

Chapter 6

Request for Comments

6.1.1 Proposed Amendments to NI 24-101 Institutional Trade Matching and Settlement and Companion Policy 24-101CP Institutional Trade Matching and Settlement

NOTICE AND REQUEST FOR COMMENTS

PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 24-101 *INSTITUTIONAL TRADE MATCHING AND SETTLEMENT* AND COMPANION POLICY 24-101CP *INSTITUTIONAL TRADE MATCHING AND SETTLEMENT*

I. Introduction

The Canadian Securities Administrators (the CSA or we) are publishing for comment proposed amendments to National Instrument 24-101 *Institutional Trade Matching and Settlement* (NI 24-101 or the Instrument) and Companion Policy 24-101CP *Institutional Trade Matching and Settlement* (Companion Policy or CP).

The key part of the amendments to the Instrument would extend, from July 1, 2010 to July 1, 2015, the date on which the requirement to match DAP/RAP trades¹ no later than midnight on trade date (T) comes into effect. We are also proposing to extend, for a transition period of two years, the current deadline for matching DAP/RAP trades from noon on the business day following T (T+1) to 2 p.m. on T+1. Other proposed amendments to the Instrument would change the documentation and exception reporting requirements and clarify certain definitions and other provisions in the Instrument.

The text of the proposed amendments to the Instrument is contained in Annex A of this notice and will also be available on websites of CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
www.gov.ns.ca/nssc
www.nbsc-cvmnb.ca
www.osc.gov.on.ca
www.sfsc.gov.sk.ca
www.msc.gov.mb.ca

The corresponding amendments to the CP are contained in Annex C of this notice and will be available on the same websites.

We are publishing the proposed amendments for comment for 90 days. The comment period will expire on January 28, 2010. See below under “VIII. How To Provide Your Comments”.

II. Background

NI 24-101's primary objective is to expedite the pre-settlement confirmation and affirmation process—or *matching*—of an institutional trade. Registered firms trading for or with an institutional investor must have policies and procedures designed to match a DAP/RAP trade as soon as practical after the trade is executed, but no later than noon on T+1.

The Instrument had originally provided for transitioning the deadline to midnight on T on July 1, 2008.² However, in April 2008 the CSA agreed to defer the transition to the midnight on T deadline to July 1, 2010. This decision was made after concerns were expressed by industry stakeholders about the overall readiness of the Canadian capital markets to comply with the midnight on T deadline. It became apparent that industry participants from all sectors (sell side, buy side and custodians)

¹ A DAP/RAP trade is a trade executed for a client account that permits settlement on a delivery against payment or receipt against payment basis through the facilities of a clearing agency, and for which settlement is made on behalf of the client by a custodian other than the dealer that executed the trade. See definition of “DAP/RAP trade” in section 1.1 of the Instrument.

² The Instrument and CP came into force on April 1, 2007, and became fully effective on October 1, 2007. See CSA Notice of NI 24-101 and CP dated January 12, 2007 (2007) 30 OSCB 335.

needed more time to allow their middle and back-office processes to evolve to real-time processing before any move to matching by midnight on T could be achieved.

When we announced our decision to postpone the midnight on T deadline in April 2008, we noted that this would allow us to better assess the industry's overall matching performance in a noon on T+1 environment and review the Instrument and CP, including revisiting the timing for implementing the midnight on T deadline.

1. **Assessment of industry institutional trade matching performance**

CSA staff have been monitoring the industry's institutional trade matching (ITM) performance since the implementation of the Instrument in 2007. We have reviewed the ITM data provided quarterly under the Instrument by registered firms, CDS Clearing and Depository Services Inc. (CDS) and matching service providers (MSUs). Registered firms must complete and deliver an "exception report" on Form 24-101F1 for any calendar quarter in which less than a certain percentage of their executed DAP/RAP trades were matched by the specified deadline (exception reporting requirement).³ A clearing agency (through which trades governed by the Instrument are cleared and settled) and an MSU are required to provide quarterly ITM data on Form 24-101F2 and Form 24-101F5 respectively.⁴

We have also continued our discussions with market participants, service providers, industry groups and other stakeholders. This included meetings of the CSA-Industry Working Group on NI 24-101 (Working Group) that was formed in May 2007 to act as an advisory group for the CSA in identifying and resolving issues in relation to NI 24-101.⁵ In addition, we have been monitoring global ITM and other clearing and settlement developments.

The findings from our analysis of the data, stakeholder discussions, and other relevant information will be published early next year in a report of CSA staff on industry compliance with NI 24-101 (CSA Staff Report on NI 24-101). We discuss some of our preliminary findings below.

(a) *Overall impact of NI 24-101*

In April 2008 we stated that the Instrument had successfully encouraged market participants to address ITM middle and back-office problems and generally improve their clearing and settlement processes and systems since 2004.⁶ We were advised by industry groups that many processes were being re-engineered and becoming automated, resulting in efficiency gains and straight-through processing (STP).

Our review of the ITM data and stakeholder discussions confirm that NI 24-101 has encouraged market participants to improve ITM middle and back-office functions in the Canadian capital markets. Overall ITM rates at T and T+1 have improved significantly since April 2004, when the Instrument was first published for comment.⁷ See Table 1 below.

The combined equity and debt industry ITM rate at midnight on T improved from 2.98% in April 2004 to 48.24% in June 2009, representing an increase of over 45 percentage points. The ITM rate at midnight on T+1 also improved significantly, from 47.14% in April 2004 to 90.85% in June 2009, representing an increase of almost 44 percentage points. Moreover, the industry ITM rate at noon on T+1 increased from 61.89% in June 2007 (when CDS first began measuring ITM rates at noon on T+1) to 85.18% in June 2009, representing an increase of over 23 percentage points during this two year period.

³ See Part 4 and subsection 10.2(3) of NI 24-101, read together with Ontario Securities Commission Rule 24-502 – *Exemption from Transitional Rule: Extension of Transitional Phase-in Period in National Instrument 24-101 – Institutional Trade Matching and Settlement* and related blanket orders granted in other CSA jurisdictions (see CSA Notice 24-307).

⁴ See Part 5 and subsection 6.4(1) of NI 24-101.

⁵ The Working Group includes representatives of sell side, buy side and custodian firms, industry associations, the Investment Industry Regulatory Organization of Canada (IIROC), CDS and CSA staff. See CSA Staff Notice 24-304—*CSA-Industry Working Group on National Instrument 24-101*, dated July 6, 2007.

⁶ See CSA Notice 24-307.

⁷ NI 24-101 was first published for comment on April 16, 2004, together with CSA Discussion Paper 24-401 on Straight-through Processing and Request for Comments (CSA Discussion Paper 24-401). See (2004) 27 OSCB 3971. As the Instrument only came in force in April 2007, it is more accurate to say that it was the prospect of the Instrument coming into force that likely encouraged market participants to address ITM middle and back-office problems since April 2004.

Table 1
Overall Combined Debt and Equity ITM Performance
(based on 3-month rolling monthly average of number of trades entered at CDS and matched during month)

Month/ Year	% trades matched by 11:59 PM on T	% trades matched by 11:59 AM on T+1	% trades matched by 11:59 PM on T+1	% trades matched by 11:59 AM on T+2	% trades matched by 11:59 PM on T+2	% trades matched by 11:59 PM on T+3
April 2004	2.98	[not available]	47.14	[not available]	78.73	97.94
April 2007	14.32	[not available]	65.69	[not available]	85.47	97.26
June 2007	23.48	61.89	74.27	[not available]	89.13	97.47
September 2007	25.18	64.81	76.31	[not available]	90.29	97.95
September 2008	34.96	80.94	87.00	91.42	93.92	97.89
January 2009	48.11	84.91	90.36	93.82	95.35	98.58
June 2009	48.24	85.18	90.85	94.17	95.74	98.84

Source: CDS Clearing and Depository Services Inc. and CAPCO study.

One of the early rationales for the Instrument was to close the competitive gap with the U.S. industry in terms of STP and T+1 settlement preparedness.⁸ The original CAPCO study⁹ commissioned by the industry in 2004 had assessed Canada to be approximately 14 months behind the U.S. in STP/T+1 settlement readiness.¹⁰ Some stakeholders have suggested that the Canadian industry's current ITM rates are now closer to those of the U.S.

(b) Ongoing issues with meeting ITM targets

Despite significant progress since 2004, the industry is having difficulties with achieving NI 24-101's current noon on T+1 matching target of 90%. The data shows that the industry's progress towards achieving the current ITM target has slowed down in the last 15 months. See Table 2 below.

⁸ See CSA Discussion paper 24-401, at p. 3980 and 3984.

⁹ Assessment of Canada's STP/T+1 Readiness and a Comparison of Canada's vs. United States' T+1 Readiness --STP/T+1 Readiness Assessment Report for Canada, CAPCO final report, July 12, 2004.

¹⁰ See CSA Notice 24-301 – Responses to Comments Received on Discussion Paper 24-401 on Straight-through Processing, Proposed National Instrument 24-101 Post-trade Matching and Settlement, and Proposed Companion Policy 24-101CP to National Instrument 24-101 Post-trade Matching and Settlement, (2005) 28 OSCB 1509, at p. 1510.

Table 2
Overall Equity ITM Match Rates
(based on 3-month rolling monthly average of number of trades entered at CDS and matched during month)

Month/ Year	% trades matched by 11:59 PM on T	% trades matched by 11:59 AM on T+1	% trades matched by 11:59 PM on T+1	% trades matched by 11:59 AM on T+2	% trades matched by 11:59 PM on T+2	% trades matched by 11:59 PM on T+3
June 2007	22.56	64.72	77.07	[not available]	90.78	97.36
September 2007	22.42	65.08	76.37	[not available]	90.48	97.68
December 2007	27.23	72.96	81.51	[not available]	90.93	96.71
March 2008	32.32	78.44	85.88	[not available]	93.76	97.96
June 2008	32.7	81.09	87.02	91.74	94.2	98.04
September 2008	32.04	80.59	86.74	91.4	93.97	97.84
December 2008	41.29	82.18	88.18	92.39	94.17	98.03
March 2009	42.51	85.40	91.12	94.93	96.43	99.15
June 2009	46.55	85.86	91.42	94.71	96.18	98.90
August 2009	44.88	86.12	91.10	94.47	95.82	98.57

Source: CDS Clearing and Depository Services Inc.

The industry average rates of trades *entered (submitted)* by investment dealers into CDS in August 2009 are just below 91% at noon on T+1 and below 74% on T. However, the *match* rates for equity trades at noon on T+1 remain behind the *enter* rates by approximately 5 percentage points.

Most registered firms that are active in the DAP/RAP institutional markets appear to have challenges in meeting the current target, although our impression from our discussions with industry stakeholders is that they are making concerted efforts to meet the target. Moreover, based on the data and our discussions, the industry will be far from ready to meet the Instrument's midnight on T deadline commencing in July 2010.

While dealers have made important strides in entering their trades at CDS on a timely basis, more trades need to be reported earlier in the day on T, giving counterparties additional time to match trades before noon on T+1 or resolve trade matching exceptions earlier. We believe that, in order to meet the noon on T+1 deadline, dealers should be *entering* substantially all of their DAP/RAP trades by end of business on T. Similarly, investment managers and custodians must complete their ITM processes by matching their trades sooner.

We are therefore reconsidering the timing for imposing the move to matching on T.¹¹ Any benefits from moving to matching on T that were originally contemplated, such as reduction in operating costs and risks, may not be gained in a cost-effective manner without an extension of the transitional phase-in period.

¹¹ The decision to make NI 24-101 a rule was significantly influenced by international factors in the early 2000s, including a recommendation of the Group of Thirty in 2003 that market participants should collectively develop and use compatible and industry-accepted technical and market-practice standards for the automated confirmation and agreement of institutional trade details on T. See *Global Clearing and Settlement: A Plan of Action*, report of the G-30 dated January 23, 2003; Recommendation 5: Automate and Standardize Institutional Trade Matching.

We are of the view that a more realistic goal in the current environment may be for a 90% ITM rate to be achieved *at some mid-point* during the day on T+1. This goal would be consistent with a 2001 joint-recommendation of the Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of the International Organization of Securities Commissions (IOSCO) that called for a high percentage of institutional trades to be confirmed by no later than T+1.¹² Of course, our view assumes that there will be no global movement on the horizon to shorten the standard T+3 settlement cycle to T+1.

(c) *International ITM developments*

Recent global financial events have highlighted the importance of the policy objectives for imposing more timely and efficient ITM and settlement processes. However, while in certain other markets there have been improvements in automated ITM and clearance and settlement processes and ongoing discussions on shortening settlement cycles, we are not aware of any definitive plans to shorten the standard T+3 settlement cycles in other markets.¹³

(d) *Infrastructure support for ITM*

We believe that a majority of dealers and advisers that actively trade on a DAP/RAP basis in Canada are unable to match 90% of their institutional equity trades by noon on T+1 due in part to industry-wide infrastructure issues. This in turn directly impacts the adequacy of their ITM policies and procedures.

We have found examples where the infrastructure did not support more timely ITM processing or adequately provide the means to facilitate measuring a firm's ITM performance. A case in point is the current industry-wide ITM processing cycle.

Most market participants are prevented from completing their ITM processes after 7:30 p.m. until late in the evening on T. In many cases, we have found that trade instructions, including allocations, are merely held or "parked" within the systems of trade-matching parties, CDS and service providers until the morning of T+1, even though trade matching is still possible after the markets close (generally 4:30 p.m.) until 7:30 p.m. on T. Every business day at 7:30 p.m. Eastern Time (ET) (the CDS 7:30 p.m. cut-off time) until almost the end of the day on T, CDS' clearing and settlement system is shut down for batch processing. It is therefore impossible for matching to occur during this period. As a result,

- trade date (T) for the purposes of processing DAP/RAP trades in Canada seems to effectively end at the CDS 7:30 p.m. cut-off time, although transactions can continue to come in to CDS, and
- the processing schedules of trade-matching parties, CDS and service providers may be problematic, especially for investment managers of modest size who rely more on end-of-day batch processing and can only send out settlement instructions after 4:30 p.m. on T, when other trade-matching parties may have already wound down their operations for the day.

If processing could continue beyond the CDS 7:30 p.m. cut-off time until later in the evening, more trade-matching parties and their service providers might be willing to tighten their policies and procedures, including shifting their resources and reconfiguring their systems, to complete the ITM processes in the evening of T rather than in the morning of T+1.

We have also found that many dealers are unable to track or segregate their DAP/RAP trades originating from non-western hemisphere clients or counterparties, from those coming from western hemisphere clients or counterparties. This is because CDS and back-office service providers do not facilitate the tracking of this information. Under the Instrument, if a trade results from an order to buy or sell securities received from an institutional investor whose investment decisions are usually made in

¹² See *Recommendations for securities settlement systems* - Report of the Committee on Payment and Settlement Systems and Technical Committee of the International Organization of Securities Commissions, dated November 2001 (the CPSS-IOSCO report); Recommendation 2 – Trade confirmation: "Confirmation of trades between direct market participants should occur as soon as possible after trade execution, but no later than trade date (T+0). Where confirmation of trades by indirect market participants (such as institutional investors) is required, it should occur as soon as possible after trade execution, preferably on T+0, but no later than T+1." CPSS and IOSCO subsequently suggested that "a high percentage" of trades means 90% or more. See *Assessment methodology for "Recommendations for securities settlement systems" - Report of the Committee on Payment and Settlement Systems and Technical Committee of the International Organization of Securities Commissions*, dated November 2002, at p. 7.

¹³ While we are not aware of concrete plans to shorten settlement cycles, there have been recent calls to shorten the settlement cycle. See, for example, *Euromoney Magazine*, "US equity market – Short selling: The naked truth", Helen Avery, December 1, 2008, at www.euromoney.com: "However, settlement is faster in Europe than in the US. It is surprising that the US still operates a T+3 system. Robert Greifeld, chief executive of Nasdaq, questioned the system in March this year at a conference when, in reference to fails to deliver, he said it was hard to believe that in 2008 the market still required three days to settle, and that a T+1 system should be part of a discussion about fails." Also, a recent IOSCO report highlights the 2001 CPSS-IOSCO recommendation that trades should be settled no later than T+3 as part of the standard settlement cycle and the benefits and costs of a standard settlement cycle shorter than T+3 should be evaluated. See IOSCO's *Regulation of Short Selling*, Final Report, June 2009, available at <http://www.iosco.org/> (IOSCO Short Selling Report). We understand also that there are discussions among authorities in Europe to adopt a uniform T+2 settlement cycle for all European markets.

and communicated from a geographical region outside of the western hemisphere, the deadline for matching is extended by a day.¹⁴

This inability to track non-western hemisphere trades may have had an adverse effect on dealers' ITM performance, forcing some to needlessly complete and deliver quarterly exception reports on Form 24-101F1. We are told that CDS and service providers do not provide the necessary specific trade identifiers to enable dealers to track and segregate their non-western hemisphere trades from western hemisphere trades. If such specific trade identifiers were made available, certain dealers might be able to demonstrate that at least 90% of their trades in a quarter were matched by the deadline.

(e) *Automation in ITM*

We continue to believe that market participants should pursue further technology and processing improvements within the next five years. Consequently, we are of the view that we should maintain the midnight on T deadline as the ultimate goal in the Instrument. Canada's markets should aim for the midnight on T target even if that requires the industry to move to a new "technology paradigm". More specifically,

- The buy-side sector should consider augmenting their use of automation for front office functions to enable more timely post-execution operations.
- Dealers should continue their efforts to shift from end-of-day batch processing to more frequent intra-day or real time processing.
- Custodians should continue to support their clients in greater use of technology and other alternatives to improve the ITM process, including dissuading clients from manually handling their post-execution activities (e.g., using telephones, fax machines or e-mails to communicate trade details and settlement instructions).
- CDS and back-office service providers should consider modifying their systems in order to expand their processing schedules and accept and match trades after 7:30 p.m. on T and facilitate the means to accurately measure a firm's ITM performance.

We also believe that MSUs can play an important role in bringing all trade-matching parties together to expedite ITM processes. In the end, industry-wide automation and *inter-operability* will strengthen the efficiency and integrity of the securities clearing and settlement process and ultimately improve investor protection and the global competitiveness of the markets in Canada.

(f) *Industry coordination and leadership*

Industry coordination is critical to ensure steady progress towards timely ITM processes. The CSA had largely depended on the industry to identify what needs to be achieved across the industry and how to implement the various steps.¹⁵ The Canadian Capital Markets Association (CCMA) had filled this role until it was de-commissioned in 2008.¹⁶ It was founded in 2000 by the industry and had coordinated the industry's specific ITM initiatives by ensuring that a cross-section of sell side, buy side and custodial representatives were participating on various CCMA sub-committees and working groups.

2. *Timely settlement of trades*

Speedy and accurate ITM processes are an essential pre-condition to avoiding settlement failures in a T+3 settlement cycle environment.¹⁷ According to CDS data, the value of accumulated fails as a percentage of the value of trades processed through the continuous net settlement (CNS) facilities of CDS has declined overall from about 3% in April 2007 (when the Instrument came in force) to about 1.5% in September 2009.

¹⁴ See subsections 3.1(2) and 3.2(2).

¹⁵ See CSA Discussion Paper 24-401, at p. 3980.

¹⁶ See <http://www.ccma-acmc.ca/> for more information on the CCMA. According to the CCMA, the "difficult decision to decommission the active management of the CCMA was taken by the [CCMA board of directors in April 2008] after careful consideration of the successful implementation and evolution of [NI 24-101] and the future needs of our industry". See *CCMA News*, Volume 30, August 2008, available at http://www.ccma-acmc.ca/en/files/CCMA%20News%20Volume%2030_online%20version.pdf.

¹⁷ See the CPSS-IOSCO report, at par. 3.10. See also CSA Discussion Paper 24-401, at p. 3995.

We believe that NI 24-101 may have contributed to the decline of the fails-to-deliver rates in Canada.¹⁸ While more timely ITM policies and procedures do not necessarily avert all trade failures, they have a positive effect further down the transaction “value chain” in reducing the incidence of trade fails and associated costs.¹⁹

In addition to the ITM requirements, NI 24-101 contains a principle-based settlement rule that requires registered dealers to establish, maintain and enforce policies and procedures designed to facilitate settlement of trades by no later than the standard settlement date, which is typically T+3 (NI 24-101’s settlement rule).²⁰

While we are not proposing any amendments at this time to NI 24-101’s settlement rule, a working group comprised of staff from a number of CSA jurisdictions and IIROC is currently assessing, among other things, whether Canada’s trade settlement discipline regime may need to be strengthened in light of recent international developments.²¹ This will include examining NI 24-101’s settlement rule and determining whether it should be amended. In addition to comments that we are seeking in response to our questions in Section III of this Notice, we welcome views from stakeholders on whether our settlement discipline regime may need to be strengthened, including whether NI 24-101’s settlement rule should be amended.

III. Summary of the Proposed Amendments to the Instrument

This Section of the Notice describes the amendments that we are proposing to make to the Instrument. Part 1 of this Section describes the key amendments, and includes a number of questions to which we seek specific responses or commentary from stakeholders to assist us in finalizing the amendments. The key amendments would require changes to the transition provisions in section 10.2 of the Instrument.

Part 2 of this Section describes other amendments that are intended to:

- lessen the regulatory burden of certain requirements of the Instrument,
- clarify certain provisions as a result of issues that were raised by stakeholders, including during the Working Group’s discussions, and
- modify the ITM reporting requirements of clearing agencies and MSUs under the Instrument.

We welcome comments from stakeholders on all aspects of such amendments.

1. Key amendments

(a) *Postponing for five years the midnight on T deadline*

We propose to defer the requirement to match a DAP/RAP trade no later than the end of T by an additional period of five years. This requirement, which would have come in force on July 1, 2010, is now proposed to come in force on July 1, 2015.

However, we would propose to consider re-introducing the midnight on T matching deadline sooner than July 1, 2015 through subsequent amendments to the Instrument if circumstances were to change.²² One possible change of circumstances would be a shortening in the global markets of standard T+3 settlement cycles.

Question 1: For what period should the requirement to match no later than the end of T be deferred? Should the requirement be deferred indefinitely until such time as global markets shorten their standard T+3 settlement cycles? Please provide your reasons.

During our ongoing consultations on NI 24-101, a number of stakeholders had expressed doubts about the need to move to matching on T because risk was not significantly reduced in moving from noon on T+1 to midnight on T. Some stakeholders

¹⁸ IIROC has suggested that NI 24-101 may have had the effect of reducing the number of trade failures and the length of time that any failure remains outstanding and thus contributed to the declines in the value of accumulated fails as a percentage of trade value generally. See IIROC Notice 09-0037, February 4, 2009, *Recent Trends in Trading Activity, Short Sales and Failed Trades* and the IIROC report dated February 2009 *Recent Trends in Trading Activity, Short Sales and Failed Trades – For the Period May 1, 2007 to September 30, 2008*, at p. 51.

¹⁹ This is consistent with findings in other global markets. See, for example, *Building efficiencies in post-trade processing: the benefits of same-day affirmation*, June 2008, an economic study on the benefits associated with improvements in the trade verification process within the European Union markets (independent study undertaken by Oxera Consulting Ltd. at the request of Omgeo).

²⁰ See Part 7 of NI 24-101.

²¹ Among other developments, the IOSCO Short Selling Report includes a recommendation that regulation should “as a minimum requirement impose a *strict* settlement (such as compulsory buy-in) of failed trades”.

²² Any subsequent proposed amendments to the rule would be subject to public comment as required by provincial and territorial securities legislation.

suggested that no other persuasive business reasons exist to match on T while we remain at a standard T+3 settlement cycle. They believe the investment cost and technology changes required are too large to justify any potential benefits at this time.

Question 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 by midnight on T on July 1, 2015?

We refer to our discussion above on the CDS 7:30 p.m. cut-off time and the need for a specific trade identifier for non-western hemisphere trades (under "II. Background – 1. Assessment of industry institutional trade matching (ITM) performance – (d) Infrastructure support for ITM"). We believe that addressing these infrastructure issues will be necessary to assist the industry in moving to the midnight on T deadline on July 1, 2015.

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

Question 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?

(b) *Extending the time at which matching must occur on T+1 by two hours*

We propose to extend the noon on T+1 deadline to 2 p.m. on T+1 for an interim period of two years. Based on our review of some exception reports submitted under the Instrument, we believe that extending the current deadline by an additional two hours for two years may provide market participants with additional time to address delays and other ITM challenges that they are currently experiencing.

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

2. Other amendments

(a) *Amending the quarterly exception reporting requirement*

Registered firms are required to complete and deliver an exception report on Form 24-101F1 for any calendar quarter in which less than a certain threshold percentage of their executed DAP/RAP trades were matched by the specified deadline (exception reporting requirement).²³ The current threshold percentage is 90% by noon on T+1. Under the applicable transitional provisions, the threshold percentage will increase gradually to 95% by midnight on T on January 1, 2012.

We believe the exception reporting requirement remains a useful tool for two reasons. First, it serves as a powerful incentive for registered firms to improve their matching rates and avoid the exception reporting requirement. Second, it provides the CSA with important information on how the industry is progressing with ITM policies and procedures. However, we are proposing a number of amendments to the exception reporting requirement at this time. We may consider additional amendments for comment in this area, including amendments to Form 24-101F1, after we publish the CSA Staff Report on NI 24-101. We welcome comments on how we should further amend the exception reporting requirement and Form 24-101F1.

(i) *Exception reporting threshold percentages and timelines*

As a result of the proposed amendments to defer the matching on T requirement and extend the noon on T+1 deadline to 2:00 p.m. on T+1, we are proposing consequential transitional amendments to the provisions governing the exception reporting requirement so that exception reporting would only be required in the following circumstances:

²³ See Part 4 and subsection 10.2(3), as modified in June 2008 by local orders of the CSA jurisdictions exempting registered firms from the transitional provisions in NI 24-101 and extending the transitional period. In Ontario, this was accomplished by way of Ontario Securities Commission Rule 24-502.

For DAP/RAP trades executed:	Matching deadline for trades executed on T (Part 3 of Instrument)	Percentage trigger (threshold) of DAP/RAP trades for registrant exception reporting (Part 4 of Instrument)
before July 1, 2012	2:00 p.m. on T+1	Less than 90% matched by deadline
after June 30, 2012 but before July 1, 2015	12:00 p.m. (noon) on T+1	Less than 90% matched by deadline
after June 30, 2015 but before July 1, 2016	11:59 p.m. on T	Less than 70% matched by deadline
after June 30, 2016 but before July 1, 2017	11:59 p.m. on T	Less than 80% matched by deadline
after June 30, 2017	11:59 p.m. on T	Less than 90% matched by deadline

We propose to extend the transitional period to July 1, 2017 and reduce the ultimate percentage of trades that a registered firm is required to match by the deadline in order to avoid exception reporting from 95% to 90%. The 90% threshold is consistent with the CPSS-IOSCO standard requiring a high percentage of institutional trades to be confirmed no later than T+1, as CPSS-IOSCO had considered “a high percentage” to be 90% or more.²⁴

(ii) *Method for determining threshold percentages*

Currently the threshold percentages are determined by measuring both the total number and total value of DAP/RAP trades executed by or for a registered firm that matched within the deadline during a calendar quarter.²⁵ A registered firm is required to use both methods for equity and debt securities trades.

We propose to amend the Instrument, including Exhibit A of Form 24-101F1, to simplify the calculation. First, we would eliminate the need to determine the threshold based on the total value of equity trades, thus retaining the total number of trades method only for equity trades. We agree with stakeholders that have suggested that the total value measurement may not be a true STP indicator of the progress being made on ITM rates for equity trades.

Second, we propose to eliminate the need to determine the threshold based on the total number of debt trades, thus retaining the total value method only for debt trades. We would retain the total value method for debt trades because, while for any given period the total number of debt trades is much less than the total number of equity trades, the total value of debt trades is considerably higher than the total value of equity trades. Therefore, we believe that the total value method reflects a more accurate picture of the risk surrounding slow and inefficient ITM processes for DAP/RAP trades of debt securities.

(b) *Amending the pre-DAP/RAP trade execution documentation requirements and related key definition*

When trading for or with an institutional investor, registered dealers and advisors must enter into *trade-matching agreements* with other *trade-matching parties* or, alternatively, obtain signed *trade-matching statements* from other trade-matching parties.²⁶ Early in our discussions with the Working Group and feedback from other stakeholders, we were made aware of various problems with these documentation requirements.

We are therefore proposing a number of amendments to address problematic areas of the requirement and related definitional provision.

²⁴ See footnote 12, discussing the CPSS-IOSCO report.

²⁵ See paragraphs (a) and (b) of section 4.1 and Exhibit A of Form 24-101 F1.

²⁶ Sections 3.2 and 3.4.

(i) *Amending the definition of trade-matching party*

A trade-matching party includes a registered adviser acting for an institutional investor in a trade, or the institutional investor itself where a registered adviser is not acting for the institutional investor in a trade.²⁷ We are proposing to amend the definition of “trade-matching party”.

- The amended definition would include a registered adviser only where it is acting for the institutional investor in *processing* the trade. This clarification would ensure that advisers with no responsibility for trade execution and post-trade execution functions of an institutional investor are not considered a trade-matching party. The current definition is confusing for certain groups of institutional investors, such as mutual fund families, where the advice functions and trade processing functions are performed by different registered advisers.
- Under the Instrument individuals and smaller entities can be considered “institutional investors” if they have a DAP/RAP trading account relationship with their dealer. The amended definition would exclude individuals, as well as any person or company that has net investment assets under administration or management of less than \$10 million.²⁸ Registered firms would no longer be required to seek trade-matching agreements or statements from such institutional investors.

(ii) *Amending the trade-matching documentation requirements*

Certain dealers and advisers have reported difficulties in entering into trade-matching agreements with, or obtaining trade-matching statements from, clients or counter-parties. The intent of the documentation requirements is to support the Instrument’s primary ITM policies and procedures requirement. We are of the view that a dealer’s or adviser’s policies and procedures should be designed to encourage their clients or counterparties to enter into trade-matching agreements or receive trade-matching statements. If a trade-matching party refuses to enter into an agreement or provide a statement, the dealer or adviser should document its efforts to enter into the agreement or receive the statement in accordance with its policies and procedures.

We are proposing to amend sections 3.2 and 3.4 of the Instrument to reflect this regulatory approach to the documentation requirements.

(c) *Amendments to the provisions governing non-western hemisphere institutional investors*

We are proposing transitional amendments to the provisions governing trade orders coming from institutional investors based outside of the western hemisphere, as a consequence of the changes to the T and T+1 deadlines.

Some stakeholders had pointed out that foreign investors do not necessarily make and communicate their settlement instructions from the same office that makes and communicates their investment decisions. We are thus proposing to clarify that an institutional investor whose settlement instructions are usually made in and communicated from a geographical region outside of the western hemisphere be included in these provisions.

(d) *Amendments to clarify certain other definitions and concepts and to modify Forms 24-101F2 and F5*

We are proposing to make non-substantive drafting amendments to the definitions of “institutional investor”, “T+1”, “T+2” and “T+3” and certain other provisions to clarify the definitions and provisions and to reflect comments made by some stakeholders. We are also proposing to amend Form 24-101F2 and Form 24-101F5 to reflect the changes made to Form 24-101F1 and increase the number of the timeline intervals for reporting *entered* and *matched* trades.

IV. Proposed Amendments to the Companion Policy and Other Consequential Amendments

A number of consequential amendments have been made to the CP to reflect the proposed amendments to the Instrument. In addition, some of the topics in CSA Staff Notice 24-305—*Frequently Asked Questions About National Instrument 24-101 – Institutional Trade Matching and Settlement and Related Companion Policy* have been addressed by the proposed amendments to the Instrument or have been incorporated into the CP.

We are proposing an effective date for the amendments to the Instrument and Companion Policy of July 1, 2010, subject to Ministerial approval requirements in the various CSA jurisdictions. It is further proposed that, from the same date, Ontario Securities Commission Rule 24-502 – *Exemption from Transitional Rule: Extension of Transitional Phase-In Period in National*

²⁷ Paragraph (b) of the definition in section 1.1.

²⁸ We chose the amount \$10 million to be generally analogous with the definition “institutional customer” in IROC member Rule 2700 *Minimum Standards for Institutional Account Opening, Operation and Supervision*.

Instrument 24-101 – Institutional Trade Matching and Settlement and related blanket orders granted in other CSA jurisdictions will be revoked or repealed (see CSA Notice 24-307). See further Annex E.

V. Authority for the Proposed Amendments to the Instrument and CP

In those jurisdictions in which the amendments to the Instrument and CP are to be adopted, the securities legislation provides the securities regulatory authority with rule-making authority in respect of the subject matter of the amendments.

VI. Alternatives Considered

No alternatives to the proposed amendments were considered.

VII. Unpublished Materials

As noted above under “II. Background – 1. Assessment of industry institutional trade matching (ITM) performance”, we are proposing the amendments to the Instrument and CP largely based on the findings of our analysis of the ITM data and our stakeholder discussions. These findings will be published early next year in a report of CSA staff on industry compliance with NI 24-101. We have not relied on any other significant unpublished study, report or other written materials in proposing the amendments.

VIII. How To Provide Your Comments

You must submit your comments in writing by January 28, 2010. If you are not sending your comments by email, you should also send an electronic file containing the submissions (in Windows format, Microsoft Word).

Please address your comments to all of the CSA member commissions, as follows:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés 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 Territory
Superintendent of Securities, Nunavut

Please send your comments **only** to the addresses below. Your comments will be forwarded to the remaining CSA jurisdictions.

M^e Anne-Marie Beaudoin

Corporate Secretary

Autorité des marchés financiers
Tour de la Bourse
800, square Victoria, 22^e étage
C.P. 246, tour de la Bourse
Montréal Québec H4Z 1G3
Fax: (514) 864-6381
Email: consultation-en-cours@lautorite.qc.ca

John Stevenson

Secretary

Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8
Fax: (416) 593-2318
Email: jstevenson@osc.gov.on.ca

Please note that all comments received during the comment period will be made publicly available. We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period. We will post all comments received during the comment period to the OSC website at www.osc.gov.on.ca to improve the transparency of the policy-making process.

IX. Questions

Please refer your questions to any of the following:

Maxime Paré
Senior Legal Counsel
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Ontario Securities Commission
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Alina Bazavan
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Manitoba Securities Commission
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Shirley P. Lee
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Nova Scotia Securities Commission
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leesp@gov.ns.ca

Barbara Shourounis
Director, Securities Division
Saskatchewan Financial Services Commission
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Dean Murrison
Deputy Director
Saskatchewan Financial Services Commission
(306) 787-5879
dmurrison@sfsc.gov.sk.ca

Annex A contains the proposed amending instrument for the amendments to NI 24-101. Annex B contains a blackline showing the proposed amendments relative to the current version of NI 24-101. Annex C contains the proposed amending instrument for the proposed changes to CP, with Annex D providing the corresponding blackline. Annex E contains local material, where applicable.

October 30, 2009

ANNEX A

PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 24-101

1. **National Instrument 24-101 Institutional Trade Matching and Settlement is amended by this Instrument.**
2. **Section 1.1 is amended by:**
 - a. **striking out “authorized” in the definition of “clearing agency” and substituting “recognized”;**
 - b. **repealing the definition of “institutional investor” and substituting the following:**

“institutional investor” means a client of a dealer that has been granted DAP/RAP trading privileges by the dealer;
 - c. **repealing paragraphs (a) and (b) of the definition “trade-matching party” and substituting the following:**
 - (a) a registered adviser acting for the institutional investor in processing the trade,
 - (b) if a registered adviser is not acting for the institutional investor in processing the trade, the institutional investor unless the institutional investor is
 - (i) an individual, or
 - (ii) a person or company that has net investment assets under administration or management of less than \$10,000,000,
 - d. **striking out the words “the day on which a trade is executed”, wherever they occur in the definitions of “T+1”, “T+2” and “T+3”, and substituting “T”.**
3. **Paragraph 2.1(f) is amended by adding “in a security of a mutual fund” after “trade”.**
4. **Subsection 3.1(2) is amended by adding “or settlement instructions” after “investment decisions”.**
5. **Section 3.2 is repealed and substituted by the following:**
 - 3.2 **Pre-DAP/RAP trade execution documentation requirement for dealers —**

Without limiting the generality of section 3.1, a registered dealer shall not open an account to execute a DAP/RAP trade for an institutional investor or accept an order to execute a DAP/RAP trade for the account of an institutional investor unless its policies and procedures are designed to encourage each trade-matching party to either

 - (a) enter into a trade-matching agreement with the dealer, or
 - (b) provide a trade-matching statement to the dealer.
6. **Subsection 3.3(2) is amended by adding “or settlement instructions” after “investment decisions”.**
7. **Section 3.4 is repealed and substituted by the following:**
 - 3.4 **Pre- DAP/RAP trade execution documentation requirement for advisers —**

Without limiting the generality of section 3.3, a registered adviser shall not open an account to execute a DAP/RAP trade for an institutional investor or give an order to a dealer to execute a DAP/RAP trade for the account of an institutional investor unless its policies and procedures are designed to encourage each trade-matching party to either

 - (a) enter into a trade-matching agreement with the adviser, or
 - (b) provide a trade-matching statement to the adviser.

8. **Part 4 is repealed and substituted by the following:**

PART 4 REPORTING BY REGISTERED FIRMS

4.1 Exception reporting requirement

A registered firm shall deliver Form 24-101F1 to the securities regulatory authority no later than 45 days after the end of a calendar quarter if

- (a) less than 90 per cent of the DAP/RAP trades in equity securities executed by or for the registered firm during the quarter matched within the time required in Part 3, or
- (b) the DAP/RAP trades in debt securities executed by or for the registered firm during the quarter that matched within the time required in Part 3 represent less than 90 per cent of the aggregate value of the debt securities purchased and sold in those trades.

9. **Part 10 is amended by adding the following:**

10.3 Post-June 2010 Transition

- (1) A reference to “the end of T” in subsections 3.1(1) and 3.3(1) shall each be read as a reference to:
 - (a) “2:00 p.m. on T+1”, for trades executed before July 1, 2012; and
 - (b) “12 p.m. (noon) on T+1”, for trades executed after June 30, 2012 and before July 1, 2015.
- (2) A reference to the “end of T+1” in subsections 3.1(2) and 3.3(2) shall each be read as a reference to:
 - (a) “2:00 p.m. on T+2”, for trades executed before July 1, 2012; and
 - (b) “12:00 p.m. (noon) on T+2”, for trades executed after June 30, 2012 and before July 1, 2015.
- (3) A reference to “90 per cent” in paragraphs 4.1(a) and (b) shall each be read as a reference to:
 - (a) “70 per cent”, for trades executed after June 30, 2015 and before July 1, 2016; and
 - (b) “80 per cent”, for trades executed after June 30, 2016 and before July 1, 2017.

10. **Form 24-101F1 is amended by:**

(a) **repealing item 3 under “REGISTERED FIRM IDENTIFICATION AND CONTACT INFORMATION:” and substituting the following:**

- 3a. Address of registered firm’s principal place of business:
- 3b. Please indicate below the jurisdiction of your principal regulator within the meaning of National Instrument 31-103 *Registration Requirements and Exemptions*:
 - Alberta
 - British Columbia
 - Manitoba
 - New Brunswick
 - Newfoundland & Labrador
 - Northwest Territories
 - Nova Scotia
 - Nunavut
 - Ontario
 - Prince Edward Island
 - Quebec
 - Saskatchewan
 - Yukon

3c. Please indicate below all jurisdictions in which you are registered to carry on business:

- Alberta
- British Columbia
- Manitoba
- New Brunswick
- Newfoundland & Labrador
- Northwest Territories
- Nova Scotia
- Nunavut
- Ontario
- Prince Edward Island
- Quebec
- Saskatchewan
- Yukon

(b) **striking out the portion of the Form after the heading “INSTRUCTIONS:” and before the heading “EXHIBITS” and substituting the following:**

Deliver this form for both equity and debt DAP/RAP trades together with Exhibits A, B and C pursuant to section 4.1 of the Instrument, covering the calendar quarter indicated above, within 45 days of the end of the calendar quarter if,

- (a) less than 90 per cent* of the equity DAP/RAP trades executed by or for you during the quarter matched within the time** required in Part 3 of the Instrument, or
- (b) the debt DAP/RAP trades executed by or for you during the quarter that matched within the time** required in Part 3 of the Instrument represent less than 90 per cent* of the aggregate value of the debt securities purchased and sold in those trades.”

Transition

* For DAP/RAP trades executed during a transitional period after June 30, 2015 and before July 1, 2017, this percentage will vary depending on when the trade was executed. See Part 7 of the Companion Policy to the Instrument.

** The time set out in Part 3 of the Instrument is 11:59 p.m. on “T” or “T+1”, as the case may be. For DAP/RAP trades executed during a transitional period before July 1, 2012, the time is 2:00 p.m. on “T+1” or “T+2”, as the case may be. For DAP/RAP trades executed after June 30, 2012 and before July 1, 2015, the time is 12:00 p.m. (noon) on “T+1” or “T+2”, as the case may be. See Part 7 of the Companion Policy to the Instrument.

(c) **striking out the portion of the Form under the heading “EXHIBITS:” after the words “each calendar quarter.” and before the words “Describe the circumstances” and substituting the following:**

(1) *Equity DAP/RAP trades*

<i>Entered into CDS by deadline (to be completed by dealers only)</i>		<i>Matched by deadline</i>	
# of Trades	%	# of Trades	%

(2) Debt DAP/RAP trades

Entered into CDS by deadline (to be completed by dealers only)		Matched by deadline	
\$ Value of Trades	%	\$ Value of Trades	%

Exhibit B – Reasons for not meeting exception reporting thresholds

11. **Form 24-102F2 is amended by striking out the portion of the Form after the heading “Table 1 – Equity trades:” and before the heading “CERTIFICATE OF CLEARING AGENCY” and substituting the following:**

Timeline	Entered into clearing agency by <u>dealers</u>		Matched in clearing agency by <u>custodians</u>	
	# of Trades	% Industry	# of Trades	% Industry
T – 7:30 p.m.				
T – midnight				
T+1 – noon				
T+1 – 2:00 p.m.				
T+1 – midnight				
T+2 – midnight				
T+3 – midnight				
> T+3				
Total				

Table 2 – Debt Trades:

Timeline	Entered into clearing agency by <u>dealers</u>		Matched in clearing agency by <u>custodians</u>	
	\$ Value of Trades	% Industry	\$ Value of Trades	% Industry
T – 7:30 p.m.				
T – midnight				
T+1 – noon				
T+1 – 2:00 p.m.				
T+1 – midnight				
T+2 – midnight				
T+3 – midnight				
> T+3				
Total				

Legend

“# of Trades” is the total number of transactions in the month;
 “\$ Value of Trades” is the total value of the transactions (purchases and sales) in the month.

Exhibit B – Individual matched trade statistics

Using the same format as Exhibit A above, provide the relevant information for each participant of the clearing agency in respect of client trades during the quarter that have been entered by the participant and matched within the timelines indicated in Exhibit A.

12. **Form 24-101F5 is amended by striking out the portion of the Form after the heading “Table 1 – Equity trades:” and before the heading “CERTIFICATE OF MATCHING SERVICE UTILITY” and substituting the following:**

Timeline	<u>Entered into matching service utility by dealer-users/subscribers</u>		<u>Matched in matching service utility by other users/subscribers</u>	
	# of Trades	% Industry	# of Trades	% Industry
T – 7:30 p.m.				
T – midnight				
T+1 – noon				
T+1 – 2:00 p.m.				
T+1 – midnight				
T+2 – midnight				
T+3 – midnight				
> T+3				
Total				

Table 2 – Debt trades:

Timeline	<u>Entered into matching service utility by dealer-users/subscribers</u>		<u>Matched in matching service utility by other users/subscribers</u>	
	\$ Value of Trades	% Industry	\$ Value of Trades	% Industry
T – 7:30 p.m.				
T – midnight				
T+1 – noon				
T+1 – 2:00 p.m.				
T+1 – midnight				
T+2 – midnight				
T+3 – midnight				
> T+3				
Total				

Legend

“# of Trades” is the total number of transactions in the month;
“\$ Value of Trades” is the total value of the transactions (purchases and sales) in the month.

Exhibit D – Individual matched trade statistics

Using the same format as Exhibit C above, provide the relevant information for each user or subscriber in respect of trades during the quarter that have been entered by the user or subscriber and matched within the timelines indicated in Exhibit C.

13. **This Instrument comes into force on July 1, 2010.**

Annex B

Blackline Version of the Proposed Amendments

This is an unofficial consolidation of National Instrument 24-101 *Institutional Trade Matching and Settlement*, with the proposed amendments in Annex A of this Notice shown by blackline. No part of this document represents an official statement of law. Text boxes in this Annex are provided for convenience and form neither part of the Proposed Rule nor the National Instrument.

CANADIAN SECURITIES ADMINISTRATORS
NATIONAL INSTRUMENT 24-101
INSTITUTIONAL TRADE MATCHING AND SETTLEMENT

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**NATIONAL INSTRUMENT 24-101
INSTITUTIONAL TRADE MATCHING AND SETTLEMENT**

PART 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions —

In this Instrument,

“clearing agency” means,

- (a) in Ontario, a clearing agency recognized by the securities regulatory authority under section 21.2 of the *Securities Act* (Ontario),
- (b) in Quebec, a clearing house for securities ~~authorized~~recognized by the securities regulatory authority, and
- (c) in every other jurisdiction, an entity that is carrying on business as a clearing agency in the jurisdiction;

“custodian” means a person or company that holds securities for the benefit of another under a custodial agreement or other custodial arrangement;

“DAP/RAP trade” means a trade

- (a) executed for a client trading account that permits settlement on a delivery against payment or receipt against payment basis through the facilities of a clearing agency, and
- (b) for which settlement is made on behalf of the client by a custodian other than the dealer that executed the trade;

“institutional investor” means ~~an investor~~a client of a dealer that has been granted DAP/RAP trading privileges by ~~the~~a dealer;

“marketplace” has the same meaning as in National Instrument 21-101 *Marketplace Operation*;

“matching service utility” means a person or company that provides centralized facilities for matching, but does not include a clearing agency;

“registered firm” means a person or company registered under securities legislation as a dealer or adviser;

“trade-matching agreement” means, for trades executed with or on behalf of an institutional investor, a written agreement entered into among trade-matching parties setting out the roles and responsibilities of the trade-matching parties in matching those trades and including, without limitation, a term by which the trade-matching parties agree to establish, maintain and enforce policies and procedures designed to achieve matching as soon as practical after a trade is executed;

“trade-matching party” means, for a trade executed with or on behalf of an institutional investor,

- (a) a registered adviser acting for the institutional investor in processing the trade,
- (b) if a registered adviser is not acting for the institutional investor in processing the trade, the institutional investor, ~~unless the institutional investor is~~
 - (i) an individual, or
 - (ii) a person or company that has net investment assets under administration or management of less than \$10,000,000.
- (c) a registered dealer executing or clearing the trade, or
- (d) a custodian of the institutional investor settling the trade;

“trade-matching statement” means, for trades executed with or on behalf of an institutional investor, a signed written statement of a trade-matching party confirming that it has established, maintains and enforces policies and procedures designed to achieve matching as soon as practical after a trade is executed;

“T” means the day on which a trade is executed;

“T+1” means the next business day following ~~the day on which a trade is executed~~T;

“T+2” means the second business day following ~~the day on which a trade is executed~~T;

“T+3” means the third business day following ~~the day on which a trade is executed~~T.

1.2 Interpretation — trade matching and Eastern Time —

- (1) In this Instrument, matching is the process by which
 - (a) the details and settlement instructions of an executed DAP/RAP trade are reported, verified, confirmed and affirmed or otherwise agreed to among the trade-matching parties, and
 - (b) unless the process is effected through the facilities of a clearing agency, the matched details and settlement instructions are reported to a clearing agency.
- (2) Unless the context otherwise requires, a reference in this Instrument to
 - (a) a time is to Eastern Time, and
 - (b) a day is to a twenty-four hour day from midnight to midnight Eastern Time.

PART 2 APPLICATION

- 2.1 This Instrument does not apply to
- (a) a trade in a security of an issuer that has not been previously issued or for which a prospectus is required to be sent or delivered to the purchaser under securities legislation,
 - (b) a trade in a security to the issuer of the security,
 - (c) a trade made in connection with a take-over bid, issuer bid, amalgamation, merger, reorganization, arrangement or similar transaction,
 - (d) a trade made in accordance with the terms of conversion, exchange or exercise of a security previously issued by an issuer,
 - (e) a trade that is a securities lending, repurchase, reverse repurchase or similar financing transaction,
 - (f) a trade in a security of a mutual fund to which National Instrument 81-102—*Mutual Funds* applies,
 - (g) a trade to be settled outside Canada,
 - (h) a trade in an option, futures contract or similar derivative, or
 - (i) a trade in a negotiable promissory note, commercial paper or similar short-term debt obligation that, in the normal course, would settle in Canada on T.

PART 3 TRADE MATCHING REQUIREMENTS

3.1 Matching deadlines for registered dealer —

- (1) A registered dealer shall not execute a DAP/RAP trade with or on behalf of an institutional investor unless the dealer has established, maintains and enforces policies and procedures designed to achieve matching as soon as practical after such a trade is executed and in any event no later than the end of T.

- (2) Despite subsection (1), the dealer may adapt its policies and procedures to permit matching to occur no later than the end of T+1 for a DAP/RAP trade that results from an order to buy or sell securities received from an institutional investor whose investment decisions or settlement instructions are usually made in and communicated from a geographical region outside of the western hemisphere.

3.2 Pre-DAP/RAP trade execution documentation requirement for dealers —

Without limiting the generality of section 3.1, a registered dealer shall not open an account to execute a DAP/RAP trade for an institutional investor or accept an order to execute a DAP/RAP trade for the account of an institutional investor unless its policies and procedures are designed to encourage each trade-matching party to either

- (a) ~~entered~~enter into a trade-matching agreement with the dealer, or
- (b) ~~provided~~provide a trade-matching statement to the dealer.

3.3 Matching deadlines for registered adviser —

- (1) A registered adviser shall not give an order to a dealer to execute a DAP/RAP trade on behalf of an institutional investor unless the adviser has established, maintains and enforces policies and procedures designed to achieve matching as soon as practical after such a trade is executed and in any event no later than the end of T.
- (2) Despite subsection (1), the adviser may adapt its policies and procedures to permit matching to occur no later than the end of T+1 for a DAP/RAP trade that results from an order to buy or sell securities received from an institutional investor whose investment decisions or settlement instructions are usually made in and communicated from a geographical region outside of the western hemisphere.

3.4 Pre- DAP/RAP trade execution documentation requirement for advisers —

Without limiting the generality of section 3.3, a registered adviser shall not open an account to execute a DAP/RAP trade for an institutional investor or give an order to a dealer to execute a DAP/RAP trade for the account of an institutional investor unless its policies and procedures are designed to encourage each trade-matching party to either

- (a) ~~entered~~enter into a trade-matching agreement with the adviser, or
- (b) ~~provided~~provide a trade-matching statement to the adviser.

PART 4 REPORTING REQUIREMENT FOR BY REGISTERED FIRMS

4.1 Exception reporting requirement

A registered firm shall deliver Form 24-101F1 to the securities regulatory authority no later than 45 days after the end of a calendar quarter if

- (a) less than 9590 per cent of the DAP/RAP trades in equity securities executed by or for the registered firm during the quarter matched within the time required in Part 3, or
- (b) the DAP/RAP trades in debt securities executed by or for the registered firm during the quarter that matched within the time required in Part 3 represent less than 9590 per cent of the aggregate value of the debt securities purchased and sold in those trades.

PART 5 REPORTING REQUIREMENTS FOR CLEARING AGENCIES

- 5.1 A clearing agency through which trades governed by this Instrument are cleared and settled shall deliver Form 24-101F2 to the securities regulatory authority no later than 30 days after the end of a calendar quarter.

PART 6 REQUIREMENTS FOR MATCHING SERVICE UTILITIES

6.1 Initial information reporting —

- (1) A person or company shall not carry on business as a matching service utility unless
- (a) the person or company has delivered Form 24-101F3 to the securities regulatory authority, and

(b) at least 90 days have passed since the person or company delivered Form 24-101F3.

(2) During the 90 day period referred to in subsection (1), if there is a significant change to the information in the delivered Form 24-101F3, the person or company shall inform the securities regulatory authority in writing immediately of that significant change by delivering an amendment to Form 24-101F3 in the manner set out in Form 24-101F3.

6.2 Anticipated change to operations —

At least 45 days before implementing a significant change to any item set out in Form 24-101F3, a matching service utility shall deliver an amendment to the information in the manner set out in Form 24-101F3.

6.3 Ceasing to carry on business as a matching service utility —

(1) If a matching service utility intends to cease carrying on business as a matching service utility, it shall deliver a report on Form 24-101F4 to the securities regulatory authority at least 30 days before ceasing to carry on that business.

(2) If a matching service utility involuntarily ceases to carry on business as a matching service utility, it shall deliver a report on Form 24-101F4 as soon as practical after it ceases to carry on that business.

6.4 Ongoing information reporting and record keeping —

(1) A matching service utility shall deliver Form 24-101F5 to the securities regulatory authority no later than 30 days after the end of a calendar quarter.

(2) A matching service utility shall keep such books, records and other documents as are reasonably necessary to properly record its business.

6.5 System requirements —

For all of its core systems supporting trade matching, a matching service utility shall

(a) consistent with prudent business practice, on a reasonably frequent basis, and, in any event, at least annually,

(i) make reasonable current and future capacity estimates,

(ii) conduct capacity stress tests of those systems to determine the ability of the systems to process transactions in an accurate, timely and efficient manner,

(iii) implement reasonable procedures to review and keep current the testing methodology of those systems,

(iv) review the vulnerability of those systems and data centre computer operations to internal and external threats, including breaches of security, physical hazards and natural disasters, and

(v) maintain adequate contingency and business continuity plans;

(b) annually cause to be performed an independent review and written report, in accordance with generally accepted auditing standards, of the stated internal control objectives of those systems; and

(c) promptly notify the securities regulatory authority of a material failure of those systems.

PART 7 TRADE SETTLEMENT

7.1 Trade settlement by registered dealer —

(1) A registered dealer shall not execute a trade unless the dealer has established, maintains and enforces policies and procedures designed to facilitate settlement of the trade on a date that is no later than the standard settlement date for the type of security traded prescribed by an SRO or the marketplace on which the trade would be executed.

(2) Subsection (1) does not apply to a trade for which terms of settlement have been expressly agreed to by the counterparties to the trade at or before the trade was executed.

PART 8 REQUIREMENTS OF SELF-REGULATORY ORGANIZATIONS AND OTHERS

8.1 A clearing agency or matching service utility shall have rules or other instruments or procedures that are consistent with the requirements of Parts 3 and 7.

8.2 A requirement of this Instrument does not apply to a member of an SRO if the member complies with a rule or other instrument of the SRO that deals with the same subject matter as the requirement and that has been approved, non-disapproved, or non-objected to by the securities regulatory authority and published by the SRO.

PART 9 EXEMPTION

9.1 Exemption —

(1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

(3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

PART 10 EFFECTIVE DATES AND TRANSITION

Note: This unofficial consolidation does not include sections 10.1 and 10.2 which contain coming-into-force provisions and transitional provisions which are only of historical interest.

10.3 Post-June 2010 Transition

(1) A reference to “the end of T” in subsections 3.1(1) and 3.3(1) shall each be read as a reference to:

(a) “2:00 p.m. on T+1”, for trades executed before July 1, 2012; and

(b) “12 p.m. (noon) on T+1”, for trades executed after June 30, 2012 and before July 1, 2015.

(2) A reference to the “end of T+1” in subsections 3.1(2) and 3.3(2) shall each be read as a reference to:

(a) “2:00 p.m. on T+2”, for trades executed before July 1, 2012; and

(b) “12:00 p.m. (noon) on T+2”, for trades executed after June 30, 2012 and before July 1, 2015.

(3) A reference to “90 per cent” in paragraphs 4.1(a) and (b) shall each be read as a reference to:

(a) “70 per cent”, for trades executed after June 30, 2015 and before July 1, 2016; and

(b) “80 per cent”, for trades executed after June 30, 2016 and before July 1, 2017.

FORM 24-101F1

REGISTERED FIRM
EXCEPTION REPORT OF
DAP/RAP TRADE REPORTING AND MATCHING

CALENDAR QUARTER PERIOD COVERED:

From: _____ to: _____

REGISTERED FIRM IDENTIFICATION AND CONTACT INFORMATION:

1. Full name of registered firm (if sole proprietor, last, first and middle name):

2. Name(s) under which business is conducted, if different from item 1:

~~3-3a.~~ Address of registered firm's principal place of business:

3b. Please indicate below the jurisdiction of your principal regulator within the meaning of NI 31-103 *Registration Requirements and Exemptions*:

- Alberta
- British Columbia
- Manitoba
- New Brunswick
- Newfoundland & Labrador
- Northwest Territories
- Nova Scotia
- Nunavut
- Ontario
- Prince Edward Island
- Quebec
- Saskatchewan
- Yukon

3c. Please indicate below all jurisdictions in which you are registered to carry on business:

- Alberta
- British Columbia
- Manitoba
- New Brunswick
- Newfoundland & Labrador
- Northwest Territories
- Nova Scotia
- Nunavut
- Ontario
- Prince Edward Island
- Quebec
- Saskatchewan
- Yukon

4. Mailing address, if different from business address:

5. Type of business: Dealer Adviser

6. Category of registration:

7. (a) Registered Firm NRD number:

(b) If the registered firm is a participant of a clearing agency, the registered firm's CUID number:

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8. Contact employee name:

Telephone number:

E-mail address:

INSTRUCTIONS:

Deliver this form for both equity and debt DAP/RAP trades together with Exhibits A, B and C pursuant to section 4.1 of the Instrument, covering the calendar quarter indicated above, within 45 days of the end of the calendar quarter if,

- (a) less than 9590 per cent* of the equity ~~and/or debt~~ DAP/RAP trades executed by or for you during the quarter matched within the time** required in Part 3 of the Instrument, or
- (b) the ~~equity and/or~~ debt DAP/RAP trades executed by or for you during the quarter that matched within the time** required in Part 3 of the Instrument represent less than 9590 per cent* of the aggregate value of the debt securities purchased and sold in those trades.

Transition

* For DAP/RAP trades executed during a transitional period after June 30, 2015 and before July 1, 2017, the Instrument comes into force and before January 1, 2010, this percentage will vary depending on when the trade was executed. See section ~~10.2(3)~~ Part 7 of the Companion Policy to of the Instrument.

** The time set out in Part 3 of the Instrument is 11:59 p.m. on, as the case may be, T or T+1. For DAP/RAP trades executed during a transitional period after the Instrument comes into force and before July 1, 2012, the time is 2:00 p.m. on "T+1" or "T+2", as the case may be. For DAP/RAP trades executed after June 30, 2012~~08~~ and before July 1, 2015, this timeline is being phased in and the time is 12:00 p.m. (noon) on, as the case may be, "T+1" or "T+2". See subsections 10.2(1) and (2) Part 7 of the Companion Policy to the Instrument.

EXHIBITS:

Exhibit A – DAP/RAP trade statistics for the quarter

Complete Tables 1 and 2 below for each calendar quarter.

(1) *Equity DAP/RAP trades*

<i>Entered into CDS by deadline (to be completed by dealers only)</i>				<i>Matched by deadline</i>			
# of Trades	%	\$ Value of Trades	%	# of Trades	%	\$ Value of Trades	%

(2) *Debt DAP/RAP trades*

<i>Entered into CDS by deadline (to be completed by dealers only)</i>				<i>Matched by deadline</i>			
# of Trades	%	\$ Value of Trades	%	# of Trades	%	\$ Value of Trades	%

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<i>Entered into CDS by deadline (to be completed by dealers only)</i>		<i>Matched by deadline</i>	
<u># of Trades</u>	<u>%</u>	<u># of Trades</u>	<u>%</u>

(2) Debt DAP/RAP trades

<i>Entered into CDS by deadline (to be completed by dealers only)</i>		<i>Matched by deadline</i>	
<u>\$ Value of Trades</u>	<u>%</u>	<u>\$ Value of Trades</u>	<u>%</u>

Exhibit B – Reasons for ~~non-compliance~~not meeting exception reporting thresholds

Describe the circumstances or underlying causes that resulted in or contributed to the failure to achieve the percentage target for matched equity and/or debt DAP/RAP trades within the maximum time prescribed by Part 3 of the Instrument. Reasons given could be one or more matters within your control or due to another trade-matching party or service provider. If you have insufficient information to determine the percentages, the reason for this should be provided. See also Companion Policy 24-101CP to the Instrument.

Exhibit C – Steps to address delays

Describe what specific steps you are taking to resolve delays in the equity and/or debt DAP/RAP trade reporting and matching process in the future. Indicate when each of these steps is expected to be implemented. The steps being taken could be internally focused, such as implementing a new system or procedure, or externally focused, such as meeting with a trade-matching party to determine what action should be taken by that party. If you have insufficient information to determine the percentages, the steps being taken to obtain this information should be provided. See also Companion Policy 24-101CP to the Instrument.

CERTIFICATE OF REGISTERED FIRM

The undersigned certifies that the information given in this report on behalf of the registered firm is true and correct.

DATED at _____ this ____ day of _____ 20__

(Name of registered firm - type or print)

(Name of director, officer or partner - type or print)

(Signature of director, officer or partner)

(Official capacity - type or print)

FORM 24-101F2

**CLEARING AGENCY
QUARTERLY OPERATIONS REPORT OF
INSTITUTIONAL TRADE REPORTING AND MATCHING**

CALENDAR QUARTER PERIOD COVERED:

From: _____ to: _____

IDENTIFICATION AND CONTACT INFORMATION:

1. Full name of clearing agency:
2. Name(s) under which business is conducted, if different from item 1:
3. Address of clearing agency's principal place of business:
4. Mailing address, if different from business address:
5. Contact employee name:

Telephone number:

E-mail address:

INSTRUCTIONS:

Deliver this form together with all exhibits pursuant to section 5.1 of the Instrument, covering the calendar quarter indicated above, within 30 days of the end of the calendar quarter.

Exhibits shall be provided in an electronic file, in the following file format: "CSV" (Comma Separated Variable) (e.g., the format produced by Microsoft Excel).

EXHIBITS:**1. DATA REPORTING****Exhibit A – Aggregate matched trade statistics**

For client trades, provide the information to complete Tables 1 and 2 below for each month in the quarter. These two tables can be integrated into one report. Provide separate aggregate information for trades that have been reported or entered into your facilities as matched trades by a matching service utility.

Month/Year: _____ (MMM/YYYY)

Table 1 --- Equity trades:

	<u>Entered into clearing agency by dealers</u>				<u>Matched in clearing agency by custodians</u>			
	<u># of Trades</u>	<u>% Industry</u>	<u>\$ Value of Trades</u>	<u>% Industry</u>	<u># of Trades</u>	<u>% Industry</u>	<u>\$ Value of Trades</u>	<u>% Industry</u>
T								
T+1								
T+2								
T+3								
>T+3								
Total								

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<u>Timeline</u>	<u>Entered into clearing agency by dealers</u>		<u>Matched in clearing agency by custodians</u>	
	<u># of Trades</u>	<u>% Industry</u>	<u># of Trades</u>	<u>% Industry</u>
<u>T – 7:30 p.m.</u>				
<u>T – midnight</u>				
<u>T+1 – noon</u>				
<u>T+1 – 2:00 p.m.</u>				
<u>T+1 – midnight</u>				
<u>T+2 – midnight</u>				
<u>T+3 – midnight</u>				
<u>> T+3</u>				
<u>Total</u>				

Table 2 — Debt trades:

	<u>Entered into clearing agency by dealers</u>				<u>Matched in clearing agency by custodians</u>			
	<u># of Trades</u>	<u>% Industry</u>	<u>\$ Value of Trades</u>	<u>% Industry</u>	<u># of Trades</u>	<u>% Industry</u>	<u>\$ Value of Trades</u>	<u>% Industry</u>
<u>T</u>								
<u>T + 1</u>								
<u>T + 2</u>								
<u>T + 3</u>								
<u>>T+3</u>								
<u>Total</u>								

<u>Timeline</u>	<u>Entered into clearing agency by dealers</u>		<u>Matched in clearing agency by custodians</u>	
	<u>\$ Value of Trades</u>	<u>% Industry</u>	<u>\$ Value of Trades</u>	<u>% Industry</u>
<u>T – 7:30 p.m.</u>				
<u>T – midnight</u>				
<u>T+1 – noon</u>				
<u>T+1 – 2:00 p.m.</u>				
<u>T+1 – midnight</u>				
<u>T+2 – midnight</u>				
<u>T+3 – midnight</u>				
<u>> T+3</u>				
<u>Total</u>				

Legend

“# of Trades” is the total number of transactions in the month;
 “\$ Value of Trades” is the total value of the transactions (purchases and sales) in the month.

Exhibit B – Individual matched trade statistics

Using the same format below, as Exhibit A above, provide the relevant information for each participant of the clearing agency; provide the percent in respect of client trades during the quarter that have been entered and matched by the participant and matched within the time required in Part 3 of the Instrument. The percentages given should relate to both the number of client trades that have been matched within the time and the aggregate value of the securities purchased and sold in the client trades that have been matched within the time. timelines indicated in Exhibit A.

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Percentage matched within timelines				
Equity trades			Debt trades	
Participant	By # of transactions	By Value	By # of transactions	By Value

CERTIFICATE OF CLEARING AGENCY

The undersigned certifies that the information given in this report on behalf of the clearing agency is true and correct.

DATED at _____ this ____ day of _____ 20__

(Name of clearing agency - type or print)

(Name of director, officer or partner - type or print)

(Signature of director, officer or partner)

(Official capacity - type or print)

FORM 24-101F3

**MATCHING SERVICE UTILITY
NOTICE OF OPERATIONS**

DATE OF COMMENCEMENT INFORMATION:

Effective date of commencement of operations: _____ (DD/MMM/YYYY)

TYPE OF INFORMATION: INITIAL SUBMISSION AMENDMENT

MATCHING SERVICE UTILITY IDENTIFICATION AND CONTACT INFORMATION:

1. Full name of matching service utility:
2. Name(s) under which business is conducted, if different from item 1:
3. Address of matching service utility's principal place of business:
4. Mailing address, if different from business address:
5. Contact employee name:
Telephone number:
E-mail address:
6. Legal counsel:
Firm name:
Telephone number:
E-mail address:

GENERAL INFORMATION:

7. Website address:
8. Date of financial year-end: _____ (DD/MMM/YYYY)
9. Indicate the form of your legal status (e.g., corporation, limited or general partnership), the date of formation, and the jurisdiction under which you were formed:
Legal status: CORPORATION PARTNERSHIP
 OTHER (SPECIFY):
(a) Date of formation: _____ (DD/MMM/YYYY)
(b) Jurisdiction and manner of formation:
10. Specify the general types of securities for which information is being or will be received and processed by you for transmission of matched trades to a clearing agency (e.g. exchange-traded domestic equity and debt securities, exchange-traded foreign equity and debt securities, equity and debt securities traded over-the-counter).

INSTRUCTIONS:

Deliver this form together with all exhibits pursuant to section 6.1 or 10.2(4) of the Instrument.

For each exhibit, include your name, the date of delivery of the exhibit and the date as of which the information is accurate (if different from the date of the delivery). If any exhibit required is not applicable, a full statement describing why the exhibit is not applicable shall be furnished in lieu of the exhibit. To the extent information requested for an exhibit is identical to the information

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requested in another form that you have filed or delivered under National Instrument 21-101 *Marketplace Operation*, simply attach a copy of that other form and indicate in this form where such information can be found in that other form.

If you are delivering an amendment to Form 24-101F3 pursuant to section 6.1(2) or 6.2 of the Instrument, and the amended information relates to an exhibit that was delivered with such form, provide a description of the change and complete and deliver an updated exhibit. If you are delivering Form 24-101F3 pursuant to section 10.2(4) of the Instrument, simply indicate at the top of this form under "Date of Commencement Information" that you were already carrying on business as a matching service utility in the relevant jurisdiction on the date that Part 6 of the Instrument came into force.

EXHIBITS:**1. CORPORATE GOVERNANCE****Exhibit A – Constatng documents**

Provide a copy of your constating documents, including corporate by-laws and other similar documents, as amended from time to time.

Exhibit B – Ownership

List any person or company that owns 10 percent or more of your voting securities or that, either directly or indirectly, through agreement or otherwise, may control your management. Provide the full name and address of each person or company and attach a copy of the agreement or, if there is no written agreement, briefly describe the agreement or basis through which the person or company exercises or may exercise control or direction.

Exhibit C – Officials

Provide a list of the partners, officers, directors or persons performing similar functions who presently hold or have held their offices or positions during the current and previous calendar year, indicating the following for each:

1. Name.
2. Title.
3. Dates of commencement and expiry of present term of office or position and length of time the office or position held.
4. Type of business in which each is primarily engaged and current employer.
5. Type of business in which each was primarily engaged in the preceding five years, if different from that set out in item 4.
6. Whether the person is considered to be an independent director.

Exhibit D – Organizational structure

Provide a narrative or graphic description of your organizational structure.

Exhibit E – Affiliated entities

For each person or company affiliated to you, provide the following information:

1. Name and address of affiliated entity.
2. Form of organization (e.g., association, corporation, partnership).
3. Name of jurisdiction and statute under which organized.
4. Date of incorporation in present form.
5. Brief description of nature and extent of affiliation or contractual or other agreement with you.
6. Brief description of business services or functions.

7. If a person or company has ceased to be affiliated with you during the previous year or ceased to have a contractual or other agreement relating to your operations during the previous year, provide a brief statement of the reasons for termination of the relationship.

2. FINANCIAL VIABILITY

Exhibit F – Audited financial statements

Provide your audited financial statements for the latest financial year and a report prepared by an independent auditor.

3. FEES

Exhibit G – Fee list, fee structure

Provide a complete list of all fees and other charges imposed, or to be imposed, by you for use of your services as a matching service utility, including the cost of establishing a connection to your systems.

4. ACCESS

Exhibit H – Users

Provide a list of all users or subscribers for which you provide or propose to provide the services of a matching service utility. Identify the type(s) of business of each user or subscriber (e.g., custodian, dealer, adviser or other party).

If applicable, for each instance during the past year in which any user or subscriber of your services has been prohibited or limited in respect of access to such services, indicate the name of each such user or subscriber and the reason for the prohibition or limitation.

Exhibit I – User contract

Provide a copy of each form of agreement governing the terms by which users or subscribers may subscribe to your services of a matching service utility.

5. SYSTEMS AND OPERATIONS

Exhibit J – System description

Describe the manner of operation of your systems for performing your services of a matching service utility (including, without limitation, systems that collect and process trade execution details and settlement instructions for matching of trades). This description should include the following:

1. The hours of operation of the systems, including communication with a clearing agency.
2. Locations of operations and systems (e.g., countries and cities where computers are operated, primary and backup).
3. A brief description in narrative form of each service or function performed by you.

6. SYSTEMS COMPLIANCE

Exhibit K – Security

Provide a brief description of the processes and procedures implemented by you to provide for the security of any system used to perform your services of a matching service utility.

Exhibit L – Capacity planning and measurement

1. Provide a brief description of capacity planning/performance measurement techniques and system and stress testing methodologies.
2. Provide a brief description of testing methodologies with users or subscribers. For example, when are user/subscriber tests employed? How extensive are these tests?

Exhibit M – Business continuity

Provide a brief description of your contingency and business continuity plans in the event of a catastrophe.

Exhibit N – Material systems failures

Provide a brief description of policies and procedures in place for reporting to regulators material systems failures. Material systems failures include serious incidents that result in the interruption of the matching of trades for more than thirty minutes during normal business hours.

Exhibit O – Independent systems audit

1. Briefly describe your plans to provide an annual independent audit of your systems.
2. If applicable, provide a copy of the last external systems operations audit report.

7. INTEROPERABILITY

Exhibit P – Interoperability agreements

List all other matching service utilities for which you have entered into an *interoperability* agreement. Provide a copy of all such agreements.

8. OUTSOURCING

Exhibit Q – Outsourcing firms

For each person or company (outsourcing firm) with whom or which you have an outsourcing agreement or arrangement relating to your services of a matching service utility, provide the following information:

1. Name and address of the outsourcing firm.
2. Brief description of business services or functions of the outsourcing firm.
3. Brief description of the outsourcing firm's contingency and business continuity plans in the event of a catastrophe.

CERTIFICATE OF MATCHING SERVICE UTILITY

The undersigned certifies that the information given in this report on behalf of the matching service utility is true and correct.

DATED at _____ this ____ day of _____ 20____

(Name of matching service utility - type or print)

(Name of director, officer or partner - type or print)

(Signature of director, officer or partner)

(Official capacity - type or print)

FORM 24-101F4

**MATCHING SERVICE UTILITY
NOTICE OF CESSATION OF OPERATIONS**

DATE OF CESSATION INFORMATION:

- Type of information: VOLUNTARY CESSATION
 INVOLUNTARY CESSATION

Effective date of operations cessation: _____ (DD/MMM/YYYY)

MATCHING SERVICE UTILITY IDENTIFICATION AND CONTACT INFORMATION:

1. Full name of matching service utility:
2. Name(s) under which business is conducted, if different from item 1:
3. Address of matching service utility's principal place of business:
4. Mailing address, if different from business address:
5. Legal counsel:
 Firm name:
 Telephone number:
 E-mail address:

INSTRUCTIONS:

Deliver this form together with all exhibits pursuant to section 6.3 of the Instrument.

For each exhibit, include your name, the date of delivery of the exhibit and the date as of which the information is accurate (if different from the date of the delivery). If any exhibit required is not applicable, a full statement describing why the exhibit is not applicable shall be furnished in lieu of the exhibit.

EXHIBITS:

Exhibit A

Provide the reasons for your cessation of business.

Exhibit B

Provide a list of all the users or subscribers for which you provided services during the last 30 days prior to you ceasing business. Identify the type(s) of business of each user or subscriber (e.g., custodian, dealer, adviser, or other party).

Exhibit C

List all other matching service utilities for which an *interoperability* agreement was in force immediately prior to cessation of business.

CERTIFICATE OF MATCHING SERVICE UTILITY

The undersigned certifies that the information given in this report on behalf of the matching service utility is true and correct.

DATED at _____ this ____ day of _____ 20 ____

(Name of matching service utility - type or print)

(Name of director, officer or partner - type or print)

(Signature of director, officer or partner)

(Official capacity - type or print)

FORM 24-101F5

**MATCHING SERVICE UTILITY
QUARTERLY OPERATIONS REPORT OF
INSTITUTIONAL TRADE REPORTING AND MATCHING**

CALENDAR QUARTER PERIOD COVERED:

From: _____ to: _____

MATCHING SERVICE UTILITY IDENTIFICATION AND CONTACT INFORMATION:

1. Full name of matching service utility:
2. Name(s) under which business is conducted, if different from item 1:
3. Address of matching service utility's principal place of business:
4. Mailing address, if different from business address:
5. Contact employee name:
Telephone number:
E-mail address:

INSTRUCTIONS:

Deliver this form together with all exhibits pursuant to section 6.4 of the Instrument, covering the calendar quarter indicated above, within 30 days of the end of the calendar quarter.

Exhibits shall be reported in an electronic file, in the following format: "CSV" (Comma Separated Variable) (e.g., the format produced by Microsoft Excel).

If any information specified is not available, a full statement describing why the information is not available shall be separately furnished.

EXHIBITS

1. SYSTEMS REPORTING

Exhibit A – External systems audit

If an external audit report on your core systems was prepared during the quarter, provide a copy of the report.

Exhibit B – Material systems failures reporting

Provide a brief summary of all material systems failures that occurred during the quarter and for which you were required to notify the securities regulatory authority under section 6.5(c) of the Instrument.

2. DATA REPORTING

Exhibit C – Aggregate matched trade statistics

Provide the information to complete Tables 1 and 2 below for each month in the quarter. These two tables can be integrated into one report.

Month/Year: _____ (MMM/YYYY)

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Table 1 — Equity trades:

	Entered into matching service utility by dealer-users/subscribers				Matched in matching service utility by other users/subscribers			
	# of Trades	% Industry	\$ Value of Trades	% Industry	# of Trades	% Industry	\$ Value of Trades	% Industry
T								
T+1								
T+2								
T+3								
>T+3								
Total								

<u>Timeline</u>	<u>Entered into matching service utility by dealer-users/subscribers</u>		<u>Matched in matching service utility by other users/subscribers</u>	
	<u># of Trades</u>	<u>% Industry</u>	<u># of Trades</u>	<u>% Industry</u>
<u>T - 7:30 p.m.</u>				
<u>T - midnight</u>				
<u>T+1 - noon</u>				
<u>T+1 - 2:00 p.m.</u>				
<u>T+1 - midnight</u>				
<u>T+2 - midnight</u>				
<u>T+3 - midnight</u>				
<u>>T+3</u>				
<u>Total</u>				

Table 2 — Debt trades:

	Entered into matching service utility by dealer-users/subscribers				Matched in matching service utility by other users/subscribers			
	# of Trades	% Industry	\$ Value of Trades	% Industry	# of Trades	% Industry	\$ Value of Trades	% Industry
T								
T+1								
T+2								
T+3								
>T+3								
Total								

Request for Comments

<u>Timeline</u>	<u>Entered into matching service utility by dealer-users/subscribers</u>		<u>Matched in matching service utility by other users/subscribers</u>	
	<u>\$ Value of Trades</u>	<u>% Industry</u>	<u>\$ Value of Trades</u>	<u>% Industry</u>
<u>T – 7:30 p.m.</u>				
<u>T - midnight</u>				
<u>T+1 - noon</u>				
<u>T+1 – 2:00 p.m.</u>				
<u>T+1 - midnight</u>				
<u>T+2 - midnight</u>				
<u>T+3 - midnight</u>				
<u>>T+3</u>				
<u>Total</u>				

Legend

“# of Trades” is the total number of transactions in the month;
 “\$ Value of Trades” is the total value of the transactions (purchases and sales) in the month

Exhibit D – Individual matched trade statistics

Using the same format below as Exhibit C above, provide the percent relevant information for each user or subscriber in respect of trades during the quarter for each user or subscriber that have been entered by the user or subscriber and matched within the time required in Part 3 of the Instrument. The percentages given should relate to both the number of trades that have been matched within the time and the aggregate value of the securities purchased and sold in the trades that have been matched within the time.timelines indicated.

<u>User/ Subscriber</u>	Percentage matched within timelines			
	<u>Equity trades</u>		<u>Debt trades</u>	
	<u>By # of transactions</u>	<u>By value</u>	<u>By # of transactions</u>	<u>By value</u>

CERTIFICATE OF MATCHING SERVICE UTILITY

The undersigned certifies that the information given in this report on behalf of the matching service utility is true and correct.

DATED at _____ this ____ day of _____ 20__

(Name of matching service utility- type or print)

(Name of director, officer or partner - type or print)

(Signature of director, officer or partner)

(Official capacity - type or print)

ANNEX C

PROPOSED AMENDMENTS TO
COMPANION POLICY 24-101CP INSTITUTIONAL TRADE MATCHING AND SETTLEMENT

1. **Companion Policy 24-101CP is amended by this Instrument.**
2. **Part 1 is amended by:**
 - (a) **striking out** “Investment Dealers Association of Canada (IDA) Regulation” **in footnote 3 and substituting** “Investment Industry Regulatory Organization of Canada (IIROC) Member Rule”,
 - (b) **striking out** “IDA Regulation” **in footnote 5 and substituting** “IIROC Member Rule”,
 - (c) **striking out subsection 1.3(3) and substituting the following:**
 - (3) Institutional investor — A client of a dealer that has been granted DAP/RAP trading privileges is an institutional investor. This will likely be the case whenever a client’s investment assets are held by or through securities accounts maintained with a custodian instead of the client’s dealer that executes its trades. While the expression “institutional trade” is not defined in the Instrument, we use the expression in this Companion Policy to mean broadly any DAP/RAP trade.
 - (d) **striking out subsection 1.3(5) and substituting the following:**
 - (5) Trade-matching party — An institutional investor, whether Canadian or foreign-based, may be a trade-matching party. As such, it, or its adviser that is acting for it in processing a trade, should enter into a trade-matching agreement or provide a trade-matching statement under Part 3 of the Instrument. However, an institutional investor that is an individual or a person or company that has net investment assets under administration or management of less than \$10,000,000, is not a trade-matching party. A custodian that settles a trade on behalf of an institutional investor is also a trade-matching party and should enter into a trade-matching agreement or provide a trade-matching statement. However, a foreign global custodian or international central securities depository that holds Canadian portfolio assets through a local Canadian sub-custodian would not normally be considered a trade-matching party if it is not a clearing agency participant or otherwise directly involved in settling the trade in Canada.
3. **Part 2 is amended by:**
 - (a) **adding** “or settlement instructions” **before** “are usually made” **in the second sentence of section 2.2,**
 - (b) **adding the following at the end of section 2.2:**

These deadlines are being transitioned into effect over time as described in Part 7.
 - (c) **striking out subsection 2.3(1) and substituting the following:**
 - (1) Establishing, maintaining and enforcing policies and procedures --
 - (a) Under sections 3.2 and 3.4, a registered dealer’s or registered adviser’s policies and procedures must be designed to encourage trade-matching parties to either (i) enter into a trade-matching agreement with the dealer or adviser or (ii) provide or make available a trade-matching statement to the dealer or adviser. The purpose of the trade-matching agreement or trade-matching statement is to ensure that all trade-matching parties have established, maintain, and enforce appropriate policies and procedures designed to achieve matching of a DAP/RAP trade as soon as practical after the trade is executed. If the dealer or adviser is unable to obtain a trade-matching agreement or statement from a trade-matching party, it should document its efforts in accordance with its policies and procedures.
 - (b) The parties described in paragraphs (a), (b), (c) and (d) of the definition “trade-matching party” in section 1.1 of the Instrument need not necessarily all be involved in a trade for the requirements of sections 3.2 and 3.4 of the Instrument to apply. There is no need for an adviser to be involved in the matching process of an institutional investor’s trades for the requirement to apply. In this case, the trade-matching parties that should have appropriate

policies and procedures in place would be the institutional investor, the dealer and the custodian.

- (c) The Instrument does not provide the form of a trade-matching agreement or trade-matching statement other than it be in writing. Subsections (2) and (3) below provide some guidance on these documents. A trade-matching agreement or trade-matching statement should be signed by a senior executive officer of the entity to ensure its policies and procedures are given sufficient attention and priority within the entity's senior management. A senior executive officer would include any individual who is (a) the chair of the entity, if that individual performs the functions of the office on a full time basis, (b) a vice-chair of the entity, if that individual performs the functions of the office on a full time basis, (c) the president, chief executive officer or chief operating officer of the entity, and (d) a senior vice-president of the entity in charge of the entity's operations and back-office functions.

- (d) **adding "the" after "account allocations to" in the third bullet under the heading "For the institutional investor or its adviser:" in paragraph 2.3(2)(b),**
- (e) **adding "in accordance with their policies and procedures" at the end of the first sentence in subsection 2.3(4),**
- (f) **striking out the second and third sentences in subsection 2.3(4),**
- (g) **striking out "Dealers" and substituting "Registered dealers" at the beginning of the fourth sentence in subsection 2.3(4),**
- (h) **striking out footnote 8,**
- (i) **renumbering footnote 9 as footnote 8 and striking out "IDA By-Law No." in that footnote and substituting "IIROC Member Rule",**
- (j) **renumbering footnote 10 as footnote 9.**

4. **Part 3 is amended by:**

- (a) **adding the following after the first sentence in paragraph 3.1(a):**

The percentage for equity trades is to be determined on the number of trades, while the percentage for debt trades must be based on the aggregate value of trades for each quarter.

- (b) **striking out section 3.4 and substituting the following:**

3.4 Forms delivered in electronic form

Registered firms may complete their Form 24-101F1 online on the CSA's website at the following URL addresses:

In English: http://www.securities-administrators.ca/industry_resources.aspx?id=52.

In French: http://www.autorites-valeurs-mobilieres.ca/ressources_professionnelles.aspx?id=52.

5. **Part 5 is amended by renumbering footnote 11 as footnote 10 and striking out "IDA Regulation" in that footnote and substituting "IIROC Member Rule".**

6. **Part 7 is struck out and substituted by the following:**

PART 7 TRANSITION

- 7.1 **Transitional dates and percentages** — The following table summarizes the transitional provisions of the Instrument for most DAP/RAP trades governed by the Instrument. For DAP/RAP trades that result from an order to buy or sell securities received from an institutional investor whose investment decisions or settlement instructions are usually made in and communicated from a geographical region outside of the western

hemisphere, the same table can be read to apply to such trades except that references in the second column (matching deadline) to "T+1" and "T" should be read as references to "T+2" and "T+1" respectively.

For DAP/RAP trades executed:	Matching deadline for trades executed anytime on T (Part 3 of Instrument)	Percentage trigger of DAP/RAP trades for registered firm exception reporting (Part 4 of Instrument)
before July 1, 2012	2:00 p.m. on T+1	Less than 90% matched by deadline
after June 30, 2012 but before July 1, 2015	12:00 p.m. (noon) on T+1	Less than 90% matched by deadline
after June 30, 2015 but before July 1, 2016	11:59 p.m. on T	Less than 70% matched by deadline
after June 30, 2016 but before July 1, 2017	11:59 p.m. on T	Less than 80% matched by deadline
after June 30, 2017	11:59 p.m. on T	Less than 90% matched by deadline

7. This Instrument becomes effective on July 1, 2010.

Annex D

**Blackline Version of the Proposed Changes to
Companion Policy 24-101CP Institutional Trade Matching and Settlement**

This is an unofficial consolidation of Companion Policy 24-101CP *Institutional Trade Matching and Settlement*, with the proposed changes in Annex C of this Notice shown by blackline.

CANADIAN SECURITIES ADMINISTRATORS

**COMPANION POLICY 24-101CP
TO NATIONAL INSTRUMENT 24-101—
INSTITUTIONAL TRADE MATCHING AND SETTLEMENT**

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**COMPANION POLICY 24-101CP
TO NATIONAL INSTRUMENT 24-101—
INSTITUTIONAL TRADE MATCHING AND SETTLEMENT**

PART 1 INTRODUCTION, PURPOSE AND DEFINITIONS¹

1.1 Purpose of Instrument — National Instrument 24-101—*Institutional Trade Matching and Settlement* (Instrument) provides a framework in provincial securities regulation for more efficient and timely trade settlement processing, particularly institutional trades. The increasing volumes and dollar values of securities traded in Canada and globally by institutional investors mean existing back-office systems and procedures of market participants are challenged to meet post-execution processing demands. New requirements are needed to address the increasing risks. The Instrument is part of a broader initiative in the Canadian securities markets to implement straight-through processing (STP).²

1.2 General explanation of matching, clearing and settlement —

(1) Parties to institutional trade — A typical trade with or on behalf of an institutional investor might involve at least three parties:

- a registered adviser or other *buy-side* manager acting for an institutional investor in the trade—and often acting on behalf of more than one institutional investor in the trade (i.e., multiple underlying institutional client accounts)—who decides what securities to buy or sell and how the assets should be allocated among the client accounts;
- a registered dealer (including an Alternative Trading System registered as a dealer) responsible for executing or clearing the trade; and
- any financial institution or registered dealer (including under a *prime brokerage* arrangement) appointed to hold the institutional investor's assets and settle trades.

(2) Matching — A first step in settling a securities trade is to ensure that the buyer and the seller agree on the details of the transaction, a process referred to as trade confirmation and affirmation or trade *matching*.³ A registered dealer who executes trades with or on behalf of others is required to report and confirm trade details, not only with the counterparty to the trade, but also with the client for whom it acted or the client with whom it traded (in which case, the client would be the counterparty). Similarly, a registered adviser or other buy-side manager is required to report trade details and provide settlement instructions to its custodian. The parties must agree on trade details—sometimes referred to as *trade data elements*—as soon as possible so that errors and discrepancies in the trades can be discovered early in the clearing and settlement process.

(3) Matching process — Verifying the trade data elements is necessary to *match* a trade executed on behalf of or with an institutional investor. Matching occurs when the relevant parties to the trade have, after verifying the trade data elements, reconciled or agreed to the details of the trade. Matching also requires that any custodian holding the institutional investor's assets be in a position to affirm the trade so that the trade can be ready for the clearing and settlement process through the facilities of the clearing agency. To illustrate, trade matching usually includes these following activities:

- (a) The registered dealer notifies the buy-side manager that the trade was executed.

¹ In this Companion Policy, the terms “CSA”, “we”, “our” or “us” are used interchangeably and generally mean the same thing as *Canadian securities regulatory authorities* defined in National Instrument 14-101 — *Definitions*.

² For a discussion of Canadian STP initiatives, see Canadian Securities Administrators' (CSA) Discussion Paper 24-401 on *Straight-through Processing* and Request for Comments, April 16, 2004 (2004) 27 OSCB 3971 to 4031 (Discussion Paper 24-401); and CSA Notice 24-301—*Responses to Comments Received on Discussion Paper 24-401 on Straight-through Processing, Proposed National Instrument 24-101 Post-trade Matching and Settlement, and Proposed Companion Policy 24-101CP to National Instrument 24-101 Post-trade Matching and Settlement*, February 11, 2005 (2005) 28 OSCB 1509 to 1526.

³ The processes and systems for matching of “non-institutional trades” in Canada have evolved over time and become automated, such as retail trades on an exchange, which are matched or *locked-in* automatically at the exchange, or direct non-exchange trades between two participants of a clearing agency, which are generally matched through the facilities of the clearing agency. Dealer to dealer trades are subject to Investment Dealers Association Industry Regulatory Organization of Canada (IDA) Regulation IIROC Member Rule 800.49, which provides that trades in non-exchange traded securities (including government debt securities) among dealers must be entered or accepted or rejected through the facilities of an “Acceptable Trade Matching Utility” within one hour of the execution of the trade.

- (b) The buy-side manager advises the dealer and any custodian(s) how the securities traded are to be allocated among the underlying institutional client accounts managed by the buy-side manager.⁴ For so-called *block settlement trades*, the dealer sometimes receives allocation information from the buy-side manager based only on the number of custodians holding institutional investors' assets instead of on the actual underlying institutional client accounts managed by the buy-side manager.
 - (c) The dealer reports and confirms the trade details to the buy-side manager and clearing agency. The trade details required to be confirmed for matching, clearing and settlement purposes are generally similar to the information required in the customer trade confirmation delivered pursuant to securities legislation or self-regulatory organization (SRO) rules.⁵
 - (d) The custodian or custodians of the assets of the institutional investor verify the trade details and settlement instructions against available securities or funds held for the institutional investor. After trade details are agreed, the buy-side manager instructs the custodian(s) to release funds and/or securities to the dealer through the facilities of the clearing agency.
- (4) Clearing and settlement — The *clearing* of a trade begins after the execution of the trade. After matching is completed, clearing will involve the calculation of the mutual obligations of participants for the exchange of securities and money—a process which generally occurs within the facilities of a clearing agency. The *settlement* of a trade is the moment when the securities are transferred finally and irrevocably from one participant to another in exchange for a corresponding transfer of money. In the context of settlement of a trade through the facilities of a clearing agency, often acting as central counterparty, settlement will be the discharge of obligations in respect of funds or securities, computed on a net basis, between and among the clearing agency and its participants. Through the operation of novation and set-off in law or by contract, the clearing agency becomes a counterparty to each trade so that the mutual obligation to settle the trade is between the clearing agency and each participant.

1.3 Section 1.1 - Definitions and scope —

- (1) Clearing agency — Today, the definition of *clearing agency* applies only to The Canadian Depository for Securities Limited (CDS). The definition takes into account the fact that securities regulatory authorities in Ontario and Quebec currently recognize or otherwise regulate clearing agencies in Canada under provincial securities legislation.⁶ The functional meaning of *clearing agency* can be found in the securities legislation of certain jurisdictions.⁷
- (2) Custodian — While investment assets are sometimes held directly by investors, most are held on behalf of the investor by or through securities accounts maintained with a financial institution or dealer. The definition of *custodian* includes both a financial institution (non-dealer custodian) and a dealer acting as custodian (dealer custodian). Most institutional investors, such as pension and mutual funds, hold their assets through custodians that are prudentially-regulated financial institutions. However, others (like hedge funds) often maintain their investment assets with dealers under so-called *prime-brokerage* arrangements. A financial institution or dealer in Canada need not necessarily have a direct contractual relationship with an institutional investor to be considered a custodian of portfolio assets of the institutional investor for the purposes of the Instrument if it is acting as sub-custodian to a global custodian or international central securities depository.
- (3) Institutional investor — ~~An individual can be an “institutional investor” if the individual~~ A client of a dealer that has been granted DAP/RAP trading privileges (i.e., ~~he or she has a DAP/RAP account with a dealer~~) is an institutional investor. This will likely be the case whenever an ~~individual~~ a client's investment assets are held by or through securities accounts maintained with a custodian instead of the ~~individual client's~~ dealer that executes his or her trades. While the expression “institutional trade” is not defined in the Instrument, we use the expression in this Companion Policy to mean broadly any DAP/RAP trade.

⁴ We remind investment counsel/portfolio managers (ICPMs) of their obligations to ensure fairness in the allocation of investment opportunities among the ICPM's clients. An ICPM's written fairness policies should include the following disclosures, where applicable to its investment processes: (i) method used to allocate price and commission among clients when trades are bunched or blocked; (ii) method used to allocate block trades and IPOs among client accounts, and (iii) method used to allocate among clients block trades and IPOs that are partially filled (e.g., pro-rata). Securities legislation requires ICPMs to file a copy of their current fairness policies with securities regulatory authorities. See, for example, Regulation 115 under the *Securities Act* (Ontario) and OSC Staff Notice 33-723—*Fair Allocation of Investment Opportunities—Compliance Team Desk Review*.

⁵ See, for example, section 36 of the *Securities Act* (Ontario), The Toronto Stock Exchange (TSX) Rule 2-405 and ~~IDA Regulation~~ IROC Member Rule 200.1(h).

⁶ CDS is also regulated by the Bank of Canada pursuant to the *Payment Clearing and Settlement Act* (Canada).

⁷ See, for example, s. 1(1) of the *Securities Act* (Ontario).

- (4) DAP/RAP trade — The concepts *delivery against payment* and *receipt against payment* are generally understood by the industry. They are also defined terms in the Notes and Instructions (Schedule 4) to the *Joint Regulatory Financial Questionnaire and Report* of the Canadian SROs. All DAP/RAP trades, whether settled by a non-dealer custodian or a dealer custodian, are subject to the requirements of Part 3 of the Instrument. The definition of DAP/RAP trade excludes a trade for which settlement is made on behalf of a client by a custodian that is also the dealer that executed the trade.
- (5) Trade-matching party — An institutional investor, whether Canadian or foreign-based, ~~is may be~~ a trade-matching party. As such, it, or its adviser ~~would be required to~~ that is acting for it in processing a trade, should enter into a trade-matching agreement or provide a trade-matching statement under Part 3 of the Instrument. However, an institutional investor that is an individual or a person or company that has net investment assets under administration or management of less than \$10,000,000, is not a trade-matching party. A custodian that settles a trade on behalf of an institutional investor is also a trade-matching party and ~~must~~ should enter into a trade-matching agreement or provide a trade-matching statement. However, a foreign global custodian or international central securities depository that holds Canadian portfolio assets through a local Canadian sub-custodian would not normally be considered a trade-matching party if it is not a clearing agency participant or otherwise directly involved in settling the trade in Canada.
- (6) Application of Instrument — Part 2 of the Instrument enumerates certain types of trades that are not subject to the Instrument.

PART 2 TRADE MATCHING REQUIREMENTS

- 2.1 Trade data elements** — Trade data elements that must be verified and agreed to are those identified by the SROs or the best practices and standards for institutional trade processing established and generally adopted by the industry. See section 2.4 of this Companion Policy. To illustrate, trade data elements that should be transmitted, compared and agreed to may include the following:
- (a) *Security identification*: standard numeric identifier, currency, issuer, type/class/series, market ID; and
 - (b) *Order and trade information*: dealer ID, account ID, account type, buy/sell indicator, order status, order type, unit price/face amount, number of securities/quantity, message date/time, trade transaction type, commission, accrued interest (fixed income), broker settlement location, block reference, net amount, settlement type, allocation sender reference, custodian, payment indicator, IM portfolio/account ID, quantity allocated, and settlement conditions.
- 2.2 Trade matching deadlines for registered firms** — The obligation of a registered dealer or registered adviser to establish, maintain and enforce policies and procedures, pursuant to sections 3.1 and 3.3 of the Instrument, will require the dealer or adviser to take reasonable steps to achieve matching as soon as practical after the DAP/RAP trade is executed and in any event no later than the end of T. If the trade results from an order to buy or sell securities received from an institutional investor whose investment decisions or settlement instructions are usually made in and communicated from a geographical region outside of the western hemisphere, the deadline for matching is the end of T+1 (subsections 3.1(2) and 3.3(2)). These deadlines are being transitioned into effect over time as described in Part 7.
- 2.3 Choice of trade-matching agreement or trade-matching statement** —
- (1) Establishing, maintaining and enforcing policies and procedures —
- (a) ~~A registered dealer or registered adviser can open an account for an institutional investor, or accept or give, as the case may be, an order for an existing account of an institutional investor, only if each of the trade-matching parties has~~ Under sections 3.2 and 3.4, a registered dealer's or registered adviser's policies and procedures must be designed to encourage trade-matching parties to either (i) ~~entered~~ enter into a trade-matching agreement with the dealer or adviser or (ii) ~~provided~~ provide or ~~made~~ make available a trade-matching statement to the dealer or adviser ~~(sections 3.2 and 3.4)~~. The purpose of the trade-matching agreement or trade-matching statement is to ensure that all trade-matching parties have established, maintain, and enforce appropriate policies and procedures designed to achieve matching of a DAP/RAP trade as soon as practical after the trade is executed. If the dealer or adviser is unable to obtain a trade-matching agreement or statement from a trade-matching party, it should document its efforts in accordance with its policies and procedures.
 - (b) The parties described in paragraphs (a), (b), (c), and (d) of the definition “trade-matching party” in section 1.1 of the Instrument need not necessarily all be involved in a trade for the requirements of sections 3.2 and 3.4 of the Instrument to apply. For example, the requirement to enter into a trade-matching agreement or provide a trade-matching statement will apply in a simple case where an individual has a DAP/RAP trading account with a dealer and investment assets held separately by a custodian (sections 3.2 and 3.4). There is no need for an

adviser to be involved in the individual's investment decisions matching process of an institutional investor's trades for the requirement to apply to the dealer, the custodian and the institutional investor. In this case, the trade-matching parties that ~~must~~should have appropriate policies and procedures in place would be the individual (as institutional investor), the dealer and the custodian.

- (c) ~~Where a trade-matching party is an entity, we are of the view that a~~The Instrument does not provide the form of a trade-matching agreement or trade-matching statement other than it be in writing. Subsections (2) and (3) below provide some guidance on these documents. A trade-matching agreement or trade-matching statement should be signed by a senior executive officer of the entity to ensure its policies and procedures are given sufficient attention and priority within the entity's senior management. A senior executive officer would ~~be~~include any individual who is (a) the chair of the entity, if that individual performs the functions of the office on a full time basis, (b) a vice-chair of the entity, if that individual performs the functions of the office on a full time basis, (c) the president, chief executive officer or chief operating officer of the entity, and (d) a senior vice-president of the entity in charge of the entity's operations and back-office functions.

(2) Trade-matching agreement —

- (a) A registered dealer or registered adviser need only enter into one trade-matching agreement with the other trade-matching parties for new or existing DAP/RAP trading accounts of an institutional investor for all future trades in relation to such account. The trade-matching agreement may be a single multi-party agreement among the trade-matching parties, or a network of bilateral agreements. A single trade-matching agreement is also sufficient for the general and all sub-accounts of the registered adviser or buy-side manager. If the dealer or adviser uses a trade-matching agreement, the form of such agreement may be incorporated into the institutional account opening documentation and may be modified from time to time with the consent of the parties.
- (b) The agreement must specify the roles and responsibilities of each of the trade-matching parties and should describe the minimum standards and best practices to be incorporated into the policies and procedures that each party has in place. This should include the timelines for accomplishing the various steps and tasks of each trade-matching party for timely matching. For example, the agreement may include, as applicable, provisions dealing with:

For the dealer executing and/or clearing the trade:

- how and when the notice of trade execution (NOE) is to be given to the institutional investor or its adviser, including the format and content of the NOE (e.g., electronic);
- how and when trade details are to be entered into the dealer's internal systems and the clearing agency's systems;
- how and when the dealer is to correct or adjust trade details entered into its internal systems or the clearing agency's systems as may be required to agree to trade details with the institutional investor or its adviser;
- general duties of the dealer to cooperate with other trade-matching parties in the investigation, adjustment, expedition and communication of trade details to ensure trades can be matched within prescribed timelines.

For the institutional investor or its adviser:

- how and when to review the NOE's trade details, including identifying any differences from its own records;
- how and when to notify the dealer of trade differences, if any, and resolve such differences;
- how and when to determine and communicate settlement details and account allocations to the dealer and/or custodian(s);
- general duties of the institutional investor or its adviser to cooperate with other trade-matching parties in the investigation, adjustment, expedition and communication of trade details to ensure trades can be matched within prescribed timelines.

For the custodian settling the trade at the clearing agency:

- how and when to receive trade details and settlement instructions from institutional investors or their advisers;
- how and when to review and monitor trade details submitted to the clearing agency on an ongoing basis for items entered and awaiting affirmation or challenge;
- how and when to report to institutional investors or their advisers on an ongoing basis changes to the status of a trade and the matching of a trade;
- general duties of the custodian to cooperate with other trade-matching parties in the investigation, adjustment, expedition and communication of trade details to ensure trades can be matched within prescribed timelines.

(3) Trade-matching statement — A single trade-matching statement is sufficient for the general and all sub-accounts of the registered adviser or buy-side manager. A registered dealer or registered adviser may accept a trade-matching statement signed by a senior executive officer of a trade-matching party without further investigation and may continue to rely upon the statement for all future trades in an account, unless the dealer or adviser has knowledge that any statements or facts set out in the statement are incorrect. Mass mailings or emails of a trade-matching statement, or the posting of a single uniform trade-matching statement on a Website, would be acceptable ways of providing the statement to other trade-matching parties. A registered firm may rely on a trade-matching party's representations that the trade-matching statement was provided to the other trade-matching parties without further investigation.

(4) Monitoring and enforcement of undertakings in trade-matching documentation — Registered dealers and advisers should use reasonable efforts to monitor compliance with the terms or undertakings set out in the trade-matching agreements or trade-matching statements. ~~Dealers and advisers should report details of non-compliance in their Form 24-101F1 exception reports. This could include identifying to the regulators those trade-matching parties that are consistently non-compliant either because they do not have adequate policies and procedures in place or because they are not consistently complying with them in accordance with their policies and procedures.~~

~~Dealers~~Registered dealers and advisers should also take active steps to address problems if the policies and procedures of other trade-matching parties appear to be inadequate and are causing delays in the matching process. Such steps might include imposing monetary incentives (e.g. penalty fees) or requesting a third party review or assessment of the party's policies and procedures. This approach could enhance cooperation among the trade-matching parties leading to the identification of the root causes of failures to match trades on time.

2.4 Determination of appropriate policies and procedures —

(1) Best practices — We are of the view that, when establishing appropriate policies and procedures, a party should consider the industry's generally adopted best practices and standards for institutional trade processing.⁸ It should also include those policies and procedures into its regulatory compliance and risk management programs.

(2) Different policies and procedures — We recognize that appropriate policies and procedures may not be the same for all registered dealers, registered advisers and other market participants because of the varying nature, scale and complexity of a market participant's business and risks in the trading process. For example, policies and procedures designed to achieve matching may differ among a registered dealer that acts as an "introducing broker" and one that acts as a "carrying broker".⁹⁸ In addition, if a dealer is not a clearing agency participant, the dealer's policies and procedures to expeditiously achieve matching should be integrated with the clearing arrangements that it has with any other dealer acting as carrying or clearing broker for the dealer. Establishing appropriate policies and procedures may require registered dealers, registered advisers and other market participants to upgrade their systems and enhance their interoperability with others.⁴⁹⁹

2.5 Use of matching service utility — The Instrument does not require the trade-matching parties to use the facilities or services of a matching service utility to accomplish matching of trades within the prescribed timelines. However, if such

⁸ The Canadian Capital Markets Association (CCMA) released in December 2003 the final version of a document entitled *Canadian Securities Marketplace Best Practices and Standards: Institutional Trade Processing, Entitlements and Securities Lending* ("CCMA Best Practices and Standards White Paper") that sets out best practices and standards for the processing for settlement of institutional trades, the processing of entitlements (corporate actions), and the processing of securities lending transactions. The CCMA Best Practices and Standards White Paper can be found on the CCMA website at www.ccma-acmc.ca.

⁹⁸ See IDA By-Law No. IIROC Member Rule 35 — *Introducing Broker / Carrying Broker Arrangements*.

⁴⁹⁹ See Discussion Paper 24-401, at p. 3984, for a discussion of *interoperability*.

facilities or services are made available in Canada, the use of such facilities or services may help a trade-matching party's compliance with the Instrument's requirements.

PART 3 INFORMATION REPORTING REQUIREMENTS

3.1 Exception reporting for registered firms —

- (a) Part 4 of the Instrument requires a registered firm to complete and deliver to the securities regulatory authority Form 24-101F1 and related exhibits. The percentage for equity trades is to be determined on the number of trades, while the percentage for debt trades must be based on the aggregate value of trades for each quarter. Form 24-101F1 need only be delivered if less than a percentage target of the DAP/RAP trades executed by or for the registered firm in any given calendar quarter have matched within the time required by the Instrument. Tracking of a registered firm's trade-matching statistics may be outsourced to a third party service provider, including a clearing agency or custodian. However, despite the outsourcing arrangement, the registered firm retains full legal and regulatory liability and accountability to the Canadian securities regulatory authorities for its exception reporting requirements. If a registered firm has insufficient information to determine whether it has achieved the percentage target of matched DAP/RAP trades in any given calendar quarter, it must explain in Form 24-101F1 the reasons for this and the steps it is taking to obtain this information in the future.
- (b) Form 24-101F1 requires registered firms to provide aggregate quantitative information on their equity and debt DAP/RAP trades. They must also provide qualitative information on the circumstances or underlying causes that resulted in or contributed to the failure to achieve the percentage target for matched equity and/or debt DAP/RAP trades within the maximum time prescribed by Part 3 of the Instrument and the specific steps they are taking to resolve delays in the trade reporting and matching process in the future. Registered firms should provide information that is relevant to their circumstances. For example, dealers should provide information demonstrating problems with NOEs or reporting of trade details to the clearing agency. Reasons given for the failure could be one or more matters within the registered firm's control or due to another trade-matching party or service provider.
- (c) The steps being taken by a registered firm to resolve delays in the matching process could be internally focused, such as implementing a new system or procedure, or externally focused, such as meeting with a trade-matching party to determine what action should be taken by that party. Dealers should confirm what steps they have taken to inform and encourage their clients to comply with the requirements or undertakings of the trade-matching agreement and/or trade-matching statement. They should confirm what problems, if any, they have encountered with their clients, other trade-matching parties or service providers. They should identify the trade-matching party or service provider that appears to be consistently not meeting matching deadlines or to have no reasonable policies and procedures in place. Advisers should provide similar information, including information demonstrating problems with communicating allocations or with service providers or custodians.

3.2 Regulatory reviews of registered firm exception reports —

- (a) We will review the completed Forms 24-101F1 on an ongoing basis to monitor and assess compliance by registered firms with the Instrument's matching requirements. We will identify problem areas in matching, including identifying trade-matching parties that have no or weak policies and procedures in place to ensure matching of trades is accomplished within the time prescribed by Part 3 of the Instrument. Monitoring and assessment of registered firm matching activities may be undertaken by the SROs in addition to, or in lieu of, reviews undertaken by us.
- (b) Consistent inability to meet the matching percentage target will be considered as evidence by the Canadian securities regulatory authorities that either the policies and procedures of one or more of the trade matching parties have not been properly designed or, if properly designed, have been inadequately complied with. Consistently poor qualitative reporting will also be considered as evidence of poorly designed or implemented policies and procedures. See also section 2.3(4) of this Companion Policy for a further discussion of our approach to compliance and enforcement of the trade-matching requirements of the Instrument.

- 3.3 Other information reporting requirements —** Clearing agencies and matching service utilities are required to include in Forms 24-101F2 and 24-101F5 certain trade-matching information in respect of their participants or users/subscribers. The purpose of this information is to facilitate monitoring and enforcement by the Canadian securities regulatory authorities or SROs of the Instrument's matching requirements.

3.4 Forms delivered in electronic form — Registered firms may complete their Form 24-101F1 on-line on the CSA's website at the following URL addresses:

In English: http://www.securities-administrators.ca/industry_resources.aspx?id=52.

3.4 Forms delivered in electronic form — We prefer that all forms and exhibits required to be delivered to the securities regulatory authority under the Instrument be delivered in electronic format by e-mail. Each securities regulatory authority will publish a local notice setting out the e-mail address or addresses to which the forms are to be sent.

In French: http://www.autorites-valeurs-mobilieres.ca/ressources_professionnelles.aspx?id=52

3.5 Confidentiality of information — The forms delivered to the securities regulatory authority by a registered firm, clearing agency and matching service utility under the Instrument will be treated as confidential by us, subject to the applicable provisions of the freedom of information and protection of privacy legislation adopted by each province and territory. We are of the view that the forms contain intimate financial, commercial and technical information and that the interests of the providers of the information in non-disclosure outweigh the desirability of making such information publicly available. However, we may share the information with SROs and may publicly release aggregate industry-wide matching statistics on equity and debt DAP/RAP trading in the Canadian markets.

PART 4 REQUIREMENTS FOR MATCHING SERVICE UTILITIES

4.1 Matching service utility —

(1) Part 6 of the Instrument sets out reporting, systems capacity, and other requirements of a matching service utility. The term *matching service utility* expressly excludes a clearing agency. A matching service utility would be any entity that provides the services of a post-execution centralized matching facility for trade-matching parties. It may use technology to match in real-time trade data elements throughout a trade's processing lifecycle. A matching service utility would not include a registered dealer who offers "local" matching services to its institutional investor-clients.

(2) A matching service utility would be viewed by us as an important infrastructure system involved in the clearing and settlement of securities transactions. We believe that, while a matching service utility operating in Canada would largely enhance operational efficiency in the capital markets, it would raise certain regulatory concerns. Comparing and matching trade data are complex processes that are inextricably linked to the clearance and settlement process. A matching service utility concentrates processing risk in the entity that performs matching instead of dispersing that risk more to the dealers and their institutional investor-clients. Accordingly, we believe that the breakdown of a matching service utility's ability to accurately verify and match 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. The requirements of the Instrument applicable to a matching service utility are intended to address these risks.

4.2 Initial information reporting requirements for a matching service utility — Sections 6.1(1) and 10.2(4) of the Instrument require any person or company that carries on or intends to carry on business as a matching service utility to deliver Form 24-101F3 to the securities regulatory authority. We will review Form 24-101F3 to determine whether the person or company that delivered the form is an appropriate person or company to act as a matching service utility for the Canadian capital markets. We will consider a number of factors when reviewing the form, including:

- (a) the performance capability, standards and procedures for the transmission, processing and distribution of details of trades executed on behalf of institutional investors;
- (b) whether market participants generally may obtain access to the facilities and services of the matching service utility on fair and reasonable terms;
- (c) personnel qualifications;
- (d) whether the matching service utility has sufficient financial resources for the proper performance of its functions;
- (e) the existence of, and interoperability arrangements with, another entity performing a similar function for the same type of security; and
- (f) the systems report referred to in section 6.5(b) of the Instrument.

4.3 Change to significant information — Under section 6.2 of the Instrument, a matching service utility is required to deliver to the securities regulatory authority an amendment to the information provided in Form 24-101F3 at least 45

days before implementing a significant change involving a matter set out in Form 24-101F3. In our view, a significant change includes a change to the information contained in the General Information items 1-10 and Exhibits A, B, E, G, I, J, O, P and Q of Form 24-101F3.

4.4 Ongoing information reporting and other requirements applicable to a matching service utility —

- (1) Ongoing quarterly information reporting requirements will allow us to monitor a matching service utility's operational performance and management of risk, the progress of interoperability in the market, and any negative impact on access to the markets. A matching service utility will also provide trade matching data (e.g., number of trades matched on T) and other information to us so that we can monitor industry compliance.
- (2) Completed forms delivered by a matching service utility will provide useful information on whether it is:
 - (a) developing fair and reasonable linkages between its systems and the systems of any other matching service utility in Canada that, at a minimum, allow parties to executed trades that are processed through the systems of both matching service utilities to communicate through appropriate, effective interfaces;
 - (b) negotiating with other matching service utilities in Canada fair and reasonable charges and terms of payment for the use of interface services with respect to the sharing of trade and account information; and
 - (c) not unreasonably charging more for use of its facilities and services when one or more counterparties to trades are customers of other matching service utilities than the matching service utility would normally charge its customers for use of its facilities and services.

4.5 Capacity, integrity and security system requirements —

- (1) The activities in section 6.5(a) of the Instrument must be carried out at least once a year. We would expect these activities to be carried out even more frequently if there is a significant change in trading volumes that necessitates that these functions be carried out more frequently in order to ensure that the matching service utility can appropriately service its clients.
- (2) The independent review contemplated by section 6.5(b) of the Instrument should be performed by competent and independent audit personnel, in accordance with generally accepted auditing standards. Depending on the circumstances, we would consider accepting a review performed and written report delivered pursuant to similar requirements of a foreign regulator to satisfy the requirements of this section. A matching service utility that wants to advocate for that result must submit a request for discretionary relief.
- (3) The notification of a material systems failure under section 6.5(c) of the Instrument should be provided promptly from the time the incident was identified as being material and should include the date, cause and duration of the interruption and its general impact on users or subscribers. We consider promptly to mean within one hour from the time the incident was identified as being material. Material systems failures include serious incidents that result in the interruption of the matching of trades for more than thirty minutes during normal business hours.

PART 5 TRADE SETTLEMENT

- 5.1 Trade settlement by dealer** — Section 7.1 of the Instrument is intended to support and strengthen the general settlement cycle rules of the SROs and marketplaces. Current SRO and marketplace rules mandate a standard T+3 settlement cycle period for most transactions in equity and long term debt securities.⁴⁴¹⁰ If a dealer is not a participant of a clearing agency, the dealer's policies and procedures to facilitate the settlement of a trade should be combined with the clearing arrangements that it has with any other dealer acting as carrying or clearing broker for the dealer.

PART 6 REQUIREMENTS OF SELF-REGULATORY ORGANIZATIONS AND OTHERS

- 6.1 Standardized documentation** — Without limiting the generality of section 8.2 of the Instrument, an SRO may require its members to use, or recommend that they use, a standardized form of trade-matching agreement or trade-matching statement prepared or approved by the SRO, and may negotiate on behalf of its members with other trade-matching parties and industry associations to agree on the standardized form of trade-matching agreement or trade-matching statement to be used by all relevant sectors in the industry (dealers, buy-side managers and custodians).

⁴⁴¹⁰ See, for example, IDA Regulation IIROC Member Rule 800.27 and TSX Rule 5-103(1).

PART 7 TRANSITION

7.1 Transitional dates and percentages — The following table summarizes the coming-into-force and transitional provisions of Part 4 of the Instrument for most DAP/RAP trades governed by the Instrument. For DAP/RAP trades that result from an order to buy or sell securities received from an institutional investor whose investment decisions or settlement instructions are usually made in and communicated from a geographical region outside of the western hemisphere, the same table can be read to apply to such trades except that references in the second column (matching deadline) to “T+1” and “T” should be read as references to “T+2” and “T+1” respectively.

For DAP/RAP trades executed:	Matching deadline for trades executed anytime on T (Part 3 of Instrument)	Percentage trigger of DAP/RAP trades for registered firm exception reporting (Part 4 of Instrument)	Periods in which: - exception reporting must be made (Part 4 of Instrument) - documentation must be in place (Sections 3.2 and 3.4 of Instrument)
after March 31, 2007 but before October 1, 2007	12:00 p.m. (noon) on T+1	N/A ²⁹	Not required
after September 30, 2007 but before January 1, 2008	12:00 p.m. (noon) on T+1	Less than 80% matched by deadline	Required
after December 31, 2007 but before July 1, 2008	12:00 p.m. (noon) on T+1	Less than 90% matched by deadline	Required
after June 30, 2008 but before January 1, 2009	11:59 p.m. on T	Less than 70% matched by deadline	Required
after December 31, 2008 but before July 1, 2009	11:59 p.m. on T	Less than 80% matched by deadline	Required
after June 30, 2009, but before January 1, 2010	11:59 p.m. on T	Less than 90% matched by deadline	Required
after December 31, 2009	11:59 p.m. on T	Less than 95% matched by deadline	Required

<u>For DAP/RAP trades executed:</u>	<u>Matching deadline for trades executed anytime on T (Part 3 of Instrument)</u>	<u>Percentage trigger of DAP/RAP trades for registered firm exception reporting (Part 4 of Instrument)</u>
<u>before July 1, 2012</u>	<u>2:00 p.m. on T+1</u>	<u>Less than 90% matched by deadline</u>
<u>after June 30, 2012 but before July 1, 2015</u>	<u>12:00 p.m. (noon) on T+1</u>	<u>Less than 90% matched by deadline</u>
<u>after June 30, 2015 but before July 1, 2016</u>	<u>11:59 p.m. on T</u>	<u>Less than 70% matched by deadline</u>
<u>after June 30, 2016 but before July 1, 2017</u>	<u>11:59 p.m. on T</u>	<u>Less than 80% matched by deadline</u>
<u>after June 30, 2017</u>	<u>11:59 p.m. on T</u>	<u>Less than 90% matched by deadline</u>

²⁹ Although exception reporting is not required during this period (see next column), we recommend that registered firms consider applying a 70% threshold for internal measurement purposes in anticipation of reporting commencing on October 1, 2007.

ANNEX E

ONTARIO SECURITIES COMMISSION
NOTICE AND REQUEST FOR COMMENT

1. Introduction

The CSA are proposing amendments to NI 24-101 and the Companion Policy. These proposed amendments are described in the related CSA notice preceding this notice. Expressions used in this notice share the meanings provided in the related CSA notice.

The Ontario Securities Commission is proposing, consequential to the proposed amendments described in the CSA notice, to revoke Ontario Securities Commission Rule 24-502 *Exemption from Transitional Rule: Extension of Transitional Phase-In Period in National Instrument 24-101 – Institutional Trade Matching and Settlement* (OSC Rule 24-502).

In this notice, the proposed amendments described in the CSA notice and the proposed revocation of OSC Rule 24-502 are referred to as the Proposed Amendments.

The purpose of this notice is to supplement the CSA notice.

2. Substance and purpose of the Proposed Amendments

The substance and purpose of the Proposed Amendments is make adjustments to measures in NI 24-101 and its CP relating to the matching of institutional trades.

3. Summary of the Proposed Amendments

The proposed amendments to NI 24-101 and its CP are described in the CSA notice. The Proposed Amendments would also revoke OSC Rule 24-502 because it would no longer be needed as the Proposed Amendments are designed to apply uniformly across Canada without the need for a local Ontario rule or related blanket relief orders in other CSA jurisdictions.

4. Authority for the Proposed Amendments

The Proposed Amendments are being made under the following provisions of the *Securities Act* (Ontario) (Act):

- Paragraph 11 of subsection 143(1) of the Act, which authorizes the Commission to make rules regulating the listing or trading of publicly traded securities, including requiring reporting of trades and quotations.
- Subparagraph 2(i) of subsection 143(1) of the Act, which authorizes the Commission to make rules in respect of standards of practice and business conduct of registrants in dealing with their customers and clients and prospective customers and clients.
- Paragraph 12 of subsection 143(1) of the Act, which authorizes the Commission to make rules regulating recognized stock exchanges, recognized self-regulatory organizations, recognized quotation and trade reporting systems, and recognized clearing agencies.

5. Alternatives to the Proposed Amendments

No alternatives to the Proposed Amendments were considered.

6. Unpublished materials

The unpublished materials considered with respect to the Proposed Amendments are described under the heading “**VII. Unpublished Materials**” in the CSA notice.

7. Costs and benefits

We do not anticipate any substantive costs to stakeholders in implementing the Proposed Amendments. The primary benefit in implementing the Proposed Amendments, particularly the extension of the transition of the midnight on T deadline to July 1, 2015, is the additional time the industry will have in achieving NI 24-101’s overall objective to reduce operating costs and risk in ITM and clearing and settlement processes.

8. Text of revocation instrument

The proposed revocation instrument for OSC Rule 24-502 would be worded as follows:

1. ***Ontario Securities Commission Rule 24-502 Exemption from Transitional Rule: Extension of Transitional Phase-In Period in National Instrument 24-101 – Institutional Trade Matching and Settlement is revoked by this Instrument.***
2. ***This Instrument comes into force on July 1, 2010.***