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April 10, 2025

Via e-mail: [market\\_regulation\\_policy@ciro.ca](mailto:market_regulation_policy@ciro.ca)

Canadian Investment Regulatory Organization  
Bay Adelaide North  
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Toronto, Ontario, M5H 0B4

Attention: Theodora Lam  
Director, Market Regulation Policy

And To:

**Trading & Markets Division**  
Ontario Securities Commission  
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Via e-  
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**Capital Markets Regulation**  
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Dear Ms. Lam,

Re: CIRO Proposed Amendments Respecting Mandatory Close-out Requirements  
01/09/25 25-0001 Request for Comments

We, Fidelity Clearing Canada ULC (FCC), thank you for the opportunity to provide comments with respect to CIRO's proposed amendments to the Universal Market Integrity Rules (**UMIR**) and Investment Dealer Partially Consolidated Rules (**IDPC**) that would require applicable Dealer Members that are Investment Dealers (**Investment Dealer Members**) to:

- close out a fail-to-deliver position in the event of a settlement failure in a listed security at the recognized clearing agency by specified timelines by buying or borrowing shares,
- pre-borrow the affected security where there has been a failure to close out by specified timelines for all future short sales in the security at issue,
- provide certain reporting and notifications in connection with mandatory close-out requirements, and
- have a reasonable expectation to settle on settlement date for Investment Dealer Members that are not Participants under UMIR (**Proposed Amendments**).

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Respectfully, while we applaud CIRO's objective to minimize fail impacts to the integrity of our capital markets, the technical challenges that need to be overcome cannot be underestimated. In the current Canadian landscape, the nature of the CDS/CNS netting process poses a reality that trying to identify offending trades, trace them to the offending party, assign the responsibility to the offending party and track the eventual settlement of that fail is complex, costly and a monumental lift.

We don't necessarily agree with CIRO's qualitative assessment of the benefits and impacts of the Proposed Amendments. CIRO has not made a clear case that fails are greatly impacting market integrity in Canada and that closing out these fails will result in material improvements. CIRO has also implemented other regulatory changes that, in our opinion, strengthen tools to prevent abusive trading practices. We don't agree that modelling close-out regulations on those in other jurisdictions, regulations that would require lengthy and substantial operational and technological change, are currently warranted.

Our comments are in order of your questions 1 through 16, respectively, and as follows:

1. FCC, while registered as an investment dealer, is a self-clearing member and we use CDS for the clearance and settlement of our trades. We outsource to no other parties for clearing and settlement. We have no need to derogate from this reality in light of the Proposed Amendments.  
  
If the possibility of regulatory arbitrage amongst participants exists, we agree that a level playing field needs to be maintained.
2. The tracking of CNS fail-to-deliver positions to determine the applicable close-out timeline is not easily possible given the current landscape and capabilities of the books and records platforms available in the Canadian marketplace. At present, Investment Dealers and clearing members, and specifically carrying brokers do not have the books and records functionality in place to close out fails in a timely manner in accordance with the proposed timelines. The systems behind this are fluid and capture settlements that can be unrelated to the singular initial failure. The Proposed Amendments will put an undue burden specifically on CIRO members who are also carrying brokers due to the complexity added related to clearing for multiple intermediary clients.
3. The tightened time frame with t + 1 settlement makes successful settlement and fail-to-deliver allocation very challenging. The lack of current systems to track the fail to deliver allocations through to eventual settlement or buy in exacerbates the problem. This is in large part due to the fact that most clearing/carrying brokers utilize a single CUID for their trades, but that CUID represents the clearing of trades from multiple/many other CIRO members and other entities. The current information provided from CDS does not assist with the tracking or the allocation of these fails.
4. Yes, we believe CIRO should consider repealing or narrowing the reporting requirement for extended failed trades on Participants and Access Persons. The Proposed Amendments would have the majority of trades in listed securities settled or closed out prior to ten days past settlement date, minimizing the value of the current reporting timeline for extended failed trades.
5. As mentioned above, as a self-clearing member of CDS we utilize no other parties for clearance and settlement services. As a carrying broker however there is substantial difficulty in managing the Proposed Amendments. The essence of the problem is that as a carrying broker we maintain a single CUID at CDS for the settlement of our

trades and custody of our positions. However, that single box represents the holdings of many of our Investment Dealer introducing brokers and CSA regulated portfolio manager clients. Ultimately, if we have a market trade that is failing, it can be extremely difficult to attribute it to a specific client, and even more so to be able to distinguish the correct aging timelines as described in the Proposed Amendments. As an example, we could be failing for 10 days consecutively on the same security, but that could potentially be 10 different introducing brokers each failing for one day. Under the Proposed Amendments, would the carrying broker be failing past the required date to act, or would it be considered to be the introducing broker failing? In this example no buy-in would ever be initiated as no Investment Dealer would be failing for more than one day.

Depending on the interpretation, there will be substantial system development required to meet the requirements of the Proposed Amendments. An implementation period of six months would not suffice to undertake the level of system development required amongst both our official books and records platform as well as our clearing and settlement applications. We would expect significant cost and require a much longer timeframe to implement.

In addition, it would be very difficult for carrying broker systems to enforce different pre-borrow requirements for different clients given that 1) most are utilizing a common order management system with us for their order flow, and 2) some dealers trade away and as carrying broker we do not have the ability to enforce pre-borrow on those trade aways.

6. We point to UMIR 6.4, (trades to be on a marketplace), which outlines relevant factors and considerations re ensuring purchases are made on a marketplace to close out a failure. There are very few exceptions from this requirement, and we are in support of this. We can see no reason to allow for an exception to allow the purchase of securities off-market. Requiring these trades to occur on a marketplace increases transparency and is where liquidity can be discovered. To ensure close-outs are done with reasonable terms we recommend that trade types, price limits and timing of executions should also be defined in the Proposed Amendments.
7. The implementation of new trade markers is generally a relatively large amount of work as development will be required not only for trading service providers, but also for books and records platform providers, all exchanges and marketplaces, as well as CDS. Recent created tags for LEI, Multi Client and Bundled could point to the expense and timeline that would be anticipated. If a new tag is being contemplated for close out trades, then tags for other trade markers for in this proposed amendments (deemed-to-own) should be implemented at the same time. Deemed to own marking could benefit regulatory oversight the same way a close out tag would while also offering a benefit to clearing brokers.
8. The primary practice is as CIRO has highlighted - the use of average price or accumulation accounts. Aggregating marketplace sales in an average price account would no longer be possible past the first settlement date under the Proposed Amendments.
9. The challenge with the proposed notification and reporting requirements is the ability to track CNS fails through to all the different order types and clients that create the fails. CNS settlement is done in net and dealer systems are setup to match the CDS netting operation. Identifying singular failed trades might not be complex initially but grows in complexity with each additional trade or movement in the same security. As mentioned above, building

this capability will be very challenging, expensive and take a longer timeframe than proposed, and is especially complex for a carrying broker.

10. The extended close out time of T+35 is appropriate for deemed to own securities; no one is disadvantaged, and this time frame is not negatively impacting us. Our understanding is that this is primarily a regulatory timeframe, and the failing dealer will still be subject to financial risk due to a trading counterparty still effecting a buy-in regardless of the proposed T+35 timeframe.
11. The other situations that would warrant an extended close-out time would be those of dual listed securities, ie. when a member is failing to deliver to CDS-CNS because they are owed by NSCC-CNS. The member is owed shares via non-exchange trades at CDS from a CIRO or non-CIRO member or via Balance order at DTC from a CIRO or non-CIRO member. We are owed shares from CDS-CNS and have entered a buy-in is not a valid reason for Regulation SHO.

There is an option for the CNS member to step out of CNS to become 'trade for trade' (TFT) which would net out of their market obligation, and we can look to net the balance order TFT with the step out TFT and settle the cash. This option is only available if the counterparty on the CNS side is willing to unveil themselves.

In general regulations should consider the requirements of both US and Canadian rules on fails and buy-ins so that dealers who transact cross-border can effectively manage their fails without undue financial risk because of differing timelines. We would also recommend streamlining the buy-in process to minimize the need to automatically file buy-in intents that are costly and only used to prioritize a dealer's ability to execute on a buy-in.

12. SEC Rule 204 in Regulation SHO exists because short selling activity with a pre-borrow should not add to failed trades and yes, this outcome would be appropriate for Canada. Restricting short selling when there is a failure to deliver could have a detrimental impact on market quality and price discovery. If there is street availability and a dealer borrows the security short-selling should continue to be allowed.
13. Yes, given that CIRO is proposing extending the requirement for a reasonable expectation to settle to Investment Dealer Members who are not Participants, it should also consolidate this requirement in the IDPC Rules, rather than having separate requirements in both UMIR and IDPC Rules.
14. Additional considerations that might materially affect the parties is the need for consistent transparency: if CIRO is going to receive a report/file from CDS, individual participants (CIRO members) need to be provided with their reports/files from CDS as well. Without transparency and clear reporting, there is the risk of reputational damage for sending client intents when they enter a long sale where the position has been lent out.
15. As mentioned, we don't necessarily agree with CIRO's qualitative assessment of the benefits and impacts of the Proposed Amendments. CIRO has not made a clear case that fails are greatly impacting market integrity in Canada and that closing out these fails will result in material improvements. This is coupled by the fact that there is pending regulatory change, Amendments Respecting the Reasonable Expectation to Settle a Short Sale (24-0349), that will make it a conduct penalty, manipulative and deceptive trade, to not have a reasonable expectation of settlement. That regulatory change is taking place just as the comment period for these Proposed Amendments is ending. The regulatory change to enforce the 'reasonable expectation of settlement' in our opinion significantly strengthens regulatory tools to curtail potential market abuses and attempted trades where



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there is no expectation of settlement. If there currently are instances where trades are conducted with no reasonable expectation of settlement these same trades would result in fails that the Proposed Amendments seek to close out. It seems reasonable that the improvements anticipated with 24-0349 be measured and studied prior to the planning and implementation of a costly operational change.

16. As repeatedly noted, given the complexity of these requirements, especially as they would apply to carrying brokers, we would anticipate a minimum of 18-24 months to be able to design and implement system developments that would allow us to accurately report on and enforce the requirements as laid out in the Proposed Amendments.

If the Proposed Amendments are implemented, we conservatively estimate the need to add substantial staff to conduct the work required to have this be effective and successful.

In closing and to reiterate, while we respect CIRO's initiative with the Proposed Amendments, they are pre-mature considering 24-0349 and the complexity, time and cost required to achieve the Proposed Amendments cannot be underestimated.

We would be pleased to discuss any of our feedback above in more detail should CIRO so desire.

Sincerely,

FIDELITY CLEARING CANADA ULC

Paige Wadden II.b.  
Chief Compliance Officer

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