as allocations, settlement instructions and other relevant detail in order to match a trade should be able to occur right through the CDS 7:30 PM cutoff time, as the CDS process has no direct bearing on the trade matching process between an Investment Manager, the Broker Dealer and their respective settling agents.

So, while CDS processing is suspended for batch processing, it should not prevent counterparties from completing the match affirmed process through a service such as Omgeo CTM, or any other registered virtual matching utility. We therefore fail to see why the CDS batch process is a deterrent to matching on trade date.

The section on Infrastructure support for ITM also goes on to point out that ITM on T-0 "may be problematic for investment managers of modest size who rely on end-of-day batch processing and can only send out settlement instructions after 4:30" when their counterparties have already left for the day. Omgeo disagrees with this finding as well.

The basic premise of a central matching utility service such as Omgeo CTM is that it automatically matches input from counterparties. Therefore, other than exceptions (i.e., trade mismatches) there is no reason why the vast majority of these IM transactions cannot be processed on T-0, despite any batch processing involved. Assuming the broker/dealer has entered the necessary information into the matching utility prior to the end of the day, a match will occur (or exception created) as soon as the IM information is received, with no human intervention necessary. Thus, the lateness of the hour should not preclude effective ITM on T-0.

<u>Effect of NI 24-101 on Trade Failure rates and processing efficiency</u>

On the subject of trade failure rates, we noted with great interest the findings from CDS data that settlement failure rates declined from a 3% national average before implementation of NI 24-101 to 1.5% in September, 2009. As is noted in the request for comments, this finding was verified in an independent research study that Omgeo commissioned from Oxera Consulting in 2008[1]. That study also concluded the following benefits of faster trade affirmation, namely:

- Improved levels of automation & Same Day Affirmation leads to reduced operational risk & improved settlement efficiency
- Automation and faster trade affirmation allows for increased processing capacity without a commensurate increase in cost
- Efficiency gains translate into lower transaction costs for end-investors

Based on the Oxera findings, Omgeo previously estimated that the European market could conservatively save in excess of 200 million Euros per year as a result of faster trade affirmation (i.e., same day affirmation).[2]

[1] Oxera Consulting is a respected independent adviser to the European Commission and many firms specialising in the European securities market. Go to www.oxera.com for more information.

[2] Assumptions:

- Assume the average number of trades per year = approx 133 million
- Assume an average failure rate of 3% (conservative estimate)
- Assume an average €100 per failed trade (conservative estimate)
- Then, the resultant annual gross cost of failed trades is €400million
- Next, if we assume that SDA reduces failed trades by 50%.......
- **SDA could save the industry a minimum €200m per year**

Using a similar methodology, we estimate that based on the reduction in fails already achieved, NI 24-101 has already contributed to a savings in the Canadian market of more than $170 million CAD.[3] Should further reductions in the fail rate continue as NI 24-101 takes further hold, we conservatively estimate the savings to be an additional $57 million CAD per annum for each 0.5% further reduction in Fails activity.

Principles based regulation

Finally, it is interesting to note that the settlement rules of NI 24-101 are based on a Principles based approach to regulation. This regulatory approach (vs. a more prescriptive Rule-based approach) clearly made sense in the era when the regulation was first passed. However, the events of the past 24 months have caused many jurisdictions around the world to declare Principles based regulation to be dead, based upon the belief that the global markets cannot be relied upon to adhere to any such regulatory principles without stronger and more prescriptive oversight by regulators. Regardless of the fairness of this statement, the message is clear – regulations must be more prescriptive and the penalties for non-compliance more clearly defined.

While Omgeo does not have a strong opinion on how this will affect the settlement rule contained in NI 24-101, we do believe that more defined consequences of failing to satisfy the ITM requirements of NI 24-101 would help to drive this change and achieve the desired efficiency targets.

Omgeo responses to relevant questions posed by the CSA

1. **For what period should the requirement to match no later than the end of T be deferred?**

As we previously mentioned, it is our view that a national mandate to achieve ITM is a very powerful driver of change and without such a regulatory push, it will be very difficult for the market to bring about this change voluntarily, despite the benefits noted throughout this response. Therefore, in our opinion, the most important thing is for the CSA to maintain the ultimate objective of ITM on T-0.

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[3] Assumptions for Canadian market:
- Assume the average number of trades per year = approx 77 million (as reported by CDS)
- Assume an average failure rate of 3% (as reported by CDS)
- Assume a conservative average cost of $150CAD per domestic failed trade (based on 2002 Fulcrum Research study estimate, discounted to reconcile with above noted European findings)
- Then, the resultant annual gross cost of failed trades is conservatively estimated at $346 million CAD
- Next, if we assume that SDA contributed to a reduction in failed trades by 50% (as reported in the CSA Request for Comment).......
- **SDA could contribute to a minimum industry savings of $173.25 million CAD per year**

At the same time, as with any change of this magnitude, it is important to allow enough time for market participants to adapt to the coming regulatory change, so as not to add unnecessary risk into the market during this transitional period. Therefore, it is our belief that the challenge for the CSA is to set a timeframe for implementation that is reasonable without extending it out so far as to lose the incentive for industry participants to move expeditiously to improve systems and change behaviors and processes necessary to comply with the forthcoming regulation.

There is no question that a five year delay is very long and does introduce the risk that market participants will relax their efforts to make the changes necessary to achieve ITM on T-0. This, in turn, could once again jeopardize the market's ability to meet the deferred deadline and therefore the success of the initiative itself. If the target date can be reasonably shortened without introducing risk into the post-trade process, we would encourage the CSA to consider doing so. This will require the CSA to carefully consider the legitimacy of the reasons postulated for delaying implementation in the first place, some of which are discussed in our earlier comments.

We at Omgeo believe that the technology exists to meet the CSA's targets for ITM on T-0. To demonstrate this fact, we submit the following regional Same Day Affirmation (ITM) rates for users of Omgeo's Central Trade Manager service:

<u>Omgeo CTM volume for the month of November, 2009:</u>

Total trades matched:[4]	**4,297,467**
Overall SDA Rate:	**93.13%**
Europe Volume (48% of total)	
SDA Rate:	**91.73%**
Asia Pacific Volume (15% of total)	
SDA Rate:	**96.64%**
Americas (37% of total)	
SDA Rate:	**93.55%**
Equity Volume (95% of total)	
SDA Rate:	**94.00%**
Fixed Income Volume (5% of total)	
SDA Rate:	**84.00%**

[4] Volume represents Omgeo Central Trade Manager (CTM) transactions only. It does not include any volume from Investment Managers who are still utilizing Omgeo's local matching solution – OASYS. Global.

1b. Should the requirement be deferred indefinitely until such time as global markets shorten their standard T+3 settlement cycles?

There is little debate that faster trade affirmation is a condition precedent to any reduction in settlement cycles. That is one reason why the current European discussion regarding the shortening of the Pan-European settlement cycle to T+2 also involves consideration of a same day affirmation policy or recommendation.

However, shorter settlement cycles are not the only reason why consideration of a more expeditious affirmation process should be undertaken. Consider the following benefits we have identified for bringing about faster trade affirmation. Clearly, these benefits exist regardless of the length of the settlement cycle.

- Fewer Fails/Reclaims/Claims
- Reduced operational burden
- Reduced operational risk
- Reduced market error risk
- Lower costs, including FTE costs (via expanded capacity)
- Higher Rates of STP
- Alignment with global regulatory reform
- Leverage investment in existing technology
- Higher customer satisfaction

Omgeo therefore would recommend that the CSA continue to move forward with NI 24-101 regardless of the progress (or lack thereof) in other markets around the world to reduce trade settlement cycles.

2. **We seek as much information as possible from Stakeholders on the costs and benefits of the requirement to match a DAP/RAP trade no later than the end of T, including any available empirical data. What would be the benefits of moving to matching on T on July 1, 2015?**

In response to this question, we refer you to the information provided earlier in this comment letter, including the benefits identified in the Oxera research study and our response to question 1 (above). Of particular note is our belief that the technology to achieve ITM on T-0 already exists and is in fact already being embraced around the world, as evidenced by the CTM SDA statistics quoted above in our question 1 response.

We also refer you to the section above entitled: **Effect of NI 24-101 on Trade Failure rates and processing efficiency,** wherein we attempt to quantify the savings to date as well as the potential savings from further reducing fail rates in the Canadian market. We believe the estimated $170 million CAD savings noted in this section is very conservative and by itself is a strong motivator for change.

We'd like to close out this section with one final point. Much of the impetus for NI 24-101 came from the Canadian Market's desire to improve its competitive position in the global marketplace. It is our view that the success achieved to date has accomplished some of that goal. However, the task is not done and without the external driver (i.e. the regulation) continuing to push the market to greater processing efficiency, the momentum that has built up over the last few years will surely dissipate. For this reason alone, the CSA should continue forward with its target of matching on T by 2015 or earlier, if that proves feasible (or necessary, should other markets begin shortening settlement cycles in the years to come).

3. **What are the costs and benefits of extending the current industry ITM processing time to allow participants to process their trades beyond the CDS 7:30PM cut-off time until late in the evening on T?**

In response to this question, we will reiterate our earlier comment on this subject, i.e.

> "….we fail to see how this directly affects ITM on T-0 as stated in NI 24-101.
>
> It is our thought that the ITM process (i.e., confirming and affirming trades on trade date) and the subsequent CDS process leading to settlement need not be linked for purposes of compliance with NI-24-101. The exchanging of trade details such as allocations, settlement instructions and other relevant detail in order to match a trade should be able to occur right through the CDS 7:30 PM cutoff time, as the CDS process has no direct bearing on the trade matching process between an Investment Manager, the Broker Dealer and their respective settling agents.
> "So, while CDS processing is suspended for batch processing, it should not prevent counterparties from completing the match affirmed process through a service such as Omgeo CTM, or any other registered virtual matching utility. We therefore fail to see why the CDS batch process is a deterrent to matching on trade date..."

4. **What are the costs and benefits of having a specific industry-wide trade identifier to enable dealers to track and segregate their non-western hemisphere trades from western hemisphere trades?**

Identification of the source of a trade is becoming a generic issue in many markets and the recent financial crisis has thrown more light on this issue. Regulators and policy-makers want to achieve more clarity on where trades originate – from many perspectives. Geographical segmentation is obviously useful – but the ability to differentiate street-side trades[5] from client trades[6] is also desired. The data that is currently contained within a VMU or a settlement system does not provide this clarity. Omgeo uses BIC codes to identify participants in Omgeo CTM. BIC codes are a global standard which do contain a location code but they do not provide the clarity that the Canadian market may require, for the following reasons:

- Many firms use global processing systems with a single BIC code: the location of the trader/investment manager and the operations team may be different from the location implied by the BIC code.

- There is no enforcement of the accurateness of BIC codes: for example, it is feasible to implement a trade processing system in the US or Canada with a BIC from a completely different location such as the UK.

- Many buy-side firms employ outsourcers to perform their post-trade operations: a BIC code of the investment manager can be local in Canada whilst the outsourcer who processes the trades may be elsewhere, perhaps as far away as India.

Our conclusion is that BIC codes can provide some clarity but are inadequate to properly understand the location of a broker or investment manager. They are therefore an unsuitable device on which to analyze the processing capability of your members.
Unfortunately there are no other data elements in our systems that can be used for this purpose. In fact, there are no standard industry data mechanisms to identify market participants and their roles.

There has been widespread industry debate about the need for a standardized Business Entity Identifier which all market participants can use to identify their clients/counterparties. In Europe, for example, the European Central Bank in Frankfurt is considering how to address this issue. We support this approach because no commercial vendor can act alone in such a project. Industry leadership from public authorities is essential.

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[5] Street-side trades are executed directly between banks and broker/dealers for market-making, proprietary trading, hedging, risk-management purposes and do not originate from a client order.
[6] Client trades are orders provided by institutional clients to banks and broker/dealers and then subsequently executed on an exchange or other trading platform.

Omgeo is highly likely to implement any industry standard coding mechanism that can accurately identify the identity, location and type of a market participant. However, it is essential that such a mechanism be internationally agreed and implemented. We aim to standardize our systems globally so that cross-border differentiation is minimized. We therefore urge you to participate in the global debate on this issue and work towards an internationally harmonized solution.

5. **Would extending the current requirement to match no later than noon on T+1 to a new deadline of 2 PM on T+1 help address current ITM processing delays and problems for the next two years?**

Omgeo does not have an opinion on this issue.

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In closing, Omgeo very much appreciates the opportunity to respond to the CSA Request for Comments and we sincerely hope that our thoughts and comments will be of value. Should you have any further questions or need clarification on the points discussed, please feel free to contact me.

Very truly yours,

Lee J. Cutrone
Managing Director, Industry Relations