

Appendix A Summary of Comments

Comment letters were received from:

- TD Asset Management
- OpsRisk Limited
- Investment Industry Association of Canada (IIAC)
- Caisse de dépôt et placement du Québec
- CNSX Markets Inc.
- Canadian Foundation for Advancement of Investor Rights (FAIR Canada)

The comment letters are available on the OSC's and IIROC's websites (www.osc.gov.on.ca; www.iiroc.ca)

Question 1: Do you believe that more frequent aggregate short sale summaries should be made publicly available? If so, what should be the frequency of such short sale summaries (e.g. weekly, daily)? What would be the costs and benefits to issuers, investors and Participants from making this information public?

One commenter believed that existing order marking requirements were sufficient to detect abusive activity. Further, if a reporting requirement is implemented, it should only be to the regulator, as a short sale summary report could be misleading without access to trade data on all domestic and foreign markets on which a security trades. Publishing the report could also result in gaming. Another commenter believed that more current data may inform better investment decisions.

There was no consensus on the ideal frequency of short sale summaries, with one commenter suggesting weekly, another semi-monthly and a third suggesting that monthly reporting would not be sufficient.

As noted above, IIROC now publishes a semi-monthly summary of short sales on Canadian marketplaces in addition to the consolidated short position report.

Question 2: In addition to semi-monthly (or more frequent) aggregate short sale summaries, should there be public disclosure of individual short sale transaction data on an anonymous basis? If so, should the publication of this information be time deferred (e.g. one day, one month, etc.)? What would be the costs and benefits to market participants from making this information public?

Letters that specifically responded to this question did not support disclosure of individual short sale data. One noted that short sales are often part of a complex strategy and details of individual sales would not be useful. Another agreed that anonymous information would not provide sufficient information to discern patterns or a trading strategy, and so would not be more useful than aggregate data.

One commenter noted that the short sale marker is intended to identify potentially abusive behaviour, not to provide information, and that the information could be misleading as many short positions are offset.

Another commenter stated that if this requirement is adopted, it should be on an anonymous basis unless there is a size threshold for public disclosure. The commenter added that it should not be necessary to defer publication provided an investor has an opportunity to request an exemption from immediate reporting.

Question 3: Should data on the usage of the “short-marking exempt” designation in relation to trading activity of a particular security be made publicly available? If so, what should be the frequency of the release of such data?

Two commenters believed the information would be of limited or no use. Another believed it would be useful, but not as useful as information on directional short sales, and might not need to be reported as frequently as directional short sales.

Question 4: Is the existing public disclosure of short positions adequate? If not, should the information be available for unlisted securities such as debt securities and foreign-listed securities traded on alternative trading systems? Should there be one report covering all securities traded on marketplaces? Should custodians and dealers that are not Participants report their short positions?

Two commenters believed that in theory short reports should cover all securities and entities. However, they noted that it may be unduly costly to expand the requirement, there may not be demand for information about foreign-listed and debt securities, and requiring custodians and non-Participants to report may not result in data that is materially different from what is contained in existing reports.

One commenter believed the current data is inaccurate and misleading, and regulators should rely instead on IIROC’s ability to monitor short selling activity.

One commenter believed the 100 largest short positions in TSX-listed securities and the 100 largest changes in short position in those securities should be published. In addition, public disclosure of individual short positions should be required when a threshold (e.g. 5%) is crossed.

Question 5: Is the information in the Consolidated Short Position Report (CSPR) timely? Should this information be made available on a more frequent basis?

One commenter believed that CSPR information is timely and sufficient and the cost of more frequent reporting needs to be considered. Another believed the CSPR is inaccurate and should be discontinued.

Question 6: Currently, are measures for failed trades transparency warranted? If you agree:

- ***What types of information on failed trades would be most useful to participants (some options are described above) and what should be the frequency of such disclosure?***

- *In addition to equity and other securities processed through the CNS facilities at CDS, do other types of securities or products (e.g. fixed income securities) have FTD rates suggesting that similar failed trade transparency measures should apply to those securities? Please be specific in your answer.*
- *What would be the costs and benefits, if any, to market participants in implementing such measures?*

If you believe that measures for failed trades transparency are currently not required, why do you think this information would not be helpful to issuers, investors or Participants?

Two commenters noted that previous IIROC studies showed that fails are not a problem in Canada and that IIROC and the OSC receive fails-to-deliver data from CDS. One of those commenters added that it will be difficult for Participants to assess and analyse the data. The other commenter suggested that, instead, regulators consider a larger, full review of aged fails, both long and short and including debt securities, with a focus on recurring names and Participants.

One commenter believed more extensive failed trade reporting was needed. Data on fails and short interest are necessary for ongoing monitoring and analysis of operational risk, and better data is available in the United States. The commenter stated that the magnitude, volatility and pattern of short selling and fails are operational risks.

One commenter believed that failed trade reporting might better inform trading decisions, but that the current UMIR failed trade reporting provisions were sufficient to identify problems.

General Comments

One commenter generally supported the proposed measures.

One commenter noted with respect to several of the options that any additional costs must be weighed against the benefits.

One commenter generally believed that measures to increase transparency of short selling and failed trades would only be useful to indicate potential problems in borrowing a security.