PROSPECTORS & DEVELOPERS ASSOCIATION OF CANADA | ASSOCIATION CANADIENNE DES PROSPECTEURS ET ENTREPRENEURS

April 10, 2025

Theodora Lam
Director, Market Regulation Policy
Canadian Investment Regulatory Organization
40 Temperance Street, Suite 2600, Toronto, Ontario, M5H 0B4

Re: Proposed Amendments Respecting Mandatory Close-Out Requirements

The Prospectors & Developers Association of Canada (PDAC) is the leading voice of the mineral exploration and development industry. Representing over 8,200 individual and corporate members in Canada and around the world, PDAC's work centers on supporting a competitive, responsible, and sustainable mineral industry. The mineral industry supports more than 700,000 people in direct and indirect employment and contributed $159 billion to Canada's GDP in 2023. It is the largest group of public issuers in Canada, accounting for approximately a third of all companies listed on Canadian exchanges and for 50% of funds raised via equity in our capital marketplace in 2024.

PDAC recognizes the importance of short selling in capital markets and in providing liquidity and price discovery within the Canadian marketplace. However, we believe that without proper regulation there is potential for imbalance, abusive practices and distortions — such as manipulative short selling and settlement failures — which can directly undermine market integrity.

Therefore, we are encouraged by the Canadian Investment Regulatory Organization (CIRO) proposing amendments to the Universal Market Integrity Rules (UMIR) and Investment Dealer Partially Consolidated Rules (IDPC) that aim to strengthen settlement failure regulations. PDAC strongly supports adoption of the proposed amendments.

We must bring attention to other priorities that we have recommended in past consultations with respect to the short selling regulatory regime in Canada before commenting on the current proposal, which would be highly effective in addressing issues related to predatory short selling and the ability of bad actors to manipulate the market.

Priority PDAC recommendations on short selling

First and foremost, we urge CIRO to reinstate an uptick rule. This rule permits short selling only when a stock's price is higher than the previous trade, helping to prevent short sellers from surreptitiously or maliciously accelerating a stock's price decline. An option CIRO must consider is implementing an Alternative Uptick Rule, which would align with the approach currently in place in the U.S. under Rule 204 of Regulation SHO.

Secondly, in collaboration with the Canadian Securities Administrators (CSA), CIRO should develop a robust disclosure regime for short selling. Currently, short sellers are not subject to the same rigorous disclosure requirements that mining companies must follow under standards such as *National Instrument 43-101 Standards of Disclosure for Mineral Projects* (NI 43-101). This discrepancy creates an uneven playing field, particularly for junior mineral exploration companies that are often operating with limited human resources and lack capacity to effectively respond to allegations from activist short sellers who may seek to profit via reputational damage of management, mineral assets and destruction of market value.

To address the imbalance noted above, a disclosure regime for short sellers should include, at a minimum, the following elements:

- Information on the position of the publisher of the report (e.g. size, date obtained, etc.)
- Methodology and sources used to support contradictory estimates or valuations

Finally, we emphasize concerns with respect to informed consent. PDAC is aware that in many instances, brokerage accounts allow a broker to loan shares owned by clients to a short seller, unbeknownst to these clients, and lending brokerages are presumably being compensated for such transactions — creating a clear conflict of interest that may contravene Know Your Client (KYC) requirements. To address this, we recommend that CIRO establish a binding framework requiring brokers to fully disclose the potential use of client shareholdings for short selling, and to offer clients the option to opt out of share lending practices.

For additional details on the above recommendations, please refer to PDAC's commentary on CIRO's *Proposed Amendments Respecting the Reasonable Expectations to Settle a Short Sell*. Furthermore, for a more in-depth discussion of PDAC's proposal to establish a stricter disclosure regime for short selling, please consult our full response to *CSA Consultation Paper 25-403 – Activist Short Selling*.

Comments on the current proposal for mandatory close-out requirements

As noted above, PDAC supports the proposed amendments respecting mandatory close-out requirements, as they impose greater responsibility on dealers to address failed trades and impose pre-borrowing requirements for non-compliance. We view this as a positive step toward strengthening regulatory obligations around short selling and minimizing the harmful effects associated with predatory short selling — practices that have undermined investor confidence in the Canadian equity markets.

We support the intention to align Canadian regulations with international standards, particularly those of the U.S. Securities and Exchange Commission (SEC). As noted by CIRO, the SEC has taken a proactive approach to addressing settlement failures under Rule 204 of Regulation SHO, which has been instrumental in mitigating the risks associated with naked short selling and enhancing market stability.

By implementing mandatory close-out requirements consistent with Regulation SHO, CIRO can strengthen Canada's financial markets and uphold the highest standards of market integrity.

Lastly, while we support the alignment of the proposed amendments with Regulation SHO, as noted above, we recommend one important exception in response to Question 12 of the consultation. We argue that, as contemplated by CIRO, Canadian regulations should impose more severe consequences—such as restricting short selling altogether—if a dealer fails to close out a fail-to-deliver position in a timely manner. This distinction is justified by the unique nature of the Canadian markets hosting a disproportionate number of SMEs and smaller market capitalization issuers relative to the U.S.

Unlike in the U.S., one-third of the issuers on Canada's key exchanges are mineral industry companies—most of which are small to medium-sized exploration firms that do not generate revenue and rely heavily on public equity financing to fund their operations. Given the material proportion of these issuers, which depend on complex technical information to inform market valuations, along with the need for frequent equity issuance, Canadian markets are particularly vulnerable to predatory short selling and share price manipulation. In this context, the importance of Canada's robust regulatory framework and disclosure standards cannot be overstated.

We thank CIRO for the opportunity to provide commentary in this consultation, and welcome continued engagement as this consultation progresses. Please contact Jeff Killeen, PDAC's Director, Policy & Programs (jkilleen@pdac.ca) if there are questions or clarifications sought from this letter.

Sincerely,

Lisa McDonald

Executive Director

Prospectors & Developers Association of Canada (PDAC)