

Short Sales

FINRA Requests Comment on Short Interest Position Reporting Enhancements and Other Changes Related to Short Sale Reporting

Comment Period Expires: August 4, 2021

Summary

FINRA is requesting comment on potential enhancements to its short sale reporting program. FINRA is considering: (1) modifications to its short interest reporting requirements (Rule 4560); (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. FINRA believes that these potential changes could improve the usefulness of short sale-related information to FINRA, other regulators, investors and other market participants.

Questions regarding this *Notice* should be directed to:

- ▶ Yvonne Huber, Vice President, Market Regulation Department, at (240) 386-5034 or yvonne.huber@finra.org; or
- ▶ Racquel Russell, Associate General Counsel, Office of General Counsel, at (202) 728-8363 or racquel.russell@finra.org.

Questions regarding the Economic Impact Assessment in this *Notice* should be directed to Lori Walsh, Deputy Chief Economist, Office of the Chief Economist, at (202) 728-8323 or lori.walsh@finra.org.

Action Requested

FINRA encourages all interested parties to comment on this request for comment. Comments must be received by August 4, 2021.

June 4, 2021

Notice Type

- ▶ Request for Comment

Suggested Routing

- ▶ Legal & Compliance
- ▶ Operations
- ▶ Systems
- ▶ Technology
- ▶ Trading and Market Making

Key Topics

- ▶ Short Interest
- ▶ Short Sales

Referenced Rules and Notices

- ▶ FINRA Rule 4320
- ▶ FINRA Rule 4560
- ▶ Regulation SHO
- ▶ Regulatory Notice 12-38

Comments must be submitted through one of the following methods:

- ▶ online using FINRA's comment form for this *Notice*;
- ▶ emailing comments to pubcom@finra.org; or
- ▶ mailing comments in hard copy to:

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

To help FINRA process comments more efficiently, persons should use only one method to comment.

Important Notes: Comments received in response to Regulatory Notices will be made available to the public on the FINRA website. In general, comments will be posted as they are received.¹

Before becoming effective, a proposed rule change must be filed with the Securities and Exchange Commission (SEC) pursuant to Section 19(b) of the Securities Exchange Act of 1934 (SEA).²

Background and Discussion

FINRA currently collects short sale-related information from firms to support FINRA's oversight of member compliance with Regulation SHO³ and other short sale obligations, and to provide market participants with insight into short sale activity and position information. Pursuant to FINRA Rule 4560 (Short-Interest Reporting), firms are required to report to FINRA their aggregate short position in each equity security twice a month.⁴ As described further below, the short interest data collected by FINRA includes the reporting firm's current aggregate short interest position for the security and any short position changes at the firm since the prior reporting period, among other things. For over-the-counter equity securities, FINRA aggregates and publishes the collected short interest data (aggregated across all firms, per symbol) on the FINRA website along with additional FINRA-calculated metrics relating to short sale activity in the security (*e.g.*, days to cover⁵).⁶ For exchange-listed securities, FINRA provides the reported short interest data to the applicable listing exchange for processing and publication.⁷

FINRA is considering whether amendments to its short interest reporting and dissemination program would be appropriate to improve the regulatory and public utility of the information. FINRA also is considering whether any changes to other aspects of its short sale regulatory program would be beneficial, as discussed below.

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

FINRA Rule 4560 requires firms to report short positions in all equity securities (other than Restricted Equity Securities) to FINRA. Thus, FINRA members are required to report short positions in both OTC equity securities and exchange-listed equity securities. However, FINRA currently only disseminates on the FINRA website short interest information for OTC equity securities. For exchange-listed securities, FINRA provides the reported short interest position information to the applicable listing exchange for processing and publication. Exchanges historically have handled the publication of short interest data for their listed securities, even after short interest reporting for all equity securities was consolidated through FINRA in 2008.⁸

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. In addition, if this change was made, the below potential changes to the content and timing of publicly disseminated data would apply to listed and unlisted securities.

B. Content of Short Interest Data

FINRA receives short interest data from members on a firm-by-firm basis and subsequently aggregates the information by security to create the disseminated data files. FINRA is considering changes to the data fields firms are required to complete.

As discussed above, FINRA's website publication of short interest data currently is limited to non-exchange listed, OTC equity securities and includes the following fields:

- ▶ Security name
- ▶ Symbol
- ▶ Settlement Date
- ▶ Market (*i.e.*, OTC equity securities)
- ▶ Current aggregate short interest position for the security across all firms
- ▶ Previous aggregate short interest position for the security across all firms
- ▶ Change in short interest position since the prior reporting period (number of shares)
- ▶ Change in short interest position since the prior reporting period (percentage)
- ▶ Average daily trading volume for the security
- ▶ Days to cover⁹
- ▶ Revision Flag¹⁰

FINRA is considering the following changes to reported and disseminated short interest data.¹¹ In some cases, FINRA also is considering whether the additional data points proposed to be collected should be disseminated publicly or used only for regulatory purposes.

Proprietary and Customer Account Categorization: FINRA 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. Specifically, in addition to reporting the total short interest in a security, firms also would be required to specify the short interest held across all proprietary accounts and across all customer accounts (for both retail customer and institutional customer accounts) for each equity security as of the close of the designated reporting settlement date. FINRA believes that this information would provide beneficial regulatory information regarding the type of market participant that accumulated a short interest position (*i.e.*, a firm or a non-broker-dealer customer).

Account-level Position Information: Alternatively, 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. 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.

Synthetic Short Positions: In addition, FINRA is considering requiring firms to reflect synthetic short positions in short interest reports. For example, enhanced short interest reporting could include synthetic short positions achieved through the sale of a call option and purchase of a put option (where the options have the same strike price and expiration month) or through other strategies. FINRA believes this information would assist FINRA in understanding the scope of market participants' short sale activity, specifically regarding the use of less-traditional means of establishing short interest.

Loan Obligations Resulting From Arranged Financing: FINRA understands that members may offer arranged financing programs (sometimes called "enhanced lending" or "short arranging products") through which a customer can borrow shares from the firm's domestic or foreign affiliate and use those shares to close out a short position in the customer's account. FINRA is considering requiring members to report as short interest outstanding stock borrows by customers in their arranged financing programs to better reflect actual short sentiment in the stock.

Total Shares Outstanding (TSO) and Public Float: FINRA also is considering including in FINRA-disseminated short interest data, where available, the TSO and public float for securities. FINRA would obtain this information from a third-party source and include it in disseminated information; therefore, this change would not alter firms' reporting requirements. FINRA believes disseminating a security's TSO and public float would provide investors with contextual information regarding the relative size of the aggregate short position in the security.

Threshold Security Field:¹² 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. This change would not alter firms' reporting requirements. FINRA believes that a security's status as a threshold security could be useful to investors and other market participants in evaluating an investment decision, and that consolidating this information into disseminated short interest data simplifies the process of obtaining this information for users of the data.

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

Members currently must submit short interest reports to FINRA twice a month and reports are due to FINRA by 6:00 p.m. ET on the second business day after the reporting settlement date designated by FINRA. FINRA is considering requiring firms to report short interest data to FINRA more frequently. Specifically, FINRA is considering reducing the reporting timeframe to daily or weekly submissions and, to enable FINRA to disseminate the collected information to the marketplace on a timelier basis, such reports also would be due to FINRA in a shorter timeframe following the applicable settlement date. For example, if FINRA were to require daily submissions, short interest reports could be due by 6:00 p.m. ET one business day after the designated reporting settlement date, and for weekly submissions, short interest reports could be due by 6:00 p.m. ET one business day after the weekly designated reporting settlement date (instead of the current requirement of two business days after the designated reporting settlement date).¹³

FINRA also is considering reducing the FINRA processing time involved in disseminating short interest data. Currently, FINRA disseminates short interest data for OTC equity securities on the FINRA website seven business days after the designated settlement date, which is five business days after the reports are due from member firms. FINRA is considering reducing this processing time. The proposed reduction in FINRA processing time could apply where firms report short interest to FINRA on a daily or weekly basis, as described above, and also could apply to the current twice a month reporting cycle (with or without a reduced firm turnaround time).

Increasing the frequency and timing of reporting and disseminating short interest data would provide FINRA, other regulators, investors and other market participants with a more current view of short interest information, better inform investors' and other market participants' investment decisions, and provide more timely information to FINRA for regulatory use.

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

Regulation SHO permits a member that is a participant of a registered clearing agency to allocate a portion of its Rule 204 fail-to-deliver position to another broker-dealer based on that other broker-dealer's short position.¹⁴ 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.

The proposed allocation report may include the following fields:

- ▶ Security
- ▶ Identity of correspondent firm
- ▶ Amount allocated to correspondent firm (number of shares)
- ▶ Trade date(s)
- ▶ Allocation Date
- ▶ Close out Date
- ▶ Applicable close out obligation (T+3, T+5 or T+35)

This information would provide FINRA with important supplemental information in support of its Regulation SHO surveillance program. Currently, when there has been a fail-to-deliver, FINRA initiates an inquiry with the clearing firm requesting information on whether the fail-to-deliver has been allocated to a correspondent firm and, if so, the identity of the correspondent firm. Obtaining daily information on fail-to-deliver allocations would allow FINRA to directly identify the member that is responsible for a close-out obligation (without first requesting this information from the clearing firm), and, therefore, would allow FINRA to conduct more efficient investigations.

Preliminary Economic Impact Analysis

FINRA has undertaken a preliminary economic impact assessment, as set forth below, to analyze the potential economic impacts, including anticipated costs, benefits, and distributional and competitive effects, relative to the current baseline, and the alternatives FINRA considered in assessing how to best meet its regulatory objectives.

Regulatory Need

The proposed short sale-related reporting enhancements would provide greater transparency regarding short sale activity. More current and detailed data can be of use to market participants who consider short interest when evaluating investment opportunities. It also would allow FINRA to monitor for compliance more efficiently with Regulation SHO and other short sale obligations.

Economic Baseline

Under current Rule 4560, firms report to FINRA the gross short interest in a security aggregated across all accounts twice a month. Firms have two business days after the settlement date to submit the reports.

The data do not distinguish the type or identity of accounts with short positions. The data also do not reflect short positions that are achieved synthetically or loan obligations resulting from arranged financing. For OTC securities, short interest information is aggregated at the security level and then disseminated to investors five business days after the reporting deadline. This results in a seven-business day delay before investors have access to the collected short interest data. Investors who wish to know the short interest as the percentage of shares outstanding or public float, both of which are commonly used metrics that can be compared across securities, must look up the denominator elsewhere. Changes in short interest for OTC equity securities can be fairly large between settlement dates relative to the average daily trading volume in these securities. In comparing the short interest on the March 15, 2021 and March 31, 2021, settlement dates, 8,017 OTC equity securities had changes in short interest. The magnitude of the change in short interest for OTC equity securities amounted to 28 percent of the average daily trading volume for the median security but rises to 424 percent by the 75th percentile and 62,869 percent by the 95th percentile.¹⁵

For exchange-listed equity securities, bi-monthly short interest data is aggregated at the security level and provided to the relevant listing exchange that determines the content of the data it disseminates. Changes in short interest for exchange-listed equity securities between settlement dates can also be fairly large relative to average daily trading volume. In comparing the short interest on the March 15, 2021 and March 31, 2021, settlement dates, 10,027 exchange-listed equity securities had changes in short interest. The magnitude of the change in short interest for exchange-listed equity securities amounted to 26 percent of the average daily trading volume for the median exchange-listed security but rises to 60 percent by the 75th percentile and 192 percent by the 95th percentile.¹⁶

With respect to information on fail-to-deliver allocations, firms do not currently routinely report this information to FINRA. Instead, when there is a fail-to-deliver, FINRA contacts clearing firms for information on whether the fail has been allocated and, if so, to whom. On a median day in March 2021, 5,799 equity securities had outstanding fail-to-deliver positions.

Economic Impact

Publication of Short Interest for Exchange-listed Equity Securities

Although short positions in all equity securities are reported to FINRA, FINRA currently only disseminates short interest position data for OTC equity securities. Publication of data for exchange-listed securities is handled by the exchanges, which may also license this data for distribution by third parties.

Consolidating the publication of short interest data to include both OTC and exchange-listed equity securities on the FINRA website may make short interest data more easily accessible to investors and potentially at lower cost.

Members would not incur any direct costs associated with this change. However, some exchanges currently charge fees for access to or licensing for short interest data on their listed securities, and this revenue could be reduced if the data is freely available on the FINRA website. The decrease in revenue could potentially be passed on in the form of increases in other fees for other market participants.

If FINRA were to publish these data, the other potential changes to the content and timing of short interest data discussed below would apply to both exchange-listed and OTC equity securities. The broader applicability of these changes could affect the benefits and costs. FINRA requests comment below on whether it should adopt these changes and if any of the changes should apply differently to OTC and exchange-listed equity securities.

Content of Short Interest Data

Proprietary and Customer Account Categorization

Under current Rule 4560, firms report gross short interest in a security on an aggregated basis across all accounts.

FINRA believes information on the type of market participant holding a short interest position would be useful in its oversight of Regulation SHO and other short sale obligations. This information may also be useful for market participants. While proprietary short selling by members is not necessarily for the purposes of liquidity provision, it may correspond to this category to some degree and, therefore, be less likely to reflect negative sentiment in the stock. Below, FINRA requests information on whether dissemination of this information would provide useful information to the marketplace.

FINRA members would be required to make systems changes to report short positions categorized by the type of account. This would represent a fixed cost to FINRA members that report short interest. The ongoing cost and variable cost with respect to transaction volume of reporting short interest by type of account is expected to be minimal for firms as costs currently are incurred for existing short interest reporting. We request comment below on the costs associated with the proposed changes.

It is possible that the public dissemination of more granular data could discourage short-selling activity, which is an important mechanism for both efficient pricing and for liquidity provision.¹⁷ We also request comment on potential negative outcomes of making this information publicly available on an aggregated basis.

Account-level Position Information

Currently, short interest is reported by a firm on an aggregated basis across all accounts. By requiring firms to report short interest positions at the account level, FINRA believes it will obtain insight into the identities of individuals or entities with large short interest positions that would enhance its reviews for compliance with Regulation SHO and other short sale obligations. To obtain the full benefit of this data, FINRA is also considering possible ways to identify account holders across firms.

FINRA members would incur costs associated with making systems changes required to report short interest at the account level. The ongoing cost and variable cost with respect to transaction volume of reporting short interest at the account level is expected to be minimal as costs are currently incurred for existing short interest reporting but the volume of data reported would be substantially higher. The costs may be reduced if account-level reporting is only required for securities that meet a certain threshold of total short interest. We request comment below on the costs associated with reporting account-level information.

Synthetic Short Position

The sale of a call option and purchase of a put option with the same expiration date and strike price provides equivalent exposure to the price of a stock as a short sale. Despite this equivalence, this synthetic position does not currently create a short position that would be reportable under the current version of Rule 4560. The extent of use of this and other types of synthetic short positions is unknown.

A more expansive reporting requirement that captures synthetic short positions would allow FINRA to be better able to understand market participants' short sale-related activity. As synthetic short positions provide equivalent exposure, information on them may also provide investors and other market participants with similarly useful information on negative sentiment. The benefits of this additional information may be limited by an absence of information on whether and to what extent the synthetic short positions are hedged. FINRA requests comment below on whether the proposed synthetic short position reporting requirement is appropriate and the scope of the types of strategies that should be reportable.

FINRA members would incur costs associated with making systems changes required to identify synthetic short positions and include this information in short interest reports. The variable cost of reporting this information is likely to be minimal as costs are currently incurred for existing short interest reporting. We request comment below on the costs associated with the proposed changes. To the extent that market participants wish to avoid disclosure, they may respond to a new reporting requirement by instead taking similar positions that fall outside the bounds of the proposed definition of a synthetic short position. A synthetic short position reporting requirement with a broader scope than the sale of a call option and purchase of a put option with the same expiration date and strike price could potentially mitigate such avoidance.

Loan Obligations Resulting from Arranged Financing

When a customer closes-out a short position by delivering shares borrowed from a member's affiliate, the customer acquires an obligation to deliver shares to the affiliate in the future. The exposure from this loan obligation is substantially equivalent to a short position but the loan obligation is not a reportable short position under the current version of Rule 4560. If customers can close out short positions by borrowing shares from unaffiliated lenders, those loan obligations would have the same economic equivalence to reportable short positions. We request comment below on whether firms have such programs.

Expanding the short interest reporting requirement to capture loan obligations resulting from borrowing shares through an arranged financing program would allow FINRA to be better able to understand market participants' short-sale related activity and more fully reflect short interest sentiment. FINRA requests comment below on whether customers' outstanding stock borrows through arranged financing programs should be reflected in short interest reports.

FINRA members would incur costs associated with making systems changes required to identify loan obligations resulting from arranged financing. The ongoing cost and variable cost with respect to transaction volume of reporting this information is expected to be minimal as costs are currently incurred for existing short interest reporting. We request comment below on the costs associated with the proposed changes. To the extent that market participants wish to avoid disclosure and use arranged financing for this purpose, disclosure requirements for the resulting loan obligations could potentially shift some borrowing activity away from arranged financing.

TSO and Public Float

FINRA currently disseminates information on the current aggregate short interest in an OTC equity security in number of shares. The TSO or public float would provide investors and other market participants with additional context for use in understanding short interest information. Members would not incur costs in connection with this change. FINRA requests comment below on whether including this information in the disseminated short interest position data would be useful to investors and other market participants.

Threshold List Field

FINRA currently distributes a daily list of OTC equity threshold securities. Including threshold security status in FINRA-disseminated short interest data would make this information more easily accessible and salient to market participants. Among other reasons this information may be relevant to investors, academic work has found that threshold securities tend to experience subsequent abnormal returns.¹⁸ Members would not incur costs in connection with this change. FINRA requests comment below on whether including this information in the disseminated short interest position data would be useful to investors and other market participants.

Frequency and Timing of Short Interest Position Reporting and Data Dissemination

Currently, firms submit short interest reports twice a month with reports submitted on the second business day after the reporting settlement date. Information on the volume of short sales for OTC equity securities is released at a daily frequency, but short sale volume does not equate to short interest position information. Comerton-Forde et al. (2016) show that in Australia, where information on both short interest and short sale volume are disclosed at a daily frequency, the two metrics provide distinct information.¹⁹ Estimates of short interest at a daily frequency based on other sources such as securities lending data are available for purchase from vendors, but may be less accurate and are not freely available.

By increasing the reporting frequency to weekly or daily, reducing the time after the settlement date by which firms must report short interest to FINRA, and reducing the delay prior to public dissemination, FINRA and other regulators would have a more current view of short interest information for oversight of compliance with Regulation SHO and other short sale obligations. More frequently updated and current information on short positions may also be more useful to other market participants making investment decisions than the information available from FINRA today. The value of this information to market participants is demonstrated by the demand for estimates of daily short interest.

The magnitude of costs accommodating more frequent reporting with a faster turn-around time is unclear and would depend on the amount of labor involved. Changes in costs may result in changes in short selling behavior by firms or investors. We request comment on the costs associated with increased frequency and shorter timing for short interest reporting below.

It is possible that more frequent public disclosure of short interest positions could discourage short selling, which is an important mechanism for price efficiency and for liquidity provision.²⁰ We also request comment below on potential negative outcomes of making this information publicly available.

Information on Allocations of Fail-To-Deliver Positions

When there has been a fail-to-deliver, FINRA currently must contact the clearing firm to learn whether the fail-to-deliver has been allocated to a correspondent firm and if so, to whom it has been allocated. FINRA would be able to conduct investigations more efficiently if daily allocation information was reported to FINRA. Member firms may also benefit from freeing up resources used to respond to inquiries about allocation to correspondent firms.

FINRA members that are participants of a registered clearing agency would incur costs associated with establishing and operating systems to report daily allocations to correspondent firms. The incidence of such costs could also potentially fall on other FINRA members whose trades are cleared by members directly affected by the reporting requirement if the cost is passed on in the form of higher fees. We request comment below on the costs associated with the proposed changes.

Alternatives Considered

No other alternatives beyond those discussed above were considered for the proposed amendments. However, FINRA also requests recommendations below on any additional short sale-related reporting changes that should be considered.

Request for Comments

As discussed above, FINRA is considering consolidating short interest data publication on the FINRA website for all equity securities (listed and unlisted). FINRA also is considering potential short interest position reporting and dissemination enhancements to improve the usefulness of short interest data to FINRA, other regulators, investors, and other market participants by collecting more timely and granular information on short interest positions. In addition to the specific questions noted below, FINRA requests comment on all aspects of this Notice, including the costs and burdens associated with these potential enhancements. FINRA requests that commenters provide empirical data or other factual support for their comments wherever possible.

Exchange-listed Equity Securities

As discussed above, FINRA currently disseminates on the FINRA website short interest position information for OTC equity securities. For exchange-listed securities, FINRA provides reported short interest position information to the applicable listing exchange for processing and publication, and each listing exchange determines the timing and content of its disseminated short interest data. FINRA is considering consolidating the publication of short interest data on the FINRA website for both listed and unlisted securities.

- ▶ FINRA requests comment on whether FINRA should publish on the FINRA website short interest data for all equity securities (listed and unlisted).
- ▶ FINRA requests comment on whether the potential short interest enhancements discussed above would be equally beneficial for both OTC equity securities and exchange-listed equity securities.
- ▶ Are there any aspects of the proposal that should apply differently to exchange-listed equity securities or OTC equity securities? If so, please explain.
- ▶ Would the enhancements discussed herein be beneficial to investors and the marketplace even if the changes to dissemination were implemented only with respect to OTC equity securities?
- ▶ Are there any expected potential competitive effects associated with this change?

Content of Short Interest Data

FINRA is considering changes to the content of the information firms are required to report as well as to the fields published by FINRA in disseminated short interest data.

Proprietary and Customer Account Categorization

As discussed above, FINRA is considering requiring firms to specify the portion of the total short position that is held across proprietary accounts and the portion that is held across customer accounts.

- ▶ Do firms anticipate any operational challenges with separately reporting the portion of short interest positions held across customer accounts and proprietary accounts?
- ▶ What updates or changes to systems would be necessary to facilitate this change?
- ▶ FINRA believes this level of account type information would be useful to FINRA in performing its regulatory functions and is interested in obtaining feedback on whether investors and other market participants also would find this additional information useful (*e.g.*, to assess investor sentiment about a stock). Therefore, FINRA requests comment on whether publicly providing the portion of the total short position that is held across customer accounts and the portion that is held across proprietary accounts (aggregated per symbol across all firms) in disseminated short interest data would be beneficial.

- ▶ Might making this information publicly available lead to any negative outcomes regarding how short interest position information is interpreted, the willingness of market participants to take short positions or otherwise?
- ▶ Should FINRA consider requiring an even more granular breakdown of positions, *e.g.*, should FINRA require firms to further separate the positions into retail and institutional investor categories? With respect to positions held in proprietary accounts, should FINRA require firms to further separate the positions into market maker and non-market maker categories? If so, should this further granularity also be provided in publicly disseminated short interest data (aggregated per symbol across all firms)?
- ▶ Would information on the portion of total short interest that is fully or partially hedged be useful to market participants? Is this information also ascertainable by members with respect to customer short positions? What factors would impact a member's ability to determine with certainty whether a short position is fully or partially hedged and report this information to FINRA?
- ▶ Would information on the portion of total short interest that is fully or partially hedged be useful to market participants even if incomplete, for example, if it was only available for proprietary short positions or otherwise did not reflect all hedging activity?
- ▶ Do commenters believe that short interest in proprietary positions are likely to be as meaningful as short interest in customer positions? What are commenters' views on whether proprietary or customer short interest is more likely to reflect negative sentiment. Is one more likely to be short-term? Is one more likely to be hedged?
- ▶ What, if any, additional costs would commenters anticipate if FINRA were to require firms to report the portion of short interest positions held across customer accounts and the portion of short interest positions held across proprietary accounts?
- ▶ What implementation period would be appropriate to provide members with sufficient time to make the systems changes necessary to comply with these changes?
- ▶ Are there any expected potential competitive effects associated with this change, whether across member firms or between member firms and non-member firms?

Account-level Position Information

As discussed above, as an alternative to proprietary and customer account categorization, FINRA is considering requiring firms to report to FINRA (for regulatory purposes only; not to be disseminated publicly) short interest position information at the account level.²¹

- ▶ Do firms anticipate any operational challenges with reporting short interest position information to FINRA on an account-level basis?
- ▶ FINRA also is considering a means of consistently identifying account holders across reporting firms. What do commenters think would be the most appropriate means for consistently identifying individual account holders across firms for purposes for this proposal?

- ▶ What updates or changes to systems would be necessary to facilitate this change?
- ▶ If FINRA were to adopt this change, would it 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? Is 3 percent the appropriate TSO threshold? Please discuss.
- ▶ What, if any, additional costs would commenters anticipate if FINRA were to require firms to report short interest position information to FINRA on an account-level basis?
- ▶ What implementation period would be appropriate to provide members with sufficient time to make the systems changes necessary to comply with this requirement?

Synthetic Short Positions

FINRA is considering requiring firms to reflect synthetic short positions in their short interest reports.

- ▶ FINRA proposes to require that firms include synthetic short positions, such as the sale of a call option and purchase of a put option (where the options have the same strike price and expiration month), in short interest reports. FINRA requests comment on whether there are any other types of strategies (involving options, swaps or other products) that firms should be required to report as synthetic short interest. Please explain.
- ▶ FINRA requests comment on the feasibility of reporting synthetic short interest.
- ▶ What updates or changes to systems would be necessary to facilitate reporting of synthetic short interest?
- ▶ FINRA requests comment on whether synthetic short interest should be identified in disseminated short interest data (aggregated per symbol across all firms) in addition to being available for regulatory purposes. Why or why not?
- ▶ What, if any, additional costs would commenters anticipate if FINRA were to require firms to report synthetic short interest?
- ▶ What implementation period would be appropriate to provide members with sufficient time to make the systems changes necessary to comply with this requirement?
- ▶ Are there any expected potential competitive effects associated with this change, whether across member firms or between member firms and non-member firms?

TSO and Public Float

FINRA is considering including in FINRA-disseminated short interest data, where available, a security's TSO and public float. FINRA would obtain the TSO and public float information from a third-party source; therefore, this change would not alter firms' reporting requirements.

- ▶ Do commenters agree that including TSO and public float information in disseminated short interest data would be useful to investors and other market participants? Why or why not?
- ▶ TSO and public float information may not be readily available for all OTC equity securities. Do commenters believe that providing this information in some cases but not others would cause confusion or present any other problems for users of the data?
- ▶ Are there any expected potential competitive effects associated with this change, whether across member firms or between member firms and non-member firms?

Threshold List Field

As discussed above, FINRA is considering including in disseminated short interest data a new field that would indicate if the security is a threshold security. This change would not alter firms' reporting requirements.

- ▶ Do commenters agree that identifying threshold securities in disseminated short interest would be useful to investors and other market participants? Why or why not?

Loan Obligations Resulting From Arranged Financing

As discussed above, FINRA is considering requiring members who offer arranged financing programs to report outstanding stock borrows by customers in those programs as short interest.

- ▶ FINRA requests comment on whether firms currently offer this type of arranged financing service to customers. Where offered, FINRA requests feedback on whether the shares are loaned to the customer by an affiliate of the member and, if so, whether such affiliate is domestic or foreign. FINRA also requests comment on whether any firms have programs where they arrange for customers to close out short positions by borrowing shares from unaffiliated lenders.
- ▶ FINRA requests comment on whether outstanding stock borrows by customers in arranged financing programs should be reflected in short interest reports. Should all outstanding stock borrows (including outside of an arranged financing program) be reportable to FINRA along with total short interest?
- ▶ FINRA requests comment on the feasibility of reflecting outstanding stock borrows by customers in arranged financing programs in short interest reports.
- ▶ What updates or changes to systems would be necessary to facilitate this change?
- ▶ What, if any, additional costs would commenters anticipate if FINRA were to require firms to reflect outstanding stock borrows by customers in arranged financing programs in short interest reports?

- ▶ What implementation period would be appropriate to provide members with sufficient time to make the systems changes necessary to comply with this requirement?
- ▶ Are there any expected potential competitive effects associated with this change, whether across member firms or between member firms and non-member firms?

Frequency and Timing of Short Interest Position Reporting and Data Dissemination

As discussed above, FINRA is considering changes that would provide FINRA, other regulators, investors, and other market participants with more timely access to short interest data. Specifically, FINRA is considering reducing firm reporting and processing times from the current twice a month and two-day timeframes, respectively.

- ▶ FINRA is considering whether daily or weekly short interest position reporting would be preferable. What are commenters' views on the preferred frequency of short interest position reporting?
- ▶ FINRA requests that firms provide detailed information regarding the feasibility of reporting short interest information to FINRA on a daily versus weekly basis.
- ▶ What updates or changes to firms' systems would be necessary to facilitate a change to daily reporting? What updates would be necessary to facilitate a change to weekly reporting?
- ▶ What challenges do firms anticipate with complying with a daily reporting timeframe? What challenges do firms anticipate with complying with a weekly reporting timeframe?
- ▶ What, if any, additional costs would commenters anticipate if FINRA reduced the short interest reporting frequency to daily submissions? What, if any, additional costs would commenters anticipate if FINRA reduced the short interest reporting frequency to weekly submissions?
- ▶ Do commenters believe that daily submissions, combined with a one-day reduction in firm turnaround time and a one-day reduction in FINRA processing time would be beneficial in providing more timely transparency regarding short interest position information? Why or why not?
- ▶ Do commenters believe that weekly submissions, combined with a one-day reduction in firm turnaround time and a one-day reduction in FINRA processing time would be beneficial in providing more timely transparency regarding short interest? Why or why not?
- ▶ What challenges do firms anticipate with complying with a one-day reporting turnaround time? For example, would one day provide sufficient time to validate the accuracy of the short interest information prior to reporting to FINRA?

- ▶ What, if any, additional costs would commenters anticipate if FINRA were to require firms to reduce the reporting turnaround time to one day?
- ▶ Would a one-day reduction in both firm and FINRA turnaround times be beneficial (*i.e.*, short interest information would be disseminated two days earlier), even with the current twice a month reporting schedule?
- ▶ What implementation period would be appropriate to provide members with sufficient time to make the modifications necessary to comply with the potential changes described above?
- ▶ To what negative outcomes, if any, may higher frequency short interest disclosures lead?
- ▶ Are there any expected potential competitive effects associated with this change, whether across member firms or between member firms and non-member firms?

Information on Allocations of Fail-To-Deliver Positions

FINRA also requests comment on a potential new rule to require that participants of a registered clearing agency submit a report to FINRA (for regulatory purposes only; not for public dissemination) of daily allocations to correspondent firms of fail-to-deliver positions pursuant to Rule 204(d) of Regulation SHO.

- ▶ FINRA envisions that allocation information would be organized in daily files, but requests comment on the feasibility of reporting this information to FINRA on a daily versus weekly basis. If daily, how many days after the applicable allocation date would be necessary to process and report the information to FINRA (*e.g.*, close of business on allocation date +1, allocation date +2)? If weekly, how many days after the close of the reporting period would be necessary to process and report the information to FINRA?
- ▶ Do firms anticipate any operational challenges with reporting to FINRA the daily allocations to correspondent firms of Rule 204(d) fail-to-deliver positions?
- ▶ Is the fail-to-deliver allocation information that would be covered by this requirement currently kept in a form that could readily be compiled for reporting?
- ▶ What updates or changes to systems would be necessary to facilitate this change?
- ▶ What, if any, additional costs would commenters anticipate if FINRA were to require participants of a registered clearing agency to report to FINRA the daily allocations to correspondent firms of Rule 204(d) fail-to-deliver positions?
- ▶ What implementation period would be appropriate to provide firms with sufficient time to make the systems changes necessary to comply with this requirement?
- ▶ Are there any expected potential competitive effects associated with this change, whether across member firms or between member firms and non-member firms?

FINRA plans to use the additional data proposed to be collected for its short sale regulatory program of both OTC equity and exchange-listed securities. FINRA requests feedback on any potential unintended consequences of the proposed changes.

Other Short Sale-Related Initiatives

- ▶ Do commenters believe that FINRA 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. After experience is gained with the reporting regime and resulting data, FINRA could consider the appropriateness of a phased approach to providing public transparency into stock loan rebate rates and other negotiated terms.
- ▶ Are there any other short sale-related changes not discussed above that commenters recommend? Please explain.

Endnotes

1. Parties should submit in their comments only personally identifiable information, such as phone numbers and addresses, that they wish to make available publicly. FINRA, however, reserves the right to redact, remove or decline to post comments that are inappropriate for publication, such as vulgar, abusive or potentially fraudulent comment letters. FINRA also reserves the right to redact or edit personally identifiable information from comment submissions.
2. See SEA Section 19 and rules thereunder. After a proposed rule change is filed with the SEC, the proposed rule change generally is published for public comment in the *Federal Register*. Certain limited types of proposed rule changes take effect upon filing with the SEC. See SEA Section 19(b)(3) and SEA Rule 19b-4.
3. See 17 CFR 242.200-204.
4. See FINRA Rule 4560; see also [Regulatory Notice 12-38](#) (August 2012). Rule 4560 requires firms to record and report all gross short positions existing in each individual firm or customer account, including the account of a broker-dealer, that resulted from either a “short sale,” as that term is defined in Rule 200(a) of SEC Regulation SHO, or where the transaction(s) that caused the short position was marked “long,” consistent with Regulation SHO, due to the firm’s or the customer’s net long position at the time of the transaction. Firms must report only those short positions resulting from short sales that have settled or reached settlement date by the close of the reporting settlement date designated by FINRA.
5. The “days to cover” field is a FINRA-calculated number representing the number of days of average share volume it would require to cover the current short interest position.
6. In addition to short interest reporting under Rule 4560, FINRA’s equity trade reporting rules require members to identify short sales when reporting transactions to FINRA equity trade reporting facilities. FINRA uses this information to derive short sale volume data and make it publicly available. Short sale volume data differs from short interest data. Published short interest data reflects short positions held across all firms at a specific moment in time on two discrete days each month and is derived from short interest information reported to FINRA pursuant to Rule 4560. In contrast, the short sale files FINRA publishes are derived from transactions that are reported to FINRA’s equity trade reporting facilities. There are two types of short sale volume files: (1) the daily short sale volume files, which provide aggregated volume by security for all short sales executed and reported to a FINRA Trade Reporting Facility (TRF), the Alternative Display Facility (ADF), or the OTC Reporting Facility (ORF) during normal market hours; and (2) the monthly short sale transaction files, which provide detailed trade activity of all short sale trades executed and reported to the ADF or a TRF during normal market hours, as well as after-hours. The short sale files include only trades reported for public dissemination purposes. See e.g., FINRA Rules 6182 (Trade Reporting of Short Sales) and 6624 (Trade Reporting of Short Sales). See also [Information Notice 5/10/19](#) (Understanding Short Sale Volume Data on FINRA’s Website).

7. While FINRA Rule 4560 applies to the activity of all FINRA members, including those that also are members of a national securities exchange, FINRA notes that each national securities exchange determines for its listed securities the appropriate content of published short interest data. In addition, the national securities exchanges' short interest reporting rules would govern the conduct of exchange-only members. *See e.g.*, NYSE Rule 4560 and Nasdaq Equity 9 Business Conduct, Section 9.
8. *See [Regulatory Notice 08-13](#)* (March 2008).
9. *See supra* note 5.
10. The "revision flag" indicates that the previous short interest position in the security was revised since the prior reporting cycle.
11. Even if FINRA does not consolidate publication of short interest data in all equity securities on the FINRA website, the reporting changes discussed in this section would be applicable to firms' short interest reporting for both exchange-listed and OTC equity securities.
12. The proposed threshold security field would indicate whether a security is a "threshold security," as defined by Rule 203 of SEC Regulation SHO or a "non-reporting threshold security," as defined by FINRA Rule 4320. Rule 203(c)(6) of Regulation SHO generally defines a "threshold security" as any equity security of an issuer that is registered under Section 12, or that is required to file reports pursuant to Section 15(d), of the Exchange Act: where for five consecutive settlement days there is an aggregate fail-to-deliver position at a registered clearing agency of 10,000 shares or more and that is equal to at least 0.5 percent of the issuer's TSO; and the security is included on a list published by a self-regulatory organization. FINRA Rule 4320 generally defines a "non-reporting threshold security," as any equity security of an issuer that is not registered pursuant to Section 12 of the Exchange Act and for which the issuer is not required to file reports pursuant to Section 15(d) of the Exchange Act: where for five consecutive settlement days there is an aggregate fail-to-deliver position at a registered clearing agency of 10,000 shares or more and for which on each settlement day during the five consecutive settlement day period, the reported last sale during normal market hours for the security on that settlement day would value the aggregate fail-to-deliver position at \$50,000 or more; and the security is included on a list published by FINRA.
13. FINRA also is considering whether it is desirable to reduce firm turnaround time to no later than one business day after the reporting settlement date (*i.e.*, by 6:00 p.m. ET on the business day after the designated reporting settlement date) even if the current twice a month reporting cycle is retained.
14. SEC staff guidance states that:

"Rule 204(d) permits the participant to reasonably allocate a portion of a fail-to-deliver position to another registered broker or dealer for which it clears trades or for which it is responsible for settlement, based on such broker's or dealer's short position. If the participant has reasonably allocated the fail-to-deliver position, the provisions of Rule 204 relating to such fail-to-deliver position, including the pre-borrow requirement, apply to such registered broker or dealer that was allocated the fail-to-deliver position, and not to the participant." *See [Division of Market Regulation: Responses to Frequently asked Questions Concerning Regulation SHO](#), # 5.4* (October 15, 2015).

15. This calculation excludes OTC equity securities for which there was no volume reported in the security over the period.
16. This calculation excludes exchange-listed equity securities for which there was no volume reported in the security over the period.
17. Truong X. Duong, Zsuzsa R. Huszar & Takeshi Yamada, The Costs and Benefits of Short Sale Disclosure, 53 Journal of Banking and Finance 124-130 (2015).

Charles M. Jones, Adam V. Reed & William Waller, Revealing Shorts: An Examination of Large Short Position Disclosures, 29(12) The Review of Financial Studies 3278-3320 (2016).

Duong et al. study a change in Japan requiring traders to report short positions in excess of 0.25 percent of shares outstanding to exchanges within 24 hours, which are then reported to the public within another 24 hours. Jones et al. study a similar change in the European Union where any short position exceeding 0.5 percent of shares outstanding must publicly disclose the position by the next business day. Both studies find the requirements reduced short selling.
18. Don M. Autore, Thomas J. Boulton & Marcus V. Braga-Alves, Failures to Deliver, Short Sales Constraints, and Stock Overvaluation, 50(2) Financial Review 143-172 (2015).
19. Carole Comerton-Forde, Binh H. Do, Philip Gray & Tom Manton, Assessing the Information Content of Short-Selling Metrics Using Daily Disclosures, 64 Journal of Banking and Finance 188-204 (2016).
20. *See supra* note 18.
21. FINRA collects short interest reports through FINRA Gateway. The data collected from firms through short interest reporting is distinct from, and cannot be derived from, the information available through the Consolidated Audit Trail (CAT). While members are required to report the material terms of an order to CAT (for sell orders, members are required to report whether the order is long, short or short exempt), this information currently cannot be used to create a snapshot of gross short positions existing in each account at a particular point in time.