Appendix B

Summary of Public Comments and CSA Responses on National Instrument 24-101 and related Companion Policy

Background

On March 3, 2006, the CSA published for comment a revised proposed National Instrument 24-101—*Institutional Trade Matching and Settlement* (the Instrument or NI 24-101) and related Companion Policy 24-101CP (the CP). The comment period expired on May 3, 2006 and we have received submissions from 21 commenters listed below in the next section.

We have considered the comments received and wish to thank all those who took the time to comment. The questions contained in the CSA Notice that was published on March 3, 2006 with the Instrument and CP are reproduced in the table below, together with a summary of the comments we received (left column) and our responses to such comments (right column).

List of Commenters

BMO Nesbitt Burns Inc.
Canadian Capital Markets Association (CCMA)
The Canadian Depository for Securities Limited (CDS)
Capital International Asset Management
CIBC
CIBC Mellon
IDA – Industry Association
IGM Financial Inc.
Investment Dealers Association of Canada (IDA)
ISITC (North America)
ITG Canada Corp.
Merrill Lynch Canada Inc.
Omgeo, LLC
Perimeter Markets Inc.
Phillips, Hager & North Investment Management Ltd.
RBC Dexia Investor Services
RBC Financial Group
Scotiabank
Simon Romano, Stikeman Elliott LLP
TD Bank Financial Group
TSX Group Inc.

Summary of Comments and Responses

Summary of Comments	CSA Response
General comments	
Twelve commenters appeared to support the general objectives of NI 24-101, with one commenter noting in particular that the Instrument will assist in enhancing the global competitiveness and efficiency of Canada's capital markets.	We thank the commenters for their views.
Two commenters requested that alternative trading systems (ATSs) be excluded from the definition of "matching service utility" (MSU) and the provisions of Part 6 governing MSUs because, as registered dealers, ATSs will have to comply with Parts 3 and 7 of NI 24-101. Another commenter suggested that we should clarify whether ATSs are intended to be subject to the requirements applicable to MSUs. The commenter further suggested that it might be useful to understand who exactly the CSA contemplates might be an MSU, especially given the words in section 2.5 of the CP to the effect that "if such facilities or services are made available in Canada" (implying that they are not currently operating).	There should be no confusion over the role of a "marketplace", such as an exchange or ATS, and the role of an MSU. The concept of matching DAP/RAP trades, as set out in section 1.2(1) of NI 24-101, differs from the function of a marketplace within the scheme of National Instrument 21-101—*Marketplace Operation* (NI 21-101). NI 21-101 governs marketplace operations, where trade orders are brought together or matched for trade-execution purposes and specific rules apply to various types of marketplace trading systems. An MSU performs a post-execution function that is inextricably linked to the clearance and settlement process for DAP/RAP trades. For a more detailed discussion of the role of an MSU, see CSA Discussion Paper 24-401 on Straight-through Processing published on April 16, 2004. We have reconsidered the definition of "matching service utility" in the Instrument. If a marketplace is intending to also perform the role of a MSU, it should be subject to the requirements of Part 6 of NI 24-101, in addition to its requirements under NI 21-101. Consequently, we have deleted paragraph (b) of the definition in section 1.1 of the Instrument. We have also clarified that the concept of *matching* in section 1.2(1) of the Instrument is limited to DAP/RAP trades for the purposes of the Instrument. We acknowledge that some of the requirements of an MSU in Part 6 of NI 24-101 are similar to requirements applicable to marketplaces in NI 21-101. To the extent that a marketplace is proposing to carry on the business of an MSU, the similar requirements can be combined, where feasible, to avoid duplicative efforts for compliance (e.g., systems capacity requirements). Furthermore, we have revised Form 24-101F3 to allow the provider of the information to include copies of forms previously filed or delivered under NI 21-101 in lieu of completing analogous information requirements in Form 24-101F3.

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	Therefore, marketplaces, including ATSs and exchanges, should not normally be subject to Part 6 of the Instrument if they are not performing the functions of an MSU. We are aware of at least two commercial enterprises that are proposing to offer the services of an MSU in Canada.
One commenter questioned whether it was appropriate for ATSs to be caught by paragraph (c) of the definition of "trade-matching party".	Like other registered dealers, ATSs that are responsible for executing or clearing a DAP/RAP trade should be caught by the definition of "trade-matching party" in section 1.1 of the Instrument.
A commenter questioned whether section 7.1 worked insofar as it purports to apply to dealers other than investment dealers (i.e. applies to mutual fund dealers and limited market dealers who are not subject to Market Regulation Services (MRS) requirements).	The Instrument should generally not apply to a trade made by a mutual fund dealer. See section 2.1 of the Instrument. Subsection 7.1(1) will only apply to a limited market dealer (i.e., a non-SRO member dealer) if the dealer trades on a marketplace that has rules prescribing standard settlement periods.
One commenter found the definition of "settlement day" confusing and inquired whether the words "matching day" should not replace "settlement day" as this definition describes the matching date and not the settlement day.	We deleted this definition because, upon further consideration, we do not believe it is helpful. Instead, for the defined terms "T+1", "T+2" and "T+3", we have used the expression *business day* without defining it.
One commenter stated that an adviser could be seen to breach its fiduciary duty to achieve *best execution* for its client (an institutional investor) if NI 24-101 would require the adviser to use the services of a less qualified dealer instead of a more qualified dealer that has not established reasonable policies and procedures designed to achieve timely matching.	An adviser would not be breaching its best execution obligations if it is prohibited from using a dealer that has not established policies and procedures designed to achieve timely matching.
One commenter questioned why section 2.1(a) of the CP references ISINs when the common practice for industry is to use CUSIPs. The commenter questioned whether it will be necessary to convert all security identifiers to ISINs as opposed to the existing CUSIPs already in use.	We have modified the CP to refer to the more generic expression "standard numeric identifier".

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One commenter sought clarification on whether the scope of business continuity/disaster recovery planning extends to trade matching . The commenter appears concerned that such (trade-matching) requirements would put an undue burden on all parties to remain compliant regardless of whatever emergency/disaster took place.	We note that we would treat this Instrument in the same way as any other regulatory requirement if a major industry disruption or disaster would adversely impact the markets in Canada and impede market participants' abilities to generally comply with regulatory requirements. If reasonable in the circumstances, we would consider such an event as a mitigating factor in determining whether the requirements of the Instrument have been complied with.
One commenter sought clarification on the following issues in relation to MSUs: • The relevance of section 4.2(e) of the CP, which reads: "the existence of another entity performing the proposed function for the same type of security".	• Section 4.2 of the CP is similar to section 16.2 of Companion Policy 21-101CP to NI 21-101 in relation to "information processors". While in rare circumstances we may consider what impact, if any, the existence of several MSUs would have on the overall efficiency of the Canadian capital markets, we do not propose to limit the number of MSUs that would operate in Canada. The main intent of the factor set out in section 4.2(e) is to assess whether adequate interoperability arrangements exist among the MSUs. We have clarified section 4.2(e) of the CP to better reflect this intent. We will be reviewing all MSU information forms under NI 24-101 to determine whether MSUs carrying on or proposing to carry on business in Canada will be sufficiently interoperable with one another in order to seamlessly communicate trade data elements.
• Whether we would reconsider the confidentiality aspects of information provided under Form 24-101F5— *Matching Service Utility Quarterly Operations Report of Institutional Trade Reporting and Matching*. The commenter would like us to maintain in confidence information under Exhibit D (now Exhibit C) and Exhibit E (now Exhibit D) provided by MSUs, particularly in the latter case where specific subscriber or user data would be made available.	• We have carefully considered the confidentiality aspects of the Instrument's forms. The forms delivered by a registrant, clearing agency and MSU 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 for equity and debt DAP/RAP trading in the Canadian markets.
• Further clarification on the matching requirements when an MSU is in place would be helpful. At what point are the matching requirements complied with when trade information is submitted by a broker to an MSU and that information is available to trade-matching parties with a	• We note that matching has not been achieved unless the matched information is at the clearing agency. We have modified section 1.2(1) of the Instrument to make this clear.

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"matched status"? • The MSU "independent audit" and process for notifying the securities regulatory authority of material system failures described in Part 4 of the CP are areas that should be re-evaluated to ensure that the level of reporting and due diligence that will be required is commensurate with the regulatory need.	• We believe these MSU requirements are appropriate in the circumstances. For a more detailed discussion of our regulatory approach to MSUs in the Canadian markets, see CSA Discussion Paper 24-401 on Straight-through Processing published on April 16, 2004. The CP has been clarified to confirm that, 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 the independent systems review requirement.
One commenter was of the view that the requirements of Part 8 of NI 24-101 applicable to marketplaces are duplicative and unnecessary given the existing regulatory framework. Another commenter requested that Part 8 of N1 24-101 be revised to exclude ATSs for the following reasons: ATSs are required to be registered as dealers and therefore already subject to Part 3 of the Instrument *qua* dealer; there is a potential commercial conflict of interest in an ATS intervening in its dealer clients' buy-side relationships; and ATSs are not an appropriate entity to promote compliance with securities regulation.	Part 8 of NI 24-101 has been revised to exclude "marketplaces".
Question 1 – Should the definition of "institutional investor" be broader or narrower?	
Seven commenters were of the view that the definition of "institutional investor" should be amended or clarified. Some of the commenters made particular recommendations in this regard: • Together with clarifying the concept of a DAP/RAP trade, the definition should simply refer to clients to whom DAP/RAP trading privileges have been extended and whose trades clear through a centralized clearing agency. • The definition should apply to COD accounts that settle trades, which clear through a central clearing agency, on a DAP/RAP basis with a "custodian" (the definition of which should be extended to include a registered dealer). • The definition should not include retail clients. • The definition should be consistent with the definition	The interplay between the definitions "custodian", "institutional investor" and "DAP/RAP trade" in the Instrument is not as clear as it could be. In response to many comments on Questions 1, 2 and 3, we have revised the definitions to link these terms closer together and clarify and simplify the Instrument. • "Institutional investor" now means an investor that has been granted DAP/RAP trading privileges by a dealer. • The definition of "custodian" has been amended to delete the exclusion of dealers from the definition, so that it will now implicitly include a dealer acting in that capacity. We have also added the words "or other custodial arrangement" at the end of the definition to be consistent with local Ontario rule 14-501—*Definitions*. • The definition of a "DAP/RAP trade" now means a trade (i) executed for a client trading account that permits settlement on a delivery against payment or receipt

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of "institutional customer" found in IDA Policy 4 and harmonized across regulators. • The definition should reflect the categories of institutional clients and trade types that currently generate the greatest trade settlement risk. • The reference to $10 million should be deleted. • We should ensure that the definition provides appropriate flexibility to reflect existing trade and settlement practices taking into consideration what is most practical operationally and from a compliance monitoring perspective. • We should provide guidance on the applicability of the trade matching requirements to retail brokerage clients where no registered adviser is acting for their trades. • We should consider the settlement requirements of foreign jurisdictions, which may differ from those in Canada, in situations where a custodian that is a CDS participant is not located in Canada. • The growth and increased impact of hedge funds makes it important to include them in the definition. Four commenters were satisfied with the definition of "institutional investor".	against payment basis through the facilities of a clearing agency and (ii) for which settlement is made on behalf of the client by a custodian other than the dealer that executed the trade. In revising these concepts, we have considered the following factors: • We have decided against adopting the IDA Policy 4 definition of "institutional customers" into NI 24-101 because this would render the concept more complex and less practical from an operational and compliance monitoring perspective. Among other reasons, the IDA Policy 4 definition of "institutional customer" includes a non-individual with total investment assets under administration or management exceeding $10 million—a threshold that we decided not to maintain as some commenters urged us to delete this criteria. • While DAP/RAP trades executed on behalf of individuals may not pose, on an aggregate basis, the same degree of settlement risk in our markets as trades executed on behalf of large-scale institutional investors, we are of the view that all DAP/RAP trades should be covered by the matching requirements. These trades are processed in the same manner as other institutional trades. The same institutional processing issues arise, regardless of whether the client is an individual or non-individual. • Currently, CDS is unable to differentiate between individual and non-individual *institutional* investors (i.e., where assets are held in both cases by a custodian). CDS' quarterly operating reports (Form 24-101F2) do not require separate data on individual and non-individual institutional trades. We understand that significant systems and processing changes would have to be made across the industry resulting in increased costs. The costs to the industry as a whole may outweigh the benefits of carving out individuals from the definition of "institutional investor" to differentiate between individual and non-individual institutional trades for reporting purposes. • It is doubtful that the current inter-play between the defined terms set out in NI 24-101 would adequately capture prime-brokerage arrangements in the definition DAP/RAP trade. We agree with commenters that prime-brokerage arrangements should be included within the scope of the Instrument's trade-matching requirements.

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	• Commenters suggested that the matching requirements should only cover trades that settle through the clearing agency. The industry practice is that DAP/RAP trades are, by definition, settled through the clearing agency. This was the approach we initially took in the 2004 draft of the Instrument. Consequently, we have clarified that DAP/RAP trades are trades that settle through the facilities of a clearing agency. We also note the following in response to other comments: • The CP has been amended to clarify that individuals (i.e., that would otherwise be considered retail investors) with DAP/RAP accounts with a dealer are subject to the trade-matching requirements, even where no registered adviser is acting on their behalf in the trade. • The matching requirements of NI 24-101 apply to DAP/RAP trades that, in the normal course, would settle in Canada at a clearing agency (i.e., CDS) on T+1, T+2 or T+3. As the requirements do not apply to trades settled outside of Canada, settlement requirements of foreign jurisdictions should generally not be an issue. • We have considered a number of scenarios relating to the application of NI 24-101 to cross border transactions. We believe there is a need to distinguish institutional investors that can reasonably comply with the Instrument's same-day matching deadlines from those that cannot because of different international time zones. As a practical matter, foreign institutional investors trading in the Canadian markets that are located in time zones outside of the western hemisphere will likely have difficulty complying with the Instrument's matching on T requirements. We have included provisions to deal with trade orders originating from institutional investors whose investment decisions are usually made in and communicated from a geographical region outside of the western hemisphere's time zones. Consequently, where a DAP/RAP trade results from an order to buy or sell securities in the Canadian capital markets received from such institutional investors, the matching deadline will be end-of-day on T+1 instead of end-of-day on T. • Both domestic and foreign institutional investors are captured by the definition "trade-matching party". As such, they would be required to enter into a trade-matching agreement or provide a trade-matching

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	statement pursuant to sections 3.2 and 3.4 of the Instrument. • We have indicated in the CP that 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 participant in the clearing agency or directly involved in settling the trade in Canada.
Question 2 – Does the definition of "trade-matching party" capture all the relevant entities involved in the institutional trade matching process?	
Ten commenters thought that the definition of "trade-matching party" appropriately captured all the relevant entities involved in the institutional trade matching process. However, some commenters made particular recommendations: • The definition of "custodian" in section 1.1 of NI 24-101 should include a registered dealer or subsection (d) in the definition of "trade-matching party" should be expanded to capture dealers that act as custodians. • The definition should clearly state that prime brokerage accounts are captured by the definition.	See our responses under Question 1 above. Among others, the definition of "custodian" will be amended to delete the exclusion of dealers from the definition, so that a custodian will now implicitly include a dealer acting in that capacity. Also a DAP/RAP trade will mean a trade (i) 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 (ii) for which settlement is made on behalf of the client by a custodian other than the dealer that executed the trade.
One commenter stated that, in its role as a prime broker, it foresees problems in its ability to match trades in a timely manner since its actions will largely be dependent on the timelines of institutional investors to report trades to their custodians. The commenter also noted that the introduction of NI 24-101 may result in significant technology requirements for its prime brokerage clients in order to facilitate the timely matching of trades.	Regardless of whether an institutional investor uses a non-dealer custodian or a dealer custodian (e.g., prime broker) to hold its investment assets, we expect such institutional investor to establish, maintain and enforce polices and procedures designed to match trades in a timely manner. As a policy matter, it would be inappropriate to make a distinction between institutional investors that use non-dealer custodians and those that use dealer custodians to hold their investment assets. We acknowledge that NI 24-101 may require some technology upgrades for institutional investors, including prime brokers' clients. We believe that prime brokers are faced with the same challenges as non-dealer custodians in encouraging their clients to match trades in a timely manner.
Question 3 – The scope of the matching requirements of the Instrument is limited to DAP or RAP trades. Should the requirements be expanded to include other trades executed on behalf of an institutional investor? Should the requirements capture trades executed with or on behalf of an institutional investor settled without the involvement of a custodian?	

Summary of Comments	CSA Response
A majority of commenters appeared to be of the view that the scope of NI 24-101's trade matching requirements (i.e., limited to DAP/RAP trades) is appropriate and should not be expanded.	The scope of Part 3 of NI 24-101 is limited to DAP/RAP trades. The definition of a DAP/RAP trade has been revised, as discussed above under Question 1.
One commenter recommended that the scope be amended to eliminate any transactions for a retail client dealing on a DAP/RAP basis with another firm who would act as the custodian of the retail client's investment assets.	See our responses above under Question 1 in relation to individuals (i.e., retail investors) that have DAP/RAP accounts with a dealer.
One commenter requested that the CSA confirm whether new issues, account transfers, borrow/lend and repo transactions, and money market trades with less than a T+3 settlement date are excluded from the scope of NI 24-101. Two commenters requested that money market securities be excluded from the scope of NI 24-101. Another commenter thought that "off-market" transactions should be excluded, such as issuer and take-over bids, mergers and plans of arrangement, spin-offs, exercises of options and other convertible securities, stock dividends, etc. A commenter suggested that we clarify section 2.1, so that the matching requirements of the Instrument apply only to T+3 settling trades. A commenter asked whether N1 24-101 applies to other securities, such as: • derivatives that are not futures or options cleared through a clearing house • US debt and equity (forms 24-101F2 and 24-101 F5 refer to US debt and equity although N1 24-101 does not apply to securities that settle outside of Canada) • non-prospectus mutual funds, including non-prospectus funds that hold units of another non-prospectus fund	Section 2.1 of NI 24-101 has been revised to expand the types of transactions that are excluded from the application of the Instrument. NI 24-101 will not apply to the following additional specific types of trades: 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; a trade in a security to the issuer of the security; a trade made in connection with a take-over bid, issuer bid, amalgamation, merger, reorganization, arrangement or similar transaction; a trade made in accordance with the terms of conversion, exchange or exercise of a security previously issued by an issuer; a trade that is a securities lending, repurchase, reverse repurchase or similar financing transaction; a trade in an option, futures contract or similar derivative; or 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. Generally, the Instrument is intended to apply to a trade in a security that, in the normal course, would settle in Canada on T+1, T+2 or T+3. We note that Forms NI 24-101 F2 and F5 only required separate data for Canadian and U.S. dollar settled trades. There was no intention to capture U.S. debt and equity securities. Despite that, we have revised the forms to delete the requirement for separate data on Canadian and U.S. dollar settled trades so as to eliminate any confusion.
One commenter stated that the scope of the matching requirements should be changed to all "cash on delivery" (COD) accounts, since COD accounts would encompass all DAP/RAP transactions where clients have a prime broker arrangement. Another commenter believes that, because of the potentially significant operational compliance implications, the scope of the matching requirements should be determined on an account basis	See our responses above under Question 1 in relation to the definition of DAP/RAP trade. The concept is now centred upon a trade 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.

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rather than a trade basis. Another commenter felt that trade matching for securities settling on a DAP/RAP basis should be extended to include all trades executed on behalf of an institutional investor's account, as segregating only by trade type could prove to be more difficult to administer.	
One commenter encouraged regulators to consider mandating the use of block settlement for all trades with or on behalf of institutional investors in order to help the industry meet the proposed matching targets.	We do not intend to mandate the practice of so-called *block settlement*. Whether parties will apply this method of matching depends on a number of factors, including the relationship among the trade-matching parties, commercial practice, and regulatory considerations.
Nine commenters were of the view that the requirements of NI 24-101 should capture trades executed with or on behalf of an institutional investor, and settled with or without the involvement of a non-dealer custodian. Specifically, one commenter recommended that NI 24-101 should clearly state that <u>all</u> DAP/RAP trades are captured, regardless of whether settlement is effected by a traditional custodian, a prime broker acting as a custodian, or a broker dealer settling a third-party DAP/RAP trade.	See our responses above under Question 1 in relation to the definitions of custodian, institutional investor and DAP/RAP trade. We have clarified in the CP that all DAP/RAP trades, whether settled by a non-dealer custodian or a dealer custodian, are subject to the requirements of Part 3 of NI 24-101. We note that the definition of DAP/RAP trade would not include a trade for which settlement is made on behalf of a client by the dealer that executed the trade.
Question 4 – Are each of these methods (compliance agreement and signed written statement) equally effective to ensure that the trade-matching parties will match their trades by the end of T? Should trade-matching parties be given a choice of which method to use?	
Four commenters appeared to share the view that both methods (compliance agreement and signed written statement) would be equally effective to ensure that the trade matching parties will match their trades by the end of T.	We have retained these two alternative approaches. The Instrument has been revised to include the defined terms "trade-matching agreement" and "trade-matching statement" so as to simplify the drafting of sections 3.2 and 3.4 of the Instrument and clearly *label* and better describe the nature of the documentation that all trade-matching parties must have in place when opening or trading in DAP/RAP accounts.
Ten commenters were of the view that a standard form of compliance agreement or statement for all trade matching parties would be required for the following reasons: • To ensure that every trade-matching party would clearly understand what would be expected of it regarding matching • To ensure consistent and uniform application of policies and procedures	We do not propose to prescribe the form of trade-matching agreement or trade-matching statement. Trade-matching parties should be free to tailor their documentation according to their particular commercial relationships and practices. Nevertheless, Part 2 of the CP has been revised to provide guidance on the types of matters that could be included by the trade-matching parties in their trade-matching agreement. Also, we have noted in the CP that mass mailings, emails and single uniform trade-matching statements posted on a Website are acceptable ways of

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• To alleviate the complex process of negotiating and executing the required documentation • To reduce the compliance burden for dealers and oversight burden for regulators A commenter suggested that brokers and custodians be allowed to sign a single blanket statement (accepted by the CSA) that is posted on their external website. Another commenter would welcome an industry initiative (e.g., the CCMA, together with the IDA) to draft a standard agreement and statement. One commenter recommended that the CSA incorporate a standard form of agreement and statement into the Instrument that would be consistent for all parties.	providing or making available the statement. We acknowledge and encourage the industry's efforts to prepare standardized documentation.
Seven commenters proposed that the CSA implement a staggered, phased-in approach for the compliance agreement and signed written statement, to enable more time for the documents to be properly executed and finalized. A few commenters stated that the CSA allow trade-matching parties until January 1, 2007 (a six month period) to obtain signed versions of either forms of trade-matching documentation or, ideally, a commitment to abide by an industry standard, to reduce both the compliance burden for firms and the resources required by regulators to review agreements/statements.	Part 10 of NI 24-101 has been revised to provide for a six month phase-in period for preparing and executing the trade-matching documentation for all DAP/RAP accounts. As such, the requirements of sections 3.2 and 3.4 of the Instrument will not apply until October 1, 2007.
Four commenters noted that it was not clear what the consequences or the remedies of non-compliance with the documentation would be, and to whom they would be applied. For example, it is unclear from the Instrument how the CSA expects registered dealers to "use reasonable efforts to monitor compliance with and enforce the terms of the compliance agreement" when the custodial relationship is between the client and the custodian and not between the dealer and custodian. Who would be considered not in compliance? Who is responsible for remedial action? What would be the CSA's expectations of the steps to take in a situation where, for example, trades between a given broker, client and custodian are matched on T in the aggregate only 95% of the time—in such case, each party may claim that they achieved the CSA requirement and that the fault lies with the other two parties. It was noted that the effectiveness of any compliance agreement or written statement is dependent on the ability to track compliance and enforce penalties for	The CP has been revised and clarified on these issues (see s. 2.3(4) of the CP). Registered dealers and advisors 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. 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

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non-compliance.	identification of the root causes of failures to match trades on time.
One commenter stated it was unnecessary and ineffective for custodians to enter into a compliance agreement or provide a signed written statement since custodians already have policies and procedures in place to ensure the timely settlement and processing of trade instructions. Another commenter, however, recommended that, to the extent custodians are regulated, they should be "policing" their client relationships in the same manner as that proposed for SRO member firms. This could be achieved by developing a separate client/settlement agent trade matching compliance agreement/signed written statement or amending the NI 24-101 compliance agreement/signed written statement requirements to clearly include custodians.	As custodians are included as "trade-matching parties", they are required to enter into trade-matching agreements or provide trade-matching statements to registrants before a registrant can trade on behalf of an institutional investor. It is necessary and effective for custodians to enter into an agreement or provide a statement in accordance with the requirements of sections 3.2 and 3.4 of the Instrument because custodians are integral to the institutional trade matching process. Even if they are already recognized to have effective policies and procedures in place to ensure the timely processing of trade instructions and settlement, their active involvement as a party to a trade-matching agreement or in providing a trade-matching statement would, in our view, positively influence the behaviour of other trade-matching parties involved in the process.
One commenter noted that imposing these requirements on Canadian broker/dealers could disadvantage them when compared to foreign dealers, considering that a foreign institution can now become a CDS participant.	A foreign dealer or financial institution that becomes a participant in CDS to settle trades in CDS would be considered to be settling a trade in Canada, and would be caught by the requirements of Part 3 of the Instrument if the trade is a DAP/RAP trade.
One commenter would like the IDA to administer a list of broker/dealers who have established policies and procedures. This list would facilitate the IDA to enter into one written standard agreement with each adviser. Another commenter suggested two approaches for efficiencies in executing the necessary trade-matching documentation: (1) the development of standard industry compliance agreement, or (2) the use of a bare trustee approach whereby the IDA would execute the standard industry compliance agreement on behalf of all of its members with each institutional client.	We support industry efforts to standardize trade-matching documentation required under the Instrument. We would consider any SRO proposal to administer the documentation and/or a list of SRO member firms that have established policies and procedures.
Concerned about the regulatory burden, another commenter suggested alternatives to the trade-matching agreement, such as a statement as to policies and procedures, a clause in a new account agreement, or an addendum to an existing account agreement.	We think the Instrument and CP are sufficiently flexible to allow trade-matching parties to use the alternatives described by the commenter, i.e., a statement as to policies and procedures; a clause in a new account agreement; or an addendum to an existing account agreement.
A commenter would like to certify at the firm level and not at the account level, since certification at the account level would produce unnecessary paper and costs for both the	The CP confirms that a single trade-matching statement is sufficient for the general and sub-accounts of the institutional customer. Similarly, a single trade-matching

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investment manager and broker/dealer.	agreement is sufficient for the general and all sub-accounts of the institutional customer.
One commenter noted that their actual role as an investment manager appears to differ from the role of an investment manager described in the Instrument. In their experience, it is their responsibility as an investment manager to report to the client's custodian the details of the trade, but they do not confirm the details of the trade.	The role of an investment manager is critical to the trade matching process. It decides what securities to buy or sell and how the assets should be allocated among the underlying client accounts. Reporting to the custodian the details and settlement instructions of the trade is a key component of the trade matching process. A trade is matched only when all the trade-matching parties have completed their respective steps, which includes the timely involvement of the investment manager.
Question 5 – Will exception reports enable practical compliance monitoring and assessment of the trade matching requirements?	
Fourteen commenters made a number of recommendations to enable practical compliance monitoring and assessment of the trade matching requirements, including the following: • Exception reporting requirements should be clearly defined in NI 24-101 so that registrants provide reporting that is identical in content as well as format. • There should be a standard format for Exhibit A [now Exhibit B] to Form 24-101F1 to ensure the same level of detail for all parties. • Exception reporting for broker/dealers should be triggered by the failure to *enter* trades within timelines and not by *matching* failures. • A more practical approach would be to receive reporting from a clearing agency and from the MSU for the trades that they match and that are, in turn, settled by a clearing agency; and to focus oversight efforts on those individual firms with the highest values and/or volumes of trades that do not meet the deadlines. • CDS reporting should be more robust, as the experience to-date shows that additional development will be required (e.g. the ability to report trade matching statistics on a participant level); and CDS should provide minimum monthly reports to the registrant. • If exception reporting is adopted, a clearing agency should provide, at a minimum, monthly reports to	Registrants should be maintaining a record of their DAP/RAP trade matching performance, regardless of whether a regulation requires them to report on such performance in certain circumstances. A Form 24-101F1 exception report may help to maintain such a record, and in any case need only be completed if the registrant is unable to achieve matching of a certain percentage of its trades by the timeline. We are of the view that the exception reports are critically important in identifying the reasons for a trade-matching party's failure to meet the prescribed timelines. The matching of trade details must occur as soon as possible so that errors and discrepancies in the trades can be discovered early in the clearing and settlement process. We respond to a number of the specific comments as follows: • We have revised Form 24-101F1 and the CP to clarify the type of information we would require for the registrant exception reports. Dealers and advisers will need to provide aggregate quantitative information on their equity and debt DAP/RAP trades. Requiring this information will not add to the regulatory burden because a registrant would have had to track this information in any case to determine whether it had achieved the percentage threshold to avoid filing the exception report. In addition, when completing Form 24-101F1, a registrant will provide qualitative information on the circumstances or underlying causes that resulted in or contributed to the failure to match the relevant percentage of equity and/or debt DAP/RAP trades within

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registrants in order to ensure prompt attention to any issues; and to allow sufficient lead time to develop and implement any enhancements or address specific issues prior to the completion of the quarter. • NI 24-101 should state how the CSA and SROs will deal with non-compliant broker/dealers. • Field audits of registrants' exception reports and management of documentation requirements will have to be conducted. • The exception reporting requirements should be reassessed in order to ensure that they are not too onerous. • A more effective approach to determining who is unable to comply is to require immediate reporting of the details behind a failure to match. • The cost of meeting the upfront technological requirements and the ongoing monitoring requirements could be another barrier to entry into the market and could be passed onto clients in the form of fees. • Publishing the CDS performance reports on an industry-wide basis may be sufficient to encourage compliance of the Instrument; however, if such reports are found to be insufficient, then formal exception reporting could be implemented.	the time prescribed by Part 3 of the Instrument. Registrants will need to describe the specific steps they are taking to resolve delays in trade reporting and matching. • By themselves, statistics on failures to enter trades on a timely basis would not be sufficient to understand the underlying reasons why trades have not matched on a timely basis. • In contrast to Form 24-101F1, data received from a clearing agency or an MSU under Forms 24-101F2 and F5 will not fully explain why a particular trade matching party has failed to match within the prescribed timelines. Only Form 24-101F1exception reports will provide such information. • We understand that CDS will undertake the necessary development work to comply with the requirements of Form 24-101F2 and assist registrants to comply with Form 24-101F1 exception reporting. Those registrants that are not direct CDS participants will need to rely on registrants that are direct CDS participants to comply with Form 24-101F1 exception reporting. CDS currently provides a monthly report to all its participants, which identifies the participant's entry and confirmation rates. • Registrants should provide information that is relevant to their circumstances. For example, where necessary dealers should provide information demonstrating problems with notices of execution (NOEs) or reporting of trade details to CDS (e.g., time of entering trade details, aggregate number and value of trades entered, etc.). They 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 or service providers. They should identify the trade-matching party or service provider that seems to be consistently not meeting matching deadlines, or appears not to have established policies and procedures designed to achieve matching. Similarly, advisers should provide information demonstrating problems with allocations, confirm what problems, if any, they have encountered with their service providers or custodians, and identify the trade-matching party or service provider that seems to be consistently not meeting matching deadlines or appears not to have established policies and procedures designed to achieve matching.

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	• Immediate reporting to the regulators of failures to match on a timely basis may be far more time consuming and onerous than periodic reporting. Periodic reporting may identify a number of reasons, and offer a full explanation, as to why a trade-matching party was unable to meet the prescribed timelines. • Trade-matching parties may have to invest in new technology. However, this investment will, over time, result in improved efficiencies and cost-savings, including less reliance on manual processing.
One commenter was of the view that exception reporting by ICPMs may be duplicative and unnecessary. The reporting requirement of broker/dealers would be sufficient as they are primarily responsible for executing trade orders. Another commenter noted that they are concerned that ICPMs may be included as "registrants" required to file Form 24-101F1 exception reports. They question why advisers are included since (i) not all buy-side firms will be required to provide exception reports and (ii) as the buy-side firms are not affirming parties with CDS, there is no way for them to independently know that trades have matched successfully.	Exception reporting by advisers would not be duplicative or an unnecessary burden on the industry. Registered advisers are a key part of the buy-side community and are integral to ensuring that institutional trade matching is completed on a timely basis. Problems encountered by an adviser, particularly problems that are within the control or knowledge of an adviser, should be reported by the adviser.
One commenter felt it was important to ensure that all market participants be held to consistent standards and penalties regardless of the regulatory body that is assigned to monitor their trading activities.	The CSA would expect all trade-matching parties to have policies and procedures that are consistent. We plan to work with SROs and other regulators to ensure that standards and penalties are as consistent as possible.
Two commenters questioned how the CSA will be able to determine which trade-matching party is responsible for late matching in circumstances where there are conflicting claims based on different opinions regarding why a trade has not been promptly matched. One commenter noted that section 1.2(3) of the CP identifies four aspects of trade matching, only two of which are in the control of the dealer: notification of execution and reporting of trade details. The other two aspects are in the control of the buy-side client and their custodians: allocations and custodian verification. This places the dealer in a position of sub-contracted enforcers of securities regulation. In the event a dealer fails to meet its trade-matching thresholds solely because of the actions of its client or client's custodian, the implied result is that the dealer will have to enforce contractual remedies against the client, i.e. suspend or terminate the relationship. Another commenter	We plan to review completed Forms 24-101F1 on an ongoing basis to monitor and assess compliance by registrants and others with the Instrument's matching requirements. Various regulatory tools are available to us when assessing compliance by registrants, including routine field audits and compliance sweeps. We recognize that a dealer may be required to deliver an exception report because of the actions of its institutional client or such client's custodian. Our expectations of the dealer's role in these circumstances are set out in the CP, particularly s. 2.3(4). See our response under Question 4.

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recommended more of an industry solution in instances where institutional investors do not comply, rather than holding dealers accountable for failing to adequately police the trade-reporting timelines of their institutional clients.	
Question 6 – Is it necessary to require custodians to do exception reporting in order to properly monitor compliance with this Instrument?	
Six commenters were of the view that it is necessary to require custodians to complete exception reports to properly monitor industry-wide compliance with NI 24-101. Reasons cited include: • From a fairness standpoint, the dealer should not be held exclusively responsible for policing compliance with the matching requirements, particularly the compliance with regulated custodians. • To act as an additional "check and balance" on the monitoring and assessment process. • The possibility of providing an "independent review" and further insight into the reasons for failing to meet matching percentages. • Outsourcing to a custodian may be a feasible alternative for smaller registered advisers who may not have sufficient resources or capacity to monitor exception reporting. • Custodians, as an essential trade-matching party, should be subject to the same reporting standards as dealers. One commenter recommended that the CSA discuss the reporting requirements with the custodian community prior to defining reporting requirements in order to achieve useful information and avoid unnecessary costs that would likely be passed onto customers. Five commenters, however, said that it is unnecessary to require custodians to complete exception reports to properly monitor industry-wide compliance with NI 24-101. Reasons cited include: • Monitoring the extent to which trade confirmation rates for dealer participants are meeting the established thresholds can best be done through direct reporting by CDS to the regulator.	We acknowledge the comments received. However, imposing a direct regulatory reporting requirement on all custodians is not possible at this time. We are of the view that exception reporting by registrants, combined with the reporting by clearing agencies and MSUs, will be sufficient for the time being. The reporting requirements strike a proper balance and will provide useful information and avoid unnecessary costs.

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• Given the reporting currently available through CDS and the registrants' obligations to report, any exception reporting by custodians would be duplicative. • Information provided by the clearing agency and the exception reporting provided by the broker/dealer should be sufficient to meet the exception reporting requirements. One commenter stated that custodians should not be required to do exception reporting, except when directed or requested to do so by their client or counterparty broker/dealer.	
Question 7 – Is it feasible for trade-matching parties to achieve a *7:30 p.m. on T* matching rate of *98 percent* by July 1, 2008, even without the use of a matching service utility in the Canadian capital markets?	
Twelve commenters were of the view that it is not feasible for trade-matching parties to achieve a *7:30 p.m. on T* matching rate of *98%* by July 1, 2008, regardless of whether an MSU is operating in the Canadian marketplace. Reasons cited include: • The proposed target date is too aggressive; it does not allow enough time to complete all stages of the trade-matching process. • The buy-side will not be able to make the necessary investment and changes by the specified dates. • There will be push-back from smaller broker/dealers because substantial investment in technology will be required to change batch oriented systems. • During the same timeframe, the industry may be asked to absorb another large financial investment due to regulatory change to meet the TREATS requirements. • Significant changes to both behaviour of individual participants and level of automation are required before the industry will be able to achieve the target date. • There is a lack of facilities for the repair and resending of unmatched trades with the timeframes proposed. • There are no universally accepted set of trade match criteria that would require sign-off between the various parties. • The proposed targets are not achievable unless the	In response to the comments received to Questions 7 and 8, NI 24-101 has been revised as follows: • Matching requirements will apply uniformly to all DAP/RAP trades, without regard to time of execution. • The matching deadline is now end of T (11:59 p.m. on T), not 7:30 p.m. • A more gradual phase-in period has been incorporated for trade matching. • A six month phase-in period has been incorporated for allowing time to prepare and execute the required trade-matching agreements and/or trade-matching statements. After the phase-in periods, the Instrument will provide that trade-matching parties must match 95% of their DAP/RAP trades by 11:59 p.m. on T as of January 1, 2010; as compared to the previous proposal, which provided for a 98% threshold by 7:30 p.m. on T as of July 1, 2008. • For a DAP/RAP trade that results from an order to buy or sell securities received from an institutional investor whose investment decisions are usually made in and communicated from a geographical region outside of the western hemisphere, the Instrument provides for a matching deadline of 11:59 p.m. on T+1. • Led by the CCMA, the industry is working towards an accepted common set of trade-match criteria for all trade-matching parties.

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industry immediately adopts the CCMA's best practices and standards. • Some custodians may experience difficulties to match on T for those trades that are executed by registrants on behalf of foreign institutional investors, due to international time zone differences.	We are of the view that the revised time frames and phase-in periods discussed above will allow trade-matching parties to achieve the necessary systems and process changes required in due time. Despite more gradual transition periods, an ultimate matching deadline of end of T (11:59 p.m. on T) instead of 7:30 p.m. on T, and a final exception reporting threshold of 95 percent instead of 98 percent, registrants and other trade-matching parties will need to initiate some back-office processing changes and invest to upgrade their back-office technology. In the CSA's view, the benefits of the Instrument justify its costs. General securities law rules that require market participants to have policies and procedures in place to complete matching before the end of T and settle trades within the standard industry settlement periods (e.g., T+3) will augment the efficiency and enhance the integrity of capital markets. It promises to reduce both risk and costs, generally benefit the investor, and improve the global competitiveness of our capital markets. In addition, in assessing the anticipated costs and benefits of the Instrument to the industry, we carefully considered the industry's express desire for CSA regulatory action in this area.
A number of commenters were of the view that the 7:30 p.m. on trade date cut-off time should be changed to 11:59 p.m. on trade date. Reasons cited include: • The 11:59 p.m. cut-off would be more closely aligned with the U.S.'s cut-off time of 1:30 a.m. on T+1. • Canada's trade-matching performance comparisons would be more closely aligned with U.S. calculations. • Some of the end-of-day trade entry congestions caused by tighter deadlines would be relieved. • Existing trade transmission schedules imposed by major applications or systems of dealer service providers (such as ADP) would be better accommodated, especially because the processing of trade details submitted by such service providers to CDS normally occurs after 7:30 p.m. on T and before the opening of business on T+1. • It would remove any disadvantage to Western Canadian participants in the current timeframes.	As discussed above, we are no longer making a distinction in the Instrument between trades that are executed on or before 4:30 p.m. and trades that are executed after 4:30 p.m. Making such a distinction was unnecessarily complex and less relevant now that we are adopting an 11:59 p.m. matching deadline. Moreover, CDS is unable to know when a trade was executed by the counterparties. We believe that the matching requirements should be simplified to apply uniformly to any DAP/RAP trade executed on T, without regard to time of execution.

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Five stakeholders questioned the feasibility of moving to matching on T from T+1, regardless of the time on T. One commenter stated that only a study of the current state of industry's trade-matching preparedness, and an assessment of remaining steps to be taken, can answer this question. Two commenters questioned the benefits of moving from matching on T+1 to matching on T in an existing T+3 settlement environment. It was suggested that there exists no compelling reason to move to matching on T because the likelihood of a global move to a T+1 trade settlement cycle is small in the near to mid term. One of the commenters further suggested that the potential added costs may not be supportable, in terms of expense or risk reduction. The other commenter also recommended that the Instrument be amended to require matching by 12:00 p.m. (noon) on T+1, as this timeline is more realistic and achievable. Another commenter stated that a preferable approach might be to implement the initial transitional targets on T+1, and then assess the industry situation before introducing further targets. A commenter noted that the regulators should determine the implications of custodians affirming after 7:30 p.m. [and before] midnight on T before mandating the move to matching on T. One commenter noted that any move to timelines on T would be highly dependent on such things as further adoption of industry-wide communication standards and protocols, the implementation of real time trade technology, and changes to fund accounting routines (e.g., some participants delay sending trades to broker/dealers as they do not post them to their accounting systems until T+1). One commenter thought that moving the matching deadline from noon on T+1 to 7:30 p.m. or midnight on T (or even to 1:30 a.m. on T+1, as in the U.S.) will be more	We respond to these comments as follows. We believe that matching on T should continue to be the centrepiece of the Instrument. Same-day matching is critical to achieving STP and an important element of international best practices and standards. Both the Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of the International Organization of Securities Commissions (IOSCO) recommend that the confirmation of institutional trades occur as soon as possible after trade execution, preferably on T, but no later than T+1.[1] Similarly, the Group of Thirty (G-30) recommends 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 the day of the trade.[2] Agreement of trade details should occur as soon as possible so that errors and discrepancies can be discovered early in the settlement process. Early detection will help to avoid errors in recording trades, which could result in inaccurate books and records, increased and mismanaged market risk and credit risk, and increased costs. The CCMA, which has led the straight-through processing (STP) drive in Canada, strongly supports matching on T. It notes that research suggests that Canada lags behind the U.S. in achieving timely institutional trade matching.[3] Institutional trade matching on T will allow the Canadian market to move together with the U.S. market on key STP initiatives and, when the time comes, to T+1 settlement. Without moving to T matching, Canada risks being vulnerable to significant ongoing global competitive forces and may continue to lag the U.S. in the institutional trade processing area. A more efficient matching process may offer the following value to all industry sectors:

[1] 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 (Joint Task Force) on securities settlement systems*, dated November 2001, at Recommendation 2: Trade Confirmation.
[2] See *Global Clearing and Settlement: A Plan of Action*, report of the G-30 dated January 23, 2003, at Recommendation 5: Automate and Standardize Institutional Trade Matching.
[3] See, among other studies, Charles River Associates, *Free Riding, Under-investment and Competition: The Economic Case for Canada to Move to T+1: Executive Summary*, November 10, 2000; Cap Gemini Ernst and Young, *STP/T+1 Value Proposition Survey*, October 15, 2002; and Capital Markets Company (Capco), *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*, July 12, 2004. These studies are available on the CCMA website at www.ccma-acmc.ca.

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costly. Custodian staff and/or systems will have to be available to affirm trades following the trade-entry cut-off time, unless the custodian confirmation process is automated or MSUs are used.	• Registered advisers and other *buy-side* managers may be able to focus on business growth and returns with timely and accurate data that supports the entire investment process. • Registered dealers may benefit from reduced operating costs (e.g., fewer errors, reduced re-keying) and enhanced client services. • Custodians may experience a reduced need for trade intervention and be able to focus on providing clients with more value added services. • Overall institutional trade matching on T may drive other STP initiatives, reduce processing costs and operational risks, reduce settlement risk, protect the liquidity of our markets, and enhance the global competitiveness of Canada's capital markets. In response to the specific comment on the impact that same-day matching may have on fund accounting practices, we are of the view that institutional trade-matching processes and fund accounting practices are two issues that, although linked, must be treated separately. A trade executed by a dealer that results in an NOE to a *buy-side* manager will trigger requirements to complete other trade-matching steps as soon as practical under NI 24-101. The trade and NOE may also trigger a requirement for an investment fund to take into account that purchase or sale of securities in calculating the daily net asset value of the fund, but that requirement is independent of the requirements under NI 24-101.
Question 8 – Are the transitional percentages outlined in Part 10 of the Instrument practical? Please provide reasons for your answer.	
Eleven commenters are of the view that the percentages outlined in Part 10 of NI 24-101 are not practical. Reasons cited include: • Although the first transition to 70% matching at noon on T+1 is reasonable, the other transitional percentages are significantly different and would be difficult to achieve. • It will be very difficult to accomplish significant changes by implementing internal processes and system changes in six month incremental stages.	Please see our responses to Question 7 above. We believe the revised time frames and phase-in periods will address these concerns.

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• Incremental improvements in institutional trade matching will first require broker/dealers to adopt (virtual) real-time trade entry processes as opposed to batch, which will take at least 6 months to accomplish. • Use of weighted-average pricing, best-fill order management or other trading techniques prevents intra-day trade detail communication in many cases. • Any trade entry that occurs after the 7:30 p.m. cut-off is automatically recorded on the next day (T+1 for example).	
One commenter suggested that the threshold to achieving matching on T should be set to 90% as opposed to 98%; the latter threshold is to high and poses an unfair burden on the industry given the relatively concentrated nature of institutional trading in the Canadian capital markets and the economic value of institutional trade matching in absence of the move to T+1 settlement. Another commenter recommended that we consider specifying a 98 per cent entry-reporting rate for dealer trade entry to the regulated clearing agency, and a separate custodian trade affirmation rate that recognizes that, for the most part, the current process is sequential. Alternatively, the CSA should consider lowering the matching rate to 95%. Another commenter noted that, while a 98 percent marching compliance rate may be feasible, it is not likely achievable without an acceleration in the international move to T+1 settlement.	We have set the final threshold for exception reporting at 95% of DAP/RAP trades matched by end of T. Such threshold will apply commencing January 1, 2010.