Canadian Securities Administrators | Autorités canadiennes en valeurs mobilières

CSA Notice

Regulation to amend Regulation 24-101 respecting Institutional Trade Matching and Settlement
and
Amendments to *Policy Statement to Regulation 24-101 respecting Institutional Trade Matching and Settlement*

April 27, 2017

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are adopting amendments to *Regulation 24-101 respecting Institutional Trade Matching and Settlement* (**Regulation**) and changes to *Policy Statement to Regulation 24-101 respecting Institutional Trade Matching and Settlement* (**Policy Statement**) (collectively, the Regulation and Policy Statement are referred to as **Regulation 24-101**). The amendments to the Regulation and changes to the Policy Statement are referred to collectively in this Notice as the **Revisions**.

Some of the Revisions are being made 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 are expected to move to a T+2 settlement cycle.

In some jurisdictions, government ministerial approvals are required for the implementation of the amendments to the Regulation. Provided all necessary approvals are obtained, we expect the amendments will come into force, with certain transitional relief, in all CSA jurisdictions on September 5, 2017 (see "**Discussion – 3. Effective date of Revisions and transitional provisions**"). Additional information regarding the adoption of the Regulation in each province or territory is, where applicable, included in an annex to this Notice. The text of the amendments to the Regulation, and text of the changes to the Policy Statement, are published with this Notice, and will also be available on websites of CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
www.nssc.novascotia.ca
www.fcnb.ca
www.osc.gov.on.ca
www.fcaa.gov.sk.ca
www.mbsecurities.ca

This Notice includes the following Annexes:

- Annex A: list of comment letters
- Annex B: summary of comments on "Proposed Revisions" (defined below) and CSA responses

Background

We published for comment on August 18, 2016 for 90 days proposed amendments to the Regulation and changes to the Policy Statement (collectively, the **Proposed Revisions**). As we explained in the *Notice and Request for Comments* (the **Request Notice**),[1] the purposes of the Proposed Revisions were twofold:

- To facilitate the move to a T+2 settlement cycle (while Regulation 24-101 does not currently expressly mandate a T+3 settlement cycle, nor would prevent the migration to T+2, there are a number of provisions that require revision to facilitate the move to T+2), and

- To update, modernize and clarify certain provisions of Regulation 24-101.

In addition to seeking comment on the Proposed Revisions, we published at the same time CSA Consultation Paper 24-402 *Policy Considerations for Enhancing Settlement Discipline in a T+2 Settlement Cycle Environment* (**Consultation Paper**).[2] The Consultation Paper sought stakeholder views on the adequacy of today's settlement discipline regime for the Canadian equity and debt markets that are moving to a standard T+2 settlement cycle. The Consultation Paper explored, for regulatory consideration, possible new measures that might enhance settlement discipline and mitigate potential risk of increased settlement fails as the markets move to T+2. Such measures were to be over and above the Proposed Revisions.[3]

We received seven comment letters on both the Proposed Revisions and Consultation Paper. A list of the commenters is attached in Annex A to this Notice. We have considered the comments received, and thank all commenters for their submissions. We provide a summary of the comments on the Proposed Revisions, together with our responses, in Annex B to this Notice.

We briefly discuss some of the key comments and our responses below under "Discussion". CSA staff propose to bring forward for publication later in 2017 a summary of the feedback we received on the Consultation Paper, together with staff's analysis of such feedback (**Feedback Analysis**).

The Revisions being adopted today by the CSA are based solely on the Proposed Revisions. We do not propose to implement at this time any additional measures arising from the Consultation Paper to prepare for the move to T+2 as a result of the feedback received.[4] The Feedback Analysis will provide further details.

Recent developments on investment fund settlement timelines

The CSA has held ongoing discussions with the conventional mutual fund industry regarding the industry's transition to a T+2 settlement cycle. Three industry associations, an industry outsourcing and technology vendor and a clearing agency have been consulted in this regard. These industry stakeholders and service providers have requested that the CSA provide guidance regarding the adoption of a T+2 settlement cycle by conventional mutual funds. The CSA jurisdictions anticipate addressing this in a separate publication.

Discussion

Defined terms or expressions used in this Notice, which are not otherwise defined or given a meaning in this Notice, share the meanings provided in the Request Notice.

This section of the Notice is divided into three parts.

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[1] See Notice and Request for Comments: Draft *Regulation to amend Regulation 24-101 respecting Institutional Trade Matching and Settlement* and Draft Amendments to *Policy Statement to Regulation 24-101 respecting Institutional Trade Matching and Settlement* – CSA Consultation Paper 24-402 *Policy Considerations for Enhancing Settlement Discipline in a T+2 Settlement Cycle Environment*, August 18, 2016, in the *Bulletin de l'Autorité des marchés financiers*, Vol. 13, no 33, page 242.

[2] See Request Notice, at p. 249.

[3] Such measures were also over and above the changes being made by the industry to the rulebooks, procedures, standard agreements and other documentation of the marketplaces, SROs and clearing agencies to reflect the move to T+2 from T+3. For a discussion of these industry changes, see the Request Notice at p. 242, and Consultation Paper at p. 249. For example, the Investment Industry Regulatory Organization of Canada (**IIROC**) has proposed amendments to its 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*, available at: http://www.osc.gov.on.ca/documents/en/Marketplaces/iiroc_20160728_iiroc-notice-16-0177.pdf.

[4] Almost all commenters say that the existing settlement discipline regime is adequate and largely capable of meeting a T+2 settlement cycle.

- In part 1, we discuss key Revisions that relate to the migration to T+2 settlement. These Revisions do not affect Regulation 24-101's current institutional trade matching (**ITM**) deadline of noon on T+1, nor its exception reporting ITM threshold of 90 percent.

- In part 2, we discuss key Revisions that clarify or modernize certain provisions of Regulation 24-101.

- In part 3, we describe the effective date for implementing the Revisions and certain transitional provisions in response to concerns expressed by commenters with implementing the Revisions on September 5, 2017.

1. T+2-related Revisions

(a) References to "T+3"

While the primary focus of the Regulation is on having ITM policies and procedures to match institutional trades no later than noon on T+1, Regulation 24-101 contains a number of references to T+3. We are removing these references or, where appropriate, replacing them with references to "T+2".

(b) Non-North American trades

We proposed in the Request Notice to repeal the provisions that extend the ITM deadline to noon on T+2 where a 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 the North American region (**non-North American trades**). Most commenters agreed with repealing these provisions. Some commenters noted that a longer deadline could subject market participants, who are waiting for a trade to settle on T+2, to increased risks of a failed trade. Some who commented about removing the extended deadline for matching non-North American trades also indicated that such a change should not be onerous given that it would align Canada with T+2 settlement cycles in other jurisdictions. This includes the T+2 settlement cycle in use today in Europe, Hong Kong, Australia and New Zealand, as well as the T+2 settlement cycle standard proposed for the United States and Mexico as of September 5, 2017.[5]

As a result, we are repealing the provisions of Regulation 24-101 relating to non-North American trades. 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.

2. Revisions to clarify or modernize Regulation 24-101

(a) Application to ETFs

As noted in the Request Notice, Regulation 24-101 does not currently apply to a trade in a security of a mutual fund to which *Regulation 81-102 respecting Investment Funds* (**Regulation 81-102**) applies. Mutual fund trades were originally carved out of Regulation 24-101 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 Clearing and Depository Services Inc. (**CDS**). As exchange traded funds (**ETFs**) are mutual funds and therefore subject to

[5] Since the publication of our Request Notice in August 2016:

- The U.S. Securities and Exchange Commission (**SEC**) published for comment in September 2016 a release (**SEC Proposed Release**) proposing to amend SEC Rule 15c6-1(a) *Settlement Cycle* under the Securities Exchange Act of 1934 to shorten the standard settlement cycle for most broker-dealer transactions from T+3 to T+2. See SEC Release No. 34-78962; File No. S7-22-16 (RIN 3235-AL86), *Amendment to Securities Transaction Settlement Cycle*; Proposed rule; September 28, 2016; available at: https://www.sec.gov/rules/proposed/2016/34-78962.pdf. The SEC adopted these amendments on March 22, 2017 in a final release (**SEC Final Release**). See SEC Release No. 34-80295; File No. S7–22–16 (RIN 3235–AL86), *Securities Transaction Settlement Cycle*; Final rule; published in Federal Register, March 29, 2017; available at: https://www.gpo.gov/fdsys/pkg/FR-2017-03-29/pdf/2017-06037.pdf. The "compliance date" set out in the SEC Final Release for meeting the new T+2 standard is September 5, 2017.
- Grupo Bolsa Mexicana de Valores (the Mexican Stock Exchange) recently announced that it will change trade settlement dates for many equity products and warrants to T+2 from the current T+3 starting September 5, 2017, subject to the approval and implementation by the U.S. financial services industry of the move to T+2 on such date (according to a Notice from Grupo Bolsa Mexicana de Valores dated February 16, 2017 to "Traders and Head Traders of the Mexican Equity Market", as set forth in a widely distributed email dated February 21, 2017 from the Canadian Capital Markets Association (**CCMA**)).

Regulation 81-102, ETF securities that are bought and sold like any other stock on the secondary markets and settled through the facilities of CDS, are not subject to Regulation 24-101.

In the Request Notice we expressed the view that a secondary-market trade in an ETF security that settles through the facilities of CDS should be subject to Regulation 24-101, particularly the trade matching requirements of the Regulation (Parts 3 and 4). Such trades bring the same risks to our markets and the clearing and settlement infrastructure that serves our markets as any other typical trade in equity or fixed-income securities. In addition, non-redeemable investment funds that trade on a marketplace and settle through CDS are currently subject to the Regulation. We are of the view that all investment funds that are traded on a marketplace should be treated in the same way under the Regulation. Some commenters noted that, since Regulation 24-101 came into force in 2007, the volume of ETF issuers and transactions has increased, but has not posed a challenge in respect of the timely matching of these trades. Commenters also said that ETFs are already included in the ITM matching data published by CDS.

We are narrowing the scope of the current exception for investment funds by amending paragraph (f) of section 2.1 of the Regulation to clarify that the Regulation does not apply to a purchase governed by Part 9, or a redemption governed by Part 10, of Regulation 81-102. Part 9 governs purchases of securities of a mutual fund, and Part 10 governs redemptions of investment fund securities. Moreover, the Forms and Policy Statement are being amended to clarify that DAP/RAP trades in ETF securities 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 definition

In the Request Notice, we expressed our view that the defined term "clearing agency" needed to be updated, given the growing number of, and the broader range of services provided by, clearing agencies operating in Canada since 2007. Accordingly, we have amended the definition as proposed.

(c) MSU systems and business continuity planning requirements

We proposed in the Request Notice to amend section 6.5 of the Regulation and related Policy Statement provisions, which set out systems and business continuity planning requirements for matching service utilities (**MSU**). The purpose of such Proposed Revisions was to align them with similar provisions in other rules applicable to marketplaces, information processors, clearing agencies and trade repositories. However, some commenters expressed concerns with these Proposed Revisions. Among other reasons, one commenter noted that regulators should not impose new obligations on MSUs that are overly onerous, as they could jeopardize the continuity and availability of MSU services to Canadian market participants. One commenter also suggested that a formal "substitute compliance" regime be considered with respect to these requirements in circumstances where an MSU is already complying with analogous requirements of its home regulator in a foreign jurisdiction.

CSA staff will consider further policy work on systems and related requirements applicable to MSUs at a later time. Consequently, we will not proceed at this time with the Proposed Revisions to section 6.5 of the Regulation and section 4.5 of the Policy Statement.

3. Effective date of Revisions and transitional provisions

(a) Effective date of Revisions

As mentioned above, we expect the amendments to the Regulation will come into force on September 5, 2017 in all CSA jurisdictions, subject to obtaining government ministerial approvals in certain CSA jurisdictions. We chose this date so that the Revisions are implemented at the same time as the markets in the United States are expected to transition from a T+3 settlement cycle to a T+2 settlement cycle.[6] The U.S. securities industry has identified September 5, 2017 as the target date for the transition to a T+2 settlement cycle to occur. Similarly, the SEC has determined a "compliance date" of September 5, 2017 for meeting a new T+2 settlement standard for broker-dealer transactions under recently adopted amendments to SEC Rule 15c6-1(a) *Settlement Cycle* enacted under the

[6] See "Priorities" on the CCMA Website, at: http://ccma-acmc.ca/en/priorities/. See also CSA Staff Notice 24-312 – *Preparing for the Implementation of T+2 Settlement* dated April 2, 2015, available at: http://www.lautorite.qc.ca/files/pdf/reglementation/valeurs-mobilieres/0-avis-acvm-staff/2015/2015avril02-24-312-avis-acvm-en.pdf.

Securities Exchange Act of 1934.[7] However, while remote, it is possible that this target or compliance date may be extended if certain regulatory and industry contingencies are not achieved on time.[8]

As a result, while we have specified September 5, 2017 as the earliest date when the Revisions will become effective, the amending Regulation that implements the Revisions contains language that will allow for the effective date to be extended in order to match a delay of the U.S. transition to a T+2 settlement cycle, should the U.S. target-compliance date be extended for whatever reason. In the event that the U.S. compliance date is extended, for transparency purposes the CSA jurisdictions expect to publish a subsequent notice to highlight such a date extension.

(b) Transitional provisions for delivery of Forms 24-101F1, 24-101F2 and 24-101F5 for calendar quarter that includes the effective date

Under section 4.1 of the Regulation, each calendar quarter is a reporting period for the purposes of delivering an exception report in Form 24-101F1. Commenters expressed concerns that, because September 5, 2017 falls within the calendar quarter ending September 30, 2017, registered firms delivering exception reports in Form 24-101F1 for that quarter could potentially be subject to two different sets of reporting requirements in that quarter. Essentially, if the Revisions related to reporting were brought into force on September 5, 2017, firms might report their ITM rates based on two different methodologies: first, using their current methodology for reporting ITM rates for the period from July 1, 2017 to September 4, 2017, and second, using a different methodology for reporting ITM rates for the period from September 5, 2017 to September 30, 2017.

We have considered these comments, and included specific transitional provisions in the regulation amending the Regulation to address this issue. The transitional provisions also apply to the reporting requirements of clearing agencies and MSUs with respect to Forms 24-101F2 and 24-101F5, respectively. The transitional relief for registered firms relates only to determining whether an exception report is necessary for the calendar quarter and, if it is, the form required for that report. However, September 5, 2017 (or such later date, as discussed above) remains the effective date for having policies and procedures to reflect the amended matching requirements regarding ETFs and non-North American trades. A registered dealer or a registered advisor must establish, maintain, and enforce policies and procedures designed to achieve matching as soon as practical after a DAP/RAP trade for an institutional investor is executed and in any event no later than 12 p.m. (noon) on T+1.

The transitional relief would permit a registered firm to calculate its relevant ITM percentages for determining whether it needs to file an exception report for the calendar quarter during which the Revisions are implemented, and, where applicable, for completing the report, as if the Revisions do not come into force until the beginning of the following calendar quarter. Therefore, if the effective date is September 5, 2017, registered firms would be entitled to continue to use their current methodologies for calculating whether they meet the 90% ITM threshold for the entire calendar quarter ending September 30, 2017. For example, to the extent that a firm currently differentiates between North American DAP/RAP trades and non-North American DAP/RAP trades, or between ETF DAP/RAP trades and other equity DAP/RAP trades, for the purposes of its exception reports, it would not need to change mid-quarter its methodology for completing the report for the calendar quarter ending September 30, 2017.

As revised, section 3.4 of the Policy Statement encourages registered firms to complete their Form 24-101F1 through the Regulation 24-101 on-line portal on the CSA website.[9] It is important to note that the CSA will not modify the on-line version of Form 24-101F1 to reflect the relevant changes made to the Form in the Revisions until after 45 days following the end of the calendar quarter during which the Revisions are implemented. Therefore, we encourage registered firms to file their on-line exception reports for the calendar quarter during which the Revisions are implemented on the current version of the Form, and not the revised Form.

CSA Staff Notice 24-305

In order to reflect the Revisions, CSA staff plan to update and republish CSA Staff Notice 24-305 *Frequently Asked Questions About Regulation 24-101 respecting Institutional Trade Matching and Settlement and Related Policy Statement* later this year.

[7] See the SEC Final Release.
[8] See the SEC Proposed Release, at pages 76-77.
[9] In Ontario, it is mandatory to file the Form electronically through the on-line portal on the CSA Website. See OSC Rule 11-501 *Electronic Delivery of Documents to the Ontario Securities Commission*.

Questions

Questions with respect to this Notice may be referred to:

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ANNEX A

LIST OF COMMENTERS ON PROPOSED REVISIONS AND CONSULTATION PAPER

Barbara Amsden
Canadian Capital Markets Association
CIBC World Markets Inc.
Investment Industry Association of Canada
Omgeo Canada Matching Ltd. (two letters)
RBC Dominion Securities Inc.

ANNEX B
SUMMARY OF PUBLIC COMMENTS ON PROPOSED REVISIONS

1. Theme/question	2. Summary of comments	3. General responses
General		
Support for T+2 amendments	Commenters expressed appreciation for the CSA's work towards the transition to T+2, one emphasizing the CSA's contribution for raising awareness of T+2 within broader sectors of industry.	We acknowledge and thank the commenters for their remarks.
Current ITM data	A commenter suggests that the Canadian industry is already capable of meeting a T+2 standard on average, as evident from the data shown in Table B-1 of Appendix B of the Consultation Paper. It highlights that the data shows an increase in trade matching volume rates between 2007 and December 2015, including: • A doubling in percentages entered by midnight on T and approaching a quadrupling in matching by that time • A 16% increase in the percentage of trades entered and an almost 50% increase in trades matched by noon on T+1 ready for settlement on T+2.	We thank the commenter for this comment. Appendix B of the Consultation Paper includes additional analysis of the ITM data.
Regulation 24-101 respecting Institutional Trade Matching		
Non-North American Trades	Most commenters agree with the proposal to repeal the provisions that extend the institutional trade matching deadline to noon on T+2 for non-North American trades. One commenter notes that the longer deadline could subject those waiting for a trade to settle on T+2 to increased risk of failed trades. Another commenter notes that regardless of the complexities with foreign investments and cross border transactions, today non-North American trades are typically matched and settled efficiently. Although this commenter also says that some firms might need to improve their processes, it does not expect material long-term disruptions. Another commenter notes that this should not be an onerous change given that it aligns Canada with what participants are currently accustomed to for T+2 settlement in the Europe, Australia, New Zealand, etc.	We are repealing the provisions of Regulation 24-101 relating to non-North American trades. As indicated in the accompanying CSA Notice, in a T+2 settlement environment, the extended institutional trade matching deadline of noon on T+2 leaves insufficient time to solve problems and avoid failed trades.
Alternatives to T+2	One commenter notes that there are no reasonable alternatives to the proposed changes and that a detailed cost-benefit analysis is not required given the full Canadian industry agreement. Also, given the significantly interconnected nature, and relative sizes, of the Canadian and U.S. capital markets, the change to T+2 with the U.S. is required.	We agree with these comments. See: CSA Staff Notice 24-312 *Preparing for the Implementation of T+2 Settlement*, April 2, 2015; and CSA Staff Notice 24-314 *Preparing for the Implementation of T+2 Settlement: Letter to Registered Firms*, May 26, 2016; Bulletin of the Autorité des marchés financiers, May 26, 2016, Vol. 13, no 21.
Application to ETFs	One commenter notes that, despite the increased volume of ETF issuers and transactions since Regulation 24-101 came into force in 2007, it has not posed a significant challenge on the timely matching of these trades. Two commenters also note that ETFs are already included in the matching data published by CDS.	We are amending paragraph 2.1(f) of the Regulation by narrowing the scope of the current exception for investments funds. As indicated in the Notice accompanying this publication, secondary market trading in ETFs brings the same risks to our markets and the clearing and settlement infrastructure as other typical trades in equity or fixed-income securities.
MSU systems and business continuity planning	One commenter says that any new obligations imposed upon MSUs should not be viewed as overly onerous by the MSUs as it could potentially jeopardize the continuity of the MSUs service to Canadian market participants.	We are not proceeding with the Proposed Revisions to section 6.5 of the Regulation and section 4.5 of the Policy Statement regarding MSU systems and business continuity requirements at this time, as we will consider

1. Theme/question	2. Summary of comments	3. General responses
	This commenter also notes the importance of bilateral discussions with MSUs to ensure an appropriate balance in any such proposals. Another commenter expresses concern regarding the timing obligations, noting that may represent a challenge to the extent that they are out of step with non-Canadian regulatory requirements.	further policy work on this matter.[1]
Annual MSU testing requirements	One commenter submits that conducting capacity stress tests of its systems and testing its business continuity plans, including disaster recovery, on a minimum annual basis, may be unnecessarily prescriptive. This commenter suggests that it may be more effective to adopt a collaborative approach between the MSU and the regulator as to the frequency of testing, thereby enabling assessment and adjustment of expectations in response to changes in technology and market practices.	
Substituted compliance	One commenter submits that given the interconnected nature of market infrastructure, it is important to consider a degree of formalized substitute compliance. For example, where an MSU complies with the requirements of a foreign regulator, e.g. *Regulation SCI* in the U.S., such activities could be deemed to satisfy any analogous requirements in Regulation 24-101.	
Transitional phase	Two commenters identify an issue with the target implementation date, September 5, 2017, in relation to reporting requirements for registered firms. One commenter notes that the target implementation date falls mid-month and mid-quarter in a reporting period for which an exception report might have to be filed. It states that providing transitional relief for one quarter posed little, if any, systemic risk or risk for investors. It suggests that the CSA implement exception reporting effective in the fourth calendar quarter of 2017 and that reporting for the third quarter would remain on the same basis as currently (or a corresponding quarter, should the implementation date be moved). The commenter further recommends, for some matching parties, that there be no requirement for exception reporting for the third-calendar quarter of 2017.	We have included specific transitional provisions in the instrument amending the Regulation to address this issue. As indicated in the Notice accompanying this publication, the transitional provisions apply to the reporting requirements of registered firms, clearing agencies and MSUs. The transitional relief would permit a registered firm to calculate its relevant ITM percentages for determining whether it needs to file an exception report for the calendar quarter in which the Revisions are implemented, and, where applicable, for completing the report, as if the Revisions do not come into force until the following calendar quarter. However, September 5, 2017 (or such later date, if the transition to T+2 is delayed) remains the effective date for having policies and procedures to reflect the amended matching requirements regarding ETFs and non-North American trades.
Policy Statement to Regulation 24-101 respecting Institutional Trade Matching		
MSU systems and business continuity planning, including annual testing requirements	One commenter notes that subsection 4.5(1) of the Policy Statement should be supplemented to include references to equivalent, non-Canadian technology guidelines.	See our comment above with respect to the Proposed Revisions to the MSU systems and business continuity planning requirements of the Regulation.

[1] The proposed amendments to section 6.5 of the Regulation in the Request Notice had also included the addition of new sections 6.6 to 6.8 of the Regulation, as well as certain revisions to Form 24-101F3 *Matching Service Utility – Notice of Operations*. The proposed changes to section 4.5 of the Policy Statement had also included the addition of new sections 4.6 to 4.8 of the Policy Statement.