



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

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Director

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Dear Mr. McCoy:

Re: Proposed Guidance on Short Sale and Short Marking Exempt Order Designations

Thank you for providing the Investment Industry Association of Canada the opportunity to comment on the Proposed Guidance. Given that the Proposed Guidance is based on the assumption that the Provisions Respecting Regulation of Short Sales and Failed Trades in Notice 11-0075 will be implemented as proposed, the concerns expressed in our response to that request for comments apply in the case of the guidance.

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?***

We have no comment on this item.

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

Although we acknowledge that the guidance reflects current practice, we believe that the requirement to file the Regulatory Marker Correction Form by

the later of 5:00 pm and 15 minutes following the close of trading does not provide enough time to ensure the information is complete and accurate. As a result, trades are often missed and supplementary information must be subsequently filed. Given that there is not a market integrity issue driving the deadline, we recommend that in order to ensure complete and accurate information, the requirement be amended to require filing as soon as practicable after the close of trading.

- 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 have no comment on this item.

- 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 are concerned 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 should be marking particular securities as short market exempt, a Participant would require detailed information about their clients’ existing and intended trading strategies in respect of all of the securities they trade; allowing them to monitor for consistency and the possible need for amended order marking. It is unlikely that clients would provide this competitive information, and onerous and impractical for dealers to monitor trading at this level.

- 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”?**

We have no comment on this item.

- 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.

The IIAC working group formed to comment on the Proposed Guidance as well as the Short Sale / Failed Trade Regulation would be pleased to meet with IIROC representatives to discuss these issues in more detail. The group is comprised of a cross section of dealers of various sizes, business concentrations and geographic locations and as such, can provide a fulsome view of the issues raised by the proposals.

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

Yours sincerely,



Susan Copland