CANADIAN SECURITY TRADERS' ASSOCIATION, INC.
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The Investment Industry Regulatory Organization of Canada
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and

The Secretary
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and

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RE: Joint CSA/IIROC Staff Notice 23-329 -Short Selling in Canada

Dear Sir/Mesdames

The Canadian Security Traders Association, Inc (CSTA). is a professional trade organization that works to improve the ethics, business standards and working environment for members who are engaged in the buying, selling, and trading of securities (mainly equities). The CSTA represents over 850 members nationwide and is led by Governors from each of four distinct regions (Toronto, Montreal, Prairies, and Vancouver). The organization was founded in 2000 to serve as a national voice for our affiliate organizations. The CSTA is also affiliated with the Security Traders Association (STA) in the United States of America, which has approximately 4,200 members globally, making it the largest organization of its kind in the world. This letter was prepared by CSTA Trading Issues Committee (TIC) representatives with various areas of market structure expertise. It is important to note that there was no survey sent to our members to determine popular opinion. The views and statements provided below do not necessarily reflect those of all CSTA members or of their employers.

The TIC appreciates the opportunity to comment on the short selling Staff Notice. Our members overwhelmingly believe the judicious use of short selling is an integral part of our global capital markets and a net benefit to liquidity provision, price discovery and overall market efficiency.

We note there has been extensive academic research conducted over many years and across many countries supporting the net benefits of short selling (including previous work conducted by IIROC and TSXV). We note there has been extensive academic research conducted over many years and across many countries supporting the net benefits of short selling (including previous work conducted by IIROC and TSXV). We also believe the Staff Notice does a good job summarizing the existing regulatory tools available to deal with any idiosyncratic or outlier situations where a "bad actor" behaves in a way that could be demonstrated to be nefarious and/or manipulative (Part 1 C.ii).

In capital markets, our rules and regulations must be calibrated to the central tendency and not to outlier situations. In effect, we would suggest regulators should be trying to achieve the greatest good for the most people. With respect to short selling this means applying our existing rules and regulations to promote efficient liquidity provision and price discovery to many investors while also protecting investors and issuers from any rare instances of manipulation and otherwise nefarious behaviour. We believe, our current regime does this quite well. Thus, unless regulators receive overwhelming evidence to the contrary, we suggest Canadian capital markets ought to preserve the short selling status quo.

Questions:

1. Should the existing regulatory regime around pre-borrowing in certain circumstances be strengthened? What requirements would be appropriate? Specifically, should there be "pre-borrow" requirements like those in the U.S., as described above? Please provide supporting rationale and data.

   We note a pre-borrow regime like the US, is essentially a pre-locate regime and may help deter some instances of short selling: such as where a trader incorrectly believes a borrow is available or where the cost of a borrow is prohibitively high, or if the trader is looking to short a security and cover their short quickly before T+2 settlement. However, we have not seen sufficient evidence to suggest a pre-locate regime is necessary.
   It's worth mentioning the availability of a borrow may change between locate on T and settlement on T+2. There are also many instances of short selling where a market maker is exempt from any pre-locate requirements.

2. What would be the costs and benefits of implementing such requirements?

   The cost of implementing a new locate regime would be high. Short selling is already more difficult and more risky than long buying (shorts have negative carry and the potential for infinite losses). The threshold for change should be high. Any rules or regulations that further discourage short selling need to be supported by overwhelming evidence.

3. Does the current definition of a "failed trade", as described in Part 1, above, appropriately describe a failed trade?

Yes.

4. Should a timeline shorter than ten days following the expected settlement date be considered? What would be an appropriate timeline? Please provide rationale and supporting data.

   We question the benefit of changing the 10-day period.

5. Should additional public transparency requirements of short selling activities or short positions be considered? Please indicate what such requirements should be and the frequency of any disclosure. Please also provide a rationale and empirical data to support your suggestions or to support why changes are not needed.

   No.

6. Should additional reporting requirements regarding short selling activities be considered by the securities regulatory authorities? Please indicate what such requirements should be and the frequency of any disclosure. Please also provide a rationale and empirical data to support your suggestions or to support why changes are not needed.

   No

7. As noted above, IIROC's study of failed trades showed that correlations between short sales and settlement issues in junior securities were more significant, and that junior securities experience more settlement issues compared to other securities. Should specific reporting, transparency or other requirements be considered for junior issuers? Please provide additional relevant details to support your response.

   We caution that correlation does not mean causation. We would support further research into the junior securities market, but in absence of further evidence we don't support any changes at this time.

8. Would mandatory close-out or buy-in requirements like those in the U.S. and the European Union be beneficial for the Canadian capital markets? Please provide rationale and data substantiating the costs and benefits of such requirements on market participants.

   Indifferent. Our understanding is that the requirement to "buy-in" is with the buyer or receiver of shares. If our current regime already empowers the receiver, we question why further regulatory action is needed.

We thank you for the opportunity to provide comments and would be happy to elaborate further in-person.