Scotiabank

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Re: **CIRO Notice 26-0066: Proposed Amendments Respecting Client Delivery Obligations**

Scotia Capital Inc. ("Scotiabank") appreciates the opportunity to comment on Canadian Investment Regulatory Organization's proposal to replace the now-withdrawn proposal to introduce a mandatory close-out regime with a targeted approach designed to broadly address settlement practices (the "Proposal" or "Proposed Amendments").

Scotiabank is generally supportive of regulatory approaches that rely on dealer policies and procedures designed to address specific marketplace concerns, as policies and procedures can be tailored to the specific circumstances and business model of each dealer and thus encourage a right-sized and risk-managed approach in industry.

As related to the Proposal, we believe CIRO's approach strikes an appropriate balance between prescription and implementation complexity in achieving the policy goal of minimizing settlement fails-to-deliver. We believe the requirement's extension to all transactions, rather than only those that fail in CNS or result from short sales, supports settlement discipline across the Canadian equity market.

We thank CIRO for the thoughtful consultation process related to the mandatory close-out provisions, including through pivoting the policy process towards a more measured, appropriate and in our view effective alternate solution.

We provide certain specific additional suggestions in our responses to CIRO's questions below.

Answers to Specific Questions

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 believe the Proposed Amendments and any associated guidance should reinforce the expectation that dealers maintain policies and procedures designed to identify, escalate, and promptly report patterns of client behavior indicative of repeated settlement failures or conduct that is inconsistent with the spirit of fair and orderly principles of trade.

Such policies and procedures, established by dealers in a manner suitable for their business model, should clearly articulate the specific supervisory and remedial actions to be undertaken to deter and address such patterns of behaviour. In addition, these policies and procedures should contemplate mechanisms that enable dealers to report instances where a client appears to be deliberately engaging in repeated settlement fails involving multiple dealers, for example where clients shift a settlement obligation from one prime broker to another. Such reporting (to CIRO or other regulatory authorities) would promote earlier identification of abusive or unfair practices and support enhanced market integrity.

CIRO should consider broadening its gatekeeper filing requirements to capture instances of persistent trade settlement failures from specific clients, even where such failures are resolved prior to triggering the extended failed trade reporting thresholds. This would require CIRO dealer members to monitor and report recurring delivery failures associated with the same particular client, rather than limit reporting to failures exceeding the current 10-day settlement threshold.

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.*

Scotiabank is of the view that a measure of accountability should also be assigned to carrying brokers. Carrying brokers should be accountable where they have received proper instructions from an introducing broker and the client. Similarly, prime brokers should maintain robust policies and procedures to address scenarios involving third party executions. Both carrying brokers and prime brokerage service providers should be required to act on instructions in a timely manner, especially where the introducing or executing broker and the client have fulfilled their obligations to facilitate settlement or prevent a trade from failing. Where a carrying broker or prime service provider fails to act appropriately, responsibility should be appropriately attributed.

This framework should also recognize that certain prime services are provided by banking entities that are not CIRO member dealers and therefore fall outside CIRO's regulatory scope. To avoid imposing a higher standard on CIRO member dealers and to mitigate the risk of regulatory arbitrage, any requirements imposed on prime brokers that are CIRO members should be weighed carefully against standards set for similar banking entities. Accordingly, we encourage CIRO to consult and coordinate with other regulatory bodies (including provincial regulators of clearing agencies and federal regulators of banking entities) to ensure that there is a level playing field between various CDS members who are subject to varying regulatory regimes.

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?*

Scotiabank agrees with the proposed timeline of five business days past the settlement date as an appropriate period within which dealers must commence action to address a client failure to deliver related to a short sale. Five business days provides dealers with sufficient time to conduct the necessary investigations, coordinate with clients, and initiate remedial steps, while also ensuring that persistent settlement failures are addressed promptly. This timeline strikes a reasonable balance between operational practicality and the need to uphold market integrity by minimizing prolonged settlement failures.

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.*

Scotiabank is of the view that the timeline for extended failed trade reporting should remain unchanged at ten days past settlement date, as currently set out in UMIR 7.10. The existing ten-day period provides CIRO member dealers with sufficient time to properly investigate and resolve extended failed trades, ensuring operational flexibility and thoroughness. Aligning the timeline with the proposed five business days for short sales may not adequately account for the complexities and variations associated with extended failed trades, which often require additional time for resolution.

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.*

While we believe CIRO's proposal is comprehensive, we would appreciate further clarity in several areas:

- Expectations on dealers in situations where a buy-in executed in the market itself results in a fail.
- The degree to which CIRO's expectations for policies & procedures requirements apply to settlements in other regions (i.e. in situations where a dealer executes a sale in a foreign security for one of its clients).
- The degree to which the Proposal applies in situations where a dealer acts purely as a settlement agent on behalf of an end client.
- The application of failed trade penalty charges imposed by certain jurisdictions.

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 are supportive of CIRO's qualitative assessment of the benefits and impacts of the Proposed Amendments. We greatly appreciate CIRO's efforts in consulting with industry stakeholders to ensure the amendments reflect a balanced and workable solution for all parties involved. This collaborative approach demonstrates CIRO's commitment to promoting and safeguarding market integrity through operationally practical rules and guidance.

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 recommend that the implementation period be set at a minimum of six months following the publication of the final amendments. This timeframe will provide CIRO members with adequate time to establish and update relevant policies and procedures and test their effectiveness, as well as to implement any necessary operational changes required to comply with the new proposed requirements. Further, a longer implementation window would permit time for industry consensus on best practices to emerge through industry forums such as CCLS. Such an approach would help ensures that all affected parties can approach the transition in a thoughtful and systematic manner, reducing the risk of errors or disruption to business operations.

We appreciate the opportunity to comment on this important proposal.

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