Appendix "B"

Comments Received in Response to

Market Integrity Notice 2007-017 – *Request for Comments - Provisions Respecting Short Sales and Failed Trades*

On September 7, 2007, Market Integrity Notice 2007-017 – *Request for Comments – Provisions Respecting Short Sales and Failed Trades* was published requesting comments on proposed amendments to UMIR respecting various aspects of short sales and failed trades ("Short Sale and Failed Trades Proposal"). Comments were received on the Short Sale and Failed Trades Proposal from:

Absolute Software Corporation ("Absolute")
Acuity Investment Management Inc. ("Acuity")
Alternative Investment Management Association ("AIMA")
BMO Nesbitt Burns ("BMO")
Canaccord Capital ("Canaccord")
Canada Pension Plan Investment Board ("CPPIB")
Canadian Security Traders Association, Inc. ("CSTA")
Canadian Trading and Quotation System Inc. ("CNQ")
Donald Coates ("Coates")
Connor, Clark, & Lunn Investment Management Ltd. ("CCLIM")
Globex Mining Enterprises Inc. ("Globex")
International Association of Small Broker-Dealers and Advisers ("IASBDA")
Investment Industry Association of Canada ("IIAC")
ITG Canada Corp. ("ITG")
Morgan Stanley Canada ("MS")
David Patch ("Patch")
Platinum Group Metals Ltd. ("Platinum")
RBC Dominion Securities ("RBC")
Sentry Select Capital Corp. ("Sentry")
Simon Romano ("Romano")
Swift Trade Inc. ("Swift")
TD Newcrest ("TD")
Trinidad Energy Services Income Trust ("Trinidad")
TSX Group Inc. ("TSX Group")
Virgin Metals Inc. ("Virgin")

A copy of each comment letter submitted in response to the Short Sale and Failed Trade Proposal is publicly available on the IIROC website (www.iiroc.ca under the heading "Policy" and sub-heading "Market Proposals/Comments"). The following table presents a summary of the comments received on the Short Sale and Failed Trade Proposal together with the response of IIROC to those comments. Column 1 of the table highlights the revisions to the Short Sale and Failed Trade Proposal made by IIROC in response to these comments and the comments of the Recognizing Regulators.

Text of Provisions Following Adoption of the Amendments (Changes from the Short Sale and Failed Trade Proposal Highlighted)	Commentator and Summary of Comment	IIROC Response to Comment and Additional IIROC Commentary
1.1 Definitions **"failed trade"** means a trade resulting from the execution of an order entered by a Participant or Access Person on a marketplace on behalf of an account and (a) in the case of a sale, other than a short sale, the account failed to make available securities in such number and form; (b) in the case of a short sale, the account failed to make: (i) available securities in such number and form, or (ii) arrangements with the Participant or Access Person to borrow securities in such number and form; and (c) in the case of a purchase, the account failed to make available monies in such amount, as to permit the settlement of the trade at the time on the date contemplated on the execution of the trade provided a trade shall be considered a "failed trade" irrespective of whether the trade has been settled in accordance with the rules or requirements of the clearing agency.	**BMO** – Does not fundamentally disagree with proposed definition of "failed trade" but has concerns regarding administrative burden of failed trade reporting.	See responses to comments on Rule 7.10.
"short sale" means a sale of a security, other than a derivative instrument, which the seller does not own either directly or through an agent or trustee and, for this purpose, a seller shall be considered to own a security if the seller, directly or through an agent or trustee: (a) has purchased or has entered into an unconditional contract to purchase the security, but has not yet received delivery of the security; (b) owns ~~directly or through an agent or trustee~~ another security that is convertible or exchangeable into that security and has tendered such other security for conversion or exchange or has issued irrevocable instructions to convert or exchange such other security; (c) has an option to purchase the security and has exercised the option; (d) has a right or warrant to subscribe for the security and has exercised the right or warrant; or	**Romano** – The "agent or trustee" qualification in paragraph (b) of the definition of "short sale" should also apply to (a), (c), (d) and (e).	IIROC has made the suggested change and in doing so has made certain consequential amendments to Part 3 of Policy 1.1 and to clause (e) of the definition to ensure consistent structure.

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(e) ~~is making a sale of a security that trades on a when issued basis and the seller~~ has entered into a contract to purchase a security that trades on a when issued basis ~~such security which~~ and such contract is binding on both parties and subject only to the condition of issuance ~~of~~ or ~~-~~distribution of the security, but a seller shall be considered not to own a security if: (f) the seller has borrowed the security to be delivered on the settlement of the trade and the seller is not otherwise considered to own the security in accordance with this definition; (g) the security held by the seller is subject to any restriction on sale imposed by applicable securities legislation or by an Exchange or QTRS as a condition of the listing or quoting of the security; or (h) the settlement date or issuance date pursuant to: (i) an unconditional contract to purchase, (ii) a tender of a security for conversion or exchange, (iii) an exercise of an option, or (iv) an exercise of a right or warrant would, in the ordinary course, be after the date for settlement of the sale.		
"Short Sale Ineligible Security" means a security or class of securities that has been designated by a Market Regulator to be a security in respect of which an order that on execution would be a short sale may not be entered on a marketplace for a particular trading day or trading days.	**Absolute** – Difficult to rationally implement due to the challenge of determining appropriate characteristics to qualify for inclusion on the list.	IIROC believes that a subjective rather than an objective test is the most appropriate. IIROC intends to look at the "situation" of a particular security in relation to its historic "record" of trading activity.
	BMO – Generally, supports ability to designate, but would like further clarification as to threshold of failed trades or other factors used to determine designation and queries whether such factors will be published.	The criteria which IIROC would use in pursuing a designation of a security were set out in the Market Integrity Notice containing the Proposed Amendments. The Amendments vary the Proposed Amendments and incorporate these criteria as Part 4 of Policy 1.1. If, based on reports of failed trades submitted to IIROC in accordance with the Rule 7.10 or other sources of information, IIROC became aware of systemic failures to settle trades in a particular security or class of securities that were related to short selling activity, the Amendments permit IIROC to designate the particular security or class of securities as being ineligible for a short sale in the interest of a fair and orderly market. Since the study by IIROC of

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		failed trades indicated that short selling was not the primary reason for the existence of failed trades, IIROC is of the view that a statistical threshold would not by itself be appropriate and IIROC must determine that short selling is exacerbating the situation before determining to seek to designate the security as being ineligible for further short selling.
	Canaccord – Notes that removing a security or class of securities from the new pricing regime may entail a great deal of effort from multiple vendors, exchanges and ATSs to build an exception facility.	IIROC expects that the designation of a security as being a "Short Sale Ineligible Security" would be a relatively "rare" occurrence. Provision for system enforcement of the prohibition on short sales could be at the level of marketplaces, service providers and/or the Participants and Access Persons. If the restriction is not system enforced at one of these levels, IIROC would expect a Participant to employ its "special handling procedures" to route sell orders for the particular security to a trade desk.
	CSTA – IIROC must further quantify reasons for designation as ineligible for short sale. Failed trades may not be the only consideration.	See response to BMO comment above.
	IIAC – In the absence of specific criteria and guidelines, IIROC should allow an efficient market to dictate.	The test is the ability to maintain a fair and orderly market. IIROC does not believe that a uniform pre-determined threshold is appropriate for varying market conditions and types of securities. See response to BMO comment above.
	ITG – An "ineligible" designation may have a negative impact as such trades provide needed liquidity. More appropriate for IIROC to use UMIR 2.2 to address integrity issues.	The application of the restrictions in Rule 2.2 on the ability to make a short sale is determined by the circumstances of the particular Participant or Access Person. The "Short Sale Ineligible" designation would apply when the failures to settle are becoming systemic such that a fair and orderly market for the particular security ceases to exist or there are other recognized risks to market integrity arising out of continued short selling of the security. IIROC questions whether a trade that has a significant likelihood of failing or that is a risk to market integrity has provided "needed liquidity".

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	MS, TD and **TSX** – Supports IIROC ability to monitor, intervene and designate a security or class as ineligible to be sold short where market conditions warrant.	IIROC acknowledges support for the proposal.
	RBC – Clearly defined criteria are needed with clarification on how the list will be communicated. Asks: Can a dealer short if he can locate, even if security is on the list?	See response to BMO comment above. If IIROC designated a security, IIROC would intend to communicate that fact through the issuance of a Rules Notice. The purpose of the designation would be to preclude any short sale even if the seller can locate a source to lend the security.
	Romano – Proposed definition should allow for IIROC to establish terms and conditions under which otherwise ineligible short sales would be permitted. Alternatively, current exemptions in UMIR 3.1(2) should be allowed in all cases.	IIROC has the ability to grant exemptions on a case by case basis pursuant to Rule 11.1. However, IIROC acknowledges that market makers (for both the equity and underlying derivatives) may need to complete short sales even in circumstances when the security is otherwise ineligible for a short sale. For this reason, the Amendments revised the Proposed Amendments and added subsections (2) and (3) to what will become Rule 3.2.
	Trinidad – Requests criteria be set out publicly.	See response to BMO comment above.
3.1 Restrictions on Short Selling (1) Except as otherwise provided, a Participant or Access Person shall not make a short sale of a security on a marketplace unless the price is at or above the last sale price. (2) A short sale of a security may be made on a marketplace at a price below the last sale price if the sale is: (a) a Program Trade in accordance with Marketplace Rules; (b) made in furtherance of the applicable Market Maker Obligations in accordance with the Marketplace Rules; (c) for an arbitrage account and the seller knows or has reasonable grounds to believe that an offer enabling the seller to cover the sale is then available and the seller intends to accept such offer immediately; (d) for the account of a derivatives market maker and is made: (i) in accordance with the market making obligations of the seller in connection with the		Given the initiatives which are being undertaken or proposed by foreign securities regulators with respect to the conduct of short sales, IIROC has determined to defer consideration of the proposal to remove price restrictions on all short sales. The Impact Study will analyze the effect of the repeal of price restrictions on the trading of securities inter-listed between the TSX and other exchanges in the United States that became effective in July of 2007. Until additional information can be gathered on the effect of the price restrictions, Rule 3.1 will be retained and the provision in the Proposed Amendments that would have been Rule 3.1 will be renumbered as Rule 3.2.

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security or a related security, and (ii) to hedge a pre-existing position in the security or a related security; (e) the first sale of the security on any marketplace made on an ex-dividend, ex-rights or ex-distribution basis and the price of the sale is not less than the last sale price reduced by the cash value of the dividend, right or other distribution; (f) the result of: (i) a Call Market Order, (ii) a Market-on-Close Order (iii) a Volume-Weighted Average Price Order (iv) a Basis Order, or (v) a Closing Price Order; (g) a trade in an Exchange-traded Fund; or (h) made to satisfy an obligation to fill an order imposed on a Participant or Access Person by any provision of UMIR or a Policy.		
3.2 Prohibition on Entry of Orders (1) A Participant or Access Person shall not enter an order to sell a security on a marketplace that on execution would be a short sale: (a) unless the order is marked as a short sale in accordance with subclause 6.2(1)(b)(viii) or subclause 6.2(1)(b)(ix); or (b) if the security is a Short Sale Ineligible Security at the time of the entry of the order. (2) Clause (a) of subsection (1) does not apply to an order automatically generated by the trading system of an Exchange or QTRS in accordance with the Marketplace Rules in respect of the applicable Market Maker Obligations. (3) Clause (b) of subsection (1) does not apply to an order entered on a marketplace: (a) in furtherance of the applicable Market Maker Obligations in accordance with the Marketplace Rules of that marketplace; (b) for the account of a derivatives market maker and is entered:	**Absolute, Globex and Platinum** – The removal of the restrictions threatens investors in low-volume Canadian issuers and the issuers themselves with an increased likelihood of market manipulation. The volatility and downward price pressure associated with minimally restrained short selling can artificially reduce shareholders' returns and negatively impact small cap issuers' ability to access capital as share prices decouple from underlying fundamentals and react to amplified market pressures. The change could cause issuers and investors to lose confidence in the fairness of Canadian markets.	In the ordinary course, the objective of a short seller is no different than the seller of a security from a long position in that they want to maximize the proceeds of any sale. Persons who enter orders with the intention of effecting an "artificial" price (either through a purchase or sale or through the use of margin or a short sale) is engaging in manipulative behaviour which is proscribed by existing rules and detected by existing alerts in the monitoring systems of IIROC.
	Acuity and **Sentry** – Opposed to the outright repeal of price restrictions due to potential to increase volatility and create unnecessary concern on the part of retail investors.	As indicated in the Market Integrity Notice, a significant number of securities in the United States (including the Nasdaq Small Cap Market) were never subject to price restrictions on short sales and others were covered by the Pilot Project described in the notice. IIROC will undertake an "Impact Study" to determine if the repeal of price restrictions on inter-listed securities has any measurable

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(i) in accordance with the market making obligations of the seller in connection with the security or a related security, and (ii) to hedge a pre-existing position in the security or a related security; (c) as part of a Program Trade in accordance with Marketplace Rules; (d) to satisfy an obligation to fill an order imposed on a Participant or Access Person by any provision of UMIR or a Policy; or (e) that is of a class of security or type of transaction that has been designated by a Market Regulator.		effect on price volatility in the Canadian context (e.g. have the inter-listed securities had a pattern of volatility that is statistically significant from the pattern experienced by Canadian securities that remain subject to price restrictions on short sales). The Pilot Project in the US indicated that the repeal of price restrictions on short sales resulted in lower volatility for larger stocks but there were some evidence of increased volatility for smaller and less liquid securities.
	AIMA, IIAC, ITG, Swift and **TD** – Supports the repeal of price restrictions.	IIROC acknowledges support for the proposal.
	BMO, CPPIB and **CSTA** - Supports the repeal of price restrictions. Elimination of price restrictions will have the effect of facilitating efficient price discovery and enhancing liquidity and best execution.	IIROC acknowledges support for the proposal.
	Canaccord – Supports the repeal of price restrictions but acknowledges that less liquid stocks may prove more problematic (and IIROC should monitor to ensure no undue pressures).	The repeal of price restrictions on short sales would not effect existing "anti-manipulation" provisions under UMIR. As short sales will be marked, IIROC would, in the event of the repeal of all price restrictions on short sales, be able to continue to monitor the effect of short selling activity using existing alerts for the detection of possible manipulative behaviour. This is currently the case with respect to the monitoring of trading on inter-listed securities that are covered by the Inter-listed Exemption.
	CCLIM – Supports the repeal of price restrictions as such restrictions add to trading costs, reduce market efficiency and do not prevent manipulation. Existing restrictions inhibit efficient price discovery by requiring a "passive execution approach to short sales" thereby sacrificing "immediacy and execution certainty". The tick test does not prevent manipulation and reliance should instead be put on Policy 2.2.	IIROC acknowledges support for the proposal.
	CNQ - Tick test is unnecessary as manipulation is prohibited under other provisions of UMIR.	See response to Canaccord above.
	Patch – "Piggybacking" on the US analysis may be disastrous for the Canadian market. US markets have become volatile and	IIROC proposes to test the effect of the repeal of the price restrictions on short sales through an "Impact Study". In the

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	unruly since the removal of the tick test. Eliminating tick test while allowing naked shorting is a recipe for disaster.	near term, such a test will involve a comparison of trading in securities which are currently exempt from short sale restrictions with those that remain subject to such restrictions.
	RBC – Supports the repeal of price restrictions but believes other safeguards must be put into place to prevent unrestrained downward pressure on securities.	See response to Canaccord above.
	Sentry – Allowing unfettered short selling by hedge funds and arbitrageurs would promote "bear raids" against many Canadian long-term savings. Since exchange rules preclude issuer bids being executed on an "uptick", downticking by short sellers would prevent management from acting in best interests of long-term shareholders during "bear raids". Expectation that the absence of price restrictions on short sales will increase volatility and in time of significant market pullbacks it will exacerbate the situation and potentially result in market crashes.	Other rules exist to preclude manipulative behaviour whether it is abusive short selling or "upticking" for the purpose of establishing an artificial price. In the ordinary course, hedge funds or arbitrageurs in executing a short sale have the same objective as a "long-term" investor selling from a long position and that is to maximize proceeds from any sale. Attempts to establish an artificial price, either high or low, is considered manipulative. Issuer bids are to be executed at the lowest price available thereby maximizing value for the remaining shareholders. Purchases under an issuer bid can maintain the price but not increase it. The proper parallel to restricting short sales to a price at or above the last sale price would be to restrict purchases by investors on margin to a price at or below the last sale price.
	Swift – General market manipulation rules are sufficient, and in fact preferable.	See response to Canaccord above.
	Trinidad – Data should be collected through a "pilot project" on the adequacy of existing system monitors before implementation of tick test changes. IIROC must look at all alternatives (since IIROC has stated that US-style locate rule is not the answer).	Existing alerts detect possible manipulative trading behaviour irrespective of whether the order is from a long, short or undeclared short position. IIROC proposes to add additional alerts which detect significant changes in the pattern of short sales for a particular security. IIROC has questioned the applicability of locate requirements to reduce failed trades as there is no evidence in Canada of a relationship between short sales and failed trades.
	TSX Group - Supports the repeal of all price restrictions. System enforced freeze capabilities administered by TSX and TSXV (freezes trading in a security if price movement exceeds predetermined amounts) will assist IIROC in identifying any	IIROC acknowledges that the existing "freeze parameters" used by TSX and TSXV (and also CNQ) will also curtail any move to increased volatility that may accompany a repeal of the price restrictions on short sales.

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	manipulation.	
	Virgin – Concerned that unfettered short selling during a period when a company can not announce the extent of "efforts in-progress" will affect the share price and negatively impact the ability of the company to complete a financing. Also concerned on the impact on the grant of options.	Rates of short selling vary significantly based on the liquidity of the particular security (e.g. more than 30% of sales of securities on the TSX inter-listed with a US market to only 2% to 4% in general for securities listed on the TSXV or CNQ). See also response to Sentry comment above.
6.2 Designations and Identifiers (1) Each order entered on a marketplace shall contain: … (b) a designation acceptable to the Market Regulator for the marketplace on which the order is entered, if the order is: (i) a Call Market Order, (ii) an Opening Order, (iii) a Market-on-Close Order, (iv) a Special Terms Order, (v) a Volume-Weighted Average Price Order, (v.1) a Basis Order, (v.2) a Closing Price Order, (vi) part of a Program Trade, (vii) part of an intentional cross or internal cross, (viii) a short sale which is subject to the price restriction under subsection (1) of Rule 3.1, (ix) ~~[repealed]~~a short sale which is exempt from the price restriction on a short sale in accordance with subsection (2) of Rule 3.1, (x) a non-client order, (xi) a principal order, (xii) a jitney order, (xiii) for the account of a derivatives market maker, (xiv) for the account of a person who is an insider of the issuer of the security which is the subject of the order, (xv) for the account of a person who is a significant shareholder	**BMO** and **CSTA** – Supports the elimination of the "short exempt" marker.	IIROC acknowledges support for the proposal. However, with the decision of IIROC to defer final consideration of that aspect of the Short Sale and Failed Trade Proposal regarding the repeal of all price restrictions on short sales, provisions related to "short exempt" orders will also be deferred.
	ITG - Supports elimination of the "short exempt" marker but concerned as to how this will affect bundled trades and asks for clarification from IIROC on how bundled trades should be marked and entered. Recommend that bundled trades should continue to be entered as a single trade but marked "short".	Generally, a sale order from a long position may not be bundled together with a sell order from a short position and entered on a marketplace as a single order. Reference should be made to Market Integrity Notice 2005-025 – *Guidance – Bundling Orders from a Long and Short Position* (July 27, 2005). Once price restrictions on short sales are removed, one of the principal reasons for wanting to be able to enter a bundled order also will be removed. In the event that a short sale is bundled with a sale from a long position, IIROC has required that the order be marked with the most restrictive applicable markers. IIROC has introduced new procedures to permit the order markings to be corrected in these circumstances. Reference should be made to IIROC Notice 08-0033 - Rules Notice – Guidance Note – UMIR – *New Procedures for Order Marker Corrections* (July 15, 2008).
	MS – Supports continuation of marking "short sale" orders. Existing requirement to mark "short exempt" is unnecessary and undue burden.	IIROC acknowledges support for the proposal. See response to comments of BMO and CSTA above.

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of the issuer of the security which is the subject of the order, or (xvi) of a type for which the Market Regulator may from time to time require a specific or particular designation.		
7.10~~1~~ Extended Failed Trades (1) If within ten trading days following the date for settlement contemplated on the execution of a failed trade, the account: (a) in the case of a sale, other than a short sale, that failed to make available securities in such number and form; (b) in the case of a short sale, that failed to make: (i) available securities in such number and form, or (ii) arrangements with the Participant or Access Person to borrow securities in such number and form; and (c) in the case of a purchase, that failed to make available monies in such amount, as to permit the settlement of the trade at the time on the date contemplated on the execution of the trade has not made available such securities or monies or has not made arrangements for the borrowing of the securities, as the case may be, the Participant or Access Person that entered the order on a marketplace shall give notice to the Market Regulator at such time and in such form and manner and containing such information as may be required by the Market Regulator.	**BMO –** IIROC Statistical Study found that failed trades usually due to administrative error and found no evidence of impact on market integrity. Administrative burden of reporting not warranted. Implementation of NI 24-101 imposes requirement to settle trades within prescribed timeframes. Impact Study could compare fail rates and short sales before and after implementation of NI 24-101.	It is not accurate to say that the IIROC Statistical Study found "no evidence of impact on market integrity". It found that the primary reason for trade failure was administrative error. IIROC acknowledges in the Market Integrity Notice that NI 24-101 imposes a requirement to match trades within prescribed timeframes. The reporting requirement under Rule 7.10 is triggered at 10 days following the date otherwise established for settlement is well beyond the timeframe contemplated in NI 24-101. IIROC does not expect a large number of reports of failed trades. Rather, IIROC expects Participants will ensure that policies and procedures adopted for the purposes of NI 24-101 and UMIR will maximize resolution of trades prior to the time at which a failed trade report would be required. IIROC has revised the title of the rule to add the word "Extended" to clearly indicate the intention that the reporting obligation applies to a limited subset of failed trades.
	Canaccord – No evidence exists that (i) proves a correlation between short selling and trade failure or that (ii) Participating Organizations have a systematic problem with trade failures. Trade fails reporting is unnecessary. It adds no integrity value but adds unnecessary overhead costs.	IIROC acknowledges that there is no direct correlation between short selling and trade failure. For this reason, IIROC opposes the concept of a US-style "fails" list. However, trade failure is an integrity matter and IIROC is introducing a requirement to report failed trades that have not been resolved within a "reasonable period of time" (e.g. 10 days following the intended settlement date). In the view of IIROC, this additional time would allow for the correction of administrative errors.
	CNQ – Supports proposal that dealers must report delivery failures more than 10 trading days old. Reports will give IIROC early warning of situations where stock to cover shorts may be difficult to borrow.	IIROC acknowledges support for the proposal.
	IASBDA – Proposed disclosure of fails requirement is a more effective tool than those used in the U.S. (eg. locate requirement),	IIROC acknowledges support for the proposal but notes the suggestions that small trades be exempted. IIROC would

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	as it will provide a good understanding of why the trades failed and will allow you to take further action, only if needed. Suggests modifying to exempt small trades, so that IIROC can concentrate on larger trades.	consider introducing such an exemption if the reporting requirement proved burdensome and the reports from small failed trades did not reveal meaningful information. However, IIROC would also note that manipulative behaviour (particularly to set an artificial price) often involves one or more orders for relatively small volumes.
	IIAC – Proposal fails to recognize that there are a number of factors that may cause a fail. Many of these do not relate strictly to an actual trade. As such UMIR is not the appropriate place to address the issue and the "generic" approach suggested will not address all factors. Suggests that IIROC monitor its concerns for now as NI 24-101 may deal with many of the areas of concern. Reporting proposal will create administrative burden, particularly in cases where there is a reorganization or cross-border issue. Costs for new systems, etc. will be great and will be disproportionately borne by small firms. IIROC should attempt to obtain information from CDS.	IIROC recognizes that the primary reasons for trade failures are administrative. As a result, a report is not required until the failure has persisted for 10 days beyond the date scheduled for settlement. The Study by IIROC estimated that a report would be required in connection with approximately 0.01% of trades. IIROC would anticipate that the percentage would be further reduced by procedures adopted in accordance with NI 24-101 and in contemplation of a reporting obligation. The objective of the reporting requirement is to reduce the number of "prolonged" failures and to alert IIROC to trades that may have integrity concerns (e.g. is the failure due to an undeclared short sale). Information on trade failures available through CDS are on a continuous net settlement basis. While this provides information on the systemic level of trade failures, the risks to market integrity reside with the continuing failure on the part of the original party to the trade.
	ITG – States that UMIR may not be the appropriate place to address failed trades. There are a number of factors that may cause a fail and these may not relate to the actual trade itself (ie. issues at custodian or prime broker). Reporting fails over 10 days will create an administrative burden where securities are subject of reorganization or tender offer. Reporting will require significant resources and systems. Advisable to first examine impact of NI 24-101.	See response to IIAC comment above.
	Patch – States that enforcing the 10-day window after settlement is critical. IIROC should monitor which firms are involved in these extended fails, whether patterns emerge and how large fails are closed.	IIROC would note that such monitoring is one of the purposes of the report.
	RBC – Asks: Does the reference to "arrangements … to borrow" impose US style SHO obligations? Does reporting apply to	Failure is measured at the account level and not at the level of the firm. If a sale is made ostensibly from a long position

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	DAP/cash/margin accounts? Does it apply to client fails/CNS/DP fails? Please clarify the term "resolved" – does the item remain outstanding until the position is fully covered? If IDA members are under SEG, should they be prohibited from short selling? National Instrument 24-101 requires a "confirmation" not a "locate" therefore compliance with 24-101 is not indicative of an ability to settle. What happens if 10 day requirement is not met? Why was 10 chosen (not 13 as it is in the U.S.)? Will clients be notified? What if fail occurs because of "tight" market conditions? What is the form and content of the report? Report is onerous.	and the account fails to provide the Participant with the securities, the trade would be considered a failed trade until the account holder provided the securities or made arrangements with the Participant to borrow the securities through the Participant. Part 7 of NI 24-101 requires a dealer to establish, maintain and enforce polices and procedures designed to facilitate settlement of the trade on the standard settlement date unless the trade has been entered into as a special terms trade. If the short sale occurred at a time when there were "tight" market conditions, the question that would have to be answered is whether there was a "reasonable expectation of settling" the trade at the time of the entry of the order. If not, the entry of the order would have been considered manipulative behaviour pursuant to Rule 2.2 of UMIR.
	Trinidad – States that 10 days after settlement is an excessively long delay before a report is filed (T+3 + 10 is over four times longer than the normal settlement period). The report requirement should apply after 5 days or fewer. If majority of fails are as a result of administrative error, 5 days is sufficient. If fail occurred for improper reason, many will resolve before 10 days and be unreportable to the regulator, who will not be able to make a good assessment of causes of fails or to designate as ineligible. Information on failed trades must be publicly available (identify the issuer, the dealer and whether the trade was short).	The 10-day period is designed to minimize the administrative burden on Participants and to give them an adequate period of time to resolve the reason for the failure. If IIROC detects "integrity concerns" in a significant number of the trades which are subject to the reporting requirement, IIROC would consider proposing a reduction in the time period. Since trades can fail for any number of reasons, IIROC does not believe that it is appropriate to make information on failed trades publicly available.
(2) If a Participant or Access Person is required to provide notice of a failed trade to the Market Regulator in accordance with subsection (1), the Participant or Access Person shall, upon the account making available the applicable securities or monies or making arrangement for the borrowing of the applicable securities, give notice to the Market Regulator at such time and in such form and manner and containing such information as may be required by the Market Regulator.		
7.112 Variation and Cancellation of Trades No trade executed on a marketplace shall, subsequent to the execution of	**BMO** – Supports provisions requiring notice for post-trade amendments to price, volume or settlement criteria of a trade. Adjustments for bona fide errors should be exempt.	IIROC presently receives notice of any variation or cancellation made through the facilities of a marketplace or clearing agency. IIROC wishes to ensure receipt of notice of

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the trade, be: (a) cancelled; or (b) varied with respect to: (i) the price of the trade, (ii) the volume of the trade, or (iii) the date for settlement of the trade, except: (c) by the Market Regulator in accordance with UMIR ~~the Rules~~; or (d) with notice to the Market Regulator immediately following the variation or cancellation of the trade in such form and manner as may be required by the Market Regulator and such notice shall be given, if the variation or cancellation is made: (i) prior to the settlement of the trade, by: (A) the marketplace on which the trade was executed, or (B) the clearing agency through which the trade is or was to be cleared and settled, and (ii) after the settlement of the trade, by each Participant and Access Person that is a party to the trade.		any other variation or cancellation in order to be in a position to determine that such variation or cancellation is being made for a bona fide reason.
	ITG – Agrees that any changes to price and volume should be reported to IIROC. However, notes that this should be done by the marketplace and should not apply to settlement date changes. The Participant should be able to accommodate a client's request if it can ensure settlement on T+3 with the counterparty. IIROC could monitor these variations by working with CDS.	The Amendments essentially require that any variation or cancellation prior to settlement be done through the facilities of a marketplace or clearing agency (and IIROC presently receives notice from these sources). IIROC does not believe an exemption should be made for changes to the settlement date. Special terms orders are not subject to "best price" obligations under UMIR and IIROC needs to be able to verify that the settlement date has not been varied in an attempt to avoid displacement obligations.
	RBC – States that there are numerous reasons for varying or cancelling, therefore the proposal is unworkable. Asks: Is the notice pre/post amendment/cancellation? Approval or notification from IIROC? Can/will IIROC refuse an amendment/cancellation? How does cancellation affect counterparty? Do any other regulators restrict short sales in this manner?	The Amendment is quite clear that the notice is to be given to IIROC "immediately following the variation of cancellation". Under Rule 10.9, a Market Integrity Official has the power to vary or cancel any trade which is unreasonable or not in compliance with UMIR. See response to ITG comment above.
~~**10.9 Power of Market Integrity Officials**~~ ~~(1) A Market Integrity Official may, in governing trading in securities on the marketplace:~~ ~~...~~ ~~(c.1) cancel any trade that is a failed trade in respect of which notice has been, or should have been, provided to the Market Regulator in accordance with Rule 7.11 if, in the opinion of such Market Integrity Official:~~ ~~(i) the account has failed to diligently pursue making available the applicable securities or monies or making arrangement for the borrowing of the applicable securities,~~ ~~(ii) there is no reasonable prospect that the failure will be rectified pursuant to the rules, requirements or procedures of the marketplace on which the trade was executed or the clearing agency through which the trade was to be settled, and~~	**BMO** – Does not support cancellation of failed trades due to negative implications it may have to the counter-party.	IIROC deleted the provision from the Amendments. IIROC will monitor the reports of failed trades that are received pursuant to Rule 7.10 to determine the extent of the problem with "chronic" fails. As noted in the Market Integrity Notice, the cancellation power would have been used as a last resort essentially when the settlement of the trade would be for the economic benefit of the seller but the seller has not pursued settlement. Before exercising the power, the Market Integrity Official would have to have been satisfied that there was no reasonable prospect that the failure will be rectified in accordance with the requirements of the marketplace or clearing agency.
	Canaccord – Buy-in and Continuous Net Settlement (CNS) processes in Canada work extremely well. Do not see value in the ability for IIROC to cancel a trade.	The proposed amendment was intended as a "backstop" when other provisions of the marketplace or clearing agency had not worked and there was no reasonable prospect that

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~~(iii) the cancellation of the trade is appropriate in the interest of a fair and orderly market;~~ ...		such provisions would rectify the continuing failure.
	IIAC – IIROC cannot cancel a failed trade under the circumstances provided in the proposal. In the interest of the parties and those who rely on report of trades, the requirement should instead be to close out the position within 10 days (the U.S. requirement).	See response to BMO and Canaccord comments above.
	ITG – Believes that it is not appropriate for IIROC to cancel trades. Current buy-in facilities exist to ensure the buyer ultimately receives the securities. Many intervening events unrelated to settlement could make this problematic to the buyer even if he would benefit from the cancellation.	One of the tests that would have had to have been met in cancelling the trade was that the cancellation be in the interest of a fair and orderly market. Cancellation would have been pursued only when in the interest of the non-defaulting party. See response to BMO and Canaccord comments above.
	Patch – Queries the benefit of cancelling the trade. This simply gives seller opportunity to eliminate risk that would exist in settling. Cancellation should be a last resort as each trade has an immediate impact on the market.	See response to BMO and Canaccord comments above.
	TD – Opposes cancellation by IIROC, except in most serious cases of abuse, as not fair to purchasers. Should be dealt with through buy-in rules. IIROC must apply a "reasonableness" test.	See response to BMO and Canaccord comments above.
10.10 Report of Short Positions *[The Short Sale and Failed Trade Proposal recommended the repeal of the requirement to prepare and file semi-monthly a Report on Short Positions. Consideration of this proposal has been deferred until IIROC and the Recognizing Regulators are satisfied that adequate alternative information on short sales executed on a marketplace has become available.]* (1) A Participant shall calculate, as of 15th day and as of the last day of each calendar month, the aggregate short position of each individual account in respect of each listed security and quoted security. (2) Unless a Participant maintains the account in which an Access Person has the short position in respect of a listed security or quoted security, the Access Person shall calculate, as of the 15th day and as of the last day of each calendar month, the aggregate short position of the Access Person in respect of each listed security and quoted security. (3) Unless otherwise provided, each Participant and Access Person required to file a report in accordance with subsection (1) or (2) shall file a report of the	**AIMA** – CSPR is not meaningful. Decision to continue production of CSPR in any form should be made by market participants who may use it but IIROC must make sure that burdens do not outweigh benefits. Use of trade markers to differentiate between types of shorts may be cumbersome and result in trade information leakage without any material offsetting benefit to the market.	While more detailed marking of short sales was one of the options considered by IIROC, IIROC rejected this option as being unduly burdensome to Participants and Access Persons.
	BMO, Canaccord, CNQ, IIAC and **ITG** – Supports elimination of CSPR.	IIROC acknowledges support for the proposal.
	BMO – Does not support replacing CSPR with another report (e.g. report of failed trades or those involving categorizing by markers such as covered, hedged, naked, etc.) that would increase order execution complexity. Is not in favour of any requirement that would eliminate ability to bundle long and short sales.	The ability to bundle long and short sales is already restricted. Reference should be made to Market Integrity Notice 2005-025 – *Guidance – Bundling Orders from a Long and Short Position* (July 27, 2005).
	Canaccord – Distribution of new information will require an effort to educate investors, issuers clearly detailing the change.	IIROC acknowledges that the "replacement" to the CSPR will require an education process. For this reason, IIROC will

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calculation with a Market Regulator in such form as may be required by the Market Regulator not later than two trading days following the date on which the calculation is to be made.		require that both style of reports be available for a period of time and that the any proposal to repeal of the requirement to prepare and file the CSPR would only be pursued if the replacement information proved to be "adequate". The Impact Study will look at the relationship between information in the CSPR and any periodic summary reports that may be produced. The findings of the Impact Study on this and other aspects of the Amendments will be published.
	CNQ – Disagree with replacing CSPR with a report that would impose an administrative burden on marketplaces without making the case that the new report would be more meaningful than the old.	The information is readily available to each marketplace and it would also be available through the regulatory feed provided to IIROC by each marketplace. As noted in the Market Integrity Notice, it would be the preference of IIROC for the marketplaces to co-operatively agree on the procedure for the preparation and distribution of the reports.
	CPPIB – States that it does not currently use CSPR, as information therein is inaccurate. If proposed changes do not produce meaningful information, IIROC should consider dropping all requirements. Concerned with suggestion of prohibiting bundling of "long" and "short" sales. Prohibition could reveal trading. Improvement to audit trail that does not serve a market integrity purpose (no market integrity issues found with short sales) should not be pursued at the expense of trading practices.	As noted in the Market Integrity Notice, information on short trading on marketplaces could be produced by a number of sources. See response to BMO comment above.
	CSTA – Concur that CSPR could be retained to categorize a short position as "covered", "hedged", "naked" etc. to give more accurate reading of a company's "true" short position.	While this information would provide a more accurate view of the "true" short position, IIROC concluded that the administrative burden that would be imposed on Participants and Access Persons would not be worth the benefit.
	ITG - IIROC should work with marketplaces and a data consolidator to provide statistical information about short selling.	See response to CNQ comment above.
	RBC – Agrees with the change as the accuracy and consistency of current CSPR is questionable. Requires clarification on who would disseminate summary reports going forward ad what role Participants would play. Requires further guidance on what is expected in terms of order marking policies and procedures (for example with regard to dealer sponsored access clients).	See response to CPPIB comment above. The Amendments do not change any of the requirements regarding the marking of short sales. Currently, short sales must be marked whether the order is handled by the Participant or entered by a client with dealer-sponsored access.

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	TD – Believes that it is not practical to make marketplaces accountable for reporting short positions. Unbundling trades will increase order handling burden and information leakage. Even if trade were unbundled, it would still be impossible to know aggregate short positions. Current reporting systems should be strengthened by IIROC, rather than introducing new proposals.	The ability to bundle long and short sales is already restricted. Reference should be made to Market Integrity Notice 2005-025 – *Guidance – Bundling Orders from a Long and Short Position* (July 27, 2005).
Policy 1.1 Definitions **Part 3 – Definition of "Short Sale"** Under the definition of "short sale", a seller shall be considered to own a security under various circumstances including if the seller, directly or through an agent or trustee: • owns ~~directly or through an agent or trustee~~ another security that is convertible or exchangeable into that security and has tendered such other security for conversion or exchange or has issued irrevocable instructions to convert or exchange such other security; • has an option to purchase the security and has exercised the option; or • has a right or warrant to subscribe for the security and has exercised the right or warrant. In each of these circumstances, the seller must have taken all steps necessary to become legally entitled to the security, including having: • made any payment required; • submitted to the appropriate person any required forms or notices; and • submitted, if applicable, to the appropriate person any certificates, in good delivery form, for securities to be converted, exchanged or exercised.	**BMO** - If price restrictions are not removed, the requirement for payment to be effected before a seller owns the security (long) may be detrimental to efficient market price determination. Tick requirement may result in pricing inefficiencies between derivative and underlying. In the case of options, a requirement that payment must be effected prior to sale may have negative effect on price discovery.	The clarification introduced by the Amendments corresponds to corporate law requirements. The revisions to the provision from the Short Sale and Failed trade Proposal correspond to drafting changes made in the definition of "short sale".
Policy 1.1 Definitions **Part 4 – Definition of "Short Sale Ineligible Security"** Under the definition of a "short sale ineligible security", the Market Regulator may designate a security or class of securities in respect of which an order that on execution would be a short sale may not be entered on a marketplace for a particular trading day or trading days. In determining whether to make such a designation, the Market Regulator shall consider whether: • based on reports of failed trades submitted to the Market Regulator in		IIROC added as a policy under Rule 1.1, the criteria to be taken into account by IIROC when making a designation of a security or class of security as a "short sale ineligible security". See comments and responses on the definition of a "Short Sale Ineligible Security" above.

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accordance with Rule 7.10 or other information known to the Market Regulator, there is in a particular security or class of securities an unusual number or pattern of failed trades by more than one Participant or Access Person: • the number or pattern of failed trades is related to short selling; and • the designation would be in the interest of maintaining a fair and orderly market.		
Policy 2.1 – Just and Equitable Principles **Part 1 – Examples of Unacceptable Activity** … Participants and Access Persons who intentionally organize their business and affairs with the intent or for the purpose of avoiding the application of a Requirement may be considered to have engaged in behaviour that is a failure to conduct business openly and fairly or in accordance with just and equitable principles of trade. For example, the Market Regulator considers that a person who is under an obligation to enter orders on a marketplace who "uses" another person to make a trade off of a marketplace (in circumstances where an "off-market exemption" is not available) to be violating the requirement to conduct business openly and fairly or in accordance with just and equitable principles of trade. Similarly, the Market Regulator considers that a person who enters into a transaction for the purpose of rectifying a failure in connection with a failed trade prior to the time that a report must be filed in accordance with Rule 7.10 and such person knows or ought reasonably to know that such transaction will result in a failed trade to be engaging in "re-aging" for the purpose of avoiding reporting obligations contrary to the requirement to conduct business openly and fairly or in accordance with just and equitable principles of trade. …		
Policy 3.1 Restrictions on Short Selling **Part 1 – Entry of Short Sales Prior to the Opening** Prior to the opening of a marketplace on a trading day, a short sale may not be entered on that marketplace as a market order and must be entered as a limit order and have a limit price at or above the last sale price of that security as indicated in a consolidated market display (or at or above the previous day's close reduced by the amount of a dividend or distribution if the security will commence ex-trading on the opening).		With the decision to defer consideration of the repeal of price restrictions on short sale, Part 1 of Policy 3.1 has not been repealed as proposed in the Short Sale and Failed Trade Proposal.

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Policy 3.1 Restrictions on Short Selling **Part 2 – Short Sale Price When Trading Ex-Distribution** When reducing the price of a previous trade by the amount of a distribution, it is possible that the price of the security will be between the trading increments. (For example, a stock at $10 with a dividend of $0.125 would have an ex-dividend price of $9.875. A short sale order could only be entered at $9.87 or $9.88.) Where such a situation occurs, the price of the short sale order should be set no lower than the next highest price. (In the example, the minimum price for the short sale would be $9.88, being the next highest price at which an order may be entered to the ex-dividend price of $9.875). In the case of a distribution of securities (other than a stock split) the value of the distribution is not determined until the security that is distributed has traded. (For example, if shareholders of ABC Co. receive shares of XYZ Co. in a distribution, an initial short sale of ABC on an ex-distribution basis may not be made at a price below the previous trade until XYZ Co. has traded and a value determined). Once a security has traded on an ex-distribution basis, the regular short sale rule applies and the relevant price is the previous trade.		With the decision to defer consideration of the repeal of price restrictions on short sale, Part 2 of Policy 3.1 has not been repealed as proposed in the Short Sale and Failed Trade Proposal.
Specific Matters on Which Comments Were Requested 1. *Should IIROC consider a "pilot project" to evaluate the effect of the repeal of price restrictions on the short sale of illiquid securities rather than the outright repeal of all price restrictions?*	**Acuity** – Opposed to the outright repeal of price restrictions. Recommends a "pilot project" be completed to evaluate the effect of repeal on all Canadian securities. Study would be able to determine a size threshold below which the repeal of price restrictions may have a detrimental impact on volatility.	By itself, volatility is not a market integrity concern but one of market quality. For market integrity, the test is whether the price movement is "real" rather than the result of artificial or manipulative behaviour.
	AIMA – A "pilot project" is not necessary or beneficial. A body of knowledge to support the proposed amendments already exists. Proposed "Impact Study" is sufficient to see if further amendments are required to mitigate any potential increase in volatility.	IIROC acknowledges that the consensus of commentators is supportive of the approach recommended by IIROC for a repeal of price restrictions accompanied by the conduct of the Impact Study. That aspect of the Short Sale and Failed Trade Proposal dealing with the repeal of price restrictions on all short sales has been deferred and this proposal is not included in the Amendments.
	Canaccord – Little value in "pilot project" for TSXV securities where IIROC is already monitoring for market manipulation. IIROC should continue to monitor illiquid stocks across TSX and TSXV for short sales that might create manipulative volatility.	See response to AIMA comment above.
	CCLIM – Smaller cap stocks should experience a larger increase in volatility – measured as a range in price over a specified period divided by the price of the security. This is a result of an increase	See response to AIMA comment above.

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	in proactive trading and the volatility calculation method and is not a result of a deterioration of market quality. Relative spreads (quoted bid-ask spread divided by price) increase for smaller stocks. Short sellers may hit bids ("cross the spread") more often without a tick test thereby increasing volatility but this is a natural result of an increase in trading.	
	CPPIB – Answers: No. Improvements to market efficiency too compelling to delay full implementation of changes. UMIR prohibition against manipulation gives IIROC the tools to address abuses.	See response to AIMA comment above.
	CSTA – "Pilot project" should identify non-inter-listed highly-liquid stocks and illiquid stocks, similar to the SEC trials. Inter-listed securities should remain exempt from the trial period in order to remain competitive.	See response to AIMA comment above.
	IASBDA – A "pilot program" is not useful because it may not be relevant to a period of significant volatility. The U.S. pilot failed to adequately foretell what would happen in a volatile market. Instead, would suggest slowly phase in the elimination of the tick test starting with most liquid. This should occur only after solidifying disclosure of fails requirement (ie. be cautious when removing one short sale limitation and imposing another).	See response to AIMA comment above.
	ITG – Does not support a "pilot project". US reviews did not show materially negative impact on illiquid securities. Marketplaces must make necessary changes within timelines suggested by IIROC to ensure that industry can benefit form changes and do not have to incur costs to develop temporary fixes.	See response to AIMA comment above.
	MS – "Pilot project" not necessary to evaluate effectiveness of repeal of price restrictions as continuation of monitoring for two regimes (Canadian and U.S.) is burdensome to dealers. Concur with Impact Study proposal.	See response to AIMA comment above.
	RBC – Yes. The SHO Pilot Project did not adequately reflect the Canadian marketplace. The IIROC Statistical Study may not have provided an accurate correlation between short selling and failed trades. Details of "pilot project" and interim results should be made public. Should be designed/conducted by a third-party statistician.	In part, the SHO Pilot Project did not adequately reflect the Canadian marketplace because securities traded on the Nasdaq Small Cap Market, the Bulletin Board and the Pink Sheets have not been subject to price restrictions on short sales. See response to Acuity comment above.

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	Swift – No need for a pilot project and its associated costs and administrative burdens.	See response to AIMA comment above.
	TD – Believes that there is no need for the "pilot project".	See response to AIMA comment above.
	Trinidad – States that data should be through a "pilot project" collected on adequacy of existing system monitors before implementation of tick test changes. Suggests that the difficulties including TSXV securities in a "pilot project" are not sufficient reason not to conduct the project. TSXV securities are much less liquid.	See response to RBC comment above.
	TSX Group – Strongly disagrees with "pilot project" proposal. Subjecting a control group of illiquid securities will cause confusion, be administratively burdensome and may encourage dealers to stop trading the control group securities. Instead, strongly supports the idea of the "Impact Study".	See response to AIMA comment above.
	Virgin – Given the possible increased volatility for small venture firms, suggests that US experience should be monitored for a 2-5 year period. Delay would allow time to see impact of SEC's rules on OTC and Pink Sheet companies.	The Impact Study will be conducted for a period of at least 12 months. While the repeal of price restrictions on all short sales was deferred and not included in the Amendments, the exemption from price restrictions for various securities including the Inter-listed Exemption will continue in place. IIROC has indicated that price restrictions could be re-instituted even before the completion of the Impact Study if abuses or changes in trading patterns warranted the re-introduction. Price restrictions on short sales did not apply to OTC or Pink Sheet companies in the US (or the NASDAQ Small Cap Market) and as such the US rule change to repeal restrictions should have no impact.
2. *If IIROC were to undertake a pilot project, what should be the duration of the pilot project?*	**Acuity** – Not less than four quarters, to account for seasonality.	The consensus of the commentators supporting a "pilot project" was for a period of 6 months to a year. As proposed, the Impact Study would cover a period of up to year following the implementation of the Amendments. With the decision to defer consideration of the repeal of all price restrictions, the Impact Study will look at the impact on securities covered by the Inter-listed Exemption in comparison to securities which remain subject to price

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		restrictions.
	CSTA – Six months.	See response to Acuity comment above.
	MS – Does not agree with "pilot project" but, if undertaken, should be no longer than one year and should attempt to minimize time, expense and systems impact for dealers.	See response to Acuity comment above.
	RBC – Should be recommended by a third-party statistician.	See response to Acuity comment above.
	TD – One year.	See response to Acuity comment above.
3. *How should a pilot project be implemented for TSXV-listed securities if the TSXV does not support the "short exempt" marker?*	**CSTA** – TSXV should support "short exempt" marker to ensure complete evaluation of repeal of price restrictions in "pilot project".	The timing for the implementation of a "short exempt" market on the TSXV could significantly defer the commencement of any pilot project (perhaps to the first quarter of 2009 or later).
	MS – Does not agree with "pilot project" but, if undertaken, market centres should bear the responsibility for supporting "short sale" indicators without mandating use of the "short exempt" marker.	See response to CSTA comment above.
	RBC – Project should deal with only core TSX securities.	There are significant differences in the liquidity profile of a security that trades on the TSX as compared to TSXV. Reference should be made to the table on page 16 of the Market Integrity Notice. UMIR is intended to apply across marketplaces and therefore there should be policy reasons to justify different treatment. While IIROC would expect greater volatility on junior markets as a result of the elimination of price restrictions on short sales, there is currently no evidence that this would result in increased risks to market integrity.
	TD – TSX and TSXV trading engines should be reprogrammed to reflect the rule change.	See response to CSTA comment above.
4. *What costs or administrative burdens would marketplaces, Participants and Access Persons incur in connection with a pilot project?*	**Acuity** – Costs should be borne by those market participants who are interested in having the proposed price restriction repeal adopted.	IIROC notes the comment that any costs associated with a pilot project should be borne by Participants and Access Persons.
	MS – Dealers would have an obligation to (i) implement systems changes to satisfy temporary rules, followed by additional changes subsequent to amendments and (ii) maintain two sets of	IIROC acknowledges that one problem with a "pilot project" is the need for Participants to deal distinctly with securities that are included in the pilot as compared to those that are

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	protocols for pilot and non-pilot securities.	excluded. If Participants handle all securities as if restrictions continued to apply (in order not to breach any rule) the resulting information from the pilot project would be "compromised".
	RBC – A prolonged implementation period leading to an uneven Canada/U.S. playing field would be a potential administrative burden.	The timing for the implementation of a "short exempt" market on the TSXV could significantly defer the commencement of any pilot project (perhaps to the first quarter of 2009 or later). If the pilot project lasted for a period of one year, the subsequent time period for preparation of the report and adoption of rule changes would realistically mean difference in the regimes in Canada and the United States until late 2010 or early 2011.
5. *Would there be any specific costs or benefits associated with UMIR adopting provisions comparable to those in the United States related to short sales (such as a mandatory locate requirement, and documentation requirements for sales from a long position) and/or failed trades (such as the maintenance of a fails list and close-out requirements for securities on the fails list)?*	**Acuity** – Broker-dealers should be required under UMIR to borrow, enter into an agreement to borrow or have reasonable grounds to believe they can borrow, a security before effecting a short sale in that security. This will ensure potentially abusive "naked" short selling does not occur. This will also avoid an imbalance in buying and selling; the volume of a security available for short selling should not be limitless.	Rule 2.2 of UMIR presently requires that there be a "reasonable expectation" of settling any trade at the time of the entry of the order.
	AIMA – Costs of harmonizing with the U.S. not necessary or beneficial. Existing policies and policies in proposed amendments sufficient to safeguard against fails resulting from shorts.	IIROC notes the consensus of the commentators is opposition to a "fails list", "locate" requirement and "close-out requirement" comparable to those in the United States.
	Canaccord – Canadian regulators should not follow the provisions made in the U.S.	See response to AIMA comment above.
	IASBDA – UMIR should not include "locate" requirement as it has proven ineffective and difficult to enforce.	See response to AIMA comment above.
	IIAC – Whilst supportive of removal of tick test, does not wish to move to U.S. style pre-borrow system. Naked shorting has not been shown to be a problem in Canada. Requirement to pre-borrow would result in smaller firms being placed at a financial disadvantage, as stock borrowing is controlled in Canada by the larger industry participants.	See response to AIMA comment above.
	MS – Locate and documentation requirements would impose unnecessary burdens and costs not warranted by generally low rates of failures in Canada. If U.S.-style regime is adopted, it must	See response to AIMA comment above.

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	be consistent with the U.S. regime.	
	RBC – Asks: Have the long term implications of misalignment between the proposed regime and the US regime been assessed?	The US regime would impose significant administrative and compliance burdens on Canadian market participants without significant benefits as trade failure rates are significantly lower in Canada than in the US.
	Swift – No need for US-style "locate" in Canada given available evidence on failed trades.	See response to AIMA comment above.
	TD – Believes that dealer costs for technology and processes would not be substantial. These costs would be more than offset by benefits of aligning with US rules.	See response to AIMA comment above.
	Trinidad – Suggests that IIROC should run a US-style fail list. IIROC will have the necessary data. Cost of electronic dissemination would be minimal. Canadian dealers who short sell in the US will already have systems in place.	Canadian dealers that forward orders to the United States, forward such orders to dealers registered in the United States for intermediation. The US-registered dealer will have the responsibility for compliance with requirements applicable in the United States.
General Comments	**AIMA** – Very supportive of proposed amendments. Market volatility is not analogous to market integrity. UMIR provisions on manipulative and deceptive trading are sufficient to deal with abuses.	IIROC notes the support for the proposal.
	BMO – Existing mechanisms available to regulators are adequate to ensure manipulative and deceptive practices are detected and contained. As such, do not support any alternatives to repeal of price restrictions set out in the MIN as they add unnecessary complexity (ie. exemption from price restrictions only for highly liquid).	IIROC notes the opposition to available alternatives to the repeal of price restrictions.
	CPPIB – States that IIROC should consider changing sanction guidelines for short sale markers to reflect that infractions will have an administrative (not market integrity) impact.	While the audit trail should be accurate, IIROC acknowledges that errors will be made in order marking but the concern of IIROC is in circumstances when errors in order marking are accompanied by manipulative or other violative behaviour.
	CSTA – In light of elimination of price restrictions, regulatory bodies must continue efforts to detect manipulative and deceptive activity and respond with enforcement.	The existing tools available to IIROC detect patterns of trading activity that are indicative of an "artificial price" either high or low or other forms of manipulative behaviour. IIROC also proposes to introduce new alerts that will be

Text of Provisions Following Adoption of the Amendments (Changes from the Short Sale and Failed Trade Proposal Highlighted)	Commentator and Summary of Comment	IIROC Response to Comment and Additional IIROC Commentary
		generated on significant changes in the pattern of short selling for a particular security.
	Coates – Objects to ability of dealers to use clients' shares to be used for short selling. Wishes to be able to disallow dealer from doing so. Understands that these would also not be allowed to be used for margin. Feels that if client owns shares, then client should determine their use during the term of ownership.	Securities which are segregated by a dealer are not available for securities lending. Securities which have been pledged as security for loans by the dealer to the client are available for lending by the dealer.
	Patch – States that naked short selling is wrong. US criminals bring business to Canada to circumvent US laws simply because of the Canadian opportunity to sell short. In IIROC's study on Failed Trades, did IIROC investigate the market trading around failed trades and whether dealers utilized manipulative leverage? IIROC should be cautious when applying results of US studies (such as those conducted by the SEC OEA) to the Canadian market. The SEC manipulated the results to present a fictitious picture to the US investing public.	At the end of the day, all short positions need to be covered. Short selling accounts for approximately 25% of trading activity on marketplaces thereby providing liquidity. As noted in the Market Integrity Notice, entering a short sale without the reasonable expectation of settlement is presently considered manipulative behaviour under UMIR.
	RBC – Believes that, by increasing efficiency of transfer agents, marked improvement would be seen in failed trades. Request a solution on the re-registration of securities (ie. 144A). How will proposal affect responsibilities of market makers on TSXV and Pure? Who is responsible for determining ownership of options/rights/warrants – if the 'seller" then what responsibilities do dealers have regarding this determination?	IIROC has issued guidance to assist in the same of securities subject to US transfer restrictions. In particular, see Market Integrity Notice 2006-006 – *Guidance – Sales of Securities Subject to Certain United States Securities Laws* (February 17, 2006). The Amendments revised the Proposed Amendments by including certain additional provisions exempting market makers (including derivatives market makers) from the restrictions on the marking of short sales and from prohibitions on trading a "Short Sale Ineligible Security". See Rule 3.1 above. Under securities legislation, the "seller" has an obligation to declare to a dealer that an order is "short". In keeping with the trading supervision obligations of a Participant, a Participant has an obligation to inquire of an account holder if a sale is short if the securities are not otherwise held by the account holder at the Participant. The Participant must assure itself that there is a "reasonable expectation" that any trade that would result from the execution of the order will be able to settle.

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	Swift – Price downturns are accentuated in those markets with the tightest short sale restrictions (e.g. certain Asian market which prohibit short sales). Removal of price restrictions allow markets to accurately price securities without "positive bias" and improves liquidity and arbitrage opportunities.	IIROC notes the comment respecting volatility effects when short selling activity is prohibited.
	Trinidad – States that naked short selling places artificial downward pressure on the price of the security by causing the number of outstanding securities to be larger than is actually the case. It is a fraud against investors, issuers and the market. Enforcement must be discussed in the next release; particularly the role the members of the CSA/SRO working group will play in enforcement against naked shorting. In the next release, IIROC should provide support for assertion that existing system can deal with abusive short sale practices.	See the response to Patch comment above. The existing tools available to IIROC detect patterns of trading activity that are indicative of an "artificial price" either high or low or other forms of manipulative behaviour.