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The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Fax: (416) 593-2318
Email: comments@osci.gov.on.ca

Dear Secretary,

Re: Joint CSA and IIROC Staff Notice 23-329 - *Short Selling in Canada*

The Canadian Investor Relations Institute (CIRI), a professional, not-for-profit association of executives responsible for communication between public corporations, investors and the financial community, is pleased to provide comments on Joint CSA and IIROC Staff Notice 23-329 regarding Short Selling in Canada (the Notice). CIRI membership represents more than 230 non-investment fund reporting issuers with a combined market capitalization of \$1.9 trillion. More information about CIRI is provided in Appendix A.

CIRI welcomes the opportunity to provide its comments and perspectives on the Notice, particularly given the negative impact that short-selling activity has had on several of our issuer members and their institutional and retail shareholders. We commend the Canadian Securities Administrators (CSA) and the Investment Industry Regulatory Organization of Canada (IIROC) for addressing this issue and for their efforts in undertaking wide-ranging research and analysis as outlined in both the Notice and in the companion CSA Staff Notice 25-306 *Activist Short Selling Update* (Staff Notice 25-306). CIRI further appreciates the efforts of both the CSA and IIROC for addressing some stakeholder concerns in response to CSA Consultation Paper 25-403 - *Activist Short Selling* published for comment on December 3, 2020, which CIRI commented on.

General Comments

As in our 2021 submission, CIRI believes that focused regulatory action is an appropriate response to address malicious short selling, particularly when utilized by activist investors issuing short reports that have negative implications on targeted issuers' reputation, valuation and shareholders.

CIRI and our members remain concerned that activist short selling, in the absence of appropriate policies and oversight, introduces risk to investors. The fact that an activist short seller can publish research that contains potentially false or misleading market-moving information without having to go through any



review or regulatory process is in blatant contradiction to the rigorous disclosure regime required of issuers. Activist short-seller reports are disseminated instantly and globally over social media and sent to the target issuer's shareholders, having an immediate impact on the company's valuation and share price.

A motivated activist short seller can pursue their agenda virtually undetected as a result of Canada's nebulous short position reporting requirements. This situation can leave an issuer vulnerable with no recourse to protect its reputation from a nefarious activist. CIRI believes that it is in the best interest of all market participants, investors and issuers, to be able to identify short sellers and to quantify significant short positions against a company. Improved disclosure is one mechanism to provide the market with more fulsome information with which to make reasonable investment decisions.

Recommendations

CIRI continues to recommend regulatory rules and policies that:

- Require the activist short seller to provide any research report to the targeted issuer in advance of public dissemination to provide the issuer with an opportunity to respond or correct any factual inaccuracies;
- Require all short sellers to disclose their opening, changes in and closing positions as well as their identity and that such disclosures be made daily;
- Ban the practice that allows shares to be sold short without first borrowing the security;
- Implement a 10-day minimum holding period that would apply to any short seller who opens a short position and disseminates market-moving information; and
- Include recourse for issuers when activist short sellers disclose inaccurate or misleading information.

Responses to Consultation Questions

While we have reviewed the entire Notice, we have chosen to comment on those questions that we are best equipped to answer based on our knowledge and interaction with issuers and their investor relations professionals.

1. *Should the existing regulatory regime around pre-borrowing in certain circumstances be strengthened? What requirements would be appropriate? Specifically, should there be "pre-borrow" requirements similar to those in the U.S., as described above? Please provide supporting rationale and data.*

Yes, CIRI would like to see the regulatory regime strengthened by requiring investors to pre-borrow shares in advance of a short sale. We believe that adopting requirements similar to the regulatory policies in the U.S. would be appropriate given our close proximity and the fact that investors typically trade in both jurisdictions. The current Canadian approach which states "... must have a reasonable expectation that they have or will have sufficient securities to allow the Participant to settle any resulting trade on the settlement date for that trade" is not stringent enough. Revised regulations should require the short seller to prove they have pre-borrowed the shares by having borrowed them directly or through a bonafide arrangement to borrow them.

2. *What would be the costs and benefits of implementing such requirements?*

Requiring short sellers to provide proof of pre-borrowing results in greater market confidence and transparency, which is a significant benefit to all market participants, particularly retail and institutional investors. Additionally, the increased transparency and disclosure may contribute to improved price discovery. We expect the cost of implementing an improved regulatory regime around pre-borrowing



would be minimal given that such policies currently exist in other jurisdictions including the U.S. and that this requirement would strengthen existing policies rather than establish new regulations.

3. *Does the current definition of a “failed trade”, as described in Part 1, above, appropriately describe a failed trade?*

The definition of “failed trade” raises the question of the time to settle the trade, currently on the second business day after the trade date (i.e. T +2). The reality is that markets react to all trades, long and short, in real time so the disclosure of a short sale has already impacted the share price of that stock well before the settlement date, particularly if the short sale has been executed as part of a corresponding short report campaign by the short seller. CIRI would like to see regulators shorten the settlement cycle to T +1, consistent with recent changes adopted by the SEC¹, to reduce risk and better protect investors.

4. *Should a timeline shorter than ten days following the expected settlement date be considered? What would be an appropriate timeline? Please provide rationale and supporting data.*

CIRI believes that the current timeline of 10 days following the settlement date is too long to report failed short-sale trades given technological advancements and the widespread availability of market-impacting information. We strongly recommend the CSA and IIROC implement policies that are aligned with the U.S., which requires the reporting of failed short sale trades no later than the beginning of regular trading hours on the day following the settlement date².

5. *Should additional public transparency requirements of short-selling activities or short positions be considered? Please indicate what such requirements should be and the frequency of any disclosure. Please also provide a rationale and empirical data to support your suggestions or to support why changes are not needed.*

CIRI has consistently advocated and encouraged our member issuers to implement policies that foster complete and fulsome disclosure to enable fair and efficient capital markets. We believe that the Canadian regulatory regime lacks timeliness of disclosure regarding short selling compared to other jurisdictions. Reporting of aggregated data in Canada is done only twice monthly to IIROC who then posts it on their website. Whereas, in other key jurisdictions such as the U.S., EU and Australia, daily reporting of at least some short-selling data is the norm. It should be noted that in some cases, particularly in the U.S., individual transactions are disclosed less frequently, but they are disclosed. Both the EU and Australia are committed to more timely disclosure; a disclosure regime that CIRI strongly supports.

6. *Should additional reporting requirements regarding short-selling activities be considered by the securities regulatory authorities? Please indicate what such requirements should be and the frequency of any disclosure. Please also provide a rationale and empirical data to support your suggestions or to support why changes are not needed.*

CIRI believes that the existing disclosure regime for short-selling activities would be improved if there were increased disclosure required around short selling, particularly regarding a short seller’s identity as well as the opening, change in and closing positions of the seller’s holdings in an issuer’s stock. CIRI believes that this information should be available DAILY. We note that reporting issuers are required to operate under strict conditions prohibiting selective disclosure so anyone, such as an activist short seller with market moving news, should also be held to the same strict standard.

¹ Reducing Risk in Clearance and Settlement, SEC <https://www.sec.gov/files/34-94196-fact-sheet.pdf>

² Key Points About Regulation SHO, SEC <https://www.sec.gov/investor/pubs/regsho.htm>



7. *As noted, IIROC's study of failed trades showed that correlations between short sales and settlement issues in junior securities were more significant and that junior securities experience more settlement issues compared to other securities. Should specific reporting, transparency or other requirements be considered for junior issuers? Please provide additional relevant details to support your response.*

CIRI advocates that short sellers should be required to disclose the specific information as stated above in our response to Question 6, including the seller's identity and their holdings in the shorted stock. Such disclosure and transparency requirements should apply to short sales of all issuers regardless of market capitalization since there is little rationale for defining 'junior' issuers as opposed to 'senior' issuers. Any such delineation will naturally change over time given the dynamic nature of markets and valuations. In addition, there should be increased disclosure related to borrowed stock, which is particularly important immediately prior to annual meetings of shareholders where voting rights can often be difficult to determine due to untimely or inaccurate information around borrowed shares.

8. *Would mandatory close-out or buy-in requirements similar to those in the U.S. and the European Union be beneficial for the Canadian capital markets? Please provide rationale and data substantiating the costs and benefits of such requirements on market participants.*

CIRI takes the position that close-out or buy-in requirements should be developed and mandated for Canadian market participants and that such requirements should be consistent with those currently in place in the U.S. and the European Union. Markets today do not function in isolation. They are global in nature even though they operate in individual local jurisdictions. Canadian capital markets need ready access to global markets. Regulatory policies and requirements that are consistent across international jurisdictions help to foster increased market efficiencies. The benefits of increased disclosure and transparency are well documented and supported by all market participants as a key element of fair and accurate price discovery. The costs to implement improved close-out or buy-in requirements are minimal, given that the U.S. and the EU have excellent examples to emulate, while the costs to issuers and shareholders of reduced share prices as a result of under-disclosed short-selling activities are considerable.

CIRI is pleased to provide the CSA and IIROC with its comments regarding the short selling in Canada. Should you wish to discuss this submission further, please let me know.

Sincerely yours,
Yvette

Yvette Lokker

Yvette Lokker
President & Chief Executive Officer
Canadian Investor Relations Institute



Appendix A

The Canadian Investor Relations Institute

The Canadian Investor Relations Institute (CIRI) is a professional, not-for-profit association of executives responsible for communication between public corporations, investors and the financial community. CIRI contributes to the transparency and integrity of the Canadian capital market by advancing the practice of investor relations, the professional competency of its members and the stature of the profession.

Investor Relations Defined

Investor relations is the strategic management responsibility that integrates the disciplines of finance, communications, marketing, securities law compliance and sustainability to achieve an effective flow of information between a company, the investment community and other stakeholders, in order to support an informed valuation of the company's securities and enable fair and efficient capital markets.

The practice of investor relations involves identifying, as accurately and completely as possible, current shareholders as well as potential investors and key stakeholders and providing them with publicly available information that facilitates knowledgeable investment decisions. The foundation of effective investor relations is built on the highest degree of transparency in order to enable reporting issuers to achieve prices in the marketplace that accurately and fully reflect the fundamental value of their securities.

CIRI is led by an elected Board of Directors of senior IR practitioners, supported by a staff of experienced professionals. The senior staff person, the President and CEO, serves as a continuing member of the Board. Committees reporting directly to the Board include: Human Resource and Corporate Governance; Audit; Membership; and Issues.

CIRI Chapters are located across Canada in Ontario, Quebec, Alberta and British Columbia. Membership is close to 500 professionals serving as corporate investor relations officers in over 230 reporting issuer companies, consultants to issuers or service providers to the investor relations profession.

CIRI is a founding member of the Global Investor Relations Network (GIRN), which provides an international perspective on the issues and concerns of shareholders in capital markets beyond North America. The President and CEO of CIRI has been a member of the Continuous Disclosure Advisory Committee (CDAC) of the Ontario Securities Commission. In addition, several members, including the President and CEO of CIRI, are members of the National Investor Relations Institute (NIRI), the corresponding professional organization in the United States.