Cold cash, hot topic: CIRO seeks comments on two short selling proposals

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Earlier this month, the Canadian Investment Regulatory Organization (CIRO) released proposed amendments to the Universal Market Integrity Rules relating to the reasonable expectation to settle a short sale (Proposed Amendments). UMIR 3.3 would require a seller to have a reasonable expectation to settle any resulting trade on the settlement date before entering an order for a short sale on a marketplace. In addition, the amendments would add supervisory and gatekeeper requirements relating to UMIR 3.3.

It is noted in the Proposed Amendments that CIRO and the Canadian Securities Administrators are continuing to review short sale regulations, including potentially mandatory close-out requirements. It is specifically noted that the fact a trade ultimately settles does not support a claim that a reasonable expectation to settle existed before the time of order entry. Factors impacting the ability to show a reasonable expectation would include a client history of prior failed trades, or if a particular security has been deemed “hard to borrow”. Participants that engage in short selling (as principal or agent) will need policies and procedures to ensure that they comply with the Proposed Amendments. CIRO has proposed an implementation period of at least 90 days after approval and indicated that the effective date would not be prior to the date the implementation of T+1 is completed.

In addition, CIRO requests comment on its Proposed Guidance on UMIR Requirements Related to Short Selling and Failed Trades (Proposed Guidance). The Proposed Guidance is intended to clarify the short selling framework and help participants and access persons comply with the short selling requirements. While most of the Proposed Guidance address current requirements, one section specifically relates to the proposed additional requirement to have a reasonable expectation to settle a short sale, as discussed above.

The Proposed Guidance discusses expected documentation to establish that participants and access persons have complied with the obligation to establish a reasonable expectation to settle. It also further discusses factors that affect the ability to demonstrate a reasonable expectation to settle, including the presence of prior failed trades in a clients’ history. The Proposed Guidance also includes information on the appropriate use of easy-to-borrow lists of securities (for example, using lists provided by dealers with whom there is a formal relationship regarding clearing or settlement). It is

also noted that the reasonable expectation to settle applies to self-directed orders, and thus Participants that trade inter-listed securities may wish to consider technological solutions already in use for rules in other jurisdictions.

Comments are due by **April 12, 2024**.

By

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