ADDRESSED TO:

- British Columbia Securities Commission
- Alberta Securities Commission
- Financial and Consumer Affairs Authority of Saskatchewan
- The Manitoba Securities Commission
- Ontario Securities Cofmmission
- Autorité des marchés financiers
- Financial and Consumer Services Commission (New Brunswick)
- Superintendent of Securities, Prince Edward Island
- Nova Scotia Securities Commission
- Superintendent of Securities, Newfoundland and Labrador
- Superintendent of Securities, Yukon Territory
- Superintendent of Securities, Northwest Territories
- Superintendent of Securities, Nunavut

DELIVERED VIA E-MAIL TO:

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
E-mail: consultation-en-cours@lautorite.qc.ca

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
E-mail: comments@osc.gov.on.ca

Save Canadian Mining (SCM) is pleased to submit these comments to the CSA for review.

While SCM will issue specific responses to the request for comment on short selling, we will also be submitting an opening statement. Our objective in this is to make it clear that as a volunteer organization, funded by members with no permanent staff, it is difficult for us to provide datasets to support some of our positions.

This does not make our assertions any less true. If anything it highlights the need for new research that is not provided by IIROC or the CSA, but which could be obtained from them by credible third party research organizations skilled in this collection.

This research group should be guided in equal parts by the official regulatory bodies and industry, along with community representatives. In this way we could, as a group, present a transparent view of the shorting world that is not currently available.

Our view at Save Canadian Mining is that our capital markets have two core functions - around which everything else must revolve and support.

1. The Capital markets exist to provide investors of all stripes equal and fair access to a variety of accurately portrayed investment opportunities.
2. The Capital markets exist to provide Companies of all stripes equal and fair access to communicate their investment opportunities to a variety of investors.

All other actions, activities, or regulations should be looked at in the context of how they improve either or both of those market functions. We believe these core functions have suffered in a desire to make exchanges profitable - or to allow hedge funds and investment banks to thrive at the expense of the investors and companies capital markets are meant to serve.

Save Canadian Mining was built on a desire to make capital markets fair to investors and issuers. We don't believe they are fair now. The longer this process is allowed to go on - the more discouraged investors and companies get.

I will provide you with one example to illustrate the problem. I will request via our Save Canadian Mining Platform that other examples be submitted by issuers, and we will publish these credible reports as they come to our attention.

Attached, on six consecutive days of trading in February, are downtick closes in Power Nickel stock. I am the CEO of Power Nickel. The stock was closed 6 days in a row by the same broker at 15:59:59. Five of the six were a downtick. There have been many similar closes in our stock by the same broker both before and after this date all at this time.

I have complained to IIROC and they have listened to me and are investigating. I am not particularly hopeful they will act. They have informed me that while I did not have access to the data - in their view it was a different investor each time. I commented if they felt this was an uncoordinated action, and randomly six non coordinated investors all decided at 15:59:59 to sell our stock; that I had a bridge to sell them in Brooklyn.

How is it even possible that one Company could close trading on the same stock six days in a row and probably over half the time overall? I am unaware of any way I could somehow trade with my broker and close the stock up six days in a row. If I did, I'm confident I would have a call from IIROC no doubt fining me and shutting me down. Not that it's even possible for a normal investor to get the last trade six days in a row!

I have given you one live example. We will deliver more as we intend to publish this to our Save Canadian Mining audience, and to ask our members to tell us their stories both as issuers and investors. There is no way this is normal behavior. Do I think you can prove collusion among the six investors? No. These short sellers are pack animals and literally the smartest guys in the room. They are smarter than me for sure, and smarter than the regulators. They make huge profits and can of course hire the best to figure out how to legally and, I suspect, illegally beat the system.

They have compromised your systems. The downtick trading is one thing - spoofing volume on sell orders and wash trading is another. Again, I don't have the staff, expertise or time as a Junior Miner to prove that to you. But if you listen to Power Nickel as a Company and our investors, and the many companies like Power Nickels out there and their investors - you will hear these same complaints over and over.

The very requirements for proof via data we have no means to collect is all part of the gamesmanship of the short industry. They know how regulatory bodies work: slowly and deliberately with data. They know IIROC has the data. But as I have said, in my meetings with IIROC and in our submission to the Ontario taskforce - the data that is collected is not asking the right questions and obscures the true issues.

(Please see attached our historical submission to the taskforce.)

The Wall Street Bets storylines has raised this issue in the USA, and very clearly has evidenced massive naked short selling and the creation of counterfeit shares. It is happening here in Canada. It's happening to Power Nickel and many, many more companies. Our research shows that the TSXV metals and Mining index would almost have to triple to get back to normal vis a vis its traditional relationship with commodity prices. This destruction in value means our investors - whether individual or institutional - are not making fair returns. It means companies are not growing as Capital access is reduced and capital cost increased. It means we employ fewer people. For mining that means fewer first nations in our workforce, as we are among the highest employers of first nations staff. I could go on, but surely the point is made or there would be no further benefit from belaboring it.

We ask for the following.

1. We want the CSA to fund an independent research group review of short selling. We want equal representation from knowledgeable individual investors, mutual and pension funds, companies small medium and large and the CSA. We would have IIROC provide the selected research firm untethered access to the data and collection processes so that we can truly have a transparent look at the system and how it functions.
2. In connection with #1 above - we request a formal review of the so-called Tick Test regulations. As noted in our submission it is long past the time to measure how positive or negative removing this safeguard has been.
3. The Ontario TaskForce made several suggestions with respect to trade settlement. At a minimum these should be made law. Digital IOU's are not DRS's. We need to settle trades on a timely basis and understand the true short positions on stocks. The current processes do not accurately reflect reality.

We know your jobs are not easy. We also believe you are trying to do your best. We also recognize that change is difficult for you. But for the good of the capital markets you need to listen to the investors and issuers who are harmed by the current short selling dynamic. The system has some flaws. The shorts and their ecosystem have figured out how to play you - and they sure as hell have figured out how to play issuers and individual traders. We need to focus on why capital markets were created and get back to first principles.

Our Responses To Questions Raised In Joint CSA and IIROC Staff Notice 23-329 - Short Selling in Canada

1. We believe that the existing regulatory regime around pre-borrowing in certain circumstances should be strengthened. Specifically, we believe that "pre-borrow" requirements similar to those in the U.S. should be implemented in Canada. This would require broker-dealers to have pre-borrowed or made reasonable efforts to locate securities before executing a short sale. We believe that this requirement would help prevent abusive naked short selling and reduce the risk of market manipulation.

2. The costs and benefits of implementing such requirements should be carefully considered. While there may be some costs associated with implementing and enforcing these requirements, such as increased compliance costs for broker-dealers, we believe that the benefits of preventing market manipulation and protecting investors and companies outweigh

these costs. Moreover, data from the U.S. suggests that pre-borrowing requirements can be effective in reducing the incidence of failed trades and naked short selling.

3. The current definition of a failed trade does not appropriately describe a failed trade. We believe that a failed trade should be defined as any short sale that fails to deliver securities within a reasonable timeframe. This definition should take into account the various strategies, including overlapping trades, employed by predatory short sellers to circumvent locate rules and delay final settlement of naked short trades.

4. We believe that a timeline shorter than ten days following the expected settlement date should be considered. In my view, a shorter timeline, such as five days, would be more appropriate. This would help prevent market manipulation and ensure that investors are not harmed by excessive delays in the settlement process. Data from the U.S. suggests that shorter settlement periods can be effective in reducing the incidence of failed trades.

5. Additional public transparency requirements of short selling activities or short positions should be considered. Specifically, we believe that short sellers should be required to publicly disclose their short positions on a regular basis. This would increase transparency in the market and help prevent market manipulation. Data from other jurisdictions suggests that public disclosure requirements can be effective in reducing the incidence of predatory short selling.

6. Additional reporting requirements regarding short selling activities should also be considered. Specifically, we believe that broker-dealers should be required to report their short selling activities to the securities regulatory authorities on a regular basis. This would help regulators monitor short selling activities and detect any potential market manipulation. Data from other jurisdictions suggests that reporting requirements can be effective in reducing the incidence of failed trades and predatory short selling.

7. Given IIROC's study of failed trades, we believe that specific reporting, transparency or other requirements should be considered for junior issuers. These companies are particularly vulnerable to market manipulation and predatory short selling, and therefore require additional protection. Specific reporting requirements, such as more frequent public disclosure of short positions, would be appropriate in our view.

8. Mandatory close-out or buy-in requirements similar to those in the U.S. and the European Union would be beneficial for the Canadian capital markets. While there may be some costs associated with implementing these requirements, such as increased compliance costs for broker-dealers, we believe that the benefits of reducing the incidence of predatory short selling and protecting investors and companies outweigh these costs.

God Bless

Terry Lynch

Founder Save Canadian Mining

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Enter Symbol or Name: PNPN

USA / CA — Quote — Chart — News — Closes

Trade Workstation: Canada — PNPN

Individual Trades by Date

Date: 20230209
Broker: 79
Order By: Time Descending
Include ATS: ☑
Return Last: 100
Submit

Broker Summary By Date Range

Date From: 20230217
Date To: 20230217
Order By: Buyers
Include ATS: ☑
Submit

Trades for C:PNPN on 20230209 for broker #79 - 51 trades displayed

Time ET	Ex	Price	Change	Volume	Buyer	Seller	Markers
15:59:59	H	0.31	0.015	5,000	1 Anonymous	79 CIBC	K
15:59:59	V	0.315	0.02	5,000	33 Canaccord	79 CIBC	K
15:59:23	A	0.31	0.015	5,000	79 CIBC	89 Raymond James	K
15:59:18	A	0.32	0.025	5,000	33 Canaccord	79 CIBC	K
15:58:09	A	0.31	0.015	1,000	79 CIBC	89 Raymond James	K
15:57:00	A	0.32	0.025	2,000	33 Canaccord	79 CIBC	K
15:56:30	A	0.315	0.02	15,000	79 CIBC	89 Raymond James	K
15:53:36	A	0.32	0.025	500	33 Canaccord	79 CIBC	K
15:47:26	A	0.32	0.025	9,000	85 Scotia	79 CIBC	K
15:41:13	V	0.315	0.02	5,000	33 Canaccord	79 CIBC	K
15:37:33	V	0.31	0.015	2,000	79 CIBC	1 Anonymous	K
15:20:44	H	0.32	0.025	1,000	79 CIBC	1 Anonymous	K
15:18:49	A	0.32	0.025	500	33 Canaccord	79 CIBC	K

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Enter Symbol or Name: PNPN

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Trade Workstation: Canada | PNPN

Individual Trades by Date

Date: 20230210
Broker: 79
Order By: Time Descending
Include ATS: ☑
Return Last: 100
Submit

Broker Summary By Date Range

Date From: 20230217
Date To: 20230217
Order By: Buyers
Include ATS: ☑
Submit

Trades for C:PNPN on 20230210 for broker #79 - 43 trades displayed

Time ET	Ex	Price	Change	Volume	Buyer	Seller	Mark
15:59:59	H	0.295	-0.02	5,500	1 Anonymous	79 CIBC	K
15:58:16	H	0.305	-0.01	1,000	79 CIBC	1 Anonymous	K
15:56:44	H	0.305	-0.01	500	79 CIBC	1 Anonymous	K
15:54:55	V	0.30	-0.015	135	59 PI	79 CIBC	
15:53:43	H	0.30	-0.015	500	79 CIBC	1 Anonymous	K
15:53:43	H	0.30	-0.015	2,000	79 CIBC	1 Anonymous	K
15:53:43	H	0.30	-0.015	1,000	79 CIBC	1 Anonymous	K
15:53:43	H	0.30	-0.015	500	79 CIBC	1 Anonymous	K
14:26:28	A	0.29	-0.025	500	79 CIBC	1 Anonymous	K
14:26:28	A	0.29	-0.025	15,000	79 CIBC	1 Anonymous	K
14:26:27	V	0.295	-0.02	7,000	79 CIBC	1 Anonymous	K
14:26:27	U	0.295	-0.02	7,000	79 CIBC	1 Anonymous	K
12:44:16	V	0.30	-0.015	1,500	33 Canaccord	79 CIBC	K

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Trade Workstation: Canada — PNPN

Individual Trades by Date

Date: 20230213

Broker: 79

Order By: Time Descending

Include ATS: ☑

Return Last: 100

Submit

Broker Summary By Date Range

Date From: 20230217

Date To: 20230217

Order By: Buyers

Include ATS: ☑

Submit

Trades for C:PNPN on 20230213 for broker #79 - 36 trades displayed

Time ET	Ex	Price	Change	Volume	Buyer	Seller	M
15:59:59	V	0.28	-0.02	2,500	80 National Bank	79 CIBC	K
15:59:59	H	0.28	-0.02	500	1 Anonymous	79 CIBC	K
15:59:47	A	0.285	-0.015	12,000	85 Scotia	79 CIBC	K
15:55:56	A	0.285	-0.015	15,000	85 Scotia	79 CIBC	K
14:51:05	A	0.285	-0.015	3,500	7 TD Sec	79 CIBC	K
14:21:21	A	0.285	-0.015	1,000	9 BMO Nesbitt	79 CIBC	K
13:07:19	A	0.28	-0.02	6,000	79 CIBC	2 RBC	K
13:01:57	V	0.285	-0.015	14,000	79 CIBC	9 BMO Nesbitt	K
13:01:57	H	0.285	-0.015	10,000	79 CIBC	1 Anonymous	K
13:01:57	A	0.285	-0.015	15,000	85 Scotia	79 CIBC	K
13:01:57	A	0.285	-0.015	15,000	85 Scotia	79 CIBC	K
12:45:30	A	0.28	-0.02	14,000	85 Scotia	79 CIBC	K
12:35:26	A	0.28	-0.02	1,000	7 TD Sec	79 CIBC	K

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Trade Workstation: Canada — PNPN

Individual Trades by Date

Date: 20230214
Broker: 79
Order By: Time Descending
Include ATS: ☑
Return Last: 100
Submit

Broker Summary By Date Range

Date From: 20230217
Date To: 20230217
Order By: Buyers
Include ATS: ☑
Submit

Trades for C:PNPN on 20230214 for broker #79 - 46 trades displayed More trac

Time ET	Ex	Price	Change	Volume	Buyer	Seller	Markers
15:59:59	H	0.325	0.045	3,000	1 Anonymous	79 CIBC	K
15:59:45	H	0.335	0.055	1,000	79 CIBC	1 Anonymous	K
15:59:38	A	0.335	0.055	1,500	80 National Bank	79 CIBC	K
15:58:50	H	0.33	0.05	1,000	79 CIBC	13 Instinet	K
15:57:00	H	0.33	0.05	2,000	79 CIBC	13 Instinet	K
15:51:05	A	0.325	0.045	5,000	79 CIBC	1 Anonymous	K
15:51:05	A	0.325	0.045	2,000	79 CIBC	1 Anonymous	K
15:41:33	A	0.325	0.045	15,000	79 CIBC	1 Anonymous	K
15:31:10	V	0.33	0.05	5,500	79 CIBC	1 Anonymous	K
15:30:06	V	0.33	0.05	40,000	79 CIBC	9 BMO Nesbitt	K
15:30:06	V	0.33	0.05	4,500	79 CIBC	1 Anonymous	K
15:26:17	H	0.33	0.05	1,500	79 CIBC	1 Anonymous	K
15:26:17	H	0.33	0.05	1,000	79 CIBC	1 Anonymous	K

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Enter Symbol or Name: PNPN

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Trade Workstation: Canada — PNPN

Individual Trades by Date

Date: 20230215
Broker: 79
Order By: Time Descending
Include ATS: ☑
Return Last: 100
Submit

Broker Summary By Date Range

Date From: 20230217
Date To: 20230217
Order By: Buyers
Include ATS: ☑
Submit

One Broke

Date From
Date To
Broker
Include ATS

Trades for C:PNPN on 20230215 for broker #79 - 57 trades displayed More trades

Time ET	Ex	Price	Change	Volume	Buyer	Seller	Markers
15:59:59	H	0.34	0.01	1,000	1 Anonymous	79 CIBC	K
15:59:59	V	0.345	0.015	3,500	33 Canaccord	79 CIBC	K
15:59:49	H	0.35	0.02	500	79 CIBC	1 Anonymous	K
15:58:02	A	0.35	0.02	2,000	9 BMO Nesbitt	79 CIBC	K
15:48:22	A	0.35	0.02	3,500	33 Canaccord	79 CIBC	K
15:44:28	A	0.34	0.01	15,000	79 CIBC	1 Anonymous	K
15:43:00	H	0.35	0.02	1,000	79 CIBC	1 Anonymous	K
15:41:47	V	0.345	0.015	1,000	79 CIBC	53 Morgan Stanley	K
15:41:47	O	0.345	0.015	500	79 CIBC	1 Anonymous	K
15:41:47	H	0.345	0.015	500	79 CIBC	80 National Bank	K
15:41:47	H	0.345	0.015	500	79 CIBC	53 Morgan Stanley	K
15:31:33	V	0.345	0.015	2,500	33 Canaccord	79 CIBC	K
15:31:12	V	0.345	0.015	2,500	1 Anonymous	79 CIBC	K

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Enter Symbol or Name: PNPN

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Trade Workstation: Canada — PNPN

Individual Trades by Date

Date: 20230216
Broker: 79
Order By: Time Descending
Include ATS: ☑
Return Last: 100
Submit

Broker Summary By Date Range

Date From: 20230217
Date To: 20230217
Order By: Buyers
Include ATS: ☑
Submit

Trades for C:PNPN on 20230216 for broker #79 - 50 trades displayed

Time ET	Ex	Price	Change	Volume	Buyer	Seller	Marke
15:59:59	V	0.345		2,500	1 Anonymous	79 CIBC	K
15:37:29	V	0.345		3,000	7 TD Sec	79 CIBC	K
15:20:12	V	0.345		7,000	1 Anonymous	79 CIBC	K
15:03:49	H	0.345		1,000	79 CIBC	1 Anonymous	K
15:01:51	V	0.34	-0.005	10,000	85 Scotia	79 CIBC	K
14:03:33	V	0.345		1,000	79 CIBC	79 CIBC	K
14:03:33	M	0.345		100	79 CIBC	79 CIBC	
12:16:26	A	0.345		10,000	59 PI	79 CIBC	K
12:06:45	A	0.34	-0.005	2,000	79 CIBC	9 BMO Nesbitt	K
12:06:42	V	0.345		8,000	85 Scotia	79 CIBC	K
12:06:42	A	0.345		15,000	85 Scotia	79 CIBC	K
12:04:11	V	0.34	-0.005	8,500	7 TD Sec	79 CIBC	K
11:55:04	A	0.34	-0.005	15,000	79 CIBC	79 CIBC	K

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SAVE CANADIAN MINING

SUBMISSION TO THE CAPITAL MARKETS MODERNIZATION TASKFORCE

Sept 6, 2020

Dear members of the Capital Markets Modernization Taskforce (the Taskforce) –

On behalf of Save Canadian Mining (SCM) and its founding partners, I want to thank you for the work you have been doing over the past several months. It was a pleasure meeting with you and presenting to you our opinions on which regulations in Ontario's capital markets should be targeted as part of your review of Ontario's Securities Act. We were encouraged by your initial report, particularly your recommendations targeting predatory short-selling and those that supported small businesses. As an advocacy group representing issuers in the junior mining sector, please know that we view your work as a very important exercise and we thank you for the attention you have paid to our concerns.

As a reminder, SCM was launched in September 2019, and has since secured the support of industry associations such as the Ontario Mining Association (OMA), the Ontario Prospectors Association (OPA), as well as notable industry investors like Eric Sprott (Sprott Mining Inc.), Rob McEwen (McEwen Mining Inc.), Keith Neumeyer (First Majestic Silver Corp.) and Sean Roosen (Osisko Mining Inc.). Many junior mining companies have lent their support to this effort and SCM has collected the "signatures" of over 2,000 supporters from across the industry who recognize short-selling is an issue holding back the industry.

This submission contains three sections. The first outlines our feedback on several key recommendations made in your initial consultation report. The second makes a case for reinstatement of the "tick test." We have conveyed to you in our earlier meetings and correspondence why SCM considers the tick test to be an important regulation for the junior mining sector and properly functioning capital markets, and the second section elaborates on this. The second section will also provide comments on recent meetings that SCM has had with IIROC, the body that repealed the tick test in 2012. The third represents observations and recommendations about Failed Trades and research on short selling from McMillan LLP that we received that we felt important enough to forward for further consideration. Due to the size and scope of our organization we did not have the ability to provide an in-depth review. We hope the Task Force or the Ministry of Finance can devote resources to examine these issues.

Ultimately, we continue to encourage the Taskforce to revisit our recommendation that it recommend to the provincial government that the tick test should be reinstated.

SECTION 1: Comments on the Initial Consultation Report

This section will focus on three of your recommendations made in the Initial Consultation Report (Report) that SCM and its partners wish to address. These three recommendations directly address concerns that SCM's constituency has with the current capital market framework. Namely, the

recommendations that address reducing the reporting burden on smaller issuers, as well as the strong recommendation around prohibiting predatory short selling on prospectus offerings and private placements. SCM will be advocating for these recommendations with the Ontario government should the Taskforce move forward with these in the final report. For the most part, SCM takes a positive of the initial report, and are commenting on recommendations 6, 7 and 13 below.

Recommendation #6

6. **Streamlining the timing of disclosure (e.g., semi-annual reporting)**

Publicly listed companies in Ontario are currently required to provide quarterly financial reporting of interim financial results and provide accompanying Management Discussion and Analysis (MD&A). However, many stakeholders, especially smaller issuers, have noted the significant costs and resources allocated to producing quarterly financial statements and MD&A. While quarterly financial statements provide timely information to investors and intermediaries, there can be instances in which the regulatory and internal cost of preparing such frequent reporting exceeds the benefit. This is particularly true for smaller issuers that may not experience significant changes to their operations that would be reflected in the financial statements.

It is the opinion SCM that this is recommendation will help alleviate some of the cost associated with regulatory compliance for junior mining companies. Any recommendation that does not hurt public confidence in the markets, and helps small businesses manage their time and cost pressures is a good thing. While this wasn't a recommendation SCM was necessarily advocating for, there is little doubt that eliminating reporting requirements from four a year to two a year will help small issuers.

Recommendation #7

7. **Introduce an alternative offering model for reporting issuers**

The existing prospectus system functions well for larger issuers that can absorb the costs of conducting a public offering. However, the high costs associated with preparing and filing a prospectus can prove to be a barrier to capital raising for smaller issuers. Placing greater reliance on a reporting issuer's continuous disclosure record to support investment decisions rather than the filing of a prospectus for ordinary course financings would provide capital at a lower cost to these companies.

For the same reasons stated in SCM's response to recommendation #6, our campaign is wholly supportive of this recommendation. Any changes to the reporting requirements for smaller issuers that enables them to save time and money so they can reinvest those resources in their businesses, will be encouraged by our group. In many cases smaller issuers have less exposure to the investment community who view these stocks as risky. Larger issuers, highly liquid stocks should be kept to the existing standard given the amount of people who are invested in them, and for most investors, these stocks make up the bedrock of their portfolio.

Recommendation #13

13. **Prohibit short selling in connection with prospectus offerings and private placements**

The existing prospectus system is generally working effectively for Canadian issuers. However, multiple stakeholders have advised us that short selling in connection with prospectus offerings is making pricing and execution of prospectus offerings more difficult. Since prospectus offerings are generally priced at a discount to the market price, market participants and investors who expect to purchase under the offering may seek to profit through aggressive short selling prior to the offering to depress the price of the offering. Short selling is particularly problematic where the underwriters are engaged in market stabilization in connection with the prospectus offering. In the United States, the Securities and Exchange Commission has addressed some of these concerns through the prohibition in Rule 105 of Regulation M: Short selling in connection with a public offering. Stakeholders have noted to the Taskforce that bought deals pre-arranged with hedge funds that are shorting the stock before the bought deal is announced are rife in the Canadian markets and particularly targeting capital intensive industries. This harms the corporation, its shareholders and the uninformed investors trading against the short sellers.

SCM fully supports this recommendation. We believe that our comments have contributed to the recommendation that this form of predatory short selling be outlawed, and it appears that our opinion has been echoed by other groups involved in this consultation. Prohibiting market participants and investors that have previously sold short securities of the same type as offered under a prospectus or private placement from acquiring securities under the prospectus or private placements would have a material benefit for the stakeholder group that SCM represents, and would go a long way to inspire additional investment in the sector in SCM's opinion. SCM and its partners would publicly support implementation of this recommendation.

Conclusion:

The initial report was an encouraging development for SCM and its constituency. We encourage the Taskforce to continue to work with stakeholders to add additional measures that will help reduce cost and regulatory burden on smaller issuers, as well as protect these companies from predatory short selling practices they are currently subjected to under the current regulatory regime. SCM and its partners will publicly support the Taskforce should they move forward with these three recommendations and will lend its advocacy resources to help ensure adoption in the Ontario Securities Act.

SECTION 2: A Case for the Tick Test

SCM has been working to educate and engage the general public on the importance of the tick test as it pertains to the junior mining sector. SCM's "ask" of government, regulators has been to reinstate the tick test for non-highly liquid securities of a valuation of $250 million and below. What began as a largely anecdotal and intuitive conviction that the repeal of the tick test regulation in 2012 by IIROC has led to hardship for junior mining companies grew to a fairly comprehensive case that is backed by research as our campaign evolved.

As a reminder, SCM was established in November 2019 with the support of its industry partners, the Ontario Mining Association (OMA), the Ontario Prospectors Association (OPA), Sprott Mining Inc., Osisko

Mining, First Majestic Silver, McEwen Mining Inc. along with a broad cross section of junior mining companies who identified with the issue we were proposing to advocate on. Since that time SCM has been meeting with government representatives and officials, conducting research and attempting to work collaboratively with regulators including the Ontario Securities Commission (OSC) and IIROC.

SCM was founded with the specific goal to have regulators reinstate the following regulation that was repealed in 2012 by IIROC with the condition that it only be applied to junior mining stocks:

> *"Except as otherwise provided, a Participant or Access Person shall not make a short sale of a security on a marketplace unless the price is at or above the last sale price." – IIROC Universal Market Integrity Rules: Rules & Policies*

Reference to this regulation and its subsequent elimination can be found in IIROC's Universal Market Integrity Rules: Rules & Policies:
(https://www.iiroc.ca/industry/rulebook/Documents/UMIR0301_en.pdf)**.**

PART 3 – SHORT SELLING

3.1 Restrictions on Short Selling – *Repealed*

POLICY 3.1 – RESTRICTIONS ON SHORT SELLING – *Repealed*

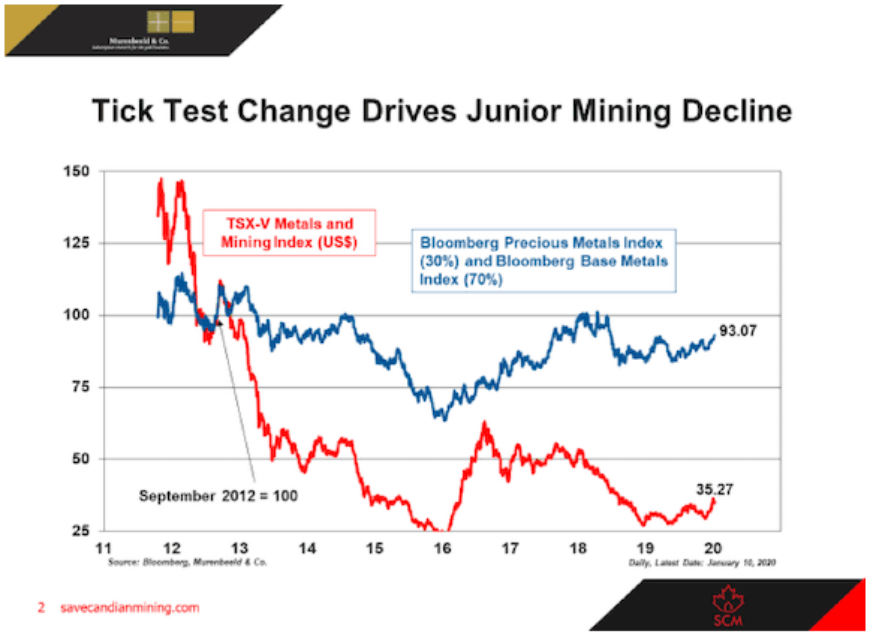
Part 1 – Entry of Short Sales Prior to the Opening – *Repealed*

Part 2 – Short Sale Price When Trading Ex-Distribution – *Repealed*

As highlighted in SCM's original submission to the taskforce, SCM is advocating for the reinstatement of this regulation through the ***Ontario Securities Act***. We want to stipulate that our interest is to protect junior issuers, which is why we would expect the reinstatement to only apply to securities with a market capitalization of $250 million or less. The $250 million threshold is being proposed to create little disruption with the existing trade strategies of large institutional investors.

In the Spring of 2020, SCM released research that provided data that we felt proved there were structural problems in Canada's capital markets. The research included in the following chart

demonstrates the divergence between commodity prices and the valuations of mining companies on the TSX Venture Exchange (TSX.V). We feel this data demonstrates a structural and/or regulatory problem exists that needs to be addressed:



In addition to the direct advocacy SCM has been conducting, our campaign has been engaging its constituency through media. SCM has conducted a number of interviews with its partners including Eric Sprott of Sprott Mining Inc. in a variety of publications and outlets, and continues to generate support for its objectives through sponsored webinars and other events. Our plans are to accelerate this activity in the fall to continue to raise awareness in the investment community.

The culmination of SCM's efforts has resulted in two senior-level meetings with IIROC officials that were conducted in July and August 2020. While SCM greatly appreciated the opportunity to meet with IIROC and discuss the importance of the tick test in financial markets, SCM remains concerned that the tick test does not appear to be on their agenda for review. Specifically, SCM would like IIROC and the taskforce to develop a response to the following two statements:

1. Adequate reasons for the repeal of the tick test in October 2012 have not been provided to the satisfaction of SCM and the junior mining industry; and
2. IIROC's own data shows that there was (and still remains) a noticeable impact on small businesses since the tick test was repealed.

Prior to a discussion on each of these statements, SCM would like to first acknowledge the work of IIROC in its interactions with us. IIROC has made itself fully accessible to SCM and has welcomed our arguments with respect and interest. The organization did additional diligence and research upon our request and took the time to take us through their data and analysis in detail. IIROC also helped educate SCM about some of the truly beneficial policy work it is doing to help protect issuers and investors in the future. We have conveyed a positive view of our experience with IIROC to our partners and our constituency and we hope to continue this constructive relationship in the months following this exercise.

The following sub-sections represent SCM's arguments on what we find to be compelling cause to reinstate the tick test. These arguments are based on research conducted following our initial submission to the Taskforce and are the direct result of the information exchanged between IIROC and SCM over the course of the summer 2020.

Section 2 (a) – *"Why was the Tick Test Repealed in the First Place?"*

Our first and primary concern reflects a curiosity as to the true motivations behind repealing the tick test in 2012. As many issuers understand it, the tick test was a regulation designed to protect vulnerable companies from being unfairly targeted by predatory short selling. It was a regulation that had been in place for 142 years prior to 2012. SCM has been unable to uncover any public arguments made by issuers for its repeal prior to 2012 and we are therefore left wondering about the chief motivating factors behind the decision.

In recent meetings with IIROC, and in publications by IIROC at the time of its decision to repeal the tick test, we understand the reasons that initiated the review to be the following:

- In IIROC's opinion and based on their own studies and data, "*the tick test (had) no appreciable impact on pricing*"[1];
- With the introduction of multiple exchanges, the tick test became a complicated regulation to administer given that a single stock could be traded across a number of different platforms; and
- The decision was made in full view of the public with little to no opposition at the time from major stakeholders.

SCM believes that the first assumption, i.e., that the tick test did not have a discernable impact on short selling, could not have been properly assessed given that it was a prohibited action to short a stock on a down tick prior to 2012. IIROC's own data shows that short selling accounted for approximately 20% of all trades both before and after 2012, with the action of selling on a down tick necessarily making up a portion of that activity following the repeal. The reason to repeal the tick test could not have been based on data evidence. We are also confused as to why the tick test would be repealed if its impact was even slightly beneficial to smaller, more vulnerable public issuers.

The second argument related to the inherent complications that the regulation would represent for the 14 different exchanges that securities are currently traded on, also confuses SCM and its partners. Primarily, SCM believes that 14 exchanges is too many for Canada's marketplace and that regulators should restrict issuers to one exchange at any given time. Irrespective of this belief, SCM understands IIROC to be a highly sophisticated organization with the ability to see every trade made in Canada in real-time. IIROC has introduced new regulatory tools over the years that are highly automated and based on its technological capabilities. It remains difficult for SCM to believe that IIROC did not have the authority or technological capability to enforce the tick test even with the advent of new exchanges. In addition, the need for safeguards on vulnerable, non-highly liquid stocks on smaller exchanges and the TSX.V should have provided sufficient motivation to develop this capability if in fact the capability does not exist.

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[1] IIROC Rules Notice: *"Provisions Respecting the Regulation of Short Sales and Failed Trades."* March 2, 2012 (https://www.iiroc.ca/Documents/2012/7026f168-80c3-45ea-a635-55b8802dbbaf_en.pdf#search=short%20sale)

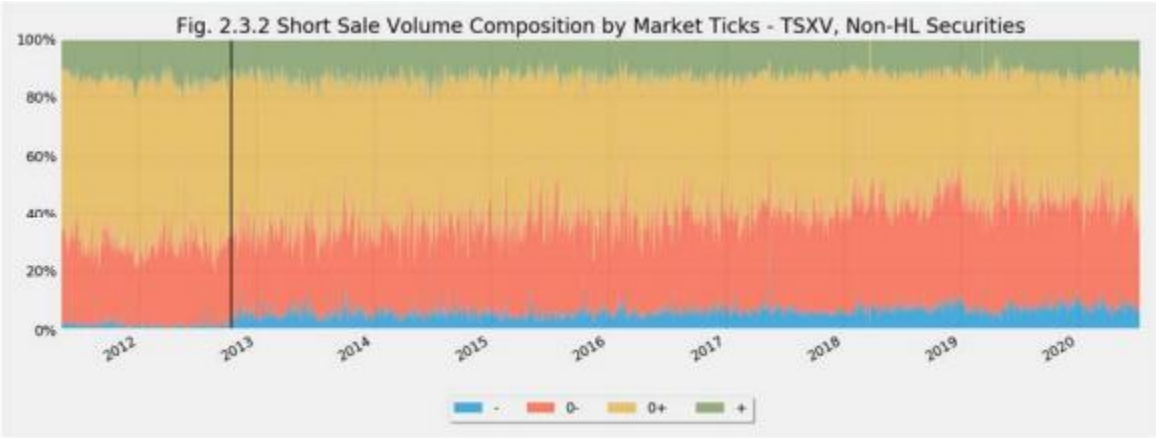
On the third argument, it is true that IIROC executed a fully transparent and public consultation in 2012 around the repeal of the tick test. SCM has reviewed the documents associated with this decision in detail. We have also reviewed the public submissions made to the consultation by the investment community. While we appreciate this decision was made in full view of the public, we nevertheless are concerned with: a) the reasoning provided in the March, 2, 2012 IIROC Notice for the interest in repealing the tick test (as outlined above); and b) the fact that there appears to be no consideration of the risks associated with the impact on smaller businesses / junior issuers.

SCM notes there were only 16 submissions made by stakeholders to the consultation paper issued by IIROC (or that were published and shared by IIROC). Of those 16 submissions, only two of them opposed the repeal of the tick test. These two submissions were made by individual, retail investors and neither submission articulates a comprehensive argument.[2] The remainder of the submissions appear to represent the views of larger investment organizations and exchanges. Interestingly, the TMX group made a submission in support of the repeal but has since joined SCM as a supporter of this campaign through the involvement of Brady Fletcher, Managing Director & Head of the TSX.V.

Most alarmingly, there does not appear to be any input by the presumed most-impacted stakeholder base (smaller issuers). The fact these opinions are not included is in no fault of IIROC, but nevertheless leaves a significant gap in terms of the public debate on this topic. In SCM's opinion, there has yet to be a serious and comprehensive contemplation of the risks involved in this decision. SCM and its partners believe the junior mining community deserves to have a chance to weigh in and protect their industry.

Section 2 (b) – *IIROC Data Proves the Repeal of the Tick Test has Impacted Small Businesses / Issuers*

At SCM's request, IIROC compiled trade data that evaluated short selling activity prior to the repeal of the tick test and after. They were able to assess each short trade that occurred prior to the tick test being repealed. The following chart was provided by IIROC as part of our request for information:



[2] IIROC Notice: "*Request for Comments, Provisions Respecting Regulation of Short Sales and Failed Trades*." February 245, 2011. https://www.iiroc.ca/SitePages/Related-Documents.aspx?linkid=752

The chart depicts all short sales on the TSX.V for non-highly liquid securities. SCM focussed on this chart given that the stakeholder group SCM represents (junior miners), would mostly fall into this data set. Selling on the down-tick is represented at the bottom of the chart in blue. As is evident, selling on the down-tick went from 0% of all short sales on the TSX.V in this category to between 5-12% following the repeal.

This data proves that what SCM has been claiming since our inception is true. IIROC's admission that selling on the down tick increased following the repeal of the tick test suggests there was value to a certain stakeholder group in having it present in capital markets. In response to SCM's concern with this data, IIROC justified their decision to repeal the tick test with the following rationale:

a. While downward trajectory selling did increase on non-highly liquid securities on the TSX.V, it was marginal when benchmarked against overall short activity (which remained at around 20% of all trades). From an overall market perspective, the tick test had little to no impact;
b. Selling on the down tick was necessarily going to increase because prior to Oct 2012 it wasn't permitted;
c. The tick test represents "red tape" that should not be reinstated given the general objectives of the government and the Taskforce and lack of impact it had on the general market;
d. There hasn't been enough data collected on the other smaller exchanges which almost exclusively house junior companies (CSE, Neo) to make an informed conclusion, and more time is needed to study trades being conducted across the wider market.

In response to these positions, SCM would like the committee to consider the following arguments:

a. While IIROC's data shows that selling on the down tick still represents a very small portion of the overall short selling activity on the TSX and the TSX.V, it does show that it nevertheless has gone up and certainly represents a meaningful percentage of all short sales. When you consider that the largest increase in selling on a down tick occurred on the TSX.V for non-highly liquid securities, we feel it is likely those smaller issuers in the mining industry (and others) that have been most impacted;
b. Selling on the down tick was prohibited prior to 2012 and even though the percentage of these sales would necessarily increase following the regulation's repeal, the impact is nevertheless acute for those companies who have been made subject to predatory short selling through the removal of this restriction. IIROC should acknowledge that selling on the down-tick is a predatory form of short selling and properly identify the securities that were most impacted by this noticeable increase in short activity;
c. SCM and its members are very much in favour of reducing red-tape, particularly on smaller issuers. This is why SCM is encouraged by many of the recommendations of the task force that deal with streamlining reporting requirements. In certain circumstances, and particularly when addressing the needs of under-resourced small businesses, regulations are a necessary part of a healthy capital market framework, and in the case of the tick test, we feel this is less about red tape and more about protecting a vulnerable industry;
d. As part of its response to SCM's request for data related to non-highly liquid securities, IIROC presented research done on smaller exchanges such as NEO and the Canadian Securities Exchange (CSE). It was clear after reviewing these charts that while preliminary data does show an adverse consequence of the repeal, it would be fair to say that consistent patterns are not

yet available due to the lack of trade volume on these exchanges. We would argue that the TSX.V data is sufficient, and that our constituency should not have to wait for better data on smaller exchanges to revisit the importance of the tick test.

A final point SCM would like the taskforce to consider relates to the sophistication of large trading firms and the impact technology has had on the smaller issuers. We note IIROC's research is based on aggregate data. The algorithmic and high-frequency trading firms that execute these trades target the companies with the weakest order book. They can close stocks down at the end of the day and open them down and frequently, according to our constituency, do. These tactical moves aren't captured by averages yet remain a very real concern. If smaller issuers closed on an uptick their own stock several days in a row IIROC would be policing this action. On down ticks the predatory short sellers and their machines can close stocks down for days on end. This is why small volume executed on specific stocks can have a compound effect such as what we have discovered and showcased in our own research shared in this document. The tick test being reinstated would stop this predatory behaviour. Absent its reinstatement it is hard to see how this destructive practice could be curbed.

While we appreciate the work that IIROC has done to address our concerns, we nevertheless feel that an adequate case has not yet been made as to why the tick test is not being considered for review and reinstatement. SCM feels that together with the research shared with the Taskforce at the outset of this exercise, the IIROC data should compel the task force to recommend reinstatement of the tick test for junior issuers ($250 million market capitalization and below). .

As highlighted in this document, there remains frustration and concern around the real motivation behind repealing the tick test in 2012, including that proper consultation with smaller issuers did not factor into the public discussion and the ultimate decision to move forward. In addition, IIROC's own data shows that the tick test did have a preventative function on predatory short selling, particularly on non-highly liquid securities on the TSX.V which is the category that captures the majority of SCM's constituency.

SECTION 3: Other Observations, Recommendations and Research

Several of our members have discussed what they feel is a key issue facing the public markets today. It is the extensive counterfeit shares (fails to deliver) that are running through the system. Regulators appear to have no way to check and regulate this criminal activity. The constant over voting being seen in many countries is a testament to this abuse. Many Canadian companies have been a victim to this criminal activity and the cost to pension funds and other investors large and small is enormous. To address this abuse, we would push for the adoption of regulation surrounding the settlement system that enforces without exceptions the t+2 settlement system. If you can't deliver the shares you have sold or sold short, then you are immediately bought in within the specified time period with no exceptions! Allowing failed trades to stay outstanding and allowing constant churning of trades never intended to be settled is what can cause constant pressure on a stock and affect the precious cost of capital for a company.

We would also suggest the task force look at making a short seller pre borrow the shares prior to selling them. It is interesting that Europe is adopting next year this exact regulation of the settlement system.

https://on.ft.com/2ZlwYR9

Finally, we attach as an Addendum a bulletin of a study done by McMillan LLP on Short Selling in Canada. We feel many of the observations they make are accurate and worthy of additional consideration as we look to make our capital markets healthier and more transparent.

In closing, SCM would like to acknowledge IIROC and its cooperation throughout this process. SCM truly believes IIROC has the same objectives as our organization as it pertains to protecting issuers and investors, addressing predatory short selling and facilitating a fair and transparent environment from which junior miners can raise capital and grow their businesses in Canada. We remain hopeful that IIROC and the taskforce will validate the junior mining sector (and smaller issuers across all markets) by acknowledging the value of the tick test. We look forward to continuing the dialogue with government and regulators on the tick test and hope that a palatable way forward is possible.

Yours truly,

Terry Lynch
Executive Director
Save Canadian Mining Inc.