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Submitted via Email

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**RE COMMENTS WITH RESPECT TO THE CANADIAN INVESTMENT REGULATORY ORGANIZATION (“CIRO”)
NOTICE 24-003- PROPOSED AMENDMENTS RESPECTING THE REASONABLE EXPECTATION TO SETTLE A
SHORT SALE PUBLISHED ON JANUARY 11, 2024 (THE “PROPOSED AMENDMENTS”) AND NOTICE 24-0004-
PROPOSED GUIDANCE ON UMIR REQUIREMENTS RELATED TO SHORT SELLING AND FAILED TRADES
PUBLISHED ON JANUARY 11, 2024 (THE “PROPOSED GUIDANCE” AND TOGETHER THE PROPOSED
AMENDMENTS THE “NOTICES”)**

The Investment Industry Association of Canada (“IIAC”) is the national association representing investment firms that provide products and services to Canadian retail and institutional investors. Our member firms trade in debt and equity on all marketplaces.

The IIAC appreciates the opportunity to comment on the proposals (“Proposals”) contained in the Notices.

SUMMARY OF POSITION

The IIAC is generally opposed to the Proposals, which do not appear needed in our continued low failed trade rate environment which has an adequate framework. The Proposals bring costs with unclear benefits.

A. GENERALLY

The IIAC is generally opposed to the Proposals for the following reasons:

I) Solving a Problem That Does Not Exist

Our member firms continue to observe a very low failed trade rate, whether with respect to short sales or otherwise, with most such failures to settle resulting from administrative reasons. Therefore, the Proposals appear an attempt to solve a problem that currently does not exist on the Canadian marketplace.

II) Adequacy of Current Framework

The existing Canadian regime is already equipped with a number of tools which can be used, if needed, to reduce the probability of settlement failures. For instance, CIRO could apply the Short Sale Ineligible Security and Pre-Borrow Security designations more frequently to address concerns about failed trades in specific sectors of the market or for specific issuers.

III) High Cost-to-Benefit Ratio

Imposing a positive obligation on Participants and Access Persons to demonstrate with conclusive evidence that there was a reasonable expectation to settle a short sale prior to order entry and to document such evidence creates a substantial new burden for IIAC member firms, without CIRO presenting clear evidence of pressing issues that could not be addressed under the existing regime.

The burdens placed upon Participants and Access Persons with respect to their gatekeeper role is concerning particularly when it pertains to obtaining conclusive evidence of expectation to settle for direct market access clients. Such an imposition will increase execution times and/or require technological solutions which are not widely available in the Canadian marketplace, resulting in operational complexity and additional costs, without a demonstrable benefit to market integrity.

B. EASY TO BORROW LISTS

Easy-to-Borrow lists are an American concept designed to work within the framework of the “locate” requirement adopted by US regulators. Canadian firms have instead adopted Hard-to-Borrow lists as best practice and find such lists to be more effective and efficient. Therefore, Easy-to-Borrow lists should not be recommended for the Canadian market without demonstrating that they are clearly superior to Hard-to-Borrow lists in preventing failed trades.

C. EXPECTATION TO SETTLE

Since CIRO has stated that the settlement of trades is not in itself evidence of a reasonable expectation to settle, then, conversely, it should be made clear that failure to settle is not necessarily evidence of absence of a reasonable expectation to settle.

D. MIGRATION TO T+1 SETTLEMENT CYCLE

IIAC member firms recommend that the Proposals to be suspended until at least six months after the transition to the T+1 settlement cycle. By waiting, CIRO can gauge the impact of the shortened

settlement cycle on failed trades and reevaluate the need for the current Proposals.

E. CONSOLIDATION OF RELATED UMIR PROVISIONS

Despite the concerns set out above, IIAC member firms do appreciate that CISO has consolidated all the UMIR provisions regarding short selling in one place and has provided additional information on how CISO may evaluate reasonable expectation to settle. Flexibility around the evidence required to prove such reasonable expectation is key.

Answers to questions posed are appended at **Schedule A**.

Respectfully submitted by,

INVESTMENT INDUSTRY ASSOCIATION OF CANADA

Laura Paglia

Per: Laura Paglia, President & Chief Executive Officer

SCHEDULE A

Question: Have we identified all the material impacts on clients, issuers, Participants, Access Persons, marketplaces or CIRO as a result of the Proposed Amendments? If not, please list any other impacts that you believe will materially impact one or more parties and why.

CIRO's impact assessment states that Participants and Access Persons "...should already have processes and systems in place to prevent trading without a reasonable expectation to settle." Therefore, CIRO states that there will be no material impact on Participants and Access Persons from adopting the proposals set out in the Notices.

CIRO makes a similar statement when assessing costs stating that because the proposals would only require an "update" to supervision systems and gatekeeper reporting processes, the costs "...would not be significant".

IIAC member firms disagree with these conclusions. Setting a standard for easy to borrow securities, implementing that standard in order to develop and maintain easy to borrow lists, making such lists available to direct market access clients, implementing technological systems to evaluate, and documenting reasonable pre-order entry expectation to settle for direct market access clients and post-hoc documentation of evidence of the reasonable expectation settle satisfactory to CIRO will result in material costs to Participants and Access Persons.

These costs may need to be passed on to clients and could have an impact on the efficiency and speed of order entry and execution on Canadian marketplaces.

IIAC member firms recognize that any new regulation may result in new costs for regulated entities and their customers and are willing to incur costs where the regulation addresses a real issue. However, CIRO has neither clearly articulated the problem which needed to be addressed nor explained how the proposals in the Notices would improve the Canadian market.

Question: Overall, do you agree with CIRO's qualitative assessment that the benefits of the Proposed Amendments are proportionate to their costs? Please provide reasons for your stance.

IIAC member firms support the consolidation of all short selling-related provisions in a single location in the UMIR.

With respect to the other Proposed Amendments, the only positive impacts highlighted by CIRO are that the Proposed Amendments "...would address the concerns of certain issuers regarding short selling" and "may promote investor confidence by helping ensure the timely receipt of securities by clients purchasing securities".

CIRO does not provide details as to the concerns of certain issuers or explain how investor confidence would be promoted (especially since even failed trades where securities are delivered at the required settlement time due to the operation of the net settlement system of CDS are considered problematic).

CIRO's March 16, 2023, Failed Trade Webcast recognized:

"...it is not very likely that one solution may fit all sizes here. ... the conclusions or the insights or the data that we see in front of us is not generalizable across the boards. What we see for example for junior marketplaces is a little different than senior marketplaces. What we see for certain price categories is different than other price categories. What we see for liquid securities is different than non-liquid securities. *So, it is very important for us to note that a solution that governs the entire landscape may not be the most practical, fair or ideal solution here.*"

Any Proposals should reflect the above acknowledgements.