NATIONAL BANK
CAPITAL MARKETS

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BY ELECTRONIC MAIL

Theodora Lam
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Dear Ms. Lam:

Re: Proposed Amendments Respecting Client Delivery Obligations

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National Bank Financial Inc. ("NBF") appreciates the opportunity to comment on CIRO's Proposed Amendments Respecting Client Delivery Obligations (the "Proposed Amendments").

We support CIRO's continued efforts to improve settlement discipline and address risks associated with failures to deliver, particularly in situations where securities are not held by or under the control of the dealer. We also commend CIRO for incorporating prior industry feedback and shifting away from prescriptive mandatory close-out requirements toward a more principles-based, outcomes-oriented framework.

That said, certain elements of the Proposed Amendments would benefit from further clarification or refinement to support implementation. In their current form, some aspects may risk introducing regulatory imbalance, operational uncertainty, and implementation challenges. In particular, the Proposed Amendments:

- May result in dealers being held accountable for outcomes influenced by third parties outside their direct control;

- Could introduce interpretive ambiguity and operational complexity;
- May not fully reflect the realities of a fragmented market structure where a significant portion of market participants are not CIRO-regulated; and
- Could require significant operational, technological, and governance adjustments across dealer organizations.

Desire for a More Coordinated Market-Wide Approach

One important consideration is that the Proposed Amendments apply exclusively to CIRO Dealer Members, while failures to deliver may originate from a broader set of market participants (e.g., institutional clients, foreign intermediaries, custodians, or exempt market participants).

In practice, Dealer Members may have limited visibility into or control over the underlying securities or settlement process, particularly in DAP/RAP or institutional trading arrangements- and may have limited ability to influence outcomes where external parties are involved.

This creates an imbalance whereby CIRO Dealer Members are subject to regulatory accountability without corresponding control, while non-CIRO participants—despite being integral to the settlement chain—are not subject to similar obligations.

We are concerned that this imbalance may reduce the effectiveness of the Proposed Amendments and create the potential for regulatory arbitrage, including:

- Migration of activity to non-CIRO-regulated channels;
- Competitive disadvantages for CIRO Dealer Members; and
- Reduced client access or increased trading constraints.

We believe that further coordination across the broader regulatory and market ecosystem could enhance the effectiveness of the Proposed Amendments and help ensure alignment between responsibility and control. This could include:

- Engagement with CSA members to explore complementary expectations for non-CIRO registrants and market participants; and
- Continued collaboration with custodians, clearing agencies, and market infrastructure providers to strengthen end-to-end settlement discipline.

Policies and Procedures

We support the requirement for dealers to establish, maintain, and apply policies and procedures reasonably designed to detect and address client failures to deliver. We note, however, that implementation may vary depending on account structures and existing operational constraints.

For example, DAP/RAP arrangements limit pre-settlement visibility into asset location. Additionally, institutional dealers often rely on custodial confirmations, client representations, and third-party intermediaries. It would help, therefore, if expectations could be framed in a manner that reflects what is reasonably within a dealer's control.

To support practical implementation, we suggest dealers be permitted to:

- rely on established policies & procedures (PnP) and only specifically document cases where we deviated from the established PnPs
- adopt a risk-based approach to their supervisory frameworks, including enhanced monitoring for clients with recurring or material fails; and
- Leverage existing surveillance and control frameworks, where these are appropriately designed.

Additional guidance or illustrative examples (e.g., escalation practices) would further promote consistency across the industry.

Five-Day Action Requirement for Short Sales

The requirement to commence action within five business days for short sale fails raises practical concerns, particularly in institutional and cross-border contexts where resolution timelines depend on custodians and clearing agents outside the dealer's control.

We recommend that CIRO adopt a flexible interpretation of "commencing action," recognizing that appropriate steps may include proportionate measures such as client outreach or conditional account restrictions, rather than solely punitive actions (e.g., buy-ins).

Absent such flexibility, dealers may be compelled to escalate prematurely, potentially introducing unnecessary market disruption.

Extended Fail Trade Reporting (EFTR)

We note that the current EFTR framework reflects established processes and systems across the industry. Any modification to this timeline would likely require system changes and process adjustments.

Additionally, a shorter reporting window may result in increased reporting volumes, including a higher proportion of fails attributable to routine operational factors. We suggest maintaining the current reporting timeline for failures unrelated to short sales.

Enforceability Considerations

CIRO Members cannot always easily "detect and address" client failures to deliver due to:

- Failures to deliver can involve multiple intermediaries (custodians, prime brokers, global agents).
- Institutional dealers and their clients are accustomed to relying on standard industry agreements that may not contain the necessary provisions to compel timely delivery.
- For cross-border activity, clients may be subject to foreign regulatory frameworks that could interfere with the Proposed Amendments.
- Failures may arise from routine operational factors (e.g., processing delays, cross-border settlement mismatches, corporate actions).

We believe it would be helpful for expectations to recognize this complexity and to account for the practical limits of dealer influence in certain circumstances.

Allocation of Responsibility

The Proposed Amendments place the compliance obligation on the investment dealer with the client relationship. We are generally supportive of this approach, however, for it to be workable client-facing dealers should be permitted to reasonably rely on information provided by other parties in the transaction chain such as clearing broker, executing brokers, clients, custodians, etc.

We also note that in some cases, such as omnibus account structures, it is not always evident who has the client-facing relationship.

We recommend CIRO provide guidance for complex structures, including omnibus accounts, IB/CB arrangements, and prime brokerage models.

Deemed to Own Exception

We see a practical need for the "deemed to own" exception included in the Proposed Amendments. To ensure consistent industry implementation, we encourage CIRO to further clarify the evidentiary expectations related to this exception including documentation requirements.

Implementation Considerations

To develop the monitoring, escalation and documentation workflows predicated by the Proposed Amendments, CIRO dealer members will require significant cross-functional coordination across front office, compliance, and operational teams. Additionally, enhancements to surveillance and other systems will need to be implemented.

To help with implementation firms should be permitted flexibility to i) leverage existing controls and infrastructure where they meet the objectives of the proposal and ii) follow a risk-based approach to compliance consistent with the dealer's level of control.

Assuming dealers are afforded flexibility on implementation, we recommend a **minimum of 6-month** implementation period following finalization of the rules.

Conclusion

We support CIRO's objective of strengthening the regulatory framework governing client delivery obligations and reducing settlement risk in Canadian markets. Additionally, we support CIRO's shift away from prescriptive mandatory close-outs to a principles-based conduct framework. With further clarification and coordination, we believe the Proposed Amendments can achieve these objectives effectively while supporting practical implementation.

We would welcome the opportunity to discuss our comments further or provide additional input as CIRO advances this initiative.

Enclosed are NBF's responses to CIRO's consultation questions.

Sincerely,

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Question 1 – Additional Steps to Remedy Client Deliver Failures

To deal fairly with clients and without jeopardizing important business relationships dealers should be afforded flexibility on how they choose to address settlement failures. The actions outlined in section 2.3 of the Bulletin provide several workable options for resolution, but dealers should not be prevented from taking other reasonable approaches that achieve a comparable outcome.

Question 2 – Responsibility on Client-Facing Dealers

We agree with the proposed approach of assigning responsibility to the dealer best positioned to engage directly with the client.

In introducing/carrying arrangements, the introducing broker typically maintains the client relationship and is therefore best placed to inform the client of settlement timelines and obtain delivery commitments.

Similarly, in originating/executing arrangements, the originating dealer holds the client relationship and should retain primary responsibility for the behaviours of the client.

Carrying and executing brokers can assist introducing/originating brokers by providing timely reporting or communication to the broker responsible to ensure effective oversight.

Question 3 – Five-Day Timeline to Commence Action for Short-Sales

For routine settlement issues the proposed timeline of five business days past settlement date for short sale-related failures to deliver should provide sufficient time for operational resolution.

Dealers may, however, occasionally require flexibility for market-specific settlement cycles and exceptional circumstances such as corporate actions or operational disruptions.

We request confirmation that “commencing action” includes documented client outreach and/or internal escalation.

Question 4 – Shortening of Extended Failed Trade Reporting Timeline

Shortening the extended failed trade reporting (EFTR)requirement to five business days so that it aligns with the proposed intervention timeline for short sales, raises several considerations.

Dealers have well established processes and systems to accommodate the current EFTR rules. Shortening the current 10-day reporting period would require system enhancements to support the accelerated reporting and otherwise disrupt current processes.

The shortened 5-day timeline will also result in increased reporting to CIRO. The bulk of failed trades reported would likely be the result of benign operational factors which do not risk jeopardizing market integrity but nonetheless may require more than 5 days to remedy. Shortening the EFTR timelines, therefore, risks sending incorrect signals to CIRO on settlement discipline in the marketplace.

Question 5 – Additional Material Impacts

The Proposed Amendments have the potential to materially impact several areas of our firm and our interaction with clients and intermediaries.

A principal consideration is the impact the proposals will have on our ability to service clients. For example, the implementation of rigid controls, such as trade restrictions, could adversely affect client trading flexibility.

The compliance and operational efforts associated with the Proposed Amendments should also not be overlooked. Existing internal workflows will need to be reexamined and likely overhauled to meet the proposed requirements. Given the scale of our trading activities it is likely a dedicated project team will have to be established internally to oversee our firm's adoption of the Proposed Amendments.

Enhanced detection, reporting, and alert functions will require dealers to secure proper resourcing. For dealers actively transacting cross-border the impacts will be further magnified given increased settlement complexity and the potential effects of foreign regulatory frameworks.

Question 6 – Overall Assessment of Benefits and Impacts

We generally agree with CIRO's qualitative assessment that the Proposed Amendments will improve market integrity by reducing settlement failures and harmonizing industry practices in this area. However, it is uncertain whether these benefits outweigh some of the potential adverse impacts:

- Without corresponding action from the CSA, the Proposed Amendments introduce regulatory asymmetry which further fragments our capital markets and risks shifting activities away from CIRO regulated entities.
- The Proposed Amendments introduce material changes to dealers' existing policies, procedures, monitoring tools, and reporting systems. The cost implications stemming from these changes could be material.

Question 7 – Implementation Period

We recommend an implementation period of **at least six months** following publication of the final amendments. This is primarily to allow sufficient time for internal policy and procedures updates and systems development and testing. However, time will also need to be devoted to staff training and raising awareness with clients and counterparties. We would also need to undertake a review of legal agreements with counterparties to determine necessary amendments considering our implementation of the Proposed Amendments.