



Theodora Lam
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Canadian Investment Regulatory Organization
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Re: Proposed Amendments Respecting the Reasonable Expectation to Settle a Short Sale

The Prospectors & Developers Association of Canada (PDAC) is the leading voice of the mineral exploration and development industry. Representing over 7,750 individual and corporate members both in Canada and around the world, PDAC's work centers on supporting a competitive, responsible, and sustainable mineral industry.

The mineral industry supports 719,000 people in direct and indirect employment and contributes more than \$120 billion to Canada's GDP every year. It is the largest group of public issuers in Canada, accounting for 1/3 of all companies listed on Canadian exchanges and more than half of the issuers listed on the TSX Venture exchange.

PDAC recognizes the important functionality of short selling in providing balance to capital markets, in generating liquidity and facilitating price discovery. However, we are also aware of the potential for short selling to be an abusive practice that can assist bad actors in various forms of market manipulation. Therefore, it is encouraging to see that the Canadian Investment Regulatory Organization (CIRO) taking steps to improve regulations that govern short selling activities in Canada.

PDAC supports CIRO's proposed amendments

We anticipate that adding to Universal Market Integrity Rules (UMIR) 3.3 to require a reasonable expectation to settle a short sale on the trade date, adding gatekeeper requirements and consolidation of provisions for improved accessibility can lead to improved compliance and reduce the potential for market manipulation via short selling.

We also encourage CIRO to dedicate resources to closely monitor failed trade volumes during and post the upcoming change in settlement time from T+2 to T+1 to understand if there is any substantive increase in the number of failed trades that may be attributed to this change, and develop actions based on such analysis.

CIRO must clarify terms for consent

PDAC members have shared concern from regarding how consent may be provided by the market regulator. Subparagraph 3.4 (1) prevents Participants or Access Person from entering a short sell order following a reportable extended failed trade in a specific security, but it also provides an exemption if *“the Market Regulator has consented the entry of such order or orders”*. The concern here is that terms under which the Market Regulator may provide consent are unclear. Therefore, we recommend that the parameters used to determine consent must be explicitly prescribed rather than left open to interpretation.



Prior PDAC recommendations on short selling

The current consultation provides an opportunity to reinforce several recommendations PDAC has offered on short selling that are pertinent to the current consultation. In particular, we point to and recommend CIRO review our full response to the Capital Markets Modernization Task Force consultation [here](#) and CSA *Consultation Paper 25-403 – Activist Short Selling* [here](#). We include some of the supporting logic for these recommendations below.

Prioritize enforcement to build market confidence

An environment that encourages regulatory compliance is the first line of defence against market manipulation and can prevent manifestation of market imbalances caused by short selling activities. PDAC has heard repeated concerns from our members that the regulatory enforcement needed to effectively discourage bad actors is lacking, and we emphasize the importance of ensuring there is consummate regulatory oversight and enforcement of penalties for bad actors attempting to circumvent regulation.

Background observations & leveling the playing field

The mineral exploration and development sector may be more susceptible to various forms of predatory short selling strategies when compared to other industries. Companies in this market segment work under inherent uncertainties that exist in mineral exploration, with only about 1 in 10,000 mineral showings becoming a future mine, and since they are typically pre-revenue, market valuations are often largely supported by complex technical information.

Given the capital-intensive nature of mineral exploration, pre-revenue explorers need to issue equity on a recurring basis and these companies operate with very lean capital, and human resources. Additionally, public issuers must adhere to regulatory disclosure requirements that include verification processes such as attestation by qualified persons. As a result, there are significant practical limitations for small issuers to respond to allegations made by activist short sellers, who are not constrained to the same regulatory oversight.

The evolution of social media over the past decade has magnified concerns around short selling, as activist short sellers can use such venues to operate and influence a share price. This dynamic can create punitive market imbalances. While the size and market liquidity of such pre-revenue companies likely prevents this situation from becoming pervasive, the high concentration of issuers within this sector in the Canadian marketplace (i.e. over half of TSXV) could lead to more predatory short selling.

To address potential market imbalance that may come from the limitations mentioned above, PDAC recommends:

CIRO to work with CSA on developing a disclosure regime that addresses social media and other non-official promotion channels that would require stipulation of:



- Information on the position of the publisher of the report (e.g. size, date obtained, etc.)
- Methodology and sources used to support contradictory estimates or valuations

Institute an alternative uptick rule

In the U.S., the uptick rule was first introduced in the over 80 years ago and evolved into the 'alternative uptick rule' in 2010, in the words of the SEC, "to preserve investor confidence and promote market stability during periods of stress and volatility."

Going in the opposite direction, Canadian exchanges eliminated the tick test for short selling in 2012 as market data suggested at the time that it was not an efficient method of stopping the type of short selling it was created to mitigate. However, financial markets continue to evolve technologically and with the advent of platforms like high-frequency and algorithmic trading, the ability of short selling campaigns to distort markets only grows as these types of platforms are beyond the reach of the average market participant. CISO and CSA must work collaboratively to mitigate the potential for such distortions to occur.

PDAC recommends that an [Alternative Uptick Rule](#), similar to what exists in the U.S. and administered by the SEC, must be instituted in Canada. This rule, in certain circumstances, prevents the execution or display of a short sale at a price that is less than or equal to the current national best bid. This regulation would bolster investor confidence, market efficiency and mitigate the potential for run-away short selling to distort the market. Instituting an alternative uptick rule in Canada would both improve alignment with the U.S. marketplace and reduce the ability of bad actors to conduct predatory short selling campaigns on Canadian exchanges. We also do not anticipate that the uptick rule would have a materially negative impact on liquidity.

Improve informed consent processes

PDAC is aware that in many instances, brokerage accounts allow a broker to loan shares owned by clients to a short seller, unbeknownst to these clients that predominantly represent 'long holders', and lending brokerages are presumably being compensated for such transactions. This practice is clearly a conflict of interest and would seem to contravene the 'Know Your Client' principles that are at the foundation of fiduciary duties for a broker.

To address this conflict of interest, we recommend CISO develop a binding framework under which brokers must clearly disclose potential use of client share holdings for short selling and provide them the option to opt out of share lending practices. This opt out option should cover both internal and external trading practices i.e. shares being loaned within a brokerage entity or to a 3rd party.

We thank CISO for the opportunity to provide commentary in this consultation, and welcome continued engagement as this consultation progresses, and please contact Jeff Killeen,



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April 12, 2024

PDAC's Director, Policy & Programs (jkillen@pdac.ca) if there are questions or clarifications sought from this letter.

Sincerely,

Lisa McDonald

Executive Director
Prospectors & Developers Association of Canada (PDAC)