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VIA EMAIL

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Re: CIRO Bulletin 26-0066 — *Request for Comments — IDPC Rules — Proposed Amendments Respecting Client Delivery Obligations* (the "Consultation")

The Canadian Advocacy Council of CFA Societies Canada (the "CAC")[1] appreciates the opportunity to provide the following general comments and responses to the specific questions set out in the Consultation.

General Comments

We commend the Canadian Investment Regulatory Organisation ("CIRO") for the approach taken in developing the Proposed Amendments. We support a conduct-based response to client delivery failures, and we recognise that the Proposed Amendments reflect a considered response to the comments received on the mandatory close-out requirements previously proposed in Bulletin 25-0001, on which we also commented.[2] By focusing on the conduct of the seller rather than the outcome of the continuous net settlement process at the Canadian Depository for Securities, CIRO has addressed the principal operational concern raised by commenters, namely the difficulty and cost of attributing net failures to individual trades, while preserving the flexibility for dealers to resolve delivery failures in a manner suited to their business and to the circumstances of the particular failure.

[1] The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 21,000 Canadian CFA charterholders. The council includes investment professionals across Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. Visit www.cfacanada.org to access the advocacy work of the CAC. As the global association of investment professionals, CFA Institute sets the standard for professional excellence and credentials. The organization is a champion of ethical behaviour in investment markets and serves as the leading source of learning and research for the investment industry. CFA Institute believes in fostering an environment where investors' interests come first, markets function at their best, and economies grow. With more than 200,000 charterholders worldwide across 160 markets, CFA Institute has ten offices and 160 local societies. Find us at www.cfainstitute.org or follow us on LinkedIn and X at @CFAInstitute.

[2] Canadian Advocacy Council of CFA Societies Canada, comment letter on *Proposed Amendments Respecting the Reasonable Expectation to Settle a Short Sale* (March 19, 2024), available at cfacanada.org; and comment letter on *Proposed Amendments Respecting Mandatory Close-out Requirements* (CIRO Bulletin 25-0001) (February 21, 2025), available at cfacanada.org.

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We are broadly supportive of the Proposed Amendments. The principles-based design, the latitude afforded to dealers in selecting among the remedial actions set out in section 2.2, the assignment of the obligation to the dealer holding the client relationship, and the post-trade alignment of the "deemed to own" exception each represent sensible and proportionate choices. We note CIRO's own assessment that the impact on dealers should not be significant, because most already maintain escalation processes to identify and resolve client delivery failures, and our comments proceed on that understanding.

We have consistently expressed the view that short selling performs an important function in fostering price discovery and liquidity, and that new short-selling measures should respond to identified problems supported by sufficient data.[3] We reiterated that view in our March 2024 comments on the Reasonable Expectation to Settle a Short Sale, where we supported a targeted reform while encouraging CIRO to review and publish data on the short-selling and securities-lending markets.[4] Our comments below address a single point of emphasis: the evidentiary basis for the proposed five-business-day timeline, and the data infrastructure on which its future calibration should rest. We raise it in support of the Proposed Amendments, not against them.

A Data-Informed Foundation for Short-Sale Settlement Regulation

We support the codification of a uniform timeline within which dealers must commence action to address a client delivery failure arising from a short sale, and we accept CIRO's rationale that a common timeline promotes a consistent and equitable framework and discourages dealers from competing on more permissive practices. We observe, however, that the specific period of five business days appears to rest on those considerations of consistency and equity, together with stakeholder concern regarding abusive short selling, rather than on observed Canadian patterns of failures to deliver. The Impact Assessment in Appendix 3 is candidly qualitative, and CIRO fairly acknowledges that it does not know the dollar magnitude of the collective impacts of the Proposed Amendments and cannot determine it without stakeholder feedback. We commend that candour, and we suggest that it identifies a constructive opportunity rather than a deficiency in the present proposal.

The opportunity is this. Canada does not at present publish data on failures to deliver, and the extended failed trade information reported to CIRO under UMIR 7.10 is held for surveillance rather than made available to inform public debate. The reports CIRO does publish, namely the Consolidated Short Position Report and the Short Sale Trading Summary, measure short interest and short-selling activity, which are distinct from settlement failures and do not reveal whether trades have settled. Nor does Canada collect transaction-level securities-lending data of the kind that would illuminate borrow availability and recall behaviour. We observe that CIRO

[3] See also the Canadian Advocacy Council's comments on Joint CSA/IIROC Staff Notice 23-329 *Short Selling in Canada* (2023) and on CSA Consultation Paper 25-403 *Activist Short Selling* (2021), in which we emphasised that incremental short-selling measures should target identified problems supported by data and should not operate as a general deterrent to legitimate short selling.

[4] Canadian Advocacy Council of CFA Societies Canada, comment letter on *Proposed Amendments Respecting the Reasonable Expectation to Settle a Short Sale* (March 19, 2024), available at cfacanada.org; and comment letter on *Proposed Amendments Respecting Mandatory Close-out Requirements* (CIRO Bulletin 25-0001) (February 21, 2025), available at cfacanada.org.

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and the Canadian Securities Administrators identified this gap in Joint Staff Notice 23-329 and, following consultation, reached no consensus on closing it.[5] The calibration questions raised by the Proposed Amendments, including the choice of a five-business-day period, are precisely the questions that such data would allow CIRO to answer.

We would therefore encourage CIRO, together with the Canadian Securities Administrators, to develop a standing capability to collect and, where appropriate, publish data on failures to deliver and on securities-lending activity, designed and operated as a utility in partnership with industry rather than imposed upon it. We believe such a capability need not be built from new machinery. CIRO already operates an analogous model in the repurchase agreement market, where transaction-level data reported through MTRS 2.0 supports the Bank of Canada in monitoring funding-market stability and in calculating the Canadian Overnight Repo Rate Average, an arrangement CIRO has described as consistent with recommendations of the Financial Stability Board endorsed by the G20.[6] The same model, in which CIRO collects and a partner such as the Bank of Canada contributes analytical capability for stability surveillance, could be extended to failures to deliver and securities lending. The participants best able to design and populate it are already organised: the agent lenders, custodians, broker-dealers, prime brokers and asset managers represented by the Canadian Securities Lending Association, and the large asset owners and asset managers that participate directly in securities lending, including Canadian pension funds such as the Healthcare of Ontario Pension Plan through the Global Peer Financing Association. The transparency and standardisation objectives of the Global Alliance of Securities Lending Associations, of which the Canadian Securities Lending Association is a founding member, offer a natural foundation for that work.

We would urge that any such capability be designed in proportion to the scale and liquidity of the Canadian market. The experience of the European Union under its Securities Financing Transactions Regulation illustrates both the value of a standing reporting framework and the cost and data-quality difficulties that follow from an unduly complex design, difficulties that persist a decade after implementation and that have prompted the European authorities to begin simplifying the regime.[7] We would encourage CIRO to take the lesson rather than the template,

[5] Joint CSA/IIROC Staff Notice 23-329 *Short Selling in Canada* (December 8, 2022); and CSA/CIRO Staff Notice 23-332 *Summary of Comments and Responses to CSA/IIROC Staff Notice 23-329* (November 16, 2023), available at asc.ca, in which CIRO and the CSA noted the absence in Canada of the public and account-level short-selling and failed-trade disclosure found in certain other markets and reached no consensus on whether to introduce it.

[6] Under CIRO Rule 2800C, transaction-level repurchase agreement data reported through the Market Trade Reporting System (MTRS 2.0) is used by the Bank of Canada in monitoring activity and potential financial stability risks in the repurchase agreement market and in the calculation of the Canadian Overnight Repo Rate Average. CIRO has described this arrangement as consistent with recommendations of the Financial Stability Board, endorsed by G20 Leaders, that trade-level data and regular snapshots of outstanding positions in repurchase agreement markets be collected by national or regional authorities.

[7] Regulation (EU) 2015/2365 of 25 November 2015 on transparency of securities financing transactions and of reuse (the "SFTR"), EUR-Lex, requires both counterparties to report securities financing transactions to a registered trade repository on a next-day basis: see ESMA, SFTR Reporting. The regime implements post-crisis commitments of the Financial Stability Board, endorsed by the G20, on transparency in securities lending and repo markets: FSB, *Policy Framework for Addressing Shadow Banking Risks in Securities Lending and Repos* (2013). The European authorities continue to report significant data-quality difficulties under the regime, with trade-level matching well below target several years after implementation, and have begun a simplification of EU transaction reporting: ESMA, *Report on the Quality and Use of Data* (April 2025); ESMA, *ESMA advances the simplification of EU reporting frameworks* (4 May 2026).

developing a lean and fit-for-purpose standard, and ideally settling the common data representation before mandating any reporting. A capability designed on these lines offers a further benefit. Market participants today purchase broadly overlapping securities-finance data from a concentrated group of commercial vendors, and a standardised regulatory or industry source of baseline information could displace a measure of that duplicative expenditure rather than add to the cost of the market in aggregate, while leaving genuine proprietary analytics to commercial providers. We note, as a matter of governance, that any such utility should be structured to serve the market on a continuing basis rather than to become a concentrated commercial gatekeeper, and we would expect CIRO's continued involvement to guard against that outcome.

We believe the timing for the market to move in this direction is right. The move to a one-day settlement cycle in Canada has compressed the windows within which borrows are arranged and recalls are met, making timely and reliable data on failures and securities lending more valuable to surveillance than before, and the development of shared domestic collateral infrastructure, which the Bank of Canada is itself preparing to join, provides a foundation on which a proportionate data capability can sensibly be built.[8]

We wish to be clear that the object of this recommendation is to improve market integrity and the quality of regulatory decision-making without curtailing legitimate short selling, which remains, in our view, valuable to efficient price formation and liquidity. The capability we describe is directed at opacity and at problematic conduct, not at short selling as such. We would encourage CIRO to commit, once such data becomes available, to reviewing the calibrations adopted in the Proposed Amendments, including the five-business-day timeline and any consequential change to the failed trade reporting period, from a data-informed perspective, and to adjusting them as the evidence warrants. Such a commitment would convert the present timeline, necessarily a matter of regulatory judgment today, into a settled element of an empirically reviewable framework.

Responses to the Specific Consultation Questions

Question 1: In addition to the actions set out in section 2.3 of this Bulletin, are there any other steps that we should consider that an investment dealer should take when a client has failed to deliver shares as expected?

We are not aware of additional steps beyond those set out in the Bulletin that we would recommend at this time. We consider the available remedial actions, namely purchasing shares on a marketplace, requiring the client to deliver borrowed shares, lending the shares to the client, or borrowing shares from a third party, to be adequate and appropriately flexible. We agree that the maintenance of records of the actions taken within the specified timeline is the appropriate means of demonstrating compliance.

[8] The Canadian and United States markets moved to a one-day standard settlement cycle (T+1) in May 2024. On the development of shared collateral infrastructure, see Bank of Canada, *Bank of Canada to join the Canadian Collateral Management Service for repo operations* (March 2026).

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Question 2: Industry consultations generally supported assigning responsibility to the investment dealer best able to engage directly with the client. In an introducing / carrying broker arrangement, the introducing dealer was deemed to be in the best position to follow up directly with the client and has visibility into the client's delivery status through reporting from the carrying broker and/or the client's custodian. Likewise, in an originating / executing dealer arrangement, the originating dealer maintains the relationship with the underlying client and is able to engage with the client in the event of a failure to deliver. We request feedback on this proposed approach and will consider all comments when finalizing the Proposed Amendments.

We agree that the obligation should rest with the investment dealer holding the client relationship. That dealer is best positioned to engage directly with the client, the assignment avoids the risk of duplicative remedial action by more than one dealer, and it forecloses the ambiguity and potential for inaction that a shared or joint responsibility would invite.

Question 3: Do you agree with the proposed timeline of five business days past settlement date as the period within which investment dealers must commence action to address a client failure to deliver where the failure relates to a short sale? Why or why not?

We support the proposed timeline of five business days following settlement date as workable and as a reasonable measure of consistency across dealers. We do so subject to the observations set out in the general comments above regarding its evidentiary foundation, and to our recommendation that CIRO commit to reviewing the period once Canadian failures-to-deliver data becomes available, adjusting it should the evidence indicate that a shorter or longer window better serves settlement discipline without unduly deterring legitimate short selling.

Question 4: Should the timeline for extended failed trade reporting be shortened to align with the proposed timeline of five business days following settlement date for short sales under the Proposed Amendments? Currently the extended failed trade reporting timeline is ten trading days past settlement date under UMIR 7.10.

We support shortening the extended failed trade reporting timeline under UMIR 7.10 to align with the five-business-day period. Earlier reporting would accelerate the flow of failure information to CIRO and so assist market surveillance, and a single timeline is simpler to administer. We would observe that the value of this information would be enhanced were it also capable of informing the standing data capability described above.

Question 5: Have we identified all the proposed provisions that will materially impact clients, investment dealers, marketplaces or CIRO in our Impact Assessment? If not, please list any other proposed provisions that you believe will materially impact one or more parties and why.

We are not in a position to identify provisions omitted from the Impact Assessment. We would observe only that the assessment is qualitative, as CIRO acknowledges, and that the data capability we recommend is what would, in future, permit the quantitative assessment that this question contemplates.

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Question 6: Overall, do you agree with CIRO's qualitative assessment of the benefits and impacts of the Proposed Amendments? Please provide reasons for your stance.

We agree with the general direction of CIRO's qualitative assessment. We accept that the Proposed Amendments are likely to strengthen settlement discipline at modest incremental cost, given existing dealer practice. We reiterate, however, that the absence of quantitative data is a limitation that the recommended capability would address, and that the benefits asserted in terms of confidence and the perception of the market would be more persuasively demonstrated on an evidentiary basis.

Question 7: We are proposing an implementation period of no less than three months after the publication of the final amendments, and request feedback on what implementation period would be appropriate to provide applicable investment dealers with sufficient time to make the changes necessary to comply with the Proposed Amendments.

We consider an implementation period of not less than three months to be appropriate, particularly in light of CIRO's observation that most dealers already maintain comparable escalation processes. Should the responses received indicate that particular categories of dealer require additional time to develop the necessary policies and procedures, we would not object to a modest extension.

Concluding Remarks

We support the Proposed Amendments. The conduct-based and principles-based approach is a proportionate and responsive means of strengthening client delivery discipline, and we commend CIRO for the direction it has taken. We would encourage CIRO and the Canadian Securities Administrators to pair this measure with the development of a standing, proportionate capability, built as a utility in partnership with the industry participants represented by bodies such as the Canadian Securities Lending Association, to collect and publish data on failures to deliver and Canadian securities lending generally, building on the model CIRO already operates in the repurchase agreement market, so that the calibration of this and future short-selling measures may rest on Canadian evidence and be refined over time.

We thank you for the opportunity to provide these comments and would be happy to address any questions you may have. Please feel free to contact us at cac@cfacanada.org on this or any other issue in the future.

(Signed) The Canadian Advocacy Council of
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