CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

Notice and Request for Comments:

Proposed Amendments to National Instrument 24-101 *Institutional Trade Matching and Settlement* and Proposed Changes to Companion Policy 24-101 *Institutional Trade Matching and Settlement*

- and –

CSA Consultation Paper 24-402 *Policy Considerations for Enhancing Settlement Discipline in a T+2 Settlement Cycle Environment*

August 18, 2016

Part I. Introduction

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

Some of the Proposed Revisions amend the Instrument and change the Companion Policy in anticipation of shortening the standard settlement cycle for equity and long-term debt market trades in Canada from three days after the date of a trade (**T+3**) to two days after the date of a trade (**T+2**). The move to a T+2 settlement cycle is expected to occur on September 5, 2017, at the same time as the markets in the United States move to a T+2 settlement cycle. The other Proposed Revisions are intended to clarify or modernize certain provisions of NI 24-101.

The text of the amending Instrument and Companion Policy follow after this Notice in Annexes A and B, respectively, and will also be available on websites of CSA jurisdictions, including:

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

Concurrently with this Notice, we are also publishing CSA Consultation Paper 24-402 *Policy Considerations for Enhancing Settlement Discipline in a T+2 Settlement Cycle Environment* (**Consultation Paper**). The Consultation Paper provides an overview of existing settlement discipline measures in the Canadian equity and debt markets. It raises certain policy considerations for addressing the risk that the transition to a standard T+2 settlement cycle may increase settlement failures in our markets. We discuss potential measures to enhance settlement discipline, specifically in relation to NI 24-101. We are seeking stakeholder views on the Consultation Paper. Any proposal to adopt measures arising from the Consultation Paper, including a proposal to further amend NI 24-101, would require another public comment process. The Consultation Paper is set out in Annex E.

We are publishing for comment for 90 days this Notice, the Proposed Revisions and the Consultation Paper. The comment period will expire on November 16, 2016. See below under "7. Comment process" of Part IV.

This Notice includes the following Annexes:

- Annex A: the proposed amendments to the Instrument;
- Annex B: the proposed changes to the Companion Policy;
- Annex C: Blackline version of the Instrument reflecting the proposed amendments to the Instrument;
- Annex D: Blackline version of the Companion Policy reflecting the proposed changes to the Companion Policy;

- Annex E: the Consultation Paper;
- Annex F: Local Matters (where applicable).

Part II. Background to, and purpose of Proposed Revisions

1. Introduction to NI 24-101

NI 24-101 came into force in 2007 and was developed largely to encourage more efficient and timely pre-settlement confirmation, affirmation, trade allocation and settlement instructions processes for institutional trades in Canada, otherwise described in this Notice as institutional trade matching (**ITM**).

Registered dealers and advisers trading on a DAP/RAP basis for or with an institutional investor must have ITM policies and procedures designed to match a *DAP/RAP trade* as soon as practical after the trade is executed, but no later than noon on T+1 (**ITM deadline**).[1] In addition, registered firms are required to complete and file exception reports on Form 24-101F1 if they did not meet, with respect to their institutional trades, the ITM threshold of 90 percent (**ITM threshold**) of trades by value and volume matched by the ITM deadline during a calendar quarter. Clearing agencies (in particular, CDS Clearing and Depository Services Inc. (**CDS**)) and matching service utilities (**MSUs**) are required to submit quarterly data on the matching of institutional equity and debt trades of their participants or users.

For more background information on NI 24-101, including its history and regulatory objective, please see the Consultation Paper being published concurrently with this Notice.

2. Migration to T+2 settlement cycle

The Canadian securities industry is preparing for the migration to a standard T+2 settlement cycle on September 5, 2017, at the same time as the industry in the United States is moving to T+2. For further information on the move to a T+2 settlement cycle, please see the Consultation Paper being published concurrently with this Notice.

For a successful migration to T+2 settlement, registered firms and other capital market stakeholders will need to review and change, as required, their current clearing and settlement procedures and internal operations and processes. In addition, self-regulatory organizations, marketplaces and clearing agencies will need to change various rules and procedures that specifically mandate a three day settlement cycle, that are keyed to the settlement date and require pre-settlement actions, or that generally facilitate the prompt clearance and settlement of trades.[2] While NI 24-101 does not expressly mandate a T+3 settlement cycle, nor would currently prevent the T+2 migration, there are a number of provisions that require revision to facilitate the move to a T+2 settlement cycle.

3. General reform of NI 24-101

We are proposing to update the Instrument to reflect certain developments since it came into force in 2007, as well as clarify certain existing provisions. One major development in the Canadian markets since 2007 is the significant rise in the trading of exchange-traded mutual funds (**ETFs**). We also propose to revise the existing requirements applicable to a MSU's systems and business continuity planning.

Part III. Summary of the Proposed Revisions

Section 1 of this Part explains our Proposed Revisions in anticipation of the transition to a T+2 settlement cycle. While we are not proposing any amendments to the ITM deadline or ITM threshold at this time, in the Consultation Paper we discuss potential substantive changes to NI 24-101 and other measures that we might consider to increase the likelihood of timely settlement, and we ask specific questions on such potential changes.

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[1] See subsections 3.1(1) and 3.3(1) of the Instrument. A DAP/RAP trade is a trade in a security executed for a client account that permits settlement on a delivery against payment or receipt against payment basis through the facilities of a clearing agency, and for which settlement is completed on behalf of the client by a custodian other than the dealer that executed the trade. See the definition "DAP/RAP trade" in section 1.1 of the Instrument.

[2] On July 28, 2016, the Investment Industry Regulatory Organization of Canada (**IIROC**) published for comment proposed amendments to IIROC's Universal Market Integrity Rules, Dealer Member Rules, and Form 1 to facilitate the investment industry's move to T+2 settlement. See IIROC Notice 16-0177 *Amendments to facilitate the investment industry's move to T+2*, at: http://www.osc.gov.on.ca/documents/en/Marketplaces/iiroc_20160728_iiroc-notice-16-0177.pdf.

Section 2 of this Part describes modernizing and clarifying amendments to the Instrument (including the Forms) and Companion Policy. Minor amendments to modernize and clarify the Instrument, Forms and Companion Policy are not discussed.

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

1. Proposed Revisions as a result of T+2 migration

a) References to "T+3"

While the primary focus of the Instrument is on having ITM policies and procedures to match trades no later than noon on T+1, NI 24-101 contains a number of references to T+3. They can be found in the definitions section of the Instrument (section 1.1), the Forms 24-101F2 and F5, and Part 5 of the Companion Policy. We propose to remove these references or replace them with "T+2".

b) Non-North American trades

The Instrument permits matching to occur no later than noon on T+2 if the DAP/RAP trade results from an order to buy or sell securities received from an institutional investor whose investment decisions or settlement instructions are usually made in and communicated from a geographical region outside of the North American region (**non-North American trades**).[3]

We are proposing to repeal the provisions that extend the ITM deadline to noon on T+2 for non-North American trades. In our view, these provisions are no longer appropriate in a standard T+2 settlement environment. The extended deadline of noon on T+2 for non-North American trades leaves insufficient time to solve problems and avoid failed trades; instead, parties need to match earlier on T+1 regardless of the cross-border nature of the trade, so that they have time to address issues and avoid failed trades. This might require improving processes in order to match on T+1, but the move to a T+2 settlement cycle will align the securities settlement cycle in Canada with the settlement cycles of most of the major foreign markets, including the U.S. and Europe. While several of the complexities with foreign investment or cross-border transactions will continue to exist,[4] market participants will need to review their internal operations and adapt their ITM policies and procedures accordingly to meet the current ITM deadline of noon on T+1. This is consistent with the need for market participants to align their policies and procedures to meet the standard settlement in the U.S., Europe and other T+2 jurisdictions.

2. Proposed Revisions to clarify or modernize NI 24-101

a) Application to ETFs

The Instrument does not currently apply to a trade in a security of a mutual fund to which National Instrument 81-102 *Investment Funds* (**NI 81-102**) applies.[5] Mutual fund trades were originally carved out of the Instrument because traditional purchase and redemption transactions in mutual fund securities were not cleared and settled through the facilities of a clearing agency such as CDS. However, because ETFs are mutual funds and therefore subject to NI 81-102, ETF securities that are bought and sold generally just like any other stock on the secondary markets and settled on a DAP/RAP basis through the facilities of CDS, are not subject to NI 24-101.

From a policy perspective, we are of the view that a secondary-market trade in an ETF security that settles on a DAP/RAP basis through the facilities of CDS should be subject to the Instrument, particularly the trade matching requirements of the Instrument (Parts 3 and 4). Such trades bring the same risks to our markets and the clearing and settlement infrastructure that serves such markets as any other trade in equity or fixed-income securities. In addition, non-redeemable investment funds that trade on a marketplace and settle on a DAP/RAP basis through CDS are currently subject to the Instrument. We are of the view that all investment funds that are traded on a marketplace should be treated in the same way under the Instrument. Currently, CDS includes ETF trades in the calculation of the aggregate number and value of equity DAP/RAP trades entered and matched at CDS, as part of its reporting of ITM data under NI 24-101. Consequently, we believe that registered firms' ITM policies and procedures should not be materially impacted by the inclusion of ETF trades into the ITM requirements.

[3] See subsections 3.1(2) and 3.3(2). "North American region" means Canada, the United States, Mexico, Bermuda and the countries of Central America and the Caribbean. See section 1.1.
[4] Such complexities include communication lags, structural challenges, currency differences, mismatches in global settlement cycles, and time zone issues.
[5] See paragraph (f) of section 2.1.

We are proposing to amend paragraph (f) of section 2.1 of the Instrument by clarifying that the Instrument does not apply to a trade to which Part 9 or 10 of NI 81-102 applies. Part 9 governs purchases of securities of a mutual fund from the mutual fund, and Part 10 governs redemptions of investment fund securities. Moreover, the Companion Policy and forms are being amended to clarify that DAP/RAP trades in ETFs are to be included in the exception reports under Form 24-101F1 by registered firms as "equity" DAP/RAP trades, and not as "debt" DAP/RAP trades.

b) Clearing agency

In the Instrument, "clearing agency" is defined as a recognized clearing agency in certain CSA jurisdictions, which, in 2007, seemed appropriate as CDS was the only recognized clearing agency at the time. Since 2007, CSA jurisdictions have recognized a number of additional clearing agencies operating in Canada that perform a wide variety of clearing and settlement services, which differ from, and may be broader than, the securities settlement services performed by CDS.[6] We propose to update the definition of the term to fit the context of the Instrument.

c) MSU systems and business continuity planning requirements

To mitigate the probability and effects of systems failures, Part 6 of the Instrument sets out requirements for an MSU governing its systems and business continuity planning. These requirements, adopted in 2007, were based on similar regulatory requirements applicable at the time to marketplaces, information processors and clearing agencies. Such similar provisions have since been modernized and updated so that they continue to be effective in helping ensure that systems are reliable, robust and have adequate controls. Because MSUs play an important infrastructure role in the clearing and settlement of securities transactions,[7] we propose requiring MSUs to follow existing IT practices for technology service providers.

Consequently, we are proposing to update the provisions of section 6.5 of the Instrument to mirror the provisions found in other rules applicable to marketplaces, information processors, clearing agencies and trade repositories, such as those found in National Instrument 21-101 *Marketplace Operation* and National Instrument 24-102 *Clearing Agency Requirements*. See new sections 6.6 to 6.8 of the Instrument, revised Form 24-101F3 *Matching Service Utility – Notice of Operations*, and sections 4.5 to 4.8 of the Companion Policy. These include new requirements to ensure that, from a systems perspective, the launching of a new MSU or material changes made to an MSU's technology requirements are conducted according to prudent business practices and are implemented so that MSU users and service vendors have a reasonable opportunity to adapt to these changes. An MSU beginning operations or making a material change to its systems can negatively impact many other parties if these actions are not carried out in a careful manner.

d) Amendments to Form 24-101F1 *Registered Firm Exception Report of DAP/RAP Trade Reporting and Matching*

To avoid the quarterly exception reporting requirement in Part 4 of the Instrument, a registered firm must have matched during a calendar quarter at least 90 percent of its DAP/RAP trades by volume or value by noon on T+1. Form 24-101F1 (**Form F1**) should only be submitted for DAP/RAP trades for the type of security (equity or debt) that did not meet the 90 percent threshold by the relevant timeline. If a registered firm does not meet the threshold for both equity and debt DAP/RAP trades, then it should submit Form F1 for both equity and debt DAP/RAP trades (i.e., by completing both tables in Exhibit A of Form F1). If the firm does not meet the threshold only for one type of security (i.e., for equity but not debt, or for debt but not equity), it should only submit Form F1 for the one type of security, by completing only one of the tables in Exhibit A of Form F1. As noted above, a DAP/RAP trade in an ETF security should be reported as an equity DAP/RAP trade, and not as a debt DAP/RAP trade. We are proposing amendments to Form F1 and Companion Policy to clarify this approach to completing Form F1.

Part IV. Other Matters

1. Authority for Instrument

In those jurisdictions in which amendments to the Instrument will be adopted, securities legislation provides the securities regulatory authority with authority in respect of the subject matter of the Instrument. See Annex F, where applicable.

[6] See, for example, in Ontario: http://www.osc.gov.on.ca/en/Marketplaces_clearing-agencies_index.htm
[7] See ss. 4.1(2) of the Companion Policy.

2. Alternatives considered to the Proposed Revisions

The alternative to the Proposed Revisions would be not to proceed with making amendments to the Instrument or changes to the Companion Policy to facilitate the move to T+2 settlement or to clarify and update provisions in the Instrument that are unclear or outdated. Not proceeding with the T+2 related Proposed Revisions would generally be inconsistent with the desire to facilitate the move to T+2. In addition, without the proposed amendments to clarify and update the Instrument, there would be less certainty and clarity with respect to the application and interpretation of NI 24-101. Moreover, not updating the MSU systems and business continuity planning requirements could have adverse consequences to our markets. See discussion below under "4. Anticipated costs and benefits".

3. Unpublished materials

In proposing revisions to the Instrument and Companion Policy, we have not relied on any significant unpublished study, report, or other material.

4. Anticipated costs and benefits

As noted above, not proceeding with the T+2 related Proposed Revisions would generally be inconsistent with the desire to facilitate the move to T+2. See the Consultation Paper, which discusses the importance of ensuring that the transition in Canada to a standard T+2 settlement cycle occurs simultaneously with the move to T+2 by the securities industry in the United States. Also, the Proposed Revisions to clarify and update the Instrument would bring more certainty and clarity with respect to the application and interpretation of NI 24-101. In addition, updating the MSU systems and business continuity planning requirements will promote more reliable and robust MSU controls and is consistent with requirements imposed on other market infrastructures that pose similar risks to the integrity of Canadian capital markets. The failure of an MSU's systems could have wide-reaching and unintended consequences.

5. CSA Staff Notice 24-305

If the Proposed Revisions are made following the comment process, CSA Staff intend to update and republish CSA Staff Notice 24-305 *Frequently Asked Questions About NI 24-101 -- Institutional Trade Matching and Settlement and Related Companion Policy.*

6. Effective date for Proposed Revisions

If the Proposed Revisions are made following the comment process, all of the Proposed Revisions will be brought into force or, in respect of the Companion Policy, be adopted as of September 5, 2017.

7. Comment process

Please submit your comments in writing on or before November 16, 2016. If you are not sending your comments by email, please include a CD containing the submissions. Address your submission to the following CSA member commissions:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Nova Scotia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Office of the Attorney General, Prince Edward Island
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Yukon
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

Please deliver your comments only to the addresses that follow. Your comments will be forwarded to the remaining CSA member jurisdictions.

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor

Toronto, Ontario M5H 3S8
Fax: 416-593-2318
E-mail: comments@osc.gov.on.ca

M^e Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 22^e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Fax: 514-864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

Please note that comments received will be made publicly available and posted on the Websites of certain CSA jurisdictions. We cannot keep submissions confidential because securities legislation requires that a summary of the written comments received during the comment period be published. In this context, you should be aware that some information which is personal to you, such as your e-mail and address, may appear in the websites. It is important that you state on whose behalf you are making the submission.

Questions with respect to this Notice, the Proposed Revisions, and the Consultation Paper may be referred to:

Antoinette Leung
Manager, Market Regulation
Ontario Securities Commission
Tel: 416-595-8901
Email: aleung@osc.gov.on.ca

Maxime Paré
Senior Legal Counsel, Market Regulation
Ontario Securities Commission
Tel: 416-593-3650
Email: mpare@osc.gov.on.ca

Meg Tassie
Senior Advisor
British Columbia Securities Commission
Tel: 604-899-6819
Email: mtassie@bcsc.bc.ca

Bonnie Kuhn
Manager, Legal, Market Oversight
Alberta Securities Commission
Tel: 403-355-3890
Email: bonnie.kuhn@asc.ca

Paula White
Deputy Director, Compliance and Oversight
Manitoba Securities Commission
Tel: 204-945-5195
Email: paula.white@gov.mb.ca

Claude Gatien
Director, Clearing houses
Autorité des marchés financiers
Tel: 514-395-0337, ext. 4341
Toll free: 1-877-525-0337
Email: claude.gatien@lautorite.qc.ca

Martin Picard
Senior Policy Advisor, Clearing houses
Autorité des marchés financiers
Tel: 514-395-0337, ext. 4347
Toll free: 1-877-525-0337
Email: martin.picard@lautorite.qc.ca

Serge Boisvert
Senior Policy Advisor
Direction des bourses et des OAR
Autorité des marchés financiers
Tel: 514-395-0337, ext. 4358
Toll free: 1-877-525-0337
Email: serge.boisvert@lautorite.qc.ca

Liz Kutarna
Deputy Director, Capital Markets, Securities Division
Financial and Consumer Affairs Authority of Saskatchewan
Tel: 306-787-5871
Email: liz.kutarna@gov.sk.ca

Jason Alcorn
Senior Legal Counsel
Financial and Consumer Services Commission (New Brunswick)
Tel: 506-643-7857
Email: jason.alcorn@fcnb.ca

ANNEX A

PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 24-101
INSTITUTIONAL TRADE MATCHING AND SETTLEMENT

1. ***National Instrument 24-101 Institutional Trade Matching and Settlement is amended by this Instrument.***

2. ***Section 1.1 is amended by***

a. ***replacing the definition "***clearing agency***" with the following:***

"clearing agency" means a recognized clearing agency that operates as a securities settlement system within the meaning of National Instrument 24-102 *Clearing Agency Requirements*;

b. ***in the definition "***DAP/RAP trade***",***

i. ***adding the words "***in a security***" immediately after "***means a trade***", and***

ii. ***replacing the word "***made***" with "***completed***" in paragraph (b),***

c. ***repealing the definitions "***North American region***" and "***T+3***", and***

d. ***replacing the semicolon at the end of the definition "***T+2***" with a period.***

3. ***Section 1.2 is amended by***

a. ***replacing in the heading of the section "***Eastern Time***" with "***clearing agency***",***

b. ***replacing subsection (2) with the following:***

For the purposes of this Instrument, in Québec, a clearing agency includes a clearing house and a settlement system within the meaning of the Québec *Securities Act*.

4. ***Paragraph 2.1(f) is replaced by the following:***

(f) a trade to which Part 9 or 10 of National Instrument 81-102 *Investment Funds* applies,

5. ***Parts 3 to 8 are amended by replacing the word "***shall***" wherever it is found by the word "***must***".***

6. ***Subsection 3.1(1) is amended by adding "***Eastern Time***" immediately after "***12p.m. (noon)***".***

7. ***Subsection 3.1(2) is repealed.***

8. ***Subsection 3.3(1) is amended by adding "***Eastern Time***" immediately after "***12p.m. (noon)***".***

9. ***Subsection 3.3(2) is repealed.***

10. ***Section 5.1 is amended by deleting the words "***through which trades governed by this Instrument are cleared and settled***".***

11. ***Section 6.5 is replaced by the following:***

6.5 System requirements

For each system operated by a matching service utility that supports the matching service utility's trade matching function, a matching service utility must

(a) develop and maintain

(i) an adequate system of internal controls over that system, and

(ii) adequate information technology general controls, including, without limitation, controls relating to information systems operations, information security, change management, problem management, network support and system software support,

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

(i) make reasonable current and future capacity estimates, and

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

(c) promptly notify the regulator or, in Québec, the securities regulatory authority of any material systems failure, malfunction, delay or security breach, and provide timely updates on the status of the failure, malfunction, delay or security breach, the resumption of service, and the results of the matching service utility's internal review of the failure, malfunction, delay or security breach.

12. ***The Instrument is further amended by adding the following sections:***

6.6 Systems reviews

(1) A matching service utility must annually engage a qualified party to conduct an independent systems review and vulnerability assessment and prepare a report in accordance with established audit standards and best industry practices to ensure that the matching service utility is in compliance with paragraph 6.5(a) and paragraph 6.8(a).

(2) The matching service utility must provide the report resulting from the review conducted under subsection (1) to

(a) its board of directors, or audit committee, promptly upon the report's completion, and

(b) the regulator or, in Québec, the securities regulatory authority, by the earlier of the 30th day after providing the report to its board of directors or the audit committee or the 60th day after the calendar year end.

6.7 Matching service utility technology requirements and testing facilities

(1) A matching service utility must make available to its users, in their final form, all technology requirements regarding interfacing with or accessing the matching service utility

(a) if operations have not begun, sufficiently in advance of operations to allow a reasonable period for testing and system modification by users, and

(b) if operations have begun, sufficiently in advance of implementing a material change to technology requirements to allow a reasonable period for testing and system modification by users.

(2) After complying with subsection (1), the matching service utility must make available testing facilities for interfacing with or accessing the matching service utility

(a) if operations have not begun, sufficiently in advance of operations to allow a reasonable period for testing and system modification by users, and

(b) if operations have begun, sufficiently in advance of implementing a material change to technology requirements to allow a reasonable period for testing and system modification by users.

(3) The matching service utility must not begin operations before

(a) it has complied with paragraphs (1)(a) and (2)(a), and

(b) the chief information officer of the matching service utility, or an individual performing a similar function, has certified in writing to the regulator or, in Québec, the securities regulatory authority,

that all information technology systems used by the matching service utility have been tested according to prudent business practices and are operating as designed.

(4) The matching service utility must not implement a material change to the systems referred to in section 6.5 before

(a) it has complied with paragraphs (1)(b) and (2)(b), and

(b) the chief information officer of the matching service utility, or an individual performing a similar function, has certified in writing to the regulator or, in Québec, the securities regulatory authority, that the change has been tested according to prudent business practices and is operating as designed.

(5) Subsection (4) does not apply to the matching service utility if the change must be made immediately to address a failure, malfunction or material delay of its systems or equipment and if

(a) the matching service utility immediately notifies the regulator or, in Québec, the securities regulatory authority, of its intention to make the change, and

(b) the matching service utility discloses to its users the changed technology requirements as soon as practicable.

6.8 Testing of business continuity plans

A matching service utility must

(a) develop and maintain reasonable business continuity plans, including disaster recovery plans, and

(b) test its business continuity plans, including its disaster recovery plans, according to prudent business practices and on a reasonably frequent basis and, in any event, at least annually.

13. ***Form 24-101F1 is amended by adding the following at the end of the text under the heading "*INSTRUCTIONS:*" and immediately before the heading "*EXHIBITS:*":***

Include DAP/RAP trades in an exchange-traded fund (ETF) security in the equity DAP/RAP trades statistics. Exhibit A(1) applies only to trades in equity and ETF securities. Exhibit A(2) applies only to trades in debt and other fixed-income securities.

14. ***Form 24-101F1 is further amended by replacing the portion of the Form under the heading "*Exhibit A – DAP/RAP trade statistics for the quarter*" and immediately before the heading "*Exhibit B – Reasons for not meeting exception reporting thresholds*" with the following:***

Where applicable, complete Table 1 or 2, or both, below for each calendar quarter. Deadline means noon Eastern time on T+1.

(1) Equity DAP/RAP trades (includes ETF trades)

Entered into the clearing agency by deadline (to be completed by dealers only)				*Matched (to be completed by dealers and advisers)*							
# of trades	**%**	**$ value of trades**	**%**	**# of trades matched**	**%**	**$ value of trades matched**	**%**	**# of trades matched by deadline**	**%**	**$ value of trades matched by deadline**	**%**

(2) Debt DAP/RAP trades

Entered into the clearing agency by deadline (to be completed by dealers only)				*Matched (to be completed by dealers and advisers)*							
# of trades	**%**	**$ value of trades**	**%**	**# of trades matched**	**%**	**$ value of trades matched**	**%**	**# of trades matched by deadline**	**%**	**$ value of trades matched by deadline**	**%**

Legend

"**#** of Trades" is the total number of transactions in the calendar quarter;
"$ Value of Trades" is the total value of the transactions (purchases and sales) in the calendar quarter.

15. ***Form 24-101F1 is further amended by replacing references to "***Companion Policy 24-101CP***" under the headings "*****Exhibit B – Reasons for not meeting exception reporting thresholds" and "*****Exhibit C – Steps to address delays" with "***Companion Policy 24-101***"***

16. ***Form 24-101F2 is amended under the heading "*****INSTRUCTIONS:" by***

a. ***inserting the following paragraph immediately after the first paragraph:***

Include client trades in an exchange-traded fund (ETF) security in the equity trades statistics.

b. ***replacing "***shall***" with "***must***" in the last sentence.***

17. ***Form 24-101F2 is further amended in each of Table 1 (Equity trades) and Table 2 (Debt trades) under the heading and subheadings "*****EXHIBITS: – 1. DATA REPORTING – Exhibit A – Aggregate matched trade statistics" by removing the entire row titled "***T+3***" and changing the title of the row titled "***>T+3***" with "***>T+2***".***

18. ***Form 24-101F3 is amended under the heading "*****INSTRUCTIONS:" by***

a. ***deleting "***or 10.2(4)***" in the first sentence,***

b. ***replacing "***shall***" with "***must***" in the second paragraph,***

c. ***deleting the last sentence of the last paragraph.***

19. ***Form 24-101F3 is further amended under the heading "*****6. SYSTEMS COMPLIANCE" by***

a. ***replacing the text of Exhibit K –*** **Security** ***with the following:***

Exhibit K – General and security

Provide a high level description of the systems used to perform your services of a matching service utility, including the processes and procedures implemented by you to provide for the security of the systems.

b. ***replacing the text under the subheading "*****Exhibit M – Business continuity***" with the following:***

Exhibit M – Business continuity

Provide a brief description of your business continuity and disaster recovery plans that includes, but is not limited to, information regarding the following:

1. Where the primary processing site is located.
2. What the approximate percentage of hardware, software and network redundancy is at the primary site.
3. Any uninterruptible power source (UPS) at the primary site.
4. How frequently market data is stored off-site.
5. Any secondary processing site, the location of any such secondary processing site, and whether all of the matching service utility's critical business data is accessible through the secondary processing site.
6. The creation, management, and oversight of the plans, including a description of responsibility for the development of the plans and their ongoing review and updating.
7. Escalation procedures, including event identification, impact analysis, and activation of the plans in the event of a disaster or disruption.
8. Procedures for internal and external communications, including the distribution of information internally, to the securities regulatory authority, and, if appropriate, to the public, together with the roles and responsibilities of the matching service utility's staff for internal and external communications.
9. The scenarios that would trigger the activation of the plans.
10. How frequently the business continuity and disaster recovery plans are tested.
11. Procedures for record keeping in relation to the review and updating of the plans, including the logging of tests and deficiencies.
12. The targeted time to resume operations of critical information technology systems following the declaration of a disaster by the matching service utility and the service level to which such systems are to be restored.
13. Any single points of failure faced by the matching service utility.

c. ***replacing the text of "*****Exhibit O – Independent systems audit*****" with the following:***

Exhibit O – Independent systems audit

1. Provide high level information on the qualified party engaged to provide an annual independent systems review and vulnerability assessment.

2. If applicable, provide a copy of the last systems operations audit report.

20. ***Form 24-101F4 is amended under the heading "*****INSTRUCTIONS:*****" by replacing "***shall***" with "***must***" in the second paragraph.***

21. ***Form 24-101F5 is amended under the heading "*****INSTRUCTIONS:*****" by***

a. ***adding the following paragraph after the first paragraph:***

Include DAP/RAP trades in an exchange-traded fund (ETF) security in the equity DAP/RAP trades statistics.

b. ***replacing "***shall***" with "***must***" in the second and third sentences.***

22. ***Form 24-101F5 is further amended under the heading "*****EXHIBITS*****" by***

a. ***adding the text and punctuation "***,malfunction, delay or security breach***" immediately after "***systems failures***" in the sentence under the subheadings "*****1. SYSTEMS REPORTING – Exhibit B – Material systems failures reporting*****"***

b. ***by removing the entire row titled "***T+3***" and changing the title of the row titled "***>T+3***" with "***>T+2***" in each of Table 1 (Equity trades) and Table 2 (Debt trades) under the subheadings "*****2. DATA REPORTING – Exhibit C – Aggregate matched trade statistics*****".***

23. ***This Instrument comes into force on September 5, 2017.***

***

ANNEX C
BLACKLINE VERSION OF NI 24-101 REFLECTING PROPOSED AMENDMENTS

CANADIAN SECURITIES ADMINISTRATORS

NATIONAL INSTRUMENT 24-101
INSTITUTIONAL TRADE MATCHING AND SETTLEMENT

TABLE OF CONTENTS

NATIONAL INSTRUMENT 24-101
INSTITUTIONAL TRADE MATCHING AND SETTLEMENT

PART 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions —

In this Instrument,

"clearing agency" means~~,~~ a recognized clearing agency that operates as a securities settlement system within the meaning of National Instrument 24-102 *Clearing Agency Requirements*;

~~(a) in Ontario, a clearing agency recognized by the securities regulatory authority under section 21.2 of the *Securities Act* (Ontario),~~

~~(b) in Québec, a clearing house for securities recognized by the securities regulatory authority, and~~

~~(c) in every other jurisdiction, an entity that is carrying on business as a clearing agency in the jurisdiction;~~

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

"DAP/RAP trade" means a trade in a security

(a) executed for a client trading account that permits settlement on a delivery against payment or receipt against payment basis through the facilities of a clearing agency, and

(b) for which settlement is ~~made~~completed on behalf of the client by a custodian other than the dealer that executed the trade;

"institutional investor" means a client of a dealer that has been granted DAP/RAP trading privileges by the dealer;

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

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

~~"North American region" means Canada, the United States, Mexico, Bermuda and the countries of Central America and the Caribbean;~~

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

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

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

(a) a registered adviser acting for the institutional investor in processing the trade,

(b) if a registered adviser is not acting for the institutional investor in processing the trade, the institutional investor unless the institutional investor is

(i) an individual, or

(ii) a person or company with total securities under administration or management not exceeding $10 million,

(c) a registered dealer executing or clearing the trade, or

(d) a custodian of the institutional investor settling the trade;

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

"T" means the day on which a trade is executed;

"T+1" means the next business day following T;

"T+2" means the second business day following T~~;"T+3" means the third business day following T~~.

1.2 Interpretation — trade matching and ~~Eastern Time —~~ clearing agency

(1) In this Instrument, matching is the process by which

(a) the details and settlement instructions of an executed DAP/RAP trade are reported, verified, confirmed and affirmed or otherwise agreed to among the trade-matching parties, and

(b) unless the process is effected through the facilities of a clearing agency, the matched details and settlement instructions are reported to a clearing agency.

(2) ~~Unless the context otherwise requires, a reference in this Instrument to~~For the purposes of this Instrument, in Québec, a clearing agency includes a clearing house and a settlement system within the meaning of the Québec *Securities Act*.

~~(a) a time is to Eastern Time, and~~

~~(b) a day is to a twenty-four hour day from midnight to midnight Eastern Time.~~

PART 2 APPLICATION

2.1 This Instrument does not apply to

(a) a trade in a security of an issuer that has not been previously issued or for which a prospectus is required to be sent or delivered to the purchaser under securities legislation,

(b) a trade in a security to the issuer of the security,

(c) a trade made in connection with a take-over bid, issuer bid, amalgamation, merger, reorganization, arrangement or similar transaction,

(d) a trade made in accordance with the terms of conversion, exchange or exercise of a security previously issued by an issuer,

(e) a trade that is a securities lending, repurchase, reverse repurchase or similar financing transaction,

(f) a trade ~~in a security of a mutual fund~~ to which Part 9 or 10 of National Instrument 81-102~~—*Mutual*~~ *Investment Funds* applies,

(g) a trade to be settled outside Canada,

(h) a trade in an option, futures contract or similar derivative, or

(i) a trade in a negotiable promissory note, commercial paper or similar short-term debt obligation that, in the normal course, would settle in Canada on T.

PART 3 TRADE MATCHING REQUIREMENTS

3.1 Matching deadlines for registered dealer —

(1) A registered dealer ~~shall~~must not execute a DAP/RAP trade with or on behalf of an institutional investor unless the dealer has established, maintains and enforces policies and procedures designed to achieve matching as soon as practical after such a trade is executed and in any event no later than 12 p.m. (noon) Eastern time on T+1.

(2) ~~Despite subsection (1), the dealer may adapt its policies and procedures to permit matching to occur no later than 12 p.m. (noon) on T+2 for a DAP/RAP trade that results from an order to buy or sell securities received from an institutional investor whose investment decisions or settlement instructions are usually made in and communicated from a geographical region outside of the North American region.~~**[REPEALED]**

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

A registered dealer ~~shall~~must not open an account to execute a DAP/RAP trade for an institutional investor or accept an order to execute a DAP/RAP trade for the account of an institutional investor unless its policies and procedures are designed to encourage each trade-matching party to

(a) enter into a trade-matching agreement with the dealer, or

(b) provide a trade-matching statement to the dealer.

3.3 Matching deadlines for registered adviser —

(1) A registered adviser ~~shall~~must not give an order to a dealer to execute a DAP/RAP trade on behalf of an institutional investor unless the adviser has established, maintains and enforces policies and procedures designed to achieve matching as soon as practical after such a trade is executed and in any event no later than 12 p.m. (noon) Eastern time on T+1.

(2) ~~Despite subsection (1), the adviser may adapt its policies and procedures to permit matching to occur no later than 12 p.m. (noon) on T+2 for a DAP/RAP trade that results from an order to buy or sell securities received from an institutional investor whose investment decisions or settlement instructions are usually made in and communicated from a geographical region outside of the North American region.~~ **[REPEALED]**

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

A registered adviser ~~shall~~must not open an account to execute a DAP/RAP trade for an institutional investor or give an order to a dealer to execute a DAP/RAP trade for the account of an institutional investor unless its policies and procedures are designed to encourage each trade-matching party to

(a) enter into a trade-matching agreement with the adviser, or

(b) provide a trade-matching statement to the adviser.

PART 4 REPORTING BY REGISTERED FIRMS

4.1 Exception reporting requirement

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

(a) less than 90 per cent of the DAP/RAP trades executed by or for the registered firm during the quarter matched within the time required in Part 3, or

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

PART 5 REPORTING REQUIREMENTS FOR CLEARING AGENCIES

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

PART 6 REQUIREMENTS FOR MATCHING SERVICE UTILITIES

6.1 Initial information reporting —

(1) A person or company ~~shall~~must not carry on business as a matching service utility unless

(a) the person or company has delivered Form 24-101F3 to the securities regulatory authority, and

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

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

6.2 Anticipated change to operations —

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

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

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

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

6.4 Ongoing information reporting and record keeping —

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

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

6.5 System requirements —

For ~~all of its core systems supporting~~each system operated by a matching service utility that supports the matching service utility's trade matching function, a matching service utility ~~shall~~must

(b) develop and maintain

(ii) an adequate system of internal controls over that system, and

(~~a) consistent~~ii) adequate information technology general controls, including, without limitation, controls relating to information systems operations, information security, change management, problem management, network support and system software support,

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

(i) make reasonable current and future capacity estimates, and

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

(~~iii) implement reasonable procedures to review and keep current the testing methodology of those systems,~~c) promptly notify the regulator or, in Québec, the securities regulatory authority of any material systems failure, malfunction, delay or security breach, and provide timely updates on the status of the failure, malfunction, delay or security breach, the resumption of service, and the results of the matching service utility's internal review of the failure, malfunction, delay or security breach.

~~(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~~

6.6 Systems reviews

(~~v) maintain adequate contingency and business continuity plans;(b) annually cause to be performed~~1) A matching service utility must annually engage a qualified party to conduct an independent systems review and ~~written~~vulnerability assessment and prepare a report~~,~~ in accordance with ~~generally accepted auditing standards, of the stated internal control objectives of those systems; and~~established audit standards and best industry practices to ensure that the matching service utility is in compliance with paragraph 6.5(a) and paragraph 6.8(a).

(2) The matching service utility must provide the report resulting from the review conducted under subsection (1) to

(a) its board of directors, or audit committee, promptly upon the report's completion, and

(b) the regulator or, in Québec, the securities regulatory authority, by the earlier of the 30th day after providing the report to its board of directors or the audit committee or the 60th day after the calendar year end.

6.7 Matching service utility technology requirements and testing facilities

(1) A matching service utility must make available to its users, in their final form, all technology requirements regarding interfacing with or accessing the matching service utility

(a) if operations have not begun, sufficiently in advance of operations to allow a reasonable period for testing and system modification by users, and

(b) if operations have begun, sufficiently in advance of implementing a material change to technology requirements to allow a reasonable period for testing and system modification by users.

(2) After complying with subsection (1), the matching service utility must make available testing facilities for interfacing with or accessing the matching service utility

(a) if operations have not begun, sufficiently in advance of operations to allow a reasonable period for testing and system modification by users, and

(b) if operations have begun, sufficiently in advance of implementing a material change to technology requirements to allow a reasonable period for testing and system modification by users.

(3) The matching service utility must not begin operations before

(a) it has complied with paragraphs (1)(a) and (2)(a), and

(b) the chief information officer of the matching service utility, or an individual performing a similar function, has certified in writing to the regulator or, in Québec, the securities regulatory authority, that all information technology systems used by the matching service utility have been tested according to prudent business practices and are operating as designed.

(4) The matching service utility must not implement a material change to the systems referred to in section 6.5 before

(a) it has complied with paragraphs (1)(b) and (2)(b), and

(b) the chief information officer of the matching service utility, or an individual performing a similar function, has certified in writing to the regulator or, in Québec, the securities regulatory authority, that the change has been tested according to prudent business practices and is operating as designed.

(5) Subsection (4) does not apply to the matching service utility if the change must be made immediately to address a failure, malfunction or material delay of its systems or equipment and if

(a) the matching service utility immediately notifies the regulator or, in Québec, the securities regulatory authority, of its intention to make the change, and

(b) the matching service utility discloses to its users the changed technology requirements as soon as practicable.

6.8 Testing of business continuity plans

A matching service utility must

(a) develop and maintain reasonable business continuity plans, including disaster recovery plans, and

(~~c~~) ~~promptly notify the securities regulatory authority of a material failure of those systems.~~b) test its business continuity plans, including its disaster recovery plans, according to prudent business practices and on a reasonably frequent basis and, in any event, at least annually.

PART 7 TRADE SETTLEMENT

7.1 Trade settlement by registered dealer —

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

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

PART 8 REQUIREMENTS OF SELF-REGULATORY ORGANIZATIONS AND OTHERS

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

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

PART 9 EXEMPTION

9.1 Exemption —

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

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

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

PART 10 EFFECTIVE DATES AND TRANSITION

10.1 Effective dates

[LAPSED]

10.2 Transition

[LAPSED]

FORM 24-101F1

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

CALENDAR QUARTER PERIOD COVERED:

From: _____ to: _____

REGISTERED FIRM IDENTIFICATION AND CONTACT INFORMATION:

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

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

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

3b. Indicate below the jurisdiction of your principal regulator within the meaning of NI 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations:*

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

3c. Indicate below all jurisdictions in which you are registered:

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

4. Mailing address, if different from business address:

5. Type of business: O Dealer O Adviser

6. Category of registration:

7. (a) Registered Firm NRD number:

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

8. Contact employee name:

Telephone number:

E-mail address:

INSTRUCTIONS:

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

(a) less than 90 per cent of the equity and/or debt DAP/RAP trades executed by or for you during the quarter matched within the time required in Part 3 of the Instrument, or

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

Include DAP/RAP trades in an exchange-traded fund (ETF) security in the equity DAP/RAP trades statistics. Exhibit A(1) applies only to trades in equity and ETF securities. Exhibit A(2) applies only to trades in debt and other fixed-income securities.

EXHIBITS:

Exhibit A – DAP/RAP trade statistics for the quarter

~~Complete Tables 1 and 2~~Where applicable, complete Table 1 or 2, or both, below for each calendar quarter. Deadline means noon Eastern time on T+1.

(1) Equity DAP/RAP trades (includes ETF trades)

Entered into ~~CDS~~the clearing agency by deadline (to be completed by dealers only)				*Matched (to be completed by ~~deadline~~dealers and advisers)*							
# of ~~Trades~~trades	**%**	**$ ~~Value~~value of ~~Trades~~trades**	**%**	**# of ~~Trades~~trades matched**	**%**	**$ ~~Value of Trades~~ value of trades matched**	**%**	**# of trades matched by deadline**	**%**	**$ value of trades matched by deadline**	**%**

(2) Debt DAP/RAP trades

Entered into ~~CDS~~the clearing agency by deadline (to be completed by dealers only)				*Matched (to be completed by ~~deadline~~dealers and advisers)*							
# of ~~Trades~~ trades	**%**	**$ ~~Value of Trades~~ value of trades**	**%**	**# of ~~Trades~~ trades matched**	**%**	**$ ~~Value~~value of ~~Trades~~trades matched**	**%**	**# of trades matched by deadline**	**%**	**$ value of trades matched by deadline**	**%**

Legend

"# of Trades" is the total number of transactions in the calendar quarter;
"$ Value of Trades" is the total value of the transactions (purchases and sales) in the calendar quarter.

Exhibit B – Reasons for not meeting exception reporting thresholds

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

Exhibit C – Steps to address delays

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

CERTIFICATE OF REGISTERED FIRM

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

DATED at _____ this ____ day of _____ 20___

_____
(Name of registered firm - type or print)

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

_____
(Signature of director, officer or partner)

_____
(Official capacity - type or print)

FORM 24-101F2

CLEARING AGENCY
QUARTERLY OPERATIONS REPORT OF
INSTITUTIONAL TRADE REPORTING AND MATCHING

CALENDAR QUARTER PERIOD COVERED:

From: _____ to: _____

IDENTIFICATION AND CONTACT INFORMATION:

1. Full name of clearing agency:

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

3. Address of clearing agency's principal place of business:

4. Mailing address, if different from business address:

5. Contact employee name:

   Telephone number:

   E-mail address:

INSTRUCTIONS:

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

Include client trades in an exchange-traded fund (ETF) security in the equity trades statistics.

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

EXHIBITS:

1. DATA REPORTING

Exhibit A – Aggregate matched trade statistics

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

Month/Year: _____ (MMM/YYYY)

Table 1 --- Equity trades:

	Entered into clearing agency by dealers				Matched in clearing agency by custodians			
	# of Trades	% Industry	$ Value of Trades	% Industry	# of Trades	% Industry	$ Value of Trades	% Industry
T								
T+1 - noon								
T+1								
T+2								
~~T+3~~								
>T+~~3~~2								
Total								

Table 2 — Debt trades:

	Entered into clearing agency by dealers				Matched in clearing agency by custodians			
	# of Trades	% Industry	$ Value of Trades	% Industry	# of Trades	% Industry	$ Value of Trades	% Industry
T								
T+1 - noon								
T+1								
T+2								
~~T+3~~								
>T+~~3~~2								
Total								

Legend

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

Exhibit B – Individual matched trade statistics

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

CERTIFICATE OF CLEARING AGENCY

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

DATED at _____ this ____ day of _____ 20___

_____
(Name of clearing agency - type or print)

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

_____
(Signature of director, officer or partner)

_____
(Official capacity - type or print)

FORM 24-101F3

MATCHING SERVICE UTILITY
NOTICE OF OPERATIONS

DATE OF COMMENCEMENT INFORMATION:

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

TYPE OF INFORMATION: O INITIAL SUBMISSION O AMENDMENT

MATCHING SERVICE UTILITY IDENTIFICATION AND CONTACT INFORMATION:

1. Full name of matching service utility:

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

3. Address of matching service utility's principal place of business:

4. Mailing address, if different from business address:

5. Contact employee name:

   Telephone number:

   E-mail address:

6. Legal counsel:

   Firm name:

   Telephone number:

   E-mail address:

GENERAL INFORMATION:

7. Website address:

8. Date of financial year-end: _____ (DD/MMM/YYYY)

9. Indicate the form of your legal status (e.g., corporation, limited or general partnership), the date of formation, and the jurisdiction under which you were formed:

   Legal status: O CORPORATION O PARTNERSHIP
   O OTHER (SPECIFY):

   (a) Date of formation: _____ (DD/MMM/YYYY)

   (b) Jurisdiction and manner of formation:

10. Specify the general types of securities for which information is being or will be received and processed by you for transmission of matched trades to a clearing agency (e.g. exchange-traded domestic equity and debt securities, exchange-traded foreign equity and debt securities, equity and debt securities traded over-the-counter).

INSTRUCTIONS:

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

For each exhibit, include your name, the date of delivery of the exhibit and the date as of which the information is accurate (if different from the date of the delivery). If any exhibit required is not applicable, a full statement describing why the exhibit is not applicable ~~shall~~must be furnished in lieu of the exhibit. To the extent information requested for an exhibit is identical to the information requested in another form that you have filed or delivered under National Instrument 21-101 *Marketplace Operation*, simply attach a copy of that other form and indicate in this form where such information can be found in that other form.

If you are delivering an amendment to Form 24-101F3 pursuant to section 6.1(2) or 6.2 of the Instrument, and the amended information relates to an exhibit that was delivered with such form, provide a description of the change and complete and deliver

an updated exhibit. ~~If you are delivering Form 24-101F3 pursuant to section 10.2(4) of the Instrument, simply indicate at the top of this form under "Date of Commencement Information" that you were already carrying on business as a matching service utility in the relevant jurisdiction on the date that Part 6 of the Instrument came into force.~~

EXHIBITS:

1. CORPORATE GOVERNANCE

Exhibit A – Constating documents

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

Exhibit B – Ownership

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

Exhibit C – Officials

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

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

Exhibit D – Organizational structure

Provide a narrative or graphic description of your organizational structure.

Exhibit E – Affiliated entities

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

1. Name and address of affiliated entity.
2. Form of organization (e.g., association, corporation, partnership).
3. Name of jurisdiction and statute under which organized.
4. Date of incorporation in present form.
5. Brief description of nature and extent of affiliation or contractual or other agreement with you.
6. Brief description of business services or functions.
7. If a person or company has ceased to be affiliated with you during the previous year or ceased to have a contractual or other agreement relating to your operations during the previous year, provide a brief statement of the reasons for termination of the relationship.

2. FINANCIAL VIABILITY

Exhibit F – Audited financial statements

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

3. FEES

Exhibit G – Fee list, fee structure

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

4. ACCESS

Exhibit H – Users

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

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

Exhibit I – User contract

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

5. SYSTEMS AND OPERATIONS

Exhibit J – System description

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

1. The hours of operation of the systems, including communication with a clearing agency.

2. Locations of operations and systems (e.g., countries and cities where computers are operated, primary and backup).

3. A brief description in narrative form of each service or function performed by you.

6. SYSTEMS COMPLIANCE

Exhibit K – ~~Security~~General and security

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

Exhibit L – Capacity planning and measurement

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

Exhibit M – Business continuity

Provide a brief description of your ~~contingency and~~ business continuity ~~plans in the event of a catastrophe.~~and disaster recovery plans that includes, but is not limited to, information regarding the following:

14. Where the primary processing site is located.

15. What the approximate percentage of hardware, software and network redundancy is at the primary site.

16. Any uninterruptible power source (UPS) at the primary site.

17. How frequently market data is stored off-site.

18. Any secondary processing site, the location of any such secondary processing site, and whether all of the matching service utility's critical business data is accessible through the secondary processing site.

19. The creation, management, and oversight of the plans, including a description of responsibility for the development of the plans and their ongoing review and updating.

20. Escalation procedures, including event identification, impact analysis, and activation of the plans in the event of a disaster or disruption.

21. Procedures for internal and external communications, including the distribution of information internally, to the securities regulatory authority, and, if appropriate, to the public, together with the roles and responsibilities of the matching service utility's staff for internal and external communications.

22. The scenarios that would trigger the activation of the plans.

23. How frequently the business continuity and disaster recovery plans are tested.

24. Procedures for record keeping in relation to the review and updating of the plans, including the logging of tests and deficiencies.

25. The targeted time to resume operations of critical information technology systems following the declaration of a disaster by the matching service utility and the service level to which such systems are to be restored.

26. Any single points of failure faced by the matching service utility.

Exhibit N – Material systems failures

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

Exhibit O – Independent systems audit

1. ~~Briefly describe your plans~~Provide high level information on the qualified party engaged to provide an annual independent ~~audit of your~~ systems review and vulnerability assessment.

2. If applicable, provide a copy of the last ~~external~~ systems operations audit report.

7. INTEROPERABILITY

Exhibit P – Interoperability agreements

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

8. OUTSOURCING

Exhibit Q – Outsourcing firms

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

1. Name and address of the outsourcing firm.

2. Brief description of business services or functions of the outsourcing firm.

3. Brief description of the outsourcing firm's contingency and business continuity plans in the event of a catastrophe.

CERTIFICATE OF MATCHING SERVICE UTILITY

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

DATED at _____ this _____ day of _____ 20____

_____
(Name of matching service utility - type or print)

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

_____
(Signature of director, officer or partner)

_____
(Official capacity - type or print)

FORM 24-101F4

MATCHING SERVICE UTILITY
NOTICE OF CESSATION OF OPERATIONS

DATE OF CESSATION INFORMATION:

Type of information: O VOLUNTARY CESSATION

O INVOLUNTARY CESSATION

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

MATCHING SERVICE UTILITY IDENTIFICATION AND CONTACT INFORMATION:

1. Full name of matching service utility:

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

3. Address of matching service utility's principal place of business:

4. Mailing address, if different from business address:

5. Legal counsel:

   Firm name:

   Telephone number:

   E-mail address:

INSTRUCTIONS:

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

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

EXHIBITS:

Exhibit A

Provide the reasons for your cessation of business.

Exhibit B

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

Exhibit C

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

CERTIFICATE OF MATCHING SERVICE UTILITY

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

DATED at _____ this_____ day of _____ 20____

_____
(Name of matching service utility - type or print)

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

_____
(Signature of director, officer or partner)

_____
(Official capacity - type or print)

FORM 24-101F5

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

CALENDAR QUARTER PERIOD COVERED:

From: _____ to: _____

MATCHING SERVICE UTILITY IDENTIFICATION AND CONTACT INFORMATION:

1. Full name of matching service utility:

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

3. Address of matching service utility's principal place of business:

4. Mailing address, if different from business address:

5. Contact employee name:

   Telephone number:

   E-mail address:

INSTRUCTIONS:

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

Include DAP/RAP trades in an exchange-traded fund (ETF) security in the equity DAP/RAP trades statistics.

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

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

EXHIBITS

1. SYSTEMS REPORTING

Exhibit A – External systems audit

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

Exhibit B – Material systems failures reporting

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

2. DATA REPORTING

Exhibit C – Aggregate matched trade statistics

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

Month/Year: _____ (MMM/YYYY)

Table 1 — Equity trades:

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

Table 2 — Debt trades:

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

Legend

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

Exhibit D – Individual matched trade statistics

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

CERTIFICATE OF MATCHING SERVICE UTILITY

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

DATED at _____ this ____ day of _____ 20___

_____
(Name of matching service utility- type or print)

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

_____
(Signature of director, officer or partner)

_____
(Official capacity - type or print)

Document comparison by Workshare Compare on July-11-16 5:51:50 PM

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Document 1 ID	file://C:/Users/MPARE/AppData/Roaming/OpenText/OTEdit/EC_oscer/c1408084/Clean Rule unofficial+.doc
Description	Clean Rule unofficial+
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Description	NI 24-101 DRAFT 2016 07 11
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	148
Deletions	98
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	248

ANNEX D
BLACKLINE VERSION OF CP 24-101 REFLECTING PROPOSED CHANGES

CANADIAN SECURITIES ADMINISTRATORS

COMPANION POLICY 24-101~~CP~~
~~TO NATIONAL INSTRUMENT 24-101~~

INSTITUTIONAL TRADE MATCHING AND SETTLEMENT

TABLE OF CONTENTS

COMPANION POLICY 24-101~~CP~~
~~TO NATIONAL INSTRUMENT 24-101—~~

INSTITUTIONAL TRADE MATCHING AND SETTLEMENT

PART 1 INTRODUCTION, PURPOSE AND DEFINITIONS[1]

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

1.2 General explanation of matching, clearing and settlement —

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

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

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

(3) *Matching process* — Verifying the trade data elements is necessary to *match* a trade executed on behalf of or with an institutional investor. Matching occurs when the relevant parties to the trade have, after verifying the trade data elements, reconciled or agreed to the details of the trade. Matching also requires that any custodian holding the institutional investor's assets be in a position to affirm the trade so that the trade can

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

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

[3] The processes and systems for matching of "non-institutional trades" in Canada have evolved over time and become automated, such as retail trades on an exchange, which are matched or *locked-in* automatically at the exchange, or direct non-exchange trades between two participants of a clearing agency, which are generally matched through the facilities of the clearing agency. Dealer to dealer trades are subject to Investment Industry Regulatory Organization of Canada (IIROC) Member Rule 800.49, which provides that trades in non-exchange traded securities (including government debt securities) among dealers must be entered or accepted or rejected through the facilities of an "Acceptable Trade Matching Utility" ~~within one hour of~~by no later than 6 pm on the ~~execution~~day of the trade.

be ready for the clearing and settlement process through the facilities of the clearing agency. To illustrate, trade matching usually includes these following activities:

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

(b) The buy-side manager advises the dealer and any custodian(s) how the securities traded are to be allocated among the underlying institutional client accounts managed by the buy-side manager.[4] For so-called *block settlement trades*, the dealer sometimes receives allocation information from the buy-side manager based only on the number of custodians holding institutional investors' assets instead of on the actual underlying institutional client accounts managed by the buy-side manager.

(c) The dealer reports and confirms the trade details to the buy-side manager and clearing agency. The trade details required to be confirmed for matching, clearing and settlement purposes are generally similar to the information required in the customer trade confirmation delivered pursuant to securities legislation or self-regulatory organization (SRO) rules.[5]

(d) The custodian or custodians of the assets of the institutional investor verify the trade details and settlement instructions against available securities or funds held for the institutional investor. After trade details are agreed, the buy-side manager instructs the custodian(s) to release funds and/or securities to the dealer through the facilities of the clearing agency.

(4) *Clearing and settlement* — The *clearing* of a trade begins after the execution of the trade. After matching is completed, clearing will involve the calculation of the mutual obligations of participants for the exchange of securities and money—a process which generally occurs within the facilities of a clearing agency. The *settlement* of a trade is the moment when the securities are transferred finally and irrevocably from one participant to another in exchange for a corresponding transfer of money. In the context of settlement of a trade through the facilities of a clearing agency, often acting as central counterparty, settlement will be the discharge of obligations in respect of funds or securities, computed on a net basis, between and among the clearing agency and its participants. Through the operation of novation and set-off in law or by contract, the clearing agency becomes a counterparty to each trade so that the mutual obligation to settle the trade is between the clearing agency and each participant.

1.3 Section 1.1 - Definitions and scope —

(1) *Clearing agency* — ~~Today, the definition of *clearing agency* applies only to The Canadian Depository for Securities Limited (CDS). The definition takes into account the fact that securities regulatory authorities in Ontario and Québec currently recognize or otherwise regulate clearing agencies in Canada under provincial securities legislation.[6] The functional meaning of *clearing agency* can be found in the securities legislation of certain jurisdictions.[7]~~While the terms "clearing agency" and "recognized clearing agency" are generally defined in securities legislation,[6] we have defined *clearing agency* for the purposes of the Instrument to

[4] We remind registered advisers of their obligations to ensure fairness in allocating investment opportunities among their clients. An adviser must establish, maintain and apply policies and procedures that provide reasonable assurance that the firm and each individual acting on its behalf fairly allocates investment opportunities among its clients. If the adviser allocates investment opportunities among its clients, the firm's fairness policies should, at a minimum, indicate the method used to allocate the following: (i) price and commission among client orders when trades are bunched or blocked; (ii) block trades and initial public offerings (IPOs) among client accounts, and (iii) block trades and IPOs among client orders that are partially filled, such as on a pro-rata basis. The fairness policies should also address any other situation where investment opportunities must be allocated.

A summary of the fairness policies must be delivered to each client at the time the adviser opens an account for the client, and in a timely manner if there is a significant change to the summary last delivered to the client.

See sections 14.3 and 14.10 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) and section 14.10 of the Companion Policy to NI 31-103.

[5] See, for example, section ~~36 of the Securities Act (Ontario), The Toronto Stock Exchange (TSX) Rule 2-405~~14.12 of NI 31-103 and IIROC Member Rule 200.1(h).

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

~~[7] See, for example, s. 1(1) of the Securities Act (Ontario).~~

[6] See, for example, s. 1(1) of the *Securities Act* (Ontario).

narrow its scope to a recognized clearing agency that operates as a securities settlement system. The term *securities settlement system* is defined in National Instrument 24-102 *Clearing Agency Requirements* as a system that enables securities to be transferred and settled by book entry according to a set of predetermined multilateral rules. Today, the definition of *clearing agency* in the Instrument applies to CDS Clearing and Depository Services Inc. (**CDS**). For the purposes of the Instrument, a clearing agency includes, in Quebec, a clearing house and settlement system within the meaning of the Québec *Securities Act*. See subsection 1.2(2).

(2) *Custodian* — While investment assets are sometimes held directly by investors, most are held on behalf of the investor by or through securities accounts maintained with a financial institution or dealer. The definition of *custodian* includes both a financial institution (non-dealer custodian) and a dealer acting as custodian (dealer custodian). Most institutional investors, such as pension and mutual funds, hold their assets through custodians that are prudentially-regulated financial institutions. However, others (like hedge funds) often maintain their investment assets with dealers under so-called *prime-brokerage* arrangements. A financial institution or dealer in Canada need not necessarily have a direct contractual relationship with an institutional investor to be considered a custodian of portfolio assets of the institutional investor for the purposes of the Instrument if it is acting as sub-custodian to a global custodian or international central securities depository.

(3) *Institutional investor* —A client of a dealer that has been granted DAP/RAP trading privileges is an institutional investor. This will likely be the case whenever a client's investment assets are held by or through securities accounts maintained with a custodian instead of the client's dealer that executes its trades. While the expression "institutional trade" is not defined in the Instrument, we use the expression in this Companion Policy to mean broadly any DAP/RAP trade.

(4) *DAP/RAP trade* — The concepts *delivery against payment* and *receipt against payment* are generally understood by the industry. They are also defined terms in the Notes and Instructions (Schedule 4) to ~~the *Joint Regulatory Financial Questionnaire and Report* of the Canadian SROs~~IIROC Form 1, Part II. All DAP/RAP trades, whether settled by a non-dealer custodian or a dealer custodian, are subject to the requirements of Part 3 of the Instrument. The definition of DAP/RAP trade excludes a trade for which settlement is made on behalf of a client by a custodian that is also the dealer that executed the trade.

(5) *Trade-matching party* — An institutional investor, whether Canadian or foreign-based, may be a trade-matching party. As such, it, or its adviser that is acting for it in processing a trade, should enter into a trade-matching agreement or provide a trade-matching statement under Part 3 of the Instrument. However, an institutional investor that is an individual or a person or company with total securities under administration or management not exceeding $10 million, is not a trade-matching party. A custodian that settles a trade on behalf of an institutional investor is also a trade-matching party and should enter into a trade-matching agreement or provide a trade-matching statement. However, a foreign global custodian or international central securities depository that holds Canadian portfolio assets through a local Canadian sub-custodian would not normally be considered a trade-matching party if it is not a clearing agency participant or otherwise directly involved in settling the trade in Canada.

(6) *Application of Instrument* — Part 2 of the Instrument enumerates certain types of trades that are not subject to the Instrument.

PART 2 TRADE MATCHING REQUIREMENTS

2.1 Trade data elements — Trade data elements that must be verified and agreed to are those identified by the SROs or the best practices and standards for institutional trade processing established and generally adopted by the industry. See section 2.4 of this Companion Policy. To illustrate, trade data elements that should be transmitted, compared and agreed to may include the following:

(a) *Security identification*: standard numeric identifier, currency, issuer, type/class/series, market ID; and

(b) *Order and trade information*: dealer ID, account ID, account type, buy/sell indicator, order status, order type, unit price/face amount, number of securities/quantity, message date/time, trade transaction type, commission, accrued interest (fixed income), broker settlement location, block reference, net amount, settlement type, allocation sender reference, custodian, payment indicator, IM portfolio/account ID, quantity allocated, and settlement conditions.

2.2 Trade matching deadlines for registered firms — The obligation of a registered dealer or registered adviser to establish, maintain and enforce policies and procedures, pursuant to sections 3.1 and 3.3 of the

Instrument, will require the dealer or adviser to take reasonable steps to achieve matching as soon as practical after the DAP/RAP trade is executed and in any event no later than 12 p.m. (noon) Eastern time on T+1. ~~If the trade results from an order to buy or sell securities received from an institutional investor whose investment decisions or settlement instructions are usually made in and communicated from a geographical region outside of the North American region, the deadline for matching is 12 p.m. (noon) on T+2 (subsections 3.1(2) and 3.3(2)). As defined, the North American region comprises Canada, the United States, Mexico, Bermuda and the countries of Central America and the Caribbean.~~The policies and procedures requirement of Part 3 of the Instrument is consistent with the overarching obligation of a registered firm to manage the risks associated with its business in accordance with prudent business practices.[7]

2.3 Choice of trade-matching agreement or trade-matching statement —

(1) *Establishing, maintaining and enforcing policies and procedures* —

(a) Under sections 3.2 and 3.4, a registered dealer's or registered adviser's policies and procedures must be designed to encourage trade-matching parties to (i) enter into a trade-matching agreement with the dealer or adviser or (ii) provide or make available a trade-matching statement to the dealer or adviser. The purpose of the trade-matching agreement or trade-matching statement is to ensure that all trade-matching parties have established, maintain, and enforce appropriate policies and procedures designed to achieve matching of a DAP/RAP trade as soon as practical after the trade is executed. If the dealer or adviser is unable to obtain a trade-matching agreement or statement from a trade-matching party, it should document its efforts in accordance with its policies and procedures.

(b) The parties described in paragraphs (a), (b), (c), and (d) of the definition "trade-matching party" in section 1.1 of the Instrument need not necessarily all be involved in a trade for the requirements of sections 3.2 and 3.4 of the Instrument to apply. There is no need for an adviser to be involved in the matching process of an institutional investor's trades for the requirement to apply. In this case, the trade-matching parties that should have appropriate policies and procedures in place would be the institutional investor, the dealer and the custodian.

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

(2) *Trade-matching agreement* —

(a) A registered dealer or registered adviser need only enter into one trade-matching agreement with the other trade-matching parties for new or existing DAP/RAP trading accounts of an institutional investor for all future trades in relation to such account. The trade-matching agreement may be a single multi-party agreement among the trade-matching parties, or a network of bilateral agreements. A single trade-matching agreement is also sufficient for the general and all sub-accounts of the registered adviser or buy-side manager. If the dealer or adviser uses a trade-matching agreement, the form of such agreement may be incorporated into the institutional account opening documentation and may be modified from time to time with the consent of the parties.

(b) The agreement must specify the roles and responsibilities of each of the trade-matching parties and should describe the minimum standards and best practices to be incorporated into the policies

[7] See s. 11.1 of NI 31-103, which requires registered firms to establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to manage the risks associated with their business in accordance with prudent business practices.

and procedures that each party has in place. This should include the timelines for accomplishing the various steps and tasks of each trade-matching party for timely matching. For example, the agreement may include, as applicable, provisions dealing with:

For the dealer executing and/or clearing the trade:

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

For the institutional investor or its adviser:

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

For the custodian settling the trade at the clearing agency:

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

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

(4) *Monitoring and enforcement of undertakings in trade-matching documentation* — Registered dealers and advisers should use reasonable efforts to monitor compliance with the terms or undertakings set out in the trade-matching agreements or trade-matching statements in accordance with their policies and procedures.

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

2.4 Determination of appropriate policies and procedures —

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

(2) *Different policies and procedures* — We recognize that appropriate policies and procedures may not be the same for all registered dealers, registered advisers and other market participants because of the varying nature, scale and complexity of a market participant's business and risks in the trading process. For example, policies and procedures designed to achieve matching may differ among a registered dealer that acts as an "introducing broker" and one that acts as a "carrying broker".[8] In addition, if a dealer is not a clearing agency participant, the dealer's policies and procedures to expeditiously achieve matching should be integrated with the clearing arrangements that it has with any other dealer acting as carrying or clearing broker for the dealer. Establishing appropriate policies and procedures may require registered dealers, registered advisers and other market participants to upgrade their systems and enhance their interoperability with others.[9]

2.5 Use of matching service utility — The Instrument does not require the trade-matching parties to use the facilities or services of a matching service utility to accomplish matching of trades within the prescribed timelines. However, if such facilities or services are made available in Canada, the use of such facilities or services may help a trade-matching party's compliance with the Instrument's requirements.

PART 3 INFORMATION REPORTING REQUIREMENTS

3.1 Exception reporting for registered firms —

(a) Part 4 of the Instrument requires a registered firm to complete and deliver to the securities regulatory authority Form 24-101F1 and related exhibits. Form 24-101F1 need only be delivered if less than ~~a percentage target~~90 percent of the DAP/RAP trades (by volume and value) executed by or for the registered firm in any given calendar quarter have matched within the time required by the Instrument. Tracking of a registered firm's trade matching statistics may be outsourced to a third party service provider, including a clearing agency or custodian. However, despite the outsourcing arrangement, the registered firm retains full legal and regulatory liability and accountability to the Canadian securities regulatory authorities for its exception reporting requirements. If a registered firm has insufficient information to determine whether it has achieved the percentage target of matched DAP/RAP trades in any given calendar quarter, it must explain in Form 24-101F1 the reasons for this and the steps it is taking to obtain this information in the future.

(b) Form 24-101F1 requires registered firms to provide aggregate quantitative information on their equity and debt DAP/RAP trades. ~~They~~DAP/RAP trades in exchange-traded funds are reportable in the equities category of DAP/RAP trades.

Form 24-101F1 should only be submitted for DAP/RAP trades for the type of security (equity or debt) that did not meet the 90 percent threshold by the relevant timeline. If a registered firm does

[8] See IIROC Member Rule 35 — *Introducing Broker / Carrying Broker Arrangements*.

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

not meet the threshold for both equity and debt DAP/RAP trades, then it should submit the Form for both equity and debt DAP/RAP trades (i.e., by completing both tables in Exhibit A of Form 24-101F1). If the firm does not meet the threshold only for one type of security (i.e., for equity but not debt, or for debt but not equity), it should only submit the Form for the one type of security, by completing only one of the tables in Exhibit A of Form 24-101F1. A registered firm must also provide qualitative information on the circumstances or underlying causes that resulted in or contributed to the failure to achieve the percentage target for matched equity and/or debt DAP/RAP trades within the maximum time prescribed by Part 3 of the Instrument and the specific steps they are taking to resolve delays in the trade reporting and matching process in the future. Registered firms should provide information that is relevant to their circumstances. For example, dealers should provide information demonstrating problems with NOEs or reporting of trade details to the clearing agency. Reasons given for the failure could be one or more matters within the registered firm's control or due to another trade-matching party or service provider.

(c) The steps being taken by a registered firm to resolve delays in the matching process could be internally focused, such as implementing a new system or procedure, or externally focused, such as meeting with a trade-matching party to determine what action should be taken by that party. Dealers should confirm what steps they have taken to inform and encourage their clients to comply with the requirements or undertakings of the trade-matching agreement and/or trade-matching statement. They should confirm what problems, if any, they have encountered with their clients, other trade-matching parties or service providers. They should identify the trade-matching party or service provider that appears to be consistently not meeting matching deadlines or to have no reasonable policies and procedures in place. Advisers should provide similar information, including information demonstrating problems with communicating allocations or with service providers or custodians.

3.2 Regulatory reviews of registered firm exception reports —

(a) We will review the completed Forms 24-101F1 on an ongoing basis to monitor and assess compliance by registered firms with the Instrument's matching requirements. We will identify problem areas in matching, including identifying trade-matching parties that have no or weak policies and procedures in place to ensure matching of trades is accomplished within the time prescribed by Part 3 of the Instrument. Monitoring and assessment of registered firm matching activities may be undertaken by the SROs in addition to, or in lieu of, reviews undertaken by us.

(b) ~~Consistent~~The Canadian securities regulatory authorities may consider the consistent inability to meet the matching percentage target ~~will be considered~~ as evidence ~~by the Canadian securities regulatory authorities~~ that either the policies and procedures of one or more of the trade matching parties have not been properly designed or, if properly designed, have been inadequately complied with. Consistently poor qualitative reporting ~~will~~may also be considered as evidence of poorly designed or implemented policies and procedures. See also section 2.3(4) of this Companion Policy for a further discussion of our approach to compliance and enforcement of the trade-matching requirements of the Instrument.

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

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

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

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

3.5 Confidentiality of information — The forms delivered to the securities regulatory authority by a registered firm, clearing agency and matching service utility under the Instrument will be treated as confidential by us, subject to the applicable provisions of the freedom of information and protection of privacy legislation adopted by each province and territory. We are of the view that the forms contain intimate financial, commercial and technical information and that the interests of the providers of the information in non-

disclosure outweigh the desirability of making such information publicly available. However, we may share the information with SROs and may publicly release aggregate industry-wide matching statistics on equity and debt DAP/RAP trading in the Canadian markets.

PART 4 REQUIREMENTS FOR MATCHING SERVICE UTILITIES

4.1 Matching service utility —

(1) Part 6 of the Instrument sets out reporting, systems capacity, and other requirements of a matching service utility. ~~The~~For the purposes of the Instrument, the term *matching service utility* expressly excludes a clearing agency. A matching service utility would be any entity that provides the services of a post-execution centralized matching facility for trade-matching parties. It may use technology to match in real-time trade data elements throughout a trade's processing lifecycle. A matching service utility would not include a registered dealer who offers "local" matching services to its institutional investor-clients. In Québec, a person or company that seeks to provide centralized facilities for matching must, in addition to the requirements of the Instrument, apply for recognition as a matching service utility or for an exemption from the requirement to be recognized as a matching service utility pursuant to the *Securities Act* (Québec, chapter V-1.1) or *Derivatives Act* (Québec, chapter I-14.01). In certain other jurisdictions, in addition to the requirements of the Instrument, such person or company may be required to apply either for recognition as a clearing agency or for an exemption from the requirement to be recognized as a clearing agency.[17]

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

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

(a) the performance capability, standards and procedures for the transmission, processing and distribution of details of trades executed on behalf of institutional investors;

(b) whether market participants generally may obtain access to the facilities and services of the matching service utility on fair and reasonable terms;

(c) personnel qualifications;

(d) whether the matching service utility has sufficient financial resources for the proper performance of its functions;

(e) the existence of, and interoperability arrangements with, another entity performing a similar function for the same type of security; and

(f) the systems report referred to in section 6.5(b) of the Instrument.

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[17] See, for example, the scope of the definition of "clearing agency" in s. 1(1) of the *Securities Act* (Ontario), which includes providing centralized facilities "for comparing data respecting the terms of settlement of a trade or transaction".

4.3 **Change to significant information —** Under section 6.2 of the Instrument, a matching service utility is required to deliver to the securities regulatory authority an amendment to the information provided in Form 24-101F3 at least 45 days before implementing a significant change involving a matter set out in Form 24-101F3. In our view, a significant change includes a change to the information contained in the General Information items 1-10 and Exhibits A, B, E, G, I, J, O, P and Q of Form 24-101F3.

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

(1) Ongoing quarterly information reporting requirements will allow us to monitor a matching service utility's operational performance and management of risk, the progress of interoperability in the market, and any negative impact on access to the markets. A matching service utility will also provide trade matching data and other information to us so that we can monitor industry compliance.

(2) Completed forms delivered by a matching service utility will provide useful information on whether it is:

(a) developing fair and reasonable linkages between its systems and the systems of any other matching service utility in Canada that, at a minimum, allow parties to executed trades that are processed through the systems of both matching service utilities to communicate through appropriate, effective interfaces;

(b) negotiating with other matching service utilities in Canada fair and reasonable charges and terms of payment for the use of interface services with respect to the sharing of trade and account information; and

(c) not unreasonably charging more for use of its facilities and services when one or more counterparties to trades are customers of other matching service utilities than the matching service utility would normally charge its customers for use of its facilities and services.

4.5 ~~**Capacity, integrity and security system**~~**System requirements —**

(1) The intent of these provisions is to ensure that controls are implemented to support information technology planning, acquisition, development and maintenance, computer operations, information systems support, and security. Recognized guides as to what constitutes adequate information technology controls include 'Information Technology Control Guidelines' from the Canadian Institute of Chartered Accountants (CICA) and 'COBIT' from the IT Governance Institute.

(2) Capacity management requires that the matching service utility monitor, review, and test (including stress test) the actual capacity and performance of the system on an ongoing basis. Accordingly, under paragraph 6.5(b), the matching service utility is required to meet certain standards for its estimates and for testing. These standards are consistent with prudent business practice. The activities and tests required in that paragraph are to be carried out at least once a year. In practice, continuing changes in technology, risk management requirements and competitive pressures will often result in these activities being carried out or tested more frequently..

(3) A failure, malfunction or delay or other incident is considered to be "material" if the matching service utility would, in the normal course of operations, escalate the matter to or inform its senior management ultimately accountable for technology. It is also expected that, as part of this notification, the matching service utility will provide updates on the status of the failure and the resumption of service. Further, the matching service utility should have comprehensive and well-documented procedures in place to record, report, analyze, and resolve all operational incidents. In this regard, the matching service utility should undertake a "post-incident" review to identify the causes and any required improvement to the normal operations or business continuity arrangements. Such reviews should, where relevant, include the matching service utility's participants. The results of such internal reviews are required to be communicated to the securities regulatory authority as soon as practicable. Paragraph 6.5(c) also refers to a material security breach. A material security breach or systems intrusion is considered to be any unauthorized entry into any of the systems that support the functions of the matching service utility or any system that shares resources with one or more of these systems. Virtually any security breach would be considered material and thus reportable to the securities regulatory authority. The onus would be on the matching service utility to document the reasons for any security breach it did not consider material.

4.6 Systems reviews

(1) A qualified party is a person or a group of persons with relevant experience in both information technology and in the evaluation of related internal systems or controls in a complex information technology environment. Qualified persons may include external auditors or third party information system consultants, as well as employees of the matching service utility or an affiliated entity of the matching service utility, but may not be persons responsible for the development or operation of the systems or capabilities being tested. Before engaging a qualified party, a matching service utility should discuss its choice with the regulator or, in Québec, the securities regulatory authority.

4.7 Matching service utility technology requirements and testing facilities

The technology requirements required to be disclosed under subsection 6.7(1) do not include detailed proprietary information.

We expect the amended technology requirements to be disclosed as soon as practicable, either while the changes are being made or immediately after.

~~(1) The activities in section 6.5(a) of the Instrument must be carried out at least once a year. We would expect these activities to be carried out even more frequently if there is a significant change in trading volumes that necessitates that these functions be carried out more frequently in order to ensure that the matching service utility can appropriately service its clients.~~

4.8 Testing of business continuity plans

~~(2) The independent review contemplated by section 6.5(b) of the Instrument should be performed by competent and independent audit personnel, in accordance with generally accepted auditing standards. Depending on the circumstances, we would consider accepting a review performed and written report delivered pursuant to similar requirements of a foreign regulator to satisfy the requirements of this section. A matching service utility that wants to advocate for that result must submit a request for discretionary relief.~~

(1) Paragraph 6.8 (a) of the Instrument requires that matching service utility develop and maintain reasonable business continuity plans, including disaster recovery plans. Business continuity planning should encompass all policies and procedures to ensure uninterrupted provision of key services regardless of the cause of potential disruption. In fulfilling the requirement to develop and maintain reasonable business continuity plans, the Canadian securities regulatory authorities expect that matching service utilities are to remain current with best practices for business continuity planning and to adopt them to the extent that they address their critical business needs.

(2) ~~(3) The notification of a material systems failure under section 6.5(c) of the Instrument should be provided promptly from the time the incident was identified as being material and should include the date, cause and duration of the interruption and its general impact on users or subscribers. We consider promptly to mean within one hour from the time the incident was identified as being material. Material systems failures include serious incidents that result in the interruption of the matching of trades for more than thirty minutes during normal business hours.~~A matching service utility's business continuity plan and its associated arrangements should be subject to frequent review and testing. At a minimum, under paragraph 6.8(b), such tests must be conducted annually. Tests should address various scenarios that simulate wide-scale disasters and inter-site switchovers. The matching service utility's employees should be thoroughly trained to execute the business continuity plan and participants, critical service providers, and linked clearing agencies should be regularly involved in the testing and be provided with a general summary of the testing results. The CSA expects that the matching service utility will also facilitate and participate in industry-wide testing of the business continuity plan. The matching service utility should make appropriate adjustments to its business continuity plan and associated arrangements based on the results of the testing exercises.

PART 5 TRADE SETTLEMENT

5.1 Trade settlement by dealer — Section 7.1 of the Instrument is intended to support and strengthen the general settlement cycle rules of the SROs and marketplaces. Current SRO and marketplace rules mandate a standard T+~~3~~2 settlement cycle period for most transactions in equity and long term debt securities.[~~10~~18] If a dealer is not a participant of a clearing agency, the dealer's policies and procedures to facilitate the

[~~10~~ 18] See, for example, IIROC Member Rule 800.27 and TSX Rule 5-103(1).

settlement of a trade should be combined with the clearing arrangements that it has with any other dealer acting as carrying or clearing broker for the dealer.

PART 6 REQUIREMENTS OF SELF-REGULATORY ORGANIZATIONS AND OTHERS

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

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Total changes	90

Annex E

Canadian Securities Administrators

CSA Consultation Paper 24-402

Policy Considerations for Enhancing Settlement Discipline in a T+2 Settlement Cycle Environment

August 18, 2016

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Executive summary

The securities industry in Canada is preparing to shorten the standard settlement cycle for equity and long-term debt market trades from three days after the date of a trade (**T+3**) to two days after the date of a trade (**T+2**). As part of the transition to a standard T+2 settlement cycle, there has been a focus by industry on operational improvements that will be needed to manage any risk that the move to T+2 may cause an increase in settlement failures.

In parallel with the industry's efforts, the Canadian Securities Administrators (**CSA** or **we**) believe that it is prudent to solicit stakeholder views on settlement failures in Canada. Market participants and regulators alike must manage the risk that the transition to T+2 might increase settlement failure rates in normal market conditions. We wish to understand whether stakeholders consider current regulatory and other mechanisms adequate to promote and encourage timely settlement of trades in a T+2 settlement environment.

This Consultation Paper provides an overview of existing settlement discipline measures in the Canadian equity and debt markets and raises policy considerations for addressing the risk that the transition to a standard T+2 settlement cycle might increase settlement failures in our markets. We seek comments on whether

1. additional settlement discipline measures might be required, including additional amendments to National Instrument 24-101 — *Institutional Trade Matching and Settlement* (**Instrument**) and Companion Policy 24-101 *Institutional Trade Matching and Settlement* (**Companion Policy**) (the Instrument and Companion Policy collectively, **NI 24-101**); and

2. other settlement discipline mechanisms for the Canadian equity and debt markets would deter settlement failures, such as a settlement-fail "penalty" mechanism or a close-out or forced buy-in requirement.

Any proposal to adopt measures arising from this consultation on policy considerations for enhancing settlement discipline, including proposing any further amendments to NI 24-101, would require a further public comment process.

1. Introduction

The securities industry in Canada is preparing to shorten the standard settlement cycle for equity and long-term debt market trades from three days after the date of a trade (**T+3**) to two days after the date of a trade (**T+2**). The move to a T+2 settlement cycle is expected to occur on September 5, 2017, at the same time as the markets in the United States move to a T+2 settlement cycle.

Efficient clearing and settlement arrangements are critical to successful securities markets. They lie at the core of a securities market and determine, to a large extent, its efficiency and effectiveness.[1] Shortening the settlement cycle to T+2 is intended to mitigate risk in securities clearing and settlement by reducing counterparty exposure between the parties to a trade. However, if the move to T+2 is not properly managed and implemented, it could instead increase settlement fails.

Currently, various regulations and industry rules and standards promote and encourage timely trade settlement. This Consultation Paper refers to them collectively as the **settlement discipline regime**. This regime should help to support a smooth transition to T+2. It includes NI 24-101, which contains principle-based requirements to promote efficient and timely processes for institutional trades occurring after trade execution and prior to settlement (trade confirmation, affirmation, allocations and settlement instructions). We describe these processes as **institutional trade matching** or **ITM**.

1.1 Purpose of consultation

The Canadian securities industry's T+2 initiatives are anticipated to consider operational improvements and identify possible rule changes to manage the risk that the move to T+2 might increase settlement failures. We believe it is also prudent for the CSA to consider whether the current settlement discipline regime for the Canadian equity and debt markets is adequate for a standard T+2 settlement cycle.[2]

This Consultation Paper is intended to solicit for regulatory consideration views about today's settlement discipline regime as well as enhancements or alternatives to that regime, encompassing not only firms' operations but also broader industry processes. This includes whether amendments to NI 24-101, in addition to the proposed amendments described in the Request for Comment Notice (see below), may be necessary to enhance settlement discipline measures. For example, we are asking questions about whether it would be desirable to modify the ITM requirements of NI 24-101 to facilitate higher rates of "same day affirmation" or other improvements to matching and settlement efficiency. We are also seeking feedback on whether additional settlement discipline measures in the Canadian equity and debt markets should be considered to address settlement failures, such as a settlement-fail "penalty"[3] mechanism or a close-out or forced buy-in requirement.

In this Consultation Paper we are not seeking views on whether stakeholders agree or disagree with the move to a T+2 settlement cycle, or on what the expected costs and benefits to the equity and debt markets in Canada may be from shortening the settlement cycle from T+3 to T+2. As we stated in CSA Staff Notice 24-312 – *Preparing for the Implementation of T+2 Settlement* dated April 2, 2015 (**Notice 24-312**), it is important that the Canadian industry move to T+2 at the same time as the U.S. markets. Failure to do so would be detrimental to the Canadian capital markets due to the interconnectedness of our markets.[4]

1.2 Simultaneous Request for Comment Notice on proposed amendments to NI 24-101

This Consultation Paper is being published together with CSA Notice and Request for Comment – "Proposed Amendments to National Instrument 24-101 *Institutional Trade Matching and Settlement* and Proposed Changes to Companion Policy 24-101 *Institutional Trade Matching and Settlement*" (the **Request for Comment Notice**). The Request for Comment Notice seeks comments on proposed amendments to NI 24-101, some of which are in anticipation of the shortening of the settlement cycle. However, while we are not proposing at this time any amendments to NI 24-101's current ITM deadline of noon on T+1, nor to its ITM threshold of 90 percent, we discuss in this Consultation Paper potential additional changes to NI 24-101 that we might consider, and we ask specific questions on such potential changes.

1.3 Overview of Consultation Paper

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[1] See *Towards a Legal Framework for Clearing and Settlement in Emerging Markets*, Emerging Markets of the International Organization of Securities Commissions; IOSCO paper November 1997, at 1; available at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD74.pdf

[2] In this Consultation Paper, a reference to the equity markets includes the markets for exchange-traded funds (**ETFs**).

[3] In this Consultation Paper, we use the expression "penalty" in a broad, colloquial sense only, and not as a formal securities law term. See discussion in Part 6 of this Consultation Paper. For certain CSA jurisdictions, a securities regulatory authority's power to impose fines or penalties for failure to settle a trade on time would have to be explicitly authorized by securities legislation.

[4] See: http://www.osc.gov.on.ca/en/SecuritiesLaw_sn_20150402_24-312_t2-settlement.htm

Part 2 of this Consultation Paper provides a high-level overview of the recommendations of international standard-setting bodies on settlement cycles, post-trade matching, and the monitoring of failed trades. It summarizes global developments in shortening the standard settlement cycle from T+3 to T+2, and describes the Canadian securities industry's T+2 initiatives. Part 3 and Appendix A discuss information from CDS Clearing and Depository Services Inc. (**CDS**) on average settlement failure rates of equity trades in Canada. Part 4 summarizes our current settlement discipline regime in general terms, and Part 5 focuses on an important part of such regime: NI 24-101. Part 5 describes the history and policy objective of NI 24-101 and discusses a range of factors that should be considered in improving trade-matching performance by market participants, especially as we move to a T+2 settlement cycle. It also incorporates by reference Appendix B to this Consultation Paper, which contains an analysis of aggregate industry ITM rates. Finally, Part 6 discusses potential new settlement discipline measures that regulators or market infrastructures might want to consider implementing to manage settlement risk in moving to T+2.

2. Shortening settlement cycle from T+3 to T+2

2.1 Background

During the last 30 years, policy makers and industry groups have sought to reduce risk (credit, market, and liquidity risk) by shortening the settlement cycle. In 1989, the Group of Thirty (G30) recommended that final settlement of cash transactions should occur on T+3.[5] In 1995, the markets in Canada and the United States successfully shortened the standard settlement cycle to T+3 from five days after the date of trade (T+5), and other markets followed suit. In the early 2000s, the securities industries in both Canada and the U.S. had considered further shortening the settlement cycle from T+3 to one day after the date of trade (T+1). While the industries subsequently abandoned their plans to move to T+1, they actively pursued straight-through processing (**STP**) and other industry-wide initiatives to improve clearing and settlement processes and systems. At the same time, international standard-setting bodies released a number of reports on clearing and settlement arrangements in an effort to reduce systemic risk in the financial system and improve the overall soundness of such arrangements. We discussed these international reports in CSA Discussion Paper 24-401 *Straight-through Processing* published in 2004,[6] and briefly highlight their relevant recommendations below.

The Committee on Payments and Market Infrastructures (**CPMI**)[7] and the International Organization of Securities Commissions (**IOSCO**) released a report in 2001 that made recommendations on, among other things, trade confirmation and settlement cycle.[8] In particular, the RSSS report recommended the following:

- Final settlement of a securities trade should occur no later than T+3, and the benefits and costs of a settlement cycle shorter than T+3 should be evaluated.[9] The report notes that, the longer the period from trade execution to settlement, the greater the risk that one of the parties may become insolvent or default on the trade, the larger the number of unsettled trades, and the greater the opportunity for the prices of the securities to move away from the contract prices – thereby increasing the risk that non-defaulting parties will incur a loss when replacing the unsettled contracts.

- Confirmation of trades between direct market participants should occur as soon as possible after trade execution, but no later than trade date (**T**). Where confirmation of trades by indirect market participants (such as institutional investors) is required, it should occur as soon as possible after trade execution, preferably on T, but no later than T+1.[10]

The CPMI and IOSCO further note that, regardless of the settlement cycle, the frequency and duration of settlement failures should be monitored closely. They suggest that in some markets, the benefits of T+3 settlement are currently not being fully realized because the rate of settlement on the contractual date falls

[5] Group of Thirty, *Clearance and Settlement Systems in the World's Securities Markets* (New York: Group of Thirty, March 1989). The G30 is a private organization sponsored by central banks and major commercial and investment banks that, over the years, has assembled a number of international task forces to study and report on the state of global clearing and settlement. See www.group30.org.

[6] CSA Request for Comment – Discussion Paper 24-401 on Straight-through Processing, April 16, 2004, (2004) 27 OSCB 3977 (**DP 24-401**).

[7] Prior to September 2014, the CPMI was known as the Committee on Payment and Settlement Systems or "CPSS".

[8] *Recommendations for securities settlement systems* - Report of the Committee on Payment and Settlement Systems and Technical Committee of the International Organization of Securities Commissions, dated November 2001 (**RSSS report**); available at: http://www.bis.org/cpmi/publ/d46.pdf. In 2012, CPMI and IOSCO reaffirmed the market-wide recommendations in the RSSS report. See Annex C of the April 2012 CPSS-IOSCO report, *Principles for financial market infrastructures* (**PFMI report**); available at: http://www.bis.org/cpmi/publ/d101a.pdf.

[9] Recommendation 3: Settlement cycles.

[10] Recommendation 2: Trade confirmation.

significantly short of 100%. In such circumstances, they note that the risk implications of the fail rates should be analyzed and actions identified that could reduce the rates or mitigate the associated risks.[11]

Building on the recommendations of the RSSS report, the G30 released a report in 2003 that recommended wide-ranging reform of the clearing and settlement process, including creation and implementation of global standards in technological and operational areas and improvements in risk management practices.[12] In particular, the G30 recommended that market participants should collectively develop and use fully compatible and industry-accepted technical and market-practice standards for the automated confirmation and agreement of institutional trade details on T.[13]

2.2 Global T+2 initiatives

The 2007-2008 global financial crisis had highlighted the need to improve risk management and efficiency in clearing and settlement processing. In particular, there has been a sharper focus by industry, regulators and policy makers alike on mitigating counterparty risk exposure for market participants. Various measures have been taken to mitigate such risks in capital markets, including a move to settle trades more quickly.

Many countries already operate under a shortened settlement cycle, or are moving towards it. Most European markets successfully shifted to a T+2 settlement cycle in 2014.[14] Other major markets in the Asia-Pacific region are already on T+2 or T+1. Australia and New Zealand moved to T+2 for their equity markets in March 2016, while Singapore is planning to reduce its settlement cycle to T+2 from T+3 this year.[15] The U.S. markets have committed to moving to a T+2 settlement cycle on September 5, 2017.[16] The Canadian securities industry has also stated its intention of meeting the same target and timelines as the U.S. markets.[17]

There is wide-spread agreement that shortening the settlement cycle by a business day to T+2 should deliver significant benefits, such as reducing counterparty risk for individual investors, market participants and central counterparties. In 1989, the G30 recognized that "to minimize counterparty risk and market exposure associated with securities transactions, same day settlement is the final goal" when it recommended that final settlement of cash transactions should occur on T+3. Shortening the settlement cycle could also help to reduce margin and liquidity needs during times of economic volatility and drive greater post-trade operational process efficiencies and cost savings.[18]

However, shortening the settlement cycle requires a compression of timeframes, which in turn may require a reconfiguration of the trade settlement process and an upgrade of existing systems. CPMI and IOSCO note that, for "markets with a significant share of cross-border trades, substantial system improvements may be essential for shortening settlement cycles". Canada is such a market because of its extensive cross-border securities trading with the United States. "Without such investments, a move to a shorter cycle could generate increased settlement fails, with a higher proportion of participants unable to agree and exchange settlement data or to acquire the necessary resources for settlement in the time available."[19]

During the Fall of 2014, in anticipation of the U.S. move to a shorter settlement cycle, staff from the Ontario Securities Commission (**OSC**) conducted a sample of industry interviews to gain a sense of the readiness of

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[11] See RSSS report, at para. 3.16. The CPMI and IOSCO suggest that monetary penalties for failing to settle could be imposed contractually or by market authorities; alternatively, failed trades could be marked to market and, if not resolved within a specified timeframe, closed out at market prices.

[12] See *Global Clearing and Settlement: A Plan of Action,* report of the G30 released on January 23, 2003.

[13] Recommendation 5: Automate and standardize institutional trade matching.

[14] See Notice 24-312. The migration to a T+2 settlement period in Europe is an important contributory factor in achieving the wider ambitions of "Target2-Securities" (T2S), the European Central Bank initiative to streamline Europe's securities settlement structure.

[15] See ASX, "Shortening the Settlement Cycle in Australia: Transitioning to T+2 for Cash Equities", Consultation Paper, 25 February 2014 (**ASX Paper**); available at: http://www.asx.com.au/documents/public-consultations/T2_consultation_paper.PDF.

[16] For information on the initiatives of the securities industry in the United States to shorten the settlement cycle to T+2 from the current T+3, see the following website : http://www.ust2.com/. The transition date of September 5, 2017 to move from a T+3 to a T+2 settlement cycle was announced by the U.S. industry on March 7, 2016. See T2 Settlement Media Alert, March 7, 2016 "US T+2 ISC recommends move to shorter settlement cycle on September 5, 2017"; available at: http://www.ust2.com/pdfs/T2-ISC-recommends-shorter-settlement-030716.pdf

[17] See "CCMA announces T+2 Steering Committee", September 11, 2015 (**CCMA Release**); available at: http://ccma-acmc.ca/en/ccma-announces-t2-steering-committee-t2sc/.

[18] See White Paper "Cost benefit analysis of shortening the settlement cycle," prepared by The Boston Consulting Group – Commissioned by The Depository Trust and Clearing Corporation, October 2012; available at: http://www.ust2.com/industry-action/

[19] See RSSS report, at para. 3.15.

the Canadian industry to make the move to T+2. All the industry participants interviewed expressed the view that the Canadian industry must make the move to T+2 at the same time as the U.S. markets. Failure to do so would be detrimental to the Canadian capital markets due to the interconnectedness of our markets (i.e., the large volumes and value of cross-border trades and the large number of inter-listed securities). At the same time, there would appear to be little, or no, benefit to be gained by moving prior to the U.S.[20]

The move to T+2 with the U.S. markets is consistent with previous efforts by the Canadian securities industry to align trade settlement timelines and processes with those of the Unites States.[21] Previous Canadian industry settlement and STP initiatives have attempted to be consistent with U.S. industry efforts because market practices in both countries are generally the same, and the securities clearing and settlement systems in both countries are closely integrated.[22]

The Canadian Capital Markets Association (**CCMA**)[23] is leading the efforts of the securities industry in Canada to prepare for the migration to a T+2 settlement cycle on September 5, 2017. It has been mandated by industry stakeholders to lead and coordinate the Canadian industry's preparations for the T+2 migration, by ensuring that a cross-section of sell side, buy side, custodial, market infrastructure and back-office vendor representatives are participating on various CCMA sub-committees and working groups. A CCMA T+2 Steering Committee (the **T2SC**) and various working groups are coordinating activities in Canada, including identifying operational improvements (system development, procedures and processes), gaining industry agreement on minimum standards, identifying rule changes, agreeing on timelines, coordinating the completion of tasks, and planning an industry-wide testing that will be needed to ensure overall industry readiness for the migration to T+2.[24]

Among the rules that the CCMA has identified will require amendment are the rules of the Investment Industry Regulatory Organization of Canada (**IIROC**) and the exchanges that specifically mandate a three day settlement cycle or that are keyed to the settlement date and require pre-settlement actions.[25] Timely changes to such rules will be crucial for the industry to accomplish a migration to T+2 and meet the targeted implementation of September 5, 2017. The CCMA has also recommended amending NI 24-101 to remove an extended ITM deadline that accommodates cross-border trades from distant geographical zones. See Part 6 below.

While NI 24-101 neither expressly mandates a T+3 settlement cycle, nor would prevent the T+2 migration, it has a number of provisions that require adjustment to facilitate the move to a T+2 settlement cycle. These are discussed in the Request for Comment Notice.

3. Monitoring failed trades

As noted above, the frequency and duration of settlement failures should be monitored closely, and the risk implications of the fail rates should be analysed and actions identified that could reduce the rates or mitigate the associated risks.

3.1 What is a failed trade?

[20] See Notice 24-312.

[21] See DP 24-401, at p. 3984. We had noted then a 2000 economic analysis conducted by Charles River Associates of the consequences for Canada of not moving to a T+1 settlement cycle in a coordinated manner with the United States. The analysis demonstrated that, if Canada were to remain at T+3 while the U.S. moves to T+1, our markets would become uncompetitive vis-à-vis the U.S. markets and would suffer harm.

[22] See DP 24-401, at p. 3985. The connection between the CDS and The Depository Trust & Clearing Corporation (**DTCC**) is the most active and sophisticated inter-depository linkage globally. About 40% of trades on Canadian stock exchanges are in inter-listed securities, and Canada-U.S. cross-border transactions make up nearly 25% of the millions of trades processed annually through CDS. See: http://www.ust2.com/news/t2-too-update-from-canada/

[23] The CCMA is a federally incorporated, not-for-profit organization, launched to identify, analyze and recommend ways to meet the challenges and opportunities facing Canadian and international capital markets. See: http://www.ccma-acmc.ca/

[24] See CCMA Release. The T2SC has mandated four working groups to focus on specific areas of expertise. An Operational Working Group is responsible for identifying processes, procedures, and conflicted areas that may prevent T+2 from being successful. A Communication and Education Working Group is tasked with ensuring that T+2 information reaches all areas of the industry and public. A Mutual Fund Working Group is tasked with identifying issues regarding investment funds and similar products (such as segregated funds). A Legal and Regulatory Working Group is tasked with identifying all relevant rules (including the rules of SROs, marketplaces, and clearing agencies) that will need to be investigated for possible change.

[25] On July 28, 2016, IIROC published for comment proposed amendments to IIROC's Universal Market Integrity Rules, Dealer Member Rules, and Form 1 to facilitate the investment industry's move to T+2 settlement. See IIROC Notice 16-0177 *Amendments to facilitate the investment industry's move to T+2*, at: http://www.osc.gov.on.ca/documents/en/Marketplaces/iiroc_20160728_iiroc-notice-16-0177.pdf.

The term "failed trade" is not defined in securities legislation.[26] However, a failed trade is generally considered to occur when the seller (whether short or long) fails to deliver securities to the buyer when delivery is due (usually on T+3) or the buyer fails to pay the funds when payment is due (usually T+3).[27] In the context of this policy consultation, we refer to failed trades, or settlement fails or failures, as usually meaning a failure to deliver securities, or "fail to deliver". The failure to pay for securities, or "cash fail", is more easily resolvable, as cash is fungible and the party failing to pay may rely on credit facilities.[28] In a fail to deliver, on the other hand, securities need to be delivered in the specific agreed-upon type (ISIN code), which in some cases may not be easily available in the market for purchase or borrowing.[29] Moreover, a fail to deliver may expose a counterparty to replacement cost risk if the value of the securities fluctuates while the transaction remains unsettled.[30] In the context of a clearing agency's operations, a fail to deliver means the non-delivery of securities on "value date" (again, generally on T+3) in a delivery-versus-payment (**DVP**) mechanism. The CPMI and IOSCO suggest that markets should take steps to mitigate both the risks and the implications of failures to deliver securities.[31]

3.2 CNS fails in Canada

Currently, CDS provides data to the OSC on daily cumulative fails to deliver in its continuous net settlement (**CNS**) service. CNS is a central counterparty (**CCP**) service that nets and novates most trades that are executed on marketplaces in Canada, primarily in equity and ETF securities. CNS fails data can be used as a fair proxy for monitoring the settlement efficiency of the Canadian equity markets because they reflect the cumulative number and value of failed equity trades at CDS on any given date. Appendix A to this Consultation Paper contains a brief description and analysis of aggregate CNS fails rates in Canada.

It is important to emphasize that no specific conclusions can be drawn from the CNS fails data about overall settlement failures in all our cash markets. Daily cumulative CNS fail rates are not a reflection of all settlement fails at CDS, especially fixed income trades, which are mostly processed for settlement through CDS' trade-for-trade service, and not through CNS; nor do they represent aggregate settlement fails at the "account level" in the multitude of securities accounts maintained by dealers, custodians and other securities intermediaries for their customers.[32]

4. Settlement discipline regime

There are a number of rules and industry standards and practices that, together, can be considered to comprise the *settlement discipline* regime in Canada. In addition to basic contractual obligations, most requirements regarding settlement obligations arise from rules imposed by the CSA, self-regulatory organizations (**SROs**), exchanges and clearing agencies. The measures vary and are directly designed to either (i) encourage the timely settlement of a trade by the standard settlement date, or (ii) incentivize or force the timely resolution of a failure to deliver securities on time.[33] While we discuss some of these settlement discipline measures below, we focus in particular on NI 24-101 in Part 5 of this Consultation

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[26] The term "failed trade" is defined in IIROC's Universal Market Integrity Rules (UMIR). UMIR Rule 1.1 defines "failed trade" as a trade resulting from the execution of an order entered on a marketplace on behalf of an "account" and (a) in the case of a sale, other than a short sale, the account failed to make available securities in such number and form; (b) in the case of a short sale, the account failed to make: (i) available securities in such number and form, or (ii) arrangements with the Participant or Access Person to borrow securities in such number and form; and (c) in the case of a purchase, the account failed to make available monies in such amount, as to permit the settlement of the trade at the time on the date contemplated on the execution of the trade. The provision further provides that a trade shall be considered a "failed trade" irrespective of whether the trade has been settled in accordance with the rules or requirements of the clearing agency.

[27] See also March 2, 2012, Notice of Request for Comment: CSA/IIROC Joint Notice 23-312 - *Transparency of Short Selling and Failed Trades*, (2012) 35 OSCB 2099 (**Notice 23-312**); available at: http://www.osc.gov.on.ca/documents/en/Securities-Category2/csa_20120302_23-312_rfc-trans-short-selling.pdf.

[28] Also, in most markets, cash settlements are greatly facilitated by CCP services and delivery-versus-payment (DVP) securities settlement mechanisms.

[29] See European Central Bank, *Settlement Fails – Report on Securities Settlement Systems (SSS) Measures to Ensure Timely Settlement*, April 1, 2011, at p. 1; available at: ttps://www.ecb.europa.eu/pub/pdf/other/settlementfails042011en.pdf.

[30] See PFMI report, at para. 2.5.

[31] See PFMI report, at para. 3.8.2. CPMI and IOSCO had noted in 2002 that, in assessing whether fails are a significant source of risk, fails should not exceed 5% by value. See November 2002, CPSS and IOSCO, *Assessment methodology for "Recommendations for Securities Settlement Systems"*, at p. 8; available at: http://www.bis.org/cpmi/publ/d51.pdf. However, because CPMI and IOSCO may conduct a full review of the market-wide standards in the RSSS report in the future, it is unclear whether such a percentage would still be viewed today as an appropriate measure. See the PFMI report, at para. 1.7.

[32] See the UMIR definition of "failed trade", *supra*, footnote 26.

[33] In addition to these measures, the ability to transfer ownership of securities efficiently and in a timely manner is critical to a firm in the securities industry and to its clients. Since it is in this firm's own interest to avoid settlement fails, commercial pressures impose a certain degree of discipline on the settlement process.

Paper. We anticipate that industry, through the SROs, clearing agencies and marketplaces, will work to revise a number of these measures to be aligned with a T+2 settlement cycle or otherwise support the transition to T+2.

The CSA are seeking feedback on whether existing arrangements in place for the management of settlement risk, including the settlement discipline regime discussed below, will continue to provide appropriate incentives to promote timely settlement and support market efficiency in a T+2 settlement cycle environment.

4.1 CSA instruments and companion policies

A number of CSA instruments and companion policies directly address post-trade execution processing. NI 24-101 requires registered firms trading for or with an institutional investor to have policies and procedures designed to match an institutional trade (in the Instrument, described as a **DAP/RAP trade**) as soon as practical after the trade is executed, but no later than noon on T+1. NI 24-101 also requires registered dealers to have policies and procedures designed to facilitate settlement no later than the standard settlement date prescribed by SROs and relevant marketplaces. We discuss NI 24-101 in more detail in Part 5 below.

Also, Companion Policy 23-101CP (**CP 23-101**) to National Instrument 23-101 – *Trading Rules* (**NI 23-101**) states that a person who enters an order to either purchase or sell a security without having the *ability and intention* to settle the trade would be considered to be violating express anti-manipulation/anti-fraud rules in NI 23-101.[34] In addition, under National Instrument 81-102 *Investment Funds* (**NI 81-102**), the payment obligations for mutual fund purchases or redemptions are required to be met within three business days.[35]

Other CSA rules and policies indirectly support the settlement discipline regime. For example, National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* contains a principle-based rule that requires registered firms to manage the risks associated with their business in accordance with prudent business practices. Implementation of this obligation by registered firms puts in place effective systems and controls to properly manage their risks, including those in relation to settlement of trades. Moreover, National Instrument 24-102 *Clearing Agency Requirements* requires recognized clearing agencies to meet or exceed a number of international risk-management standards associated with the clearing and settlement process.

4.2 Requirements of IIROC

IIROC's dealer member *trading and delivery* rules impose a number of requirements designed to enhance settlement discipline.[36] For example, a rule requires a trade to be settled within a specified settlement cycle, unless alternative terms of settlement are agreed upon in writing.[37] Settlement cycles tend to be shorter for money market instruments and short term government securities (between T and T+2) than for equities and long-term fixed-income securities (normally T+3). Another IIROC rule requires trades among dealer members in non-exchange traded securities (including government debt securities) to be entered or accepted or rejected through the facilities of an "Acceptable Trade Matching Utility" by no later than 6 pm on the day of the trade.[38] In addition, IIROC's "uniform settlement" rule prohibits a dealer member from accepting a trade order from a customer pursuant to an arrangement whereby payment of securities purchased or delivery of securities sold is to be made to or by a settlement agent of the customer (generally,

[34] See Section 3.1(3)(f) of Companion Policy 23-101CP. Certain provinces have inserted similar general anti-fraud and market manipulation provisions into their securities laws (e.g., OSA s. 126.1), which generally override the anti-manipulation/anti-fraud rules in NI 23-101.

[35] Payment of the issue price of securities of a mutual fund must be made to the mutual fund on or before the third business day after the pricing date (see section 9.4 of NI 81-102). Also, a mutual fund must pay the redemption proceeds for securities that are the subject of a redemption order within three business days after the date of calculation of the net asset value per security used in establishing the redemption price (see section 10.4 of NI 81-102). These requirements do not prevent a mutual fund from paying the issue price or the redemption proceeds of securities on a shorter period than a T+3 timeframe (e.g. T+2).

[36] IIROC Dealer Member Rule 800: *Trading and Delivery*. IIROC is proposing to amend some of these requirements to facilitate the investment industry's move to T+2 settlement. See, *supra*, footnote 25.

[37] See Rule 800.27. Despite these settlement cycle rules, market practice appears to allow some degree of failures to deliver on time, particularly if caused by "administrative delays or errors"; e.g., improperly endorsed certificates received from a client, back-office glitches or human error. In essence, it seems the SRO/marketplace rules will tolerate the occasional failure by market participants to settle on time, so long as they settle reasonably quickly after T+3.

[38] See Rule 800.49.

a custodian) unless certain procedures have been followed to facilitate prompt affirmation and settlement of the trade by the settlement agent.[39]

IIROC's Universal Market Integrity Rules (UMIR) and related policies are also relevant. Clause (h) of Part 2 of UMIR Policy 2.2, which interprets the anti-manipulative and deceptive trading provisions of Rule 2.2 of UMIR, provides that entering an order on a marketplace for the sale of a security without, at the time of entering the order, having the *reasonable expectation* of settling any trade that would result from the execution of the order would constitute a manipulative and deceptive trading activity. In addition, Rule 7.10 of UMIR requires "Participants" to report a trade (an "Extended Failed Trade") that has failed to settle on the settlement date if the trade remains unresolved ten trading days following the settlement date.[40] The report must give the reason for the settlement failure. The Participant is also required to update the report once the problem has been rectified.[41]

4.3 Exchanges' T+3 settlement cycle rules

Except for trades with special terms settlement, the exchanges require trades to be settled within T+3.[42]

4.4 Clearing agency and exchange optional buy-in processes

CDS and certain exchanges have "buy-in" rules to enforce settlement, which allow a purchaser, at its discretion, to require the purchase of securities in the market for delivery to the purchaser, with the seller obliged to pay for the costs of the purchase and thereby forcing the settlement obligation of the seller.[43]

Question 1: In your opinion, is the existing settlement discipline regime adequate to promote timely settlement and support market efficiency in a T+2 settlement cycle environment? Please provide reasons for your response, including, if available, any quantitative analysis to support your reasons.

5. National Instrument 24-101 – *Institutional Trade Matching and Settlement*

5.1 Background to, and Purpose of, NI 24-101

NI 24-101 came into force in 2007 and was developed largely to encourage more efficient and timely post-trade execution and pre-settlement ITM processes (trade confirmation, affirmation, allocations and settlement instructions). Under NI 24-101, registered dealers and advisers trading for or with an institutional investor must have ITM policies and procedures designed to match a *DAP/RAP trade* as soon as practical after the trade is executed, but no later than noon on T+1 (**ITM deadline**).[44] The Instrument currently defers the matching deadline to noon on T+2 if the DAP/RAP trade results from an order to buy or sell securities received from an institutional investor whose investment decisions or settlement instructions are usually made in and communicated from a geographical region outside of the North American region (**non-North**

[39] See Rule 800.31. Among other things, the dealer must have obtained an agreement from the customer that the customer will furnish its settlement agent with instructions with respect to the receipt or delivery of the securities involved in the transaction promptly upon receipt by the customer of a trade confirmation from the dealer, or the relevant date and information as to each execution, relating to such order (even though such execution represents the purchase or sale of only a part of the order), and that in any event the customer will ensure that its settlement agent affirms the transaction no later than the next business day after the date of execution of the trade to which the confirmation relates. See subpara. (a)(iv).

[40] An Extended Failed Trade is a "failed trade" within the meaning of the UMIR that was not rectified within ten trading days following the date for settlement contemplated on the execution of that trade. See, *supra*, footnote 26 for the UMIR definition of "failed trade".

[41] There are also UMIR requirements that are designed to prevent abusive short selling practices, which can be characterized as settlement discipline measures (such as the UMIR "pre-borrow requirement" in limited circumstances). However, they are generally specific to short sale trades, and since a short sale is not likely to fail to settle any more than a long sale would be likely to fail to settle, we do not discuss these measures in this Consultation Paper. See the "IIROC Trends Study" described in Appendix A to this paper, which confirms at page 32 previous IIROC studies that "a short sale was less likely to fail in settlement than a trade generally".

[42] See, for example, TSX rule 5-103(1) and Aequitas NEO Exchange Rule 12.03(1).

[43] See, for example, CDS Rules 7.3.8(b) and 7.4.8(b) and TSX Rule 5-301. Generally, where a party to a trade fails to deliver within the usual settlement time, the counterparty may issue a buy-in notice to the defaulting party and request the marketplace to execute the buy-in.

[44] See subsections 3.1(1) and 3.3(1) of the Instrument. A DAP/RAP trade is a trade executed for a client account that permits settlement on a delivery against payment or receipt against payment basis through the facilities of a clearing agency, and for which settlement is made on behalf of the client by a custodian other than the dealer that executed the trade. See, among other terms, the definitions of "DAP/RAP trade", "T", "T+1" and "T+2" in section 1.1 of the Instrument.

American trades).[45] We are proposing to repeal the provision that defers the ITM deadline to noon on T+2 for non-North American trades (see the Request for Comment Notice, and Part 6 below).

Originally, NI 24-101 contained transition provisions that would have eventually imposed, after several years, a requirement to match DAP/RAP trades by no later than midnight on trade date (**midnight on T**). However, in 2010 we amended NI 24-101 to, among other things, halt the transition to midnight on T. In our notice of amendments, we had said that we are maintaining the ITM noon on T+1 deadline in NI 24-101 because, at that time, there were no plans to shorten the T+3 settlement cycle in global markets, and therefore moving to midnight on T would no longer be appropriate. However, we had also noted that we might re-introduce the midnight on T matching deadline into the Instrument through subsequent amendments if circumstances changed, such as from a global shortening of the standard T+3 settlement cycles.[46]

In addition, under the Instrument registered firms are required to complete and file exception reports on Form 24-101F1 if they did not meet, with respect to their institutional trades, the ITM matching threshold of 90% (**ITM threshold**) of trades by value and volume matched by noon on T+1 during a calendar quarter.[47] Also, clearing agencies (in particular, CDS) and matching service utilities (**MSUs**) are required to submit quarterly data on the matching of institutional equity and debt trades of their participants. Appendix B to this Consultation Paper contains a brief analysis of aggregate CDS ITM rates.

Finally, NI 24-101 contains a principles-based settlement rule (**settlement rule**) that requires registered dealers to establish, maintain and enforce policies and procedures designed to facilitate settlement of trades by no later than the "standard settlement date" prescribed by SROs and marketplaces.[48]

5.2 ITM processes

The post-trade execution and pre-settlement processes and systems for comparing and matching institutional trade data are complex, and inextricably linked to clearance and settlement. Most ITM in Canada involves many sequential steps after a trade is executed (referred to as "local" matching, which includes: a notice of execution; verification of trade details; confirmation and affirmation of trade; allocation of trade; and settlement instructions to custodian).[49] All the relevant parties[50] in ITM must agree on trade details as soon as possible so that errors and discrepancies in the trades can be discovered early in the clearing and settlement process.[51] Speedy and accurate ITM is an essential pre-condition to avoiding settlement failures in a shortened settlement cycle environment.[52]

Instead of local ITM, some market participants will use the services of a MSU to perform a "centralized" ITM process that is non-sequential. Either party can submit their trade details at any time, and in any order, into the MSU, which would automatically match the trades based on specific criteria and tolerances set up by the investment manager.[53] There are currently two MSUs in Canada that are authorized to provide such services.

5.3 Factors to improve ITM performance and generally to facilitate the move to a T+2 settlement cycle

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[45] See subsections 3.1(2) and 3.3(2). "North American region" means Canada, the United States, Mexico, Bermuda and the countries of Central America and the Caribbean. See section 1.1.

[46] CSA Notice of Amendments to NI 24-101 Institutional Trade Matching and Settlement and Companion Policy 24-101CP Institutional Trade Matching and Settlement, dated April 16, 2010, (2010) 33 OSCB 3379 (**2010 Notice**), at p. 3380; available at: http://www.osc.gov.on.ca/documents/en/Securities-Category2/csa_20100416_24-101_notice-amd.pdf. See also: (i) CSA Notice 24-307 – *Exemption from Transitional Rule: Extension of Transitional Phase-In Period in NI 24-101*, dated April 4, 2008, (2008) 31 OSCB 3721 (**2008 Notice**); available at: http://www.osc.gov.on.ca/documents/en/Securities-Category2/csa_20080404_24-307_phase-in-24-101.pdf; and (ii) CSA Notice and Request for Comment – *Proposed Amendments to NI 24-101 Institutional Trade Matching and Settlement and Companion Policy 24-101CP Institutional Trade Matching and Settlement*, dated October 30, 2009, (2009) 32 OSCB 9059 (**2009 Notice**); available at: http://www.osc.gov.on.ca/documents/en/Securities-Category2/rule_20091030_24-101_pro-amd.pdf .

[47] See Part 4 of the Instrument.

[48] The settlement rule applies to all trades, not just DAP/RAP trades. It does not specifically reference "T+3", but instead incorporates the settlement period norms established by the SROs or marketplaces.

[49] See Companion Policy, ss. 1.2(2) and (3).

[50] In NI 24-101, referred to as the "trade-matching parties". See definitions in s. 1 of the Instrument.

[51] See Companion Policy, ss. 1.2(2).

[52] See the RSSS report, at para. 3.10. See also DP 24-401, at p. 3995; and more recently Notice 24-312.

[53] See Omgeo, "Mitigating Operational Risk and Increasing Settlement Efficiency through Same Day Affirmation (SDA)", Industry Discussion Paper, October 2010 (**Omgeo paper**), at p. 16 (footnote 13).

Despite our decision in 2010 not to transition the ITM deadline to midnight on T, we encouraged the industry to work towards ITM goals that are earlier than noon on T+1.[54] We suggested tools to further improve ITM rates, such as the adoption of order management systems or the use of MSUs, together with moving from end-of-day batch processing to more frequent intra-day or real-time processing.

We strongly encouraged market participants to pursue further technology and processing improvements. Specifically, we encouraged:

- the buy-side to augment their use of front-office automation to enable more timely post-execution operations;
- dealers to continue their efforts to shift from end-of-day batch processing to more frequent intra-day or real time processing;
- custodians to support their clients in greater use of technology and other alternatives to improve ITM, including dissuading clients from manual post-execution activities (e.g., using telephones, fax machines or e-mails to communicate trade details and settlement instructions); and
- CDS and other back-office service providers to consider modifying their systems to expand their processing schedules and accept matched trades on T later in the processing day to facilitate compressed timelines and accurate measurement of a firm's ITM and settlement performance.

In addition, we noted our view that MSUs could play an important role in bringing all trade-matching parties together to expedite ITM processes. Industry-wide automation and *interoperability* would strengthen the efficiency and integrity of the securities clearing and settlement process and ultimately improve investor protection and the global competitiveness of the markets in Canada.[55]

The actions described above are more important than ever as we move to T+2. Market participants will need to implement improvements to accelerate their ITM timelines and enhance their operational efficiency in post-trade execution processing.

5.3.1 Same day affirmation or "SDA"

Same day affirmation (**SDA**) is achieved when an institutional trade is confirmed and affirmed on the day of the trade. Certain foreign markets and international post-trade execution service providers have identified the importance of achieving higher rates of SDA as a necessary pre-condition to ensure settlement failures do not increase with the introduction of a T+2 settlement cycle.[56] SDA helps speed up the post-trade ITM and settlement processes, by compressing the confirmation-affirmation steps, allowing for more time to complete trade allocations and settlement instructions and address errors and mismatches before trades are due to settle. By agreeing on the details of a trade more quickly, operational risk, costs and inefficiencies can be reduced. Automated trade verification, using electronic systems to match the trade details either locally or centrally, enables timely trade confirmation-affirmation and facilitate higher rates of SDA.[57]

Question 2: Given that international research suggests that achieving SDA rates of over 90 percent may be important in delivering greater settlement efficiency and lower rates of settlement failures,[58] is increasing SDA rates in the Canadian markets an important pre-condition to transitioning to T+2?

Question 3: Is a higher degree of automation in the trade confirmation-affirmation processes the key to delivering higher SDA rates? Please provide reasons for your answer.

5.3.2 Faster allocations and settlement instructions matching

The introduction of a T+2 settlement cycle will require a more rigorous and timely release of the allocations and settlement instructions. Generally, we would expect that higher levels of ITM rates by noon on T+1 should be achieved. See Appendix B for more information on current aggregate ITM rates.

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[54] See 2010 Notice, at p. 3380.
[55] See 2009 Notice, at p. 9064. See also DP 24-401, at p. 3984, for a discussion of *interoperability*.
[56] ASX Paper, at p. 10, citing the Omgeo paper. The Omgeo study found that there was a direct correlation between SDA and shortening settlement cycles, and that SDA leads to greater settlement efficiency.
[57] Ibid. The centralized trade verification and matching facility offered by an MSU enables trades to be automatically matched within compressed time frames, without the usual dependency on sequential steps among the trade-matching parties in a local matching trade-verification process.
[58] See ASX paper, at p. 10, which cites the Omgeo paper.

Question 4: What actions could trade-matching parties take to accelerate the timing of the release of allocations and settlement instructions in a T+2 settlement environment?

6. Possible new measures to manage settlement risk

As we move to a T+2 settlement cycle, the CSA believes that it may be appropriate to examine at this time whether new settlement discipline measures may be warranted to help mitigate the risk that settlement failures may increase. We discuss below a number of additional measures to prevent or address settlement fails. Some of the measures also exist in other jurisdictions, such as in the United States, Europe and Australia.

We emphasize that we are not proposing to adopt or mandate the adoption of any of the measures at this time. However, we might consider adopting, or mandate the adoption of, some of them in the future after this consultation process. Commenters who believe that the existing settlement discipline regime is not adequate to promote timely settlement and support market efficiency in a T+2 settlement cycle environment should identify a particular measure that would, in the commenter's view, benefit our markets. In assessing the appropriateness of any of the measures, we ask stakeholders to provide reasons and describe potential benefits and costs to the markets.

6.1 Possible ITM rule amendments

Ensuring STP at all levels of the transaction processing chain will help accelerate ITM and improve accuracy, which will be essential pre-conditions to avoiding settlement failures in a T+2 settlement cycle environment. Amending NI 24-101 in one or more ways might help to achieve this goal. For example, the Instrument could require registered dealers and advisers to have ITM policies and procedures designed to match a *DAP/RAP trade* no later than midnight on T instead of noon on T+1, thereby returning the Instrument to its original target deadline. Alternatively, the ITM threshold could be amended to require a registered firm to complete and file an exception report if it fails to meet a threshold of 95 percent (instead of 90 percent) of trades, measured by both value and volume, matched by noon on T+1 during a calendar quarter.

Question 5: Should the ITM deadline be amended, such that the ITM policies and procedures of a registered dealer or adviser would have to be designed to match a *DAP/RAP trade* no later than midnight on T instead of noon on T+1? Please provide reasons for your answer. If you believe the ITM deadline should be amended, but not to a midnight on T deadline, then please give your views on how the Instrument should be amended.

Question 6: Alternatively, should the ITM threshold be amended, such that a registered firm would be required to complete and file an exception report if it fails to meet a threshold of 95% (instead of 90%) of trades, measured by both value and volume, matched by noon on T+1 during a calendar quarter? Please provide reasons for your answer. If you believe the ITM threshold should be amended, but not to a 95% threshold, then please give your views on how the Instrument should be amended.

Question 7: Are there other pre-settlement measures that could be taken to encourage prompt confirmation and affirmation of a trade and communication of allocations and settlement instructions by trade-matching parties? If so, please describe such measures in reasonable detail.

As we mentioned in the Request for Comment Notice, we are proposing to repeal the provisions in NI 24-101 that extend the ITM deadline to noon on T+2 for non-North American trades. Given the move to a standard T+2 settlement cycle, we believe these provisions are no longer useful. The extended deadline of noon on T+2 for non-North American trades leaves insufficient time to solve problems and avoid failed trades; instead, parties need to match earlier on T+1 regardless of the cross-border nature of the trade, so that they have time to address issues and avoid failed trades. We appreciate the fact that transacting globally is complicated due to communication lags, structural challenges, currency differences, mismatches in global settlement cycles, and time zone issues. However, the move to T+2 will align the securities settlement cycle in Canada with the settlement cycles of most of the major foreign markets, including the U.S. and Europe. While several of the complexities with foreign investment and cross-border transactions will continue to exist, market participants will need to review their internal operations and adapt their ITM policies and procedures accordingly to meet the current ITM deadline of noon on T+1. This is consistent with the need for market participants to align their policies and procedures to meet the standard settlement cycle in the U.S., Europe and other T+2 jurisdictions.

6.2 Possible settlement rule amendment

In 2004, the CSA had asked whether it should mandate a T+3 settlement cycle.[59] The initial proposed NI 24-101 contained a rule that required a dealer who executes a trade in depository eligible securities "to take all necessary steps to settle the trade no later than the end of T+3".[60] We had expressed the view that, although current rules of the SROs and exchanges had already mandated a standard T+3 settlement cycle period for equity and long term debt securities, a general T+3 settlement cycle rule enshrined in provincial securities legislation would strengthen the clearing and settlement system in Canada.

However, a majority of commenters were of the view that the CSA should not mandate a T+3 settlement cycle.[61] Instead, we included in the final version of NI 24-101 the current principles-based settlement rule that requires a registered dealer to establish, maintain and enforce policies and procedures designed to facilitate settlement of trades by no later than the "standard settlement date", as prescribed by the rules of the SROs and marketplaces.

A prescriptive T+2 rule would be consistent with the U.S. Securities and Exchange Commission's (**SEC**) Rule 15c6-1[62] and the European Union's "CSDR regulation" that mandates a T+2 settlement cycle.[63]

Question 8: Should NI-24-101's current principles-based settlement rule be amended to incorporate a prescriptive T+2 rule? Please provide reasons for your answer.

6.3 Possible mechanisms to address settlement fails

A number of foreign jurisdictions have put in place "penalties" associated with settlement failures, or have proposed such penalties, to serve as an incentive for participants that cause settlement fails to resolve them expeditiously. Such penalties operate as monetary incentives (or disincentives) to settle on time, or to resolve fails quickly (e.g., fines or interest charges). They can be explicit (e.g., imposed by an SRO or clearing agency rule) or implicit (e.g., adopted as market practice by industry). The international experience indicates that introducing a minimum penalty discourages settlement fails.[64]

For example, under its CSDR regulation, European Union (EU) authorities are proposing to require central securities depositories (**CSDs**) to establish procedures that impose a cash penalty for participants that cause fails.[65] The cash penalties are to be calculated on a daily basis for each business day that a transaction fails to be settled after its "intended settlement date" (usually, T+2) until the moment of the actual settlement date or until the end of a mandatory buy-in process required to be initiated pursuant to the same regulation. Details of the implementation of the CSDR penalty regime and related operational processing have not yet been finalized.

In Australia, under the settlement disciplinary regime established by the securities exchange ASX, participants that fail to deliver securities on the scheduled settlement date are levied a daily fine.[66] The current fine is 0.1% of the trade value outstanding, with a floor of AU$100 and a cap of AU$5,000. ASX did not propose to increase the financial penalties with the introduction of a T+2 settlement cycle.

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[59] See DP 24-401, at p. 3998.
[60] See Part 5 of the Instrument, as first published on April 16, 2004, in *Proposed National Instrument 24-101 Post-trade Matching and Settlement*, (2004) 27 OSCB 4010; available at: http://www.osc.gov.on.ca/documents/en/Securities-Category2/rule_20040416_24-101_ni-roc.pdf.
[61] See CSA Staff Notice 24-301 - *Responses to Comments Received on Discussion Paper 24-401 on Straight-through Processing, Proposed National Instrument 24-101 Post-trade Matching and Settlement, and Proposed Companion Policy 24-101CP to National Instrument 24-101 Post-trade Matching and Settlement*; February 11, 2005, (2005) 28 OSCB 1509; available at: http://www.osc.gov.on.ca/documents/en/Securities-Category2/csa_20050211_24-301_not-resp-comments.pdf.
[62] 17 CFR 240.15c6-1 - Settlement cycle. The rule requires a broker or dealer not to effect or enter into a contract for the purchase or sale of a security that provides for payment of funds and delivery of securities later than the third business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction. The SEC is intending to amend its rule to require settlement no later than T+2. See letter from the Chair of the SEC to the U.S. industry, dated September 16, 2015, available at: http://www.ust2.com/news/sec-endorsements/
[63] Regulation (EU) No. 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (**CSDR regulation**).
[64] See Bank of Canada, "Securities Financing and Bond Market Liquidity", *Financial System Review,* June 2016, at p. 44; available at: http://www.bankofcanada.ca/2016/06/fsr-june-2016/
[65] See CSDR regulation, Article 7 – Measures to address settlement fails.
[66] See ASX paper, at p. 13.

To encourage prompt delivery of U.S. government and agency securities in a trade, the CCP for fixed income trades in the U.S. collects interest at an annual rate of 3% on the settlement value of the trade that has failed to deliver in the CCP (minus the "Target Fed" funds rate in effect the day before the settlement day).[67]

In addition, a number of foreign jurisdictions have close-out (or forced buy-in) procedures that require the failing participant to remedy a failed trade as quickly as possible.

In Australia, the ASX Settlement Operating Rules require a settlement participant to close out settlement shortfalls that remain after batch settlement on T+5 by purchasing or borrowing securities needed to complete settlement.[68] With the introduction of a T+2 settlement cycle, ASX is proposing to change its settlement operating rules so that settlement disciplinary milestones are also reduced by one business day (that is, financial penalties will be levied for settlement fails on T+2, and the automatic close-out requirement would apply for settlement shortfalls that remain after batch settlement on T+4).

In the U.S., SEC Rule 204 requires brokers and dealers that are participants of a registered clearing agency to take action to close out failure to deliver positions.[69] Closing out under Rule 204 requires the broker or dealer to purchase or borrow securities of like kind and quantity. The participant must close out a failure to deliver for a short sale transaction by no later than the beginning of regular trading hours on the settlement day following the settlement date (currently T+4, but will become T+3 in a T+2 settlement cycle environment). A failure to deliver for a long sale transaction, or for a trade that is attributable to bona fide market making activities, must be closed out by no later than the beginning of regular trading hours on the third consecutive settlement day following the settlement date (currently T+6, but will become T+5 in a T+2 settlement cycle environment).[70]

In Europe, under the CSDR regulation EU authorities are proposing to require CCPs, CSDs or trading venues to put in place a forced "buy-in" process for fails in many types of securities transactions that would be triggered generally within a certain period after the intended settlement date.[71] This period would be dependent on the asset type and liquidity of the relevant security; for example, up to four days for liquid securities, seven days for illiquid securities, and 15 days for transactions on SME growth markets.

Question 9: Is the current settlement discipline regime in Canada sufficient to resolve settlement failures expeditiously or are other mechanisms needed?

- **If other mechanisms should be imposed, what should those mechanisms be?**
- **To which types of trades, securities or markets should such mechanisms apply?**
- **How would a settlement failure be determined or defined for the purposes of such mechanisms?**
- **Who should establish and administer such mechanisms (for example, an SRO, clearing agency or CSA regulator)?**

6.4 Other potential impediments to ensuring timely settlement of trades

We seek stakeholder views on whether any other aspect of the securities clearing and settlement processing chain not discussed above may be a source of delay in meeting a T+2 settlement timeline. It is important that stakeholders identify the weak links in the processing chain so that regulators can consider

[67] See the following documents published by The Treasury Market Practices Group (TMPG), revised February 2016: *U.S. Treasury Securities Fails Charge Trading Practice* and *Agency Debt and Agency Mortgage-Backed Securities Fails Charge Trading Practice*; both available on the Website of the Federal Reserve Bank of New York, at: https://www.newyorkfed.org/tmpg/about.html. The TMPG is composed of senior business managers and legal and compliance professionals from a variety of institutions — including securities dealers, banks, buy-side firms, market utilities and others — and is sponsored by the Federal Reserve Bank of New York. The U.S. CCP for fixed income trades is Fixed Income Clearing Corporation, a wholly owned subsidiary of DTCC.
[68] ASX paper, at p. 13.
[69] 17 CFR 242.204 - Close-out requirement.
[70] If the position is not closed out, the broker or dealer and any broker or dealer for which it clears transactions (for example, an introducing broker) may not effect further short sales in that security without borrowing or entering into a bona fide agreement to borrow the security (known as the "pre-borrowing" requirement) until the broker or dealer purchases shares to close out the position and the purchase clears and settles.
[71] See CSDR regulation, Article 7 – Measures to address settlement fails.

whether additional settlement discipline measures may be needed to address such weak links.[72] For example, we are interested in knowing whether any services or systems currently used by investors, issuers or other market participants for the clearance and settlement of securities transactions, the maintenance of securities accounts, and the safeguarding of securities may not be able to support a shorter T+2 settlement environment. The reasons for this could be varied, including because the service or system is too dependent on manual processes and is not sufficiently automated.

Question 10: Are there other aspects of the securities transaction processing chain that may be a source of delay in meeting a T+2 settlement timeline? If so, please describe them and identify any additional settlement discipline measures that could be taken to address such delays. Please describe such measures in reasonable detail.

Conclusion

In this Consultation Paper, we briefly describe the Canadian securities industry's efforts to prepare for shortening the standard settlement cycle from T+3 to T+2. The move to T+2 is expected to occur on September 5, 2017, at the same time as the markets in the United States move to T+2. We provide an overview of existing settlement discipline measures in the Canadian equity and debt markets.

The Consultation Paper raises certain policy considerations for addressing the risk that the transition to a standard T+2 settlement cycle may increase settlement failures in our markets. We are seeking feedback on whether existing arrangements in place for the management of settlement risk will continue to provide appropriate incentives to promote timely settlement and support market efficiency in a T+2 settlement cycle environment. As we move to a T+2 settlement cycle, to help mitigate the risk that settlement failures may increase, it might be prudent to consider adopting, or mandate the adoption of, new measures to enhance the settlement discipline regime in a T+2 settlement environment.

We seek feedback on any aspect of this Consultation Paper and, in particular, on the following specific questions:

Question 1: In your opinion, is the existing settlement discipline regime adequate to promote timely settlement and support market efficiency in a T+2 settlement cycle environment? Please provide reasons for your response, including, if available, any quantitative analysis to support your reasons.

Question 2: Given that international research suggests that achieving SDA rates of over 90 percent may be important in delivering greater settlement efficiency and lower rates of settlement failures, is increasing SDA rates in the Canadian markets an important pre-condition to transitioning to T+2?

Question 3: Is a higher degree of automation in the trade confirmation-affirmation processes the key to delivering higher SDA rates? Please provide reasons for your answer.

Question 4: What actions could trade-matching parties take to accelerate the timing of the release of allocations and settlement instructions in a T+2 settlement environment?

Question 5: Should the ITM deadline be amended, such that the ITM policies and procedures of a registered dealer or adviser would have to be designed to match a *DAP/RAP trade* no later than midnight on T instead of noon on T+1? Please provide reasons for your answer. If you believe the ITM deadline should be amended, but not to a midnight on T deadline, then please give your views on how the Instrument should be amended.

Question 6: Alternatively, should the ITM threshold be amended, such that a registered firm would be required to complete and file an exception report if it fails to meet a threshold of 95% (instead of 90%) of trades, measured by both value and volume, matched by noon on T+1 during a calendar quarter? Please provide reasons for your answer. If you believe the ITM threshold should be amended, but not to a 95% threshold, then please give your views on how the Instrument should be amended.

Question 7: Are there other pre-settlement measures that could be taken to encourage prompt confirmation and affirmation of a trade and communication of allocations and settlement instructions by trade-matching parties? If so, please describe such measures in reasonable detail.

[72] A discussion of the potential for emerging technologies, such as the blockchain concept and distributed ledgers, to radically transform current clearing and settlement processes and systems is beyond the scope of this policy consultation.

Question 8: Should NI-24-101's current principles-based settlement rule be amended to incorporate a prescriptive T+2 rule? Please provide reasons for your answer.

Question 9: Is the current settlement discipline regime in Canada sufficient to resolve settlement failures expeditiously or are other mechanisms needed?

- **If other mechanisms should be imposed, what should those mechanisms be?**
- **To which types of trades, securities or markets should such mechanisms apply?**
- **How would a settlement failure be determined or defined for the purposes of such mechanisms?**
- **Who should establish and administer such mechanisms (for example, an SRO, clearing agency or CSA regulator)?**

Question 10: Are there other aspects of the securities transaction processing chain that may be a source of delay in meeting a T+2 settlement timeline? If so, please describe them and identify any additional settlement discipline measures that could be taken to address such delays. Please describe such measures in reasonable detail.

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APPENDIX A
Aggregate CNS Fails Rates

CDS measures aggregate fails to deliver in its CNS system based on the aggregate value of securities that fail to settle on T+3. CDS acts as central counterparty to each trade processed through the CNS system (generally, most equity trades on marketplaces). In the CNS system, each CNS participant's daily purchases and sales of a security, based on trade date, are automatically netted into one long position (right to receive securities from CDS) or one short position (obligation to deliver securities to CDS) for each issue purchased and sold.

Where a CNS participant fails to deliver securities to CDS on T+3, a fail to deliver occurs. A number of CNS participants could be in a short position at any one time, and fail to deliver on T+3. All fails to deliver in a particular issue of securities on a given day are a cumulative number of all fails outstanding until that day, plus new fails that occur that day, less fails that settle that day. The figure is not a daily amount of fails, but a combined figure that includes both new fails on the reporting day as well as existing fails. In other words, these numbers reflect aggregate fails as of a specific point in time (the CNS system does not track the length of time that a fail to deliver remains outstanding or "age" of a fail).

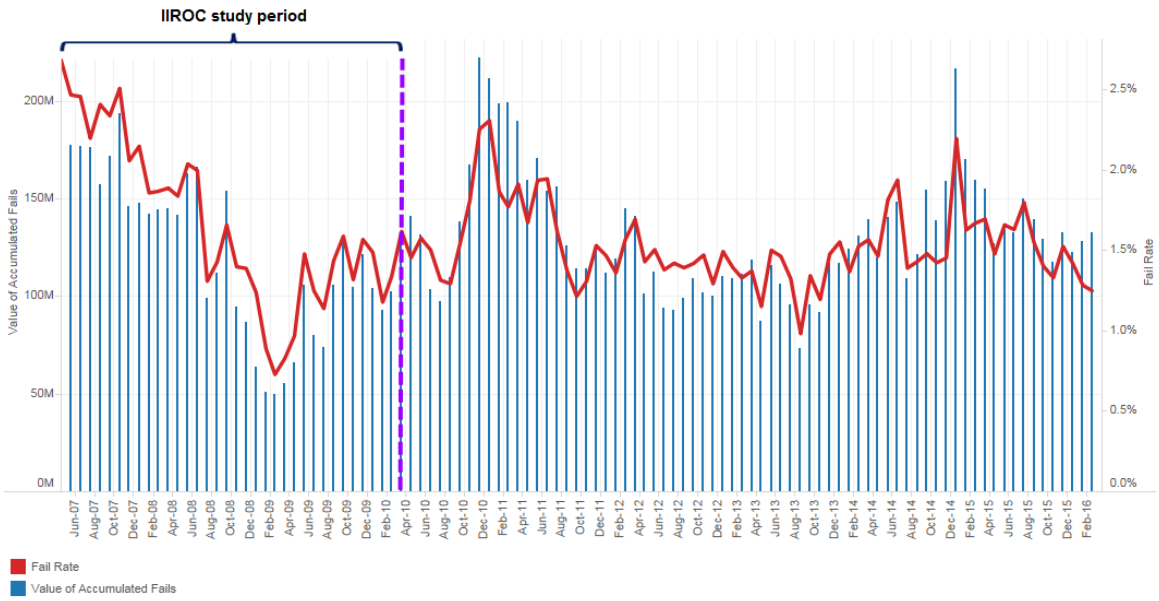
The aggregate value of accumulated fails to deliver on a particular day in the CNS system is then compared to the aggregate value of all trades that settle on "value date" in CNS on that day. The value of trades eligible for CNS is lagged by three days such that the trade-date data are matched to the failures associated with that trade date on a T+3 basis. In order to "smooth" out the effects of the failure of an individual large block trade or of unusual levels of trading activity (such as trading days on Canadian marketplaces when markets in the United States are closed), CDS calculates 20-day rolling averages for both measures.

Using the CNS fails data received from CDS, OSC staff have compiled the information to create Chart A-1, as well as set out the data in Table A-1 below. Table A-1 and the chart reflect daily aggregate CNS fails from May 1, 2007 to March 31, 2016. A part of this period, i.e., from May 2007 to April 2010 (**IIROC study period**) was analyzed by IIROC in a February 2011 report entitled *Trends in Trading Activity, Short Sales and Failed Trades – For the period May 1, 2007 to April 30, 2010* (**IIROC Trends Study**).[73] IIROC concluded that, overall during the IIROC study period, there was a general downward trend in the value of accumulated fails as a percentage of the aggregate value of trades processed in CNS, with the exception of a "spike" in trade failures that occurred in September 2008 during the financial crisis.[74] According to IIROC, the decline may have been attributable to two factors:

- general decline in the length of time that a "failed" trade remains outstanding; or
- a general decline in the rate of trade failures.

[73] The IIROC Trends Study is available at: http://www.iiroc.ca/Documents/2011/cee8bc8c-a639-44de-bcfc-f2e499676f43_en.pdf.
[74] See the IIROC Trends Study, at p. 27-28. According to IIROC, this spike was "due to the bankruptcy of a major U.S. investment dealer that was the ultimate counter-party to a significant volume of trades".

Chart A-1 – Daily CNS fails rate



From May 1, 2010 onwards (i.e., after the end of the IIROC study period) the declining trend in CNS fail rates appears to have abated, with cumulative CNS fails remaining relatively stable and generally below 2% of the aggregate value of trades processed through CNS.[75] The average of aggregate CNS fails during the entire period May 1, 2007 to March 31, 2016 is 1.58%. See Table A-1 below.

While the CNS fails data does not provide information on the causes of fails, previous IIROC studies have found that the "predominant cause of failed trades is administrative delay or error".[76] Even if the data is unable to tell us whether a fail at the clearing agency level (i.e, a delivery failure caused by a direct participant of the clearing agency) is caused by a corresponding fail at a dealer's or custodian's client-account level, it is probable that many fails to settle trades at the clearing agency are the direct or indirect result of fails in such underlying accounts maintained at one or more tiers of such intermediaries.

With respect to average fail rates in markets outside of Canada, different markets apply different methodologies for calculating fail rates, so it is also difficult to draw comparisons with foreign markets. The IIROC Trends Study contains a brief comparative analysis with fails in the United States. Based on information from the SEC's Office of Economic Analysis,[77] IIROC suggested that "fail rates in the United States may be somewhat higher than in Canada after taking into account differences in the size of the respective markets".[78]

[75] However, there are some exceptions to this general observation: it also appears that certain unexplained, but temporary, increases or spikes in fails to deliver occurred in late 2010/early 2011 and early 2015 when the fail rate increased above the 2% mark.
[76] See the IIROC Trends Study, at p. 5-6.
[77] See Office of Economic Analysis, *Impact of recent SHO Rule Changes on Fails to Deliver* (April 16, 2009). A revised version of this document dated November 4, 2009 is available at: https://www.sec.gov/spotlight/shortsales/oeamemo110409.pdf.
[78] It is interesting to note that, in Australia, the settlement failure rate for cash equities is extremely low, with an average daily settlement failure rate of 0.339% over the December 2013 quarter. See ASX Paper, at p. 13. It is unclear whether this percentage is based on number of securities or the value of the securities that fail to settle on time. The ASX says that the high level of settlement efficiency in Australia is demonstrated by both average daily settlement completion rate of 99.7% and the fact that 77.8% of settlements which failed on T+3 were completed by T+4. Ninety three percent of the settlements that failed on T+3 over Q4 2013 involved securities outside the top 50 ASX-listed securities.

Table A-1 – Value of Accumulated Fails in CNS

Table A-1 – Value of Accumulated Fails			
Month	20-Day Rolling Average of		Value of Accumulated Fails as % of Trade Value
	Continuous Net Settlement Trade Value	Value of Accumulated Fails	
May-07	$ 7,072,864,788	$ 190,530,817	2.69%
Jun-07	$ 7,175,899,218	$ 177,079,299	2.47%
Jul-07	$ 7,186,423,091	$ 176,816,985	2.46%
Aug-07	$ 8,016,228,401	$ 176,485,419	2.20%
Sep-07	$ 6,523,189,147	$ 157,141,611	2.41%
Oct-07	$ 7,349,209,434	$ 171,706,634	2.34%
Nov-07	$ 7,714,020,926	$ 193,563,475	2.51%
Dec-07	$ 7,063,445,146	$ 145,759,967	2.06%
Jan-08	$ 6,884,294,114	$ 147,751,865	2.15%
Feb-08	$ 7,629,710,520	$ 141,827,181	1.86%
Mar-08	$ 7,723,931,327	$ 144,401,989	1.87%
Apr-08	$ 7,683,901,472	$ 144,996,218	1.89%
May-08	$ 7,695,119,932	$ 141,500,208	1.84%
Jun-08	$ 7,990,506,163	$ 163,049,106	2.04%
Jul-08	$ 8,300,632,652	$ 165,949,115	2.00%
Aug-08	$ 7,566,027,689	$ 98,967,891	1.31%
Sep-08	$ 7,765,134,588	$ 111,699,872	1.43%
Oct-08	$ 9,265,502,773	$ 153,736,905	1.66%
Nov-08	$ 6,730,676,331	$ 94,520,509	1.40%
Dec-08	$ 6,242,704,936	$ 86,917,132	1.39%
Jan-09	$ 5,140,145,092	$ 63,994,026	1.24%
Feb-09	$ 5,712,182,858	$ 50,783,628	0.89%
Mar-09	$ 6,637,664,169	$ 50,053,832	0.73%
Apr-09	$ 6,690,814,518	$ 55,662,309	0.83%
May-09	$ 6,866,748,063	$ 66,107,911	0.97%
Jun-09	$ 7,140,039,142	$ 105,592,566	1.48%
Jul-09	$ 6,330,705,081	$ 80,248,484	1.25%
Aug-09	$ 6,524,151,799	$ 73,859,488	1.14%
Sep-09	$ 7,499,492,432	$ 105,980,101	1.44%
Oct-09	$ 8,010,051,153	$ 128,256,855	1.59%
Nov-09	$ 7,867,282,950	$ 104,376,622	1.32%
Dec-09	$ 7,755,872,818	$ 121,610,483	1.57%
Jan-10	$ 7,015,269,830	$ 104,335,029	1.49%
Feb-10	$ 7,854,569,053	$ 92,934,069	1.18%
Mar-10	$ 7,673,630,354	$ 102,195,128	1.34%
Apr-10	$ 8,228,071,445	$ 133,018,447	1.62%
May-10	$ 9,680,483,463	$ 141,053,179	1.46%
Jun-10	$ 8,332,890,633	$ 131,457,722	1.58%
Jul-10	$ 6,863,386,601	$ 103,316,906	1.51%
Aug-10	$ 7,400,363,281	$ 97,441,461	1.32%
Sep-10	$ 8,486,406,274	$ 109,836,461	1.29%
Oct-10	$ 8,942,465,332	$ 138,031,677	1.54%
Nov-10	$ 9,216,966,639	$ 167,228,840	1.81%
Dec-10	$ 9,847,801,045	$ 222,187,757	2.26%
Jan-11	$ 9,161,265,959	$ 211,598,802	2.31%
Feb-11	$ 10,649,798,759	$ 198,685,634	1.87%
Mar-11	$ 11,221,033,494	$ 199,034,117	1.77%
Apr-11	$ 9,905,815,097	$ 189,657,100	1.91%
May-11	$ 9,504,509,917	$ 159,198,189	1.67%
Jun-11	$ 8,814,514,979	$ 170,858,690	1.94%
Jul-11	$ 7,906,422,785	$ 153,942,946	1.95%
Aug-11	$ 9,645,711,225	$ 156,234,934	1.62%
Sep-11	$ 9,136,409,948	$ 125,736,996	1.38%
Oct-11	$ 9,379,516,927	$ 114,059,066	1.22%
Nov-11	$ 8,731,360,061	$ 114,310,999	1.31%
Dec-11	$ 8,209,229,504	$ 125,748,021	1.53%

Table A-1 – Value of Accumulated Fails			
Month	20-Day Rolling Average of		Value of Accumulated Fails as % of Trade Value
	Continuous Net Settlement Trade Value	Value of Accumulated Fails	
Jan-12	$ 7,627,146,676	$ 112,114,440	1.47%
Feb-12	$ 8,752,801,479	$ 119,229,480	1.36%
Mar-12	$ 9,254,526,183	$ 145,092,895	1.57%
Apr-12	$ 8,326,839,455	$ 141,150,535	1.70%
May-12	$ 7,060,215,801	$ 101,068,837	1.43%
Jun-12	$ 7,472,308,216	$ 112,567,935	1.51%
Jul-12	$ 6,793,008,979	$ 93,821,758	1.38%
Aug-12	$ 6,537,526,483	$ 92,989,892	1.42%
Sep-12	$ 7,114,775,151	$ 99,175,350	1.39%
Oct-12	$ 7,664,088,294	$ 108,878,215	1.42%
Nov-12	$ 6,903,115,514	$ 101,685,366	1.47%
Dec-12	$ 7,754,502,011	$ 100,380,386	1.29%
Jan-13	$ 7,361,459,898	$ 110,013,649	1.49%
Feb-13	$ 7,825,580,622	$ 109,151,397	1.39%
Mar-13	$ 8,369,051,413	$ 111,398,558	1.33%
Apr-13	$ 8,626,141,145	$ 118,459,809	1.37%
May-13	$ 7,549,909,603	$ 87,034,523	1.15%
Jun-13	$ 7,708,191,934	$ 115,808,064	1.50%
Jul-13	$ 7,249,298,529	$ 106,239,613	1.47%
Aug-13	$ 7,222,839,903	$ 95,762,354	1.33%
Sep-13	$ 7,467,273,049	$ 73,458,972	0.98%
Oct-13	$ 7,134,066,435	$ 95,895,171	1.34%
Nov-13	$ 7,647,258,002	$ 91,523,310	1.20%
Dec-13	$ 7,899,019,895	$ 116,860,952	1.48%
Jan-14	$ 7,520,037,956	$ 116,866,404	1.55%
Feb-14	$ 9,068,268,939	$ 124,202,397	1.37%
Mar-14	$ 8,584,955,918	$ 131,110,465	1.53%
Apr-14	$ 8,883,557,953	$ 139,317,479	1.57%
May-14	$ 8,164,086,538	$ 119,730,161	1.47%
Jun-14	$ 7,722,030,302	$ 140,318,789	1.82%
Jul-14	$ 7,657,546,131	$ 148,530,599	1.94%
Aug-14	$ 7,852,382,868	$ 109,286,911	1.39%
Sep-14	$ 8,464,405,954	$ 121,268,376	1.43%
Oct-14	$ 10,437,412,125	$ 154,583,284	1.48%
Nov-14	$ 9,730,735,609	$ 138,721,246	1.43%
Dec-14	$ 10,928,812,528	$ 159,046,647	1.46%
Jan-15	$ 9,851,185,673	$ 216,597,828	2.20%
Feb-15	$ 10,443,117,192	$ 170,100,474	1.63%
Mar-15	$ 9,539,542,128	$ 159,427,943	1.67%
Apr-15	$ 9,139,613,831	$ 155,047,935	1.70%
May-15	$ 8,594,193,281	$ 127,206,751	1.48%
Jun-15	$ 8,093,983,952	$ 134,392,981	1.66%
Jul-15	$ 8,128,056,379	$ 132,644,452	1.63%
Aug-15	$ 8,339,300,943	$ 150,044,043	1.80%
Sep-15	$ 8,960,875,588	$ 139,050,902	1.55%
Oct-15	$ 9,226,858,931	$ 129,445,026	1.40%
Nov-15	$ 8,798,002,637	$ 117,217,762	1.33%
Dec-15	$ 8,687,635,347	$ 132,572,379	1.53%
Jan-16	$ 8,611,974,623	$ 122,258,166	1.42%
Feb-16	$ 9,970,479,116	$ 128,119,896	1.28%
Mar-16	$ 10,618,968,915	$ 132,864,132	1.25%
Period Average	**$ 8,120,574,125**	**$ 128,623,977**	**1.58%**

Source: CDS

APPENDIX B
Aggregate ITM Rates

As we had stated in previous CSA notices in 2008, 2009 and 2010,[79] during the period from 2004 to 2009, we believe NI 24-101 had successfully encouraged market participants to address ITM middle and back-office problems and generally improve their clearing and settlement processes and systems. Many processes were re-engineered and became automated, resulting in efficiency gains and STP. Overall ITM rates at T and at T+1 had improved significantly from April 2004 to June 2009.[80] Specifically, the combined equity and debt industry ITM rate at midnight on T improved from 2.98% in April 2004 to 48.24% in June 2009, representing an increase of over 45 percentage points. The ITM rate at midnight on T+1 also improved significantly, from 47.14% in April 2004 to 90.85% in June 2009, representing an increase of almost 44 percentage points. Moreover, the industry ITM rate at noon on T+1 increased from 61.89% in June 2007 (when CDS first began measuring ITM rates at noon on T+1) to 85.18% in June 2009, representing an increase of over 23 percentage points during this two-year period. We also noted that NI 24-101 may have contributed to the overall decline of the fails-to-deliver rates in Canada since April 2007, when the Instrument came into force.[81]

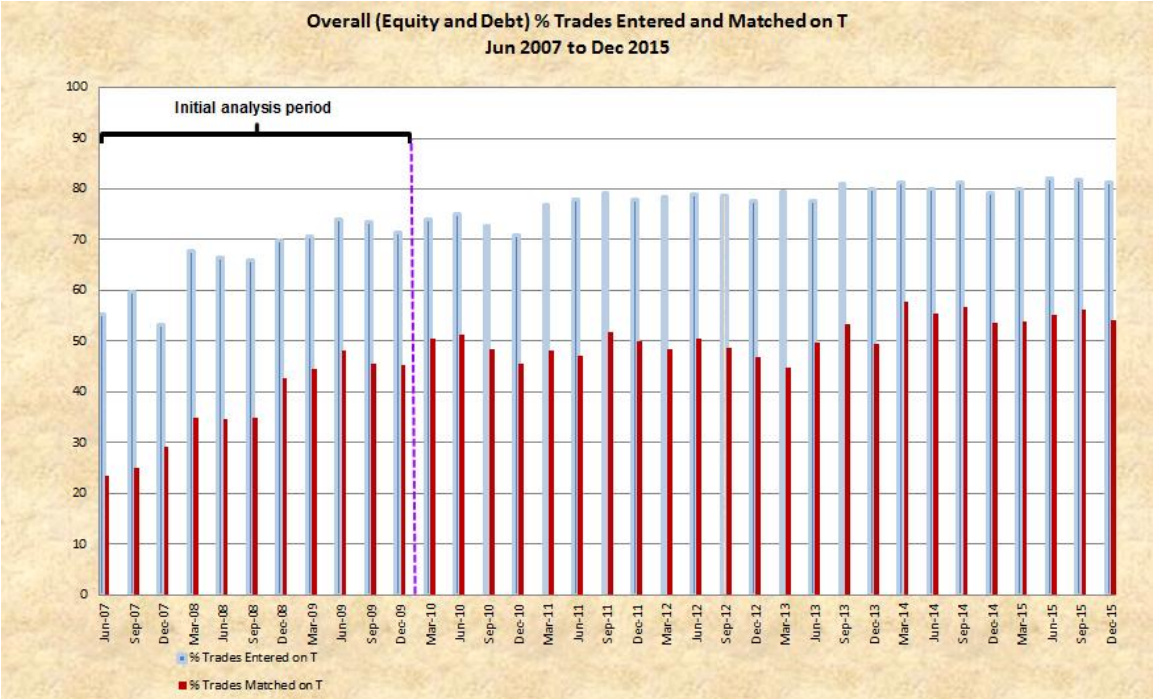
With the 2010 Notice, we published a report entitled *CSA Staff Report on Industry Compliance with the Institutional Trade Matching Requirements of National Instrument 24-101* (**2010 Analysis**).[82] The 2010 Analysis summarized our review of the ITM data from April 2007 to December 2009 (**initial analysis period**). Our findings showed that, while the industry had made steady progress in meeting the ITM target during the initial analysis period, many market participants had reached a "significant ceiling" in their ability to meet the ITM deadline in mid-2009. The increasing trend in ITM rates at noon on T+1 appeared to have flattened for the last two quarters of 2009. The average percentage of trades entered (submitted) by noon on T+1 into CDS had remained around 90%, and the average percentage of matched trades had fluctuated from 80% to 86%. This indicated that market participants had stopped investing in or improving their ITM policies and procedures, or that reaching the ITM target had become less of a focus for market participants. The 2010 Analysis had set forth in table format the industry aggregate ITM rates (quarterly),[83] and included charts[84] and data tables showing the industry trends in equity and debt ITM rates.

OSC staff have continued to examine this data, and have updated the charts and tables to extend the initial analysis period to the end of December 2015. Charts B-1 and B-2 and the data in Tables B-1 to B-3 below reflect aggregate ITM rates from April 2007 to December 2015. Based on OSC staff's observations, the trend in industry aggregate ITM rates increased at a much slower pace between January 2010 and December 2015, when compared to the initial analysis period. Specifically, the aggregate industry ITM rate increased by approximately 5 percentage points at noon on T+1 during this period.

Based on the data in Tables B-2 and B-3, the aggregate ITM rates for debt trades seem to lag the ITM rates for equity trades at noon on T+1. Currently, debt trades appear to be consistently matched below the 90% threshold, while equity trades are matched at, or slightly above, the 90% threshold. This may be due to the differences in how these transactions are processed. While equity transactions are processed on a more straight-through processing basis, the processing of trades in fixed-income securities tends to rely more on manual intervention. Specifically, certain details on debt transactions are not always readily available (e.g., CUSIP numbers for new issues) and, therefore, the parties to the trade have to manually input these details, which results in additional processing time.

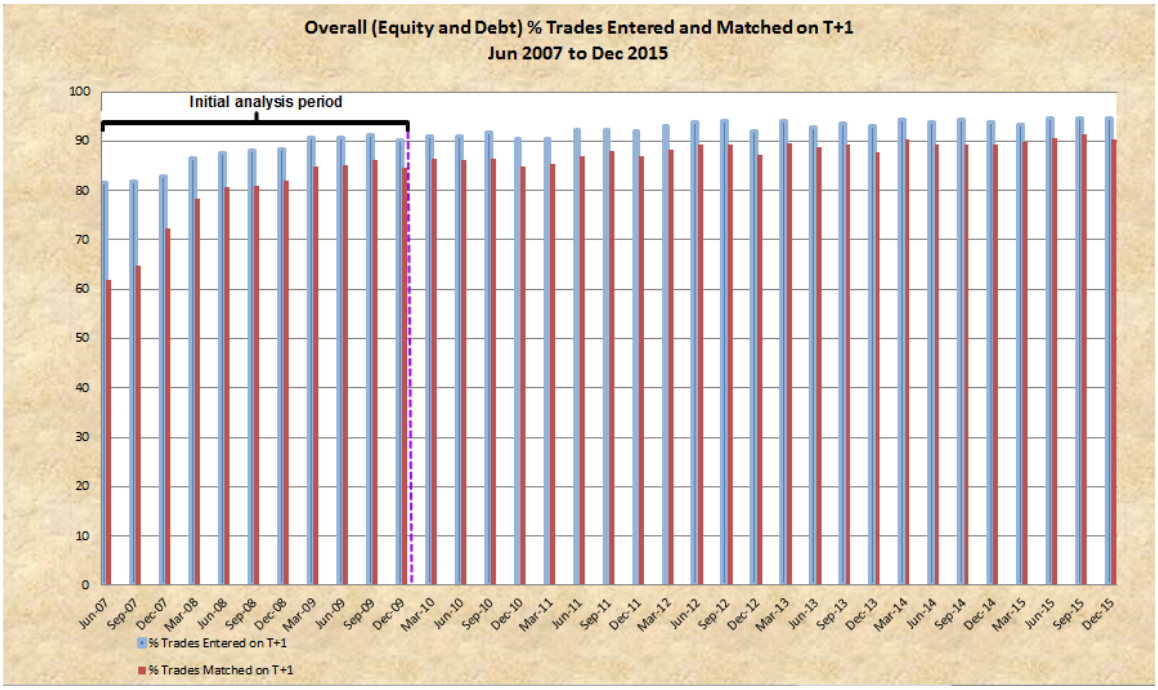
[79] See the 2008 Notice, 2009 Notice and 2010 Notice.
[80] NI 24-101 was first published for comment on April 16, 2004, together with DP 24-401. While NI 24-101 only came in force in April 2007, market participants were likely influenced or encouraged to upgrade systems, improve processes, and change behaviours since April 2004 by the prospect of NI 24-101 coming into force.
[81] See the 2009 Notice, at p. 9065. This view was expressed by IIROC as well.
[82] See the 2010 Notice, at p. 3396.
[83] See Tables A-1 to A-3 in the Appendix to the 2010 Analysis.
[84] See Charts 1 and 2 of the 2010 Analysis.

Chart B-1. Overall equity and debt ITM rates from CDS data based on volume – entered vs. matched midnight on T



Source: CDS

Chart B-2. Overall equity and debt ITM rates from CDS data based on volume – entered vs. matched noon on T+1



Source: CDS

Table B-1 – Overall ITM Rates (combined equity and debt) from CDS data based on volume – percentage entered into CDS during the quarter

Quarter Ending	Entered Midnight on T	Matched Midnight on T	Entered Noon T+1	Matched Noon T+1
Dec-15	81.27	54.17	94.56	90.36
Sep-15	81.85	56.20	94.70	91.32
Jun-15	81.99	55.19	94.75	90.62
Mar-15	79.95	53.88	93.48	89.86
Dec-14	79.35	53.51	93.83	89.40
Sep-14	81.20	56.79	94.37	89.32
Jun-14	79.96	55.52	93.90	89.45
Mar-14	81.24	57.83	94.45	90.32
Dec-13	79.93	49.56	93.02	87.75
Sep-13	80.91	53.43	93.63	89.33
Jun-13	77.76	49.85	92.97	88.80
Mar-13	79.37	44.72	94.24	89.65
Dec-12	77.75	46.78	92.18	87.25
Sep-12	78.96	48.75	94.09	89.37
Jun-12	78.97	50.48	93.82	89.20
Mar-12	78.40	48.41	93.04	88.31
Dec-11	78.03	50.09	91.98	86.87
Sep-11	79.12	51.74	92.44	88.13
Jun-11	77.81	47.09	92.37	86.86
Mar-11	76.94	48.10	90.61	85.45
Dec-10	70.79	45.47	90.44	84.82
Sep-10	72.70	48.34	91.78	86.55
Jun-10	74.94	51.25	91.00	86.17
Mar-10	74.07	50.54	90.89	86.34
Dec-09	71.43	45.24	90.20	84.70
Sep-09	73.45	45.47	91.40	86.30
Jun-09	73.96	48.24	90.70	85.20
Mar-09	70.55	44.59	90.80	84.80
Dec-08	69.78	42.72	88.30	82.00
Sep-08	65.97	34.96	88.10	80.90
Jun-08	66.48	34.62	87.50	80.60
Mar-08	67.69	34.84	86.70	78.40
Dec-07	53.34	29.28	82.90	72.30
Sep-07	59.74	25.18	81.80	64.80
Jun-07	55.32	23.48	81.70	61.90
Apr-07	39.72	14.30		

Table B-2 – Overall ITM Rates (equity only) from CDS data based on volume – percentage entered into CDS during the quarter

Quarter Ending	Entered Midnight on T	Matched Midnight on T	Entered Noon T+1	Matched Noon T+1
Dec-15	81.72	53.34	94.84	90.73
Sep-15	82.42	55.09	95.21	92.16
Jun-15	82.60	53.89	95.27	91.32
Mar-15	80.40	52.98	93.73	90.55
Dec-14	79.71	52.55	94.31	90.21
Sep-14	81.39	55.57	94.78	89.81
Jun-14	80.48	54.61	94.59	90.46
Mar-14	81.63	56.86	94.96	91.02
Dec-13	80.24	47.24	93.43	88.30
Sep-13	81.30	50.43	94.25	90.26
Jun-13	78.01	46.51	93.44	89.63
Mar-13	79.37	44.72	94.24	89.65
Dec-12	78.24	44.60	92.52	87.95
Sep-12	78.96	45.72	94.57	90.03
Jun-12	78.84	46.94	94.12	89.63
Mar-12	78.03	45.04	93.10	88.41
Dec-11	78.22	48.35	92.20	87.40
Sep-11	79.14	50.09	92.56	88.56
Jun-11	77.25	44.12	92.33	87.10
Mar-11	76.59	45.85	90.48	85.61
Dec-10	70.36	43.77	90.53	85.19
Sep-10	71.90	46.33	91.93	86.93
Jun-10	74.44	50.35	67.79	44.59
Mar-10	73.70	49.33	91.10	86.87
Dec-09	70.06	43.40	90.30	85.20
Sep-09	73.00	43.50	91.60	86.80
Jun-09	73.70	46.60	90.90	85.90
Mar-09	69.60	42.50	90.90	85.40
Dec-08	69.20	41.30	88.10	82.20
Sep-08	64.10	32.00	87.80	80.10
Jun-08	65.50	32.70	87.50	81.10
Mar-08	66.50	32.30	86.40	78.40
Dec-07	54.40	27.20	82.90	73.00
Sep-07	58.20	22.40	81.20	65.10
Jun-07	53.50	21.70	81.20	62.90
Apr-07	39.50	13.10		

Table B-3 – Overall ITM Rates (debt only) from CDS data based on volume – percentage entered into CDS during the quarter

Quarter Ending	Entered Midnight on T	Matched Midnight on T	Entered Noon T+1	Matched Noon T+1
Dec-15	78.56	59.09	92.92	88.14
Sep-15	79.09	61.55	92.25	87.36
Jun-15	79.21	61.05	92.40	87.46
Mar-15	77.44	58.61	92.11	86.18
Dec-14	77.11	59.21	90.83	84.62
Sep-14	80.31	62.52	92.41	87.07
Jun-14	77.56	59.60	90.69	84.97
Mar-14	79.36	62.59	92.01	86.96
Dec-13	78.32	61.11	90.88	84.98
Sep-13	79.42	64.38	91.26	85.92
Jun-13	76.76	63.04	91.08	85.52
Mar-13	79.18	64.95	92.75	87.12
Dec-12	75.25	57.68	90.44	83.78
Sep-12	77.96	62.92	91.67	86.25
Jun-12	79.59	64.99	92.53	87.45
Mar-12	80.38	64.87	92.73	87.79
Dec-11	76.90	59.53	90.69	83.98
Sep-11	79.00	60.87	91.76	85.68
Jun-11	80.61	60.98	92.57	85.71
Mar-11	79.09	61.70	91.40	84.48
Dec-10	73.34	55.47	89.85	82.57
Sep-10	76.95	58.92	90.94	84.58
Jun-10	77.33	55.68	90.30	83.33
Mar-10	75.92	56.79	89.85	83.63
Dec-09	75.70	55.50	89.30	81.70
Sep-09	78.90	56.30	90.80	83.20
Jun-09	75.50	55.90	90.00	82.10
Mar-09	75.42	55.36	90.06	81.76
Dec-08	73.33	50.95	89.32	80.60
Sep-08	76.52	51.79	90.09	82.98
Jun-08	71.74	45.61	87.21	77.86
Mar-08	74.10	49.13	88.36	78.09
Dec-07	66.00	39.60	82.60	68.80
Sep-07	67.00	38.60	84.80	63.50
Jun-07	63.20	31.40	63.50	57.50
Apr-07	41.00	20.90		

Source: CDS