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Autorité des marchés financiers
New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island
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Re: CSA/IIROC Joint Notice 23-312 – Transparency of Short Selling and Failed Trades

TD Asset Management Inc. ("TDAM") welcomes the opportunity to provide comments on *CSA/IIROC Joint Notice 23-312 – Transparency of Short Selling and Failed Trades* published on March 2, 2012. TDAM, a wholly owned subsidiary of The Toronto-Dominion Bank, is one of Canada's largest asset managers. We are responding in our capacity as an investment adviser.

Question 1: Do you believe that more frequent aggregate short sale summaries should be made publicly available? If so, what should be the frequency of such short sale summaries (e.g. weekly, daily)? What would be the costs and benefits to issuers, investors and Participants from making this information public?

We feel that more frequent short sale summaries will inevitably need to be made publicly available. If the cost scales down over time (ease of capture, technology etc.) it makes all the more sense.

A greater frequency of summaries is beneficial when factoring in such considerations as high frequency trading and possible large and rapid fluctuations in short interest. This, of course, needs to be balanced against costs. If incremental costs are quite high, for example, in moving from weekly to daily summaries, then weekly summaries may be preferable initially.

In the absence of such short sale data, possible investment decisions are made that would not be made with knowledge of more current data.

Question 2: In addition to semi-monthly (or more frequent) aggregate short sale summaries, should there be public disclosure of individual short sale transaction data on an anonymous basis? If so, should the publication of this information be time deferred (e.g. one day, one month, etc.)? What would be the costs and benefits to market participants from making this information public?

Disclosure of short sale transaction data should be anonymous, unless thresholds come into play. Publication of such data does not need to be time deferred. Investors should be able to request exemptions similar to exemptions from the filing of Form 13F currently available in the United States.

The main cost consideration for market participants would be the disadvantage to those building or trading their short positions. The main benefit would be to those considering either long positions (i.e. whether it would help in making an investment decision) or short positions (who could change views on participating in crowded trades, flexibility, change potential volatility, change recall risk, buy-in risk, etc.).

Question 3: Should data on the usage of the "short-marking exempt" designation in relation to trading activity of a particular security be made publicly available? If so, what should be the frequency of the release of such data?

Discerning between "short" (i.e. directional) and "short-marking exempt" is important and it is more valuable to have information on the former or the "net" directional. It would be advantageous to have data on both but cost is a consideration and "short-marking exempt" may not need to be as timely.

Our short sales would be designated "short" and not fall under "short-marking exempt". As such, our interest would be in the benefit this additional marker provides in filtering out noise to determine "true" directional short interest data on securities. However, having information on market activity is still helpful as it pertains to trends such as high frequency trading and other "exempt" parties.

Question 4: Is the existing public disclosure of short positions adequate? If not, should the information be available for unlisted securities such as debt securities and foreign-listed securities traded on ATSs? Should there be one report covering all securities traded on marketplaces? Should custodians and dealers that are not Participants report their short positions?

It would make sense that more data should be available for listed than unlisted securities as the benefit seems greater for the larger universe of listed securities and cost would probably be a greater consideration if including unlisted securities.

It does not seem correct that only Participant dealers be required to report their short positions. However, depending on how proportionate they are, including non-Participants may not greatly change the data. As well, requiring such reporting could possibly be prohibitive to dealers with less scale.

Question 5: Is the information in the CSPR timely? Should this information be made available on a more frequent basis?

CSPR information is timely and currently sufficient. One obvious guiding consideration is not being out of sync with other jurisdictions in terms of best practices.

The question regarding the availability of the information in the CSPR is two-fold. First, what costs would be imposed on organizations and ultimately the investor if frequency and requirements are increased? Secondly, how much is the data currently utilized and would changes increase utilization? US short interest data is much more pervasive, especially in services such as Bloomberg and Thomson. Canadian data seems to be more scarce and accessible through fewer outlets (i.e. TSX data product). For this reason US data is likely utilized more than Canadian data.

Question 6: Currently, are measures for failed trades transparency warranted? If you agree:

- **What types of information on failed trades would be most useful to participants (some options are described above) and what should be the frequency of such disclosure?**

- **In addition to equity and other securities processed through the CNS facilities at CDS, do other types of securities or products (e.g. fixed income securities) have FTD rates suggesting that similar failed trade transparency measures should apply to those securities?**

- **What would be the costs and benefits, if any, to market participants in implementing such measures? If you believe that measures for failed trades transparency are currently not required, why do you think this information would not be helpful to issuers, investors or Participants?**

Incremental data concerning trade failures could be used in conjunction with short selling data to better inform about trading in a particular security. If greater failed trade data were to help in detecting trade anomalies or deceptive activity this would seem beneficial to market integrity (especially in the absence of rules such as downtick, for example).

Only equity securities are dealt with in our short selling. Therefore, we cannot comment on fixed income securities.

We do not currently use failed trade information in the portfolio management process, so it is difficult to comment on costs and benefits, if any.

Conclusion

We would be pleased to provide any further explanations or submissions with respect to matters discussed above and would make ourselves available at any time for further discussion.

Yours truly,

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