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RE: Proposed Amendments Respecting Mandatory Close-Out Requirements [Proposed Amendments]

April 10, 2025

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Attention:

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Dear Ms. Lam

EXECUTIVE SUMMARY

The Canadian marketplace is unique, valuable and needs to do better than its U.S. competition. It should be nurtured with a regulatory framework which focuses on promoting its advantages and enhancing its global position.

As currently drafted, the Proposed Amendments' benefits are in doubt, do not clearly outweigh costs and may cause market harm.

Since the move to T+1, no data has been produced to determine whether a short selling problem exists in Canada and, if so, its scope. Marketplaces and clearing houses should provide a year of post T+1 data regarding buy ins, failure to deliver (FTD) and short sales which illustrate frequency, credit risk and market conditions so that materiality may be determined and assessed. This missing relevant data would inform whether rule changes are necessary. Should mandatory close outs prove necessary, the missing relevant data would provide materiality of credit risk to inform any proposed timelines.

The Proposed Amendments give rise to regulatory arbitrage because of CIRO's limited jurisdiction over all parties impacted by the benefits of securities lending, the lack of reference to, or enforcement of marketplace buy in requirements (and the lack of such requirements across marketplaces), the exclusion of the Canadian Depository for Securities Limited ("CDS") and the potential use of US clearing houses by Canadian participants who have non-CIRO regulated related parties or affiliates in the United States. Securities lending, for example, as a highly regulated industry, adds market liquidity for the benefit of Canadian pension funds and investment funds, which may be disadvantaged by additional regulatory barriers.

Trade fails, "buy-in rules," short selling, and securities lending are economically and operationally inter-related. As currently drafted, the Proposed Amendments appear to only address continuous net settlement (CNS) positions and not trade-for-trade (TFT).

Currently regulatory requirements respecting short selling appear fulsome. In addition, ongoing reporting of FTD by CDS and marketplaces and post surveillance may achieve the same objectives of the Proposed Amendments with less burden. A consolidation and modernization of all regulatory requirements, with consideration of US alignment, may be fruitful only following a review of the missing relevant data. Recommendations to guide amendments are provided, should the missing data support them.

CONCERNS WITH THE PROPOSED AMENDMENTS

Over prioritization of Alignment

Following the collection and review of the missing, relevant data, it is recognized that some regulatory alignment with US markets may be warranted in the interest of increasing efficiencies for dealers that trade in both markets. However, the Proposed Amendments prioritize alignment without considering whether a differentiated approach may be beneficial to Canada's capital markets and investors.

As drafted, the Proposed Amendments do not account for the unique character of Canada's capital markets as compared to the United States as follows:

- The US clearing market has DTCC, NSCC, and OCC (which accept Canadian equities as collateral) while Canada only has CDS as an integrated, clearing/settlement agency and depository.

- Unlike Canada, the US has numerous clearing brokers and an array of introducing brokers/RIAs.

- The US clearing, settlement, depository, and as a result, collateral finance business, has entirely different software, systems processes, and collateralization requirements (affecting equity finance), which are suited to the needs of its hyper-liquid securities markets.

  The context in which Reg SHO was introduced is entirely different from the present context in Canada given that there was no US ban on naked shorting prior to the introduction of Reg SHO, whose primary goal was to provide one. While Reg SHO may have helped reduce naked short selling, it has also created other challenges for short sellers who may have difficulty finding available shares to borrow when shorting stocks in high demand. This may create a 'short squeeze' where buying activity can drive up the price, forcing short sellers to cover their positions, as occurred with GameStop in early 2021.

- Canada has the advantage of a centralized system through CDS and a small number of clearing members. This makes it feasible for CIRO to consider a failure-to-trade system based on a credit and risk framework. It is notable that clearing members in Canada are highly if not top-rated counterparties from a credit perspective, which may not the case with lesser clearers in the United States. Although the large and fragmented nature of the US market may lead to a greater need to resolve credit problems, the same issues may not be as prominent in Canada.

- As compared to the United States, Canada has a larger number of illiquid securities.

As discussed in further detail below, a 'one-size-fits all' approach that focuses on U.S. alignment to the exclusion of the differences that exist between Canada and the United States will not improve Canada's competitive position and could be harmful to Canada's capital markets. In this regard, it is noted that Australia and Europe have adopted failure-to-close regimes that differ from the United States and reflect the needs of those markets.[1]

[1] Proposed Amendments, s. 3.2

Lack of Supporting Data

The Proposed Amendments rely upon the Final Report of the Capital Markets Modernization Taskforce (The Taskforce Report), which preceded the move to T+1 in May 2024. The Proposed Amendments also rely on the Joint CSA and IIROC Staff Notice 23-329 - Short Selling in Canada | OSC (2022 Short Selling in Canada Study). The 2022 Short Selling in Canada Study did an admirable job of highlighting the "causes" of delivery failures, but did not include credit risk and market exposure as part of an economic analysis.

The result is that the Proposed Amendments do not include any data to substantiate how frequently failure-to-deliver positions occur and whether this presents a risk for Canada's securities markets. Similarly, the Proposed Amendments do not include any data on the occurrence of naked short selling.

In other words, CIRO has not presented any empirical evidence to indicate that failure-to-deliver positions are a "problem" that should be solved through the Proposed Amendments. In particular, the Proposed Amendments do not provide data on post-T+1 fail rates, volume, or value and do not include information on the:

- Settlement rate within a 10-day timeframe
- Trade-for-trade procedures
- Fail rate that presents a real risk, factoring in counterparty risk
- Relative level of failure-to-deliver trades as a share of the market or borrows.
- Total number and frequency with which failures-to-trade result in credit loss
- Loss-given default (LGD);
- Probability of default based on liquidity tiers with comparison to the capital positions of clearing houses, clearing brokers, and executing firms.
- Changes in failures-to-deliver loss given default with aging of settlement. Aging is a standard practice for receivables. An aging analysis should be further analyzed by liquidity tier characteristics.
- Changes in failure-to-deliver loss given default based on counter party risk exposures and whether certain counterparties are the main drivers of economic risk.

In order to have a quantitative basis to claim that fail-to-delivers are an issue, the economic data outlined above is needed. To ensure that its Proposed Amendments are needed and appropriate, it is necessary for CIRO to first ascertain the impact that trade failures are having or threaten to have on Canada's capital markets. An empirical approach to this issue will allow CIRO to craft amendments that fit the unique needs and characteristics of Canada's capital markets. An enhanced level of economic, namely credit, analysis incorporating LGD, aging and counter-party risk, could lead to a better setting of the timelines, by liquidity tier, that recognize Canada's strengths, and allow for more flexible allocations and buy-ins that relate to the real risks and needs of the Canadian marketplace. An updated report on fails for the 2025 fiscal year address credit risk exposure is most relevant.

Commercial Timelines

The Final Report of the Capital Markets Modernization Taskforce recommended that mandatory buy-in rules should be triggered at S+2 rather than S+1 as proposed.[2] It further acknowledged that buy-ins should be on reasonably commercial terms, determined by prevailing market conditions, which include market factors, such as price and liquidity.[3]

The timelines for closing out a fail-to-deliver position and related buy-in requirements in the Proposed Amendments are not based on any consideration of whether a given failure-to-deliver actually presents a risk to the counterparty or the markets generally.

The Proposed Amendments do not draw a distinction between failure-to-deliver positions that result from deliberate efforts including circumvention of CIRO's naked short-selling rules, and failure-to-deliver positions that are simply the result of errors or operational challenges. A firm may have, for example, borrowed securities from multiple sources to serve multiple clients both internal and external, resulting in an inadvertent failure-to-deliver. In the absence of data to the contrary, the bulk of failure to deliver positions may fall into the latter category, and, by failing to account for this distinction, the Proposed Amendment may penalize those firms.

Lack of Coordination

The Proposed Amendments will impact the securities lending industry. It is important to note that, this industry not only sources stock loans to facilitate short trading but also engages in equity finance (including collateral upgrades, collateral downgrades, and term equity finance), proprietary trades (including DRIP), and proxy borrowing. This industry includes participants managing collateral globally across banking, broker-dealers and the buyside. A number of core constituents of banking and the buy-side are direct members of CDS, and as counterparties to each other and to the clearing member firms of CIRO, they have their own differing operational and financial drivers.

To be effective, any amended close out, short selling or failure-to-deliver rules must be binding on all CDS [4]members including non-CIRO dealer members. In the absence of coordination with CDS, there is a risk of arbitrage which will have unfair impacts across the industry. At a minimum, firms outside of CIRO jurisdiction should be subject to a co-ordinated regulatory framework. The Taskforce Report similarly indicated that amendments to the failure-to-deliver rules may require amendments to the CDS rules.[5] In addition, marketplaces have its own set of buy-in rules or services, which may not be monitored, measured or enforced, which will not be impacted by the Proposed Amendments.[6] Any Proposed Amendments should be accompanied by corresponding amendments to marketplace rules.

As stated, the Proposed Amendments ought to have been informed by data gathered from CDS, TSX, and other intermediaries. Moreover, the Proposed Amendments do not include any ongoing reporting

[2] Final Report of the Capital Markets Modernization Taskforce (2021), at p. 49, [the "**Taskforce Report**"] the online: https://files.ontario.ca/books/mof-capital-markets-modernization-taskforce-final-report-en-2021-01-22-v2.pdf

[3] *Ibid* at p. 49

[4] https://cds.ca/resource/en/67

[5] The Taskforce Report, *supra* at p. 49.

[6] Toronto Stock Exchange Rule Book, rules 5-301 to 5-307, online: https://www.tsx.com/en/resource/1464; https://thecse.com/trading/trading-resources/

obligations for CDS or marketplaces.. CSA/IIROC Notice 23-312 Request for Comments - Transparency of Short Selling and Failed Trades states in part:

> Reporting FTD rates would provide a means of comparing information on short positions and short selling with trade failures during the same period, therefore allowing the reader to determine whether rates of trade failure may be correlated with rates of short selling of a particular security.

To address the perceived risks associated with failures to deliver, it is necessary for clearing houses and exchanges to collect and report data on failures to deliver, buy-ins, and short sales. A data solution that provides full audit trail to affected parties who may have failures-to-deliver is possible and within CDS' remit. Also unique to Canada are the LEI and client indicators, which when coupled with marketplace trades, and CDS audit trail, and clearing data could quickly allow for rapidly tracing of bad actors.

At a minimum, marketplaces should be required to report on when and how frequently buy-ins occur and the identity of the parties that fail to deliver. An improved post-trade surveillance system coupled with existing rules could serve the same purpose as the Proposed Amendments without additional regulatory burden.

Existing Regulations

The existing naked short-selling ban and extended fail penalties are robust regulatory tools. The Proposed Amendments do not include any data to suggest that the existing prohibition against naked short-selling,[7] existing extended fail provisions/penalties,[8] and the rules that permit market regulators to designate a security as a "pre-borrow security" or "short sale ineligible"[9], have failed to address the underlying risks associated with failures to deliver, such that the Proposed Amendments are required.

To the extent that the Proposed Amendments are intended to impugn bad actors and eliminate naked short selling, it is not beneficial to duplicate or supplant existing rules with the Proposed Amendments with unnecessary and unwarranted regulation.

A. UNINTENDED HARMS

As a result of the above-noted deficiencies including a fundamental lack of supporting data, the Proposed Amendments may prove to be harmful by, for example:

- Creating financial asymmetries in long and short capital.
- Reducing market liquidity, especially in less liquid securities.
- Disincentivizing new liquidity providers to participate in the capital markets.
- Introducing opportunities for regulatory arbitrage and information asymmetry.

[7] For example: *Securities Act* (Ontario), RSO 1990, c S.5, ss. 48, 126.1 and 126.2; Canadian Investment Regulatory Organization, Annotated Universal Market Integrity Rules [UMIR], policy 2.2 (2), 3.2, and 6.4(6) online: https://www.ciro.ca/media/7526/download?inline.

[8] For example: UMIR, *supra* at policy 6.1(4) and 7.10. Toronto Stock Exchange Rule Book, rules 5-301 to 5-306, online: https://www.tsx.com/en/resource/1464.

[9] UMIR, *supra* at policy 1.1, 3.2, and 6.4(5).

- Negatively impacting lending participation by CIRO dealers; and

- Increasing costs to investors through wider spreads.

Liquidity and price discovery are especially important for junior listed securities who often have no ready access to stock lending facilities i.e., not widely held. In addition, for venture markets, warrants and options may be a significant part of financing. Mandatory buy-ins negatively impact investors simultaneously instructing the exercise of a warrant or option (long position) and the sale of the shares to be acquired as part of the exercise. If the transfer agent, whose timing is beyond the control of the dealer and investor, is unable to process the issuance of underlying securities in a timely manner, a failed trade with mandatory close out could cause harm. [10]

B. RECOMMENDATIONS

CIRO's failure-to-deliver and mandatory buy-in rules should be based on an empirical risk analysis and designed to increase the competitiveness of Canada's capital markets. In order to meet these objectives, we recommend that CIRO delay the Proposed Amendments to allow for the collection and review of post T+1 data and conduct an empirical analysis of the most up-to-date data to determine whether and to what extent failures to deliver arise and present a material risk to Canada's capital markets.

The following principles and considerations should apply to Canada's short selling framework:

a) The timelines for closing a failure-to-deliver position and the trigger for the pre-buy restriction should be informed by a credit analysis incorporating loss-given default, liquidity, aging, and counter-party risk.

b) Provided a firm has sufficient credit to close out its position – and is not engaged in prohibited naked short selling – there should be no restrictions on short selling for immaterial failures to close.

c) Flexibility and deference to the firm's professional judgement is needed in the approach to allocations, reasonable price, timelines and buy-ins, that reflect the real risks posed to Canadian marketplaces by failures-to-deliver. Deference to the firm's professional judgment avoids market harms of short overly-prescriptive timelines that create new fails to avoid immediate sales.

d) Consideration of whether the underlying security is inter-listed. A dealer's ability to close out a failure-to-deliver position may be impaired where, for example, a security is inter-listed and there is a lack of supply on a US exchange. In those cases, Canadian dealers may face operational challenges in sourcing the security resulting from low queue positions. In order to support Canadian dealers, the failure-to-deliver framework should not impose short sale restrictions on dealers that are unable to close due to a lack of supply of an inter-listed security. Delivery to CDS should be an acceptable mechanism to close out inter-listed securities.

e) Reasonable understanding of the implied magnitude of the reporting effort and/or additional development work required by affected members which considers the full spectrum of all resources expended and whether they are outsized versus the intended outcomes from the proposal.

[10] CSE-April-12-2024_0-1.pdf

D. CONCLUSION

CIRO committed[11] to building confidence in Canada's markets *by conducting robust industry consultation* regarding proposed amendments to mandatory close outs.

The Proposed Amendments suffer from core deficiencies that undermine the effectiveness of this proposal and fail to improve the competitiveness of Canada's capital markets. Concerns are summarized as follows:

- Aligning failure-to-deliver rules with the SEC Regulation while placing asymmetrical demands on short sales and long sales, is likely to impact market liquidity by reducing short sales in general and in those securities which require two-way markets the most.

- In the absence of any data to suggest that failure-to-deliver positions pose a risk to Canada's capital markets, it is unreasonable to introduce a new failure-to-deliver framework that will require the industry to incur costs to adopt, monitor, and maintain.

- If it is necessary to update Canada failure-to-deliver framework, any such amendments must include marketplaces and CDS as part of the solution.

- Close-out rules and short-selling restrictions must be flexible to account for credit risk and liquidity for the Canadian marketplace. .

An analysis of how any proposed rule amendment directly links to a clearly identified problem, in the context of the operational realities of the Canadian marketplace, is pivotal to any future rule proposals.

We recommend that CIRO delay any further consideration of the Proposed Amendments and conduct an empirical analysis to determine whether and to what extent failures-to-deliver arise and present a risk to Canada's capital markets. In the meantime, at a minimum, Canada's existing ban on naked short selling and penalties for extended failures to close, provide a suitable framework for mitigating risk.

Due to the necessary technology and process changes, the participation of various stakeholders including vendors, custodians, investment dealers, CIRO and marketplaces, a minimum implementation period of 18 months is requested to account for stakeholder scheduling including regular technology blackout windows or periods of unexpected extreme market stress or volatility and budgeting.

Respectfully submitted,

Investment Industry Association of Canada ***The Canadian Securities Lending Association***

cc.

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[11] CIRO's Annual Priorities the 2025-26 fiscal year, ending March 31, 2026

Appendix "A"

RESPONSES TO CONSULTION QUESTIONS

Question No. Question 1

> To what extent do Investment Dealer Members currently use CDS Participants for clearing and settlement that are not Investment Dealer Members? It is important that we assess the risk of regulatory arbitrage, as the Proposed Amendments would become a CIRO requirement that would only affect Investment Dealer Members that are within CIRO's jurisdiction.
>
> Would the Proposed Amendments create an incentive for Investment Dealer Members to seek entities that are not regulated by CIRO for clearing purposes, and/or create disadvantages for Investment Dealer Members that currently offer clearing and settlement?

The Proposed Amendments may create incentives for dealers to seek out opportunities for regulatory arbitrage. As contemplated, the Proposed Amendments may benefit dealers with non-dealer affiliates while creating a disadvantage for firms without those capabilities. As noted above, CIRO's amendments must be accompanied with corresponding amendments to the CDS and exchange rules to capture entities that are not CIRO dealer members. Should rule amendments prove necessary, at a minimum, investment dealers that have affiliates which are not regulated by CIRO, should be subject to tailored rules to ensure that they are not shifting risks outside of CIRO's jurisdiction.

Question No. 2

> *Do Clearing Members, or Investment Dealers that could be allocated a fail-to-deliver position from a Clearing Member, currently have the books and records in place to close out in a timely manner pursuant to the proposed timelines? This would require the tracking of a CNS fail-to-deliver position to one of the following in order to determine the applicable close-out timeline:*
>
> - *Short sales or trades resulting from SME orders that do not relate to persons with Marketplace Trading Obligations when trading in securities for which that person has obligations: S+1.*
> - *Long sales: S+3*
> - *Persons with Marketplace Trading Obligations when trading in a security for which that person has obligations: S+3.*
> - *Deemed to own: T+35.*

It is anticipated that this tracking will attract significant implementation costs which raise concern in light of missing benefits. The default timeline of S+1 is too rigid at the margins and may impact the financing of long and short positions and have material unintended consequences on incentives to provide liquidity.

Question No. 3

> We propose to allow Clearing Members to allocate all or a portion of the fail-to-deliver

position to another Investment Dealer Member as long as that allocation is made in a reasonable and timely manner. Would the recent move to T+1 settlement affect the ability of Clearing Members to make allocations, or the ability of Allocated Members to close out under the specified timelines? Would Clearing Members have enough information from CDS or their own books and records to conduct allocations in a timely manner, and if not, what types of information would be required?

The risk of double book, or race conditions in operations within a S+1 (effectively 24-hour cycle) is material, with illiquid securities. We therefore recommend that any proposal allow the allocation of failure-to-trade positions should be coupled with longer time periods. Forced buyouts should be avoided when allocating to another firm. The allocated firm, as lender, and the clearing member ,are better placed to determine risks. We also note that CIRO implicitly recognizes CDS' role in the overall industry system in this question.

Question No. 4

Under the Proposed Amendments, we would expect the majority of trades in listed securities to be settled or closed out prior to ten days past settlement date, which is the current reporting timeline for extended failed trades. Given the proposed close-out requirements would apply to all sales, should we consider repealing or narrowing the reporting requirement for extended failed trades on Participants and Access Persons?

Please see above comments.

Reporting requirements, consume costs and resources. A repeal, or at a minimum, narrowing of reporting requirements for extended failed trade is welcomed. The percentage of FTDs settled on which date, incorporating a credit aging analysis is needed. Only the riskiest or most material positions, or counter-party exposures, should be in issue.

Please see also see response to Question 8.

Question No. 5

Given that Investment Dealer Members may use different entities for clearing and trading purposes in Canada, would the proposed notification and reporting requirements ensure a consistent application of close-out and pre-borrow requirements similar to the regulatory framework under Regulation SHO? What are the operational or technical challenges associated with the proposed reporting or notification requirements?

Though the operational and technical challenges associated with the proposed notification and reporting requirements will differ from firm to firm, it is anticipated they could be substantial. The Proposed Amendments require a more expansive impact analysis. Operational and technical challenges should be fully reviewed prior to any proposed rule amendment as part of a fulsome cost-benefit analysis.

Question No. 6

What are some relevant factors or considerations when ensuring purchases made on a marketplace to close out a fail-to-deliver position are being executed using reasonable commercial terms in a manner that is consistent with market integrity?

> For example, should there be an exception to allow the purchase of securities made to close out fail-to-deliver positions to be executed off-marketplace in order to minimize potential market disruptions? Would the ability to conduct off-marketplace trades only benefit certain Investment Dealer Members that are able to find their own counterparties away from the marketplace? Would there be a greater benefit to the market to require these trades to occur on a marketplace for transparency purposes?

It is appreciated that the creation of an exception to allow for the off-market purchase of securities to close out a fail-to-deliver position could help to minimize potential market disruptions. This could assist in achieving a better reasonable price on dual-listed securities. An exception would be achieved through amendment to UMIR Rule 6.4, Trades to be on a Marketplace. However, the concern is whether these off-market trades would have to continue to respect the context of the central limit order book. If not, the marketplace may find itself in a position where participants deliberately fail to deliver to create opportunities for off-market trades.

Question No. 7

> To assist with our monitoring capabilities at CIRO, we are considering the use of a new marker for purchases executed on a marketplace for the purpose of closing out a fail to deliver position. While this marker would only be used for regulatory purposes and would not be publicly disseminated, we would like to seek feedback on whether there are any operational challenges faced by executing Participants in terms of implementing such a marker.

The use of a marker for regulatory purposes attracts unnecessary cost in light of current monitoring capabilities and the lack of relevant data identifying a material concern. Following a review and analysis of relevant data, should a material concern be identified that in turn, clearly exceeds current monitoring capabilities, any STAMP or FIX tag should uniformly available across all market venues (i.e. same tag #)to help ease development. Using different tag for each venue would be more costly to implement and would present challenges for exception management.

Question No. 8

> Are there any common practices that are currently in place that may raise issues in complying with closing out under the specific timeframes or with the pre-borrow requirements as set out in the Proposed Amendments?
>
> 8a) Would the use of average price or accumulation accounts affect the ability of Investment Dealer Members to close out in a timely manner as required by the Proposed Amendments, and if so, how?
>
> 8b) Would the use of the SME marker for trades that are not executed by a person with Marketplace Trading Obligations in respect of their security of responsibility affect the ability of Participants to close out in a timely manner or pre-borrow as required by the Proposed Amendments, and if so, how?

The following practices need to be reviewed before any implementation of amendments, to avoid

regulatory arbitrage:

- Trade for trade settlement: The Proposed Amendments appear based only on continuous net settlement.
- Use of multiple sources (dealer and non-dealer) within an affiliate group to source securities. Canadian dealers without these functionalities would be at a competitive disadvantage.
- The use of US depositories including DTCC and OCC and their settlement practices to allocate positions.

As stated, in general, pre-borrow requirements need to introduce a materiality threshold informed by relevant data. Most often with FTDs, it is smaller, stub positions that are misallocated due to errors or operational challenges that pose the bulk of the quantity of issues, rather than a deliberate effort to circumvent naked short selling. Regulation should not penalize firms for the former nor allow regulatory arbitrage to avoid penalty for the latter.

As noted above, there may be instances in which a Canadian firm encounters difficulties meeting the contemplated delivery timelines where there is lack of supply on a US market for an inter-listed security that results in operational difficulties for Canadian firms in sourcing securities.

Question No. 9

> To facilitate the operation of a close-out framework in Canada, we are proposing reporting and notification requirements as set out above. We are requesting comment on whether Investment Dealer Members anticipate any challenges with the proposed reporting and notification requirements, and if so, please specify.

Please see the answer to Question 4. Reporting and notification requirements consume costs and resources and should be considered following a review and analysis of relevant data.

Question No. 10

> Is the extended close-out timeline of T+35 calendar days appropriate for deemed to own securities, or should we consider a shortened close-out timeline for these transactions?

A shortened timeline should not be considered. Deemed to own securities include restricted securities whereby the lifting of restrictions is beyond the dealer's control. Corporation actions, which vary in length and complexity, are similarly beyond a dealer's control..

Question No. 11

> Are there other situations that would warrant an extended close-out timeline, and if so, what other exceptions should we consider?

Please see answer to Question 10. As discussed in this correspondence, timelines should be based on market analysis. `

Question No. 12

> SEC Rule 204 in Regulation SHO allows broker dealers that have not closed out fail-to-deliver positions to continue short selling as long as they pre-borrow for themselves or their clients in the affected security. Would this outcome be appropriate for Canada, or should we consider restricting short selling altogether where there is a failure to deliver?

In general, there should be no restriction on short selling in a security for immaterial FTDs, if the borrowing firm has the credit capacity to make good. The firm may have borrowed from multiple sources to serve multiple clients, both external and internal. Any minor deliveries which are out of the clearing brokers' control, should not punish the liquidity symmetry of a security.

Furthermore, it should be recognized that for inter-listed securities, the tighter the supply in the US for a security, the lower on the queue for inter-listed deliveries are Canadian brokers. Canadian regulations should support, Canadian dealers' competitiveness.. There should be no discouragement of liquidity in trading due to immaterial operational challenges.

As discussed above, any restriction on short selling should include a materiality threshold based on a credit and risk framework. Immaterial failures to deliver should not result in pre-borrow restrictions. Exceptions should also be permitted for firms that fail to close because of a lack of supply of an inter -listed security.

Question No. 13

> *Given that we are proposing extending the requirement for a reasonable expectation to settle to Investment Dealer Members that are not Participants, should we also consolidate this requirement in the IDPC Rules, rather than having separate requirements in both UMIR and IDPC Rules?*

There should be one set of rules which apply to all participants, including those outside of CIRO jurisdiction.

Question No. 14

> Have we identified all the proposed provisions that will materially impact clients, investors Investment Dealer Members, marketplaces or CIRO in our Impact Assessment? If not, please list any other proposed provisions that you believe will materially impact one or more parties and why.

Please see above comments.

Question No. 15

> Overall, do you agree with CIRO's qualitative assessment of the benefits and impacts of the Proposed Amendments? Please provide reasons for your stance.

Please see above comments. The Proposed Amendments have not been guided by any disclosed data or quantitative analysis on fail rates, abusive short selling, and the related market risks. The qualitative assessment is problematic insofar as recognizes that the Proposed Amendments will have significant impact on dealers and other patriciates but assumes, without justification, that there is a sufficient market

problem or risk that justifies intervention.

No. Question 16

> We are proposing an implementation period of no less than six months after the publication of the final amendments, and request feedback on what implementation period would be appropriate to provide applicable Investment Dealer Members with sufficient time to make the changes necessary to comply with the Proposed Amendments.

Please see above comments. The implementation of the Proposed Amendments should be delayed pending a quantitative study on the prevalence and cause of failure-to-trade positions in Canada and additional consultation.

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