

Chapter 5

Rules and Policies

5.1.1 Notice of OSC Rule 24-501 – Designation as Market Participant

NOTICE OF ONTARIO SECURITIES COMMISSION RULE 24-501 DESIGNATION AS MARKET PARTICIPANT

A. INTRODUCTION

On June 12, 2007, the Commission made OSC Rule 24-501 – *Designation as Market Participant* (Rule) under the *Securities Act* (Ontario) (Act). The Rule was published for a 90-day comment period on January 12, 2007. No comments were received.

Under subsection 143.3 of the Act, the Rule was delivered to the Minister of Government Services on July 12, 2007. Unless the Minister rejects the Rule or returns it to the Commission for further consideration, it will come into force on October 1, 2007.

B. BACKGROUND

The Rule is ancillary to National Instrument 24-101 – *Institutional Trade Matching and Settlement* (NI 24-101), developed by the Canadian Securities Administrators (CSA), which came into force in Ontario on April 1, 2007.

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 matching of a DAP/RAP trade as soon as practical after the trade is executed and in any event no later than, in most cases, the end of trade date or “T”. Trade matching is generally 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 Form 24-101F3 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 institutional markets.

As noted in CSA Discussion Paper 24-401 – *Straight-through Processing*, published in April 2004,¹ the CSA believe the 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)² and (ii) ensuring interoperability with other matching service utilities. As an important infrastructure system involved in the clearing and settlement of securities transactions, a matching service utility operating in the Canadian markets may raise 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.³

1 See (2004) 27 OSCB 3971, at 3997 and 3998.

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

3 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).

C. SUBSTANCE AND PURPOSE OF PROPOSED RULE

The Rule will designate matching service utilities as market participants under the 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 s. 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.

D. SUMMARY OF PROPOSED RULE

The 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 came into force on April 1, 2007. Part 6 of NI 24-101 will come into force in Ontario on October 1, 2007, assuming this Rule is in 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. TEXT OF THE PROPOSED RULE

The text of the proposed Rule follows.

**PROPOSED ONTARIO SECURITIES COMMISSION RULE
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 October 1, 2007.