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Re: Proposed Amendments to NI 24-101 Institutional Trade Matching and Settlement and Proposed Changes to Companion Policy 24-101 Institutional Trade Matching and Settlement

Dear Sirs and Mesdames:

**Re: Request for Comments on 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**

We appreciate the opportunity to provide submissions to the Canadian Securities Administrators (the CSA) in response to the request for comments published August 18, 2016 regarding proposed amendments (the Proposed Amendments) to National Instrument 24-101 Institutional Trade Matching and Settlement and Companion Policy 24-101 Institutional Trade Matching and Settlement (together, NI 24-101).

Omgeo Canada Matching Ltd./Services D'Appariement Omgeo Canada Ltée. (Omgeo Canada) supports the CSA's efforts to ensure strong and harmonized regulation of key market infrastructure. As a matching service utility (MSU) Omgeo Canada, and its affiliate Omgeo LLC, consider prudent regulation to be important in promoting robust and reliable infrastructure systems.

**About Omgeo Canada and Omgeo LLC**

Omgeo Canada provides centralized facilities for the institutional trade comparison and matching process. As a MSU, Omgeo Canada is subject to the regulatory framework set forth in NI 24-101 and received an exemption from certain requirements contained in the Ontario Securities Act requiring it to be recognized as a clearing agency in 2011 by the Ontario Securities Commission. It is an Ontario corporation with its head office located in Toronto, and is an affiliate of Omgeo LLC.

The systems, infrastructure, policies/procedures, protocols, personnel and other corporate functions for the operation of Omgeo Canada's MSU services are largely provided by Omgeo LLC.

Omgeo LLC is subject to regulatory and oversight requirements in the United States by the Securities and Exchange Commission (the SEC) and maintains a highly reliable and available service architecture at all levels of its corporate structure. Reliability of Omgeo LLC's service architecture and infrastructure is subject to rigorous internal oversight, and the SEC provides comprehensive regulatory oversight, including pursuant to Regulation Systems Compliance and Integrity (Regulation SCI).

**Comments on the Proposed Amendments**

As noted above, Omgeo Canada supports efforts to improve NI 24-101. While we are broadly in agreement with the proposed amendments, Omgeo Canada has some limited concerns regarding the new requirements applicable to MSUs. Of particular relevance to MSUs is the proposed addition to NI 24-101 of system requirements, system reviews and business continuity requirements at sections 6.5, 6.6, 6.7 and 6.8 (the MSU Requirements).

While Omgeo Canada is in support of the robust business continuity requirements, Omgeo Canada submits that particular aspects of the MSU Requirements introduce unnecessarily prescriptive timing obligations. These represent a challenge to the extent they are out of step

with non-Canadian regulatory requirements. In particular, we note a potential for conflict with the expectations established under the SEC's Regulation SCI and guidelines set forth by the Financial Institutions Examination Council in the United States. We have set forth our concerns and suggested revisions as further detailed below.

### **Annual Testing Requirements are Unnecessarily Prescriptive**

Section 6.5(b)(ii) of the proposed amendments to NI 24-101 requires that a MSU conduct capacity stress tests on its systems at least annually. Similarly, proposed section 6.8(b) states that a MSU must 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.

Omgeo Canada submits that an annual testing cycle requirement is unnecessarily prescriptive. Under the U.S. requirements of Regulation SCI, a MSU is expected to obtain the SEC's concurrence that its review plan for system testing is appropriate. In the case of Omgeo LLC, the testing cycle under Regulation SCI occurs over a staggered period which has been relayed and evaluated by the SEC that provides for testing of the infrastructure it uses and maintains with its affiliates.

While Omgeo Canada finds it is understandable that an "at least annually" requirement may seem reasonable, we submit that such a fixed requirement is less desirable than a requirement for system testing (as contemplated in section 6.5(b)(ii) and section 6.8(b)) (a) being subject to standards of prudent business practices and (b) with such testing being required on a reasonably frequent basis. The frequency of such testing by a matching service utility could be agreed upon by the regulator, or in Quebec, the securities regulatory authority, having regard to the MSU's systems and structure.

Omgeo Canada also submits that changes to the "at least annually" requirement would also be reflected in the Companion Policy, at sections 4.5(2) and 4.8(2), where reference to "annually" could be replaced with, "as frequently as may be agreed upon by the regulator or, in Quebec, the securities regulatory authority".

We submit that these changes will avoid the unintended consequence of imposing, albeit indirectly, systems testing requirements on Omgeo LLC which are inconsistent with those required by the SEC. Furthermore, by adopting an approach which calls for collaboration between a MSU and the regulator as to frequency of testing, the CSA will be better able to adjust its expectations of MSUs in response to changes in technology and market practices.

### **Include References to Non-Canadian Technology Guidelines**

Omgeo Canada would encourage the CSA to consider supplementing section 4.5 of the Companion Policy. Where reference is made in section 4.5(1) of the Companion Policy to "Information and Technology Control Guidelines" from the Canadian Institute of Chartered Accountants (CICA) and 'COBIT' from the IT Governance Institute", Omgeo Canada requests that the CSA members consider adding, "and such equivalent guides published by the National Institute of Standards and Technology (U.S. Department of Commerce)".

### **Limited Substituted Compliance**

Finally, due to the highly interconnected nature of market infrastructure, Omgeo Canada encourages the CSA to consider incorporating a degree of formalized substitute compliance within NI 24-101. In particular, we urge the CSA members to consider adopting a provision which would recognize that where a MSU complies with the requirements of Regulation SCI, such activities would be deemed to satisfy any analogous requirements in NI 24-101. Under Regulation SCI, a MSU provides robust reporting of system issues and changes to the SEC, and Omgeo Canada would propose similar reports be provided to the regulator, or in Quebec, the securities regulatory authority to meet the requirements of NI 24-101.

This change could be incorporated at Part 9 Exemptions, through the addition of the following:

**"Part 9.1 (4) Where a matching service utility satisfies requirements of the United States Securities and Exchange Commission's Regulation Systems Compliance and Integrity as such relates to system requirements, system reviews, technology requirements and testing facilities, and testing of business continuity plans as set out in sections 6.5 to 6.8 of this Instrument, the matching service utility shall be deemed to have satisfied sections 6.5 to 6.8 of this Instrument."**

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We thank the CSA for this opportunity to provide comments in respect of the Proposed Amendments, and welcome the opportunity for further dialogue on issues relevant to the regulation of MSUs by the CSA.

Yours truly,



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General Counsel**

**Omgeo Canada Matching Ltd./Services D'Appariement Omgeo Canada Ltée.**