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CIRO Bulletin

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Rules Bulletin > Request for Comments

Distribute internally to:
Institutional, Internal Audit, Legal and Compliance, Operations, Senior Management, Trading Desk

Rule Connection: IDPC Rules

Division: Investment Dealer

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Proposed Amendments Respecting Client Delivery Obligations

Executive Summary

Comments Due By: July 3, 2026

The Canadian Investment Regulatory Organization (**CIRO**) is proposing amendments to the Investment Dealer Partially Consolidated (**IDPC**) Rules that would require applicable investment dealers to:

- establish, maintain and apply policies and procedures that are reasonably designed to detect and address failures to deliver by a client following the sale of a listed security on a marketplace, where the security is neither held by or under the control of the investment dealer
- commence action to address the failure to deliver no later than five business days following settlement date where the failure relates to a short sale of a listed security on a marketplace (**Proposed Amendments**).

How to Submit Comments

Comments on the Proposed Amendments should be in writing and delivered by July 3, 2026 (90 days from the publication date of this Bulletin) to:

Theodora Lam
Director of Market Regulation Policy
Canadian Investment Regulatory Organization

Suite 2600
40 Temperance Street
Toronto, Ontario M5H 0B4
e-mail: **tlam@ciro.ca**

A copy should also be delivered to the Canadian Securities Administrators (**CSA**):

Trading and Markets
Ontario Securities Commission
Suite 2200
20 Queen Street West Toronto, Ontario M5H 3S8
e-mail: **TradingandMarkets@osc.ca**

and
Market Oversight
Alberta Securities Commission
Suite 600 250-5th Street SW, Calgary, Alberta T2P 0R4
email: **CIRO-Reporting@asc.ca**

Commentators should be aware that a copy of their comment letter will be made publicly available on the CIRO website at www.ciro.ca

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1. Background

CIRO and the CSA published Joint Staff Notice 23-329[1] (Staff Notice) in December 2022 regarding the short selling regulatory framework. Comments received supported stronger measures to address abusive short selling, including the introduction of mandatory buy-in or close-out requirements similar to the U.S.[2] The Ontario Capital Markets Modernization Taskforce's 2021 Final Report[3] also recommended modernizing short selling requirements, including the adoption of mandatory buy-ins or close-out provisions by CIRO.

In November 2023, CIRO and the CSA issued a joint response to the Staff Notice indicating that a staff working group would be formed to examine these issues.[4] The CSA-CIRO Short Selling Working Group was established in January 2024 and has since been reviewing whether additional short selling requirements would be appropriate in the Canadian context.

This work led to CIRO clarifying and strengthening the short selling framework under UMIR with the adoption of a new positive requirement for Participants and Access Persons to have a reasonable expectation to settle on settlement date in December 2024.[5] In January 2025, CIRO also published for comment Proposed Amendments Respecting Mandatory Close-out Requirements.[6]

Based on the public comments received, CIRO is withdrawing the portion of the proposal relating to close-out requirements as of April 2, 2026. CIRO is adopting amendments that extend the reasonable expectation to settle to all investment dealers and introduce a new 'deemed to own' exception.[7] These two proposed changes were included as part of the Proposed Amendments Respecting Mandatory Close-out Requirements. Commenters were generally supportive of these two changes. As a policy alternative to the close-out requirements, CIRO is now proposing a conduct-based approach that focuses on the investment dealer's policies and procedures governing client delivery failures.

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[1] Joint CSA and IIROC – Staff Notice **23-329** Short Selling in Canada (December 8, 2022).
[2] **Comments Received for Joint CSA/CIRO Staff Notice 23-329**
[3] Government of Ontario, Ministry of Finance. ***Capital Markets Modernization Taskforce: Final Report*** **(January 2021)**.
[4] CSA/CIRO Staff Notice **23-332** Summary of Comments and Responses to CSA/IIROC Staff Notice 23-329 Short Selling in Canada (November 16, 2023).
[5] CIRO Bulletin **24-0349** – Rules Bulletin – Approval/Implementation – UMIR - Amendments Respecting the Reasonable Expectation to Settle a Short Sale (December 5, 2024).
[6] CIRO Bulletin **25-0001** – Rules Bulletin – Request for Comments – UMIR and IDPC Rules – *Proposed Amendments Respecting Mandatory Close-out Requirements* (January 9, 2025).
[7] CIRO Bulletin 26-0067 – Rules Bulletin – UMIR and IDPC Rules - *Amendments Respecting Reasonable Expectations to Settle Short Sales* (April 2, 2026).

2. Proposed Amendments

We are proposing a new requirement for investment dealers to establish, maintain and apply policies and procedures that are reasonably designed to detect and address failures to deliver by a client following the sale of a listed security that is neither held by or under the control of the investment dealer (e.g. using Delivery-Against-Payment (**DAP**) and Receipt-Against-Payment (**RAP**) accounts). This requirement would apply regardless of whether the client's failure to deliver results in a settlement failure at the Canadian Depository for Securities Limited and CDS Clearing and Depository Services Inc. (**CDS**).

The Proposed Amendments would apply to all investment dealers that act for a client to sell shares in a listed security on a marketplace. The investment dealer would need to have policies and procedures to ensure the client delivers the shares by the intended settlement date, where the shares are neither held by or under the control of the investment dealer. If the failure to deliver relates to a trade that is a short sale, the investment dealer would be required to commence action to address the client delivery failure within five business days following settlement date, unless the client is able to demonstrate they are 'deemed to own' the security.

The text of the Proposed IDPC Rule Amendments is set out in **Appendix 1** and a blackline of the changes is set out in **Appendix 2**.

2.1 Conduct-based approach

The Proposed Amendments would adopt a conduct-based approach that focuses on the seller's actions after executing a trade on a marketplace, rather than whether a settlement failure occurs at CDS.

This conduct-based approach prevents clients that fail to deliver securities from taking advantage of the continuous net settlement process at CDS, where the aggregation of buys and sells at the CDS Clearing Participant level may obscure individual client failures to deliver to an investment dealer. By focusing on the conduct of the seller, the Proposed Amendments help ensure that clients deliver shares as expected, even if there may be no outstanding position following the continuous net settlement (**CNS**) process at CDS.

At the same time, a conduct-based requirement would prevent investment dealers from having to identify individual failed trades following the CNS process at CDS, which was one of the main concerns raised by commenters[8] following the original mandatory close-out proposal in CIRO Bulletin 25-0001. In particular, commenters indicated that basing fails-to-deliver on the outstanding position after the aggregation and netting process at CNS becomes an

[8] Comments Received for CIRO Bulletin 25-0001 – Rules Bulletin – Request for Comments – UMIR and IDPC Rules – ***Proposed Amendments Respecting Mandatory Close-out Requirements*** **(January 9, 2025)**

operationally challenging exercise that requires a determination of which specific transaction gave rise to the fail-to-deliver. The need to build systems and processes that could map net fails to specific trades was one of the main reasons for the high implementation costs flagged by commenters, as this would have required significant infrastructure upgrades, automation and coordination among dealers, vendors and regulators. In light of these concerns, the Proposed Amendments would not rely on the outcomes of the CNS process at CDS to trigger the requirements.

2.2 Principles-based requirement

The Proposed Amendments would establish a principles-based framework that moves away from a one-size-fits-all response to delivery failures. For example, if a client does not deliver shares as expected following a sale in a listed security on a marketplace, the investment dealer would need to resolve this by taking one of the following actions:

- Buy back shares on a marketplace,
- Require the client to deliver borrowed shares to the investment dealer,
- Loan the shares to the client, or
- Borrow shares from a third party.

If an investment dealer chooses to buy back shares on a marketplace to address the client's delivery failure, CIRO would expect these purchases to be executed under reasonable commercial terms that would not be prejudicial to the maintenance of a fair and orderly market. The investment dealer would be considered to have met its obligations under the Proposed Amendments once the buy-back has been executed on a marketplace, even if the subsequent receipt of those shares may be delayed due to a CDS settlement failure that is outside of the dealer's control. In this case, the investment dealer would have the ability to expedite the settlement of outstanding securities positions by initiating the CDS buy-in process.

Rather than prescribing the same regulatory consequence to every scenario, the Proposed Amendments permit investment dealers to take measures that would be appropriate for their business, taking into account the circumstances of the client and the particular failure to deliver at issue. We believe that this flexibility supports the development of controls and processes that would be appropriately tailored to each dealer's operations and business.

We request feedback on the actions outlined above in Question 1 of this Bulletin and will take the comments into consideration when assessing whether additional actions should be taken by the investment dealer under the Proposed Amendments.

Maintaining appropriate records of the actions taken to resolve the client delivery failure within the specified timeline would allow investment dealers to demonstrate compliance with the Proposed Amendments.

2.3 Where the Failure to Deliver relates to a Short Sale

Where the client failure to deliver arises from a short sale, the investment dealer would need to address the failure to deliver by taking one of the actions set out in section 2.2 of this Bulletin. The investment dealer must commence such action no later than five business days following settlement date. It is important to codify a specific timeline for short sales given the recent stakeholder concerns on abusive short selling. A uniform timeline for short sales reduces the potential risk of investment dealers applying extended timelines as a competitive advantage, and helps promote a consistent and equitable framework across all investment dealers.

2.4 Placing the Obligation on the Investment Dealer with the Client Relationship

Given that any marketplace trade could involve more than one investment dealer acting in a different function or capacity, it is important to specify which investment dealer has the obligation to act under the Proposed Amendments.

Duplication of responsibility could potentially result in, for example, multiple buybacks of the same security to address the same failure to deliver by the same client, while a shared or joint responsibility among dealers may lead one dealer to rely on the other to act, creating ambiguity and the potential for inaction. Through our consultations, dealers have articulated a strong preference for a clear assignment of responsibility within the proposal that is aligned with their role in the trade to ensure predictable and efficient compliance.

Based on our industry consultations, there was an emerging consensus that the investment dealer with the client relationship should be responsible to take action under the Proposed Amendments. In particular, with respect to an introducing / carrying broker relationship, the introducing dealer would be best positioned to directly follow up with the client and has visibility on the status of security delivery through reports from the carrying broker and/or the client's custodian. Similarly, in an originating / executing dealer relationship, the originating dealer has the relationship with the underlying client and would be able to engage directly with the client in the event of a failure to deliver. We are asking for feedback on this issue in Question 2 of this Bulletin and will take the comments into consideration when determining the appropriate assignment of responsibility under the Proposed Amendments.

2.5 'Deemed to Own' Exception

Under the Proposed Amendments, if an investment dealer can demonstrate on its books and records that the client's failure to deliver resulted from the sale of a security that the client is 'deemed to own', the investment dealer would not be required take action with respect to this client's failure to deliver until:

- all delivery restrictions have been lifted, and
- in any event by no later than thirty-five calendar days following the trade date (T+35).

Under the Proposed Amendments, a seller is deemed to own a security if they have complied with one of the following conditions, either directly or through an agent or trustee:

(a) purchased or entered into an unconditional contract to purchase the security, but has not yet received delivery of the security;

(b) owns another security that is convertible or exchangeable into that security and has tendered such other security for conversion or exchange or has issued irrevocable instructions to convert or exchange such other security;

(c) has an option to purchase the security and has exercised the option;

(d) has a right or warrant to subscribe for the security and has exercised the right or warrant; or

(e) has entered into a contract to purchase a security that trades on a when issued basis and such contract is binding on both parties and subject only to the condition of issuance or distribution of the security.

In these scenarios, it is possible that the seller has fulfilled a condition as set out above, but the security may not be in the physical possession of the seller at the time of the execution of the trade due to administrative or processing delays that are outside of the seller's control. Given that the 'deemed to own' exception applies at the pre-trade stage with respect to the reasonable expectation to settle requirement, we propose to include this exception on a post-trade level with respect to the Proposed Amendments to ensure consistency.

3. Impacts of the Proposed Amendments

A detailed assessment of the impact of the Proposed Amendments has been prepared and is included as Appendix 3.

4. Implementation

If approved, the Proposed Amendments would become effective no sooner than 90 days after the publication of the Notice of Approval.

5. Questions

While comment is requested on all aspects of the Proposed Amendments, comment is also specifically requested on the following questions:

(a) 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?

(b) 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.

(c) 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?

(d) 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.

(e) 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.

(f) 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.

(g) 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.

7. Policy Development Process

7.1 Regulatory Purpose

The Proposed Amendments would:

- foster fair and efficient capital markets and promoting market integrity,

- prevent fraudulent and manipulative acts and practices,
- promote just and equitable principles of trade and the duty to act fairly, honestly and in good faith, and
- foster public confidence in capital markets.

The Proposed Amendments do not involve a Rule that CIRO, its Members or Approved Persons must comply with in order to be exempted from a requirement of securities legislation and any applicable references to such requirement.

The Proposed Amendments do not have any regional specific effects.

7.2 Regulatory Process

The Board of Directors of CIRO (**Board**) has determined the Proposed Amendments to be in the public interest and on March 18, 2026 approved them for public comment.

We consulted with the following CIRO advisory committees on this matter:

- CCLS Institutional Subcommittee
- Financial and Operations Advisory Section Subcommittee (**FOAS**)
- Market Rules Advisory Committee (**MRAC**)
- National Council

We also consulted with several individual Investment Dealers that act in different capacities with respect to trades in listed securities including prime brokers, introducing and carrying brokers, originating dealers and executing Participants, as well as industry associations including Canadian Independent Finance And Innovation Counsel (**CIFIC**) and Securities Investment and Management Association (**SIMA**).

After considering the comments on the Proposed Amendments received in response to this Request for Comments together with any comments of the CSA, CIRO staff may recommend revisions to the Proposed Amendments. If the revisions received are not material in nature, the Board has authorized the President to approve the revisions on CIRO's behalf and the revised Proposed Amendments will be subject to approval by the CSA. If the revisions are material, CIRO staff will submit the Proposed Amendments, including any revisions, to the Board for approval for republication or implementation, as applicable.

CIRO has followed its governance practices in approving the publication of the Proposed Amendments for comment and considered the need for consequential amendments.

8. Appendices

Appendix 1 - Proposed IDPC Rules Amendments Respecting Client Delivery Obligations (clean)

Appendix 2 - Proposed Amendments Respecting Client Delivery Obligations (blacklined and clean)

Appendix 3 - Impact Assessment