

24-101 Canadian Securities Administrators' Request for Comment Proposed National Instrument 24-101 Institutional Trade Matching and Settlement [NI Proposed - Lapsed]
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**Proposed
National Instrument 24-101
Institutional Trade Matching and Settlement**

PART 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions -

In this Instrument,

"custodian" means a person or company^[1] that holds securities for the benefit of another under a custodial agreement, but does not include a registered dealer;^[2]

"DAP or RAP trade" means a trade in a security for which settlement is made on a delivery against payment or receipt against payment basis;

“institutional investor” means

- (a) a person or company, other than an individual, that has net investment assets of at least \$10,000,000 as shown on its most recently prepared financial statements, or
- (b) a person or company that holds securities through a custodian;

“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) a regulated clearing agency, or
- (b) an exchange, stock exchange or quotation and trade reporting system that is recognized or authorized by a securities regulatory authority^[3] to carry on business as an exchange, stock exchange or quotation and trade reporting system or that is exempted by a securities regulatory authority from a requirement under securities legislation^[4] to be so recognized or authorized;

“regulated clearing agency” means,

- (a) in Ontario, a clearing agency^[5] recognized by the securities regulatory authority under section 21.2 of the *Securities Act* (Ontario),
- (b) in Québec, a clearing agency for securities authorized by the securities regulatory authority, and
- (c) in every other jurisdiction,^[6] a clearing agency that is subject to regulation under the securities legislation of another jurisdiction in Canada;^[7]

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

“settlement day” means a day on which deliveries of securities and payments of money may be made through the facilities of a regulated clearing agency;

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

- (a) a registered adviser acting for the institutional investor in the trade,
- (b) if a registered adviser is not acting for the institutional investor in the trade, the institutional investor,
- (c) a registered dealer executing or clearing the trade, or
- (d) a custodian of the institutional investor settling the trade;

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

“T+1” means the next settlement day following the day on which a trade is executed.

1.2 Interpretation - trade matching and Eastern Time -

(1) In this Instrument, matching is the process by which the details and settlement instructions of an executed trade are reported, verified, confirmed and affirmed or otherwise agreed to among the trade-matching parties.

(2) A reference to a time in this Instrument is to Eastern Time.

PART 2 APPLICATION

2.1 This Instrument does not apply to

- (a) a distribution of a security,
- (b) a trade in a security of a mutual fund to which National Instrument 81-102- *Mutual Funds* applies,
- (c) a trade in a security to be settled outside Canada, or
- (d) a trade in an option or futures contract that is cleared through a clearing house.

PART 3 TRADE MATCHING REQUIREMENTS

3.1 Matching deadlines for registered dealer -

A registered dealer shall not execute a DAP or RAP trade with or on behalf of an institutional investor unless the dealer has established reasonable policies and procedures to achieve matching as soon as practicable after the trade has been executed and in any event no later than

- (a) 7:30 p.m. on T if the trade is executed before 4:30 p.m., or
- (b) 7:30 p.m. on T+1 if the trade is executed after 4:30 p.m.

3.2 Compliance agreement or signed written statement -

A registered dealer shall not open an account to execute a DAP or RAP trade for an institutional investor or accept an order to execute a DAP or RAP trade for the account of an institutional investor unless each trade-matching party has either

- (a) entered into a written agreement with the dealer that sets out the roles and responsibilities of the trade-matching parties in the matching of trades, and includes, without limitation, a term by which the trade-matching parties agree to establish policies and procedures to achieve matching as soon as practicable after the trade is executed and in any event no later than
 - (i) 7:30 p.m. on T if the trade is executed before 4:30 p.m., or
 - (ii) 7:30 p.m. on T+1 if the trade is executed after 4:30 p.m., or
- (b) provided a signed written statement to the dealer that confirms that the trade-matching party has established policies and procedures to achieve matching as soon as practicable after the trade is executed and in any event no later than

- (i) 7:30 p.m. on T if the trade is executed before 4:30 p.m., or
- (ii) 7:30 p.m. on T+1 if the trade is executed after 4:30 p.m.

3.3 Matching deadlines for registered adviser -

A registered adviser shall not give an order to a dealer to execute a DAP or RAP trade on behalf of an institutional investor unless the adviser has established reasonable policies and procedures to achieve matching as soon as practicable after the trade is executed and in any event no later than

- (a) 7:30 p.m. on T if the trade is executed before 4:30 p.m., or
- (b) 7:30 p.m. on T+1 if the trade is executed after 4:30 p.m.

3.4 Compliance agreement or signed written statement -

A registered adviser shall not open an account to execute a DAP or RAP trade for an institutional investor or give an order to a dealer to execute a DAP or RAP trade for the account of an institutional investor unless each trade-matching party has either

(a) entered into a written agreement with the adviser that sets out the roles and responsibilities of the trade-matching parties in the matching of trades, and includes, without limitation, a term by which the trade-matching parties agree to establish policies and procedures to achieve matching as soon as practicable after the trade is executed and in any event no later than

- (i) 7:30 p.m. on T if the trade is executed before 4:30 p.m., or
- (ii) 7:30 p.m. on T+1 if the trade is executed after 4:30 p.m., or

(b) provided a signed written statement to the adviser that confirms that the trade-matching party has established policies and procedures to achieve matching as soon as practicable after the trade is executed and in any event no later than

- (i) 7:30 p.m. on T if the trade is executed before 4:30 p.m., or
- (ii) 7:30 p.m. on T+1 if the trade is executed after 4:30 p.m.

PART 4 REPORTING REQUIREMENT FOR REGISTRANTS

4.1 A registrant shall file a completed Form 24-101F1 no later than 45 days after the end of a calendar quarter if

(a) less than 98 percent of the DAP or RAP trades executed by or for the registrant during the quarter matched within the time required in Part 3; or

(b) the DAP or RAP trades executed by or for the registrant during the quarter that matched within the time required in Part 3 represent less than 98 percent of the aggregate value of the securities purchased and sold in those trades.

PART 5 REPORTING REQUIREMENTS FOR REGULATED CLEARING AGENCIES

5.1 A regulated clearing agency shall file a completed Form 24-101F2 no later than 30 days after

the end of a calendar quarter.

PART 6 REQUIREMENTS FOR MATCHING SERVICE UTILITIES

6.1 Initial filing -

- (1) A person or company shall not carry on business as a matching service utility unless
 - (a) the person or company has filed a completed Form 24-101F3; and
 - (b) at least 90 days have passed since the person or company filed the completed Form 24-101F3.
- (2) During the 90 day period referred to in subsection (1), a person or company that files Form 24-101F3 shall inform in writing the securities regulatory authority immediately of any significant change to the information provided in Form 24-101F3 and the person or company shall file an amendment to the information provided in Form 24-101F3 in the manner set out in Form 24-101F3 no later than seven days after a change takes place.

6.2 Anticipated change to operations -

At least 45 days before implementing a significant change involving a matter set out in Form 24-101F3, a matching service utility shall file an amendment to the information provided in Form 24-101F3 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, the matching service utility shall file a report on Form 24-101F4 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, the matching service utility shall file a report on Form 24-101F4 as soon as practicable after it ceases to carry on that business.

6.4 Ongoing filing and record keeping -

- (1) A matching service utility shall file a completed Form 24-101F5 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 for the proper recording of its business.

6.5 System requirements -

For all of its core systems supporting the matching of trades, 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
 - (i) a material failure of those systems, and
 - (ii) a material change to 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 reasonable policies and procedures 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 a self-regulatory entity.
- (2) Subsection (1) does not apply to a trade in respect of which terms of settlement have been expressly agreed to by the counterparties to the trade at or before the trade was executed.

PART 8 EQUIVALENT REQUIREMENTS OF SELF-REGULATORY ENTITIES AND OTHERS

8.1 A regulated clearing agency, marketplace or matching service utility shall have rules or other instruments to promote compliance by its members, participants or users with the requirements of Parts 3 and 7.

8.2 A member of a self-regulatory entity may comply with a requirement of this Instrument by complying with a rule or other instrument of the self-regulatory entity dealing with the same subject matter as that requirement that has been approved by a securities regulatory authority and published by the self-regulatory entity.

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 DATE AND TRANSITION

10.1 Effective date - This Instrument comes into force on July 1, 2006.

10.2 Transition -

(1) A reference to "7:30 p.m. on T" in sections 3.1(a), 3.2(a)(i) and (b)(i), 3.3(a), and 3.4(a)(i) and (b)(i) shall each be read as a reference to:

(a) "12:00 p.m. (Noon) on T+1", for trades executed after December 31, 2006 but before July 1, 2007.

(2) A reference to "98 percent" in sections 4.1(a) and (b) shall each be read as a reference to:

(a) "70 percent", for trades executed after December 31, 2006, but before July 1, 2007,

(b) "80 percent", for trades executed after June 30, 2007, but before January 1, 2008, and

(c) "90 percent", for trades executed after December 31, 2007, but before July 1, 2008.

^[1] The term "person or company" is defined for clarification in certain jurisdictions in National Instrument 14-101 - *Definitions* .

^[2] This definition of custodian is derived in part from the definition found in OSC Rule 14-501 - *Definitions*.

^[3] The term "securities regulatory authority" is defined in National Instrument 14-101 - *Definitions*.

^[4] The term "securities legislation" is defined in National Instrument 14-101 - *Definitions*.

^[5] The term "clearing agency" is defined in the securities legislation of certain jurisdictions (see, for example, s. 1(1) of the *Securities Act* (Ontario)).

^[6] The term "jurisdiction" is defined in National Instrument 14-101 - *Definitions*.

^[7] The Canadian Depository for Securities Limited (CDS) is recognized as a clearing agency for securities in Ontario and as a self-regulatory organization in Québec. No other CSA jurisdiction regulates CDS.