Appendix B - Comments Received in Response to Rules Notice 11-0075 - Request for Comments - UMIR - *Provisions Respecting Regulation of Short Sales and Failed Trades*

On February 25, 2011, the Investment Industry Regulatory Organization of Canada ("IIROC") issued Rules Notice 11-0075 requesting comments on Provisions Respecting Regulation of Short Sales and Failed Trades ("Proposed Amendments"). IIROC received comments on the Proposed Amendments from:

The Canadian Depository for Securities Limited ("CDS")
Canadian Security Traders Association, Inc. ("CSTA")
Chi-X Canada ("Chix-X")
CIBC World Markets Inc. ("CIBC")
CNSX Markets Inc. ("CNSX")
Desjardins Securities ("Desjardins")
Brian M. Hearst ("Hearst")
Investment Industry Association of Canada ("IIAC")
Elaine and Robert MacDonald ("MacDonald")
RBC Capital Markets ("RBC")
Scotia Capital ("Scotia")
Summerwood Capital Corp. ("Summerwood")
TD Newcrest ("TD")
William R. Thompson ("Thompson")
TMX Group Inc. ("TMX")
Wolverton Securities Ltd. ("Wolverton")

A copy of the comment letter in response to the Proposed Amendments is publicly available on the website of IIROC (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 Proposed Amendments together with the responses of IIROC to those comments. Column 1 of the table highlights the revisions to the Proposed Amendments made on the approval of the Amendments.

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
1.1 Definitions "Pre-Borrow Security" means a security 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 unless the Participant or Access Person has made arrangements to borrow the securities that would be necessary to settle the trade prior to the entry of the order.	**RBC** – Believes that the proposal would impose disproportionate and substantial changes to Participants' order entry and back office systems in order to maintain accurate and up-to-date lists of "pre-borrow" securities and "extended failed trades".	IIROC believes that the approach (i.e. designating securities that will require "pre-borrowing" before undertaking a short sale) is preferable to general and comprehensive requirements such as in the United States. As set out in the notice, there have been historic instances of "problems" in the trading of specific securities but there have been none since the "manipulative" rules were amended in 2005. Presently, UMIR provides that IIROC may designate particular securities as being ineligible for short sale. The introduction of the "pre-borrow" requirement is seen as a less dramatic intervention with a similar impact on Participant's systems.
1.1 Definitions "short-marking exempt order" means an order for the purchase or sale of a security from account that is: (a) an arbitrage account; (b) the account of a person with Marketplace Trading Obligations in respect of a security for which that person has obligations; ~~and~~ (c) a client, non-client or principal ~~the~~ account ~~of an institutional customer~~: (i) for which order generation and entry is fully-automated, and ~~(ii) which, in the ordinary course, executes both purchases and sales of a particular security on one or more marketplaces on each trading day, and~~ (ii~~i~~) which, in the ordinary course, does not have, at the end of each trading day, more than a nominal position, whether short or long, in a ~~the~~ particular security; or (d) a principal account that has acquired during a trading day a position in a particular security in a transaction with a client that is unwound during the balance of the trading day such that, in the ordinary course, the account does not have, at the end of each trading day, more than a nominal position, whether short or long, in a particular security.	**CSTA –** Supports the proposal and suggests that the separate marking be extended to all trading activity from the "specialty participants".	IIROC expanded the definition to permit orders from certain client, non-client and principal accounts to qualify as "short-marking exempt". To qualify, the activity in the account would have to be "directionally" neutral and the generation and entry of orders would have to be fully-automated.
	CIBC and **IIAC–** Supports the proposal but suggests that it be expanded to include proprietary accounts that use "directionally neutral strategies" such as "facilitation trades".	See the response to CSTA above. In particular, the revisions permit orders from a principal account to be marked as a "short-marking exempt order" if the account is used essentially for "facilitation" trades such as entering into a short position to facilitate a client purchase which is then covered by purchases generally by the end of the same trading day.
	Scotia – Notes that there is no a generally accepted definition of "high frequency trading" but do not agree that HFT should have an "advantage" in marking trades that in effect were short at the time of entry simply because it is problematic. Suggests a "more principle based approach" in place of the specific criteria. Also suggests that principal accounts should be able to qualify.	IIROC would note that in some jurisdictions, HFTs have adopted the practice of marking all sell orders as "short". Such a practice compromises the ability to properly monitor short sale activity. The Amendments seek to maintain the value of the order data by dividing the orders between those that make a general practice of being "directionally" neutral (e.g. any short sales during the day will be offset by purchases during the trading day such that securities will not have to be borrowed to effect settlement) from those that are entering short orders as a result of "negative" sentiment or who will

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		have to borrow securities to effect settlement of any trade. IIROC would also note that the "rule" component is principle based but the guidance sets out "general guidelines". Failure to meet the guidelines for short periods of time would not constitute "non-compliance".
3.1 Restrictions on Short Selling - *repealed*	**CSTA, Chi-X, CIBC, CNSX, Desjardins, IIAC, RBC, Scotia, Summerwood** and **TD**- Supportive of the repeal of price restrictions at which a short sale may be made.	IIROC acknowledges support for the repeal.
	Summerwood –Notes that some market participants confuse the principles of investor protection and market integrity with price stability.	In the view of IIROC, "unexplained" significant price movement, both to the upside and the downside, is a concern in maintaining a fair and orderly market.
	CNSX – Critical for IIROC to continue to work with other regulators to identify abusive practices, including abusive short selling.	IIROC has introduced an alert to its surveillance system to detect price declines associated with increases in rates of short selling. The alert will allow regulatory attention to be directed to potentially abusive behaviour in "real-time".
	Hearst – Opposes the removal of the tick test and would support a ban on short selling as it makes it difficult for issuer to "keep their market stable".	Studies by IIROC and others have demonstrated that short selling contributes to price stability and that volatility and spreads increase when short selling is prohibited. The purpose of markets is to provide price discovery and not to favour or support either "inflated" or "depressed" prices for securities. IIROC would note that the issuer does not have a responsibility for ensuring the price stability of their securities. The price discovery mechanism is premised on buyers and sellers with equal access to material information concerning the issuer coming together to establish the market price.
	MacDonald – Believes short selling enables large institutional holders/purchasers of stock to manipulate the market prices.	Short selling performs many functions not the least of which is lessening price volatility. Misuse of short selling for "manipulative" purposes is contrary to the rules in the same way as "pump and dump" from long positions is contrary from the rules.

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	Thompson – Believes that the tick test "does slow down abusive short selling". Allowing an excessive time frame to borrow stocks to cover short positions in no way protects the retail investor and leads to a lack of confidence in a fair and equitable marketplace.	"Abusive short selling" is manipulation and can be dealt with by existing rules dealing with manipulation. The tick test complicates the other "normal" short selling activity without providing a regulatory benefit. IIROC has introduced a real-time alert to assist in the detection of "abusive" short selling.
	TMX – Believes that removing the short sale tick test should not lead to any harm given the regulatory framework in Canada and IIROC's ability to perform real-time surveillance.	IIROC is in agreement with the comment.
	Wolverton – Believes that the tick rule permits shorts when the market is "frothy" while shuts down short sales when a public company is weak and in need of protection. For junior companies market manipulation is a real concern both on the upside and the downside.	The empirical studies by IIROC demonstrate that rates of short selling and short positions increase in rising markets and fall during periods of price decline (indicating that "shorts" act as support in the periods of price decline and a not the cause of the decline). This pattern is particularly pronounced for "junior" securities. IIROC has moved to specifically introduce real-time alerts that monitor for "abusive" short selling (increases in rates of short selling during periods of price decline). The price discovery mechanism is designed to provide a "true price" based on overall market sentiment and full disclosure of material information and should not be distorted to provide "protection" for the price of securities in certain circumstances.
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 (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 that has been designated as a "short-marking exempt order" in accordance with subclause 6.2(1)(b)(ix). …		

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6.1 Entry of Orders to a Marketplace ... (3) A Participant acting as agent shall not enter a client order or a non-client order on a marketplace that would, if executed, be a short sale if the client or non-client has previously executed a sale of any listed security that became a failed trade in respect of which notice to the Market Regulator was required pursuant to Rule 7.10 unless: (a) the Participant has made arrangements for the borrowing of the securities necessary to settle any resulting trade prior to the entry of the order; or (b) the Participant is satisfied, after reasonable inquiry, that the reason for any prior failed trade was ~~solely as a result of administrative error and~~ not as a result of any intentional or negligent act of the client or non-client~~;~~. ~~or~~ ~~(c) the Market Regulator has consented to the entry of such order or orders.~~ (4) A Participant acting as principal or an Access Person shall not enter an order on a marketplace for a particular security that would, if executed, be a short sale if the Participant or Access Person has previously executed a sale in that security that became a failed trade in respect of which notice to the Market Regulator was required pursuant to Rule 7.10 unless: (a) the Participant or Access Person has made arrangements for the borrowing of the securities necessary to settle any resulting trade prior to the entry of the order; or (b) the Market Regulator has consented to the entry of such order or orders. (5) A Participant or an Access Person shall not enter an order on a marketplace for a Pre-Borrow Security that would, if executed, be a short sale unless the Participant or Access Person has made arrangements for the borrowing of the securities necessary to settle any resulting trade prior to the entry of the order.	**CSTA –** Street will face significant costs to implement pre-borrow and regulators should weight the costs of implementation versus the actual benefits.	Unlike the regulatory framework in the United States, IIROC is not introducing a "general obligation" that is applicable to all short sales. Rather, IIROC has tried to focus the obligation only on those accounts that have demonstrated an inability to settle a trade within a reasonable time (10 days) following the original settlement date. IIROC originally proposed an exception from the requirement if the Participant is satisfied that the reason for the "extended failed trade" was due to administrative error. IIROC has revised the exception to clarify that the Participant may waive the requirement if the Participant is satisfied that the reason for the prior failure was not as a result of any intentional or negligent act. There would be no compliance costs if all trades are settled and the account has met all delivery requirements within the 10 days following the original settlement date.
	Chi-X – Supports IIROC's determination not to introduce a mandatory pre-borrow requirement.	See response to CSTA comment above.
	CIBC – Believes that existing UMIR requirements related to manipulative trading and other IIROC requirements make the proposal unnecessary. Believes that there will be significant costs to the investor in both time and resources.	IIROC agrees that a general "pre-borrow" requirement would be "unnecessary and burdensome" given the history in Canada of short selling and trade failures. For that reason, the proposed requirement is only applicable to those accounts that have previously executed an "extended failed trade". In this way, the cost to investors will only be borne by those investors who have established a record for defaulting on settlement which has not been rectified within a "reasonable" time (e.g. 10 days after the original settlement date). The additional requirements become an "incentive" to investors and Participants to ensure rectification of delivery problems within the 10 days. IIROC acknowledges that these "failures" represent a very small percentage of failures but they have an inordinate impact on rates of cumulative trade failure. IIROC expects that these additional requirements will lead Participants to strengthen settlement discipline such that number of extended failed trades would fall from current levels and would focus on failures that may evidence non-compliance by the account holders with other regulatory

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		requirements.
	Desjardins – Suggests that the requirement be revisited as the IIROC studies do "not indicate that a problem currently exists".	IIROC acknowledges that the studies demonstrate that there is not a problem which would require a "general and comprehensive" solution. IIROC has attempted to focus the burden only on those accounts with a record of failing to settle within a reasonable time.
	IIAC –Believes that the pre-borrow requirement is an example of regulation without clear justification. If the requirement is to be retained, it should be based on a threshold where the number of shorts against a stock impairs the settlement process. Believes that there are significant systems issues to monitoring extended failed trades.	Under the Amendments, "pre-borrow" is not a requirement for all short sales. Pre-borrow would only apply if the account had previously experienced an extended failed trade that was not of an administrative nature or if IIROC designated a particular security due to settlement problems related to levels of short selling. Reference should be made to the proposed Part 2.1 of Policy 1.1 dealing with the definition of a "Pre-Borrow Security." The definition of "Pre-Borrow Security" addresses the systemic problems arising from short sales while the extended failed trade threshold addresses "potential abusive short selling" which may be occurring at the account level (such as when the account holder has engaged in "naked" short selling without an intention of effecting settlement on the settlement date.) The number of extended failed trades will be extremely low (and IIROC further expects that Participants will "tighten" settlement procedures to avoid triggering the extended failed trade provisions except in circumstances that would justify regulatory review of the trade to ensure that the failure is not part of a manipulative pattern of trading.
	RBC – Believes that the restriction on clients to pre-borrow should only be for the specific security which was the subject of an extended failed trade. Failed trades resulting from administrative delay should not be treated in the same manner as fails resulting from improper shorts.	If a client has previously had an "extended failed trade", the pre-borrow requirement would apply to all securities unless the Participant was satisfied that the earlier failure was not as a result of an intentional or negligent act by the client. If the client intentionally defaulted on its obligations to settle a sale of stock "A", IIROC is of the view that the client should not be permitted to make a short sale of stock "B" (since the Participant could not know in advance whether the client intended to default on its settlement obligations).

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		IIROC confirms that "administrative error" or "delay" (such as delayed processing times by a transfer agent or custodian) would not be considered an intentional or negligent act of the client or non-client.
	RBC – The proposed requirements would likely have a negative impact on the number of short sales executed and may unduly reduce or restrict trading in certain securities that are not readily available for pre-borrow, such as "junior securities". Particular complexities may arise with the sale of securities subject to Rule 144A restrictions which, due to delays in the removal of the legend, are prone to extended fails.	IIROC believes that the "pre-borrow" requirements will have no impact on short selling activity unless there is an abnormal situation in the market or the person entering the order has previously had an extended failed trade. IIROC has previously issued guidance (Market Integrity Notice 2006-006 – Sale of Securities Subject to Certain United States Securities Laws) that confirms that the sale of securities subject to Rule 144A or Regulation D other than as a Special Term Order with "delayed delivery" to allow for the removal of the restrictive legend would be achieved by the Participant marking the order as "short exempt" and "the Participant would need to borrow free-trading securities to complete settlement while arranging for the removal of any restrictive legend". To do otherwise would be the entry of an order without having "the reasonable expectation of settling" any resulting trade contrary to Policy 2.2 of UMIR.
	Scotia – Does not believe that the "pre-borrowing" requirement will benefit the overall settlement process. It also will not deter manipulative behaviours of individuals that wish to naked short.	The studies by IIROC demonstrated that there was no demonstrable relationship between short selling and failed trades. In fact, the IIROC studies indicated that a short sale was less likely to fail than a regular trade. However, IIROC is of the view that those persons who have failed to settle and have not rectified the situation within a reasonable period of time should be subject to additional restrictions and that this approach is preferable to options pursued in other jurisdictions such as locate requirements for any short sale or the imposition of "mandatory close-outs" when the majority of trade failures are due to administrative error or delay.
	Wolverton – Problem with restraining shorts with borrowing is that most small companies are purchased in cash accounts and fully-paid for by clients resulting in almost no stock available for	The Amendments do not introduce a general borrowing requirement for short sales. Rather the requirement is limited to securities which are experiencing highly unusual settlement problems or when the person

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	borrowing thereby "eliminating" short sales.	making the short sale has previously executed an "extended failed trade" that is attributable to an intentional or negligent act of the client or non-client. The pre-borrowing requirement would not arise if the prior failure was due to administrative error or delay. Existing UMIR provisions require a Participant that is entering an order on a marketplace to have a "reasonable expectation of settling any trade that would result from the execution of the order". A Participant is not able to enter an order if the Participant knows the Participant will not be in a position to settle the trade on the settlement date.
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, (v.3) a bypass order, (v.4) a directed action order as defined in the Trading Rules, (vi) part of a Program Trade, (vii) part of an intentional cross or internal cross, (viii) a short sale but not including an order which is designated as a "short-marking exempt order" in accordance with subclause 6.2(1)(b)(ix), (ix) a short-marking exempt order, (x) a non-client order, (xi) a principal order, (xii) a jitney order,		

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(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 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.		
Policy 1.1 - Definitions **Part 2.1 – Definition of "Pre-Borrow Security"** Under the definition of a "Pre-Borrow Security", the Market Regulator may designate a security in respect of which an order that on execution would be a short sale may not be entered on a marketplace unless the Participant or Access Person entering the order has made arrangements to borrow the securities that would be required to settle the trade prior to the entry of the order. In determining whether to make such a designation, the Market Regulator shall consider whether: • based on information known to the Market Regulator, there is an increase in the number, value or volume of failed trades in the particular security 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 2.2. – Manipulative and Deceptive Activities **Part 1 – Manipulative or Deceptive Method, Act or Practice** There are a number of activities which, by their very nature, will be considered to be a manipulative or deceptive method, act or practice. For the purpose of subsection (1) of Rule 2.2 and without limiting the generality that subsection, the following activities when undertaken on a marketplace constitute a manipulative or deceptive method, act or practice: (a) making a fictitious trade; (b) effecting a trade in a security which involves no change in the beneficial or economic ownership; and (c) effecting trades by a single interest or group with the intent of limiting the supply of a security for settlement of trades made by other persons except at prices and on terms arbitrarily dictated by such interest or group.		

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If persons know or ought reasonably to know that they are engaging or participating in these or similar types of activities those persons will be in breach of subsection (1) of Rule 2.2 irrespective of whether such method, act or practice results in a false or misleading appearance of trading activity or interest in the purchase or sale of a security or an artificial ask price, bid price or sale price for a security or a related security.		
Policy 3.1 Restrictions on Short Selling **Part 1 – Entry of Short Sales Prior to the Opening** ***- repealed***		
Policy 3.1 Restrictions on Short Selling **Part 2 – Short Sale Price When Trading Ex-Distribution** ***- repealed***		
Questions: 1. Are there any policy reasons, other than those identified in this Request for Comments, that IIROC should consider in pursuing the proposed repeal of the existing "tick test" (short sales must be made at a price not less than the last sale price)? If you disagree with the proposal to repeal the tick test, please indicate why it should be retained.	**Scotia** – Agrees with the repeal but suggests other safeguards such as circuit breakers.	IIROC does not support restrictions on short sales when a circuit breaker is triggered. The analysis by IIROC indicates that sharp price declines are rarely associated with short selling activity (though IIROC monitors for this type of activity and has introduced an alert based on increased short selling activity and price declines). IIROC has been monitoring the instances in which an inter-listed security has been subject to a short sale circuit breaker in the U.S. In more than 80% of the cases, the price decline was attributable to the release of material negative news or sector specific events. Patterns of short selling in the period leading up to the triggering of the circuit breaker were not significantly different from that in the period after the circuit breaker had expired (nor the pattern during the period when the circuit breaker was in effect in the U.S.). IIROC continues to believe that a short sale circuit breaker regime is not warranted.
2. If restrictions on the price of a short sale are to be retained, should UMIR adopt a "bid test" at the time of order entry (e.g. a short order may only be entered on a marketplace at a price above the best bid price)?	**Scotia –** Does not support the use of any type of tick test unless it is coupled with a circuit breaker approach and evidence exists that short sales were driving down the market.	See comment on Scotia response to Question 1.

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	TD – Does not believe any restriction on the price of a short sale should be retained.	IIROC agrees with the comment.
3. If restrictions on the price of a short sale are to be retained, whether in the short-term or on a long-term basis, should there be an exemption provided to securities inter-listed on an exchange in the United States?	**CIBC, Desjardins, IIAC, Scotia** and **TD –** If the tick test is retained, inter-listed securities should be exempt to prevent regulatory arbitrage detrimental to Canadian markets.	IIROC agrees with the comment.
4. If restrictions on the price of a short sale are repealed, what regulatory arbitrage opportunities may exist in the case of an inter-listed security, where a circuit breaker has been triggered in the United States giving rise to short sale price restrictions? What measures could be taken, if any, to limit this potential regulatory arbitrage?	**Chi-X –**Where possible, differences in regulatory regimes should be reconciled, nonetheless the policy rationale for repeal of the "tick test" outweighs the impact of creating an opportunity for regulatory arbitrage.	IIROC has been monitoring the trading of inter-listed securities which have triggered short sale circuit breakers in the United States. IIROC has found no evidence of "short sale" migration. In addition, IIROC has found no evidence that increases in the rate of short selling was the cause of price declines.
	CIBC – Proposed "general" circuit breaker should be sufficient.	IIROC agrees with the comment. Guidance for the triggering of "Single-Stock Circuit Breakers" has been published in IIROC Notice 12-0040. Revised proposed guidance on regulatory intervention for the cancellation or variation of trades has been published for comment.
	Desjardins and **Scotia–** Believes that no measures will be necessary.	
	IIAC – If no regulatory risk in repealing the tick test, there is no reason why the arbitrage opportunity should not be permitted to exist.	
	TD – Believes that opportunities for regulatory arbitrage will be "extremely limited". Notes that historically Canadian rules on short sale price restrictions have varied from those in the U.S.	
	TMX – Not aware of any regulatory arbitrage to date and believes existing UMIR provisions are adequate to protect the Canadian market.	
5. The Proposed Amendments would "reuse" the existing "short exempt" designation to indicate accounts that qualify for the "short-marking exempt" designation. Are there any specific operational considerations for marketplaces or Participants from this change in use? Would there be any benefits to	**Chi-X** , **CIBC, CNSX** and **Scotia** – While the "re-use" of the existing marker may save costs, commenters suggest that investor confusion/variations from the FIX protocol used	IIROC agrees with the suggestion.

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introducing a separate, new designation if marketplaces, service providers and Participants still have to modify their system to remove functionality and provision for the existing "short exempt" designation?	in the U.S. may make the introduction of a new tag preferable.	
	IIAC – Suggest marketplaces be required to provide a new tag/marker that would be uniform across all venues.	IIROC agrees with the suggestion.
	RBC – Implementation costs will be significant and, if the change is for purely statistical reasons, suggests that IIROC reconsider the proposal.	The key element in the Amendments is the removal of the tick test on short sales. To address concerns that this removal may open the door to "abusive" short selling, IIROC needs to be in a position to better monitor short selling activity. The provisions differentiate short sales being made by investors with a "directional" focus on the merits of a security from short sales by "persons" who are directionally neutral but simply taking advantage of "trading opportunities" principally created by an increase in the number of markets and marketplaces trading the same securities While there will be costs to the implementation of the new marker, the changes will, in the longer term, simplify the oversight by Participants of the fact that orders have been properly marked. The change will also have the effect of removing the requirement for accounts that qualify as "short-marking exempt" to change the status of a previously entered order to "short" when subsequent to the entry of the sell order the account has moved from a "long" position. Such changes to an order may affect the order's priority on certain marketplaces.
	TD – Supports the "re-use" of the marker.	
	TMX – Prefers the introduction of a new order marker.	IIROC agrees with the suggestion.
6. Are there any other operational considerations for marketplaces or Participants that would arise as a result of the adoption of the Proposed Amendments, beyond those identified in this Request for Comments?	**Chi-X –** The repeal of the "tick test" will simplify routing decisions for smart order routers that will no longer have to take into account differences in the mechanisms used by each marketplace to system enforce the price restrictions.	IIROC agrees. IIROC has solicited comment on changes to the requirements surrounding the calculation of "last sale price" as part of proposed amendments to UMIR regarding "Dark Liquidity". See IIROC Notice 11-0225 issued on July 29, 2011.

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	CIBC and **IIAC** – Believes that the time and resources required to scope and develop system to automate and monitor compliance with the requirements may be disproportionate to the regulatory benefits obtained.	The number of failed trades is small and the extended failed trades are less than 4% of that. IIROC would expect that Participants will review their policies and procedures with a view to minimizing the number of extended failed trades even further. Given the limited number of instances, IIROC does not expect that Participants would specifically "automate" compliance with either EFTR or pre-borrow. Each Participant presently monitors "credit" activity of accounts and has the ability to "manually" place restrictions on trading activity.
7. If the Proposed Amendments are approved, IIROC is proposing to delay the implementation for a period of one hundred and eighty (180) days in order to provide Participants, marketplaces and service providers the time to make necessary changes to their systems, policies and procedures. Should the implementation period be longer and, if so, why?	**CIBC** and **IIAC** – Suggests one year implementation period.	See response to CIBC comment on question 6.
	Desjardins – Difficult to estimate the time.	IIROC can be flexible in extending the implementation if issues arise.
	Scotia – Suggests an implementation period of not less than one year given system changes together with education, training and testing.	Given the limited nature of the Amendments (i.e. to impose additional restrictions on particular accounts that have defaulted in delivery on settlement or the trading of particular securities in extraordinary circumstances), IIROC believes that the existing policies, procedures or mechanisms which Participants have to constrain trading activities in particular securities or accounts will be adequate (and should not require major modification).
	TD – Supports suggested 180 day implementation period.	
	TMX – 180 days should be sufficient for marketplaces (if a new "short marking exempt" marker is introduced rather than "re-used").	
8. The requirement to mark a sell order as a "short sale" is determined based on the aggregate holdings of the "seller" (across multiple accounts which may in fact be held at multiple Participants or dealers) while the requirement of a Participant to file a short position report is based on the position of each individual account. If the tick test is repealed, should the basis for determining the marking orders and filing short position reports be harmonized? Would it be preferable for the marking of orders to be determined based on the holdings in the account entering the sell order at the time the order is entered?	**CIBC** and **IIAC** – Marking for client accounts should be on an "aggregate" basis but suggests that proprietary accounts be given the option of either methodology.	With the repeal of the tick test, any benefit from aggregating positions across accounts will be removed (i.e. the ability to make a sale below the last sale price even when the account actually making the sale will be in a short position.). If there is in fact "settlement" risk when the security is not held in the account making the sale, there may be merit to having such sale marked "short".

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	Desjardins – Supports use of "aggregate" level.	
	Scotia – Suggests that "net position" for both firm and client would provide a more reliable benchmark for marking purposes and short position reporting purposes. Questions whether accounts exempt from marking orders as short would be exempt from short position reporting.	Accounts exempt from "short" marking are not exempt from short position reporting.
	TD – Practicable approach is to make the determination based on the position of each individual account. For "delivery against payment" accounts dealers currently have to rely on client disclosure.	
General Comments	**CDS** – Strongly supports all initiatives to reduce failed trades. If IIROC or CDS participants determine that additional or enhanced reports would facilitate IIROC's objectives, CDS will engage in discussions to determine how best to develop these reports and the timing for such development work.	IIROC and the CSA are issuing a joint notice requesting comments on various aspects of transparency of short sales and failed trades.
	CSTA – Notes problems with U.S. short sale circuit breakers including the fact that securities subject to a "corporate action" have not been exempted.	IIROC did not support a short sale circuit breaker as its analysis did not find a relationship between significant price declines and short selling activity.
	IIAC – Suggests the proposals be re-examined to ensure that they are addressing a demonstrated Canadian problem that would justify the increased regulatory burden.	Given the limited nature of the IIROC proposals to impose additional restrictions on particular accounts that have defaulted in delivery on settlement or the trading of particular securities in extraordinary circumstances, IIROC that the existing policies, procedures or mechanisms which Participants have to constrain trading activities in particular securities or accounts will be adequate (and should not require major modification).
	Wolverton – Significant differences in settlement and margin rules between Canada and the United States mean Canada has not had the short sale or failure problems experienced in	IIROC has not proposed to adopt the general and comprehensive "solutions" suggested or adopted in the United States. Rather the Amendments focus any additional requirements only in situations in which there

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	the United States. Shorting does not need fixing, "respectfully, please resist the urge to fix things that aren't broken."	have been "problems" and to remove restrictions which are not warranted by trading experience.