

FINANCIAL INFORMATION FORUM

September 29, 2021

By electronic mail to pubcom@finra.org

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 21-19: FINRA Requests Comment on Short Interest Position Reporting Enhancements and Other Changes Related to Short Sale Reporting

Dear Ms. Mitchell,

The Financial Information Forum (FIF)¹ appreciates the opportunity to comment on Regulatory Notice 21-19 (the Regulatory Notice) published by the Financial Industry Regulatory Authority (FINRA).² The Regulatory Notice solicits comment on: “(1) modifications to FINRA’s short interest reporting requirement; (2) a new rule to require that participants of a registered clearing agency report to FINRA information on allocations to correspondent firms of fail-to-deliver positions; and (3) other potential enhancements related to short sale activity.”³ In this comment letter, we focus on the challenges that firms would face to implement the various proposed changes and to fulfill, on an ongoing basis, the new reporting obligations that would be imposed. We do not comment on potential impacts to the market and competition resulting from the proposals.

The following are some of the key points that we discuss in further detail below:

- ***Clarifying the purpose of the short interest reporting rule.*** FIF members request that FINRA provide further clarification on FINRA’s understanding of the purpose of the short interest reporting rule and how the specific proposals by FINRA further that purpose. FIF members consider the purpose of the short interest rule to be disclosure to regulators and the public of the aggregate level of short interest in specific stocks. FIF members do not consider surveillance

¹ FIF (www.fif.com) was formed in 1996 to provide a centralized source of information on the implementation issues that impact the securities industry across the order lifecycle. Our participants include broker-dealers, exchanges, back office service bureaus, and market data, regulatory reporting and other technology vendors in the securities industry. Through topic-oriented working groups, FIF participants focus on critical issues and productive solutions to technology developments, regulatory initiatives, and other industry changes.

² FINRA Regulatory Notice 21-19 (June 4, 2021), available at <https://www.finra.org/sites/default/files/2021-06/Regulatory-Notice-21-19.pdf> (Regulatory Notice 21-19).

³ Regulatory Notice 21-19, p. 1.

of individual customer and firm positions and transactions to be the purpose of the short interest reporting rule. FINRA should consider whether surveillance of individual customer and firm activity can be achieved more effectively through other reporting systems, such as the Consolidated Audit Trail system (CAT) and the Large Option Position Reporting system (LOPR).

- **Reporting of hedging and synthetic short positions.**
 - **Scope of short interest reporting rule.** The proposals for reporting of hedging positions and synthetic short positions would require firms to report a significant volume of customer positions in stocks and options, and potentially other investment products. This would represent a significant expansion of the current scope of the short interest reporting rule.
 - **Reporting burden on member firms.** This type of reporting would impose a significant burden on member firms as they would need to apply complex rules to identify hedging and synthetic short positions. While not explicitly stated in the Regulatory Notice, these proposals presumably would encompass aggregating customer positions across different accounts. This is not required for current short interest reporting and would impose a significant reporting burden on member firms. It also would present challenging interpretative questions relating to the aggregation of customer positions across accounts.
 - **Incompleteness of data reported.** As discussed below, the hedging and synthetic short data that is reported would be incomplete because, for example, it would not reflect hedging or synthetic short positions that result from positions held across multiple firms.
- **Security and cost considerations with reporting of individual account positions.** Requiring the reporting of individual account positions would raise security and cost considerations that would need to be addressed. A requirement to aggregate a customer's positions across different accounts would add further cost and complexity. Since all market participant short positions would be reportable by symbol and account, security protocols similar to those implemented for CAT would need to be adopted. Given the costs and security risks, and the fact that CAT will provide disclosure to regulators of the short sale activity of all market participants, FIF members do not believe it is necessary or advisable to require the reporting of short positions on an account basis.
- **Frequency and timing of short interest reporting.** Increasing the frequency of short interest reporting to weekly can be achieved if the current manually-intensive follow-up processes relating to short interest reporting can be streamlined. Reducing the reporting timeframe to one business day will mean that firms will not have sufficient time to perform appropriate validation, resulting in less accurate short interest reporting.

A. Publication of Short Interest for Exchange-listed Equity Securities

In the Regulatory Notice, “FINRA is considering consolidating the publication of short interest data that is reported to FINRA for both listed and unlisted securities.” “If FINRA were to make this change, short interest files for all equity securities would be made available free of charge on the FINRA website and would not require changes to firms’ reporting requirements.”⁴

FIF members do not object to this proposal.

B. Content of Short Interest Data

FINRA is considering various changes to the content of reported and disseminated short interest data, as discussed in this section.

1. Proprietary and Customer Account Categorization

Distinguishing between proprietary and customer accounts

FINRA provides in the Regulatory Notice that it “is considering requiring firms to segregate the total reportable short interest into two categories – short interest held in proprietary accounts and short interest held in customer accounts.”⁵

Accounts can be classified into one of the following three categories:

- **Firm (proprietary) accounts.** These are proprietary accounts of the broker-dealer that is submitting the short interest report.
- **Proprietary Accounts of Brokers (PAB accounts).** These are accounts that a reporting broker-dealer that is a clearing firm holds for an introducing broker-dealer. The account is a proprietary account of the introducing broker-dealer.
- **Customer accounts.** These are accounts that a reporting broker-dealer holds for a customer that is not a broker-dealer.

FIF members request clarification on how FINRA is proposing to classify PAB accounts. More specifically, is FINRA proposing that PAB accounts be grouped with firm accounts of the reporting broker-dealer or that PAB accounts be grouped with customer accounts? Under FINRA Rule 4560(b), a customer account for purposes of short interest reporting includes “the account of a broker-dealer”. This means that short interest held in an account maintained for another broker-dealer would be reported as held in a customer account and not a proprietary account. On the other hand, the parenthetical at the end of the paragraph titled “Proprietary and Customer Account Categorization” on page 4 of the Regulatory Notice distinguishes between a “firm” position and a position of a “non-broker-dealer customer”. This would

⁴ Regulatory Notice 21-19, p. 3.

⁵ Regulatory Notice 21-19, p. 4.

indicate that a position in a proprietary account of a broker-dealer customer would be reported as a firm position. FIF members request that FINRA clarify this point in any rule change that is adopted.

A requirement for firms to separately identify proprietary accounts, on the one hand, and PAB and customer accounts, on the other hand, for short interest reporting would require additional work for FIF member firms. Firms are required to classify accounts as proprietary or customer for other purposes, but many firms do not have these classifications implemented in their systems that are used for short interest reporting. This is a further challenge for firms that use third-party service bureaus.

Similarly, a requirement to differentiate between proprietary and PAB accounts, on the one hand, and customer accounts, on the other hand, also would require additional work from firms. Firms are required to distinguish between PAB and customer accounts under certain other rules,⁶ but many firms do not have these classifications implemented in their systems that are used for short interest reporting. FIF members note that this type of differentiation would help to identify separately the percentage of short interest that is for broker-dealer accounts.

An additional challenge involves a clearing firm reporting a position or positions in an account for an introducing broker where the beneficial owner of that account is a third broker-dealer. FIF members propose that these accounts be reported as customer accounts.

More granular breakdown of positions

In the Regulatory Notice, FINRA asks whether it should “consider requiring an even more granular breakdown of positions...”⁷ FIF members do not agree with requiring any further breakdown of account types (for example, a breakdown between retail and institutional accounts) as firms would need to undertake significant work to determine, record and report the appropriate identifiers for each account. While firms might have these types of breakdowns available in other systems, such as account master systems, these types of breakdowns typically would not be included in systems that firms use for short interest reporting.

Short interest that is hedged

In the Regulatory Notice, FINRA asks whether “information on the portion of total short interest that is fully or partially hedged” would be useful to market participants. FINRA further asks whether this information is “ascertainable by members”.⁸

We first respond to the question of whether “information on the portion of total short interest that is fully or partially hedged” is “ascertainable by members.” There is no general obligation for a customer to communicate to a broker-dealer whether the positions that it holds through the broker-dealer are

⁶ See, for example, the definition of “Customer” in Rule 15c3-3(a)(1) under the Securities Exchange Act of 1934. 17 CFR 240.15c3-3(a)(1).

⁷ Regulatory Notice 21-19, p. 14.

⁸ Regulatory Notice 21-19, p. 14.

hedged by other positions held through the broker-dealer and, in many cases, customers understandably do not communicate their trading strategies to their brokers. This means that a broker-dealer would not necessarily know whether positions held through the broker-dealer are hedged. The best that a broker-dealer can do is to apply a formula specifically designated by regulation. This formula would need to identify the specific circumstances under which a hedge exists as defined by regulation. An example of this approach is FINRA Rule 2360(b)(3) relating to position limits for options, where specific positions can be classified as hedges of other positions, thereby reducing the size of customer and firm positions.

Reporting hedges of short positions would involve significant work for firms to implement. Depending on which combinations of positions are defined as hedges by regulation, firms would need to code their systems to process and compare the relevant characteristics of each position in an account (or potentially across multiple accounts) and determine which combinations of positions meet the regulatory definition of a hedge. Further complexity will result based on which types of financial products must be taken into consideration. If additional financial products, such as futures and swaps, must be taken into consideration, this greatly increases the complexity and cost for industry members. If these additional products are not included, the data will be incomplete and potentially misleading. Another significant complexity involves aggregation of customer positions across accounts. This is discussed in more detail below.

While this type of report would be complex to implement, it would also be of limited value because it would be incomplete. For example, if a customer has a long option position and a short stock position in the same stock, and these two positions meet the definition of a hedge as adopted by regulation, the hedge would be reportable if the positions are at the same broker-dealer but would not be reportable if the positions are at two different broker-dealers. As a second example, if only hedges involving options and stock are reportable and short and long positions in other financial products are excluded, this will result in incomplete and potentially misleading data. A third limitation is that hedging should take into consideration all of a customer's positions while short interest reporting only reports on positions that have "settled or reached settlement date by the close of the reporting settlement date designated by FINRA".⁹

While not expressly stated, this proposal also presumably would require the aggregation of a customer's positions across multiple accounts at the same broker-dealer, which is not required under the current Rule 4560.¹⁰ Otherwise, the same long position would be reported as a hedge if held in the same account as a short position but not reported as a hedge if held in a different account from the short position. The reporting of a customer's positions aggregated across multiple accounts presents significant interpretive issues that would need to be addressed. As one example, if a person is a sole holder of one account and a joint holder of a second account with another person, should those positions be aggregated, and would this result in duplicate over-reporting? Classifying account groups

⁹ FINRA Rule 4560(b).

¹⁰ See, for example, FINRA Regulatory Notice 17-43, "Guidance on Reporting Short Interest Positions Held in Master/Sub-Accounts or Parent/Child Accounts", available at https://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-17-43.pdf.

and aggregating positions in this manner would be a significant undertaking for industry members. While there are various rules that require aggregation of accounts under certain conditions, aggregation under these rules is complex and costly to implement. For example, FINRA Rule 2360(b)(5) relating to reporting of large option positions requires firms to aggregate positions of investors who “act in concert”. This aggregation requirement involves complex determinations to avoid over-counting of investors who could be considered to be part of multiple groups.¹¹ While the regulators have issued guidelines relating to aggregation, these guidelines do not cover various scenarios, which can result in firms adopting varying and inconsistent reporting practices.

The CAT system (as discussed in the section below on “Account-level Position Information”) will provide regulatory personnel with access to all of a customer’s options and equities orders, executions and allocations, with all equity sell orders (and, through linkage, the associated trades) and allocations identified as long, short or short exempt. This should diminish the need for the inclusion of hedging in short interest reporting.

In addition, the LOPR system hosted by the Options Clearing Corporation provides for reporting of large customer positions in options.¹² This also diminishes the need for the inclusion of hedging in short interest reporting.

Based on the significant work that would be required for firms to report on short interest that is hedged and the fact that the information reported would be incomplete, FIF members do not support this type of reporting requirement. If this type of reporting requirement is adopted, it is important that detailed criteria are provided to firms so it is clear which combinations of positions would be considered hedges for reporting purposes.

2. Account-level Position Information

As an alternative to the proposal discussed above to require firms to distinguish between proprietary and customer accounts, “FINRA is considering requiring firms to report (for regulatory purposes only; not to be disseminated publicly) short interest position information with more granularity by reporting at the account level for all equity securities.”¹³

Security and privacy concerns

FINRA provides that “account-level short interest position information would provide FINRA with insight into the identity of the individuals or entities that accumulated concentrations of large short interest positions, which FINRA would use to enhance its reviews for compliance both with SEC Regulation SHO and FINRA’s short sale rules.”¹⁴ Will FINRA require reporting of account names and numbers associated

¹¹ See, for example, FINRA Regulatory Notice 16-17, at p.3.

¹² FINRA Rule 2360(b)(5).

¹³ Regulatory Notice 21-19, p. 4.

¹⁴ Regulatory Notice 21-19, p. 4.

to all short positions on a security-by-security basis? Alternatively, does FINRA intend to manually request firms to provide account names on a follow-up basis?

If FINRA intends for firms to report account names and numbers associated to all short positions, what processes will be implemented to protect the confidentiality of these account names and numbers? Rule 613 of Regulation NMS, which establishes the Consolidated Audit Trail (CAT), requires that “the national market system plan submitted pursuant to this section shall include policies and procedures, including standards, to be used by the plan processor to: (i) Ensure the security and confidentiality of all information reported to the central repository....”¹⁵ Appendixes C and D to the National Market System Plan Governing the Consolidated Audit Trail (the CAT NMS Plan) contain detailed requirements relating to protection of account and customer information.¹⁶ As an example of the security measures implemented in CAT, FAQ M2 published by the plan participants (the joint self-regulatory organization operators of the CAT NMS Plan) prohibits the reporting of customer account numbers to the CAT transaction reporting system:

“The use of an actual account number as the FDID is prohibited to ensure the capture of sensitive data in CAT is minimized when its inclusion is not required to achieve the objectives of CAT. Specifically, the Operating Committee has determined that Industry Members must not assign as an FDID a customer’s account number or any other number associated with the customer’s account that could be used to effect a transaction in the account.”¹⁷

Account names also are not reported to the CAT transaction system and are instead reported to a segregated Customer Account & Information System (CAIS) that is part of CAT.¹⁸

Cost and resource concerns

Industry members at present are incurring significant costs for CAT reporting. These costs fall into two categories:

- The internal costs that firms are incurring to comply with CAT. This includes:
 - Ongoing review and interpretation of the CAT reporting requirements.
 - Ongoing review of existing trading, allocation and account management workflows against the CAT requirements and determination and documentation of the CAT reporting requirements for these workflows.

¹⁵ 17 C.F.R. §242.613(e)(4).

¹⁶ Limited Liability Company Agreement of Consolidated Audit Trail, LLC, available at <https://catnmsplan.com/sites/default/files/2020-07/LLC-Agreement-of-Consolidated-Audit-Trail-LLC-as-of-7.24.20.pdf>.

¹⁷ CAT FAQ M2, available at <https://catnmsplan.com/faq#M2>.

¹⁸ See, for example, “CAT Reporting Customer & Account Technical Specifications for Industry Members”, Version 2.0 r3, June 2, 2021, available at https://catnmsplan.com/sites/default/files/2021-06/06.01.21_CCID_Technical_Specification_2.0_R3_CLEAN.pdf.

- Development, testing and implementation of CAT reporting software and systems.
- Daily management of the reporting process, including corrections, repairs and supervisory, compliance and security oversight.
- The costs that industry members will be required to pay to cover the majority of the costs of the CAT reporting system.¹⁹

It is important prior to moving forward with a requirement for reporting of account-level position information that FINRA conduct an analysis of the benefits of such a requirement relative to the costs that industry members will need to incur, and that industry members and other market participants have the opportunity to comment on that analysis. That analysis should take account of the customer and account-level information relating to short sale transactions that will be available to Securities and Exchange Commission (Commission), FINRA and other SRO surveillance personnel through the CAT reporting system, as discussed in more detail in the next sub-section. The cost analysis should take account of the internal costs that industry members will need to incur (similar to those described for CAT) as well as any increased fees to FINRA that firms would incur to fund any expansion of the short interest reporting requirements. This analysis also should take into account the risk of exposure of personally identifiable information of customers and the associated liability risk that will fall on industry members.

Leveraging the CAT reporting system

As part of its analysis of whether to require account-level reporting of short interest, FINRA should consider equivalent data that is currently available through the CAT system, as the information that is available through CAT would diminish the need for account-by-account reporting of short positions. For example, the CAT system identifies every short-sale order that is received or routed by a broker-dealer. The CAT system also identifies every short-sale order that is received by an exchange or alternative trading system. Through linkage provided through the CAT system, surveillance personnel can determine every execution that resulted from a short sale. As of July 11, 2022, CAT also will provide linkage to the customer for every short-sale order, execution and allocation. While CAT provides for transaction, allocation, account and customer-level reporting, as opposed to position reporting, starting from July 11, 2022, surveillance personnel will be able to access CAT to identify active short-sellers in a particular stock over any period of time.²⁰ In contrast to the prior Order Audit Trail System, CAT requires reporting of allocations, and these allocation reports must indicate whether the allocation relates to a buy, a long sale or a short sale.

¹⁹ See, for example, “Proposed CAT NMS Plan Amendment Related to Revised Funding Model”, March 31, 2021, available at <https://catnmsplan.com/sites/default/files/2021-03/3.31.21-Plan-Amendment.pdf>.

²⁰ See, for example: CAT Reporting Technical Specifications for Industry Members, Version 4.0.0, June 18, 2021, available at https://catnmsplan.com/sites/default/files/2021-06/6.29.21_CAT_Reporting_Technical_Specifications_for_Industry_Members_v4.0.0r9_CLEAN.pdf; and CAT Reporting Customer & Account Technical Specifications for Industry Members, Version 2.0, June 2, 2021, available at https://catnmsplan.com/sites/default/files/2021-06/06.01.21_CCID_Technical_Specification_2.0_R3_CLEAN.pdf.

Other advantages of leveraging the CAT reporting system include:

- CAT reported data is accessible by the Commission and all SROs, including FINRA.
- Various security and resiliency controls have been implemented as part of CAT, including hashing of individual customer identifiers and segregation of account details from account transaction activity.
- CAT identifies for each account the beneficial owners of the account and persons and entities with trading authorization over the account.
- CAT provides surveillance personnel with the ability to aggregate a customer's activity across multiple broker-dealers through a unique CAT Customer ID (CCID) assigned to each customer.
- CAT data is reportable by T+1 at 8 am.

While transaction and allocation data is not necessarily equivalent to position data, the regulators should weigh the incremental benefit of having position data against the significant costs and associated security risk.

Limiting account-level reporting to positions that are 3% of total shares outstanding

In the Regulatory Notice, FINRA asks whether it would be “more appropriate to limit the account-level reporting requirement to accounts where a beneficial owner’s reportable short interest in a security (aggregated across all of such customer’s accounts at the firm) is 3 percent or more of the TSO?”²¹

This requirement would be more burdensome for many firms as compared to reporting all accounts because firms would need to implement filters based on the total shares outstanding for each stock. This requirement also presumably would require firms to aggregate short positions across accounts. As discussed above, this type of aggregation requirement would raise challenging interpretative questions (for example, whether an account held by a customer individually should be aggregated with an account held by the same customer jointly with another customer and how to avoid over-reporting). This requirement also would be a change to the current short interest reporting, which does not provide for aggregation of a customer’s positions across accounts.²² With the implementation of full CAIS reporting on July 11, 2022, regulators will have access to information about market participants who are significant short sellers in individual stocks, which diminishes the need for this type of reporting requirement.

3. Synthetic Short Positions

FINRA provides in the Regulatory Notice that it “is considering requiring firms to reflect synthetic short positions in short interest reports.” FINRA writes, “[F]or example, enhanced short interest reporting could include synthetic short positions achieved through the sale of a call option and purchase of a put

²¹ Regulatory Notice 21-19, p. 15.

²² See, for example, FINRA Regulatory Notice 17-43, “Guidance on Reporting Short Interest Positions Held in Master/Sub-Accounts or Parent/Child Accounts”, available at https://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-17-43.pdf.

option (where the options have the same strike price and expiration month) or through other strategies.”²³

FIF members have similar concerns as those discussed above relating to the proposal to require the reporting of hedges. FINRA cites as a specific example of a synthetic short “the sale of a call option and purchase of a put option (where the options have the same strike price and expiration month)”. If FINRA were to impose a requirement to report synthetic short positions, it would be important for FINRA to provide specific guidelines as to what constitutes a synthetic short position. Even with these guidelines, reporting this type of information would be a significant undertaking for industry members. While not expressly stated in the Regulatory Notice, one challenge is that firms presumably would need to aggregate customer information across accounts. This presents a significant number of interpretive challenges; for example, how would firms report in a scenario where a person is a sole owner of one account at a broker-dealer and a joint owner of a second account at the same broker-dealer? An additional challenge for many firms is that positions in different instruments often are maintained in different internal ledgers, requiring the analysis of customer positions across different ledgers.

For the reasons set forth above under the discussion of hedging, the costs to industry members to implement this type of requirement would be significant. The cost to maintain this reporting on an ongoing basis also would be significant.

This type of reporting also would have limitations similar to those discussed above with respect to reporting of hedging. For example, synthetic short positions that involve individual positions at different firms would not be reported. In addition, the proposal either would need to include other derivative products, such as swaps and futures, which would greatly increase the reporting burden, or would need to exclude these other products, resulting in incomplete reporting of synthetic short positions.

FIF members also are unclear as to the value of reporting synthetic short positions if firms would be reporting as synthetic short positions holdings that are hedged by long positions, and the associated long positions are not reportable. Presumably, FINRA also would need to require the reporting of offsetting synthetic long positions, as discussed above with respect to the reporting of hedging. This would involve further cost and complexity.

FIF members further note that information about options trading by customers and broker-dealers is available to Commission, FINRA and other SRO personnel through the CAT system. Through CAT, effective July 11, 2022, surveillance personnel will be able to access all options and equities trading activity by a firm or individual across accounts at different broker-dealers and across different accounts at the same broker-dealer. As discussed above, CAT also includes allocations. In addition to having access to CAT, regulators have access to option position reports through the LOPR system.

²³ Regulatory Notice 21-19, p. 4.

4. Outstanding stock borrows

In the Regulatory Notice, FINRA requests comment on whether “... all outstanding stock borrows (including outside of an arranged financing program)” should “be reportable to FINRA along with total short interest?”²⁴

Having to report all outstanding stock borrows would require significant additional work for firms, including the development work to create the reports and the ongoing reporting responsibility. FIF members recommend that FINRA consider the information on stock borrows that FINRA can obtain directly from The Depository Trust Company (DTC), which operates the Collateral Loan Service.²⁵

5. Total Shares Outstanding (TSO) and Public Float

In the Regulatory Notice, FINRA is considering “including in FINRA-disseminated short interest data, where available, the TSO and public float for securities.”²⁶ FIF members do not object to this proposal. If the public availability of this data will impose additional supervisory, compliance or disclosure obligations on firms, FIF members request guidance on these obligations.

6. Threshold Security Field

In the Regulatory Notice, “FINRA is considering including in FINRA-disseminated short interest data a new field that would indicate if the security is a threshold security as of the short interest position reporting settlement date.” FIF members do not object to this proposal.²⁷ If the public availability of this data will impose additional supervisory, compliance or disclosure obligations on firms, FIF members request guidance on these obligations.

C. Frequency and Timing of Short Interest Position Reporting and Data Dissemination

In the Regulatory Notice, “FINRA is considering reducing the reporting timeframe [for short interest reporting] to daily or weekly submissions....” FINRA also is considering requiring that reports be submitted by “6:00 p.m. ET one business day after the designated reporting settlement date....” Finally, FINRA is considering reducing the time period between receipt of short interest data by FINRA and FINRA’s public dissemination of the data (for example, from five to four business days).²⁸

²⁴ Regulatory Notice 21-19, p. 16.

²⁵ For a description of DTC’s Collateral Loan Service, see the DTC Settlement Service Guide, available at <https://www.dtcc.com/-/media/Files/Downloads/legal/service-guides/Settlement.pdf>.

²⁶ Regulatory Notice 21-19, p. 5.

²⁷ Regulatory Notice 21-19, p. 5.

²⁸ Regulatory Notice 21-19, p. 5.

Frequency of reporting

Many FIF members are concerned about moving to daily reporting. For a number of firms, there is a significant manual oversight process associated with the submission of the bi-monthly short interest report. Having to conduct this oversight process on a daily basis would require these firms to expend significant additional resources. FIF members believe that a weekly reporting requirement would be more feasible, subject to reducing the current level of manual follow-up requests.

Some FIF members have estimated that the manual work to prepare, review and submit a short interest report is approximately four hours. Daily short interest reporting would require firms to allocate significant additional employee resources to this process and could represent a 15X increase in the resources required to prepare, review and submit reports and respond to follow-up requests. An additional concern is the extensive resources that firms expend to respond to follow-up requests from FINRA relating to their short interest reports. Moving to daily reporting would involve a significant increase in the number of follow-up requests and the resources that firms will need to allocate to respond to these requests. Moving to daily reporting also would require FINRA to incur significant additional costs to review filings, submit follow-up requests to firms and review the firm responses and updates.

In general, FIF members would not object to moving to a weekly reporting timeframe if the current manual follow-up processes relating to short interest reporting can be streamlined. Today, firms are required to expend significant resources to respond to manual follow-up requests from FINRA relating to the short interest reports that they submit. These follow-up requests often are several pages long and require manual review and response by member firms. Follow-up requests often relate to significant position changes from the prior short interest report submitted by a firm, reporting of foreign positions, and reporting of symbols that have been subject to corporate actions (such as stock splits and acquisitions). FIF members report that in the significant majority of cases firms confirm the data that they have previously submitted without amendments.

Moving to weekly reporting would effectively double the resources required for firms to respond to manual follow-up requests from FINRA and also double the resources that FINRA will need to expend to manually review firm responses. After submission of this letter, FIF members would appreciate the opportunity to meet with FINRA personnel to discuss ways in which the current follow-up processes could be streamlined to the benefit of FINRA and industry members. It would be important for industry members and FINRA to engage in these discussions if the time interval for short interest reporting will be reduced.

Reporting in one business day

One business day is not sufficient time for industry members to perform proper validation prior to submission of short interest reports. As one example, the validation process for clearing firms when reporting on behalf of their correspondent firms typically involves coordination between the clearing and correspondent firms. Some of these correspondent firms are based in other countries. It is important to provide sufficient time for this coordination process. As a second example, firms must

perform validation to ensure that corporate actions are properly reflected in their short interest reports. Because one business day is not a sufficient time for firms to perform proper validation, reducing the reporting period to one business day will mean a significant reduction in the quality of the data that is reported.

Reducing the reporting period from bi-monthly to weekly, as proposed, will mean that short interest data is made available to regulators and the public on a more timely basis. The potential benefit of further reducing this timeframe by one additional business day is outweighed by the reduced quality of the data that would be reported. Regulators also can access CAT for more timely access to information about short sale activity in the market.

D. Information on Allocations of Fail-to-Deliver Positions

In the Regulatory Notice, “FINRA is considering enhancing its short sale reporting program by adopting a new rule to require members to submit to FINRA (for regulatory purposes only; not for public dissemination) a report of daily allocations of fail-to-deliver positions to correspondent firms pursuant to Rule 204(d) of Regulation SHO.”

FIF members believe that this type of report can be beneficial if it reduces the number of manual inquiries that firms receive today relating to allocations of fail-to-deliver positions. This benefit should be balanced against the costs of developing this report and implementing ongoing daily reporting. On balance, FIF members believe that the benefits of this reporting can outweigh the costs, subject to the manner in which the reporting requirement is implemented and providing an appropriate timeframe for implementation.

FIF members recommend that if a firm does not allocate fail-to-deliver positions the firm should be able to submit a one-time filing to that effect in lieu of the daily filing requirement.

E. Other Short Sale-Related Initiatives

Reporting framework around stock lending activity

In the Regulatory Notice, FINRA requests comment on whether it “should explore creating a reporting framework around stock lending activity? For example, member firms that engage in stock lending transactions could be required to report loan terms to FINRA – e.g., rebate rate (for new loans, open daily loans and re-rates), loan amount, contra-party information.”²⁹

This type of report would be a significant reporting burden for firms. FIF members recommend that FINRA consider the information on stock borrows that FINRA can obtain directly from The Depository Trust Company (DTC), which operates the Collateral Loan Service.

²⁹ Regulatory Notice 21-19, p. 19.

Recommended changes not discussed above

In the Regulatory Notice, FINRA asks whether “there are any other short sale-related changes not discussed above that commenters recommend?”³⁰

As of July 11, 2022, CAT will include all allocations of all customer short and long positions associated to the underlying customer with linkage of a customer’s allocations across different firms and different accounts at the same firm. Allocations for sells in CAT will include whether the allocation is for a short or long sale. CAT also will include all short and long customer and principal sell orders and trades. Considering the level of short sale data in CAT, FINRA should consider whether it is necessary to continue to require short interest reporting or, alternatively, whether the scope of short interest reporting can be reduced.

Implementation timeframes

In the Regulatory Notice, FINRA requests comment on the appropriate timeframe for implementation of the various proposed changes.³¹ It is difficult for FIF members to comment on timeframes without having a better understanding of the specific set of proposed changes that FINRA intends to implement. FIF members anticipate that as this process moves forward, FINRA will provide more detail on the specific changes that FINRA intends to implement. FINRA might communicate this through a subsequent regulatory notice or other form of communication or through a filing with the Commission. FIF members will be better able to provide input on specific timeframes when there is a better understanding of the specific changes that FINRA intends to implement.

Any determinations relating to timelines should take account of the current responsibilities that firms have for implementing CAT and other regulatory reporting changes. FIF members also request that the implementation timeline for any changes commence upon the publication of updated technical specifications and the issuance of any FAQs or other interpretive guidance by FINRA. In addition, subject to the scope of the reporting changes that FINRA adopts, FINRA should consider a phased implementation of the reporting requirements.

³⁰ Regulatory Notice 21-19, p. 19.

³¹ Regulatory Notice 21-19, pp. 14-18.

FIF appreciates the opportunity to comment on Regulatory Notice 21-19. If you would like clarification on any of the items discussed in this letter or would like to discuss further, please contact me at howard.meyerson@fif.com.

Very truly yours,

/s/ Howard Meyerson

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