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VIA EMAIL

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Re: Proposed Amendments Respecting Mandatory Close-Out Requirements | Request for Comments

I am writing to you as a concerned market participant with over two decades of experience as a broker in the Canadian capital markets. I am in favour of the proposed amendments respecting the mandatory close out rules and I have attempted to answer your 16 questions as presented. I do however want to provide some additional commentary at this time. Since beginning my career in the late 1990's, I have had the opportunity to observe firsthand how regulatory changes and market practices have impacted the health and integrity of our public markets—particularly for small-capitalization companies.

One area of significant concern has been the persistent presence of naked, market exempt, high-frequency and undisclosed short selling. While short selling may play an important role in maintaining market efficiency and price discovery, the failure to locate and deliver shares in a timely manner has, in my experience, had disproportionately negative effects on smaller issuers. These companies often operate with limited liquidity and rely heavily on investor confidence, which can be significantly eroded by sustained and unchecked downward pressure from abusive short selling tactics. While regulators also often site "liquidity" as a benefit of short selling it has been my experience that liquidity is not improved to the benefit of the small issuer or the public shareholder.

Compounding this issue was the removal of the tick test by IIROC in 2012, which once served as a safeguard by preventing short sales from being executed on a downtick. The absence of this rule has opened the door for more aggressive short selling practices that, in the context of small-cap companies, can create artificial downward momentum, dissuade investors, prevent accurate price discovery and ultimately inhibit access to capital.

Small-cap companies are a vital part of Canada's innovation economy and represent a key avenue for growth and employment. It is my firm belief that current market regulations do not sufficiently protect these issuers or their investors from the destabilizing effects of naked short selling and the lack of appropriate trading safeguards.

I urge the regulators to revisit these issues with a focus on increasing transparency and reinstating protections that foster fair and orderly markets—particularly for the most vulnerable issuers. I would

strongly recommend a reinstatement of the tick test rule along with a total ban on short selling securities with a market capitalization of under \$1 billion.

Answers to the questions in the request for comments.

Question 1.

To ensure fairness, clearing and settlement by entities that are not CIRO regulated should still require oversight by a non-CIRO organization to ensure they are meeting the same obligations.

Question 2.

Books and records must be updated in real time to ensure accurate and timely tracking of a CNS fail to deliver positions.

Question 3.

The recent move to T+1 should facilitate a similar move by Investment Dealer Member when it comes to close out transactions. It should be the investment dealers responsibility to maintain the information on their books to facilitate the covering transactions in a timely manner.

Question 4.

Leaving the extended failed trades requirement at 10 days is fundamentally opposite to the concept of requiring mandatory close out provisions, the timeline needs to be repealed.

Question 5.

Operational and technical challenges should be easily overcome with staffing and technology solutions. This cannot be an excuse for non-compliance.

Question 6.

Off marketplace transactions should not be permitted to close out a fail to deliver position. Off market place transactions again circumvent the purpose of requiring mandatory close out provisions by permitting undisclosed actions and impairing market transparency.

Question 7.

There should be no operational challenges with adding one additional marker to the system that indicates the purchase was for the purpose of a closing out transaction.

Question 8.

There are no practices currently that should raise issues with the proposed close out provisions.

- a. There should not be an issue with using price or accumulation accounts
- b. The use of the SME marker is specifically intended for certain accounts and trading activities. Applying the SME marker to trades that do not meet these criteria- particularly when executed by an individual without marketplace trading obligations for that security- can lead to misclassification of trades. This may obscure the true nature of short positions, potentially hindering the participant's ability to monitor and address fail to deliver positions effectively. This could impact the timely close out of such positions and the fulfillment of pre borrowing requirements. SME markers should be heavily audited to prevent misuse.

Question 9.

Not aware of any challenges with the proposed reporting and notification requirements.

Question 10.

Shortened standard close out timelines should be adopted with individual exception cases considered for unforeseen circumstances.

Question 11

Difficult to give specific situations that could arise, and these should be considered on a case by case basis.

Question 12.

Consider short selling restrictions all together when there is a failure to deliver.

Question 13.

IDPC and UMIR rules should be consolidated to ensure equitable participant treatment.

Question 14.

Missing from the impact assessment are two items.

1. The Downtick Rule should be re-instated.

The short-selling downtick rule, also known as the "tick test", is designed to prevent excessive downward pressure on a stock by restricting short sales to being executed only at a price above the last trade (or at the last trade price if it was an uptick). The key rationales behind this rule include:

- Preventing Market Manipulation – Without a downtick rule, aggressive short selling could drive a stock's price down artificially, creating a "bear raid" where traders profit from panic selling.
- Maintaining Market Stability – The rule prevents rapid declines caused by unrestricted short selling, reducing volatility and promoting orderly markets.
- Protecting Investor Confidence – Sudden sharp declines in a stock due to aggressive shorting can shake investor confidence. A downtick rule helps maintain trust in fair price discovery.
- Mitigating Systemic Risk – In times of market stress, unrestricted short selling can accelerate declines, potentially leading to broader financial instability.

I have worked with small cap resource companies for over 25 years and since removing the tick test I can say with the utmost confidence that the benefits originally anticipated have not materialized and in fact it has been a significant detriment to small cap companies and their shareholders. Transaction volume has not improved and market manipulation to the downside by algo trading has been disastrous for many small companies.

2. Short selling should not be permitted for companies under a market capitalization of \$1 Billion. I realize in 2022 that the question went to the public and according to CIRO there was limited response to the market cap restriction however I did not see that request for comments at the time and did not respond so I am indicating my position here.

Small-cap or junior companies are often more vulnerable to short selling due to lower liquidity and limited institutional ownership. The potential benefits of restricting short selling for these stocks include:

- Reduced Market Manipulation – Junior stocks are more susceptible to price manipulation, as a few aggressive short sellers can exert significant influence over price movements.
- Encouraging Capital Formation – Many small-cap companies are in early growth stages and rely on equity markets for funding. Excessive short selling can depress valuations, making it harder to raise capital.
- Promoting Fairer Price Discovery – With low trading volumes, sharp price drops from short selling can exaggerate negative sentiment, leading to pricing inefficiencies.
- Protecting Retail Investors – Small-cap stocks often have a larger retail investor base, who may be more vulnerable to panic selling triggered by aggressive shorting.
- Enhancing Market Confidence – By limiting short-selling risks, investors may have greater confidence in the valuation of small-cap stocks, leading to healthier market participation.

Question 15.

I agree with the amendment proposed as long as the items in the answer to question 14 here are also included.

Question 16.

6 months at the most should be allowed. Systems changes should not be onerous.

Thank you for your time and consideration.

Sincerely,

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