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March 8, 2023

VIA EMAIL

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

Re: *Joint CSA and IIROC Staff Notice 23-329 Short Selling in Canada* (the "Staff Notice")

The Canadian Advocacy Council of CFA Societies Canada[1] (the "**CAC**") appreciates the opportunity to provide the following general comments on the Staff Notice.

As outlined in the Staff Notice, Canada's regulatory regime is generally consistent with the principles for the effective regulation of short selling published by the International Organization of Securities Commissions in 2009. The Staff Notice (and Staff Notice 25-306) adds that regulators' previous consultation on activist short selling over 2020–21 did not yield evidence of specific actionable issues relating to activist short selling campaigns or short selling generally that would justify immediate regulatory change.

As discussed in our response to the 2020–21 consultation, we believe short selling is important to robust capital markets. We remain concerned generally that potential policy responses to perceived issues will have unintended and unwanted consequences. To the extent such changes have the unintended effect of deterring short selling generally, they could have wide-ranging and systemic negative consequences for Canadian capital markets.

We must also consider whether existing regulatory tools are already capable of addressing problematic practices. Absent robust evidence demonstrating that these

[1] The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 20,000 Canadian CFA Charterholders. The council includes investment professionals across Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. Visit www.cfacanada.org to access the advocacy work of the CAC.

CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors' interests come first, markets function at their best, and economies grow. There are more than 190,000 CFA Charterholders worldwide in 160 markets. CFA Institute has nine offices worldwide and there are 160 local societies. For more information, visit www.cfainstitute.org or follow us on LinkedIn and Twitter at @CFAInstitute.

tools are insufficient, regulators should not proceed with reforms with uncertain and potentially profound implications for our markets.

While our direct responses to the questions in the Staff Notice will be limited as a result of an inability to provide detailed data-driven commentary, we would be supportive of further analysis of the potential systemic improvement(s) offered by the introduction of positive locate requirements for short sales (and not just those where there has been a prior extended failed trade), and the potential benefits of alignment of these practices to the U.S., given the interconnectedness of our capital markets.

On failed trade reporting, we would also question generally whether ten days following expected settlement is still an appropriate timeline, given the progressive compression of settlement timelines to T+2, and the pending changes to move to T+1 across North American markets. We would be supportive of further study of the feasibility and potential benefits of shortening this reporting cycle. We would have similar views on potential changes to buy-ins and close-outs, and would suggest that this be examined further for potential policy action in recognizance of other recent progressive changes to other settlement-related functions and reporting.

Turning to discussion of proposals that would demand increased public transparency of short selling activities and short positions, we would urge caution as to unintended consequences and the potential for impedance of the price-formative benefits of short selling, and are concerned as to the potential for new regulation to act as a general deterrent against short selling and short sellers in the Canadian capital markets. These concerns also hold for junior securities, and we would suggest further study of the referenced junior securities failed trade data for potentially confounding explanatory factors not considered in the analysis, such as less institutional and/or operationally efficient market participants potentially making up a greater proportion of trading, short selling, and settlement activity in this segment. In sum, we agree that now is not an appropriate time to propose new disclosure requirements on short selling in Canada, until such time that specific policy action is both justified by data and stakeholders can be satisfied such action will not have a materially stifling effect on short selling and price formation generally in the Canadian capital markets.

In lieu of new regulatory requirements generally relating to short selling, we would support a review of how best to use existing enforcement mechanisms to deter any problematic activities associated with short selling, including by looking to other jurisdictions for technological innovations that might aid in enforcement. We would also support ongoing efforts to gain greater regulatory insight/transparency into short selling and associated transactional and position data for further study.

Concluding Remarks

We strongly support initiatives to review existing regulation to ensure effectiveness, but this exercise should be driven by data and an awareness of potential unintended consequences of regulatory changes. Short selling makes critical contributions to market liquidity and price formation, supporting robust capital markets. In the absence of evidence of specific harm(s), we should not proceed with rule changes that could serve as a general deterrent to short selling and significantly impair the quality of Canadian capital markets.

We thank you for the opportunity to provide these comments and would be happy to address any questions you may have. Please feel free to contact us at cac@cfacanada.org on this or any other issue in future.

(Signed) *The Canadian Advocacy Council of*
CFA Societies Canada

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