

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*****December 15, 2022****Part I. Introduction**

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

Some of the Proposed Revisions amend the Instrument and change the CP in anticipation of shortening the standard settlement cycle for equity and long-term debt market trades in Canada from two days after the date of a trade (**T+2**) to one day after the date of a trade (**T+1**). The move to a T+1 settlement cycle is expected to occur in 2024, at the same time as the markets in the United States move to a T+1 settlement cycle.

The Proposed Revisions would also repeal the exception reporting requirements in Part 4 of the NI 24-101, including the requirement to file NI Form 24-101F1 *Registered Firm Exception Reporting of DAP/RAP Trade Reporting and Matching* (**Form 24-101F1**) and make related changes to the NI 24-101 CP. Other Proposed Revisions are more housekeeping in nature as they are intended to clarify and update existing requirements. A blackline of the Proposed Revisions to the current versions of the Instrument and CP follows after this Notice in Annexes C and D, and will also be available on the websites of CSA jurisdictions, including:

www.lautorite.qc.ca

www.asc.ca

www.bcsc.bc.ca

<https://nssc.novascotia.ca>

<https://fcnb.ca>

www.osc.gov.on.ca

www.fcaa.gov.sk.ca

www.mbsecurities.ca

We are publishing this Notice and the Proposed Revisions for comment for 90 days. The comment period will expire March 17, 2023. See below under “Comment process” in Part V.

This Notice includes the following Annexes:

- Annex A: the proposed amendments to NI 24-101;
- Annex B: the proposed changes to 24-101CP;
- Annex C: Blackline version of NI 24-101 reflecting the proposed amendments to the Instrument;
- Annex D: Blackline version of NI 24-101CP reflecting the proposed changes to the CP; and
- Annex E: Local Matters (where applicable).

Part II. Purpose of Proposed Revisions

1. Background – History of NI 24-101

NI 24-101 came into force in 2007 and was intended to encourage more efficient and timely pre-settlement confirmation, affirmation, trade allocation and settlement instructions processes for institutional trades in Canada. This process is known as institutional trade matching (ITM).

Registered dealers and advisers trading on a DAP/RAP¹ 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 currently by noon on T+1 (**ITM deadline**). In addition, registered firms must complete and file a Form 24-101F1 for every calendar quarter where they do not meet the ITM threshold of matching 90 percent of trades by value and volume before the ITM deadline (**Exception Reporting Requirement**).² We note that this requirement is currently subject to a moratorium, discussed below.

The Instrument also requires clearing agencies (in particular, CDS Clearing and Depository Services Inc.) and matching service utilities 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 that was published with the 2016 Notice and Request for Comment.³

2. Migration to T+1 settlement cycle

The Canadian securities industry is preparing for the migration to a standard T+1 settlement cycle in 2024 at the same time as the industry in the United States is moving to T+1.⁴ While NI 24-101 does not expressly mandate a T+2 settlement cycle, and would not currently prevent the T+1 migration, there are a few provisions that require revision to facilitate the move to a T+1 settlement cycle and promote uniformity of settlement times across the industry.

We are therefore proposing to repeal “T+2” in the Instrument’s definitions section, and to amend subsections 3.1(1) and 3.3(1) of Part 3 Trade Matching Requirements to require registered dealers and registered advisers to have policies and procedures in place designed to achieve institutional trade matching by **9 p.m. Eastern Time** on the date of a trade (T), as opposed to the current requirement of 12 p.m. (noon) Eastern Time on T+1. We are also proposing amendments to Form 24-101F2 *Clearing Agency Quarterly Operations Report of Institutional Trade Reporting and Matching* and Form 24-101F5 *Matching Service Utility Quarterly Operations Report of Institutional Trade Reporting and Matching* that would change the ITM data reporting requirements to **T at 12 p.m., T at 9 p.m., T+1 at 12 p.m., T+1 at 3 p.m., T+1 at 11:59 p.m., and after T+1**. These amendments are intended not only to support the upcoming move to settlement on T+1, but also the potential move to settlement on T.⁵

For a successful migration to T+1 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, marketplaces and clearing agencies may need to update various rules and procedures that specifically mandate a particular settlement cycle, that are keyed to the settlement date and require pre-settlement actions, or that generally facilitate the clearance and settlement of trades.

3. Repealing the Exception Reporting Requirement

We are proposing to repeal the Exception Reporting Requirement in Part 4 of the Instrument. This change will codify and replace the current reporting moratorium provided by blanket orders and a local rule in Ontario.

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 See section 4.1 of the Instrument.

³ See: <https://www.osc.ca/en/securities-law/instruments-rules-policies/2/24-101/proposed-amendments-ni-24-101-institutional-trade-matching-and-settlement-changes-companion-policy>, specifically Annex E to the Notice and Request for Comment.

⁴ For more information about the US move to T+1 please see: <https://www.dtcc.com/ust1>. For more information about Canada’s move to T+1 please see: <http://ccma-acmc.ca/en/t1-resources/>.

⁵ The SEC has indicated in its T+1 rule proposals that it would like industry to begin considering and preparing for a move to a settlement date of T: <https://www.sec.gov/news/press-release/2022-2.1>

4. Other amendments to update and clarify NI 24-101

While our primary focus is to support the move to T+1 and reduce regulatory burden by eliminating the Exception Reporting Requirement, we have also proposed amendments to update and clarify NI 24-101.

Part III. Summary of the Proposed Revisions

Section 1 of this Part explains our Proposed Revisions in anticipation of the transition to a T+1 settlement cycle, including our proposal to amend the ITM deadline from noon on T+1 to 9 p.m. on T. Section 2 of this Part explains our Proposed Revisions relating to the repeal of the Exception Reporting Requirement. Section 3 describes the modernizing and clarifying amendments to NI 24-101 including Form 24-101F2 and Form 24-101F5. Section 4 describes proposed changes to the CP.

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

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

a) References to “T+2”

NI 24-101 contains a number of references to T+2. They can be found in the definitions section of the Instrument (section 1.1), Forms 24-101F2 and F5, and Part 5 of the CP. We propose to remove these references or replace them with “T+1” as applicable.

b) Amending the ITM deadline

We are proposing to amend the ITM deadline from noon on T+1 to 9 p.m. on T. As noted above, in February 2022 the U.S. Securities and Exchange Commission (**SEC**) published for comment a number of proposed rule changes mandating a move to T+1 settlement. While the U.S. rule changes are not yet final at the time of drafting this Notice, and certain aspects – including their implementation date – may be adjusted in response to industry feedback, there appears to be little doubt that the United States financial sector will move to T+1 settlement.

Given the close ties between the Canadian and American markets, in particular the large number of inter-listed securities, in our view it is critical that CSA jurisdictions move to T+1 in concert with the U.S.

It is also our view that the current ITM deadline is no longer appropriate in a standard T+1 settlement environment. Permitting matching to occur until noon on T+1 leaves insufficient time to resolve issues with trade processing (technological and otherwise) and avoid failed trades. For this reason, we have proposed an ITM matching deadline of 9 p.m. on T. This deadline reflects input from industry, including the Canadian Capital Markets Association, which has struck several T+1 working groups in response to the SEC rule proposals.⁶

We welcome stakeholder feedback on whether 9 p.m. is an appropriate ITM deadline.

2. Repealing the Exception Reporting Requirement

In 2020, the CSA provided a three-year moratorium on the applicability of the Exception Reporting Requirement.⁷ Specifically, registered firms are not required to deliver Form 24-101F1 to the CSA for so long as the moratorium is in effect, from July 1, 2020 to July 1, 2023.

Under the Exception Reporting Requirement, registered firms are required to deliver Form 24-101F1 to the CSA if less than 90% of trades executed by or for the registered firm during the quarter matched within the time required by NI 24-

⁶ The proposed deadline also reflects the timing constraints imposed by the U.S. T+1 conversion date, which will likely not allow for a second CSA comment period. For this reason we have opted to propose what we understand to be the earliest viable deadline, on the basis that any public comments on the Proposed Revisions that the deadline is too early could be accommodated by moving the deadline to a later time in the final amendments to NI 24-102 *Clearing Agency Requirements*. By contrast, industry feedback requesting an earlier deadline would likely require a material change to the Proposed Revisions, triggering a second comment period that would jeopardize our ability to align the Canadian and American changeovers to T+1.

⁷ In Ontario, the Minister approved a local rule providing for the three-year moratorium. The other Canadian CSA jurisdictions imposed a three-year moratorium through blanket orders.

101. Form 24-101F1 requires registered firms, among other things, to explain why they did not meet the exception reporting thresholds and the steps they have taken to address the delay.⁸

CSA Staff have had discussions with stakeholders who confirmed that the Exception Reporting Requirement is burdensome and has limited utility. CSA Staff agree with these comments and have identified the revocation of the Exception Reporting Requirement as a means of permanently removing unnecessary regulatory burden. Given that the applicable information can be obtained from clearing agencies and matching service utilities, CSA Staff are of the view that the Exception Reporting Requirement no longer meaningfully contributes to the CSA's oversight.

Our proposed amendment would permanently repeal the Exception Reporting Requirement. We note, however, that the amendment would not relieve registered firms from complying with other requirements in NI 24-101 such as establishing, maintaining, and enforcing policies and procedures to achieve the matching threshold for institutional trades.

CSA Staff recognize that the reporting moratorium is set to expire prior to the proposed implementation date for the Proposed Amendments. We anticipate that the moratorium will be extended in all CSA jurisdictions until such time as the proposed amendment, if approved, comes into effect.

3. Other proposed amendments to NI 24-101

While our primary focus is to support the move to T+1 and reduce regulatory burden by eliminating the Exception Reporting Requirement, we have also proposed the following amendments to update and clarify NI 24-101:

- Adding a reference to cyber-resilience to the system requirements in s. 6.5a(iv) of Part 6 to reflect the increasing importance of cybersecurity to the core system requirements of matching service utilities;
- Updating the instructions for Exhibit N of Form F3 to remove the reference to ... "during normal business hours; and
- Housekeeping amendments in the form of changing references to months in the various Form instructions from "MMM" to "MM" and correcting minor typographical punctuation errors.

4. Proposed changes to NI 24-101CP

In support of the above-noted rule amendment proposals, we propose the following changes to NI 24-101CP:

- Changing the references to the time of trade matching deadlines in s. 2.2;
- Clarifying the language of s. 2.3(1)(c) by changing "The Instrument does not provide" to "The Instrument does not prescribe";
- Removing the guidance associated with the Exception Reporting Requirement in Part 3;
- Updating the guidance on capacity, integrity, and security system requirements by removing the words "during normal business hours" from s. 4.5(3);
- Changing a reference to a T+2 settlement system to refer instead to a T+1 settlement system in s. 5.1;
- Updating references to IIROC Rules in the footnotes; and
- Housekeeping amendments such as minor typographical changes and updating the table of contents.

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.

⁸ For more information about the three-year moratorium relating to the Exception Reporting Requirement, please see: <https://www.osc.ca/en/securities-law/instruments-rules-policies/2/24-101/notice-amendment-national-instrument-24-101-institutional-trade-matching-and-settlement>

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 CP to facilitate the move to T+1 settlement or to repeal the Exception Reporting Requirement, or to clarify and update provisions in the Instrument that are unclear or outdated. Not proceeding with the T+1-related Proposed Revisions would be inconsistent with the desire to facilitate the move to T+1 and could lead to confusion in the markets with respect to settlement that could put investors at risk.

In addition, without the proposed amendments related to repealing the Exception Reporting Requirement, registered firms would be required to deliver Form 24-101F1, a form that the CSA has determined no longer meaningfully contributes to the CSA's daily oversight, resulting in undue regulatory burden.

3. Unpublished materials

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

4. Effective date for Proposed Revisions

If the Proposed Revisions are made following the comment process, all the Proposed Revisions will be brought into force or, in respect of the Companion Policy, be adopted at a date to be determined, to align with the transition in the United States.

Part V. Request for Comments

1. Questions

We welcome your comments on the Proposed Revisions. In addition to any general comments you may have, we also invite comments on the following specific questions:

- a. In a T+1 settlement system, is an ITM deadline of 9 p.m. on T appropriate? Why or why not?
- b. Are the data reporting requirements in Form 24-101F2 *Clearing Agency Quarterly Operations Report of Institutional Trade Reporting and Matching* and Form 24-101F5 *Matching Service Utility Quarterly Operations Report of Institutional Trade Reporting and Matching* of T at 12 p.m., T at 9 p.m., T+1 at 12 p.m., T+1 at 3 p.m., T+1 at 11:59 p.m., and after T+1 appropriate in a T+1 settlement system? Why or why not?

2. Comment process

Please submit your comments in writing on or before **March 17, 2023**. Please address your submission to all of the CSA as follows:

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](mailto:comments@osc.gov.on.ca)

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We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at www.albertasecurities.com, the Autorité des marchés financiers at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission. Questions with respect to this Notice and the Proposed Revisions may be referred to:

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