

MEMO# 33597

June 21, 2021

FINRA Request for Comment on Potential Enhancements to Short Interest Reporting and a Reporting Framework for Stock Lending

[33597]

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TO: Equity Markets Advisory Committee RE: FINRA Request for Comment on Potential Enhancements to Short Interest Reporting and a Reporting Framework for Stock Lending

Earlier this month, FINRA issued a Regulatory Notice requesting comment on potential enhancements to its short sale reporting program.^[1] Should FINRA determine to pursue these enhancements, it would then file a proposed SRO rule change with the SEC.^[2] FINRA states that the enhancements would increase transparency into short sale activity and allow market participants to use this information to evaluate investment opportunities, as well as enable it to monitor for compliance with Regulation SHO and other short sale obligations. A summary is provided below.

FINRA also seeks comment on whether it should "explore" a potential reporting framework around stock lending activity, described in further detail below.

Comments are due by August 4, 2021. Please let me or [Sarah Bessin](#) know if you have any feedback or questions regarding the Request by COB Monday, June 28th.

Publication of Short Interest for Exchange-Listed Equity Securities

FINRA is considering consolidating the publication of short interest data that is reported to FINRA for both listed and unlisted securities. While both categories of data are reported to FINRA, FINRA only disseminates on its website short interest data for OTC equity securities; data for exchange-listed securities are transmitted to and published by the applicable listing exchange. According to FINRA, it would instead make a consolidated set of data available free of charge on its website.

Content of Short Interest Data

FINRA is considering the following changes to reported and disseminated short interest data:

- **Proprietary and Customer Account Categorization:** When reporting total reportable short interest for each equity security as of the close of the designated reporting settlement date, firms would be required to segregate the total reportable short interest held between (i) interest across all proprietary accounts and (ii) interest across all customer accounts (both retail and institutional). FINRA, however, also requests comment on whether it should adopt even more granular reporting requirements for each category, as well as whether there should be reporting on the portion of short interest that is fully or partially hedged.
- **Account-Level Position Information:** As an alternative, FINRA is considering requiring firms to report short interest position information at a more granular account level for all equity securities. FINRA states that this information would be reported for regulatory purposes only and not publicly disseminated. Among other things, FINRA requests comment on the most appropriate means to consistently identify account holders and whether it should limit account-level reporting only to where a beneficial owner has at least three percent of an equity security's total shares outstanding (TSO).
- **Synthetic Short Positions:** Firms would be required to reflect synthetic short positions in short interest reports.[\[3\]](#)
- **Loan Obligations Resulting from Arranged Financing:** Firms would be required to report as short interest outstanding stock borrows by customers in their "arranged financing" programs, under which a customer can borrow shares from a firm's domestic or foreign affiliate to close out a short position in the customer's account.
- **TSO and Public Float:** FINRA is considering disseminating TSO and public float information, which it would obtain from a third-party source.
- **Threshold Security Field:** FINRA is considering including a new data field to indicate if a security is a threshold security[\[4\]](#) as of the short interest position reporting settlement date.

Frequency and Timing of Short Interest Position Reporting and Data Dissemination

FINRA is considering increasing the frequency with which firms must report short interest from twice a month to daily or weekly. Further, FINRA is considering reducing the time allowed for submitting the short interest report from 6 p.m. ET on the second business day after the designated reporting settlement date to one business day. FINRA states that it is considering whether to reduce this timeframe even if it does not increase the frequency of reporting.

FINRA is also considering reducing its processing time for disseminating short interest data from seven business days after the designated settlement date (which includes the two business days given to firms to report). FINRA suggests that it would reduce this processing time by one day.

Information on Allocations of Fail-to-Deliver Positions

FINRA is considering requiring members to submit a reporting of daily allocations for fail-to-deliver positions to a correspondent firm pursuant to Rule 204(d) of Regulation SHO.[\[5\]](#) FINRA states, however, that this information would be reported for regulatory purposes only and not publicly disseminated.

Potential Reporting Framework on Stock Lending Activity

In addition to requesting comment on short interest reporting enhancements, FINRA requests comment on whether it should explore the creation of a reporting framework around stock lending activity. Reportable information could include loan terms, loan amount, and contra-party information. FINRA states that based on its experience with a potential framework, it could then consider whether it is appropriate to phase in public reporting of this information.

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endnotes

[1] FINRA Regulatory Notice 21-19 (June 4, 2021), available at <https://www.finra.org/rules-guidance/notices/21-19>.

[2] Pursuant to Rule 19(b) of the Exchange Act, the SEC would review such a filing under a review period that may range between 45 days up to 240 days, depending on whether it extends its review.

[3] This reporting would include, for example, a short position achieved through selling a call option and purchasing a put option where the options have the same strike price and expiration month.

[4] 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 an SRO.

[5] Rule 204(d) of Regulation SHO allows a member that a registered clearing agency participant 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. The proposed allocation report may include fields such as (i) the security; (ii) identity of the correspondent firm; (iii) number of shares allocated to the correspondent firm; (iv) trade date(s); (v) allocation date; (vi) close out date; and (vii) applicable close out obligation (T+3, T+5 or T+35).