INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÉRES

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Dear Sir:

Re: Proposed Guidance on Short Sale and Short Marking Exempt Order Designations (the "Proposed Guidance")

Thank you for providing us with the opportunity to comment on the Proposed Guidance. In general, we find the guidance to be helpful in its description of how firms should approach the scenarios described in the notice. We do, however, have a few significant questions and concerns with the Proposed Guidance and the underlying Rule.

The primary problem with the implementation of the Rule is the timing. Compliance with the Rule will require significant development of new technological functionality, not only by individual firms, but also by vendors, service providers and marketplaces. The implementation will involve the new technology, and new tags to be developed, certified and tested by all market participants. Given the extent of the development, we do not believe it will be possible for all of these parties to develop, integrate, and test the systems in time for the September implementation date.

As such, we recommend that the Rule implementation be phased in to accommodate the development time that will be required to comply with the Rule. We propose that the repeal of the tick rule and the "short exempt designation" become effective on September 1, 2012 as planned. In order to accommodate the development and coordination of the technological efforts of the dealers, vendors and marketplaces, we recommend that the implementation of the short marking exempt designation not be effective until January 1, 2013 at the earliest.

In addition to our comments on the specific questions in the Proposed Guidance, we have a number of questions and concerns in respect of the implementation of the pre-borrow requirements. Specifically, the criteria for the IIROC designation of a security as a "Pre-Borrow Security" should be disclosed, in order to assist participants in understanding the regulatory concerns and predict the types of securities that might become subject to this designation. We would appreciate if IIROC could provide a listing of IIROC's designated "Pre-Borrow Security" in a readily readable electronic format that would be easily accessible by dealers.

We also seek guidance on whether time limits are applicable (e.g. six months) to the requirements under UMIR 6.1(3) and (4) to determine if a client or non-client had an extended failed trade in any security, and if a Participant or Access Person had an extended failed trade in a particular security. With respect to a client or non-client's extended failed trade (see UMIR 6.1(3)), please confirm that a firm is only subject to pre-borrow requirements if the client or non-client's prior extended fail trades relate to trades executed through the firm.

In the context of an introducing-carrying relationship, guidance as to how the introducer's processes would be affected when a carrying broker's trades are subject to a pre-borrow requirement should be addressed.

We also seek guidance as to what is intended to be captured in section 1.2, in respect of the requirement that "a client, non-client or principal account: for which order generation and entry is fully automated". We are not clear on the scope of what "fully automated" comprises.

We also question whether a proprietary inventory trading account will be part of the "short-marking exempt" category. Generally speaking a facilitation inventory account aims to be flat each day but this is not always the case. Further guidance as to what would be considered a nominal position would be helpful, as well as clarification as to whether it is dependant on specific circumstances including the volume of securities traded on a particular day, and whether it will be measured as a percentage of the trading volume or as a fixed number.

Our comments about the questions and answers provided in the guidance are noted below. Where no comment is provided, we acknowledge that this is appropriate and reflects current practice.

1. ***Must an order be marked as a "short sale" if it is a bundled order that is comprised of orders from accounts that are both "long" and "short" the security?***

   Although we acknowledge that the guidance reflects current practice, we have found that the requirement to file a Regulatory Marker Correction Form by the later of 5:00pm and 15 minutes following the close of trading on the marketplace on which the trade was executed does not provide sufficient time to ensure the information is complete and accurate. We urge IIROC tor reconsider extending the reporting deadline to 12:00 pm ET on T+1. .

2. Can a "short-marking exempt" order be bundled with other orders including a "short sale" order?

See response to question 1 above.

3. If an account operates an inter-listed arbitrage strategy, should sell orders entered when the account is in a short position be designated as "short sales"?

We suggest that the definition of a 'short marking exempt' account be clarified to include not only accounts which hold only nominal physical positions in securities but also accounts which hold zero delta or only nominal net delta positions. There are several types of accounts including ETF market making and derivatives accounts which are directionally neutral but which do not appear to be covered by the current guidance. It is our belief that these types of accounts are covered in the spirit of the guidance provided.

4. If a Participant has agreed to buy a block of stock from a client and is "moving the market" down to the agreed print price, should an order entered for the purpose of displacing the market be designated as a "short sale"?

We have no comment on this item.

5. Is a client who accesses a marketplace through a dealer-sponsored access arrangement subject to the order designation requirements?

We reiterate our concern that the guidance relating to "institutional customers" creates a number of practical problems for Participants, particularly in relation to clients accessing the marketplace through Direct Electronic Access. In order to determine if such a client is adopting directionally neutral strategies, requiring them to mark particular securities as short market exempt, detailed information about their clients' existing and intended trading strategies would be required to monitor for consistency. Given that clients are not likely to provide this competitive information, the infrastructure and systems that would have to be developed to monitor this trading represent a very significant effort in terms of cost and time. Even with such monitoring capability in place, it will be very difficult to determine neutrality using the criteria articulated in the Notice. We support an approach where Participants monitor the trading and query their clients. An attestation from clients as to their strategy, supported by evidence should be sufficient to make a determination as to the neutrality of their trading strategy.

We understand that DEA rules will be released prior to September. It is important to understand how and if the DEA rules will be integrated into the Short Sale Rules. The release of the DEA rules may further impact the way in which the technology must be developed to comply with both Rules.

As noted above, we are very concerned about Participants' ability to meet the September implementation date in respect of building the infrastructure needed to comply with the Rules. We emphasize our recommendation that the elements

of the Rule that require the development of significant new technology be delayed until January 2013.

6. *Should all orders entered by a person with Marketplace Trading Obligations be designated as "short-marking exempt"?*

We have no comment on this item.

7. *A person holds an option and intends to pay the exercise price of the option from the proceeds of the sale of the securities that will be issued on the exercise of the option. Must the sell order be designated as a "short sale"?*

Many of our members are also very concerned about the application of the Rule to the cashless exercise of warrants and options, which is an extremely common practice in respect of firms that deal with venture issuers. The issue arises in that in the majority of cases relating to such issuers, security holders pre-sell the underlying securities and use the cash to exercise the options/warrants. This pre-selling in itself can take a few days to do. Under the new proposed rule, if the client or firm has had an incident where they were not able to settle the trade by settlement date, the client/firm must pre-borrow the security. Because most warrant and option exercises require additional time before the certificate is converted and the firm is able to deliver and settle the existing trade, there will be a number of cases where this will happen. Under the current rule, the security holder would have to pre-borrow the security. As noted in our response to the Rules Notice, this is not practically possible to borrow most venture stocks. As a result, a requirement to pre-borrow would simply result in a prohibition of cashless exercise of options and warrants in the venture markets.

Although we support the spirit of the rule, which is to prevent market manipulation, the cashless exercise of warrants and options is not an activity that falls within that category of transactions. The rationale for the cashless exercise of warrants and options is as follows. Many issuers undertake financings that are comprised of units which include warrants. This allows the issuer to potentially access additional cash flow at a later date when the warrants are exercised, rather than having to undertake a separate offering. The ability for clients to exercise these warrants and options without tying up their own cash flow provides a significant incentive to participate in a financing. If this incentive is removed and clients are forced to access their cash reserves (which may mean liquidating other assets) this will likely become a deterrent to invest in unit financings, thus making it very difficult for junior issuers to raise capital.

As such, we request that IIROC reconsider its position on this matter and provide an exemption to the pre-borrowing rule in respect to the cashless exercise of warrants and options.

8. *Is there any difference in the order designation requirements if the order is entered on a marketplace prior to the marketplace opening for execution of trades?*

We have no comment on this item.

9. ***I own shares of an issuer which are subject to a regulatory hold period that has not yet expired. While I am not able to sell the particular shares that are subject to the hold period, is any order to sell this security required to be designated as a "short sale"?***

   We have no comment on this item.

10. ***I am long warrants and wish to hedge my exposure by selling the underlying securities. Is the order required to be designated as a "short sale"?***

    We have no comment on this item.

Thank you for considering our comments. If you have any questions please do not hesitate to contact me.

Yours sincerely,

Susan Copland