



May 31, 2012

**BY EMAIL**

British Columbia Securities Commission  
Alberta Securities Commission  
Saskatchewan Financial Services Commission  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
New Brunswick Securities Commission  
Registrar of Securities, Prince Edward Island  
Nova Scotia Securities Commission  
Superintendent of Securities, Newfoundland and Labrador  
Superintendent of Securities, Northwest Territories  
Superintendent of Securities, Yukon Territory  
Superintendent of Securities, Nunavut

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Dear Sirs/Mesdames:

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

CNSX Markets appreciates the opportunity to comment on these issues. We offer some general comments and observations in addition to our responses to the specific questions in the Notice.

## **Background – CNSX Markets Inc.**

CNSX Markets Inc. (“CNSX Markets”) is a recognized stock exchange in Ontario, and authorized or exempt in Quebec, British Columbia, Alberta and Manitoba. We operate two markets: the Canadian National Stock Exchange and the Pure Trading (Pure) facility.

## **General Comments**

We agree with the position of the CSA and IIROC as stated in the Notice that the current regulatory framework governing short sales and failed trades is generally consistent with the IOSCO four principles for effective regulation of short selling. A previous IIROC study found that the primary reasons for trade failure are administrative and clerical errors in processing, and that long sales were more likely to fail than shorts. We agree that reducing failed trades and providing effective control over certain manipulative activities are both important policy objectives, and fully support the UMIR amendments to be implemented in October as a means of addressing those objectives. We are concerned, though, that existing practices related to the collection and reporting of short positions provides the investment community with inaccurate and potentially misleading information. We do not agree that additional public reporting of data related to short selling or short positions should be considered; we strongly believe instead that the entire provision of “official” reports should be reconsidered in light of multiple market trading, inter-listed trading, cash/derivatives activity and foreign OTC and listed derivatives markets activity. The investing public, who generally accept that a net increase in a short position in a company’s stock is a negative leading indicator, are being provided with reports that cannot accurately measure the true short position in the security. The effort involved in collecting this information on a timely and accurate basis would far outweigh its benefit, in our view.

## **Responses to Questions**

***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?***

- 1) For the reasons introduced in our general comments above, we do not believe that the information should be publicly available. Understanding the true short position in a security would require access to timely and accurate information from multiple securities markets in Canada (netted out), domestic and international derivatives markets, and from dealers themselves for OTC transactions with an impact on the net short/long position in a security. It is difficult to see how the costs of obtaining this data (even if the timeliness goals can be met, which is unlikely) justify the benefit of obtaining and reporting it. The second of the IOSCO four principles states “Short selling should be subject to a reporting regime that provides timely information to the market or to **market authorities**” (emphasis added). The new order marking requirements in the UMIR Amendments (as defined in the Notice) will permit IIROC’s new surveillance and monitoring “alert” system to detect abusive short selling activity on a “timely basis.”
- 2) IIROC will be using the information in real time to detect abusive activity. The implication is that for the information to be useful, it would have to be available much more frequently than monthly, in which case all the reasons against such disclosure would apply (e.g. gaming, inappropriate reliance on the data, etc).

***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?***

No. The short sale marker is a regulatory marker that provides monitoring and tracking data to determine whether there may be abusive activity, and to ensure that regulatory requirements have been met. We do not support periodic reporting, and believe that there will be more harm than benefit by disclosing trade-by-trade information, even on an anonymous basis, as it will not provide accurate information about the real short position in the stock. As noted above, the fact is that many short sales in the domestic cash equities market are off-set by another transaction: on another cash market in Canada, in the derivatives market (listed and OTC) or on an international exchange inter-listing the stock subject to the original short sale declaration. Reports of this kind, given the prevailing belief in the importance of short sale information, would be especially harmful in less liquid securities.

***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?***

We do not believe public disclosure of this information will have any meaningful benefit.

***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?***

As stated in our general comments, we believe that the present regime for disclosure of short sale information provides the investment community with inaccurate and misleading information. The UMIR Amendments will enhance the ability of IIROC to monitor and regulate short selling activity but public dissemination of short position data will not achieve the goal of enhanced transparency due to the inherent flaws in the data. With respect to foreign-listed securities traded on ATSS and unlisted securities, there would likely be more potential for abuse or manipulation following publication of such data. This may be exacerbated by the fact that IIROC would not be monitoring or regulating the activity. On the other hand, the absence of this information, highlights the incompleteness of the current disclosure.

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

No. We supported the IIROC proposal to eliminate short position reporting, and our position has not changed. The UMIR Amendments will result in far more meaningful data for IIROC to monitor and analyze short selling. IIROC may determine that it would be useful for a limited time to track and reconcile short positions with short sales to monitor for compliance with the amended requirements. In that case, a monthly short position report could be prepared for IIROC. Publication of a consolidated report would be unnecessary, and for the reasons stated previously, could not be guaranteed to provide an accurate picture of the net short position in a particular security.

**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?**

The Notice suggests that “Reporting FTD rates would provide a means of comparing information on short positions and short selling with trade failures during the same period, therefore allowing the reader to determine whether the rates of trade failure may be correlated with rates of short selling of a particular security.” This is likely true, but IIROC has already determined that this is not a systemic problem in Canada. The current requirement to report an Extended Failed Trade and the pre-borrow requirements included in the UMIR Amendments, including IIROC’s ability to designate a security as a Pre-borrow Security, should be an effective way to monitor FTD rates and act accordingly.

As noted above, we support the policy objective to reduce failed trades. The publication of FTD rates and reasons will introduce a requirement for subjective analysis of public information, requiring participants to develop policies and procedures far more detailed than what will be required by the simple objective criteria in the UMIR Amendments.

We thank the Working Group for the comprehensive review of the issues, and the provision of suggested alternatives to consider in meeting the objective of transparency. Data on its own does not represent transparency, nor does varying the frequency of reporting such data enhance its relevance. Following the implementation of the UMIR Amendments, the regulatory regime will be sufficient to meet the objective without any public dissemination of short position or short sale data.

Yours truly,

“Mark Faulkner”

Vice President, Listings & Regulation

cc: Richard W. Carleton, CEO  
Rob Cook, President  
Cindy Petlock, General Counsel & Corporate Secretary