

# CSA AND CIRO PROVIDE UPDATE ON SHORT SELLING REGULATORY REGIME REVIEW

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On November 16, 2023, the Canadian Securities Administrators (the “**CSA**”) and the Canadian Investment Regulatory Organization (“**CIRO**”) published CSA/CIRO Staff Notice 23-332 *Summary of Comments and Responses to CSA/IIROC Staff Notice 23-329 Short Selling in Canada* (the “**Staff Notice**”), summarizing comments received in response to CSA/IIROC Staff Notice 23-329 *Short Selling in Canada* (the “**Request for Comments**”) and next steps for the CSA and CIRO. Lawyers in McMillan’s Capital Markets Group prepared and submitted a comment letter, in their personal capacities, in response to the Request for Comments, which can be found [here](#).

The Staff Notice noted that “there was no consensus [from commenters] on the appropriate regulatory regime for short selling”. The Staff Notice indicated that the comment letters suggested potential areas of further study and analysis, including: pre-borrowing requirements, different treatment of junior issuers with respect to short selling, shortening of the timeline for reporting failed trades, transparency of short sales, and mandatory close-outs or buy-ins of short positions.

While no specific changes to regulatory provisions are being proposed at this time, the Staff Notice stated that “CIRO is actively considering ways to clarify and support its existing requirement to have a reasonable expectation to settle a short sale trade on the settlement date”, with CIRO anticipating that proposals aimed at achieving such clarity will be published in early 2024. We expect that these new proposals will consider whether the adoption of pre-borrow or locate requirements will be necessary in Canada. We continue to believe meaningful and helpful changes could be made in this regard and we applaud the efforts of CIRO to re-examine or strengthen its regulatory approach to ensure that short sale trades are settled on settlement date.

In addition, the CSA and CIRO anticipate forming a staff working group in early 2024 to more broadly examine short selling issues in the Canadian market context, starting with an analysis of potential mandatory close-out or buy-in requirements. The Staff Notice highlights that any proposals which result from this working group, or otherwise, will consider the impact of the move to a T+1 settlement cycle.

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### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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