

## Chapter 6

# Request for Comments

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### 6.1.1 Notice and Request For Comment – Proposed OSC Rule 24-501 – Designation as a Market Participant

#### NOTICE AND REQUEST FOR COMMENTS

#### PROPOSED ONTARIO SECURITIES COMMISSION RULE 24-501

#### DESIGNATION AS MARKET PARTICIPANT

##### A. INTRODUCTION

The Commission is publishing proposed Ontario Securities Commission (OSC) Rule 24-501 – *Designation as Market Participant* for a 90 day comment period. The comment period will end on April 12, 2007.

##### B. BACKGROUND

On January 12, 2007 the Commission published National Instrument 24-101 – *Institutional Trade Matching and Settlement* (NI 24-101), developed by the Canadian Securities Administrators (CSA). NI 24-101 provides a framework in provincial securities regulation for ensuring more efficient and timely settlement processing of trades, particularly institutional trades. Among other things, NI 24-101 requires registered dealers and advisors to establish, maintain and enforce policies and procedures that are designed to achieve trade matching as soon as practical after a DAP/RAP trade has been executed and in any event no later than, in most cases, the end of trade date or “T”. Trade matching is the process by which the details and settlement instructions of an executed DAP/RAP trade are reported, verified, confirmed and affirmed or otherwise agreed to among “trade-matching parties” (as defined in NI 24-101).

Part 6 of NI 24-101 imposes a number of requirements on so-called matching service utilities. A “matching service utility” is defined in NI 24-101 as a person or company that provides centralized facilities for trade matching but does not include a recognized clearing agency in Ontario. Among other things, a person or company that intends to carry on business as a matching service utility must deliver a form to the Commission under NI 24-101. The Commission understands that certain entities are proposing to offer their services as a matching service utility to participants in the Canadian capital markets.

As noted in CSA Discussion Paper 24-401 – *Straight-through Processing*, published in April 2004,<sup>1</sup> the CSA believe the reporting requirements of matching service utilities under NI 24-101 are appropriate to ensure minimal oversight, including (i) compliance with the OSC’s Automation Review Program (ARP)<sup>2</sup> and (ii) ensuring interoperability with other matching service utilities. As a critical infrastructure system involved in the clearing and settlement of securities transactions, a matching service utility operating in the Canadian markets raises certain regulatory concerns. Trade matching is a complex process that is inextricably linked to the clearance and settlement process. While a matching service utility should bring efficiencies to the markets, it concentrates processing risk in the entity that performs matching instead of dispersing that risk among the dealers and their institutional customers. The breakdown of a matching service utility’s ability to accurately compare trade information from multiple market participants involving large numbers of securities transactions and sums of money could have adverse consequences for the efficiency of the Canadian securities clearing and settlement system. Accordingly, we believe that some regulatory oversight of the operational risks inherent in the use of a matching service utility is necessary.<sup>3</sup>

##### C. SUBSTANCE AND PURPOSE OF PROPOSED RULE

The proposed rule will designate matching service utilities as market participants under the *Securities Act* (Ontario) (Act). As a result, certain provisions of the Act that apply to market participants generally will also apply to matching service utilities, including the books and records requirements of section 19, the ability of Commission staff to perform compliance reviews under section 20, and the Commission’s power to make a public interest order under clause 4 of subsection 127(1) of the Act.

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<sup>1</sup> See (2004) 27 OSCB 3971, at 3997 and 3998.

<sup>2</sup> See (2002) 25 OSCB 6789 and 6941 for a discussion of the ARP.

<sup>3</sup> Commission staff note that matching service utilities may be affected by recent amendments made to the *Securities Act* (Ontario) (Act). Pursuant to the amendments, a matching service utility carrying on business in Ontario may be required to apply either for recognition as a clearing agency under section 21.2 of the Act or for an exemption from such recognition under section 147 of the Act. See Section 144 of the *Securities Transfer Act*, 2006, S.O. 2006, c. 8 (Bill 41) and section 2 of Schedule 20 – *Securities Act* – of the *Budget Measures Act*, 2005 (No. 2), S.O. 2005, c. 31 (Bill 18).

**D. SUMMARY OF PROPOSED RULE**

The proposed rule will designate a matching service utility that delivers Form 24-101F3 to the Commission under NI 24-101 as a "market participant" for purposes of the definition of that term in subsection 1(1) of the Act.

**E. AUTHORITY FOR PROPOSED RULE**

Paragraph 40 of subsection 143(1) of the Act provides the Commission with authority to adopt this rule. It authorizes the Commission to "make rules respecting the designation or recognition of any person, company or jurisdiction if advisable for purposes of the Act, including ... designating a person or company for the purpose of the definition of "market participant".

**F. RELATED INSTRUMENT**

The proposed rule is related to NI 24-101, which was published as a rule made by the Commission on January 12, 2007. NI 24-101 was delivered to the Minister of Finance on January 10, 2007. Unless the Minister rejects or returns NI 24-101 to the Commission for further consideration, Part 6 of NI 24-101 will come into force in Ontario on the later of October 1, 2007 and the day that this rule comes into force.

**G. ALTERNATIVES CONSIDERED**

No alternatives were considered to the adoption of this rule.

**H. UNPUBLISHED MATERIALS**

In proposing this rule, the Commission has not relied on any significant unpublished study, report, decision or other material.

**I. ANTICIPATED COSTS AND BENEFITS**

This rule may impose costs on matching service utilities as they will be subject to the general market participant requirements of the Act. However, it will benefit the Ontario capital markets and protect investors by making matching service utilities subject to certain provisions that apply to all market participants generally under the Act.

**J. REGULATIONS TO BE AMENDED OR REVOKED (ONTARIO)**

None.

**K. QUESTIONS AND COMMENTS**

Interested parties are invited to make written submissions with respect to the proposed rule. Please submit your comments in writing before April 12, 2007.

Submissions should be made to:

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

A diskette containing the submissions should also be submitted. As the Act requires that a summary of written comments received during the comment period be published, confidentiality of submissions cannot be maintained.

Questions may be referred to:

Randee Pavalow  
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(416) 593-8257  
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**Request for Comments**

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**L. TEXT OF THE PROPOSED RULE**

The text of the proposed Rule follows.

January 12, 2007

**ONTARIO SECURITIES COMMISSION**  
**PROPOSED RULE 24-501**  
**DESIGNATION AS MARKET PARTICIPANT**

**PART 1 DEFINITIONS**

**1.1 Definitions** - In this Rule,

“matching service utility” has the same meaning as in NI 24-101;

“NI 24-101” means National Instrument 24-101 *Institutional Trade Matching and Settlement*.

**PART 2 DESIGNATION AS MARKET PARTICIPANT**

**2.1 Matching Service Utility** – A matching service utility that delivers Form 24-101F3 under NI 24-101 to the Commission is designated as a market participant for the purposes of the Act.

**PART 3 EFFECTIVE DATE**

**3.1 Effective Date** – This Rule comes into force on ●.