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Rules Bulletin

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*Rule Connection:* UMIR / IDPC Rules

*Division:* Investment Dealer

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## Amendments Respecting Reasonable Expectations to Settle Short Sales

### Executive Summary

The Canadian Securities Administrators (**CSA**) have approved amendments to the Universal Market Integrity Rules (**UMIR**) and Investment Dealer Partially Consolidated Rules (**IDPC**) that would:

- require all Investment Dealers to have a reasonable expectation to settle trades in listed securities on settlement date
- introduce a “deemed to own” exception to the reasonable expectation to settle requirement (**Amendments**).

The amendments are effective on August 11, 2026.

The Amendments were part of the proposed changes published by CIRO for comment on January 9, 2025 in CIRO Bulletin 25-0001 *Proposed Amendments Respecting Mandatory Close-out Requirements* (**Proposed Amendments**). In response to the comments received, **we are withdrawing** the portion of the Proposed Amendments that would have required investment dealers to:

- close out a fail-to-deliver position in the event of a settlement failure in a listed security at the recognized clearing agency by specified timelines by buying or borrowing shares
- pre-borrow the affected security where there has been a failure to close out by specified timelines for all future short sales in the security at issue, and

*CIRO Bulletin 26-0067 – Rules Bulletin – UMIR and IDPC Rules - Amendments Respecting Reasonable Expectations to Settle Short Sales*

- provide certain reporting and notifications (**close-out requirements**).

We have informed the Canadian Securities Administrators that we have withdrawn the proposed close-out requirements.

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## **1. Comments received**

We received twenty-two comment letters in response to CIRO Bulletin 25-0001. While only eight commenters provided comments in relation to the Amendments, we provide a summary of all public comments received and our responses in Appendix D.

## **2. Description of Non-Material Changes**

As the rule changes relating to the close-out requirements previously proposed in CIRO Bulletin 25-0001 are not being implemented as part of these Amendments, we have removed certain references and provisions relating to the close-out requirements and renumbered certain provisions to maintain consistency in the sequencing of provisions.

The text of the Amendments is set out in Appendix A. A blackline of the changes compared to the current rules is set out in Appendix B. A blackline of the changes compared to the previous publication is set out in Appendix C.

## **3. The Amendments**

The Amendments consist of the following:

- extending the requirement for a reasonable expectation to settle trades in listed securities on settlement date to investment dealers that are not Participants under UMIR
- creating an exception to the reasonable expectation to settle requirement for a person that sold short “deemed to own” securities.

### **3.1 Extending requirement for a reasonable expectation to settle to investment dealers that are not Participants**

To address a regulatory gap, we are extending the requirement for a reasonable expectation to settle on settlement date to investment dealers that are not Participants under UMIR. This obligation previously applied only to Participants and Access Persons under UMIR, allowing trades to be executed by Participants for originating dealers that are not subject to the same standard. To ensure a level playing field, we are extending this requirement to investment dealers that are not UMIR Participants, given that the originating dealer would be the one that has the relationship with the underlying client and be in a better position to evaluate whether this requirement can be met. Applying the same requirement across all investment dealers ensures consistent pre-trade settlement expectations, even in cases where an executing Participant may be relying on an originating dealer that is not a Participant to have a reasonable expectation to settle on settlement date.

### **3.2 ‘Deemed to Own’ Exception**

The Amendments introduce an exception to the requirement to have a reasonable expectation to settle on settlement date in cases where a seller has sold short a security that they are ‘deemed to own’. We created this exception to recognize that in certain cases, delays in delivering

securities may be due to processing and operational issues that are outside of the seller's control, such as the removal of legends for restricted securities.

Where the 'deemed to own' exception applies, the investment dealer would not be required to have a reasonable expectation to settle on settlement date, but rather the investment dealer must be reasonably informed that the seller would deliver the security:

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

A seller would be "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.

Investment dealers may rely on the 'deemed to own' exception where the above criteria are met as an exception to the CIRO requirement for a reasonable expectation to settle under UMIR 3.3 and IDPC Rule 4782. However, this exception would not prevent a trade counterparty from exercising their ability to initiate a buy-in pursuant to applicable processes and rules of CDS Clearing and Depository Services Inc., as these processes are outside of CIRO requirements.

### **3.2.1 'Deemed to Own' Exception in relation to Warrant and Option Exercises**

CIRO recognizes that the inclusion of warrants and options as part of equity units may be a common financing structure in Canada. Given that this is an important part of capital raising for early-stage issuers, which are an integral part of Canadian capital markets, it is important that we avoid unnecessary market disruptions as part of this process. The introduction of the 'deemed to own' exception provides an important distinction between temporary administrative delivery delays arising from legitimate exercises of warrants and options, and other types of settlement failures.

Following industry consultation, we have heard that a common strategy by investors is to short sell the underlying security and then use the proceeds to exercise the related warrant or option to cover the short sale. The ‘deemed to own’ exception would be available in this case as long as the investment dealer has received the seller’s instructions for the option or warrant exercise prior to, or on the same day as, the short sale and exercises sufficient options or warrants to cover the short sale. Maintaining appropriate records of client instructions including time of receipt would allow investment dealers to demonstrate compliance with the ‘deemed to own’ exception.

### **3.2.2 Must be marked as a ‘short sale’**

Where a seller is relying on the ‘deemed to own’ exception, the trade would still need to be marked as a ‘short sale’ on the marketplace under UMIR 6.2(1)(b)(viii). Given that the seller would not expect to receive delivery of the shares until after settlement date, the trade would be considered a short sale pursuant to section 1.1 of UMIR.

## **4. Implementation**

The Amendments will be effective on August 11, 2026, being 90 days from the publication of the Implementation Bulletin.

## **5. Appendices**

**Appendix A** – Clean copy of the Amendments to the UMIR and IDPC Rules

**Appendix B** – Blackline comparison of the Amendments to the current Universal Market Integrity Rules

**Appendix C** – Blackline comparison of the Amendments to the Proposed Amendments published on January 9, 2025

**Appendix D** – Summary of public comments received

## Appendix A – Clean copy of the Amendments to the UMIR and IDPC Rules

### *Clean version of the Amendments to UMIR*

#### **UMIR 1.1 Definitions**

...

“**deemed to own**” means the seller, directly or through an agent or trustee:

(a) has purchased or has 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.

...

#### **UMIR POLICY 2.2 – MANIPULATIVE AND DECEPTIVE ACTIVITIES**

...

##### **Part 2 – False or Misleading Appearance of Trading Activity or Artificial Price**

For the purposes of subsection (2) of Rule 2.2 and without limiting the generality of that subsection, if any of the following activities are undertaken on a marketplace and create or could reasonably be expected to create a false or misleading appearance of trading activity or interest in the purchase or sale of a security or a derivative or an artificial ask price, bid price or sale price, the entry of the order or the execution of the trade shall constitute a violation of subsection (2) of Rule 2.2:

...

(g) entering an order for the purchase of a security or a derivative without, at the time of entering the order, having the ability or the reasonable expectation to make the payment that would be required to settle any trade that would result from the execution of the order;

(h) entering an order for the sale of a security or a derivative without, at the time of entering the order, having the reasonable expectation of settling any trade on settlement date that would result from the execution of the order;

(h.1) the prohibition in paragraph (h) of Part 2 of Policy 2.2 does not apply to the sale of a security by:

(i) a person that is deemed to own the security, provided that the Participant has been reasonably informed that the person has a reasonable expectation to deliver such security in such number and form as to permit the settlement of the trade:

(1) as soon as all restrictions on delivery have been removed; and

(2) by no later than thirty-five consecutive calendar days following the trade date;

...

If persons know or ought reasonably to know that they are engaging or participating in these or similar types of activities those persons will be in breach of subsection (2) of Rule 2.2 irrespective of whether such activity results in a false or misleading appearance of trading activity or interest in the purchase or sale of a security or a derivative or an artificial ask price, bid price or sale price for a security or a derivative or a related security or a related derivative.

...

### **UMIR 3.3 Reasonable expectation to settle prior to the entry of an order for a short sale**

(1) Before entering an order on a marketplace to sell a security that on execution would result in a short sale, a Participant or Access Person must have a reasonable expectation to settle any resulting trade on the date contemplated on the execution of the trade.

(2) Subsection (1) does not apply to the short sale of a security by:

(a) a person that is deemed to own the security, provided that the Participant has been reasonably informed that the person has a reasonable expectation to deliver such security in such number and form as to permit the settlement of the trade:

(i) as soon as all restrictions on delivery have been removed; and

(ii) by no later than thirty-five consecutive calendar days following the trade date;

***Clean version of the Proposed Amendments to IDPC Rules***

**Rule 4700 – Operations – Business Continuity and General Trading and Delivery Standards**

**4701 – Introduction**

(1) Rule 4700 sets out the following requirements relating to Dealer Member operations:

Part A - Business continuity plan

[sections 4710 through 4716]

Part B - General trading and delivery standards applicable to all transactions

[sections 4750 through 4761]

Part C – Reasonable Expectation to Settle

[sections 4780 through 4782]

...

**PART C – REASONABLE EXPECTATION TO SETTLE**

**4780. Introduction**

(1) Part C of Rule 4700 sets out the requirements relating to a reasonable expectation to settle applicable to all trades in a *listed security* that are executed on a *Marketplace*.

**4781. Definitions**

(1) The following terms have the meaning set out below when used in section 4782:

“deemed to own”	The same meaning as set out in the Universal Market Integrity Rules, section 1.1.
“intended settlement date”	The <i>business day</i> on which the delivery of <i>securities</i> and payment of money is required to be made to permit the settlement of the trade through the facilities of a <i>recognized clearing agency</i> on the date expected when the trade was executed on a <i>Marketplace</i> .
“listed security”	The same meaning as set out in the Universal Market Integrity Rules, section 1.1.
“Participant”	The same meaning as set out in the Universal Market Integrity Rules, section 1.1.
“short sale”	The same meaning as set out in the Universal Market Integrity Rules, section 1.1.

**4782. Reasonable expectation to settle prior to the entry of an order for a short sale**

- (1) Before submitting an order to a *Dealer Member* to sell a *listed security* on a *Marketplace* that on execution would result in a *short sale*, a *Dealer Member* that is not a *Participant* must have a reasonable expectation to settle any resulting trade on the *intended settlement date*.
- (2) Subsection 4782(1) does not apply to the short sale of a *listed security* by:
  - (i) a person that is *deemed to own* the *security*, provided that the *Participant* has been reasonably informed that the person has a reasonable expectation to deliver such security in such number and form as to permit the settlement of the trade:
    - (a) as soon as all restrictions on delivery have been removed; and
    - (b) by no later than thirty-five consecutive calendar days following the trade date.

**Appendix B – Text of UMIR and IDPC Rules to Reflect UMIR and IDPC Rules Amendments Respecting the Requirement to have a Reasonable Expectation to Settle**

Blue and Red – blacklined changes as compared to current UMIR and IDPC Rules

Text of Provision Marked to Reflect Adoption of the Proposed UMIR Rules Amendments	Text of Provision Following Adoption of the Proposed UMIR Amendments
<p><b>UMIR 1.1 Definitions</b></p> <p>...</p> <p><u>“deemed to own” means the seller, directly or through an agent or trustee:</u></p> <p><u>(a) has purchased or has entered into an unconditional contract to purchase the security, but has not yet received delivery of the security;</u></p> <p><u>(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;</u></p> <p><u>(c) has an option to purchase the security and has exercised the option;</u></p> <p><u>(d) has a right or warrant to subscribe for the security and has exercised the right or warrant; or</u></p> <p><u>(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.</u></p> <p>...</p>	<p><b>UMIR 1.1 Definitions</b></p> <p>...</p> <p>“deemed to own” means the seller, directly or through an agent or trustee:</p> <p>(a) has purchased or has entered into an unconditional contract to purchase the security, but has not yet received delivery of the security;</p> <p>(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;</p> <p>(c) has an option to purchase the security and has exercised the option;</p> <p>(d) has a right or warrant to subscribe for the security and has exercised the right or warrant; or</p> <p>(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.</p> <p>...</p>
<p><b>UMIR POLICY 2.2 – MANIPULATIVE AND DECEPTIVE ACTIVITIES</b></p> <p><b>Part 2 – False or Misleading Appearance of Trading Activity or Artificial Price</b></p> <p>For the purposes of subsection (2) of Rule 2.2 and without limiting the generality of that subsection, if any of the following activities are undertaken on a marketplace and create or could reasonably be expected to create a false or misleading appearance of trading activity or interest in the purchase or sale of a security or a derivative or an artificial ask price, bid price or sale price, the entry of the order or the</p>	<p><b>UMIR POLICY 2.2 – MANIPULATIVE AND DECEPTIVE ACTIVITIES</b></p> <p><b>Part 2 – False or Misleading Appearance of Trading Activity or Artificial Price</b></p> <p>For the purposes of subsection (2) of Rule 2.2 and without limiting the generality of that subsection, if any of the following activities are undertaken on a marketplace and create or could reasonably be expected to create a false or misleading appearance of trading activity or interest in the purchase or sale of a security or a derivative or an artificial ask price, bid price or sale price, the entry of the order or the</p>

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<p>execution of the trade shall constitute a violation of subsection (2) of Rule 2.2:</p> <p>...</p> <p>(g) entering an order for the purchase of a security or a derivative without, at the time of entering the order, having the ability or the reasonable expectation to make the payment that would be required to settle any trade that would result from the execution of the order;</p> <p>(h) entering an order for the sale of a security or a derivative without, at the time of entering the order, having the reasonable expectation of settling any trade <u>on settlement date</u> that would result from the execution of the order; <del>and</del></p> <p><u>(h.1) the prohibition in paragraph (h) of Part 2 of Policy 2.2 does not apply to the sale of a security by:</u></p> <p><u>(i) a person that is deemed to own the security, provided that the Participant has been reasonably informed that the person has a reasonable expectation to deliver such security in such number and form as to permit the settlement of the trade:</u></p> <p><u>(1) as soon as all restrictions on delivery have been removed; and</u></p> <p><u>(2) by no later than thirty-five consecutive calendar days following the trade date;</u></p> <p>...</p> <p>If persons know or ought reasonably to know that they are engaging or participating in these or similar types of activities those persons will be in breach of subsection (2) of Rule 2.2 irrespective of whether such activity results in a false or misleading appearance of trading activity or interest in the purchase or sale of a security or a derivative or an artificial ask price, bid price or sale price for a security or a derivative or a related security or a related derivative.</p>	<p>execution of the trade shall constitute a violation of subsection (2) of Rule 2.2:</p> <p>...</p> <p>(g) entering an order for the purchase of a security or a derivative without, at the time of entering the order, having the ability or the reasonable expectation to make the payment that would be required to settle any trade that would result from the execution of the order;</p> <p>(h) entering an order for the sale of a security or a derivative without, at the time of entering the order, having the reasonable expectation of settling any trade on settlement date that would result from the execution of the order;</p> <p>(h.1) the prohibition in paragraph (h) of Part 2 of Policy 2.2 does not apply to the sale of a security by:</p> <p>(i) a person that is deemed to own the security, provided that the Participant has been reasonably informed that the person has a reasonable expectation to deliver such security in such number and form as to permit the settlement of the trade:</p> <p>(1) as soon as all restrictions on delivery have been removed; and</p> <p>(2) by no later than thirty-five consecutive calendar days following the trade date;</p> <p>...</p> <p>If persons know or ought reasonably to know that they are engaging or participating in these or similar types of activities those persons will be in breach of subsection (2) of Rule 2.2 irrespective of whether such activity results in a false or misleading appearance of trading activity or interest in the purchase or sale of a security or a derivative or an artificial ask price, bid price or sale price for a security or a derivative or a related security or a related derivative.</p>

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Text of Current Provisions Marked to Reflect Adoption of the Proposed IDPC Rules Amendments	Text of Provision Following Adoption of the Proposed IDPC Rules Amendments
<p><b>Rule 4700 – Operations – Business Continuity and General Trading and Delivery Standards</b></p> <p><b>4701 – Introduction</b></p> <p>(1) Rule 4700 sets out the following requirements relating to Dealer Member operations:</p> <p>Part A - Business continuity plan [sections 4710 through 4716]</p> <p>Part B - General trading and delivery standards applicable to all transactions [sections 4750 through 4761]</p> <p><u>Part C – Reasonable Expectation to Settle [sections 4780 through 4782]</u></p>	<p><b>Rule 4700 – Operations – Business Continuity and General Trading and Delivery Standards</b></p> <p><b>4701 – Introduction</b></p> <p>(1) Rule 4700 sets out the following requirements relating to Dealer Member operations:</p> <p>Part A - Business continuity plan [sections 4710 through 4716]</p> <p>Part B - General trading and delivery standards applicable to all transactions [sections 4750 through 4761]</p> <p>Part C – Reasonable Expectation to Settle [sections 4780 through 4782]</p>

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<p><b><u>4782. Reasonable expectation to settle prior to the entry of an order for a short sale</u></b></p> <p><u>(1) Before submitting an order to a Dealer Member to sell a listed security on a Marketplace that on execution would result in a short sale, a Dealer Member that is not a Participant must have a reasonable expectation to settle any resulting trade on the intended settlement date.</u></p>	<p><b>4782. Reasonable expectation to settle prior to the entry of an order for a short sale</b></p> <p>(1) Before submitting an order to a Dealer Member to sell a listed security on a Marketplace that on execution would result in a short sale, a Dealer Member that is not a Participant must have a reasonable expectation to settle any resulting trade on the intended settlement date.</p>																				

Text of Current Provisions Marked to Reflect Adoption of the Proposed IDPC Rules Amendments	Text of Provision Following Adoption of the Proposed IDPC Rules Amendments
<p><u>(2) Subsection 4782(1) does not apply to the short sale of a listed security by:</u></p> <p><u>(i) a person that is deemed to own the security, provided that the Participant has been reasonably informed that the person has a reasonable expectation to deliver such security in such number and form as to permit the settlement of the trade;</u></p> <p><u>(a) as soon as all restrictions on delivery have been removed; and</u></p> <p><u>(b) by no later than thirty-five consecutive calendar days following the trade date.</u></p>	<p>(2) Subsection 4782(1) does not apply to the short sale of a listed security by:</p> <p>(i) a person that is deemed to own the security, provided that the Participant has been reasonably informed that the person has a reasonable expectation to deliver such security in such number and form as to permit the settlement of the trade:</p> <p>(a) as soon as all restrictions on delivery have been removed; and</p> <p>(b) by no later than thirty-five consecutive calendar days following the trade date.</p>

**Appendix C – Blacklined comparison of text of UMIR and IDPC Rules to the Proposed Amendments as published on January 9, 2025**

Blue and Red – blacklined to reflect changes to the January 2025 publication

Text of Current UMIR Provisions Marked to Reflect Changes to the January 2025 publication	Text of UMIR Provisions Following Adoption of the Changes to the January 2025 publication
<p><b>UMIR 1.1 Definitions</b></p> <p>...</p> <p><b>“deemed to own”</b> means the seller, directly or through an agent or trustee:</p> <p>(a) has purchased or has entered into an unconditional contract to purchase the security, but has not yet received delivery of the security;</p> <p>(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;</p> <p>(c) has an option to purchase the security and has exercised the option;</p> <p>(d) has a right or warrant to subscribe for the security and has exercised the right or warrant; or</p> <p>(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.</p> <p>...</p>	<p><b>UMIR 1.1 Definitions</b></p> <p>...</p> <p><b>“deemed to own”</b> means the seller, directly or through an agent or trustee:</p> <p>(a) has purchased or has entered into an unconditional contract to purchase the security, but has not yet received delivery of the security;</p> <p>(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;</p> <p>(c) has an option to purchase the security and has exercised the option;</p> <p>(d) has a right or warrant to subscribe for the security and has exercised the right or warrant; or</p> <p>(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.</p> <p>...</p>
<p><b>UMIR POLICY 2.2 – MANIPULATIVE AND DECEPTIVE ACTIVITIES</b></p> <p><b>Part 2 – False or Misleading Appearance of Trading Activity or Artificial Price</b></p> <p>For the purposes of subsection (2) of Rule 2.2 and without limiting the generality of that subsection, if any of the following activities are undertaken on a marketplace and create or could reasonably be expected to create a false or misleading appearance of trading activity or interest in the purchase or sale of a security or a derivative or an artificial ask price, bid</p>	<p><b>UMIR POLICY 2.2 – MANIPULATIVE AND DECEPTIVE ACTIVITIES</b></p> <p><b>Part 2 – False or Misleading Appearance of Trading Activity or Artificial Price</b></p> <p>For the purposes of subsection (2) of Rule 2.2 and without limiting the generality of that subsection, if any of the following activities are undertaken on a marketplace and create or could reasonably be expected to create a false or misleading appearance of trading activity or interest in the purchase or sale of a security or a derivative or an artificial ask price, bid</p>

Text of Current UMIR Provisions Marked to Reflect Changes to the January 2025 publication	Text of UMIR Provisions Following Adoption of the Changes to the January 2025 publication
<p>price or sale price, the entry of the order or the execution of the trade shall constitute a violation of subsection (2) of Rule 2.2:</p> <p>...</p> <p>(g) entering an order for the purchase of a security or a derivative without, at the time of entering the order, having the ability or the reasonable expectation to make the payment that would be required to settle any trade that would result from the execution of the order;</p> <p>(h) entering an order for the sale of a security or a derivative without, at the time of entering the order, having the reasonable expectation of settling any trade on settlement date that would result from the execution of the order;</p> <p>(h.1) the prohibition in paragraph (h) of Part 2 of Policy 2.2 does not apply to the sale of a security by:</p> <p style="padding-left: 40px;">(i) a person that is deemed to own the security, provided that the Participant has been reasonably informed that the person has a reasonable expectation to deliver such security in such number and form as to permit the settlement of the trade:</p> <p style="padding-left: 80px;">(1) as soon as all restrictions on delivery have been removed; and</p> <p style="padding-left: 80px;">(2) by no later than thirty-five consecutive calendar days following the trade date;</p> <p>...</p> <p>If persons know or ought reasonably to know that they are engaging or participating in these or similar types of activities those persons will be in breach of subsection (2) of Rule 2.2 irrespective of whether such activity results in a false or misleading appearance of trading activity or interest in the purchase or sale of a security or a derivative or an artificial ask price, bid price or sale price for a security or a derivative or a related security or a related derivative.</p>	<p>price or sale price, the entry of the order or the execution of the trade shall constitute a violation of subsection (2) of Rule 2.2:</p> <p>...</p> <p>(g) entering an order for the purchase of a security or a derivative without, at the time of entering the order, having the ability or the reasonable expectation to make the payment that would be required to settle any trade that would result from the execution of the order;</p> <p>(h) entering an order for the sale of a security or a derivative without, at the time of entering the order, having the reasonable expectation of settling any trade on settlement date that would result from the execution of the order;</p> <p>(h.1) the prohibition in paragraph (h) of Part 2 of Policy 2.2 does not apply to the sale of a security by:</p> <p style="padding-left: 40px;">(i) a person that is deemed to own the security, provided that the Participant has been reasonably informed that the person has a reasonable expectation to deliver such security in such number and form as to permit the settlement of the trade:</p> <p style="padding-left: 80px;">(1) as soon as all restrictions on delivery have been removed; and</p> <p style="padding-left: 80px;">(2) by no later than thirty-five consecutive calendar days following the trade date;</p> <p>...</p> <p>If persons know or ought reasonably to know that they are engaging or participating in these or similar types of activities those persons will be in breach of subsection (2) of Rule 2.2 irrespective of whether such activity results in a false or misleading appearance of trading activity or interest in the purchase or sale of a security or a derivative or an artificial ask price, bid price or sale price for a security or a derivative or a related security or a related derivative.</p>
<p><b>UMIR 3.3 Reasonable expectation to settle prior to the entry of an order for a short sale</b></p>	<p><b>UMIR 3.3 Reasonable expectation to settle prior to the entry of an order for a short sale</b></p>

Text of Current UMIR Provisions Marked to Reflect Changes to the January 2025 publication	Text of UMIR Provisions Following Adoption of the Changes to the January 2025 publication
<p>(1) Before entering an order on a marketplace to sell a security that on execution would result in a short sale, a Participant or Access Person must have a reasonable expectation to settle any resulting trade on the date contemplated on the execution of the trade.</p> <p>(2) Subsection (1) does not apply to the short sale of a security by:</p> <p style="padding-left: 40px;">(a) a person that is deemed to own the security, provided that the Participant has been reasonably informed that the person has a reasonable expectation to deliver such security in such number and form as to permit the settlement of the trade:</p> <p style="padding-left: 80px;">(i) as soon as all restrictions on delivery have been removed; and</p> <p style="padding-left: 80px;">(ii) by no later than thirty-five consecutive calendar days following the trade date;</p>	<p>(1) Before entering an order on a marketplace to sell a security that on execution would result in a short sale, a Participant or Access Person must have a reasonable expectation to settle any resulting trade on the date contemplated on the execution of the trade.</p> <p>(2) Subsection (1) does not apply to the short sale of a security by:</p> <p style="padding-left: 40px;">(a) a person that is deemed to own the security, provided that the Participant has been reasonably informed that the person has a reasonable expectation to deliver such security in such number and form as to permit the settlement of the trade:</p> <p style="padding-left: 80px;">(i) as soon as all restrictions on delivery have been removed; and</p> <p style="padding-left: 80px;">(ii) by no later than thirty-five consecutive calendar days following the trade date;</p>

Text of Current IDPC Provisions Marked to Reflect Changes to the January 2025 publication	Text of IDPC Provisions Following Adoption of the Changes to the January 2025 publication
<p><b>Rule 4700 – Operations – Business Continuity and General Trading and Delivery Standards</b></p> <p><b>4701 – Introduction</b></p> <p>(1) Rule 4700 sets out the following requirements relating to Dealer Member operations:</p> <p style="padding-left: 40px;">Part A - Business continuity plan</p> <p style="padding-left: 80px;">[sections 4710 through 4716]</p> <p style="padding-left: 40px;">Part B - General trading and delivery standards applicable to all transactions</p> <p style="padding-left: 80px;">[sections 4750 through 4761]</p> <p style="padding-left: 40px;">Part C – Reasonable Expectation to Settle <del>and</del> <u>Mandatory Close-out Requirements</u></p> <p style="padding-left: 80px;">[sections 4780 through <del>4784</del> <u>4782</u>]</p>	<p><b>Rule 4700 – Operations – Business Continuity and General Trading and Delivery Standards</b></p> <p><b>4701 – Introduction</b></p> <p>(1) Rule 4700 sets out the following requirements relating to Dealer Member operations:</p> <p style="padding-left: 40px;">Part A - Business continuity plan</p> <p style="padding-left: 80px;">[sections 4710 through 4716]</p> <p style="padding-left: 40px;">Part B - General trading and delivery standards applicable to all transactions</p> <p style="padding-left: 80px;">[sections 4750 through 4761]</p> <p style="padding-left: 40px;">Part C – Reasonable Expectation to Settle</p> <p style="padding-left: 80px;">[sections 4780 through 4782]</p>

Text of Current IDPC Provisions Marked to Reflect Changes to the January 2025 publication	Text of IDPC Provisions Following Adoption of the Changes to the January 2025 publication																
<p><b>PART C – REASONABLE EXPECTATION TO SETTLE <u>AND MANDATORY CLOSE-OUT REQUIREMENTS</u></b></p> <p><b>4780. Introduction</b></p> <p>(1) Part C of Rule 4700 sets out the requirements relating to a reasonable expectation to settle <u>and mandatory close-outs</u> applicable to all trades in a <i>listed security</i> that are executed on a <i>Marketplace</i>.</p>	<p><b>PART C – REASONABLE EXPECTATION TO SETTLE</b></p> <p><b>4780. Introduction</b></p> <p>(1) Part C of Rule 4700 sets out the requirements relating to a reasonable expectation to settle applicable to all trades in a <i>listed security</i> that are executed on a <i>Marketplace</i>.</p>																
<p><b>4781. Definitions</b></p> <p>(1) The following terms have the meaning set out below when used in sections <u>4782 through 4784</u>:</p> <table border="1" data-bbox="159 772 792 1890"> <tr> <td data-bbox="159 772 370 951"><u>“Allocated Member”</u></td> <td data-bbox="376 772 792 951"><u>A Dealer Member that has been allocated all or a portion of a fail to deliver position from a Clearing Member through which it clears or settles trades.</u></td> </tr> <tr> <td data-bbox="159 957 370 1062"><u>“Clearing Member”</u></td> <td data-bbox="376 957 792 1062"><u>A Dealer Member that is a member of a recognized clearing agency.</u></td> </tr> <tr> <td data-bbox="159 1068 370 1890">“deemed to own”</td> <td data-bbox="376 1068 792 1890"> <u>A seller shall be deemed to own a security if the seller, directly or through an agent or trustee:</u>   <u>(a) has purchased or has entered into an unconditional contract to purchase the security, but has not yet received delivery of the security;</u>   <u>(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;</u>   <u>(c) has an option to purchase the security and has exercised the option;</u>   <u>(d) has a right or warrant to subscribe for the security and has exercised the right or warrant; or</u>   <u>(e) has entered into a contract to purchase a security that trades on</u> </td> </tr> </table>	<u>“Allocated Member”</u>	<u>A Dealer Member that has been allocated all or a portion of a fail to deliver position from a Clearing Member through which it clears or settles trades.</u>	<u>“Clearing Member”</u>	<u>A Dealer Member that is a member of a recognized clearing agency.</u>	“deemed to own”	<u>A seller shall be deemed to own a security if the seller, directly or through an agent or trustee:</u>  <u>(a) has purchased or has entered into an unconditional contract to purchase the security, but has not yet received delivery of the security;</u>  <u>(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;</u>  <u>(c) has an option to purchase the security and has exercised the option;</u>  <u>(d) has a right or warrant to subscribe for the security and has exercised the right or warrant; or</u>  <u>(e) has entered into a contract to purchase a security that trades on</u>	<p><b>4781. Definitions</b></p> <p>(1) The following terms have the meaning set out below when used in section 4782:</p> <table border="1" data-bbox="831 772 1464 1495"> <tr> <td data-bbox="831 772 1019 888">“deemed to own”</td> <td data-bbox="1026 772 1464 888">The same meaning as set out in the Universal Market Integrity Rules, section 1.1.</td> </tr> <tr> <td data-bbox="831 894 1019 1157">“intended settlement date”</td> <td data-bbox="1026 894 1464 1157">The <i>business day</i> on which the delivery of <i>securities</i> and payment of money is required to be made to permit the settlement of the trade through the facilities of a <i>recognized clearing agency</i> on the date expected when the trade was executed on a <i>Marketplace</i>.</td> </tr> <tr> <td data-bbox="831 1163 1019 1268">“listed security”</td> <td data-bbox="1026 1163 1464 1268">The same meaning as set out in the Universal Market Integrity Rules, section 1.1.</td> </tr> <tr> <td data-bbox="831 1274 1019 1379">“Participant”</td> <td data-bbox="1026 1274 1464 1379">The same meaning as set out in the Universal Market Integrity Rules, section 1.1.</td> </tr> <tr> <td data-bbox="831 1386 1019 1495">“short sale”</td> <td data-bbox="1026 1386 1464 1495">The same meaning as set out in the Universal Market Integrity Rules, section 1.1.</td> </tr> </table>	“deemed to own”	The same meaning as set out in the Universal Market Integrity Rules, section 1.1.	“intended settlement date”	The <i>business day</i> on which the delivery of <i>securities</i> and payment of money is required to be made to permit the settlement of the trade through the facilities of a <i>recognized clearing agency</i> on the date expected when the trade was executed on a <i>Marketplace</i> .	“listed security”	The same meaning as set out in the Universal Market Integrity Rules, section 1.1.	“Participant”	The same meaning as set out in the Universal Market Integrity Rules, section 1.1.	“short sale”	The same meaning as set out in the Universal Market Integrity Rules, section 1.1.
<u>“Allocated Member”</u>	<u>A Dealer Member that has been allocated all or a portion of a fail to deliver position from a Clearing Member through which it clears or settles trades.</u>																
<u>“Clearing Member”</u>	<u>A Dealer Member that is a member of a recognized clearing agency.</u>																
“deemed to own”	<u>A seller shall be deemed to own a security if the seller, directly or through an agent or trustee:</u>  <u>(a) has purchased or has entered into an unconditional contract to purchase the security, but has not yet received delivery of the security;</u>  <u>(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;</u>  <u>(c) has an option to purchase the security and has exercised the option;</u>  <u>(d) has a right or warrant to subscribe for the security and has exercised the right or warrant; or</u>  <u>(e) has entered into a contract to purchase a security that trades on</u>																
“deemed to own”	The same meaning as set out in the Universal Market Integrity Rules, section 1.1.																
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	<p><del>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.</del></p> <p>The same meaning as set out in the Universal Market Integrity Rules, section 1.1.</p>	
“intended settlement date”	The <i>business day</i> on which the delivery of <i>securities</i> and payment of money is required to be made to permit the settlement of the trade through the facilities of a <i>recognized clearing agency</i> on the date expected when the trade was executed on a <i>Marketplace</i> .	
“listed security”	The same meaning as set out in the Universal Market Integrity Rules, section 1.1.	
<del>“long sale”</del>	<del>A sale in a listed security that is not a short sale.</del>	
<del>“Marketplace Trading Obligations”</del>	<del>The same meaning as set out in the Universal Market Integrity Rules, section 1.1.</del>	
“Participant”	The same meaning as set out in the Universal Market Integrity Rules, section 1.1.	
<del>“recognized clearing agency”</del>	<del>An acceptable clearing corporation that is recognized by the applicable securities regulatory authorities in Canada for the clearing and settling of trades in listed securities.</del>	
“short sale”	The same meaning as set out in the Universal Market Integrity Rules, section 1.1.	
<del>“trading day”</del>	<del>The same meaning as set out in the Universal Market Integrity Rules, section 1.1.</del>	

Text of Current IDPC Provisions Marked to Reflect Changes to the January 2025 publication	Text of IDPC Provisions Following Adoption of the Changes to the January 2025 publication
<p><b>4782. Reasonable expectation to settle prior to the entry of an order for a short sale</b></p> <p>(1) Before submitting an order to a <i>Dealer Member</i> to sell a <i>listed security</i> on a <i>Marketplace</i> <u>that on execution would result in a short sale</u>, a <i>Dealer Member</i> that is not a <i>Participant</i> must have a reasonable expectation to settle any resulting trade on the <i>intended settlement date</i>.</p> <p>(2) Subsection 4782(1) does not apply to the <u>short sale</u> of a <i>listed security</i> by:</p> <p>(i) a person that is <i>deemed to own</i> the <i>security</i>, provided that the <i>Participant</i> has been reasonably informed that the person has a reasonable expectation to deliver such <i>security</i> in such number and form as to permit the settlement of the trade:</p> <p>(a) as soon as all restrictions on delivery have been removed; and</p> <p>(b) by no later than thirty-five consecutive calendar days following the trade date.</p>	<p><b>4782. Reasonable expectation to settle prior to the entry of an order for a short sale</b></p> <p>(1) Before submitting an order to a <i>Dealer Member</i> to sell a <i>listed security</i> on a <i>Marketplace</i> that on execution would result in a <i>short sale</i>, a <i>Dealer Member</i> that is not a <i>Participant</i> must have a reasonable expectation to settle any resulting trade on the <i>intended settlement date</i>.</p> <p>(2) Subsection 4782(1) does not apply to the short sale of a <i>listed security</i> by:</p> <p>(i) a person that is <i>deemed to own</i> the <i>security</i>, provided that the <i>Participant</i> has been reasonably informed that the person has a reasonable expectation to deliver such <i>security</i> in such number and form as to permit the settlement of the trade:</p> <p>(a) as soon as all restrictions on delivery have been removed; and</p> <p>(b) by no later than thirty-five consecutive calendar days following the trade date.</p>
<p><b><u>4783. Close-out requirement</u></b></p> <p><del>(1) A <i>Clearing Member</i> must deliver securities to a recognized clearing agency for the clearing and settling of a sale in a listed security by the intended settlement date.</del></p>	
<p><del>(2) If a <i>Clearing Member</i> has a fail to deliver position at a recognized clearing agency in any listed security for a sale in that listed security, the <i>Clearing Member</i> shall, by no later than the trading day following the intended settlement date, immediately close out its fail to deliver position by borrowing or purchasing securities of like kind and quantity.</del></p>	
<p><del>(3) If a <i>Clearing Member</i> has a fail to deliver position at a recognized clearing agency in any listed security and the <i>Clearing Member</i> can demonstrate on its books and records that such fail to deliver position resulted from:</del></p> <p><del>(i) a long sale, the <i>Clearing Member</i> shall by no later than the third consecutive trading</del></p>	

Text of Current IDPC Provisions Marked to Reflect Changes to the January 2025 publication	Text of IDPC Provisions Following Adoption of the Changes to the January 2025 publication
<p><del>day following the intended settlement date, immediately close out the fail to deliver position by purchasing or borrowing securities of like kind and quantity;</del></p> <p><del>(ii) a sale of a security that a person is deemed to own and that such person intends to deliver as soon as all restrictions on delivery have been removed, the Clearing Member shall, by no later than the thirty-fifth consecutive calendar day following the trade date of the transaction, immediately close out the fail to deliver position by purchasing securities of like kind and quantity;</del></p> <p><del>(iii) a sale that is executed by a person with Marketplace Trading Obligations in respect of a security for which that person has obligations, the Clearing Member shall by no later than the third consecutive trading day following the intended settlement date, immediately close out the fail to deliver position by purchasing or borrowing securities of like kind and quantity;</del></p>	
<p><del>(3) If a Clearing Member has a fail to deliver position in any listed security at a recognized clearing agency and does not close out such fail to deliver position in accordance with the requirements of subsections 4783(2) or 4783(3):</del></p> <p><del>(i) The Clearing Member and any Dealer Member from which it receives trades for clearing and settlement:</del></p> <p><del>(a) may not accept a short sale order in that listed security from another person, or</del></p> <p><del>(b) effect a short sale in that listed security for its own account,</del></p> <p><del>to the extent that the Dealer Member submits short sales to that Clearing Member for clearing and settlement, until the Clearing Member closes out the fail to deliver position by purchasing or</del></p>	

Text of Current IDPC Provisions Marked to Reflect Changes to the January 2025 publication	Text of IDPC Provisions Following Adoption of the Changes to the January 2025 publication
<p><del>borrowing securities of like kind and quantity and:</del></p> <p><del>(3) (I). the purchase has cleared and settled at a recognized clearing agency, or</del></p> <p><del>(4) (II). the Clearing Member can demonstrate that it has a net flat or net long position in that listed security on its books and records.</del></p> <p><del>(ii) Despite clause 4783(4)(i), the Clearing Member and any Dealer Member from which it receives trades for clearing and settlement may accept a short sale order in that listed security from another person, or effect a short sale for its own account if the Clearing Member or Dealer Member first:</del></p> <p><del>(a) borrows that listed security, or</del></p> <p><del>(b) enters into a bona fide arrangement to borrow that listed security.</del></p>	
<p><del>(5) A Clearing Member must:</del></p> <p><del>(i) notify any Dealer Member from which it receives trades for clearing and settlement:</del></p> <p><del>(a) that the Clearing Member has a fail to deliver position in a listed security at a recognized clearing agency that has not been closed out in accordance with the requirements of subsections 4783(2) or 4783(3); and</del></p> <p><del>(b) when the purchase or borrow that the Clearing Member has made to close out the fail to deliver position has been cleared and settled at a recognized clearing agency; and</del></p> <p><del>(ii) provide a copy of the notification required under clause 4783(5)(i) to the Corporation at such time and in such form and manner as required by the Corporation; and</del></p> <p><del>(iii) notify any Dealer Member that receives an order from the Clearing Member to sell that listed security on a Marketplace that on execution would result in a short sale that</del></p>	

Text of Current IDPC Provisions Marked to Reflect Changes to the January 2025 publication	Text of IDPC Provisions Following Adoption of the Changes to the January 2025 publication
<p><del>the Clearing Member has become subject to the requirements of subsection 4783(4)(ii);</del></p> <p><del>(5)–</del></p>	
<p><b><u>4784. Allocating a fail to deliver position</u></b></p> <p><del>(1) A Clearing Member can reasonably allocate all or a portion of a fail to deliver position to an Allocated Member by notifying the Allocated Member of the fail to deliver position on a timely basis.</del></p>	
<p><del>(2) If a Clearing Member reasonably allocates all or a portion of a fail to deliver position to an Allocated Member pursuant to subsection 4784(1):</del></p> <p><del>(i) Subsections 4783(2), 4783(3) and 4783(4) relating to such fail to deliver allocation shall apply to the Allocated Member, and not to the Clearing Member;</del></p> <p><del>(ii) If the Allocated Member does not comply with subsections 4783(2) and 4783(3), the Allocated Member must provide immediate notification that the Allocated Member has become subject to the requirements of subsection 4783(4) to:</del></p> <p><del>(a) the Clearing Member from which the Allocated Member received a fail to deliver allocation; and</del></p> <p><del>(b) any other Dealer Member that receives an order from the Allocated Member to sell that listed security on a Marketplace that on execution would result in a short sale.</del></p> <p><del>(iii) If the Allocated Member does not comply with subsections 4783(2) and 4783(3), the Allocated Member must provide immediate notification when the purchase or borrow that the Allocated Member has made to close out the fail to deliver position has been cleared and settled at a recognized clearing agency to:</del></p> <p><del>(a) the Clearing Member from which the Allocated Member received a fail to deliver allocation; and</del></p>	

Text of Current IDPC Provisions Marked to Reflect Changes to the January 2025 publication	Text of IDPC Provisions Following Adoption of the Changes to the January 2025 publication
<p><del>(b) any other Dealer Member that receives an order from the Allocated Member to sell that listed security on a Marketplace that on execution would result in a short sale.</del></p> <p><del>(iv) The Allocated Member must provide a copy of the notifications required under clauses 4784(2)(ii) and 4784(2)(iii) to the Corporation at such time and in such form and manner and containing such information as may be required by the Corporation.</del></p> <p><del>(v) The Clearing Member must provide notification regarding the allocation of the fail to deliver position to the Corporation at such time and in such form and manner and containing such information as may be required by the Corporation.</del></p> <p><del>4785.-4799. Reserved.</del></p>	

## Appendix D - Comments Received in Response to Bulletin 25-0001 Proposed Amendments Respecting Mandatory Close-Out Requirements

On January 9, 2025, the Canadian Investment Regulatory Organization (CIRO) published Bulletin [25-0001](#) to require applicable Dealer Members to, among other things, close out a fail-to-deliver position in the event of a settlement failure in a listed security at the recognized clearing agency by specified timelines by buying or borrowing shares.

We received 22 comment letters from the following commenters:

BMO Nesbitt Burns Inc. (**BMO**)

Bob Shewchuk (**Mr. Shewchuk**)

Canaccord Genuity Wealth Management – Watson Strategic Investments (**CGWM-WSI**)

Canadian Advocacy Council of CFA Societies Canada (**CAC**)

Canadian Bankers Association (**CBA**)

Canadian Independent Finance and Innovation Counsel (**CIFIC**)

Canadian Securities Exchange (**CSE**)

Canadian Security Traders Association, Inc. (**CSTA**)

CIBC World Markets Inc. (**CIBC**)

Fidelity Clearing Canada ULC (**Fidelity**)

Fiore Management & Advisory Corp. (**Fiore**)

Generation Mining Ltd. (**Generation Mining**)

Investment Industry Association of Canada and the Canadian Securities Lending Association (**IIAC & CASLA**)

Interactive Brokers Canada Inc. (**Interactive Brokers**)

McMillan LLP (**McMillan**)

National Bank Financial (**NBF**)  
Prospectors & Developers Association of Canada (**PDAC**)  
Save Canadian Mining (**SCM**)<sup>1</sup>  
Scotia Capital Inc. (**Scotia**)  
TD Securities Inc. (**TD**)  
TMX Group Limited (**TMX**)  
Virtu Canada Corp. (**Virtu**)

Copies of these comments are publicly available on CIRO's website (<https://www.ciro.ca/rules-and-enforcement/consultations/proposed-amendments-respecting-mandatory-close-out-requirements>). The following table provides a summary of the comments received:

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<sup>1</sup> The following 67 individuals indicated their support for the SCM comment letter: Shondell Sabad of Acapella Holdings Ltd., P. Drozinika, Richard Grafton of Westgate Energy Inc., Robert Cross of Standard Lithium Ltd., Roger Rosmus of Goliath Resources Limited, Terry Wasylak, Dave Lauer of Urvin Finance and We The Investors, Jeff Kennedy of 2176423 Ontario Ltd., Mitchell Smith of Global Energy Metals Corporation, Greg Sauer, Jean-Daniel Joly of SRQ Resources Inc. & Falcon Energy Materials plc, Dan Wilton of First Mining Gold Corp., Nicole Brewster of Renforth, Malcolm Shaw of MSC Corp, Zeeshan Saeed of Quantum BioPharma, Peter Lyngstad, Sean Adam Kingsley of Gold Hunter Resources Inc./Investor Events, Sherman A Garner, Brandon Bonifacio of NevGold Corp., Larry Acton, Ron Thiessen of Hunter Dickinson Inc., Eugene Toffolo, Spiros Kletas, Steve Regoci of Garibaldi Resources Corp., Tom English, Thomas Ronk of Buyins, Inc., H Vance White of Nobel Mineral Exploration Inc, Warren Robinson, Zayn Kalyan of Scorpio Gold Corporation, George Tsiolis of Agoracom, Alain Desrochers, Anne Waters, Mark NJ Ashcroft of Aurelius Minerals Inc., Brad White, J. Garry Clark of the Ontario Prospectors Association, Conor O'Brien of 2176423 Ontario Ltd., Craig Steincce of Reconnaissance Energy, Danny Guy of Harrington Global Limited, David Sears of DS Market Solutions Inc., David Wenger of Shareintel, Denis Clement, Edward J Borkowski, Eric Sprott of 2176423 Ontario Ltd., Glenn J. Mullan of Val-D'or Mining Corporation, Jean-Francois Meilleur, John W Welborn of Welborn Economics LLC, Knox Henderson of Strikepoint Gold, Lewis Bateman of Spirit Blockchain Capital Inc., Loren S. Greenspoon of Instadose Pharma Corp., Malcolm Smith of West Harbour Capital, Marc Lustig, Mark Peters of Northern Dynasty Minerals Ltd., Michelle Suzuki, Richard Hall, Sylvain Laberge of 1844 Resources Inc., Frank Wilson of BIM Committee, Michael Behrens, Laura Young, Donald (Bob) Heimler, Robert Pollock of Primary Capital Inc., Mark Trendell-Jensen of Endeavor Trust Corporation, J Christian, Lorne Pringle of BIM Committee, Hugh Balkam of Eskay Mining Corp., Dale Neill, Howard Doucette, Dennis Peterson.

## Summary of Comments

### Comments on the Close-out Proposal

#### General Comments

Nine commenters were not supportive of the close-out proposal. (NBF, CSTA, Fidelity, IIAC & CASLA, CIFIC, Virtu, Scotia, Interactive Brokers, CIBC)

Four commenters were supportive of the close-out proposal. (CSE, PDAC, CAC, TD)

Four commenters were supportive of certain aspects of the close-out proposal. (TMX, BMO, SCM, CGWM-WSI)

#### Regulatory Arbitrage or Uneven Playing Field

Nine commenters raise concerns that applying close-out requirements only to CIRO dealers could create possibilities for regulatory arbitrage and/or an uneven playing field. They ask CIRO to coordinate with CDS Clearing and Depository Services Inc. (CDS) and the Canadian Securities Administrators (CSA) so requirements apply uniformly to all CDS participants, addressing differences in settlement practices and infrastructure to prevent a two-tier system. This would avoid competitive disadvantages and unintended market shifts. (CIBC, CSE, CSTA, Virtu, Scotia, IIAC & CASLA, CBA, NBF, TMX)

One commenter confirms that continuous net settlements (CNS) cannot be cleared by a CDS Participant that is not an investment dealer. A marketplace cannot give up its trades for clearing to a CDS Participant unless that CDS Participant is an investment dealer. (TMX)

#### Disproportionate cost-benefit analysis

##### High Implementation Costs and Unintended Consequences

Ten commenters raise concerns about high implementation costs (ranging from \$3–22 million), significant technology and staffing requirements, as well as potential unintended consequences. Commenters indicate the close-out proposal could lead to increased costs for investors through pre-borrow requirements and wider spreads, and note close-out proposal would disproportionately burden smaller dealers and those with low failure rates, as all firms would need major system upgrades regardless of historical performance. Commenters also raise concerns about unintended consequences, that the

We would like to thank all those who submitted their comments. In light of the concerns raised by commenters, we have decided to withdraw the close-out proposal. Any future proposals on this issue will take into account the comments received.

close-out proposal could reduce liquidity, especially for junior and illiquid securities, harm market making and ETF activity, and disrupt securities lending. They stress these unintended consequences could increase volatility and create systemic liquidity challenges. (Scotia, NBF, CSTA, Fidelity, CIFIC, IIAC & CASLA, CIBC, TMX, Virtu, BMO)

**Lack of sufficient evidence of failed trades**

Eight commenters indicate there is a lack of evidence that short selling or fail rates pose a significant problem; call for data before introducing costly changes. (NBF, Fidelity, CIFIC, CSTA, Virtu, IIAC & CASLA, Scotia, CIBC)

One commenter indicates that CIRO’s 2022 Failed Trade Study showed higher fail rates on certain venues, raising concerns on impact on smaller issuers. (SCM)

**Rely on existing regulations**

Nine commenters ask CIRO to assess the impact of recently implemented “reasonable expectation to settle” requirements before introducing close-out rules. They state that existing regulations already address settlement failures and short-selling concerns, and better enforcement would be preferable to adding duplicative, costly, and operationally complex requirements. (NBF, CSTA, Fidelity, IIAC & CASLA, CIFIC, Virtu, Scotia, Interactive Brokers, CIBC)

**Technical and Operational Challenges**

Seven commenters highlight major operational challenges with the close-out proposal, including difficulty identifying and allocating failed trades due to CNS netting, lack of integrated systems and compressed timelines. Significant infrastructure upgrades, automation, and enhanced reporting from CDS would be required, along with coordination among brokers, vendors, and regulators to implement new processes accurately and efficiently. (NBF, CSTA, Scotia, Fidelity, CIFIC, CIBC, CBA)

**Modeling Canadian requirements after U.S. Regulation SHO**

Four commenters do not support aligning Canadian requirements with U.S. Regulation SHO, citing operational complexity, regulatory uncertainty and differences in market structure. (NBF, Interactive Brokers, SCM, IIAC & CASLA)

One commenter note that Canada lacks U.S.-style infrastructure that facilitates compliance with Regulation SHO, such as NSCC's securities borrowing program for settlement completion. (TMX)

One commenter supports aligning close-out requirements with the U.S. approach due to market interconnectedness and Canadian dealers' familiarity with U.S. requirements and settlement processes. (CAC)

#### **Regulatory consequences for failure to close out on time**

Commenters were divided on the appropriate regulatory consequence for failing to close out on time:

- Scope of Pre-Borrow Requirement
  - One commenter indicates the pre-borrow requirement should apply only to the dealer responsible for the failure, not all introducing brokers under the same carrying broker. (Virtu)
  - One commenter states the pre-borrow requirement should not apply to immaterial failures if the firm has the capacity to resolve them. (IIAC & CASLA)
- Restrict Short Selling
  - Seven commenters do not support restricting short selling where there is a failure to close out, citing risks to liquidity, price discovery, and market efficiency. Rather they view requiring pre-borrow for future short sales to be sufficient. (TMX, NBF, Fidelity, CIFIC, CSTA, Scotia, CIBC)
  - One commenter supports restricting short selling where there is a failure to close out in a timely manner. (PDAC)
- Data Analysis and Monitoring
  - One commenter asks CIRO to analyze short selling and fail-to-deliver data annually in order to determine regulatory consequences for fail-to-deliver positions. If failures are frequent or disruptive, stricter measures (such as temporary short-selling restrictions) may be needed. (McMillan)

### Closing out fail-to-deliver positions

Commenters provide the following views on closing out fail-to-deliver positions:

- Eleven commenters had mixed views on whether trades to close out a fail-to-deliver position should be conducted on or off-marketplace.
  - Six commenters support on-marketplace executions for close-outs for transparency and liquidity. (TMX, Fidelity, CSTA, Virtu, Scotia, CBA)
  - Six commenters support allowing off-marketplace trades for illiquid or inter-listed securities to minimize disruption, but raise concerns about potential abuse and complexity. Suggests off-marketplace executions to be used only as rare exceptions in the rule or to be granted pursuant to CIRO-approved exemptions. (NBF, CIFIC, Virtu, IIAC & CASLA, McMillan, CIBC)
- Eight commenters oppose using a new marker to tag close-out trades citing significant operational burden; raising concerns on cost, complexity, and attribution challenges. (NBF, Fidelity, CIFIC, Virtu, Scotia, CIBC, CBA, IIAC & CASLA)
- Two commenters support setting a cap on premiums over market price to prevent misuse and ensure commercially reasonable terms. (McMillan, CBA)
- Two commenters asked for further clarification on the process to close out, including timing and communication of fail-to-deliver lists from CDS to dealers, and whether there would be harmonization with U.S. Regulation SHO for operational efficiency. (CBA, Virtu)

### Close-out Timelines

Eight commenters had mixed views on the general close-out timeline of S+1. Some commenters support this timeline for efficiency, while others cite operational risks and request flexibility, especially for illiquid securities. Some commenters suggest a differentiated approach based on liquidity profiles to avoid market disruption. (SCM, IIAC & CASLA, Scotia, CIBC, CBA, NBF, Mr. Shewchuk, Generation Mining)

Eleven commenters request additional consideration and/or guidance for certain scenarios, including ETFs and structured products, short-marking exempt orders, persons with Marketplace Trading Obligations, trading in inter-listed securities

<p>and administrative fails. (NBF, Scotia, BMO, CIBC, CSTA, Virtu, CBA, CSE, TMX, Fidelity, IIAC &amp; CASLA)</p>	
<p><b>Notification and Reporting Requirements</b></p>	
<p>Five commenters ask for restrictions on future short sales to apply only to the originating dealer, not through notifications to other brokers. They raise concerns on significant operational and technical challenges regarding proposed notification and reporting requirements, such as tight T+1 timelines and the need for major system upgrades and real-time reporting. Some commenters oppose allocation reporting to CIRO, noting that CDS already holds fail-to-deliver data and additional reporting would be duplicative and inconsistent with U.S. rules. (Virtu, IIAC &amp; CASLA, NBF, CIBC, CBA)</p>	
<p><b>Implementation Timeline</b></p>	
<p>Eight commenters were divided on the proposed implementation timeline: some support six months, while most request 12–24 months to allow CDS system development, dealer compliance builds, and industry consultations. Some commenters suggest tiered implementation for smaller or lower-risk firms. (McMillan, TMX, NBF, CIFIC, IIAC &amp; CASLA, CIBC, Scotia, CBA)</p>	
<p><b>Other policy options in place of, or in addition to, the close-out proposal</b></p>	<p>We thank commenters for sharing their views on alternative policy options to replace or supplement the close-out proposal. Any future policy analysis undertaken will consider the comments received.</p>
<p>Eleven commenters suggest other policy options including having CDS administer mandatory close-outs rather than CIRO. Some commenters recommend cash penalties for failures to deliver, or requiring dealers to strengthen internal policies for DVP settlements and securities borrowing. One commenter supports enhanced data reporting by marketplaces and CDS, coupled with post-trade surveillance by CIRO. Some commenters ask CIRO to reinstate the uptick rule, or consider the Alternative Uptick Rule. Some commenters call for stricter rules for junior markets, such as separate short-selling regimes or short selling bans for issuers under \$1B market cap. One commenter urges CIRO to suspend repeat offenders from market access. Some commenters call for more transparency in short selling, including disclosure of short sellers' positions, adopting EU-level standards (including daily fail-to-deliver reporting to regulators, bi-weekly public disclosures on fail-to-deliver amounts with remediation and counterparty details), publication of monthly reports on failed trades that are not closed out by S+3, greater transparency on buy-ins, and increased frequency for short position and short sale transaction reports. One commenter asks for all trading to be limited to two exchanges (TSXV and TSX), or alternatively for other exchanges to be regulated by CIRO</p>	

<p>under the same rules as the TSX and TSXV. Some commenters recommend prohibiting brokerage firms from collecting fees for lending shares to short sellers, or requiring dealers to obtain informed client consent with an opt-out option for share lending practices. (Scotia, IIAC &amp; CASLA, Virtu, CSE, PDAC, CGWM-WSI, Mr. Shewchuk, Generation Mining, SCM, Interactive Brokers, McMillan)</p>	
<p><b>Comments on Extending the Requirement for a Reasonable Expectation to Settle to Investment Dealers that are not UMIR Participants</b></p>	
<p>Two commenters support extending the reasonable expectation to settle requirement to investment dealers that are not Participants (<b>non-Participant dealers</b>). Non-Participant dealers are in a much better position than their executing Participants to determine whether a given order has a reasonable expectation to settle on settlement date. (Virtu, CIBC)</p>	<p>We thank commenters for their comments. Extending this requirement to non-Participant dealers would promote a consistent understanding of the need to have a reasonable expectation to settle across all investment dealers.</p>
<p><b>Comments on Introduction of a ‘Deemed to Own’ Exception</b></p>	
<p>Six commenters support the T+35 timeline for ‘deemed to own’ securities (Fidelity, CIFIC, IIAC &amp; CASLA, Fiore, Virtu, CIBC)</p> <ul style="list-style-type: none"> <li>• One commenter note that failing dealers would still be subject to financial risk from a buy-in effected by trading counterparty, regardless of the proposed T+35 timeframe. (Fidelity)</li> <li>• One commenter states there should be a mechanism for additional extensions in complex situations. (CIBC)</li> </ul>	<p>We thank all those that responded for their comments.</p> <p>We agree that a seller’s reliance on the ‘deemed to own’ exception would not prevent buyers from initiating a buy-in under CDS rules, as the exception applies only to a CIRO requirement.</p> <p>Dealers that require additional time beyond thirty-five days past trade date may seek a regulatory exemption. CIRO would consider providing exemptive relief on a case-by-case basis.</p>
<p>Two commenters do not support the T+35 timeline for ‘deemed to own’ securities (Scotia, SCM)</p> <ul style="list-style-type: none"> <li>• One commenter raises concerns about potential abuse of the ‘deemed to own’ exemption. The T+35 timeline was modeled after Regulation SHO in the U.S., which has been shown to be ineffective and unenforceable due to its subjective terms and loopholes. (SCM)</li> <li>• One commenter recommends that subjecting each case to an approval process at CIRO for determination on an individual basis, rather than a blanket T+35 timeline for ‘deemed to own’ securities. (Scotia)</li> </ul>	<p>We thank those who provided their comments. To prevent potential misuse of this exception, we would require dealers to maintain records that demonstrate compliance with the ‘deemed to own’ condition being relied upon (e.g. exercise of option or warrant, or legend removal for a specific security, etc.), and these records would be subject to regulatory inspection as part of CIRO’s ongoing dealer compliance reviews. This would achieve the same policy objective of preventing potential abuse of the new exception without creating a new regulatory process that would require dealers to make an application to CIRO to</p>

	demonstrate each use of the exception on an individual basis.
<b>Cashless exercise of warrants and options</b>	
<p>One commenter supports the ability of an investor to short sell the underlying security on a marketplace before exercising the related option or warrant. They raise concerns about the current short sale rules, where dealers require sellers, at the time when the shares are sold, to provide the issuer with a notice of the intent to exercise and request the Share Registry/transfer agent to deliver the share on a rush basis. This subjects the investor to risk where the value of the shares could decline prior to being able to sell them, and investors would also need to pay taxes on an unrealized benefit as taxes are collected on exercise day for options. (Fiore)</p> <p>One commenter supports the extended T+35 timeline for cashless exercise of warrants and options. (CIFIC)</p>	<p>We thank those who responded for their comments. The ‘deemed to own’ exception would apply to cashless exercise of warrants or options provided that, at the time of order entry for the short sale, there is a clear audit trail demonstrating client instructions to exercise specific warrants or options to cover the sale. There should also be accompanying documentation of the actions taken to effect the warrant or option exercise on a post-trade basis.</p>
<b>Other</b>	
<p><b>Concerns for Market Manipulation / Abusive Short Selling</b></p> <ul style="list-style-type: none"> <li>• One commenter raises concerns about the persistent presence of naked, market exempt, high-frequency and undisclosed short selling. (CGWM-WSI)</li> <li>• One commenter note that Canadian markets are particularly vulnerable to predatory short selling and share price manipulation, given that one-third of issuers on key Canadian exchanges are mineral industry companies that are mostly small to medium-sized exploration firms that do not generate revenue and rely heavily on public equity financing to fund their operations. (PDAC)</li> <li>• One commenter asks CIRO to investigate potential market manipulation on junior exchanges, where illiquid securities are being targeted by short sellers to artificially depress prices. They question how large-scale short selling can occur in hard-to-borrow stocks under T+1 settlement rules. They identify a key issue involving participants holding long warrants with strike prices that exceed the market price of the underlying security. When these participants initiate or increase short positions in the underlying stock, they do not intend to exercise the warrants but are short selling to profit from declining prices. (CIFIC)</li> </ul>	<p>We thank those that provided their comments. CIRO continues to monitor abusive trading strategies, including those involving short selling, and actively conducts real-time market surveillance to detect and review potential price manipulation on marketplaces. Reported instances of potential market misconduct are also investigated as part of our ongoing regulatory processes, as outlined in <a href="#">What CIRO does with Market Conduct Complaints</a>.</p>