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May 9, 2012

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**RE: IIROC Request for Comments 12-0076 “Canadian Securities Administrators / Investment Industry Regulatory Organization of Canada Joint Notice 23-312 Transparency of Short Selling and Failed Trades”, Notice 12-0078 – Notice of Approval – “Provisions Respecting Regulation of Short Sales and Failed Trades” effective September 1 2012, Request for Comments 12-0079 - “Proposed Guidance on ‘Short Sale’ and ‘Short-Marking Exempt’ Order Designations” effective September 1 2012**

Dear Sirs / Mesdames:

CIBC World Markets Inc. (“CIBC WM”) appreciates the opportunity to comment on the proposed guidance and rules noted above. CIBC is generally supportive of the proposed rule and provides the following comments to seek minor clarifications and to provide our suggestions which we believe would help all market participations broadly in support of this IIROC initiative. IIROC may wish to consider a published review of the rule’s effectiveness after a sufficient pilot period to show the results.

**Repeal of the short sale “tick test”:**

CIBC agrees with IIROC’s decision to repeal the short sale “tick test” and understands this to be the key component in this combination of rule proposals and guidance. CIBC believes that the removal of this rule will help by simplifying the price discovery process.<sup>1</sup>

**SME eligibility:**

With regards to SME eligibility, CIBC requests more guidance on the definition of an SME account that is “directionally neutral”. CIBC also recommends IIROC consider possibly modifying the definition of “nominal” for SME accounts to accommodate less liquid securities. Some securities in Canada may not have sufficient ‘turnover’ for an otherwise SME qualifying neutral account to achieve IIROC’s definition of nominal<sup>2</sup>. IIROC may want to consider changing the SME definition of “nominal position” for less liquid securities and where securities have a small float of available shares where turnover may be difficult for an account that is intending to be neutral to meet the stricter definition of SME.

CIBC requests further guidance from IIROC on sufficient methods the dealer would be expected to implement for the monthly review of each account for the potential eligibility for the SME marker. As a guideline IIROC has outlined that an account using the SME marker must not have more than 5% of its volume in an end of day long or short position on 90% or more of the trading days in the previous month for any given security. Would this monthly review be applied across the client’s entire portfolio or apply for each individual name traded in that portfolio during the month? Kindly also clarify the dealer’s responsibility in performing monthly reviews where the client may not hold their positions at that executing dealer.

**Evidence of pre-borrow:**

With regards to “pre-borrow”, CIBC seeks clarification on the manner of evidence a dealer may be called upon by regulators to demonstrate the dealer’s reasonable efforts to ensure a ‘pre-borrow’ was secured in cases where a pre-borrow was deemed necessary for any given security or account.

**Order Marker Corrections:**

CIBC recommends IIROC perform a system review and consider updates to the current order marker correction facility in connection with this proposed rule. There may be a significant increase in order marker corrections as a result of this new rule so it may be practical for IIROC to invest in system changes to this facility that would allow dealers to manage their obligation by electronically submitting lists of marker corrections (possibly through existing order entry channels to the marketplaces) rather than manually inputting each order marker correction on the current IIROC web-based system which takes 5 minutes for a trained

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<sup>1</sup> IIROC’s repeal of the price restrictions on short sales and elimination of ‘short exempt’ order marking requirements have already been approved by the applicable securities regulatory authorities as per IIROC’s March 2 2012 rules notice of approval #12-0078 “Provisions Respecting Regulation of Short Sales and Failed Trades”.

<sup>2</sup> As per section 1.2 of IIROC notice 12-0079 IIROC’s defines an SME account as having an end of day position no greater than 5% of the account’s trading volume in a given security on at least 90% of the days in the previous month

operator to complete, as a single order marker correction necessitates 20-30 keystrokes.<sup>3</sup> CIBC also suggests regulators reconsider whether buy orders from an SME account require an SME marker, since omitting this requirement may help to reduce administrative cost and simplify rules and system changes.

**Implementation plan:**

CIBC requests regulators be cognizant of the effort required to implement this plan as it will require co-ordination amongst all marketplaces, service bureau vendors, broker dealers and their customers.

Sincerely,

**Signed by: Thomas Kalafatis**

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Prime Services Group  
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CIBC World Markets Inc.

**Signed by: James Beattie**

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<sup>3</sup> See IIROC Notice 08-0050 – Rules Notice- Guidance Note – UMIR – *User Guide for the Regulatory Marker Correction Form* (July 30, 2008)