

50 Wellington Street W.
5th Floor
Toronto, ON M5L 1E2
Canada
+1 416 364 8420
canada@aima.org
canada.aima.org



Chair

Belle Kaura
Tel. (647) 776-8217

Deputy Chair

Liam O'Sullivan
Tel. (647) 776-1779

Legal Counsel

Darin Renton
Tel. (416) 869-5635

Treasurer

Derek Hatoum
Tel. (416) 869-8755

Head of Canada

Claire Van Wyk-
Allan
Tel. (416) 453-0111

April 12, 2024

Theodora Lam
Acting Director, Market Regulation Policy
Canadian Investment Regulatory Organization
Suite 2000
121 King Street West
Toronto
Ontario M5H 3T9

Delivered by e-mail: tlam@ciro.ca;
CMRdistributionofSROdocuments@bcsc.bc.ca;
on@osc.gov.on.ca

Dear Theodora,

**RE: CIRO Proposed Amendments Respecting the Reasonable Expectation
to Settle a Short Sale**

About Alternative Investment Management Association (AIMA)

AIMA was established in 1990 as a direct result of the growing importance of alternative investments in global investment management. AIMA is a not-for-profit international educational and research body that represents practitioners in alternative investment funds, futures funds and currency fund management – whether managing money or providing a service such as prime brokerage, administration, legal or accounting.

AIMA's global membership comprises approximately 2,100 corporate members in more than 60 countries, including many leading investment managers, professional advisers and institutional investors and representing over \$3 trillion in assets under management. AIMA Canada, established in 2003, has approximately 150 corporate members.

The objectives of AIMA are to provide an interactive and professional forum for our membership and act as a catalyst for the industry's future development; to provide leadership to the industry and be its pre-eminent voice; and to develop sound practices, enhance industry transparency and education, and to liaise with the wider financial community, institutional investors, the media, regulators, governments and other policy makers.

The majority of AIMA Canada members are managers of alternative investment funds and fund of

funds. Most are small businesses with fewer than 20 employees and \$100 million or less in assets under management. The majority of assets under management are from high net worth investors and are typically invested in pooled funds managed by the member.

Investments in these pooled funds are sold under exemptions from the prospectus requirements, mainly the accredited investor and minimum amount investment exemptions. Manager members also have multiple registrations with the Canadian securities regulatory authorities: as Portfolio Managers, Investment Fund Managers, Commodity Trading Advisers and in many cases as Exempt Market Dealers. AIMA Canada's membership also includes accountancy and law firms with practices focused on the alternative investments sector.

For more information about AIMA Canada and AIMA, please visit our web sites at canada.aima.org and www.aima.org.

Comments

We are writing in response to CIRO's Proposed Amendments Respecting the Reasonable Expectation to Settle a Short Sale¹ and associated proposed guidance². Overall, AIMA Canada supports the objective of reviewing short selling regulation to ensure that it remains appropriate in light of ongoing developments in the Canadian securities market and globally.

We note that in its consultation CIRO contemplates changes to the Universal Market Integrity Rules (UMIR) by:

- adding a new positive requirement under 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 in supervisory and gatekeeping requirements relating to the proposed UMIR 3.3; and
- generally consolidating current UMIR provisions relating to short selling into one location within UMIR with corresponding housekeeping changes to UMIR generally.

AIMA Canada broadly welcomes these changes, which we believe will bring greater clarity to the expectations applicable in the context of short selling, while allowing firms to leverage existing operational systems and processes. We anticipate that the change will entail additional compliance work by Participants and Access Persons to ensure that they can properly evidence the basis for having a reasonable expectation to settle, but believe that the associated costs are proportionate in light of the likely benefits to the Canadian securities markets.

We also note publication by CIRO of the Proposed Guidance on UMIR Requirements Related to Short Selling and Failed Trades. As a general matter, we believe having in place accessible and clear guidance is a helpful means of promoting adherence to UMIR requirements by providing clarity to the market about CIRO's expectations.

¹ Online at: <https://www.ciro.ca/news-room/publications/proposed-amendments-respecting-reasonable-expectation-settle-short-sale>.

² Online at: <https://www.ciro.ca/news-room/publications/proposed-guidance-umir-requirements-related-short-selling-and-failed-trades#GN-URPart3-24-0001>.

We have noted in the guidance some elements that might benefit from further reflection by CIRO:

- The discussion in section 3.3 of the concepts of an “international act” and “negligent act” are potentially difficult to apply to many real-world scenarios where there might be some ambiguity as to attribution of the ultimate responsibility for a settlement fail (which could have arisen due to mismarking of a trade or the fact that a participant becomes aware after entering into a short sale that the security is, contrary to its prior belief, no longer easy to borrow).
- In the discussion of the Prior Extended Failed Trade framework (section 1.3; section 3.5), it would be helpful to reconsider the ongoing application of restrictions following an extended failed trade to ensure that these are not entirely open-ended, which we believe would be unduly punitive (noting in particular the second sub-bullet under section 3.5).
- Whether it would be beneficial to add further detail about the approach that should be taken to close out extended failed trades.

We would be happy to discuss this topic with you further and look forward to inputting further into future work by CIRO relating to the framework for short selling in Canada.

Yours sincerely,

ALTERNATIVE INVESTMENT MANAGEMENT ASSOCIATION CANADA

By:

Adam Jacobs-Dean, AIMA