

CANADIAN SECURITIES ADMINISTRATORS

NOTICE OF NATIONAL INSTRUMENT 24-101 INSTITUTIONAL TRADE MATCHING AND SETTLEMENT, AND COMPANION POLICY 24-101CP TO NATIONAL INSTRUMENT 24-101 INSTITUTIONAL TRADE MATCHING AND SETTLEMENT

I. Introduction

National Instrument 24-101 — *Institutional Trade Matching and Settlement* (Instrument) and Companion Policy 24-101CP — to National Instrument 24-101 — *Institutional Trade Matching and Settlement* (Companion Policy) are an initiative of the Canadian Securities Administrators (the CSA or we). The Instrument has been made or is expected to be made by each member of the CSA, and will be implemented as: a rule in each of Alberta, British Columbia, Manitoba, Ontario, New Brunswick, Newfoundland and Labrador, Nova Scotia, and Prince Edward Island; a commission regulation in Saskatchewan; a regulation in each of Québec, Nunavut and the Northwest Territories; and a policy in the Yukon Territory. We intend the Instrument to come into force on April 1, 2007, although certain provisions of the Instrument are not intended to come into force before October 1, 2007.

We also expect the Companion Policy to be adopted in all jurisdictions.

The following jurisdictions have obtained commission approval: Alberta, British Columbia, Manitoba, Ontario, New Brunswick, Nova Scotia and Saskatchewan.

In British Columbia, Ontario, New Brunswick, and Saskatchewan the implementation of the Instrument is subject to ministerial approval.

In Ontario, the Instrument and other required materials were delivered to the Minister of Government Services and Minister responsible for securities regulation on January 10, 2007. The Minister may approve or reject the Instrument or return it for further consideration. If the Minister approves the Instrument or does not take any further action, the Instrument will come into force on April 1, 2007. The Companion Policy will come into force at the same time.

In Québec, the Instrument has been approved for publication by the Autorité des marchés financiers. The Instrument is a regulation made under section 331.1 of *The Securities Act* (Québec) and will have to be approved, with or without amendment, by the Minister of Finance. The Instrument will come into force on the date of its publication in the *Gazette officielle du Québec* or any later date specified in the regulation.

The final text of the Instrument and Companion Policy is being published concurrently with this Notice and can be obtained on the websites of CSA members, including the following:

- www.albertasecurities.com
- www.bcsc.bc.ca
- www.osc.gov.on.ca
- www.lautorite.qc.ca
- www.msc.gov.mb.ca

II. Substance and Purpose of Instrument and Companion Policy

The Instrument provides a general framework in provincial securities regulation for ensuring more efficient and timely settlement processing of trades, particularly institutional trades.

Generally, the Instrument:

- requires registered dealers and advisers to establish, maintain and enforce policies and procedures designed to achieve *matching of delivery against payment* or *receipt against payment* (DAP/RAP) trades as soon as practical after the trade has been executed and in any event no later than the end of the day on which the trade was executed or “T”
- prevents a registered dealer or adviser from opening a DAP/RAP account or executing a DAP/RAP trade for an institutional investor unless each *trade-matching party* has entered into a *trade-matching agreement* with the dealer or adviser or, alternatively, provided a *trade-matching statement* to the dealer or adviser
- requires registered dealers to establish, maintain and enforce policies and procedures designed to facilitate settlement of trades by the standard settlement date
- requires registrants to deliver an exception report on Form 24-101F1 for a given calendar quarter if less than 95 percent of the DAP/RAP trades executed by or for the registrant in the calendar quarter have matched within T
- requires *clearing agencies* and *matching services utilities* to deliver statistical information relating to matching
- provides transitional provisions to gradually phase in the requirement to match DAP/RAP trades on T and the 95 percent threshold for delivering exception reports

The purpose of the Companion Policy is to assist the industry in understanding and applying the

Instrument and to explain how we will interpret or apply certain provisions of the Instrument.

III. Prior Publications and Background

A. First publication for comment

On April 16, 2004, we published for comment the first version of the Instrument (2004 Instrument), a related companion policy, and CSA Discussion Paper 24-401 on *Straight-through Processing* (STP) and Request for Comments (collectively, the 2004 Documents).¹ We received 26 comment letters. A summary of the comments and our responses were published in CSA Notice 24-301 dated February 11, 2005.²

The majority of comments on the 2004 Documents, including some from the buy-side community, supported a CSA rule requiring institutional trade matching on T. However, almost all of the commenters found it unfeasible to require institutional trade matching on T by July 1, 2005. Rather, the consensus was for the rule to gradually phase in the requirement to match institutional trades on T, starting with T+1 and shortening the period to T when the industry is ready. Commenters felt that incremental steps would provide market participants with an opportunity to address a number of concerns about an accelerated confirmation and affirmation process. In CSA Notice 24-301, we agreed with the industry's prevailing view that a rule is required to support institutional trade matching on T with phased-in implementation.

B. Second publication for comment

After considering the comments received on the 2004 Documents and consulting with the industry, including the Canadian Capital Markets Association, Investment Dealers Association of Canada and The Canadian Depository for Securities Limited, we made material changes to the 2004 Instrument and related companion policy and published revised materials for comment a second time on March 3, 2006 (March 2006 Documents).³ The March 2006 Documents introduced a number of key changes. We generally refocused the obligations of trade-matching parties under the 2004 Instrument from taking all *necessary steps* to match a trade to adopting appropriate *policies and procedures* to achieve matching. We included the concept of a signed written statement as an alternative to entering into a trade matching compliance agreement. We introduced a new *exception* reporting requirement for registrants and a new requirement for a regulated clearing agency to file quarterly information relating to the trade matching activities of their participants. We also included new transitional phase-in provisions to gradually move to matching on T.

IV. Summary of Written Comments on March 2006 Documents

We received 21 comment letters on the March 2006 Documents. We have considered these comments and thank all the commenters. A list of the commenters and a summary of the comments, together with our responses, are contained in Appendix B to this Notice.

V. Summary of Changes to March 2006 Documents

¹ In Ontario, published at (2004) 27 OSCB 3971.

² In Ontario, published at (2005) 28 OSCB 1509.

³ In Ontario, published at (2006) 29 OSCB 1829.

We revised the March 2006 Documents in light of the comments received and after consulting again with industry. All of the revisions were made in response to the comments from stakeholders and to clarify and simplify the requirements of the Instrument. In our view, none of the revisions are material, so the Instrument and Companion Policy are being published with this Notice as a final rule and policy. A summary of the revisions made to the March 2006 Documents is set out in Appendix A to this Notice.

VI. Authority for Instrument in Saskatchewan

In Saskatchewan, the Saskatchewan Financial Services Commission (the SFSC) has authority to make regulations adopting the Instrument pursuant to the following provisions of *The Securities Act, 1988* (Saskatchewan) (SK Act):

- Under clause 154(1)(i) of the SK Act the SFSC has the authority to make regulations regulating the listing or trading of securities, including prescribing requirements for keeping records and reporting trades and quotations;
- Under sub-clause 154(1)(c)(i) of the SK Act the SFSC has the authority to make regulations prescribing standards of practice and business conduct of registrants in dealing with their customers and clients and prospective customers and clients;
- Under clause 154(1)(k) of the SK Act the SFSC has the authority to make regulations regulating exchanges, self-regulatory organizations, and clearing agencies.

VII. Alternatives to Instrument Considered

In proposing the Instrument, the CSA considered as an alternative not implementing any regulatory requirement, relying instead either on the SROs to impose matching by the end of T or industry practices and standards to evolve towards matching on T. We believe that market participants are seeking assurances that, before they invest in the necessary financial and technological resources to improve institutional trade processing, a requirement to complete matching by the end of T will become a rule subject to compliance and enforcement by the Canadian securities regulatory authorities.

VIII. Unpublished Materials

In proposing the Instrument, the CSA have not relied on any significant unpublished study, report, or other material.

IX. Anticipated Costs and Benefits

We refer you to Discussion Paper 24-401, in particular *Part I: The Canadian Securities Clearing and Settlement System and Straight-through Processing — C. Why is STP important to the Canadian capital markets?*

In summary, the CSA are of the view that the Instrument offers several benefits to the Canadian capital markets, including but not limited to the following:

- reduction of processing costs due to development of STP systems;
- reduction of operational risk due to development of STP systems;
- protection of Canadian market liquidity;
- reduction of settlement risk; and
- overall mitigation of systemic risk in, and support of the global competitiveness of, the Canadian capital markets.

The CSA recognize, however, that implementing the Instrument may entail costs, which will be borne by market participants. 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.

X. Regulations to be Amended or Revoked

None.

XI. Questions

Please refer any of your questions to:

Randee Pavalow
Director, Capital Markets
Ontario Securities Commission
(416) 593-8257
rpavalow@osc.gov.on.ca

Maxime Paré
Senior Legal Counsel, Market Regulation
Capital Markets
Ontario Securities Commission
(416) 593-3650
mpare@osc.gov.on.ca

Emily Sutlic
Legal Counsel, Market Regulation
Capital Markets
Ontario Securities Commission
(416) 593-2362
esutlic@osc.gov.on.ca

Shaun Fluker
Legal counsel
Alberta Securities Commission
(403) 297-3308
shaun.fluker@seccom.ab.ca

Serge Boisvert
Analyste en réglementation
Direction de la supervision des OAR
Autorité des marchés financiers
(514) 395-0558 poste 4358
serge.boisvert@lautorite.qc.ca

Meg Tassie
Senior Advisor
Capital Markets Regulation
British Columbia Securities Commission
(604) 899-6819
mtassie@bcsc.bc.ca

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The texts of the Instrument and Companion Policy follow after Appendices A and B to this Notice.