

Appendix 3 - Impact Assessment

I. Impact Assessment Table

In the impact assessment table below, we list:

- the major policy elements of the Proposed Amendments,
- a description of the intended policy benefits of each element, and
- an assessment of its impact on investors, Investment Dealer Members, marketplaces, The Canadian Depository for Securities Limited and CDS Clearing and Depository Services Inc. (CDS) and CIRO.

We recognize that the impacts on investors, Investment Dealer Members, and CDS may be significant, as set out in the impact assessment table below.

As part of the comment process, we are requesting specific comments on the following aspects of the Proposed Amendments:

- the implementation impacts
- the potential costs and resources that would be needed to implement the proposed requirements
- any alternative approaches to consider that may reduce impacts.

II. Cost Estimate

We do not know the dollar magnitude of the collective impacts of the Proposed Amendments, and we cannot determine it without detailed stakeholder feedback.

Description of Proposed Amendment:	<i>Investment Dealer Member that is a member of CDS (Clearing Member) to close out fail-to-deliver positions by the required timeline, or allocate to another Investment Dealer Member (Allocated Member) within set timelines.</i>
Related intended benefits	<p>The purpose of mandatory close-out requirements is to further reduce the fail rate particularly in edge cases involving persistent failures to settle. Persistent failures to deliver may have adverse effects on existing shareholders and deter potential investors by contributing to a negative perception of a security and the market as a whole.</p> <p>A mandatory close out requirement may improve investor confidence by reducing potential perceptions of abusive short selling in connection with failures to deliver.</p> <p>A mandatory close out requirement would add rigor to Canada’s voluntary buy-in framework, which would address stakeholder concerns that suggest the framework is too lax and out of step with regulatory requirements in other jurisdictions.</p>
Impact on clients	<p>A requirement on mandatory close-outs may improve investor confidence by reducing:</p> <ul style="list-style-type: none"> • the fail rate involving persistent failures to settle in edge cases • potential perceptions of abusive short selling in connection with failures to deliver. <p>Mandatory close-out requirements could increase trading costs related to short selling in the following ways:</p> <ul style="list-style-type: none"> • Investment Dealer Members may pass on costs related to operational or systems developments for the implementation of the new requirement onto clients. • Certain clients may face additional costs associated with purchasing or borrowing shares by a certain timeline to close out a fail to deliver position. • Certain clients may face increased costs related to pre-borrowing ahead of short selling where the Investment Dealer Member and/or client has failed to close out on time. Borrowing costs may differ depending on the security at issue, and potentially depending on the Investment Dealer Member.

Impact on Investment Dealer Members	<p>While the impact on Investment Dealer Members may differ depending on whether they are a Clearing Member, Allocated Member or a trading dealer, it is expected that the proposal may have a significant impact on all Investment Dealer Members that trade listed securities. This may include additional resources needed to develop systems, operations and new processes to comply with the proposal.</p> <p>Investment Dealer Members may also be subject to compressed timeframes for closing out fail-to-deliver positions given the recent move to T+1 settlement.</p>
Impact on Marketplaces	<p>We do not expect this proposal to have a negative impact on marketplaces.</p> <p>Mandatory close out requirements may indirectly have a beneficial effect on marketplaces generally by further reducing the current fail rate in edge cases involving persistent failures to settle, which may improve investor confidence. Persistent failures to deliver may have adverse effects on existing shareholders and deter potential investors by contributing to a negative perception of a security and the market as a whole.</p> <p>A mandatory close out requirement would add rigor to Canada’s voluntary buy-in framework, which is intended to address stakeholder concerns of being too lax and out of step with regulatory requirements in other jurisdictions.</p> <p>While the need to buy shares to close out on a timely basis may lead to more trades being conducted on a marketplace, we expect these trades to be executed under reasonable commercial terms that would not exacerbate market volatility.</p>
Impact on CDS	<p>CDS may need to develop additional systems and processes to provide daily fail-to-deliver positions in each listed security to:</p> <ul style="list-style-type: none"> • each Clearing Member, and • CIRO for each Clearing Member.
Impact on CIRO	<p>CIRO would need to build new infrastructure and operations to:</p> <ul style="list-style-type: none"> • process and store the daily fail-to-deliver positions in each listed security received from CDS for each Clearing Member • create tools to generate alerts or reports to facilitate monitoring, including the tracking of close-outs and ensuring subsequent pre-borrow restrictions are being applied by Investment Dealer Members appropriately • dedicate resources and personnel to monitor, review and respond to alerts and reports.

Description of Proposed Amendment:	<i>Different close-out timelines for long sales, persons with Marketplace Trading Obligations, and sellers that sell securities they are deemed to own.</i>
Related intended benefits	Aligns timelines for the mandatory close-out requirement with Regulation SHO in the U.S. in order to reduce regulatory impact on Investment Dealer Members that trade inter-listed securities.
Impact on clients	Clients that sell securities that are “deemed to own” securities would have more time to deliver the securities without being forced to close out the position when they may not yet be in physical possession of the securities being sold. We would expect the new proposed close-out timeline for “deemed to own” securities to have a positive impact on clients that sell these securities.
Impact on Investment Dealer Members	Aligning timelines with those in Regulation SHO would reduce impact on Investment Dealer Members that trade securities that are inter-listed in the U.S. or those that can leverage the support of an U.S.-based affiliate by harmonizing timelines with mandatory close-out requirements.
Impact on Marketplaces	Persons with Marketplace Trading Obligations may continue to maintain a two-sided market in their stocks of responsibility without being unduly affected by the close-out requirements.
Impact on CDS	There should not be a significant impact on CDS, as mandatory close-out provisions would become a CIRO requirement, and CIRO would be responsible for tracking and enforcing the different timelines.
Impact on CIRO	Allowing different timelines would require CIRO to invest in systems and processes that would be able to track multiple close-out timelines pursuant to the various exemptions available. However longer close-out timelines would only be available to those that are able to demonstrate they are eligible for the exemption in their books and records.

Description of Proposed Amendment:	<p><i>Allow Clearing Members to allocate fail-to-deliver positions to an Investment Dealer Member for whom they clear or settle trades.</i></p> <p><i>Allocated Members that have received an allocated fail-to-deliver position would be required to close out on a timely basis.</i></p>
Related intended benefits	<p>Help ensure there is no regulatory gap so that fail-to-deliver positions that are allocated by the Clearing Member to another Investment Dealer Member would still need to be closed out on a timely basis.</p>
Impact on clients	<p>There should be no additional negative impact on clients. This proposed requirement ensures that close-out requirements apply consistently across Clearing Members and Allocated Members.</p>
Impact on Investment Dealer Members	<p>Allocated Members would need to develop systems, operations and new processes to close out by the required timelines. Allocated Members may also be subject to compressed timeframes for closing out fail-to-deliver positions given the recent move to T+1 settlement.</p>
Impact on Marketplaces	<p>We do not expect this proposed requirement to have a significant impact on marketplaces. While the need to buy shares in order to close out on a timely basis may lead to more trades being conducted on a marketplace, we expect these trades to be executed under reasonable commercial terms that would not exacerbate market volatility.</p>
Impact on CDS	<p>Providing the ability to allocate to Clearing Members should not have a negative impact on CDS. Requiring Allocated Members to close out on a timely basis may further reduce the current fail rate in edge cases involving persistent failures to settle.</p>
Impact on CIRO	<p>CIRO would need to build systems and processes to be able to review allocations and determine whether:</p> <ul style="list-style-type: none"> • allocations are being made on a reasonable and timely basis, • Allocated Members are closing out by the specified timelines as required.

Description of Proposed Amendment:	Clearing Member or Allocated Member to become subject to pre-borrow restrictions for failure to close out when short selling in the affected security for themselves and all of their clients.
Related intended benefits	Help ensure there is a regulatory consequence (i.e. need to pre-borrow for all future short selling in that security until fail-to-deliver position has been closed out) when there is a failure to comply with mandatory close out requirements.
Impact on clients	Certain clients may face increased costs related to pre-borrowing ahead of short selling where the dealer has failed to close out on time. Borrowing costs may differ depending on the security at issue and potentially depending on the Investment Dealer Member.
Impact on Investment Dealer Members	Clearing Member or Allocated Member would need to develop systems and processes to ensure they pre-borrow for future short sales as needed for themselves and all of their clients in the affected security. Smaller dealers may face difficulty in accessing securities for borrowing. Borrowing costs may differ depending on the security at issue and potentially depending on the Investment Dealer Member.
Impact on Marketplaces	While pre-borrow restrictions are not expected to have a significant impact on marketplaces, there could be an indirect impact on the liquidity of certain securities. If Investment Dealer Members and clients face difficulty in accessing certain securities for borrowing, this may affect their ability to conduct future short sales in that security. Restricting the ability to short sell may have an impact on the liquidity in the trading of certain securities.
Impact on CDS	Pre-borrow restrictions should not have a negative impact on CDS. Ensuring pre-borrow restrictions are applied where required may further reduce the current fail rate particularly in edge cases involving persistent failures to settle.
Impact on CIRO	CIRO would need to implement processes and dedicate resources to review whether pre-borrow restrictions are being applied to the Clearing Member or Allocated Member with respect to a specific security as required.

Description of Proposed Amendment:	Allocation reporting to CIRO by Clearing Member
Related intended benefits	Helps facilitate surveillance by CIRO on all fail-to-deliver positions, including those that have been allocated by Clearing Members to another Investment Dealer Member.
Impact on clients	We do not expect allocation reporting to impose any additional negative impacts on clients. While we have not set out the particulars of the information to be reported to CIRO at this stage, allocation reporting to CIRO will likely not involve client identity, and would focus on the identity of the allocated firm, portion of fail-to-deliver position allocated to that firm, and the applicable close-out date(s) associated with the allocated position. This information would be used for regulatory purposes only and will not be publicly disseminated.
Impact on Investment Dealer Members	Clearing Members would need to develop new systems, operations and processes to report to CIRO the allocations of fail-to-deliver positions to other Investment Dealer Members in the requested format on a reasonable and timely basis.
Impact on Marketplaces	Allocation reporting should not have an impact on marketplaces, as we expect the reporting to be made directly by the Clearing Member to CIRO, and will not be passed through marketplaces. This information will be used for regulatory purposes only and will not be publicly disseminated.
Impact on CDS	Requirement on Clearing Members to report allocations to CIRO should not have an impact on CDS, as CDS would not be involved in sending or receiving the report.
Impact on CIRO	CIRO will need to build systems and operations to receive, process and store allocation reports. Receiving these reports will allow CIRO to follow up directly with the Allocated Member for these allocated fail-to-deliver positions, rather than reaching out to the Clearing Member to obtain information about the allocation.

Description of Proposed Amendment:	<i>Clearing Member to notify their clients that are Investment Dealer Members if they have failed to close out on time, and when the purchase to close out has been made. Clearing Member to provide copy of notification to CIRO.</i>
Related intended benefits	Investment Dealer Members that are clients of the Clearing Member would be affected by the Clearing Member's failure to close out on time, and this notification requirement would help ensure that these Investment Dealer Members are promptly informed. Requiring the Clearing Member to send a copy of the notification to CIRO would help facilitate CIRO's monitoring efforts for those fail-to-deliver positions.
Impact on clients	We do not expect this notification requirement to have a negative impact on clients that are not Investment Dealer Members as the requirement focuses on notification among Investment Dealer Members.
Impact on Investment Dealer Members	Clearing Members would need to develop new systems, operations and processes to notify their clients that are Investment Dealer Members as required and to provide a copy of the notification to CIRO.
Impact on Marketplaces	We do not expect this notification requirement to have an impact on marketplaces as the notification would be made among Investment Dealer Members and would not pass through the marketplace.
Impact on CDS	We do not expect this notification requirement to have an impact on CDS, as CDS would not be involved in sending or receiving the notification.
Impact on CIRO	CIRO will need to build systems and operations to receive, process and store notifications from Clearing Members. Receiving a copy of the notification from the Clearing Member would facilitate monitoring of fail-to-deliver positions and associated close outs by CIRO.

Description of Proposed Amendment:	<i>Allocated Member to notify Clearing Member if they have failed to close out on time, and when the purchase to close out has been made. Allocated Member to provide copy of notification to CIRO.</i>
Related intended benefits	Would help ensure that the Clearing Member is aware when the Allocated Member has failed to close out on time and is now subject to pre-borrow restrictions until the allocated position has been closed out. Requiring the Allocated Member to send a copy of the notification to CIRO would help facilitate CIRO's monitoring efforts for those fail-to-deliver positions.
Impact on clients	We do not expect this notification requirement to have a negative impact on clients that are not Investment Dealer Members as the requirement focuses on notifications among Investment Dealer Members.
Impact on Investment Dealer Members	Allocated Members would need to develop new systems, operations and processes to notify Clearing Members as required and to provide a copy of the notification to CIRO.
Impact on Marketplaces	We do not expect this notification requirement to have an impact on marketplaces as the notification would be made among dealers and CIRO and would not pass through the marketplace.
Impact on CDS	We do not expect this notification requirement to have an impact on CDS, as CDS would not be involved in sending or receiving the notification.
Impact on CIRO	CIRO will need to build systems and operations to receive, process and store notifications from Allocated Members. Receiving a copy of the notification from the Allocated Member would facilitate monitoring of fail-to-deliver positions and associated close outs by CIRO.

Description of Proposed Amendment:	<i>Where the Clearing Member or Allocated Member use another Investment Dealer Member to execute trades on a marketplace (trading dealer), the Clearing Member or Allocated Member must notify the trading dealer if they fail to close out on time and become subject to pre-borrow restrictions for future short sales in the affected security.</i>
Related intended benefits	Help ensure there is no regulatory gap so that pre-borrow requirements are being applied consistently regardless of whether the Clearing Member or Allocated Member may use a different Investment Dealer Member to trade when they have failed to close out in time.
Impact on clients	We do not expect this notification requirement to impose additional negative impact on clients. This notification requirement helps ensure the consistent application of pre-borrow requirements when triggered by a failure to close out.
Impact on Investment Dealer Members	Clearing Members, Allocated Members and trading dealers may need to invest in new or updated communications mechanisms so that trading dealers will be notified on a timely basis to ensure pre-borrow restrictions are being applied accordingly.
Impact on Marketplaces	We do not expect this notification requirement to have a negative impact on marketplaces, as the notification should be made directly by the Clearing Member or Allocated Member to the trading dealer, and will not be passed through marketplaces.
Impact on CDS	We do not expect this notification requirement to have a negative impact on CDS, as CDS would not be involved in sending or receiving the notification.
Impact on CIRO	CIRO would need to review whether pre-borrow restrictions are being communicated and applied appropriately where an Allocated Member or Clearing Member uses another Investment Dealer Member to short sell shares for the security at issue.

Description of Proposed Amendment:	<i>Extend the requirement to have a reasonable expectation to settle sell trades in a listed security to Investment Dealer Members that are not Participants under UMIR</i>
Related intended benefits	Help ensure there is no regulatory gap so that the pre-trade requirement to have a reasonable expectation to settle applies consistently to sell trades that are executed by all Investment Dealer Members, regardless of whether they may be a Participant under UMIR.
Impact on clients	Clients that hold accounts at Investment Dealer Members that are not Participants would also be required to have an expectation to settle that is reasonable at the time of entering an order to sell a listed security on a marketplace. We propose to include the exception for deemed to own securities to this pre-trade requirement so that clients selling these securities would be required to have a reasonable expectation to deliver those shares as soon as applicable restrictions have been removed and in any case by no later than thirty-five calendar days after trade date.
Impact on Investment Dealer Members	Investment Dealer Members that are not Participants may need to update their processes and procedures to ensure there is an expectation to settle that is reasonable for sell orders in a listed security.
Impact on Marketplaces	We do not expect this proposed requirement to have an impact on marketplaces as marketplaces would not be involved in the execution of the trade and would not have an expectation regarding the reasonability of its settlement.
Impact on CDS	We do not expect this proposed requirement to have an impact on CDS as CDS would not be involved in the execution of the trade or have an expectation regarding the reasonability of its settlement.
Impact on CIRO	CIRO would need to extend its review with respect to a reasonable expectation to settle to include Investment Dealer Members that are not Participants under UMIR.