



Delivered Via Email

Ms. Theodora Lam
Acting Director, Market Regulation Policy
Canadian Investment Regulatory Organization
Via Email: tlam@ciro.ca

Mr. Stan Magidson
Canadian Securities Administrators
Via Email: stan.magidson@asc.ca
lynn.tsutsumi@asc.ca

April 12, 2024

Re: Proposed Amendments Respecting the Reasonable Expectation to Settle a Short Sale.

Dear Ms. Lam,

On behalf of the clients of BIM Group, we seek to make a submission to CIRO in accordance with your request for public input.

Observationally, the proposed changes really are on the fringe of the issues that are plaguing our market which is why we have reached out to the Minister of Finance, the Honorable Chrystia Freeland, with a request to impose a ban on all naked short selling, audit chartered banks for FTD's and 'spoofing', and conduct a regulatory review (copies attached). Your request for submissions appears to us as a distraction that looks like CIRO is doing something when, in fact, the core issues are left completely as is. This is unacceptable. In our view, we have major problems in Canada, and we need immediate and decisive action.

With respect to recommendations that are specific to UMIR, we remind CIRO that Harrington provided the [Ontario Task Force Committee](#) with a comprehensive list of proposed changes in their submission dated September 22, 2020. To date, none of these recommendations have been implemented. They included:

- 1) Regulate the settlement system. Enforce a T+2 settlement on all trades with no exceptions. This will force everyone to borrow the stock prior to execution of the short sale so to timely deliver it and timely consummate the trade.

- 2) This includes market makers who are marking the shares long (when they are short) and posting multiple offers that are not real in their market making activities with no intention of ever covering the trades in the required time frame under the market making rules. This will force them to get the borrow to cover as they are currently required to by law, but fail to do. Interestingly, this is what Europe appears to be implementing early next year.
- 3) Bring back the uptick rule so that stocks can't be driven down relentlessly by the abuses above which will help with market structure and integrity. This rule was put in place for a reason and should never have been removed.
- 4) Implement a pre-borrow locate requirement on all short sales.
- 5) Regulate the stock loan business to ensure over lending isn't occurring which happens all the time. Impose large fines for this behavior if violated.
- 6) Never let cash account shares be borrowed in any manner. IIROC's recent change to allow the borrowing of cash account shares was, in our opinion, due to cover the tracks of this abuse of prior lending shares that was happening on a large scale.
- 7) Put in place the same report requirements for short sales as currently are in place for long positions. If a 10% beneficial (long) ownership is deemed appropriate, then have the same requirements for short sales.
- 8) Transparency into the positions of all broker dealers must be implemented. It is astounding that in today's age of required transparency that this already isn't in place. This should include the following: (a) Daily publication of total short sale volume; and (b) daily publication of all failed trades by broker.

Since this submission over 3 years ago there are modifications and/or new recommendations based on our expanded awareness. We refer CIRO to Harrington Globals letter to the Minister of Finance dated February 5, 2024 and highlight the following:

- 1) Implement a pre-borrow "hard locate" on all short sales.
- 2) Implement an outright ban on all Short Market Exempt high frequency trading algorithms using baiting, wash trades or spoofing techniques.
- 3) Implement Mandatory buy-ins in accordance with a European-style Settlement Discipline Regime.
- 4) Implement market oversight modeled after Regulation SHO to track failed trades. Our SRO structure is conflicted. Canada needs a national securities regulator that is truly independent of the banks, dealers and market participants.
- 5) Adopt a short position disclosure regime modeled after the United Kingdom
- 6) Regulators need an automated system to detect, and block, baiting and spoofing orders.
- 7) A limit on market makers to 1 or 2 for the Company and a corresponding number to be appointed by the home exchange.
- 8) The Securities Transfer Association of Canada ("STAC") needs to be regulated to ensure FTD's are properly reported.
- 9) A requirement that only the company can authorize listing its shares on an exchange. Brokers do this on behalf of companies in jurisdictions which allow FTD's. This must be banned.
- 10) Like Australia, no trade in a security should occur unless the security is in the account of the trader through a pre-borrow.

We understand that legitimate short selling with borrowed stock serves a healthy purpose in capital markets. What isn't healthy is algorithms that use spoofing and FTD's via Exempt Market Dealers ("EMD") to manipulate stock prices down. We refer readers to our [real estate analogy](#) and ask if spoofing

and FTD's would facilitate fair price discovery in the housing market? Of course they wouldn't, so why do we allow them on our stock exchanges or leave them unreported in offshore jurisdictions? [CIRO's data](#) states that 30% of all FTD's are lumped in a category called 'Other'. In 2023 that was \$37 billion of unaccounted capital plus countless other amounts going back for a decade or more.

We believe these changes, when combined with vigilant regulatory oversight and enforcement, would protect investors from malfeasance in Canada's capital markets and provide fair and efficient price discovery. We encourage CIRO to integrate these changes into UMIR and/or refer them to the appropriate jurisdiction for implementation without delay.

Respectively,

Murray Bockhold
Bockhold Investment Management