

## Rules Bulletin

### Request for Comments

UMIR

24-0003

January 11, 2024

Comments Due By: April 12, 2024

Contact:

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Rule

Connection:

UMIR Rules 1.1, 2.2, Part 3, 6.1, 6.2, 7.1, 10.4, and  
10.16

IDPC Rules 3803 and 3804

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## Proposed Amendments Respecting the Reasonable Expectation to Settle a Short Sale

### Executive Summary

The Canadian Investment Regulatory Organization (**CIRO**) is proposing to support and clarify the short selling framework under UMIR by:

- adding a new positive requirement in UMIR 3.3 to have prior to order entry, a reasonable expectation to settle on settlement date any order that upon execution would be a short sale
- adding supervisory and gatekeeper requirements pertaining to the proposed requirement in UMIR 3.3
- consolidating other current provisions related to short selling to a common location within UMIR (**Proposed Amendments**).

To provide further clarity and a more complete view of the resulting regulatory framework, we are simultaneously publishing proposed guidance for comment [GN-URPart3-24-0001](#) that clarifies various current and proposed requirements related to short sales and failed trades (**Proposed Guidance**).

Along with CSA staff, we will continue to explore other areas of short sale regulations where additional regulatory measures may be appropriate, including but not limited to mandatory close-out requirements. Any additional proposed requirements would be introduced separately and published for comment as part of the policy development process.

**How to Submit Comments**

Comments on the Proposed Amendments should be in writing and delivered by **April 12, 2024** to:

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

Market Regulation Ontario Securities Commission Suite 1903, Box 55 20 Queen Street West Toronto, Ontario M5H 3S8 e-mail: <a href="mailto:marketregulation@osc.gov.on.ca">marketregulation@osc.gov.on.ca</a>	Capital Markets Regulation B.C. Securities Commission P.O. Box 10142, Pacific Centre 701 West Georgia Street, Vancouver, British Columbia, V7Y 1L2 e-mail: <a href="mailto:CMRdistributionofSROdocuments@bcsc.bc.ca">CMRdistributionofSROdocuments@bcsc.bc.ca</a>
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Commentators should be aware that a copy of their comment letter will be made publicly available on the CIRO website at [www.ciro.ca](http://www.ciro.ca).

**Table of Contents**

- 1. Background ..... 4
- 2. Proposed Amendments ..... 4
  - 2.1 Positive obligation for Reasonable Expectation to Settle Prior to Order Entry..... 5
    - 2.1.1 Elements of the proposed provision ..... 5
    - 2.1.2 Comparison of the proposed requirement in UMIR 3.3 to the existing requirement under paragraph 2(h) of Policy 2.2..... 7
    - 2.1.3 Factors that affect the Ability to Demonstrate a Reasonable Expectation to Settle .... 8
    - 2.1.4 Where there is No Reasonable Expectation to Settle ..... 9
    - 2.1.5 How a Participant or Access Person may demonstrate a Reasonable Expectation to Settle 9
    - 2.1.6 Self-Directed Orders (direct electronic access, routing arrangements, order execution only accounts) ..... 10
    - 2.1.7 Persons with Marketplace Trading Obligations or those using the short-marking exempt order marker ..... 12
    - 2.1.8 Supervision and Gatekeeper Requirements..... 12
  - 2.3 Consolidation of Requirements Related to Short Selling ..... 13
- 3. Impacts of the Proposed Amendments ..... 13
  - 3.1 Cost Estimate ..... 14
  - 3.2 Conclusions..... 15
- 4. Implementation ..... 16
- 5. Questions ..... 16
- 6. Policy Development Process..... 16
  - 6.1 Regulatory Purpose..... 16
  - 6.2 Regulatory Process ..... 16
- 7. Appendices ..... 17
  - Appendix A – Impact Assessment..... 18
  - Appendix B – Proposed Amendments to UMIR (clean) ..... 21
  - Appendix C - Text of UMIR to Reflect the Proposed Amendments ..... 24

## 1. Background

We published Joint CSA/IIROC Staff Notice [23-329 Short Selling in Canada](#) to request public feedback on Canada's short selling regulatory framework, and received 23 comment letters. On November 16, 2023, the CSA and CIRO published Joint CSA/CIRO Staff Notice [23-332 Summary of Comments and Responses to CSA/IIROC Staff Notice 23-329 Short Selling in Canada](#) that provided a summary of the comments received and the regulators' response to those comments.

In Joint CSA/CIRO Staff Notice 23-332 we indicated that CIRO is working on ways to support the current short selling framework, in part by reinforcing the obligation to have a reasonable expectation to settle a short sale on settlement date.

Along with CSA staff, we will continue to explore other areas of short sale regulations where additional regulatory measures may be appropriate, including but not limited to mandatory close-out requirements. Any additional proposed requirements would be introduced separately and published for comment as part of the policy development process.

We are publishing the Proposed Amendments and Proposed Guidance for a 90-day public comment period.

The Proposed Amendments and Proposed Guidance take the public interest into account by:

- fostering fair and efficient capital markets and the promotion of market integrity by helping to minimize any potential settlement disruption pertaining to short sales
- fostering public confidence in capital markets by helping ensure the timely delivery of securities by settlement date in connection with short sales, and
- promoting just and equitable principles of trade and the duty to act fairly, honestly and in good faith by helping Participants and Access Persons better understand and comply with the short selling regulatory framework in UMIR through clear requirements and guidance.

## 2. Proposed Amendments

The Canadian Investment Regulatory Organization (**CIRO**) is proposing to support and clarify the short selling framework under UMIR by:

- adding a new positive requirement in UMIR 3.3 to have prior to order entry, a reasonable expectation to settle on settlement date any order that upon execution would be a short sale
- adding supervisory and gatekeeper requirements pertaining to the proposed requirement in UMIR 3.3
- consolidating current provisions related to short selling to a common location within UMIR (**Proposed Amendments**).

To provide further clarity and a more complete view of the resulting regulatory framework, we are simultaneously publishing proposed guidance for comment [GN-URPart3-24-0001](#) that clarifies the current and proposed requirements related to short sales and failed trades (**Proposed Guidance**).

## **2.1 Positive obligation for Reasonable Expectation to Settle Prior to Order Entry**

The proposed provision would require a seller to have a reasonable expectation to settle any resulting trade on settlement date before entering an order for a short sale on a marketplace. We break down the various aspects of the proposed requirement below.

### **2.1.1 Elements of the proposed provision**

#### **Prior to order entry**

The proposed provision would be a new requirement for a Participant or Access Person to establish before entering an order that would result in a short sale on a marketplace. Documenting how a reasonable expectation to settle prior to order entry was established would help Participants and Access Persons demonstrate compliance with this new positive obligation.<sup>1</sup>

Whether a trade ultimately settles would not support the claim that a reasonable expectation to settle the trade existed before the time of order entry. Therefore, the fact that a trade did not ultimately fail would not in itself be sufficient evidence to show that the seller had a reasonable expectation to settle prior to order entry.

#### **By settlement date**

The proposed provision would require a seller to have a reasonable expectation to settle on the date contemplated on the execution of the trade. Unless a trade on the marketplace was executed

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<sup>1</sup> See also IDPC Rules 3803 and 3804 on requirements to document compliance and the maintenance of those records.

as a Special Terms Order<sup>2</sup> using a different settlement date, all trades executed on a marketplace must currently settle by T+2, which is expected to change to T+1 on May 27, 2024.<sup>3</sup>

Trades that do not settle by the date contemplated on the execution of a trade will be considered a “failed trade”<sup>4</sup>. In order to settle a short sale under the UMIR 1.1 definition of a “failed trade”, the Participant or Access Person must make:

- available securities in such number and form, or
- arrangements to borrow securities in such number and form,

to permit settlement, regardless of whether the trade has been settled in accordance with the rules or requirements of the clearing agency.<sup>5</sup> This means that **a trade will still be considered a failed trade if the seller failed to deliver the securities as required, regardless of whether the trade settled through netting and novation by the CDS Clearing and Depository Services Inc. (CDS).**

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<sup>2</sup> UMIR 1.1 defines a “Special Terms Order” to mean an order for the purchase or sale of a security:

- (a) for less than a standard trading unit;
- (b) the execution of which is subject to a condition other than as:
  - (i) to price,
  - (ii) to the date of settlement; or
  - (iii) imposed by the marketplace on which the order is entered as a condition for the entry or execution of the order; or
- (c) that on execution would be settled on a date other than:
  - (i) the second business day following the date of the trade, or
  - (ii) any settlement date specified in a special rule or direction referred to in subsection (2) of Rule 6.1 that is issued by an Exchange or a QTRS,but does not include an order that is a Basis Order, Call Market Order, Closing Price Order, Market-on-Close Order, Opening Order or Volume-Weighted Average Price Order.

<sup>3</sup> CIRO Notice [23-0054](#) – *Amendments to facilitate the investment industry’s move to T+1 settlement* (April 20, 2023).

<sup>4</sup> UMIR 1.1 defines a “failed trade” to mean a trade resulting from the execution of an order entered by a Participant or Access Person on a marketplace on behalf of an account and

- (a) in the case of a sale, other than a short sale, the account failed to make available securities in such number and form;
- (b) in the case of a short sale, the account failed to make:
  - (i) available securities in such number and form, or
  - (ii) arrangements with the Participant or Access Person to borrow securities in such number and form; and
- (c) in the case of a purchase, the account failed to make available monies in such amount, as to permit the settlement of the trade at the time on the date contemplated on the execution of the trade provided a trade shall be considered a “failed trade” irrespective of whether the trade has been settled in accordance with the rules or requirements of the clearing agency.

<sup>5</sup> See Notice [08-0143](#) – *Provisions Respecting Short Sales and Failed Trades* (October 15, 2008).

**2.1.2 Comparison of the proposed requirement in UMIR 3.3 to the existing requirement under paragraph 2(h) of Policy 2.2**

The following table sets out the differences and similarities between the existing prohibition in Policy 2.2 and the proposed requirement in UMIR 3.3 to have a reasonable expectation to settle on settlement date:

Existing requirement in paragraph 2(h) of UMIR Policy 2.2	Proposed requirement in UMIR 3.3(1)
<ul style="list-style-type: none"> <li>• Applies to all sales (both long and short sales).</li> <li>• Prohibition - Prevents Participants and Access Persons from entering an order for a sale of a security (both long and short) on a marketplace without having, at the time of order entry, a reasonable expectation of settling any resulting trade on settlement date.</li> <li>• Participants that engage in the selling of securities, whether in a principal or agent capacity, are required to develop written policies and procedures to ensure compliance with paragraph 2(h) of UMIR Policy 2.2 under UMIR 7.1. At a minimum, a Participant’s supervision system must include regular compliance reviews with respect to paragraph 2(h) of UMIR Policy 2.2 pursuant to Part 3 of UMIR Policy 7.1.</li> <li>• Potential violations are reportable to CIRO via a gatekeeper report under existing requirements in UMIR 10.16.</li> </ul>	<ul style="list-style-type: none"> <li>• Focuses on short sales.</li> <li>• Affirmative obligation - Requires Participants and Access Persons to have, prior to order entry on a marketplace, a reasonable expectation to settle the resulting short sale trade on settlement date.</li> <li>• Participants that engage in short selling, whether in a principal or agent capacity, would need to develop written policies and procedures to ensure compliance with the Proposed Amendments under UMIR 7.1. At a minimum, a Participant’s supervision system would need to include regular compliance reviews with respect to the Proposed Amendments pursuant to Part 3 of UMIR Policy 7.1.</li> <li>• Potential violations to be reportable to CIRO via a gatekeeper report under proposed changes to UMIR 10.16.</li> </ul>

We note that the current requirement in Policy 2.2 Manipulative and Deceptive Activities may be difficult for certain dealers to discern when this prohibition is in effect given that the provision is

situated in a section that applies to manipulative and deceptive trading.<sup>6</sup> The proposed technical requirement in UMIR 3.3 is intended to clearly impose an obligation to have a reasonable expectation to settle on settlement date before entering an order that would result in a short sale and would not entail any consideration of manipulative or deceptive behavior in order to apply. We expect that the positive obligation together with the clear understanding that no analysis of the presence of manipulative and deceptive trading is required would assist dealers in complying with this proposed provision.

The proposed provision focuses only on short sales and would not replace the requirement in Policy 2.2, which continues to apply to all sales (both long and short). We believe that the requirement in Policy 2.2 is important to support the policy objective of prohibiting the false or misleading appearance of trading activity.

### **2.1.3 Factors that affect the Ability to Demonstrate a Reasonable Expectation to Settle**

In the following sections we set out factors that would affect the ability of Participants and Access Persons to show a reasonable expectation to settle a short sale under the Proposed Amendments.

#### ***Client History – Presence of Prior Failed Trades***

A prior failed trade may negatively impact whether a Participant can demonstrate a reasonable expectation to settle future short sales for the same client in certain circumstances. This would include any prior failed trades that may not have persisted beyond ten trading days past settlement date to trigger an extended failed trade report to CRO under UMIR 7.10. Ascertaining the reason for the previously failed trade with the client can help the Participant determine if there is an impact on a reasonable expectation to settle future short sales from that client.

For example, if a Participant learns that the reason for the previous failed trade was due to an administrative error, this may not have a negative impact on a reasonable expectation to settle future short sales from that client.

However, if a Participant relied on a client's attestation on having access to the necessary securities and that trade resulted in a failed trade under UMIR 1.1 due to the client's negligence or

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<sup>6</sup> To constitute a violation under paragraph 2(h) of Policy 2.2, the order at issue or resulting trade does not need to result in a false or misleading appearance of trading activity or interest in the purchase or sale of the security or an artificial price. See Part 2 of UMIR Policy 2.2, which provides: "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."



false claim, it may not be reasonable to readily rely on such attestations from that client in relation to future potential short sales.

#### ***Whether a Security has been Determined to be “Hard-to-Borrow”<sup>7</sup>***

Before entering an order for a hard-to-borrow security that upon execution would result in a short sale, Participants or Access Persons may need to make additional arrangements to have a reasonable expectation to settle the resulting trade on settlement date. This may include pre-borrowing a sufficient number of securities to settle the trade where appropriate.

#### **2.1.4 Where there is No Reasonable Expectation to Settle**

If a Participant or Access Person cannot establish a reasonable expectation to settle the resulting trade on settlement date, the entry of a sell order on a marketplace that on execution would result in a short sale is prohibited.

#### **2.1.5 How a Participant or Access Person may demonstrate a Reasonable Expectation to Settle**

One way to demonstrate a reasonable expectation to settle under the Proposed Amendments, is to rely on easy-to-borrow lists<sup>8</sup> of securities, provided that such lists only include securities that are readily available.

Below we have set out some considerations on how Participants and Access Persons can compile, monitor and use easy-to-borrow lists:

#### ***How to Compile***

Participants and Access Persons may consider the following factors when determining the securities to include on an easy-to-borrow list:

- liquidity parameters, such as those used to define highly-liquid securities<sup>9</sup> in UMIR 1.1
- avoiding securities that have a known history of delivery failures

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<sup>7</sup> A “hard-to-borrow” security is one that has been determined to be difficult to borrow or unavailable for borrowing.

<sup>8</sup> While we refer to easy-to-borrow “lists” in this Bulletin, we mean the statuses of potentially thousands of securities determined by dealers including prime brokers for which costs to borrow and/or trade may change on an intraday basis to reflect the availability of those securities.

<sup>9</sup> UMIR 1.1 defines a “highly-liquid security” to mean a listed security or quoted security that:

- (a) has traded, in total, on one or more marketplaces as reported on a consolidated market display during a 60-day period ending not earlier than 10 days prior to the commencement of the restricted period:
  - (i) an average of at least 100 times per trading day, and
  - (ii) with an average trading value of at least \$1,000,000 per trading day; or
- (b) is subject to Regulation M under the 1934 Act and is considered to be an “actively-traded security” under that regulation.

- price thresholds that have been determined by the Participant's or Access Person's prime broker or custodian, and
- lack of any other condition(s) that would limit its availability.

Importantly, a particular security that has not been determined to be hard-to-borrow, does not automatically mean it can be assumed to be easy-to-borrow.

#### ***How to Monitor***

In order for a Participant or Access Person to reasonably rely on an easy-to-borrow list to comply with the Proposed Amendments, the availability of securities on such lists must be monitored and updated on a regular basis.

#### ***How to Use***

We expect that Participants and Access Persons would only rely on easy-to-borrow lists that they have compiled or from dealers with whom they have established a formal relationship regarding clearing or settlement, as such dealers usually provide assurances to their clients that securities included on these lists are readily available.

For example, if a Participant or Access Person obtained an easy-to-borrow list from a dealer, but it does not trade or clear through that dealer and the dealer has not agreed to make securities on that list available to the Participant or Access Person – the Participant or Access Person would not have a reasonable expectation to access those securities and in turn not have a reasonable expectation to settle the trade on settlement date. As a result, it would not be reasonable for the Participant to rely on that list.

#### **2.1.6 Self-Directed Orders (direct electronic access, routing arrangements, order execution only accounts)**

Before sending a self-directed order from a client to a marketplace that upon execution would result in a short sale, Participants must ensure compliance with reasonable expectations to settle any resulting trade on settlement date.

As a best practice, Participants that trade inter-listed securities may consider expanding the use of technological solutions that are already in use for compliance with other rules, such as Regulation

SHO<sup>10</sup> by the Securities and Exchange Commission (**SEC**) in the United States or the EU Short Selling Regulation (**SSR**)<sup>11</sup>.

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<sup>10</sup> Rule 203(b)(1) of [Regulation SHO](#) provides:

A broker or dealer may not accept a short sale order in an equity security from another person, or effect a short sale in an equity security for its own account, unless the broker or dealer has:

- (i) Borrowed the security, or entered into a bona-fide arrangement to borrow the security; or
- (ii) Reasonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due; and
- (iii) Documented compliance with this paragraph (b)(1).

<sup>11</sup> Article 12(1) of the [EU SSR](#) provides:

1. A natural or legal person may enter into a short sale of a share admitted to trading on a trading venue only where one of the following conditions is fulfilled:
  - (a) the natural or legal person has borrowed the share or has made alternative provisions resulting in a similar legal effect;
  - (b) the natural or legal person has entered into an agreement to borrow the share or has another absolutely enforceable claim under contract or property law to be transferred ownership of a corresponding number of securities of the same class so that settlement can be effected when it is due;
  - (c) the natural or legal person has an arrangement with a third party under which that third party has confirmed that the share has been located and has taken measures vis-à-vis third parties necessary for the natural or legal person to have a reasonable expectation that settlement can be effected when it is due.

### **2.1.7 Persons with Marketplace Trading Obligations or those using the short-marking exempt order marker**

Proper use of the short-marking exempt order<sup>12</sup> marker, including by entities with Marketplace Trading Obligations<sup>13</sup> trading in their securities of responsibility, would generally enter orders with a reasonable expectation to settle. This is because entities with Marketplace Trading Obligations would not, in the ordinary course, have more than a nominal position at the end of a trading day, whether long or short, in any particular security.

Participants and Access Persons should refer to Notices [16-0028](#) and [16-0029](#) for further details on the proper use of the short-marking exempt order marker.

### **2.1.8 Supervision and Gatekeeper Requirements**

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<sup>12</sup> UMIR 1.1 defines a “short-marking exempt order” to mean an order for the purchase or sale of a security from an account that is:

- (a) an arbitrage account;
- (b) the account of a person with Marketplace Trading Obligations in respect of a security for which that person has obligations;
- (c) a client account, non-client account or principal account:
  - (i) for which order generation and entry is fully-automated, and
  - (ii) which, in the ordinary course, does not have, at the end of each trading day, more than a nominal position, whether short or long, in a particular security;
- (d) a principal account that has acquired during a trading day a position in a particular security in a transaction with a client that is unwound during the balance of the trading day such that, in the ordinary course, the account does not have, at the end of each trading day, more than a nominal position, whether short or long, in a particular security; or
- (e) a principal account for a Participant that has:
  - (i) Marketplace Trading Obligations in respect of an exempt Exchange-traded Fund, or
  - (ii) entered into an agreement for the continuous distribution of an Exempt Exchange-traded Fund; if the order is for the Exempt Exchange-traded Fund security or one of its underlying securities to hedge a pre-existing position in the Exempt Exchange-traded Fund security or one of its underlying securities and in the normal course, the account does not have, at the end of each trading day, more than a minimal exposed risk.

<sup>13</sup> UMIR 1.1 defines “Marketplace Trading Obligations” to mean obligations imposed by:

- (a) Marketplace Rules on a member or user or a person employed by a member or user to guarantee:
  - (i) a two-sided market for a particular listed security or a listed derivative on a continuous or reasonably continuous basis, or
  - (ii) the execution of orders for the purchase or sale of a particular security which are less than a minimum number of units of the security as designated by the marketplace; or
- (b) contract between a marketplace and a member, user or subscriber to guarantee the execution of orders for the purchase or sale of a particular security which are less than a minimum number of units of the security as stipulated by the terms of the contract provided such number is less than one standard trading unit and the orders for the member, user or subscriber are automatically generated by the trading system of the marketplace.

To demonstrate compliance with the proposed positive requirement for a reasonable expectation to settle, Participants and Access Persons would need to update their:

- policies and procedures and trading processes to ensure sellers have a reasonable expectation to settle on settlement date prior to order entry for a short sale
- supervision systems to ensure there are regular compliance reviews with respect to the requirements for a reasonable expectation to settle on settlement date before entering an order for a short sale
- gatekeeper reporting processes to ensure potential violations are being reported to CRO in a timely manner.

We do not expect that Participants and Access Persons who already have supervisory and gatekeeper procedures and processes in place to ensure sellers have a reasonable expectation to settle under the current requirement in UMIR Policy 2.2, would need to make significant further changes to comply with the proposed changes to UMIR 7.1 and UMIR 10.16.

### **2.3 Consolidation of Requirements Related to Short Selling**

As part of the Proposed Amendments, we are consolidating certain UMIR requirements that are related to short selling under Part 3 of UMIR. Currently there are requirements that are related to short selling in different parts of the UMIR rulebook. By moving these requirements to one common section that is focused on short selling, we aim to help Participants and Access Persons understand and comply with the current short selling regulatory framework in UMIR.

### **3. Impacts of the Proposed Amendments**

In the impact assessment table below, we list:

- the major policy elements of the Proposed Amendments,
- a description of the intended policy benefits of each element, and
- an assessment of its impact on clients, issuers, marketplaces, Participants, Access Persons and CRO itself.

The Proposed Amendments are intended to:

- Minimize the impact on investors, investment dealers, issuers, marketplaces and the industry at large. We believe the proposal will have an incremental impact in terms of implementation for Participants and Access Persons.
- Reduce the potential for unintended consequences that may occur and better determine the effectiveness of the proposed change by introducing one material requirement at a time.

### **3.1 Cost Estimate**

Participants and Access Persons would need to consider changes to update their systems and processes to ensure there is a reasonable expectation to settle prior to the entry of an order on a marketplace that upon execution, would result in a short sale.

Participants would also need to consider changes to develop policies and procedures to:

- update their supervision systems to ensure they are conducting regular compliance reviews with respect to the requirements for a reasonable expectation to settle on settlement date prior to order entry, and
- update their gatekeeper reporting processes to ensure potential violations of the requirement respecting a reasonable expectation to settle would be reported to CIRO in a timely manner.

We do not know the specific costs without detailed stakeholder feedback however we believe these costs would not be significant.

### 3.2 Conclusions

We believe that, if approved, the Proposed Amendments would result in:

- neutral to positive impacts on Participants and Access Persons, as the proposed requirement for a reasonable expectation to settle on settlement date focuses on short sales is not a net new requirement in UMIR, but rather a technical requirement that would support and clarify the existing prohibition in Policy 2.2 that already restricts trading without a reasonable expectation to settle. Moving provisions related to short selling to a common section within UMIR and developing further guidance would positively assist Participants and Access Persons in understanding and complying with the overall short selling framework in UMIR without imposing negative impacts. Participants would also be required to develop policies and procedures to ensure compliance with the proposed positive obligation to demonstrate a reasonable expectation to settle prior to order entry for a short sale.
- neutral impacts on clients, as the proposed requirement for a reasonable expectation to settle on settlement date may promote investor confidence by helping ensure the timely receipt of securities by clients purchasing securities. However, certain clients may be required to make arrangements prior to shorting to ensure the availability of certain hard-to-borrow securities in order for the Participant to be able to establish a reasonable expectation to settle those trades. However, this would not be substantially different from current expectations pursuant to the current requirements in Policy 2.2.
- neutral to minor positive impacts on issuers, as the Proposed Amendments would address the concerns of certain issuers regarding short selling by imposing a positive obligation to have a reasonable expectation to settle on settlement date prior to the entry of a short sale order on a marketplace.
- neutral impacts on marketplaces, as the Proposed Amendments may strengthen market efficiency by helping ensure sellers deliver securities in a timely manner in connection with a short sale. The Proposed Amendments may also have an indirect impact on the liquidity of certain securities by curtailing short selling where sellers are not able to demonstrate a reasonable expectation to settle.

Similar to the current requirement in Policy 2.2, the Proposed Amendments would have a greater impact on regions where there are a higher number of:

- issuers whose securities may be deemed hard-to-borrow, or
- Participants that lack access to available securities to establish a reasonable expectation to settle.

We are of the view that any negative impacts are outweighed by the positive impacts that would result from the Proposed Amendments.

#### 4. Implementation

CIRO does not expect Participants and Access Persons to undertake substantial implementation efforts in order to achieve compliance with the Proposed Amendments, which impose similar requirements as the current rule in paragraph 2(h) of UMIR Policy 2.2.

We propose at least a 90-day implementation period after the publication notice of approval. We are mindful of the fact that the industry is currently preparing to move to a T+1 settlement cycle in 2024 and would not impose an effective date before the implementation to T+1 is completed.

#### 5. Questions

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

- (a) Have we identified all the material impacts on clients, issuers, Participants, Access Persons, marketplaces or CIRO as a result of the Proposed Amendments? If not, please list any other impacts that you believe will materially impact one or more parties and why.
- (b) Overall, do you agree with CIRO's qualitative assessment that the benefits of the Proposed Amendments are proportionate to their costs? Please provide reasons for your stance.

#### 6. Policy Development Process

##### 6.1 Regulatory Purpose

The Proposed Amendments would:

- foster fair and efficient capital markets and promote market integrity,
- foster public confidence in capital markets, and
- promote just and equitable principles of trade and the duty to act fairly, honestly and in good faith.

The Proposed Amendments do not impose any requirements that CIRO, its Members or Approved Persons must comply with in order to become exempted from a requirement of securities legislation.

##### 6.2 Regulatory Process

The Board of Directors of CIRO (**Board**) has determined the Proposed Amendments to be in the public interest and on **April 12, 2024** approved them for public comment.

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

- CCLS Institutional Subcommittee
- Investor Advisory Panel



- Market Rules Advisory Committee
- National Council
- Pacific Regional Council
- Alberta Regional Council

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 and comments 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 or comments are material, CIRO staff will submit the Proposed Amendments, including any revisions, to the Board for approval for republication or implementation, as applicable.

## **7. Appendices**

[Appendix A – Impact Assessment](#)

[Appendix B - Proposed Amendments to UMIR \(clean\)](#)

[Appendix C - Proposed Amendments to UMIR \(blacklined and clean\)](#)

## Appendix A – Impact Assessment

Description of Proposed Amendment	Related intended benefits	Impact on clients	Impact on issuers	Impact on Participants or Access Persons	Impact on Marketplaces	Impact on CIRO
<p><i>Adding a new requirement under UMIR 3.3 to have a reasonable expectation to settle prior to the entry of an order for a short sale on a marketplace</i></p>	<p>Proposed Amendments would support the current regulatory framework on short selling, and is intended to minimize any potential settlement disruption in order to reduce the associated risks of short selling.</p>	<p><i>Neutral – Proposed Amendments would strengthen investor confidence by helping ensure sellers deliver securities in a timely manner in connection with a short sale. Clients that wish to short certain securities that may be deemed hard-to-borrow may need to incur additional fees prior to trading in order to ensure the availability of securities for settlement.</i></p>	<p><i>Net positive – Proposed Amendments would address concerns of certain issuers regarding short selling by imposing a positive obligation to have a reasonable expectation to settle on settlement date prior to the entry of a short sale order on a marketplace.</i></p>	<p><i>Neutral to net positive – Proposed Amendments would supplement and reinforce the existing requirement on Participants and Access Persons pursuant to paragraph 2(h) of Part 2 of Policy 2.2. Participants and Access Persons should already have the processes and systems in place to prevent trading without a reasonable expectation to settle.</i></p>	<p><i>Neutral – Proposed Amendments would strengthen market efficiency by helping ensure sellers deliver securities in a timely manner with a short sale. If there are certain securities where a reasonable expectation to settle cannot be established, the Proposed Amendments may affect the ability to conduct short selling on the marketplace.</i></p>	<p><i>Net positive - Facilitates CIRO's enforcement of a technical requirement to have a reasonable expectation to settle separate from the prohibition on manipulative and deceptive activities in Part 2 of Policy 2.2.</i></p>
<p><i>Adding a new requirement for potential violations of new UMIR provision 3.3 to be reportable as a gatekeeper report under UMIR 10.16</i></p>	<p>Proposed changes to UMIR 10.16 would require Participants and Access Persons to report potential violations of UMIR 3.3 as a gatekeeper report within the applicable timeframe</p>	<p><i>Neutral – proposed changes to UMIR 10.16 does not impose any additional impact on clients.</i></p>	<p><i>Neutral – proposed changes to UMIR 10.16 does not impose additional impact on issuers.</i></p>	<p><i>Minor negative – Requiring potential violations of proposed UMIR 3.3 to be reportable to CIRO as a gatekeeper report should not have a large impact on Participants and Access Persons, as the</i></p>	<p><i>Neutral – proposed changes to UMIR 10.16 does not impose any additional impact on marketplaces.</i></p>	<p><i>Net positive – Facilitates CIRO's oversight of proposed requirements in UMIR 3.3 by requiring Participants and Access Persons to report potential violations to CIRO.</i></p>

Description of Proposed Amendment	Related intended benefits	Impact on clients	Impact on issuers	Impact on Participants or Access Persons	Impact on Marketplaces	Impact on CIRO
	under UMIR 10.16.			existing requirement for a reasonable expectation to settle in UMIR Policy 2.2 is already a reportable violation in UMIR 10.16.		
<i>Including the new UMIR 3.3 to the list of UMIR provisions for which Participants must develop written policies and procedures and conduct regular compliance reviews as part of their supervision system under Part 3 of Policy 7.1.</i>	Proposed changes to UMIR 7.1 would require Participants to develop policies and procedures and update their supervision systems to ensure compliance with the proposed requirement in UMIR 3.3.	<i>Neutral</i> – proposed changes to UMIR 7.1 does not impose any impact on clients.	<i>Neutral</i> – proposed changes to UMIR 7.1 does not impose any impact on issuers.	Minor negative – Proposed changes to UMIR 7.1 should not have a large impact on Participants as they should already have written policies and procedures in place to prevent trading without a reasonable expectation to settle pursuant to Policy 2.2.	<i>Neutral</i> – proposed changes to UMIR 3.3 does not impose any impact on marketplaces	Net positive – Facilitates review by CIRO’s Trading Conduct Compliance teams by requiring Participants to demonstrate compliance with UMIR 3.3 through updates to its policies and procedures and regular compliance checks as part of the Participant’s supervision system.
<i>Moving provisions related to short selling to a common section within UMIR</i>	Proposed Amendments in the form of renumbering of existing sections would not involve any material changes to existing provisions – only renumbers	<i>Neutral</i> – Proposed Amendments in the form of renumbering of existing sections does not impose any impact on clients.	<i>Neutral</i> – Proposed Amendments in the form of renumbering of existing sections does not impose any impact on issuers.	<i>Neutral to net positive</i> – While the Proposed Amendments would not impose any impact on Participants or Access Persons, moving provisions related to short selling to Part 3	<i>Neutral</i> – Proposed Amendments in the form of renumbering of existing sections does not impose any impact on marketplaces.	<i>Neutral</i> – Proposed Amendments in the form of section renumbering would change the order of existing sections but not add any new requirements.

Description of Proposed Amendment	Related intended benefits	Impact on clients	Impact on issuers	Impact on Participants or Access Persons	Impact on Marketplaces	Impact on CIRO
	existing sections to move provisions related to short selling within a common spot in UMIR.			of UMIR should make it easier for Participants and Access Persons to see and understand current requirements.		

## Appendix B – Proposed Amendments to UMIR (clean)

### 3.2 Prohibition on the Entry of Orders

(1) A Participant or Access Person shall not enter an order to sell a security on a marketplace that on execution would be a short sale:

- (a) unless the order is marked as a short sale in accordance with subclause 6.2(1)(b)(viii);
- (b) if the security is a Short Sale Ineligible Security at the time of the entry of the order; or
- (c) if the security is a Pre-Borrow Security, unless the Participant or Access Persons has made arrangements for the borrowing of the securities necessary to settle any resulting trade prior to the entry of the order.

...

### 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.

### 3.4 Short Selling after a Reportable Extended Failed Trade

(1) A Participant acting as principal or an Access Person shall not enter an order on a marketplace for a particular security that on execution would be a short sale if the Participant or Access Person has previously executed a sale in that security that became a failed trade in respect of which notice to the Market Regulator was required pursuant to Rule 7.10 unless:

- (a) the Participant or Access Person has made arrangements for the borrowing of the securities necessary to settle any resulting trade prior to the entry of the order; or
- (b) the Market Regulator has consented to the entry of such order or orders.

(2) A Participant acting as agent shall not enter a client order or a non-client order on a marketplace that on execution would be a short sale if the client or non-client has previously executed a sale of any listed security that became a failed trade in respect of which notice to the Market Regulator was required pursuant to Rule 7.10 unless:

- (a) the Participant has made arrangements for the borrowing of the securities necessary to settle any resulting trade prior to the entry of the order; or
- (b) the Participant is satisfied, after reasonable inquiry, that the reason for any prior failed trade was not as a result of any intentional or negligent act of the client or non-client.

### 6.1 Entry of Orders to a Marketplace

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(4)-(6) repealed

...

### **Part 3 of UMIR Policy 7.1 – Supervision and Compliance Procedures for Trading on a Marketplace**

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Each Participant must develop written policies and procedures in relation to all Requirements that apply to their business activities. A Participant’s supervision system must at a minimum include the regular review of compliance with respect to the following provisions for trading on a marketplace where applicable to their lines of business:

- Audit Trail requirements (Rule 10.11)
- Electronic Access to Marketplaces (Rule 7.1)
- Specific Unacceptable Activities (Rule 2.1)
- Manipulative and Deceptive Activities (Rule 2.2)
- Trading in restricted securities (Rule 7.7)
- Trading of grey list securities (Rule 2.2)
- Reasonable expectation to settle prior to the entry of an order for a short sale requirements (Rule 3.3)
- Disclosure requirements (Rule 10.1)
- Frontrunning (Rule 4.1)
- Client/Principal Trading (Rule 8.1)
- Client Priority (Rule 5.3)
- Best Execution (Part C of Corporation Rule 3100 – Best Execution of Client Orders)
- Order Exposure requirements (Rule 6.3)
- Time synchronization requirements (Rule 10.14)

...

#### **10.4 Extension of Restrictions**

(1) A related entity of a Participant and a director, officer, partner or employee of the Participant or a related entity of the Participant shall:

(a) comply with the provisions of UMIR and any Policies with respect to specific unacceptable activities, manipulative and deceptive activities, short sales and frontrunning as if references to “Participant” in Rules 2.1, 2.2, 2.3, 4.1, and Part 3 of UMIR included reference to such person; and

(b) in respect of the failure to comply with the provisions of UMIR and the Policies referred to in clause (a), be subject to the practice and procedures and to penalties and remedies set out in this Part.

(2) A related entity of an Access Person and a director, officer, partner or employee of the Access Person or a related entity of the Access Person shall in respect of trading on a marketplace on behalf of the Access Person or related entity of the Access Person:

(a) comply with the provisions of UMIR and any Policies with respect to specific unacceptable activities, manipulative and deceptive activities and short sales as if references to “Access Person” in Rules 2.1, 2.2, 2.3 and Part 3 of UMIR included reference to such person; and

(b) in respect of the failure to comply with the provisions of UMIR and the Policies referred to in clause (a), be subject to the practice and procedures and to the penalties and remedies set out in this Part.

#### **10.16 Gatekeeper Obligations of Directors, Officers and Employees of Participants and Access Persons**

(1) An officer, director, partner or employee of a Participant shall forthwith report to their supervisor or the compliance department of the Participant upon becoming aware of activity in a principal account, non-client account or client account of the Participant or a related entity that the officer, director, partner or employee believes may be a violation of:

(a) Subsection (1) of Rule 2.1 respecting specific unacceptable activities;

(b) Rule 2.2 respecting manipulative and deceptive activities;

(c) Rule 2.3 respecting improper orders and trades;

(c.1) Subsection (1) of Rule 3.3 respecting a reasonable expectation to settle prior to the entry of an order for a short sale;

...

(h) Any Requirement that has been designated by the Market Regulator for the purposes of this subsection.

(2) An officer, director, partner or employee of an Access Person shall forthwith report to their supervisor or the compliance department of the Access Person upon becoming aware of activity by the Access Person or a related entity that the officer, director, partner or employee believes may be a violation of:

(a) Subsection (2) of Rule 2.1 respecting specific unacceptable activities;

(b) Rule 2.2 respecting manipulative and deceptive activities;

(c) Rule 2.3 respecting improper orders or trades;

(d) Subsection (1) of Rule 3.3 respecting reasonable expectation to settle prior to the entry of an order for a short sale; and

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