CASLA | Canadian Securities Lending Association

April 11th, 2024

Member Regulation Policy
Canadian Investment Regulatory Organization
Suite 2600
40 Temperance Street
Toronto, Ontario
M5H 0B4
e-mail: memberpolicymailbox@ciro.ca

Market Regulation
Ontario Securities Commission
Suite 1903, Box 55
20 Queen Street West
Toronto, Ontario
M5H 3S8
e-mail: marketregulation@osc.gov.on.ca

Capital Markets Regulation
British Columbia Securities Commission
P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia
V7Y 1L2
CMRdistributionofSROdocuments@bcsc.bc.ca

**Re: Proposed Rule Amendments and Related Guidance – Fully paid securities lending and financing arrangements**

Thank you for providing us with the opportunity to comment on the proposed amendments to the Investment Dealer and Partially Consolidated (**IDPC**) Rules and IDPC Form 1 (**Form 1**) relating to fully paid securities lending and financing arrangements (the **Proposed Amendments**).

**About CASLA**

The Canadian Securities Lending Association (**CASLA**) is an association of firms that engage as principal or agent in the lending or borrowing of securities. Our membership includes, among others, dealer members of the Canadian Investment Regulatory Organization (**CIRO**), financial institutions and service providers.

CASLA seeks to enhance the public's understanding of securities lending and the role it plays in Canada's financial markets. CASLA works with Canadian regulators, self-regulatory organizations and other market participants to ensure the long-term viability of the Canadian securities lending industry and the adoption of best practices.

In providing our comments below, we draw upon the knowledge and experience of our members.

**General comment**

Securities lending in Canada already is subject to two extensive regimes of regulation contained in Guideline B-4 *Securities Lending* (the **Guideline B-4**) issued by the Office of the Superintendent of Financial Institutions Canada (**OSFI**) and in National Instrument 81-102 *Investment Funds* (**NI 81-102**) issued by the Canadian Securities Administrators (the **CSA**). Where the Proposed Amendments deviate materially from Guideline B-4 and/or NI 81-102, we encourage CIRO to

modify the Proposed Amendment to achieve better harmony with existing regulation of the same activity.

In the view of CASLA, consistent regulation reduces unnecessary regulatory burden and minimizes the risk of accidental non-compliance by allowing firms to utilize a common set of policies and procedures to address all regulatory requirements.

**Specific comments**

Please find below CASLA's more specific comments on the Proposed Amendments.

*1. Prescribed minimum margin percentage*

We note that Rule 4624 under the Proposed Amendments would prescribe a minimum margin of 105% for non-cash collateral. This prescribed minimum is inconsistent with market standards and existing regulations which set 102% as the minimum margin requirement for all types of collateral including non-cash collateral.[1]

As indicated by our general comment above, we believe that it would be operationally efficient to apply the same minimum margin percentage to both cash and non-cash collateral. We note that the types of acceptable non-cash collateral are high quality cash equivalents (i.e., fixed income instruments of governments/governmental entities) which further supports consistency of the minimum margin percentage between cash and non-cash collateral.

*2. Non-cash collateral*

Currently, CIRO members must seek exemptive relief in order to accept non-cash collateral for securities lending transactions. We request that CIRO expressly include various types of non-cash collateral as acceptable collateral in the amended Rule 4624 such that no exemptive relief will be required. This is similar to the position taken under Guideline B-4 and NI 81-102, both of which expressly permit various types of non-cash collateral.[2]

*3. Qualified securities for lending*

We recommend that CIRO expand the types of securities that are qualified for borrowing by dealers under FPL programs to include fixed income securities, such as government and corporate debt instruments.[3] As well, allowing these securities to be borrowed by dealers would

[1] See, for example, section 2.12(1) of NI 81-102. Guideline B-4 expressly acknowledges that the minimum margin percentage was reduced from 105% to 102% in April 2007 to reflect current market practice.

[2] Guideline B-4 refers to various types of readily marketable collateral. Section 2.12(1)(6) of NI 81-102 enumerates various types of permitted non-cash collateral.

[3] For example, section 2.12(1)(4) of NI 81-102 simply requires that the securities loaned are immediately available for good delivery under applicable legislation.

correlate with the types of acceptable non-cash collateral. Ultimately it is borrower demand that determines which securities are loaned, but it would benefit the clients of FPL programs to be in a position to meet that demand as and when needed without having to seek prior regulatory approval in each instance.

We encourage CIRO to take this opportunity to enhance the flexibility of FPL programs in Canada to put them in the best position to maximize returns for their clients.

*4. Collateral agents*

Footnote 15 to the rules bulletin publishing the Proposed Amendments states that CIRO has granted exemptions permitting non-cash collateral where the proposed collateral holding model (i.e., via a collateral agent for the client) increases the likelihood of the client's recourse to collateral in the event of insolvency of the borrowing dealer. We are not aware of an ongoing rationale supporting this view.

Although certain provisions of the *Bankruptcy and Insolvency Act* (Canada) (the **BIA**) have not been tested in court, they appear to recognize that broker-dealers may hold the non-cash collateral without the need for a separate collateral agent so long as the arrangements meet the requirements necessary for the non-cash collateral to be allocated to the, "customer pool" (which would give clients priority in the insolvency administration).

Accordingly, please elaborate on how holding collateral via a collateral agent further protects a client's recourse to the collateral in the event of a broker-dealer insolvency that is administered under the broker-dealer insolvency provisions of the BIA.

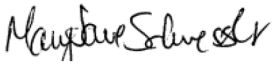
If there is no material difference, then we request that the Proposed Amendment expressly permit such non-cash collateral without the need for a separate collateral agent.

* * *

Please do not hesitate to contact the undersigned if you have questions regarding our comments above.

Yours truly,

**CANADIAN SECURITIES LENDING ASSOCIATION**



Mary Jane Schuessler
CASLA President

Roanna Kim
CASLA Vice President