

**CANADIAN SECURITIES ADMINISTRATORS' REQUEST FOR COMMENT
PROPOSED NATIONAL INSTRUMENT 24-101
POST-TRADE MATCHING AND SETTLEMENT**

TABLE OF CONTENTS

<u>PART</u>	<u>TITLE</u>
PART 1	DEFINITIONS AND INTERPRETATION
PART 2	APPLICATION
PART 3	TRADE MATCHING
PART 4	REQUIREMENTS FOR A MATCHING SERVICE UTILITY
PART 5	TRADE SETTLEMENT
PART 6	EXEMPTION
PART 7	EFFECTIVE DATE

**PROPOSED
NATIONAL INSTRUMENT 24-101
POST-TRADE MATCHING AND SETTLEMENT**

PART 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions - In this Instrument,

“counterparty”, in relation to a trade in a security by a buyer or a seller, means the opposite party to such trade;

“custodian” means a person or company¹ that holds securities for the benefit of another under a custodial agreement or other custodial arrangement, but does not include a dealer;²

“DVP” means delivery-versus-payment;

“delivery-versus-payment”, in relation to a purchase or sale of a security, means a service available to the buyer which allows him, her or it to pay for the security when the security is delivered at settlement;

"depository eligible security" means a publicly traded security in respect of which settlement of a trade in the security may be performed through the facilities or services of a recognized clearing agency;

“institutional client” means a person or company, including a portfolio adviser, that appoints a custodian to hold securities on his, her or its behalf;

“matching service utility” means a person or company that provides centralized facilities for the process of comparing trade data and has filed Form 24-101F1, but does not include a recognized clearing agency, a recognized exchange, or a recognized quotation and trade reporting system;

“portfolio adviser” means an adviser registered under securities legislation³ for the purpose of managing the investment assets of one or more clients of the adviser through discretionary authority granted to the adviser by the clients;

“RVP” means receive-versus-payment;

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 legislation” is defined in National Instrument 14-101 — Definitions.

“receive-versus-payment”, in relation to a purchase or sale of a security, means a service available to the seller which allows him, her or it to deliver the security when payment is received at settlement;

“recognized clearing agency” means,

- (a) in Ontario, a clearing agency⁴ recognized by the securities regulatory authority⁵ to carry on business as a clearing agency;
- (b) in Quebec, a clearing agency recognized by the securities regulatory authority as a self-regulatory organization, and
- (c) in every other jurisdiction,⁶ a clearing agency in Canada that is otherwise subject to regulation under securities legislation by the securities regulatory authority or by a securities regulatory authority of another jurisdiction in Canada;⁷

“recognized exchange” has the meaning ascribed to that term in National Instrument 21-101 – Marketplace Operation;

“recognized quotation and trade reporting system” has the meaning ascribed to that term in National Instrument 21-101 – Marketplace Operation;

“relevant party” means a person or company involved in the process of comparing trade data that must agree to the details of a trade in securities;

“settlement”, in relation to a trade in a security, means the completion of the trade, whereby the seller transfers the security to the buyer and the buyer transfers the payment to the seller, and includes, in the context of completion of a trade through the facilities or services of a clearing agency acting as central counterparty, the discharge of obligations in respect of funds or securities, computed on a net basis, between and among the clearing agency and the participants of the clearing agency;

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

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

4 The term “clearing agency” is defined in the securities legislation of certain jurisdictions (see, for example, s. 1(1) of the *Securities Act* (Ontario)).

5 The term “securities regulatory authority” is defined in National Instrument 14-101 — Definitions.

6 The term “jurisdiction” is defined in National Instrument 14-101 — Definitions.

7 There are only two clearing agencies in Canada that are regulated under provincial securities legislation, The Canadian Depository for Securities Limited (CDS) and Canadian Derivatives Clearing Corporation (CDCC). CDS is recognized as a clearing agency in Ontario and as a self-regulatory organization in Quebec. CDCC is recognized as a self-regulatory organization in Quebec. No other CSA jurisdiction regulates CDS or CDCC.

“T+3” means the third clearing or settlement day following the day on which a trade is executed;

“trade-matching compliance agreement” means the agreement described in section 1.4.

1.2 Interpretation — Comparing Trade Data

- (1) In this Instrument, comparing trade data is a process by which details and settlement instructions of a trade in securities executed on behalf of an institutional client are being transmitted or compared among,
 - (a) the institutional client,
 - (b) the dealer acting for the institutional client in the trade,
 - (c) the counterparty to the trade if the dealer was not acting as principal in the trade,
 - (d) the custodian or custodians of the institutional client, and
 - (e) any service provider performing services for one or more of the parties referred to in paragraphs (a) to (d) to facilitate the settlement of the trade.
- (2) Without limiting the generality of subsection (1), the process of comparing trade data includes any one or more of the following steps:
 - (a) The dealer notifies the institutional client of the execution of the trade.
 - (b) The institutional client advises the dealer and each custodian how the securities are to be allocated among,
 - (i) the underlying client accounts managed by the institutional client, or
 - (ii) each custodian.
 - (c) The dealer confirms to the institutional client certain details of the trade pursuant to securities legislation or the rules of a self-regulatory organization and submits trade details to the clearing agency.
 - (d) Each custodian verifies the trade details and settlement instructions against available securities or funds held for the institutional client.

1.3 Interpretation — Institutional Trade Matching — In this Instrument, a trade executed on behalf of an institutional client is matched when,

- (a) the process of comparing trade data is completed,
- (b) the relevant parties have agreed to the details of the trade, and
- (c) either the custodian of the institutional client or a matching service utility is in a position to notify a recognized clearing agency of the trade.

1.4 Interpretation — Trade-Matching Compliance Agreement

- (1) In this Instrument, a trade-matching compliance agreement is a written agreement between a dealer and an institutional client pursuant to which they agree, as a condition of accepting an order from the institutional client to trade in a depository eligible security on a DVP or RVP basis, to take all necessary steps to complete the process of comparing trade data and matching the trade as soon as practicable after the trade has been executed and in any event no later than the close of business on T.
- (2) Subject to subsection (3), a trade-matching compliance agreement may expressly permit a party to the agreement to complete the process of comparing trade data and matching the trade after T if, during the process of comparing trade data, the details of the trade are found to be incorrect or incomplete and the party, acting reasonably, is unable to agree to the details of the trade with another relevant party by the close of business on T.
- (3) A trade-matching compliance agreement shall expressly require the party referred to in subsection (2) to take all necessary steps to correct the details of the trade and match the trade as soon as practicable and in any event no later than the close of business on T+1.

PART 2 APPLICATION

2.1 Application — This Instrument does not apply to,

- (a) a trade in respect of which the terms of settlement have been expressly agreed upon by the counterparties at the time of the trade;
- (b) a trade that is a distribution of a security;
- (c) a trade in a security of a mutual fund to which National Instrument 81-102 Mutual Funds applies;

- (d) a trade in a security to be settled outside Canada.

PART 3 TRADE MATCHING

3.1 Trade Matching Compliance by Dealer — A dealer who executes a trade in a depository eligible security shall take all necessary steps to match the trade as soon as practicable after the trade has been executed and in any event no later than the close of business on T.

3.2 Trade-Matching Compliance Agreement — A dealer shall not accept instructions to open an account or an order to trade in a depository eligible security from an institutional client pursuant to an arrangement under which,

- (a) the payment for the security purchased is to be made on a DVP or RVP basis by a custodian or
- (b) the delivery of the security sold is to be made on a DVP or RVP basis by a custodian,

unless the dealer has entered into a trade-matching compliance agreement with the institutional client.

3.3 Trade Matching Compliance by Adviser — A portfolio adviser who gives an order to a dealer to trade in a depository eligible security on behalf of one or more clients of the portfolio adviser shall take all necessary steps to match the trade as soon as practicable after the trade has been executed and in any event no later than the close of business on T.

3.4 Trade-Matching Compliance Agreement — A portfolio adviser shall not open an account with or give an order to a dealer to trade in a depository eligible security on behalf of one or more clients of the portfolio adviser pursuant to an arrangement under which,

- (a) the payment for the security purchased is to be made on a DVP or RVP basis by a custodian, or
- (b) the delivery of the security sold is to be made on a DVP or RVP basis by a custodian,

unless the portfolio adviser has entered into a trade-matching compliance agreement with the dealer.

3.5 Correcting Trade Details

- (1) A dealer subject to section 3.1 or a portfolio adviser subject to section 3.3 is exempt from the requirements of that section if, during the process of comparing trade data, the details of the trade are found to be incorrect or incomplete and the dealer or adviser, acting reasonably, is unable to agree to the details of the trade with another relevant party by the close of business on T.
- (2) Despite subsection (1), a dealer or portfolio adviser exempted under that subsection shall take all necessary steps to correct the details of the trade and match the trade as soon as practicable and in any event no later than the close of business on T+1.

3.6 Matching Service Utility — A person or company subject to section 3.1, 3.3 or 3.5 or bound by a trade-matching compliance agreement may use the facilities or services of a recognized clearing agency, a recognized exchange, a recognized quotation and trade reporting system, or a matching service utility to comply with the section or the trade-matching compliance agreement if the facilities or services are reasonably designed to accomplish the matching of trades by the end of T.

PART 4 REQUIREMENTS FOR A MATCHING SERVICE UTILITY

4.1 Initial Filing Requirements

- (1) A person or company that intends to carry on business as a matching service utility shall file Form 24-101F1 at least 90 days before the person or company begins to carry on business as a matching service utility.
- (2) During the 90 day period referred to in subsection (1), a person or company that files Form 24-101F1 shall inform in writing the securities regulatory authority immediately of any change to the information provided in Form 24-101F1 and the person or company shall file an amendment to the information provided in Form 24-101F1 in the manner set out in Form 24-101F1 no later than seven days after a change takes place.

4.2 Change in Material Information — At least 45 days before implementing a material change involving a matter set out in Form 24-101F1, a matching service utility shall file an amendment to the information provided in Form 24-101F1 in the manner set out in Form 24-101F1.

4.3 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 24-101F2 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 24-101F2 as soon as practicable after it ceases to carry on that business.

4.4 Ongoing Filing and Other Requirements

- (1) A matching service utility shall file quarterly the information provided in Form 24-101F3 in the manner set out in Form 24-101F3 no later than 45 days after the end of each quarter of the calendar year.
- (2) A matching service utility shall keep such books, records and other documents as are reasonably necessary for the proper recording of its business.

4.5 System Requirements – A matching service utility shall

- (a) on a reasonably frequent basis, and in any event, at least annually,
 - (i) make reasonable current and future capacity estimates for each of its systems,
 - (ii) conduct capacity stress tests of critical systems to determine the ability of those systems to process information in an accurate, timely and efficient manner,
 - (iii) develop and implement reasonable procedures to review and keep current the development and testing methodology of those systems,
 - (iv) review the vulnerability of those systems and data centre computer operations to internal and external threats, including physical hazards and natural disasters, and
 - (v) establish reasonable contingency and business continuity plans;
- (b) annually, cause to be performed an independent systems review and prepare a report, in accordance with established audit procedures and standards, of its controls for ensuring that it is in compliance with paragraph (a), and conduct a review by senior management of the report containing the recommendations and conclusions of the independent review; and
- (c) promptly notify the securities regulatory authority of any material systems failures.

PART 5 TRADE SETTLEMENT

5.1 Trade Settlement by Dealer — A dealer who executes a trade in a depository eligible security shall take all necessary steps to settle the trade no later than the end of T+3.

5.2 Good Delivery Rule — A dealer shall not accept an order to trade in a depository eligible security pursuant to an arrangement under which,

(a) the payment for the security purchased is to be made on a DVP or RVP basis, or

(b) the delivery of the security sold is to be made on a DVP or RVP basis,

unless settlement of the trade is effected through the facilities of a recognized clearing agency.

PART 6 EXEMPTION

6.1 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.

PART 7 EFFECTIVE DATE

7.1 Effective Date – This Instrument comes into force on July 1, 2005.

NATIONAL INSTRUMENT 24-101

**PROPOSED
FORM 24-101F1**

INITIAL FORM FOR A MATCHING SERVICE UTILITY

DATE: _____ (DD/MMM/YYYY)

TYPE OF FILING: INITIAL FORM AMENDMENT

GENERAL INFORMATION

1. Full name of matching service utility:
2. Main street address (do not use a P.O. box):
3. Mailing address (if different):
4. Address of head office (if different from address in item 2):
5. Business telephone and facsimile number:

(Telephone)	(Facsimile)
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6. Website address:
7. Contact employee:

(Firm Name)	(Contact Name)
(Telephone Number)	(Facsimile)
(E-mail address)	
8. Counsel:

(Firm Name)	(Contact Name)
(Telephone Number)	(Facsimile)
(E-mail address)	
9. Date of financial year-end: _____ (DD/MMM/YYYY)
10. Legal status: CORPORATION SOLE PROPRIETORSHIP

PARTNERSHIP

OTHER (SPECIFY):

Except where the matching service utility is a sole proprietorship, indicate the date and place where the matching service utility obtained its legal status (e.g., place of incorporation, place where partnership agreement was filed or where matching service utility was formed):

(a) Date: _____

(DD/MMM/YYYY)

(b) Place of formation:

11. From the following list, specify the types of securities for which information will be collected and processed by the matching service utility for transmission of matched trades to a Central Securities Depository (CSD).

Exchange-traded securities:

Domestic traded EQUITY SECURITIES DEBT SECURITIES
 OPTIONS

Foreign traded EQUITY SECURITIES DEBT SECURITIES
 OPTIONS

OTC securities: GOVERNMENT DEBT CORPORATE DEBT
 EQUITY

Specify other types of securities:

EXHIBITS

File all Exhibits with the Initial Form. For each Exhibit, include the name of the matching service utility, the date of filing of the Exhibit and the date as of which the information is accurate (if different from the date of the filing). If any Exhibit required is inapplicable, a full statement describing why that Exhibit is inapplicable shall be furnished as the respective Exhibit.

If the matching service utility files an amendment to the information provided in its Initial Form, and the information relates to an Exhibit filed with the Initial Form or a subsequent amendment, the matching service utility must, in order to comply with Part 4.2 of National Instrument 24-101, provide a description of the change and file a complete and updated Exhibit.

1. CORPORATE GOVERNANCE

Exhibit A - Constatng documents

A copy of the constating documents, including corporate by-laws and other similar documents, and all subsequent amendments.

Exhibit B – Ownership

List any person or company who owns 10 percent or more of the matching service utility's voting shares or who, either directly or indirectly, through agreement or otherwise, in any other manner, may control or direct the management or policies of the matching service utility. Provide the full name and address of each such person or company and attach a copy of the agreement or, if there is none written, briefly describe the agreement or basis through which such person or company exercises or may exercise such control or direction.

Exhibit C – Officials

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

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

Exhibit D - Organizational structure

A narrative or graphic description of the organizational structure of the matching service utility.

Exhibit E - Affiliated entities

For each affiliated entity (person or company) of the matching service utility, provide the following information:

1. Name and address of affiliated entity.
2. Form of organization (e.g., association, corporation, partnership, etc.)
3. Name of location and statute citation under which organized.
4. Date of incorporation in present form.
5. Brief description of nature and extent of affiliation or contractual or other agreement with the matching service utility.
6. Brief description of business services or functions.
7. If a person or company has ceased to be an affiliated entity of the matching service

utility during the previous year or ceased to have a contractual or other agreement relating to the operation of the matching service utility during the previous year, provide a brief statement of the reasons for termination of the relationship.

2. FINANCIAL VIABILITY

Exhibit F - Audited financial statements

Audited financial statements for the latest financial year of the matching service utility and a report prepared by an independent auditor.

3. FEES

Exhibit G – Fee list, fee structure

A complete list of all fees and other charges imposed, or to be imposed, by or on behalf of the matching service utility for use of its information service processing, including the cost of establishing a connection with the matching service utility.

4. ACCESS

Exhibit H – Users

List of all users (person or company) and identify the type(s) of business of each user (e.g., custodian, dealer, advisor, clearing agency or other party) for which the matching service utility is acting or for which it proposes to act as a matching service utility. For users operating in multiple capacities, list each user's respective capacity.

For each instance during the past year in which any person, company, or user has been prohibited or limited in respect of access to services offered by the matching service utility, indicate the name of each such person or company and the reason for the prohibition or limitation.

Exhibit I - User contract

A copy of the form of contract(s) governing the terms by which users may subscribe to the services of a matching service utility.

5. SYSTEMS AND OPERATIONS

Exhibit J - System description

Describe the manner of operation of the system (the System) of the matching service utility that collects and processes trade information for transmission of matched trades to a central securities depository (CSD) in accordance with National Instrument 24-101. This description should include the following:

1. The hours of operation of the System, including CSD communication.
2. Locations of operation (e.g., countries, cities where computers are operated, primary and backup).
3. A brief description in narrative form of each service or function performed by the matching service utility.

6. SYSTEMS COMPLIANCE

Exhibit K - Security

A brief description of the measures or procedures implemented by the matching service utility to provide for the security of any system employed to perform the functions of a matching service utility.

Exhibit L - Capacity planning and measurement

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

Exhibit M - Incidents and business continuity

1. A brief description of business continuity plans in the event of a catastrophe.
2. A brief description of procedures for reporting of serious incidents which last for more than thirty minutes during the normal period of business operation.⁸

Exhibit N - Independent systems audit

1. Briefly describe plans to provide an annual independent systems audit of system operations.

⁸ Procedures to immediately report each interruption of the matching process, which has lasts for more than thirty minutes. Include the date of the interruption, cause, duration and the general impact on users. This should be provided within one hour from the time the incident was identified as being serious.

2 Please provide a copy of the last external systems operations audit report.

7. INTER-OPERABILITY

Exhibit O – Inter-operability agreements

List all other matching service utilities for which the matching service utility has an inter-operability agreement. Provide a copy of all contracts with the matching service utility.

8. OUTSOURCING

Exhibit P - Outsourcing firms

For each person or company (firm) with whom the matching service utility has a contractual or other (outsourcing) agreement relating to the clearing and other customer business type operations of the matching service utility, provide the following information:

1. Name and address of person or company.
2. Brief description of business services or functions of the outsourcing firm.

9. CONFIDENTIALITY

Please label all confidential material as "**Confidential.**" In submissions, please do not include detailed, sensitive operational security information such as IP addresses of nodes.

CERTIFICATE OF MATCHING SERVICE UTILITY

The undersigned certifies that the information given in this report is true and correct.

DATED at _____ this _____ day of _____ 20____

(Name of Matching Service Utility)

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

(Signature of director, officer or partner)

(Official capacity - please type or print)

NATIONAL INSTRUMENT 24-101

**PROPOSED
FORM 24-101F2**

**CESSATION OF OPERATIONS REPORT FOR A
MATCHING SERVICE UTILITY**

DATE: _____

(DD/MMM/YYYY)

IDENTIFICATION:

1. Full name of matching service utility:
2. Name(s) under which business is conducted, if different from item 1A:

TYPE OF FILING:

<input type="radio"/> VOLUNTARY CESSATION	<input type="radio"/> INVOLUNTARY CESSATION
Date matching service utility proposes to cease carrying on business. Date:	Date matching service utility ceased to carry on business. Date:

EXHIBITS

File all Exhibits with the Cessation of Operations Report. For each Exhibit, include the name of the matching service utility, the date of filing of the Exhibit and the date as of which the information is accurate (if different from the date of the filing). If any Exhibit required is inapplicable, a statement to that effect shall be furnished instead of such Exhibit.

Exhibit A The reasons for the matching service utility ceasing to carry on business.

Exhibit B

1. List of all users and identify the type(s) of business of the user (e.g., custodian, dealer, advisor, clearing agency or other party - such as trustee) for which the matching service utility provided matching service functionality.
2. List all other matching service utilities and service bureaus for which an interoperability agreement was/is in force prior to cessation.

CERTIFICATE OF MATCHING SERVICE UTILITY

The undersigned certifies that the information given in this report is true and correct.

DATED at _____ this _____ day of _____ 20_____

(Name of Matching Service Utility)

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

(Signature of director, officer or partner)

(Official capacity - please type or print)

NATIONAL INSTRUMENT 24-101

**PROPOSED
FORM 24-101F3**

**QUARTERLY OPERATIONS REPORT OF
MATCHING SERVICE ACTIVITIES**

DATE: _____ (DD/MMM/YYYY)

MATCHING SERVICE UTILITY

Name: _____

Period covered by this report: _____ to _____

IDENTIFICATION

- A. Full name of matching service utility (if sole proprietor, last, first and middle name):
- B. Name(s) under which business is conducted, if different from item A:
- C. Matching service utility's main street address:

SCHEDULES

File all Schedules on a quarterly basis, covering the previous quarter of the calendar year. If any Schedule required is inapplicable, a full statement describing why that Schedule is inapplicable shall be furnished as the respective Schedule.

1. SUMMARY OF MATERIAL AND OTHER CHANGES OVER PERIOD

Schedule 1 – Summary of Material Changes

Briefly summarize all material changes to the information provided in Form 24-101 F1 that was required to be filed pursuant to subsection 4.2 of National Instrument 24-101.

Schedule 2 – Description of Other Changes

Describe all changes to information set out in Form 24-101F1 during the quarterly period, other than a change referred to in Schedule 1.

2. SYSTEMS REPORTING

Schedule 3 – External systems audit

If an external systems audit was issued this quarter, provide a copy of the report.

Schedule 4 – Incident reporting

Provide a list with a summary of all incidents where normal operation could not be maintained with users and CSDs during the period.

3. DATA REPORTING

Schedule 5 – Matching Service Utility Operating Data

For securities listed in Exhibit “A” of 24-101F1 that are settled in Canada, provide the monthly summary set out below for each type of security processed by the matching service utility during the period. Each row should contain the monthly summary of the daily average values for the respective category within the security type. The data should be provided in an electronic file, for each of the security types in the following format.

Period: _____ through _____ (DD/MMM/YYYY)
 Period monthly summary of the daily average values for security type: _____

Daily average number of transactions (#) Daily average sum of transactions' value (\$)														
Date	Trades reported		Match on T		Match on T+1		Match on T+2		Match on T+3 or greater		Unmatched		Cancelled	
	#	\$	#	\$	#	\$	#	\$	#	\$	#	\$	#	\$
Month 1														
Month 2														
Month 3														

For each month (row), include the average of the daily total values of the respective category as of the end of processing for each date. For example, "Match on T" would include the average number of trades matched during the respective month and the average of the sum of trade values for those respective trades as reported to the Canadian Depository for Securities Limited (CDS) for that security type. For the number of trades and the dollar amounts in the columns "Reported", "Unmatched" and "Cancelled", use values as

reported by brokers, for consistency and to avoid double counting.

Schedule 6 - Exceptions

Electronically provide the names of users which failed to match for 2% or more of the total number of trades transacted by the user, by the end of T using the following format.

<u>User</u>	<u>% of trades unmatched at the end of T for the period (where $\geq 2\%$)</u>	<u># of trades</u>

4. CONFIDENTIALITY

Please label all confidential material as "**Confidential.**" In submissions, please do not include detailed, sensitive operational security information such as IP addresses of nodes.

CERTIFICATE OF MATCHING SERVICE UTILITY

The undersigned certifies that the information given in this report relating to the matching service utility is true and correct.

DATED at _____ this ____ day of _____ 20____

(Name of Matching Service Utility)

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

(Signature of director, officer or partner)

(Official capacity - please type or print)