PI FINANCIAL
experience. driven.

PI Financial Corp.
2500 – 733 Seymour Street
Vancouver, BC Canada
V6B 0S6

Phone 604 664 2900
Fax 604 664 2666
Toll Fee 800 810 7022

www.pifinancialcorp.com

Me Phillippe Lebel
Secrétaire et directeur général des affaires juridiques
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

VIA EMAIL consultation-en-cours@lautorite.qc.ca; comments@osc.gov.on.ca

February 27, 2023

Dear Sirs/ Mesdames:

Re. Joint CSA and IIROC Staff Notice 23-329; Short Selling in Canada

I am Senior Vice President, Administration and Head Trader at PI Financial Corp. a self-clearing member of the New SRO. We write in response to the above-noted consultation paper regarding the issues surrounding Short Selling in Canada. We are appreciative of the CSA's efforts to evaluate the complex issues surrounding this activity, and its impact upon our domestic Capital Markets.

We concur with Staff that Short Selling is a legitimate trading practice, and its importance in promoting both market liquidity and price discovery. We also believe that the practice has significant importance in facilitating greater investment in IPO and Secondary financing offerings by allowing risk mitigation actions. This is particularly important in the junior listing marketplaces of the TSXV, NEO, and CSE.

We do not, however, agree with the interpretation of UMIR 2.2 that entering a short sale without reasonable expectation of settling the trade on settlement date (by *delivery* as opposed to through the Continuous Net Settlement system) is necessarily a manipulative or deceptive act. Manipulative and deceptive acts, like those described in Notice 25-306 on Activist Short Selling, can be undertaken in the marketplaces with or without a stock borrow, and there may be impediments to delivery beyond the control of dealers or their clients. Settlement functions are often separate from execution functions on an Exchange or ATS.

In our opinion, the issues of liquidity and price discovery are particularly important on junior marketplaces. Accordingly, the regulatory environment must permit a reasonable ability to facilitate short sales on those markets. However, it should be emphasized that there is often no ready access to stock lending facilities for many of these types of securities.

It is the writer's understanding that there are two primary sources for stock lending facilities: Investment Fund Manufacturers who lend out positions held in their funds; and Dealer Members who lend their "over-segregated" client positions where those positions are not fully paid for or are held on margin. Given the size and traded float of many junior listed securities, these securities are rarely held by funds. Regarding over-segregated positions at Dealers, most systems of segregation utilized by dealers are designed to segregate the lowest priced securities positions in priority. This allows higher-priced, and often senior listed securities (equities and debt positions) to be available to the Dealer to pledge to banks or other institutions if/when needed as collateral to finance their client lending facilities and overall Treasury functions. Accordingly, there is rarely any substantial or stable quantity of over-segregated positions in junior issuers for those wishing to initiate a short sale.

As described above, there are currently significant barriers to facilitating short sales for junior securities. Accordingly, we do not believe that additional strengthening of the regulatory regime is required. As the industry moves towards T+1 settlement, "reasonable expectation" will become synonymous with pre-borrow for most practical purposes.

Our primary area of comment, however, is with respect to Question #8 of the Notice, and the potential imposition of a mandatory buy-in requirement. We do not think that a mandatory buy-in requirement is in the best interest of market participants, investors, issuers, or the Canadian capital markets generally for the following reasons:

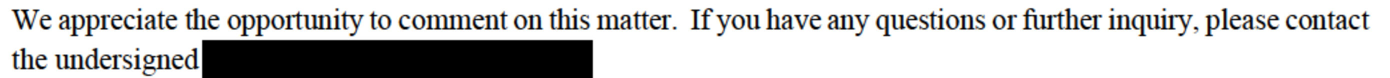
Warrants and Options

- It should also be noted that we are extremely concerned that, with Continuous Net Settlement and CDS processes, a mandatory buy-in requirement would impact both short sales and long sales that do not settle on settlement date.
- Many publicly listed issuers on junior marketplaces offer warrants and options as a component of offerings of their securities (as a "sweetener"). Warrants and options are normally paper-based and held by Dealers on behalf of the client.
- The suggested timeline of settlement date + 2 days to trigger an automatic buy-in virtually eliminates retail clients' common practice of exercising in conjunction with a long sale (our understanding is that once exercise instructions have been given, a client is deemed to be long the underlying securities).
- Warrant or option exercises must be processed through the Issuer's Transfer Agent in order to ultimately receive free-trading shares. However, since the speed/efficiency of a Transfer Agent is beyond the control of the client *and* the Dealer, investors would be disadvantaged by having to wait for the underlying securities prior to selling long securities and may have to wait for a considerable length of time before selling shares, thereby incurring additional market risk.
- The Transfer Agent delay, which already exists, would make clients even more susceptible to mandatory buy-in when CDS moves to T+1 settlement (which is expected in 2024).
- Along with disadvantaging a client who has a valid right to exercise, Issuers would potentially be disadvantaged through receiving less money into their treasury (through warrant exercise) by creating impediments for clients to exercise. We expect that issuers would experience a decreased ability to raise funds through financings, because any attached warrants would be perceived to have less value.
- We fear that a mandatory buy-in process would have unintended consequences to multiple areas of the industry. If a mandatory buy-in process is undertaken, we would suggest that, at a minimum, issuers should be required to have all warrants and options offered to clients be put in "book-based" form, to be held electronically at CDS with mandatory same-day exercise timelines. This would permit an efficient exercise process and avoid punitive buy-ins.

DRS Statements

- It should also be noted that most Transfer Agents currently issue shares via the Direct Registration System ("DRS") and issue a DRS statement as opposed to an actual share certificate. Upon deposit at CDS, it often takes 48 hours or longer for a client to receive credit for shares in electronic form at the Dealer, and a client

selling securities long that have been derived from a DRS would presumably be exposed to this mandatory buy-in timeline until ultimately credited.



We appreciate the opportunity to comment on this matter. If you have any questions or further inquiry, please contact the undersigned

Yours truly,
PI FINANCIAL CORP.

Duncan W. Boggs, CPA, CA
Senior Vice President

DB/eg

Cc: File

(Letter to CSA re Short Selling in Canada Comments February 27 2023)