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VIA ELECTRONIC SUBMISSION

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission, New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Service NL
Northwest Territories Office of the Superintendent of Securities
Office of the Yukon Superintendent of Securities
Nunavut Securities Office

C/O The Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8

VIA EMAIL comments@osc.gov.on.ca

March 8, 2023

Re: **Comments in respect of the Joint Canadian Securities Administrators (“CSA”) and Investment Industry Regulatory Organization of Canada (“IIROC”) Staff Notice 23-329 - Short Selling in Canada (“Staff Notice”)**

Cybin Inc. (NEO:CYBN) (NYSE American: CYBN) (“Cybin” or “we”) is pleased to provide the below comments in response to the Staff Notice published on December 8, 2022. We commend the CSA and IIROCs efforts to address the issues related to the regulation of short sales in Canada and welcome the opportunity to provide our views on this important issue.



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Cybin readily acknowledges that short selling, when conducted within appropriately defined regulatory parameters, plays an important role in the financial markets by promoting transparency and contributing to liquidity and price discovery. By that same token, short selling can also be used as a manipulative tool that serves to benefit a small group of persons who undertake manipulative short selling activities with the intention of enriching themselves at the cost of market participants at-large.

At its core, short sellers benefit (profit) from the decline in the share price of an issuer's securities. Abusive short sellers generally employ their tactics in one of two ways – namely:

- (1) "short and distort" campaigns, whereby (activist) short sellers publicly announce that they have a short position in a security and provide "new" information in respect of a particular issuer. The information disseminated is designed to persuade the market at large that a company is over-valued or that the current price of the securities of the issuer are not reflective of the underlying value of the company; and
- (2) "targeted shorts", whereby either individually, or in concert with others, undertake a determined, programmatic approach of entering short sales in targeted issuers for the sole purpose of improperly depressing their share price. These targeted short sales are generally (but not always) aimed at junior issuers or are based on other factors such as the "depth of the book" for a particular security.

In both above instances, "short and distort" campaigns and targeted short sales are conducted without regard for the true enterprise value of a specific issuer and are designed to illicit a specific outcome (decline in stock price). These tactics, and their motivations, stand in stark contrast to the baseline justification(s) for permissible short sales which provide market transparency and price discovery.

To be clear, we are not opposed to "bona fide" short selling, which in our view includes circumstances where an investor has a negative view on a particular issuer, vertical, industry, or market "at large" and trades on that belief. Informed decisions based on widely disseminated properly vetted information should be encouraged in a transparent and vibrant market.

In response to the questions in the Staff Notice we provide the following responses in respect of the items we would like to see addressed:



1. Should the existing regulatory regime around pre-borrowing in certain circumstances be strengthened? What requirements would be appropriate? Specifically, should there be “pre-borrow” requirements similar to those in the U.S.?

Cybin strongly supports the approach taken in the U.S under Regulation SHO, which requires a broker-dealer to not accept a short sale order in an equity security unless it has (i) borrowed the security or entered into a bona-fide arrangement to borrow the security; or (ii) reasonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due; and (iii) documented compliance with this requirement.

We do not believe the existing regulatory regime in Canada around pre-borrowing is sufficient to address the systemic risks and other challenges associated with short selling. In stark contrast to the US and EU which impose pre-borrow and/or locate requirements in respect of short sales, the Canadian regulatory regime imposes neither, nor does it impose any form of mandatory buy-in or close-out obligation.

In order to improve investor confidence and market efficiency while appropriately reducing systemic risk we are of the view that all short sales should be supported by a pre-borrow requirement. In Cybin’s opinion it is incumbent on dealers, as part of their “gatekeeper role”, to ensure that a “borrow” is in place to ensure that short sales are indeed “bona fide” and settled within the normal settlement period.

2. With respect to failed trades, should a timeline shorter than ten days following the expected settlement date be considered? What would be an appropriate timeline?

We believe that to address systemic risk in a meaningful manner that protects investors and our capital markets, regulations must be proactive. To this end we are of the view that, not only should a pre-borrow be required in the case of all short sales, but that failed trade reporting be required as soon as practicable after a failed settlement. We will defer to the CSA and IIROC on what constitutes an administratively viable option, however, we are of the view that the time frame should be significantly shorter than the current 10-day period.

Cybin is of the view that failed trade reporting should be used as a means of identifying, at an early stage, improper and/or manipulative short sales and illicit a proportionate near-time regulatory response.



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3. Should additional public transparency requirements of short selling activities or short positions be considered? Please indicate what such requirements should be and the frequency of any disclosure.

Today (abusive) short sellers are able to operate under a veil of secrecy notwithstanding that such information is readily available to the Participants through which they transact and IIROC in real-time. While we do not believe that public disclosure of all short sales /short positions by individual accounts is warranted, we do believe that the public disclosure of short sales (short positions) by persons that engage in a pattern of short selling should be publicly disclosed and that such disclosure is consistent with the policy rationale underlying the disclosure of security positions in our securities regulatory regime.

In our view, disclosing the identity of individual accounts who engage in systematic short sales is a critical and necessary disclosure that serves to advance the policy goal of increasing public transparency. To balance the interests of individuals and companies, we are of the view that IIROC, leveraging data from Participants, should publish non-aggregated short sale data on an end of day basis that identifies individual accounts that have entered into short sales beyond a pre-determined threshold (i.e. percentage of daily traded volume).

4. Should additional reporting requirements regarding short selling activities be considered by the securities regulatory authorities? Please indicate what such requirements should be and the frequency of any disclosure.

Currently, IIROC makes information on aggregate short positions on an individual issuer basis available twice monthly. This data shows the number of trades, value, and volume of short sales of each listed security and as a percentage of total trading activity. Given that data in respect of short sale volume and failed trades is available daily, we don't see the rationale for delaying the reporting of such data. To this end, we would expect that the cost of providing daily disclosure, particularly where such information is already available, would be minimal, particularly when measured against the benefits of a better informed securities market.

We agree with other commentors that, insofar as aggregate "long" data is readily available on a "real-time" basis, absent clear policy reasons, short selling information should be made available on the same basis.



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5. As noted above, IIROC's study of failed trades showed that correlations between short sales and settlement issues in junior securities were more significant, and that junior securities experience more settlement issues compared to other securities. Should specific reporting, transparency or other requirements be considered for junior issuers?

We do not support a specific reporting and/or reporting requirement for junior securities. We believe that Canadian regulations pertaining to short sales should be issuer agnostic and ensure that the regulatory regime appropriately protects against abusive short selling in all circumstances, not just for select classes of issuers.

6. Would mandatory close-out or buy-in requirements similar to those in the U.S. and the European Union be beneficial for the Canadian capital markets?

To the extent that effective locate and pre-borrow requirements are mandated by the Canadian regulators, we expect that instances of failed trades, whether for administrative purposes, or otherwise, will be significantly reduced. Against this backdrop, the implementation of mandatory close-out/buy-in procedures becomes less urgent. In the absence of the implementation and robust enforcement of locate and pre-borrow requirements, we strongly support mandatory close-out (buy-in procedures) at T+4.

We are appreciative of the CSA and IIROC's effort to solicit feedback on this important issue. Please do not hesitate to contact the undersigned at gabriel@cybin.com should you have any additional questions or comments.

Sincerely,

Gabriel Fahel
Chief Legal Officer
Cybin Inc.