



INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

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May 31, 2012

Dear Sirs / Madam:

Re: CSA-IIROC Joint Notice 23-312 – *Transparency of Short Selling and Failed Trades* (the “Notice”)

The Investment Industry Association of Canada appreciates the opportunity to comment on the provisions related to enhanced and new disclosure of short sales and failed trades.

In general, it is not clear that such an initiative would provide investors, issuers, regulators Participants or other market participants with enough useful information that

increases market integrity or investor protection to justify the costs of developing and maintaining the infrastructure for reporting. From the industry standpoint, the regulation that is currently in place, or in the case of short sale regulation, will be in place as of October 2012 appears to be sufficient to protect the market and provide interested parties with relevant information. We question if IIROC has identified a current market problem that would be addressed by the measures set out in the Notice. Are there industry participants and stakeholders that have indicated that this information is necessary or useful? It would be helpful to understand the nature of the demand for the information or relevant market problem, so that our response could more specifically address the issue.

Our responses to your specific questions are as follows:

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? Please provide reasons for your answers.

The majority of our members do not believe that more frequent aggregate short sale summaries are necessary, in that they do not currently provide information that is particularly useful to them. One member noted, however, that the data could assist in determining how easily securities could be borrowed, as large short positions could be an indicator that the security is high in lending demand. On that basis, weekly reporting would provide more relevant information, without adding a significant regulatory burden.

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? Please provide reasons for your answers.

It is unclear what purpose such disclosure would serve, as the individual anonymous information would not provide sufficient information to discern patterns, or obtain the full picture of individuals' trading strategy to be useful. As such, this information would not provide information more valuable than what is provided in the aggregated data.

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? Please provide reasons for your answers.

Given that this information would only reveal those who have non-directional trading strategies, it is unclear what the benefit of disclosure would be. In addition, dealers do not have a method of separating a "short marking exempt" short position from that of directional short positions. If however, the information is made publicly available, the dissemination of the information and the frequency of its release should be concurrent with the short sale report.

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 ATs? Should there be one report covering all securities traded on marketplaces? Should custodians and dealers that are not Participants report their short positions? Please provide reasons for your answers.

In order for the public disclosure of short positions to provide useful information, it is important that all Participants, custodians and non-dealer Participants report their short positions in the relevant securities. Without all parties reporting, it is not possible to understand how a security is being affected by various trading strategies and patterns in the market. Partial information provides unreliable data from which reasonable conclusions cannot be drawn. As such, if it can be demonstrated that this information is useful to market participants, we support a requirement for all relevant parties to report their short positions.

In respect of unlisted, debt and foreign securities, we do not believe there is a clear need or demand for this information. The resources required to create such a reporting regime is not justified by the usefulness of the information that would be provided.

Question 5: Is the information in the CSPR timely? Should this information be made available on a more frequent basis? Please provide reasons for your answers.

Please see our response to Question 1.

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? Please be specific in your answer.**
- **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? Please provide reasons for your answers.

We do not believe that in general, transparency measures for failed trades would provide significant value to the market, although it may help identify situations where a security is not available to borrow and as such if the security cannot be shorted. Given the time and effort that firms would have to expend to adjust their reporting structures, it doubtful that this possible use would justify the industry effort to comply.

Based on previous IIROC studies, it appears that the Canadian market does not have a problem relating to failed trades, with the majority being administrative in nature. Given that the recent short sale regulation includes reporting mechanisms, developing a public reporting process appears unwarranted.

The regulation relating to short sales and failed trades in Canada was developed so that failed trades do not represent a threat to market integrity, and as such, do not generate information that would be of use to issuers, investors or participants. It should be noted that IIROC and OSC already receive CNS fails for equities on a daily basis plus CDS buy-in rules are effective in governing shorts. The gap that exists is with aged fails whether short or not. In this regard, a larger full fail review, including debt, may be beneficial, with a focus on reoccurring names and participants. The industry focus should be on using the tools available (Rule 800.49, NI 24-101 and CNS fail reporting) and adding above gaps to allow trending for IIROC/OSC to inquire directly to firms on details.

In conclusion, we believe that although the earlier phases of establishing short sale regulations addressed certain market concerns, there is insufficient evidence to demonstrate that this transparency initiative would add significant value or provide additional measures of market integrity or investor protection. We recommend that prior to undertaking further steps in respect of this initiative, a cost benefit analysis be undertaken to ascertain whether disclosure is necessary or valuable in respect of market integrity or efficiency.

Thank you for considering our comments.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. Copland', written in a cursive style.

Susan Copland