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Delivered By Email to: tlam@ciro.ca

Theodora Lam
Director of Market Regulation Policy
Canadian Investment Regulatory Organization
Suite 2600
40 Temperance Street
Toronto, Ontario M5H 0B4

Dear Ms Lam,

RE: Proposed Amendments Respecting Client Delivery Obligations

The Securities and Investment Management Association **(SIMA)** appreciates the opportunity to comment on the Canadian Investment Regulatory Organization **(CIRO) Proposed Amendments Respecting Client Delivery Obligations (**the **Consultation Paper).**

SIMA empowers Canada's investment industry and is now the leading voice for the securities and investment management industry. The industry oversees approximately $4.5 trillion in assets for over 20 million investors and participates in the Canadian capital markets. Our members – including investment fund managers, investment and mutual fund dealers, capital markets participants, and professional service providers – are committed to creating a resilient, innovative investment sector that fuels long-term economic growth and creates opportunities for all Canadians.

SIMA operates within a governance framework in which we gather input from our member working groups. The analyses and recommendations of these working groups are submitted to the SIMA board or board-level committees for direction and approval. This process ensures submissions that reflect the input and direction of a broad range of SIMA members.

Summary:

We appreciate the opportunity to comment on the Proposed Amendments Respecting Client Delivery Obligations ("Proposed Amendments") and support CIRO's objective of strengthening Canada's short-selling and settlement framework while promoting timely settlement and market integrity. We also support CIRO's decision to withdraw the previously proposed mandatory close-out requirements in favour of a conduct- and principles-based approach that provides investment dealers ("dealers") with greater flexibility to address client delivery failures based on the facts and circumstances of each situation.

Notwithstanding this support, we believe the Proposed Amendments raise important questions regarding how the framework can be practically implemented and operationalized across a range of market structures and business models in the proposed time frame.

General Comments

While the Proposed Amendments address many of the concerns associated with identifying specific failed trades following CDS netting, the proposed framework raises important questions regarding how the new obligations can be practically implemented and operationalized by dealers.

By requiring firms to monitor and address client-level delivery behaviour irrespective of whether a fail-to-deliver has been formally recorded through CDS, the proposal would expand dealer oversight beyond traditional settlement-related activities and necessitate additional new surveillance, escalation and remediation controls. Firms would also be required to undertake systems, process and governance enhancements to support the identification and management of client delivery failures, the assessment and documentation of the "deemed to own" exception, and the collection, validation and retention of information obtained from third parties. Collectively, these requirements would increase compliance complexity, resource demands and implementation costs, while raising questions regarding the feasibility of achieving consistent industry-wide compliance.

As discussed in our responses below, additional guidance and clarification would assist firms in implementing the proposal consistently, effectively and in a timely manner, while ensuring that the associated regulatory burden remains proportionate to the intended regulatory outcomes

Responses to Questions

Question 1

In addition to the actions set out in section 2.3 of this Bulletin, are there any other steps that we should consider that an investment dealer should take when a client has failed to deliver shares as expected?

We support the withdrawal of the close-out requirements in favor of a conduct and principles-based approach, which appropriately recognizes that dealers require flexibility to address client delivery failures in a manner that is proportionate to the circumstances and the nature of the failures.

Section 2.3 requires a dealer to commence action as set out in section 2.2; however, the actions enumerated in section 2.2 do not expressly include contacting the client to understand and address the circumstances of a delivery failure including whether the client is able to remedy the fail. In practice, contacting the client is often an appropriate and necessary step and should be expressly contemplated as part of the range of permissible actions.

Accordingly, we suggest that the guidance clarify that dealers may contact the client as part of their response to a client delivery failure and that the actions listed in section 2.2 are not intended to be exhaustive. Dealers should retain the flexibility to employ other reasonable measures, based on the facts and circumstances, to facilitate settlement and address the delivery failure.

Question 2

Industry consultations generally supported assigning responsibility to the investment dealer best able to engage directly with the client. In an introducing / carrying broker arrangement, the introducing dealer was deemed to be in the best position to follow up directly with the client and has visibility into the client's delivery status through reporting from the carrying broker and/or the client's custodian. Likewise, in an originating / executing dealer arrangement, the originating dealer maintains the relationship with the underlying client and is able to engage with the client in the event of a failure to deliver. We request feedback on this proposed approach and will consider all comments when finalizing the Proposed Amendments.

We agree with the proposal's approach that the introducing/originating dealer is generally best positioned to engage with the client in the event of a failure to deliver. However, we would appreciate further guidance regarding the identification of such situations and the actions expected of introducing/originating dealers once a client delivery failure has been identified.

Our primary concern relates to operationalizing the proposed framework in introducing/carrying broker arrangements and originating/executing dealer relationships, particularly where application of the "deemed to own" exception may be relevant.

Where a client delivery failure exists, the dealer responsible for determining whether action must be commenced under the proposed S+5 requirement may first need to assess whether the client qualifies for the "deemed to own" exception. In many cases, the information required to make that determination may reside with another dealer, affiliate, custodian or other third party. The proposal does not provide sufficient clarity regarding how firms are expected to make, document and communicate these determinations within the proposed timelines.

Specifically, we would appreciate guidance regarding:

a. The evidentiary requirements for establishing and relying on the "deemed to own" exception, including whether firms may rely on information obtained from another dealer, affiliate, custodian or other third party and the standards applicable to such reliance.

b. The governance and supervisory expectations associated with the "deemed to own" exception, including how such determinations are expected to be reviewed, approved, documented and evidenced within a firm.

c. The operational expectations for communicating and applying "deemed to own" status across market participants, including how such status should be linked to the applicable trade, communicated between dealers, and considered when determining whether action must be commenced under the proposed S+5 requirement, particularly where information must be obtained and validated from external parties.

If CIRO expects dealers to rely on information held by third parties when assessing the applicability of the "deemed to own" exception, consideration should be given to whether the proposed S+5 timeline should be paused or otherwise accommodate circumstances where firms are awaiting information may be necessary to make and document that determination. Without such accommodation, firms may be required to commence buy-in action before they are reasonably able to establish whether an exception applies.

We would also encourage CIRO to provide guidance on the application of the proposed requirements in the context of omnibus account and prime brokerage arrangements. In these structures, the dealer responsible for managing the settlement obligation may not have visibility into the identity, holdings or status of the underlying beneficial owner and may be dependent on information from another intermediary. Additional guidance regarding responsibilities, information-sharing expectations and the application of the "deemed to own" exception in these arrangements would assist firms in implementing the proposal consistently. In particular, clarification would be helpful regarding which dealer is responsible for determining whether the proposed S+5 requirement applies and, where required, for commencing any resulting buy-in or other remedial action.

Question 3

Do you agree with the proposed timeline of five business days past settlement date as the period within which investment dealers must commence action to address a client failure to deliver where the failure relates to a short sale? Why or why not?

We are generally supportive of the proposed requirement that dealers commence action within five business days following the settlement date, provided this does not imply that the delivery failure must be resolved by that time. Given the range of factors that may affect settlement, the obligation should be understood as requiring the initiation of appropriate remedial steps, rather than completion of resolution or settlement of the outstanding position.

Further clarity regarding the practical application of the S+5 timeline would be helpful, particularly as to whether compliance requires only that the selected remedial measure be initiated by S+5 (for example, contacting the client), rather than completed by that date where the measure involves subsequent actions (for example, repurchasing shares through the market). In this context, it would also be helpful to understand whether any intraday execution expectations are contemplated where the selected action involves buying back shares on a marketplace.

In addition, we would appreciate guidance regarding the treatment of partial settlements and partial fills. In particular, clarification would be helpful as to whether the proposed requirements are intended to apply in the same manner where only a portion of a position remains outstanding, and whether any thresholds, materiality considerations or reasonable delivery expectations may apply in circumstances where the residual balance is expected to be delivered within a reasonable timeframe and the settlement deficiency is actively being resolved.

Question 4

Should the timeline for extended failed trade reporting be shortened to align with the proposed timeline of five business days following settlement date for short sales under the Proposed Amendments? Currently the extended failed trade reporting timeline is ten trading days past settlement date under UMIR 7.10.

We do not support shortening the proposed extended failed trade reporting timeline.

While we recognize the intent to enhance transparency and timeliness in reporting failed trades, a shortened reporting timeline would introduce additional operational complexity without a commensurate regulatory benefit. In particular, reducing the reporting window would require operational and technology changes at dealer firms, including updates to internal surveillance systems, exception reporting workflows, and downstream reconciliation processes. These changes would also need to be coordinated across multiple business lines and intermediaries, increasing implementation burden. In addition, a shortened reporting timeline would materially increase reporting volumes, including in cases where delivery failures remain in the process of being resolved or are subject to ongoing remedial action.

We are also of the view that maintaining the current extended failed trade reporting timeline of ten trading days past settlement date better aligns with the proposed principles-based approach, particularly where determining the appropriate course of action may depend on information gathering, including in more complex settlement environments such as omnibus accounts, prime brokerage arrangements, and introducing/carrying broker structures. In these contexts, additional time is often required to validate information from third parties and to assess whether exceptions, such as the “deemed to own” exemption, may apply.

Question 5

Have we identified all the proposed provisions that will materially impact clients, investment dealers, marketplaces or CIRO in our Impact Assessment? If not, please list any other proposed provisions that you believe will materially impact one or more parties and why.

We believe the proposal may understate the operational, technological, and market impacts associated with the proposed requirements.

The conduct-based approach outlined in Section 2.1 would introduce additional supervisory obligations for dealers. By requiring dealers to monitor and address client-level delivery behaviour independently of whether a fail-to-deliver is recorded through CDS, the proposal shifts the regulatory focus from settlement outcomes to client conduct. In many cases, these obligations would apply even where the underlying trade has settled and no settlement fail exists at the clearing and settlement level. As a result, the proposal does not materially mitigate settlement risk in such circumstances, while imposing a framework that results in outcomes that are unnecessarily restrictive or punitive for clients relative to the limited marketplace benefits achieved.

The proposal also understates the operational and technology impacts associated with the application of the "deemed to own" exception. As discussed in our response to Question 2, firms may be required to establish new processes for obtaining, validating, documenting and tracking information necessary to determine whether the exception applies, particularly where relevant information resides with another dealer, custodian, affiliate or other third party. Additional systems and controls may be required to support evidence collection, approval workflows, record retention, audit trails and communication between parties. These requirements can present considerable challenges in introducing/carrying broker arrangements, omnibus account structures, and prime brokerage relationships. We also note that the proposal creates a regulatory imbalance if comparable obligations are not applied to other market participants that are not subject to CIRO oversight. To promote a level playing field and avoid regulatory arbitrage, CIRO should coordinate with the CSA and other relevant regulators to consider whether similar requirements should apply across the broader market ecosystem or whether additional harmonization is appropriate.

There are also several broader market impacts that are not fully reflected in the proposal. For instance, cross-border trading activity presents unique challenges given differing settlement cycles, securities lending practices, borrow requirements, and regulatory frameworks across jurisdictions. The proposal is therefore more operationally complex to administer in cross-border trading environments than currently contemplated.

Question 6

Overall, do you agree with CIRO’s qualitative assessment of the benefits and impacts of the Proposed Amendments? Please provide reasons for your stance.

We agree with CIRO's objective of promoting timely settlement, supporting market integrity and addressing concerns relating to failures to deliver. We also agree that a principles-based approach provides greater flexibility than the previously proposed mandatory close-out framework and is generally preferable to a prescriptive one-size-fits-all regime. However, we do not fully agree with CIRO's qualitative assessment of the benefits and impacts of the Proposed Amendments. In our view, the proposal may overstate certain benefits while understating the operational, technology and market impacts associated with implementation.

In particular, the conduct-based approach shifts the regulatory focus from actual settlement outcomes to client delivery behaviour, resulting in additional supervisory obligations and associated operational burdens for dealers. In addition, the proposal may have broader market impacts than reflected in the assessment, including impacts on cross-border trading activity, low-touch and electronic trading models, securities lending activity and client trading restrictions. Finally, we note that the proposal may create a regulatory imbalance if comparable obligations do not apply to other market participants that are not subject to CIRO oversight.

Question 7

We are proposing an implementation period of no less than three months after the publication of the final amendments, and request feedback on what implementation period would be appropriate to provide applicable investment dealers with sufficient time to make the changes necessary to comply with the Proposed Amendments.

We do not believe that the proposed implementation period of three months would provide sufficient time for dealers to implement the operational and technology changes necessary to comply with the Proposed Amendments.

As discussed throughout our responses to Questions 1 through 6, the proposal would require enhancements to existing supervisory and operational processes, including those relating to the identification and management of client delivery failures, the assessment and documentation of the "deemed to own" exception, the collection and validation of information from third parties, recordkeeping and audit trail requirements, and associated reporting, monitoring and escalation processes. Given the scope and complexity of these changes, firms will require sufficient time to assess requirements, develop and implement policies and procedures, make any necessary technology enhancements, coordinate with third-party service providers and counterparties, and conduct appropriate testing prior to implementation.

Accordingly, we believe that an implementation period of no less than six months following publication of the final amendments would be more appropriate and would better support consistent and effective implementation across the industry.

Conclusion

SIMA is pleased to have the opportunity to comment on the Proposed Amendments. We support the overall direction of the Proposed Amendments and agree that a principles-based approach is preferable to a prescriptive mandatory close-out regime. However, we believe additional guidance is necessary to provide greater clarity regarding dealer obligations, the practical application of the proposed requirements, and the operation of the "deemed to own" exception across various market structures and intermediary arrangements.

We also encourage CIRO to further consider the operational, technological and market impacts associated with the proposal, including the challenges of implementing and evidencing compliance within the proposed timelines. Given the scope of the required supervisory, operational and technology enhancements, we believe an implementation period of no less than six months following publication of the final amendments would be necessary to support consistent, effective and industry-wide implementation.

Please feel free to contact me by email at amitchell@sima-amvi.ca. I would be pleased to provide further information or answer questions you may have, and welcome further engagement with CIRO as it considers the Proposed Amendments and the development of any related guidance.

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Yours sincerely,

THE SECURITIES AND INVESTMENT MANAGEMENT ASSOCIATION

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