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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2026 - * 012

Amendment No. (req. for Amendments *)

Filing by Financial Industry Regulatory Authority

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)		
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Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposed Rule Change to Adopt FINRA Rule 4321 (Allocations of Fail to Deliver Positions) and Amend FINRA Rule 4560 (Short-Interest Reporting)

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * John Last Name * Nachmann

Title * Associate General Counsel

E-mail * john.nachmann@finra.org

Telephone * (240) 386-4816 Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, Financial Industry Regulatory Authority has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 05/01/2026

(Title *)

By Robert McNamee

Vice President & Associate General Counsel

(Name *)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Robert McNamee

Digitally signed by Robert McNamee
Date: 2026.05.01 13:00:54 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information *

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FINRA-2026-012 19b-4.docx

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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FINRA-2026-012 Exhibit 1.docx

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2- Notices, Written Comments, Transcripts, Other Communications

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FINRA-2026-012 Exhibit 2a.pdf

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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FINRA-2026-012 Exhibit 5.docx

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”),¹ the Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to (1) amend FINRA Rule 4560 (Short-Interest Reporting) to increase the frequency and granularity of the short interest information collected and disseminated by FINRA, and (2) adopt FINRA Rule 4321 (Allocations of Fail to Deliver Positions) to require members to report to FINRA on a monthly basis their daily allocations of fail to deliver positions to correspondent firms.

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice.

3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

¹ 15 U.S.C. 78s(b)(1).

FINRA is proposing amendments to improve the usefulness of the short interest information reported to and published by FINRA, and to improve FINRA's oversight of member compliance with SEC Regulation SHO.² Specifically, the proposed amendments would increase the frequency and granularity of the short interest information reported to FINRA pursuant to Rule 4560 and adopt new FINRA Rule 4321 to require members to report to FINRA on a monthly basis their daily allocations of SEC Regulation SHO Rule 204³ fail to deliver positions to correspondent firms, as further described below.

I. Short Interest Reporting

Rule 4560(a) requires each FINRA member to maintain a record of total short positions in all customer and proprietary firm accounts in all equity securities (other than Restricted Equity Securities as defined in Rule 6420)⁴ at the member and to regularly report such information to FINRA in the manner prescribed by FINRA. The rule provides that short interest reports must be received by FINRA no later than the second business day after the reporting settlement date designated by FINRA. The rule further specifies the type of positions reportable to FINRA as short interest. Specifically, Rule

² 17 CFR 242.200-204.

³ 17 CFR 242.204. SEC Regulation SHO Rule 204 generally requires broker-dealers to either deliver securities to the clearing agency by settlement date (one business day after the trade date) or the broker-dealer must close out the fail to deliver position by the next settlement date (two business days after the trade date). If the short position is not closed out, the broker-dealer and any broker-dealer for which it clears transactions may not effect further short sales in that security without borrowing or entering into a bona fide agreement to borrow the security until the broker-dealer purchases shares to close out the position ("pre-borrow requirement").

⁴ "Restricted Equity Security" is defined in Rule 6420(k) as "any equity security that meets the definition of 'restricted security' as contained in Securities Act Rule 144(a)(3)."

4560(b) provides that members are required to record and report all gross short positions existing in each individual firm or customer account at the member, including the account of a broker-dealer, that resulted from (1) a “short sale” as that term is defined in Rule 200(a) of Regulation SHO,⁵ or (2) where the transaction 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.⁶ FINRA aggregates the short positions reported by members and publishes an industry-wide aggregate per security, free of charge, on finra.org.⁷ FINRA is proposing the following changes to its short interest reporting rules.

⁵ Rule 200 of SEC Regulation SHO provides that “short sale” means “any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller.” See Rule 200(a) of SEC Regulation SHO, 17 CFR 242.200. SEC Rule 200 further provides, among other things, that a person is deemed to own a security if: (a) the person or his agent has title to it; (b) the person has purchased, or has entered into an unconditional contract, binding on both parties thereto, to purchase it, but has not yet received it; (c) the person owns a security convertible into or exchangeable for it and has tendered such security for conversion or exchange; (d) the person has an option to purchase or acquire it and has exercised such option; (e) the person has rights or warrants to subscribe to it and has exercised such rights or warrants; or (f) the person holds a security futures contract to purchase it and has received notice that the position will be physically settled and is irrevocably bound to receive the underlying security. See Rule 200(b) of SEC Regulation SHO.

⁶ Rule 4560(b) also specifies that members 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.

⁷ See <https://www.finra.org/finra-data/browse-catalog/equity-short-interest/data>. FINRA publishes the aggregate short interest data seven business days after the reporting settlement date. Such publication includes, for each security: the reporting settlement date, security name, security symbol, identity of the listing exchange or indicates the over-the-counter market, the current aggregate short interest position for the security, and information regarding the change in the size of the short interest position since the prior reporting settlement date. FINRA also

A. Positions Resulting from “Arranged Financing”

FINRA proposes to require reporting of additional position information that reflects the kind of economic short interest sought to be captured under Rule 4560—specifically, positions in each individual firm or customer account at the member that results from arranged financings, as further described below. As previously discussed, currently, members’ short interest reporting is limited to short positions at the member that result from a “short sale” as defined in SEC Regulation SHO or where the transaction that caused the short position was marked “long” due to the member’s or customer’s net long position at the time of the transaction. FINRA is proposing also to require members to record and report to FINRA any position existing in a customer account that resulted from a securities loan obligation in connection with a customer’s borrow of a security from a domestic or foreign affiliate of the member, even where such position itself neither resulted from a “short sale,” as described in Rule 4560(b)(1) nor where the transaction that caused the short position was marked “long,” as described in Rule 4560(b)(2). In such instances, the original short position, which typically resulted from a “short sale,” has been replaced by the securities loan established through the arranged financing program; nonetheless, the borrower remains obligated to close the position in its account by purchasing shares to satisfy the loan obligation. Therefore, the position, economically, reflects the type of short interest that FINRA believes should be captured by the rule to better represent short sentiment in the stock.

provides additional FINRA-calculated metrics for the security (the average daily volume and a “days to cover” metric). “Days to cover” is a FINRA-calculated metric representing the number of days of average share volume required to buy all of the shares that were sold short during the reporting cycle.

B. Timing and Frequency of Short Interest Data Reporting and Dissemination

As stated above, FINRA Rule 4560(a) requires members to regularly report short interest information to FINRA in such a manner as may be prescribed by FINRA, and further provides for a two-business day turnaround period such that the required reports must be received by FINRA no later than the second business day after the reporting settlement date designated by FINRA. Each calendar year, FINRA publishes on its website a list of the relevant dates for its short interest reporting program—specifically, all reporting settlement dates for a calendar year (i.e., the dates on which short interest positions must be captured), the short interest report due dates (i.e., the dates that are two business days after each short interest settlement date), and the publication dates (i.e., the dates on which the aggregate reports are made publicly available by FINRA on the FINRA website).⁸

FINRA is proposing to increase the frequency of both short interest reporting under the rule and the subsequent public dissemination of short interest data by (1) requiring members to submit short interest reports on a weekly rather than a bi-monthly basis, and (2) reducing the two business-day reporting turnaround period to one business day to allow for a more streamlined and timely publication process for short interest reports. If the proposed amendments are approved by the Commission, FINRA will specify on its website a list of weekly short interest reporting settlement dates, member reporting due dates (that are one business day after the short interest reporting settlement date), and the website publication date.

⁸ See <https://www.finra.org/filing-reporting/regulatory-filing-systems/short-interest>.

FINRA believes that these modifications—which together would allow short interest data to be published weekly, five business days after the reporting settlement date—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, without substantially impacting the quality of the data received and published by FINRA.

C. Short Interest Reporting for Securities with Deleted Symbols

FINRA is also proposing to amend Rule 4560 to ensure that FINRA receives a final short interest report that includes short interest position data for a security as of the last settlement date prior to the deletion of its symbol by a self-regulatory organization (“SRO”) (i.e., FINRA or a national securities exchange).⁹ Currently, if a security no longer is assigned a security symbol as of a designated short interest reporting settlement date, members do not include that security in their reported short interest data (due to the absence of a valid symbol on the date that short interest is assessed). To address this data gap, FINRA is proposing to adopt Supplementary Material .01 under Rule 4560 to require that, where a symbol no longer exists on the short interest reporting settlement date, members must report their gross short positions in the security as of the last settlement date for which a symbol was in effect. FINRA believes that this proposed rule

⁹ A security may cease to be identified by a symbol for a variety of reasons, including where the shares have been cancelled by the issuer, the symbol has not been used for quoting or trading for an extended period of time, or where the security no longer has a valid CUSIP.

change would support the availability of more complete information to regulators and market participants.

D. Scope of Securities Subject to Short Interest Reporting Requirements

FINRA is proposing to clarify the scope of the securities that are the subject of short interest reporting requirements. Currently, Rule 4560(a) applies to “all equity securities (other than Restricted Equity Securities as defined in FINRA Rule 6420).” FINRA is proposing to clarify that the rule applies to “OTC Equity Securities,” as defined in Rule 6420,¹⁰ and securities listed on a national securities exchange. These proposed amendments align with FINRA’s short interest reporting systems and existing reporting conventions (FINRA’s systems allow members to report short interest positions only in securities that meet the definition of “OTC Equity Security” and securities listed on a national securities exchange). Thus, the proposal would not require members to make changes to their short interest reporting.

II. Allocations of Fail to Deliver Positions – New Rule 4321

Rule 204 of SEC Regulation SHO¹¹ generally requires that broker-dealers either deliver securities to the clearing agency by the short sale settlement date or close out the fail to deliver position on the next settlement day. Under SEC guidance, a clearing firm is permitted to reasonably allocate a portion of its fail to deliver position to a correspondent firm based on that firm’s activity (e.g., a clearing firm with a 1,000 share

¹⁰ “OTC Equity Security” is defined in Rule 6420(f) as “any equity security that is not an ‘NMS stock’ as that term is defined in Rule 600(b)(47) of SEC Regulation NMS; provided, however, that the term ‘OTC Equity Security’ shall not include any Restricted Equity Security.”

¹¹ 17 CFR 242.204.

fail to deliver position at a clearing agency in a stock is permitted to allocate the 1,000 share fail (or relevant portion thereof) to a correspondent firm whose activity is responsible for the development of the fail position).¹² If the clearing firm has reasonably allocated the fail to deliver position to a correspondent firm, the correspondent firm—rather than the clearing firm—must comply with the requirements of Rule 204, including the pre-borrow requirement, with respect to that position.

FINRA reviews member compliance with Regulation SHO's Rule 204 close out obligations. However, because broker-dealers are not required to report to FINRA when they have allocated a close out obligation to a correspondent firm, FINRA is often unaware of which member bears responsibility for a particular close out obligation under Rule 204. Instead, when there has been a fail to deliver, FINRA requests information on whether the fail to deliver has been allocated to a correspondent firm and, if so, the identity of the correspondent firm. Obtaining information from clearing firms on daily fail to deliver allocations would allow FINRA to directly identify the member that is responsible for a close out obligation without having to first request this information from the clearing firm, thereby reducing inefficiencies and potential delays in FINRA's surveillance and reviews.

¹² 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).

Therefore, FINRA is proposing to adopt new Rule 4321 to require member clearing firms to submit to FINRA on a monthly basis a report of their daily allocations of fail to deliver positions to correspondent firms pursuant to Rule 204 of SEC Regulation SHO.¹³ Under new Rule 4321, members that have allocated fail to deliver positions would be required to report, in the form and manner prescribed by FINRA, the following information for each allocation:

- Security name and symbol;
- Identity of the correspondent firm to which the fail was allocated;
- Number of shares of the fail that are allocated to the correspondent firm;
- Settlement date on which the allocated fail developed;
- Allocation date; and
- Other information specified by FINRA.

FINRA believes that the proposed rule change would provide FINRA with important information in support of its SEC Regulation SHO compliance program.

As noted in Item 2 of this filing, if the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁴ which requires, among other things, that FINRA rules be

¹³ Allocation reports would be due 10 business days after the end of each month. The information provided in the allocation report would be used only for regulatory purposes and would not be publicly disseminated.

¹⁴ 15 U.S.C. 78o-3(b)(6).

designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

FINRA believes that the proposal to require members to report as short interest outstanding stock borrows by customers in their arranged financing programs would improve transparency about short interest positions and better reflect short sentiment in a stock. FINRA believes that the proposal to increase the frequency of reporting under Rule 4560, and subsequent public dissemination, of short interest information would provide 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. FINRA also believes that the proposal to require members to report to FINRA the final short interest position in any security whose symbol has been deleted by an SRO would provide additional valuable information to regulators and investors. FINRA further believes that the proposal to limit the scope of Rule 4560 to OTC Equity Securities and securities listed on a national securities exchange is appropriate and consistent with the Act in that it provides for greater clarity with respect to members' existing obligations.

Finally, FINRA believes that the proposal to adopt new Rule 4321 to require member clearing firms to submit to FINRA on a monthly basis a report of their daily allocations of fail to deliver positions to correspondent firms would improve regulatory efficiency and support FINRA's oversight for member compliance with SEC Regulation SHO, consistent with the Act.

4. Self-Regulatory Organization’s Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Assessment

FINRA has undertaken an 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. The economic impact assessment is organized into three separate sections covering the frequency and timing of short interest reporting, changes to the data collected, and reporting of allocations of fail to deliver positions.

The proposed short sale-related reporting enhancements would provide greater transparency regarding short sale activity.¹⁵ Generally, providing additional data furnishes market participants a more complete view into the level of short interest in a particular security and in aggregate across reporting firms. This may allow market participants to better evaluate investment opportunities, encourage greater market

¹⁵ On October 13, 2023, the SEC adopted Exchange Act Rule 10c-1a to increase the transparency and efficiency of the securities lending market by, among other things, requiring covered persons to report information about securities loans to a registered national securities association (“RNSA”). See Securities Act Release No. 98737 (October 13, 2023), 88 FR 75644 (November 3, 2023) (File No. S7-18-21) (Reporting of Securities Loans). On December 3, 2025, the SEC issued a temporary exemption, pursuant to Section 36(a)(1) of the Exchange Act, from compliance with SEA Rule 10c-1a to allow time for the staff to consider potential changes to the proposal. See Securities Exchange Act Release No. 104303 (December 3, 2025), 90 FR 56813 (December 8, 2025).

participation, and accelerate the incorporation of potentially relevant information into price formation processes. These enhancements and the proposed fail to deliver allocation reporting also would allow FINRA to monitor more efficiently for compliance with Regulation SHO.

At the same time, increasing transparency could create concerns regarding potential disincentives for short selling. As short selling is an important mechanism for incorporating negative information into prices, such an outcome could reduce price efficiency. To the extent that short selling provides liquidity to the market, changes in short selling behavior could impact liquidity. The balance of these incentives determines the primary market impact of the proposal.

Content of Short Interest Data

Loan Obligations Resulting from Arranged Financing

Loan obligations resulting from arranged financing are economically equivalent to short interest positions but are currently not reported as short interest and therefore are not available in the short interest data to market participants nor to FINRA. Expanding the short interest reporting requirement to capture loan obligations resulting from borrowing shares through an arranged financing program would more fully reflect short sentiment, thus allowing FINRA, market participants and investors to more comprehensively understand market activity.

FINRA members would incur upfront costs associated with making systems changes required to identify these loan obligations (including sourcing information from affiliates as needed) for purposes of including this information in reported short interest. Following the upfront process and systems costs to facilitate reporting this information,

FINRA anticipates that the ongoing cost of including loan obligations resulting from arranged financing in reported short interest is expected to be minimal as firms currently incur costs for existing short interest reporting.

FINRA understands the primary motivation for customers to use arranged financing is to obtain increased leverage rather than to avoid short interest reporting. To the extent this is true, this would limit incentives to shift lending to non-FINRA members, including banks. FINRA also understands that, although it is possible for customers to obtain short exposure to a security through other means, it would be impractical for entities other than affiliates of FINRA members to offer a service substantially similar to arranged financing as discussed in the proposed rule change.

Short Interest Reporting for Deleted Symbols

Given the current timeframe for reporting short interest to FINRA, FINRA may not receive a short interest report that includes data for a security that recently was no longer identified by an SRO-issued symbol. Receiving a final short interest report in such a security would allow FINRA to more efficiently monitor for compliance with Regulation SHO.

FINRA estimates that 2,426 equity securities ceased to be identified by an SRO-issued symbol in 2025, of which 722 were exchange-listed equity securities and 1,704 were OTC equity securities. Of these 2,426 equity securities, 1,122 (46 percent) had outstanding short interest positions as of their last short interest reporting date. For these securities, the average time between the last short interest reporting date and the last settlement date for which a symbol existed was eight days.

FINRA does not expect that firms would incur substantial costs associated with reporting this information because it would be a continuation of the same data that they are required to report for securities, although they may need to make an upfront system or process change in order to report their gross short positions in the security as of the last settlement date for which a symbol was in effect.

Frequency and Timing of Short Interest Position Reporting and Data Dissemination

Based on current reporting requirements as noted above, twice a month FINRA disseminates aggregate short interest information seven business days after the reporting settlement date. However, changes in short interest for OTC and exchange-listed equity securities between reporting settlement dates (and thus dissemination) can be fairly large relative to the average daily trading volume¹⁶ and, currently, there are no other sources of the short interest information that FINRA produces available on a more frequent basis, free of charge to investors generally and retail investors in particular.¹⁷

¹⁶ For each short interest reporting date between January 2025 and December 2025, FINRA analyzed the change in each security's short interest from the previous reporting date. On an average reporting date, 11,323 exchange-listed equity securities experienced changes in short interest. The median change in short interest for these securities amounts to 25 percent of the average daily trading volume but rises to 56 percent by the 75th percentile and 183 percent by the 95th percentile. During the same time period, an average of 7,118 OTC equity securities experienced changes in short interest each reporting date. The median change in short interest for these securities amounted to 60 percent of the average daily trading volume but rises to 1,170 percent by the 75th percentile and 157,032 percent by the 95th percentile.

¹⁷ A 2025 study finds that vendor-derived short interest estimates explain only up to 67 percent of the variation in actual short interest changes. See Yong Chen, Minjae Kim, John McInnis, and Wuyang Zhao, Interest in the Short Interest: The Rise of Private Sector Data, 42(4) Contemporary Accounting Research 2424-2457 (2025). In addition, the cost of this data is substantial and likely unaffordable for most retail investors.

Increasing the reporting frequency to weekly would provide FINRA and market participants with more current short interest information. More frequent information could accelerate the incorporation of potentially relevant information into price formation processes.

The costs associated with accommodating more frequent reporting with a faster turn-around time depends primarily on firms' reliance upon manual processes in collecting, validating and reporting short interest.¹⁸ Many firms like rely on manual processes to determine whether a short position is reportable, as well as to validate and verify their short positions.

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.¹⁹ However, the five-business-day turnaround time between the

¹⁸ A total of 86 firms reported short interest for at least one security in 2025.

¹⁹ Two studies that looked at short interest reporting in the European Union and Japan found that daily short interest reporting of large individual positions reduced short selling. The study looking at the European Union found that this reduction slowed down the incorporation of new information into prices as measured by the Hou and Moskowitz (2005) measure. It also found short reporting increased the Amihud illiquidity measure, which is calculated as the ratio of absolute value of daily stock returns to daily dollar trading volume and intended as a rough measure of price impact, although quoted spreads narrowed. The study looking at Japan did not directly examine price efficiency or liquidity but finds that after adopting the reporting regime, the remaining short selling became less informed and short-term price volatility increased. However, both studies examine reporting requirements with higher frequency and less aggregation than the instant proposal. See 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) and 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).

reporting settlement date and the dissemination of short interest information, combined with aggregation across all accounts, should mitigate concerns about information leakage and the impact on liquidity and make any such outcome less likely.²⁰

Information on Allocations of Fail To Deliver Positions

FINRA is proposing to require member clearing firms to submit to FINRA on a monthly basis a report of their daily allocations of fail to deliver positions to correspondent firms pursuant to Rule 204 of Regulation SHO. Currently, when there has been a fail to deliver, FINRA must contact the clearing firm to learn whether the firm has allocated the fail to deliver to a correspondent firm and if so, to which firm.²¹

Requiring clearing firms to submit on a monthly basis a report of their daily allocations would allow FINRA to conduct more efficient investigations as FINRA would be able to identify which member has the close-out obligation directly from the

FINRA received comments expressing concern that increasing the frequency of short interest reporting could have negative impacts on liquidity because short sellers, a source of market liquidity, may limit their activity if they believe reporting reveals their trading strategies or allows others to trade in a way that is detrimental to their interests.

²⁰ Studies have suggested that, while increasing dissemination speed beyond a certain point may discourage short selling, more moderate increases in dissemination speed can offset negative impacts. Kahraman (2020) finds that, at the same level of aggregation as the instant proposal, increasing the short interest reporting frequency from monthly to bimonthly more than offset any negative impact on short selling activity by accelerating the incorporation of the information into prices. See Bige Kahraman, *Publicizing Arbitrage: Impact of Mandatory Disclosures*, *Journal of Financial and Quantitative Analysis*, 56, 789-820 (2020).

²¹ Across settlement dates in 2025, the median number of equity securities with any outstanding fail to deliver positions was 5,261. A total of 158 firms reported at least one fail to deliver position in 2025.

reported information. Member clearing firms may also benefit from freeing up resources used to respond to inquiries about allocations to correspondent firms.

FINRA members that are participants of a registered clearing agency would incur costs associated with establishing a process to report to FINRA daily allocations to correspondent firms. These member firms may seek to amend their contracts with correspondent firms to shift these costs.

Alternatives Considered

FINRA considered requiring short interest to be reported on a daily rather than weekly basis. While more frequent availability of information could be useful to market participants and to FINRA for regulatory purposes because it would provide information about short positions at members with less delay, reporting data daily also would place a larger burden on reporting firms and may raise concerns addressed above regarding potential impacts on price efficiency and liquidity.

5. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

In June 2021, FINRA published Regulatory Notice 21-19 (“Notice”) seeking comment on potential enhancements to its short sale reporting program. These potential enhancements included (1) modifications to the short interest reporting requirements in Rule 4560, (2) adoption of a new rule to require participants of a registered clearing agency to report to FINRA information on allocations to correspondent firms of fail to deliver positions, and (3) other potential enhancements related to short sale activity.²²

²² In the Notice, FINRA did not solicit comment on the proposed rule changes discussed in Item 3 of this rule filing regarding the reporting of final short interest positions for securities with deleted symbols or the clarification of the scope of the securities subject to the reporting requirements of Rule 4560.

FINRA received 2,227 comment letters in response to the Notice. A copy of the Notice is attached as Exhibit 2a. A list of the comment letters and copies of the comment letters received in response to the Notice are available on FINRA's website.²³

In general, the commenters supported some aspects of the potential enhancements and raised concerns with others. A summary of the comments FINRA received that are related to the instant proposed rule change and FINRA's responses are discussed below.²⁴

1. Positions Resulting from "Arranged Financing"

FINRA received comments regarding expanding short interest reporting to require members to report as short interest outstanding stock borrows by customers in their arranged financing programs through which a customer borrows shares from the firm's domestic or foreign affiliate and uses those shares to close out a short position in the customer's account.

Several commenters supported reflecting loan obligations resulting from arranged financing in reported short interest.²⁵ Angel, Better Markets, and CFA Institute stated

²³ See <https://www.finra.org/rules-guidance/notices/21-19#comments>.

²⁴ Some comments raised concerns regarding broader issues, such as (1) more stringent regulation of naked short selling and fails to deliver, (2) allowing shares to be borrowed only once and limiting the total amount of shares held short to no more than the security's float, (3) increasing enforcement penalties and fines, (4) the potential conflict of interest when a market maker also runs a hedge fund, (5) lack of transparency and manipulation in the context of dark pools, (6) requiring settlement on trade date, (7) preventing payment for order flow, and (8) requiring disclosure of synthetic long positions. These comments are outside the scope of the instant proposed rule change and therefore are not addressed herein.

²⁵ See letter from James J. Angel, Ph.D., CFP, CFA, Associate Professor of Finance, Georgetown University, McDonough School of Business, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 30, 2021 ("Angel"); letter from Joseph R. Cisewski, Senior Derivatives Consultant and Special Counsel, Better Markets, Inc., to Jennifer Piorko Mitchell, Office of the

that the proposal would provide greater transparency regarding short interest. In addition, individual investors generally supported increased granularity of short interest information.

Three commenters opposed reflecting loan obligations resulting from arranged financing in reported short interest.²⁶ Credit Suisse stated that this change could result in “false positives” and potential duplication in the data reported. Fidelity stated that the change would shift borrowing activity away from FINRA member arranged financing programs to swaps dealers, custody banks, or off-shore entities that are not subject to similar reporting requirements. FIF stated that there would be a significant undertaking involved in reporting this information and that the information is available from other sources such as The Depository Trust Company. One commenter neither supported nor opposed this aspect of the proposal but asked that FINRA consider the challenges firms

Corporate Secretary, FINRA, dated September 30, 2021 (“Better Markets”); letter from Kurt N. Schacht, CFA, CFA Institute Head of Advocacy, and Stephen Deane, CFA, CFA Institute Senior Director – Advocacy, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 24, 2021 (“CFA Institute”); letter from Jennifer W. Han, Chief Counsel & Head of Regulatory Affairs, Managed Funds Association, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 30, 2021 (“MFA”); letter from Melanie Senter Lubin, NASAA President, Maryland Securities Commissioner, North American Securities Administrators Association, Inc., to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 30, 2021 (“NASAA”).

²⁶ See letter from Michael E. Moran, Managing Director, Head of US Public Policy, Credit Suisse Holdings (USA), Inc., to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, received September 30, 2021 (“Credit Suisse”); letter from Michael Lyons, Chief Financial Officer, National Financial Services LLC (submitted by Fidelity Investments), to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 30, 2021 (“Fidelity”); letter from Howard Meyerson, Managing Director, Financial Information Forum, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 29, 2021 (“FIF”).

would face obtaining the information from their affiliates in addition to the significant implementation challenges before proceeding to require that firms provide arranged financing information in short interest.²⁷

After considering the comments received, FINRA has determined to propose amendments to Rule 4560(b) to require members to report as short interest outstanding stock borrows by customers in their arranged financing programs. FINRA believes that including in FINRA's short interest data these positions, as specifically defined in the proposed rule change, would not be duplicative and would better reflect the actual short sentiment in an equity security. Because the reporting member has made available the arranged financing program to its customers and the position is reflected on the member's books, FINRA believes it is reasonable to require the member to identify these positions and include them in reported short interest, as contemplated in the proposal. FINRA also believes that the primary motivation for customers to use arranged financing is to obtain increased leverage rather than to avoid short interest reporting, which, to the extent this is true, would limit incentives to shift lending to non-FINRA members, including banks. FINRA further understands that, although it is possible for customers to obtain short exposure to a security through other means, it would be impractical for entities other than affiliates of FINRA members to offer a service substantially similar to arranged financing. FINRA continues to believe that requiring members to include these positions will improve the completeness of reported short interest information, and notes that this

²⁷ See letter from Robert Toomey, Managing Director, Associate General Counsel, and Joseph Corcoran, Managing Director, Associate General Counsel, Securities Industry and Financial Markets Association, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 30, 2021 ("SIFMA").

information is not reasonably ascertainable elsewhere; therefore, requiring members to report this information is reasonable and appropriate.

2. Frequency and Timing of Short Interest Position Reporting and Dissemination

In the Notice, FINRA requested comment on potentially increasing the frequency of short interest reporting and dissemination. Specifically, FINRA stated that it was considering increasing the frequency of short interest reporting and dissemination from bi-monthly to weekly or daily. In addition, FINRA noted that it was considering shortening the timeframe for members to submit short interest reports and reducing the amount of time FINRA takes to process the collected information so that FINRA could disseminate short interest data more quickly.

Eight commenters supported increasing the short interest reporting frequency to weekly, noting that it would be more feasible than daily reporting while still increasing transparency, providing investors with timely information, and preserving the confidentiality of individual firm investment and trading strategies.²⁸ FIF, however, raised concerns, including regarding the feasibility of shortening the timeframe for

²⁸ See letter from Stephen John Berger, Managing Director, Global Head of Government & Regulatory Policy, Citadel Securities, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 30, 2021 (“Citadel”); letter from Sarah A. Bessin, Associate General Counsel, and Nhan Nguyen, Assistant General Counsel, Investment Company Institute, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated August 31, 2021 (“ICI”); letter from Paul Wilson, Managing Director, Global Head of Securities Finance, Equities Data & Analytics, IHS Markit, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 30, 2021 (“IHS Markit”); letter from Matthew R. Cohen, Chief Executive Officer, Provable Markets LLC, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 30, 2021 (“PML”); letter from Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc., to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 30, 2021 (“Virtu”); letters from CFA Institute, FIF and MFA.

members to submit short interest position reports to FINRA after the designated settlement date.

Angel, Better Markets, NASAA, and several individual investors supported daily reporting and dissemination of short interest data. Better Markets and NASAA suggested that, if necessary, there should be a suitable delay in daily dissemination to allow firms to compile short interest data. NASAA further stated that daily short interest data currently can be purchased and therefore this data can be compiled without undue burden. CFA Institute also asked that FINRA consider daily reporting if daily short interest data already is available through other means.

Five commenters opposed increasing the frequency of short interest reporting.²⁹ Credit Suisse, Fidelity, and SIFMA stated that such a change would be operationally challenging and a significant cost burden on firms. Nasdaq asked that FINRA undertake a rigorous analysis on the frequency of reporting, and publish the results of that analysis, before increasing the frequency of short sale reporting. T. Rowe Price stated that more frequent short interest reporting would negatively impact liquidity.

After considering the comments received, FINRA is proposing to increase the frequency of short interest reporting and dissemination from bi-monthly to weekly and to reduce the turnaround time for the submission of the reports from two business days to

²⁹ See letter from Jeffrey Davis, Senior Vice President, North American Regulation, Nasdaq, Inc., to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated October 13, 2021 (“Nasdaq”); letter from Mehmet Kinak, Global Head of Systematic Trading & Market Structure, Philip Nestico, Head of U.S. Equity Trading, and Jonathan Siegel, Senior Legal Counsel – Legislative & Regulatory Affairs, T. Rowe Price, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 20, 2021 (“T. Rowe Price”); letters from Credit Suisse, Fidelity and SIFMA.

one business day following the designated settlement date. FINRA believes that these changes best balance the goals of improving transparency and the usefulness of short interest data for regulators and market participants with the burden on firms to provide such information on a more frequent basis and concerns regarding potential impacts on liquidity. FINRA believes that firms' current reporting processes are well-established and that, following the initial process and systems adjustments, members will be able to report data on a weekly basis using current systems. In addition, FINRA believes that the aggregate nature of the published short interest data and the five-business-day turnaround time between the date of the short interest data and its dissemination would largely mitigate concerns regarding potential information leakage and impacts on liquidity.³⁰

3. Allocations of Fails to Deliver Positions

FINRA also received comments with respect to the proposal to adopt a new rule to require members to submit to FINRA a report of daily allocations of fail to deliver positions to correspondent firms pursuant to Rule 204(d) of SEC Regulation SHO. Angel, Better Markets, CFA Institute, FIF, and NASAA supported the adoption of such a rule. FIF stated that, subject to the manner and timing of implementation, on balance, the benefits of the proposed rule could outweigh the costs. NASAA indicated that the proposed rule would benefit investors by adding efficiencies to FINRA's market

³⁰ Some comment letters also discussed FINRA's oversight program with regard to the accuracy and completeness of firms' short interest reporting. These commenters state that FINRA's inquiries, which require manual efforts, would further complicate weekly reporting. FINRA notes that the referenced process appears to be part of the ongoing oversight process to ensure that members are reporting their short interest data in compliance with FINRA rules and guidance. FINRA believes that these oversight efforts have been, and will remain, important elements of FINRA's regulatory program.

oversight with minimal impacts on firms, as well as possibly increase the likelihood that firms would comply with their settlement requirements in a timely fashion.

Fidelity and SIFMA opposed FINRA adopting such a rule, stating that the costs would outweigh the benefits and increase the potential for reporting errors. Fidelity further stated that FINRA should eliminate the proposed data field requiring the time period for the applicable close out obligation as the introducing firm rather than the clearing firm is responsible for this information.

Having considered comments received, FINRA continues to believe it is appropriate to propose new Rule 4321 to require members to report to FINRA on a monthly basis their daily allocations of fail to deliver positions to correspondent firms. FINRA believes that allocations of these positions by clearing firms is a common occurrence and that a report of daily allocations of fail to deliver positions to correspondent firms would provide valuable information in support of FINRA's surveillance program for compliance with SEC Regulation SHO. FINRA believes that routinely obtaining this information would allow FINRA to conduct more efficient investigations and that the anticipated costs of the proposal are appropriate in light of the expected regulatory benefits. However, FINRA has, in response to comments, revised the proposal to omit the data fields pertaining to the close out date and the applicable close out obligation, since clearing firms will not necessarily know this information.

6. Extension of Time Period for Commission Action

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.³¹

³¹ 15 U.S.C. 78s(b)(2).

7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)**

Not applicable.

8. **Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

9. **Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

10. **Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

11. **Exhibits**

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 2a. Regulatory Notice 21-19 (June 2021).

Exhibit 5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2026-012)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Adopt FINRA Rule 4321 (Allocations of Fail to Deliver Positions) and Amend FINRA Rule 4560 (Short-Interest Reporting)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on , the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to (1) amend FINRA Rule 4560 (Short-Interest Reporting) to increase the frequency and granularity of the short interest information collected and disseminated by FINRA, and (2) adopt FINRA Rule 4321 (Allocations of Fail to Deliver Positions) to require members to report to FINRA on a monthly basis their daily allocations of fail to deliver positions to correspondent firms.

The text of the proposed rule change is available on FINRA’s website at <http://www.finra.org> and at the principal office of FINRA.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA is proposing amendments to improve the usefulness of the short interest information reported to and published by FINRA, and to improve FINRA's oversight of member compliance with SEC Regulation SHO.³ Specifically, the proposed amendments would increase the frequency and granularity of the short interest information reported to FINRA pursuant to Rule 4560 and adopt new FINRA Rule 4321 to require members to report to FINRA on a monthly basis their daily allocations of SEC Regulation SHO Rule 204⁴ fail to deliver positions to correspondent firms, as further described below.

³ 17 CFR 242.200-204.

⁴ 17 CFR 242.204. SEC Regulation SHO Rule 204 generally requires broker-dealers to either deliver securities to the clearing agency by settlement date (one business day after the trade date) or the broker-dealer must close out the fail to deliver position by the next settlement date (two business days after the trade date). If the short position is not closed out, the broker-dealer and any broker-dealer for which it clears transactions may not effect further short sales in that security without borrowing or entering into a bona fide agreement to borrow the security until the broker-dealer purchases shares to close out the position ("pre-borrow requirement").

I. Short Interest Reporting

Rule 4560(a) requires each FINRA member to maintain a record of total short positions in all customer and proprietary firm accounts in all equity securities (other than Restricted Equity Securities as defined in Rule 6420)⁵ at the member and to regularly report such information to FINRA in the manner prescribed by FINRA. The rule provides that short interest reports must be received by FINRA no later than the second business day after the reporting settlement date designated by FINRA. The rule further specifies the type of positions reportable to FINRA as short interest. Specifically, Rule 4560(b) provides that members are required to record and report all gross short positions existing in each individual firm or customer account at the member, including the account of a broker-dealer, that resulted from (1) a “short sale” as that term is defined in Rule 200(a) of Regulation SHO,⁶ or (2) where the transaction that caused the short position was marked “long,” consistent with Regulation SHO, due to the firm’s or the customer’s

⁵ “Restricted Equity Security” is defined in Rule 6420(k) as “any equity security that meets the definition of ‘restricted security’ as contained in Securities Act Rule 144(a)(3).”

⁶ Rule 200 of SEC Regulation SHO provides that “short sale” means “any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller.” See Rule 200(a) of SEC Regulation SHO, 17 CFR 242.200. SEC Rule 200 further provides, among other things, that a person is deemed to own a security if: (a) the person or his agent has title to it; (b) the person has purchased, or has entered into an unconditional contract, binding on both parties thereto, to purchase it, but has not yet received it; (c) the person owns a security convertible into or exchangeable for it and has tendered such security for conversion or exchange; (d) the person has an option to purchase or acquire it and has exercised such option; (e) the person has rights or warrants to subscribe to it and has exercised such rights or warrants; or (f) the person holds a security futures contract to purchase it and has received notice that the position will be physically settled and is irrevocably bound to receive the underlying security. See Rule 200(b) of SEC Regulation SHO.

net long position at the time of the transaction.⁷ FINRA aggregates the short positions reported by members and publishes an industry-wide aggregate per security, free of charge, on finra.org.⁸ FINRA is proposing the following changes to its short interest reporting rules.

A. Positions Resulting from “Arranged Financing”

FINRA proposes to require reporting of additional position information that reflects the kind of economic short interest sought to be captured under Rule 4560—specifically, positions in each individual firm or customer account at the member that results from arranged financings, as further described below. As previously discussed, currently, members’ short interest reporting is limited to short positions at the member that result from a “short sale” as defined in SEC Regulation SHO or where the transaction that caused the short position was marked “long” due to the member’s or customer’s net long position at the time of the transaction. FINRA is proposing also to require members to record and report to FINRA any position existing in a customer account that resulted from a securities loan obligation in connection with a customer’s

⁷ Rule 4560(b) also specifies that members 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.

⁸ See <https://www.finra.org/finra-data/browse-catalog/equity-short-interest/data>. FINRA publishes the aggregate short interest data seven business days after the reporting settlement date. Such publication includes, for each security: the reporting settlement date, security name, security symbol, identity of the listing exchange or indicates the over-the-counter market, the current aggregate short interest position for the security, and information regarding the change in the size of the short interest position since the prior reporting settlement date. FINRA also provides additional FINRA-calculated metrics for the security (the average daily volume and a “days to cover” metric). “Days to cover” is a FINRA-calculated metric representing the number of days of average share volume required to buy all of the shares that were sold short during the reporting cycle.

borrow of a security from a domestic or foreign affiliate of the member, even where such position itself neither resulted from a “short sale,” as described in Rule 4560(b)(1) nor where the transaction that caused the short position was marked “long,” as described in Rule 4560(b)(2). In such instances, the original short position, which typically resulted from a “short sale,” has been replaced by the securities loan established through the arranged financing program; nonetheless, the borrower remains obligated to close the position in its account by purchasing shares to satisfy the loan obligation. Therefore, the position, economically, reflects the type of short interest that FINRA believes should be captured by the rule to better represent short sentiment in the stock.

B. Timing and Frequency of Short Interest Data Reporting and Dissemination

As stated above, FINRA Rule 4560(a) requires members to regularly report short interest information to FINRA in such a manner as may be prescribed by FINRA, and further provides for a two-business day turnaround period such that the required reports must be received by FINRA no later than the second business day after the reporting settlement date designated by FINRA. Each calendar year, FINRA publishes on its website a list of the relevant dates for its short interest reporting program—specifically, all reporting settlement dates for a calendar year (i.e., the dates on which short interest positions must be captured), the short interest report due dates (i.e., the dates that are two business days after each short interest settlement date), and the publication dates (i.e., the dates on which the aggregate reports are made publicly available by FINRA on the FINRA website).⁹

⁹ See <https://www.finra.org/filing-reporting/regulatory-filing-systems/short-interest>.

FINRA is proposing to increase the frequency of both short interest reporting under the rule and the subsequent public dissemination of short interest data by (1) requiring members to submit short interest reports on a weekly rather than a bi-monthly basis, and (2) reducing the two business-day reporting turnaround period to one business day to allow for a more streamlined and timely publication process for short interest reports. If the proposed amendments are approved by the Commission, FINRA will specify on its website a list of weekly short interest reporting settlement dates, member reporting due dates (that are one business day after the short interest reporting settlement date), and the website publication date.

FINRA believes that these modifications—which together would allow short interest data to be published weekly, five business days after the reporting settlement date—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, without substantially impacting the quality of the data received and published by FINRA.

C. Short Interest Reporting for Securities with Deleted Symbols

FINRA is also proposing to amend Rule 4560 to ensure that FINRA receives a final short interest report that includes short interest position data for a security as of the last settlement date prior to the deletion of its symbol by a self-regulatory organization (“SRO”) (i.e., FINRA or a national securities exchange).¹⁰ Currently, if a security no

¹⁰ A security may cease to be identified by a symbol for a variety of reasons, including where the shares have been cancelled by the issuer, the symbol has not

longer is assigned a security symbol as of a designated short interest reporting settlement date, members do not include that security in their reported short interest data (due to the absence of a valid symbol on the date that short interest is assessed). To address this data gap, FINRA is proposing to adopt Supplementary Material .01 under Rule 4560 to require that, where a symbol no longer exists on the short interest reporting settlement date, members must report their gross short positions in the security as of the last settlement date for which a symbol was in effect. FINRA believes that this proposed rule change would support the availability of more complete information to regulators and market participants.

D. Scope of Securities Subject to Short Interest Reporting Requirements

FINRA is proposing to clarify the scope of the securities that are the subject of short interest reporting requirements. Currently, Rule 4560(a) applies to “all equity securities (other than Restricted Equity Securities as defined in FINRA Rule 6420).” FINRA is proposing to clarify that the rule applies to “OTC Equity Securities,” as defined in Rule 6420,¹¹ and securities listed on a national securities exchange. These proposed amendments align with FINRA’s short interest reporting systems and existing reporting conventions (FINRA’s systems allow members to report short interest positions only in securities that meet the definition of “OTC Equity Security” and securities listed

been used for quoting or trading for an extended period of time, or where the security no longer has a valid CUSIP.

¹¹ “OTC Equity Security” is defined in Rule 6420(f) as “any equity security that is not an ‘NMS stock’ as that term is defined in Rule 600(b)(47) of SEC Regulation NMS; provided, however, that the term ‘OTC Equity Security’ shall not include any Restricted Equity Security.”

on a national securities exchange). Thus, the proposal would not require members to make changes to their short interest reporting.

II. Allocations of Fail to Deliver Positions – New Rule 4321

Rule 204 of SEC Regulation SHO¹² generally requires that broker-dealers either deliver securities to the clearing agency by the short sale settlement date or close out the fail to deliver position on the next settlement day. Under SEC guidance, a clearing firm is permitted to reasonably allocate a portion of its fail to deliver position to a correspondent firm based on that firm's activity (e.g., a clearing firm with a 1,000 share fail to deliver position at a clearing agency in a stock is permitted to allocate the 1,000 share fail (or relevant portion thereof) to a correspondent firm whose activity is responsible for the development of the fail position).¹³ If the clearing firm has reasonably allocated the fail to deliver position to a correspondent firm, the correspondent firm—rather than the clearing firm—must comply with the requirements of Rule 204, including the pre-borrow requirement, with respect to that position.

FINRA reviews member compliance with Regulation SHO's Rule 204 close out obligations. However, because broker-dealers are not required to report to FINRA when they have allocated a close out obligation to a correspondent firm, FINRA is often

¹² 17 CFR 242.204.

¹³ 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).

unaware of which member bears responsibility for a particular close out obligation under Rule 204. Instead, when there has been a fail to deliver, FINRA requests information on whether the fail to deliver has been allocated to a correspondent firm and, if so, the identity of the correspondent firm. Obtaining information from clearing firms on daily fail to deliver allocations would allow FINRA to directly identify the member that is responsible for a close out obligation without having to first request this information from the clearing firm, thereby reducing inefficiencies and potential delays in FINRA's surveillance and reviews.

Therefore, FINRA is proposing to adopt new Rule 4321 to require member clearing firms to submit to FINRA on a monthly basis a report of their daily allocations of fail to deliver positions to correspondent firms pursuant to Rule 204 of SEC Regulation SHO.¹⁴ Under new Rule 4321, members that have allocated fail to deliver positions would be required to report, in the form and manner prescribed by FINRA, the following information for each allocation:

- Security name and symbol;
- Identity of the correspondent firm to which the fail was allocated;
- Number of shares of the fail that are allocated to the correspondent firm;
- Settlement date on which the allocated fail developed;
- Allocation date; and
- Other information specified by FINRA.

¹⁴ Allocation reports would be due 10 business days after the end of each month. The information provided in the allocation report would be used only for regulatory purposes and would not be publicly disseminated.

FINRA believes that the proposed rule change would provide FINRA with important information in support of its SEC Regulation SHO compliance program.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁵ which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

FINRA believes that the proposal to require members to report as short interest outstanding stock borrows by customers in their arranged financing programs would improve transparency about short interest positions and better reflect short sentiment in a stock. FINRA believes that the proposal to increase the frequency of reporting under Rule 4560, and subsequent public dissemination, of short interest information would provide 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. FINRA also believes that the proposal to require members to report to FINRA the final short interest position in any security whose symbol has been deleted by an SRO would provide additional valuable information to regulators and investors. FINRA further believes that the proposal to limit the scope of Rule 4560 to OTC Equity Securities and securities listed on a national securities exchange is

¹⁵ 15 U.S.C. 78q-3(b)(6).

appropriate and consistent with the Act in that it provides for greater clarity with respect to members' existing obligations.

Finally, FINRA believes that the proposal to adopt new Rule 4321 to require member clearing firms to submit to FINRA on a monthly basis a report of their daily allocations of fail to deliver positions to correspondent firms would improve regulatory efficiency and support FINRA's oversight for member compliance with SEC Regulation SHO, consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Assessment

FINRA has undertaken an 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. The economic impact assessment is organized into three separate sections covering the frequency and timing of short interest reporting, changes to the data collected, and reporting of allocations of fail to deliver positions.

The proposed short sale-related reporting enhancements would provide greater transparency regarding short sale activity.¹⁶ Generally, providing additional data

¹⁶ On October 13, 2023, the SEC adopted Exchange Act Rule 10c-1a to increase the transparency and efficiency of the securities lending market by, among other things, requiring covered persons to report information about securities loans to a

furnishes market participants a more complete view into the level of short interest in a particular security and in aggregate across reporting firms. This may allow market participants to better evaluate investment opportunities, encourage greater market participation, and accelerate the incorporation of potentially relevant information into price formation processes. These enhancements and the proposed fail to deliver allocation reporting also would allow FINRA to monitor more efficiently for compliance with Regulation SHO.

At the same time, increasing transparency could create concerns regarding potential disincentives for short selling. As short selling is an important mechanism for incorporating negative information into prices, such an outcome could reduce price efficiency. To the extent that short selling provides liquidity to the market, changes in short selling behavior could impact liquidity. The balance of these incentives determines the primary market impact of the proposal.

Content of Short Interest Data

Loan Obligations Resulting from Arranged Financing

Loan obligations resulting from arranged financing are economically equivalent to short interest positions but are currently not reported as short interest and therefore are not available in the short interest data to market participants nor to FINRA. Expanding the short interest reporting requirement to capture loan obligations resulting from

registered national securities association (“RNSA”). See Securities Act Release No. 98737 (October 13, 2023), 88 FR 75644 (November 3, 2023) (File No. S7-18-21) (Reporting of Securities Loans). On December 3, 2025, the SEC issued a temporary exemption, pursuant to Section 36(a)(1) of the Exchange Act, from compliance with SEA Rule 10c-1a to allow time for the staff to consider potential changes to the proposal. See Securities Exchange Act Release No. 104303 (December 3, 2025), 90 FR 56813 (December 8, 2025).

borrowing shares through an arranged financing program would more fully reflect short sentiment, thus allowing FINRA, market participants and investors to more comprehensively understand market activity.

FINRA members would incur upfront costs associated with making systems changes required to identify these loan obligations (including sourcing information from affiliates as needed) for purposes of including this information in reported short interest. Following the upfront process and systems costs to facilitate reporting this information, FINRA anticipates that the ongoing cost of including loan obligations resulting from arranged financing in reported short interest is expected to be minimal as firms currently incur costs for existing short interest reporting.

FINRA understands the primary motivation for customers to use arranged financing is to obtain increased leverage rather than to avoid short interest reporting. To the extent this is true, this would limit incentives to shift lending to non-FINRA members, including banks. FINRA also understands that, although it is possible for customers to obtain short exposure to a security through other means, it would be impractical for entities other than affiliates of FINRA members to offer a service substantially similar to arranged financing as discussed in the proposed rule change.

Short Interest Reporting for Deleted Symbols

Given the current timeframe for reporting short interest to FINRA, FINRA may not receive a short interest report that includes data for a security that recently was no longer identified by an SRO-issued symbol. Receiving a final short interest report in such a security would allow FINRA to more efficiently monitor for compliance with Regulation SHO.

FINRA estimates that 2,426 equity securities ceased to be identified by an SRO-issued symbol in 2025, of which 722 were exchange-listed equity securities and 1,704 were OTC equity securities. Of these 2,426 equity securities, 1,122 (46 percent) had outstanding short interest positions as of their last short interest reporting date. For these securities, the average time between the last short interest reporting date and the last settlement date for which a symbol existed was eight days.

FINRA does not expect that firms would incur substantial costs associated with reporting this information because it would be a continuation of the same data that they are required to report for securities, although they may need to make an upfront system or process change in order to report their gross short positions in the security as of the last settlement date for which a symbol was in effect.

Frequency and Timing of Short Interest Position Reporting and Data Dissemination

Based on current reporting requirements as noted above, twice a month FINRA disseminates aggregate short interest information seven business days after the reporting settlement date. However, changes in short interest for OTC and exchange-listed equity securities between reporting settlement dates (and thus dissemination) can be fairly large relative to the average daily trading volume¹⁷ and, currently, there are no other sources of

¹⁷ For each short interest reporting date between January 2025 and December 2025, FINRA analyzed the change in each security's short interest from the previous reporting date. On an average reporting date, 11,323 exchange-listed equity securities experienced changes in short interest. The median change in short interest for these securities amounts to 25 percent of the average daily trading volume but rises to 56 percent by the 75th percentile and 183 percent by the 95th percentile. During the same time period, an average of 7,118 OTC equity securities experienced changes in short interest each reporting date. The median change in short interest for these securities amounted to 60 percent of the average

the short interest information that FINRA produces available on a more frequent basis, free of charge to investors generally and retail investors in particular.¹⁸

Increasing the reporting frequency to weekly would provide FINRA and market participants with more current short interest information. More frequent information could accelerate the incorporation of potentially relevant information into price formation processes.

The costs associated with accommodating more frequent reporting with a faster turn-around time depends primarily on firms' reliance upon manual processes in collecting, validating and reporting short interest.¹⁹ Many firms like rely on manual processes to determine whether a short position is reportable, as well as to validate and verify their short positions.

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 However, the five-business-day turnaround time between the reporting

daily trading volume but rises to 1,170 percent by the 75th percentile and 157,032 percent by the 95th percentile.

¹⁸ A 2025 study finds that vendor-derived short interest estimates explain only up to 67 percent of the variation in actual short interest changes. See Yong Chen, Minjae Kim, John McInnis, and Wuyang Zhao, Interest in the Short Interest: The Rise of Private Sector Data, 42(4) Contemporary Accounting Research 2424-2457 (2025). In addition, the cost of this data is substantial and likely unaffordable for most retail investors.

¹⁹ A total of 86 firms reported short interest for at least one security in 2025.

²⁰ Two studies that looked at short interest reporting in the European Union and Japan found that daily short interest reporting of large individual positions reduced short selling. The study looking at the European Union found that this reduction slowed down the incorporation of new information into prices as measured by the Hou and Moskowitz (2005) measure. It also found short reporting increased the Amihud illiquidity measure, which is calculated as the

settlement date and the dissemination of short interest information, combined with aggregation across all accounts, should mitigate concerns about information leakage and the impact on liquidity and make any such outcome less likely.²¹

Information on Allocations of Fail To Deliver Positions

FINRA is proposing to require member clearing firms to submit to FINRA on a monthly basis a report of their daily allocations of fail to deliver positions to correspondent firms pursuant to Rule 204 of Regulation SHO. Currently, when there has

ratio of absolute value of daily stock returns to daily dollar trading volume and intended as a rough measure of price impact, although quoted spreads narrowed. The study looking at Japan did not directly examine price efficiency or liquidity but finds that after adopting the reporting regime, the remaining short selling became less informed and short-term price volatility increased. However, both studies examine reporting requirements with higher frequency and less aggregation than the instant proposal. See 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) and 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).

FINRA received comments expressing concern that increasing the frequency of short interest reporting could have negative impacts on liquidity because short sellers, a source of market liquidity, may limit their activity if they believe reporting reveals their trading strategies or allows others to trade in a way that is detrimental to their interests.

²¹ Studies have suggested that, while increasing dissemination speed beyond a certain point may discourage short selling, more moderate increases in dissemination speed can offset negative impacts. Kahraman (2020) finds that, at the same level of aggregation as the instant proposal, increasing the short interest reporting frequency from monthly to bimonthly more than offset any negative impact on short selling activity by accelerating the incorporation of the information into prices. See Bige Kahraman, *Publicizing Arbitrage: Impact of Mandatory Disclosures*, *Journal of Financial and Quantitative Analysis*, 56, 789-820 (2020).

been a fail to deliver, FINRA must contact the clearing firm to learn whether the firm has allocated the fail to deliver to a correspondent firm and if so, to which firm.²²

Requiring clearing firms to submit on a monthly basis a report of their daily allocations would allow FINRA to conduct more efficient investigations as FINRA would be able to identify which member has the close-out obligation directly from the reported information. Member clearing firms may also benefit from freeing up resources used to respond to inquiries about allocations to correspondent firms.

FINRA members that are participants of a registered clearing agency would incur costs associated with establishing a process to report to FINRA daily allocations to correspondent firms. These member firms may seek to amend their contracts with correspondent firms to shift these costs.

Alternatives Considered

FINRA considered requiring short interest to be reported on a daily rather than weekly basis. While more frequent availability of information could be useful to market participants and to FINRA for regulatory purposes because it would provide information about short positions at members with less delay, reporting data daily also would place a larger burden on reporting firms and may raise concerns addressed above regarding potential impacts on price efficiency and liquidity.

²² Across settlement dates in 2025, the median number of equity securities with any outstanding fail to deliver positions was 5,261. A total of 158 firms reported at least one fail to deliver position in 2025.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

In June 2021, FINRA published Regulatory Notice 21-19 (“Notice”) seeking comment on potential enhancements to its short sale reporting program. These potential enhancements included (1) modifications to the short interest reporting requirements in Rule 4560, (2) adoption of a new rule to require participants of a registered clearing agency to report to FINRA information on allocations to correspondent firms of fail to deliver positions, and (3) other potential enhancements related to short sale activity.²³ FINRA received 2,227 comment letters in response to the Notice. A copy of the Notice is available on FINRA’s website at <http://www.finra.org>. A list of the comment letters and copies of the comment letters received in response to the Notice are available on FINRA’s website.²⁴

In general, the commenters supported some aspects of the potential enhancements and raised concerns with others. A summary of the comments FINRA received that are related to the instant proposed rule change and FINRA’s responses are discussed below.²⁵

²³ In the Notice, FINRA did not solicit comment on the proposed rule changes discussed in Item 3 of this rule filing regarding the reporting of final short interest positions for securities with deleted symbols or the clarification of the scope of the securities subject to the reporting requirements of Rule 4560.

²⁴ See <https://www.finra.org/rules-guidance/notices/21-19#comments>.

²⁵ Some comments raised concerns regarding broader issues, such as (1) more stringent regulation of naked short selling and fails to deliver, (2) allowing shares to be borrowed only once and limiting the total amount of shares held short to no more than the security’s float, (3) increasing enforcement penalties and fines, (4) the potential conflict of interest when a market maker also runs a hedge fund, (5) lack of transparency and manipulation in the context of dark pools, (6) requiring settlement on trade date, (7) preventing payment for order flow, and (8) requiring disclosure of synthetic long positions. These comments are outside the scope of the instant proposed rule change and therefore are not addressed herein.

1. Positions Resulting from “Arranged Financing”

FINRA received comments regarding expanding short interest reporting to require members to report as short interest outstanding stock borrows by customers in their arranged financing programs through which a customer borrows shares from the firm’s domestic or foreign affiliate and uses those shares to close out a short position in the customer’s account.

Several commenters supported reflecting loan obligations resulting from arranged financing in reported short interest.²⁶ Angel, Better Markets, and CFA Institute stated that the proposal would provide greater transparency regarding short interest. In addition, individual investors generally supported increased granularity of short interest information.

Three commenters opposed reflecting loan obligations resulting from arranged financing in reported short interest.²⁷ Credit Suisse stated that this change could result in

²⁶ See letter from James J. Angel, Ph.D., CFP, CFA, Associate Professor of Finance, Georgetown University, McDonough School of Business, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 30, 2021 (“Angel”); letter from Joseph R. Cisewski, Senior Derivatives Consultant and Special Counsel, Better Markets, Inc., to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 30, 2021 (“Better Markets”); letter from Kurt N. Schacht, CFA, CFA Institute Head of Advocacy, and Stephen Deane, CFA, CFA Institute Senior Director – Advocacy, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 24, 2021 (“CFA Institute”); letter from Jennifer W. Han, Chief Counsel & Head of Regulatory Affairs, Managed Funds Association, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 30, 2021 (“MFA”); letter from Melanie Senter Lubin, NASAA President, Maryland Securities Commissioner, North American Securities Administrators Association, Inc., to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 30, 2021 (“NASAA”).

²⁷ See letter from Michael E. Moran, Managing Director, Head of US Public Policy, Credit Suisse Holdings (USA), Inc., to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, received September 30, 2021 (“Credit Suisse”);

“false positives” and potential duplication in the data reported. Fidelity stated that the change would shift borrowing activity away from FINRA member arranged financing programs to swaps dealers, custody banks, or off-shore entities that are not subject to similar reporting requirements. FIF stated that there would be a significant undertaking involved in reporting this information and that the information is available from other sources such as The Depository Trust Company. One commenter neither supported nor opposed this aspect of the proposal but asked that FINRA consider the challenges firms would face obtaining the information from their affiliates in addition to the significant implementation challenges before proceeding to require that firms provide arranged financing information in short interest.²⁸

After considering the comments received, FINRA has determined to propose amendments to Rule 4560(b) to require members to report as short interest outstanding stock borrows by customers in their arranged financing programs. FINRA believes that including in FINRA’s short interest data these positions, as specifically defined in the proposed rule change, would not be duplicative and would better reflect the actual short sentiment in an equity security. Because the reporting member has made available the arranged financing program to its customers and the position is reflected on the member’s

letter from Michael Lyons, Chief Financial Officer, National Financial Services LLC (submitted by Fidelity Investments), to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 30, 2021 (“Fidelity”); letter from Howard Meyerson, Managing Director, Financial Information Forum, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 29, 2021 (“FIF”).

²⁸ See letter from Robert Toomey, Managing Director, Associate General Counsel, and Joseph Corcoran, Managing Director, Associate General Counsel, Securities Industry and Financial Markets Association, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 30, 2021 (“SIFMA”).

books, FINRA believes it is reasonable to require the member to identify these positions and include them in reported short interest, as contemplated in the proposal. FINRA also believes that the primary motivation for customers to use arranged financing is to obtain increased leverage rather than to avoid short interest reporting, which, to the extent this is true, would limit incentives to shift lending to non-FINRA members, including banks. FINRA further understands that, although it is possible for customers to obtain short exposure to a security through other means, it would be impractical for entities other than affiliates of FINRA members to offer a service substantially similar to arranged financing. FINRA continues to believe that requiring members to include these positions will improve the completeness of reported short interest information, and notes that this information is not reasonably ascertainable elsewhere; therefore, requiring members to report this information is reasonable and appropriate.

2. Frequency and Timing of Short Interest Position Reporting and Dissemination

In the Notice, FINRA requested comment on potentially increasing the frequency of short interest reporting and dissemination. Specifically, FINRA stated that it was considering increasing the frequency of short interest reporting and dissemination from bi-monthly to weekly or daily. In addition, FINRA noted that it was considering shortening the timeframe for members to submit short interest reports and reducing the amount of time FINRA takes to process the collected information so that FINRA could disseminate short interest data more quickly.

Eight commenters supported increasing the short interest reporting frequency to weekly, noting that it would be more feasible than daily reporting while still increasing transparency, providing investors with timely information, and preserving the

confidentiality of individual firm investment and trading strategies.²⁹ FIF, however, raised concerns, including regarding the feasibility of shortening the timeframe for members to submit short interest position reports to FINRA after the designated settlement date.

Angel, Better Markets, NASAA, and several individual investors supported daily reporting and dissemination of short interest data. Better Markets and NASAA suggested that, if necessary, there should be a suitable delay in daily dissemination to allow firms to compile short interest data. NASAA further stated that daily short interest data currently can be purchased and therefore this data can be compiled without undue burden. CFA Institute also asked that FINRA consider daily reporting if daily short interest data already is available through other means.

Five commenters opposed increasing the frequency of short interest reporting.³⁰ Credit Suisse, Fidelity, and SIFMA stated that such a change would be operationally

²⁹ See letter from Stephen John Berger, Managing Director, Global Head of Government & Regulatory Policy, Citadel Securities, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 30, 2021 (“Citadel”); letter from Sarah A. Bessin, Associate General Counsel, and Nhan Nguyen, Assistant General Counsel, Investment Company Institute, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated August 31, 2021 (“ICI”); letter from Paul Wilson, Managing Director, Global Head of Securities Finance, Equities Data & Analytics, IHS Markit, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 30, 2021 (“IHS Markit”); letter from Matthew R. Cohen, Chief Executive Officer, Provable Markets LLC, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 30, 2021 (“PML”); letter from Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc., to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 30, 2021 (“Virtu”); letters from CFA Institute, FIF and MFA.

³⁰ See letter from Jeffrey Davis, Senior Vice President, North American Regulation, Nasdaq, Inc., to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated October 13, 2021 (“Nasdaq”); letter from Mehmet Kinak, Global Head of Systematic Trading & Market Structure, Philip Nestico, Head of U.S.

challenging and a significant cost burden on firms. Nasdaq asked that FINRA undertake a rigorous analysis on the frequency of reporting, and publish the results of that analysis, before increasing the frequency of short sale reporting. T. Rowe Price stated that more frequent short interest reporting would negatively impact liquidity.

After considering the comments received, FINRA is proposing to increase the frequency of short interest reporting and dissemination from bi-monthly to weekly and to reduce the turnaround time for the submission of the reports from two business days to one business day following the designated settlement date. FINRA believes that these changes best balance the goals of improving transparency and the usefulness of short interest data for regulators and market participants with the burden on firms to provide such information on a more frequent basis and concerns regarding potential impacts on liquidity. FINRA believes that firms' current reporting processes are well-established and that, following the initial process and systems adjustments, members will be able to report data on a weekly basis using current systems. In addition, FINRA believes that the aggregate nature of the published short interest data and the five-business-day turnaround time between the date of the short interest data and its dissemination would largely mitigate concerns regarding potential information leakage and impacts on liquidity.³¹

Equity Trading, and Jonathan Siegel, Senior Legal Counsel – Legislative & Regulatory Affairs, T. Rowe Price, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 20, 2021 (“T. Rowe Price”); letters from Credit Suisse, Fidelity and SIFMA.

³¹ Some comment letters also discussed FINRA's oversight program with regard to the accuracy and completeness of firms' short interest reporting. These commenters state that FINRA's inquiries, which require manual efforts, would further complicate weekly reporting. FINRA notes that the referenced process appears to be part of the ongoing oversight process to ensure that members are reporting their short interest data in compliance with FINRA rules and guidance.

3. Allocations of Fails to Deliver Positions

FINRA also received comments with respect to the proposal to adopt a new rule to require members to submit to FINRA a report of daily allocations of fail to deliver positions to correspondent firms pursuant to Rule 204(d) of SEC Regulation SHO. Angel, Better Markets, CFA Institute, FIF, and NASAA supported the adoption of such a rule. FIF stated that, subject to the manner and timing of implementation, on balance, the benefits of the proposed rule could outweigh the costs. NASAA indicated that the proposed rule would benefit investors by adding efficiencies to FINRA's market oversight with minimal impacts on firms, as well as possibly increase the likelihood that firms would comply with their settlement requirements in a timely fashion.

Fidelity and SIFMA opposed FINRA adopting such a rule, stating that the costs would outweigh the benefits and increase the potential for reporting errors. Fidelity further stated that FINRA should eliminate the proposed data field requiring the time period for the applicable close out obligation as the introducing firm rather than the clearing firm is responsible for this information.

Having considered comments received, FINRA continues to believe it is appropriate to propose new Rule 4321 to require members to report to FINRA on a monthly basis their daily allocations of fail to deliver positions to correspondent firms. FINRA believes that allocations of these positions by clearing firms is a common occurrence and that a report of daily allocations of fail to deliver positions to correspondent firms would provide valuable information in support of FINRA's

FINRA believes that these oversight efforts have been, and will remain, important elements of FINRA's regulatory program.

surveillance program for compliance with SEC Regulation SHO. FINRA believes that routinely obtaining this information would allow FINRA to conduct more efficient investigations and that the anticipated costs of the proposal are appropriate in light of the expected regulatory benefits. However, FINRA has, in response to comments, revised the proposal to omit the data fields pertaining to the close out date and the applicable close out obligation, since clearing firms will not necessarily know this information.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2026-012 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2026-012. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of FINRA. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-FINRA-2026-012 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Jill M. Peterson
Assistant Secretary

³² 17 CFR 200.30-3(a)(12).

Regulatory Notice

21-19

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.

EXHIBIT 5

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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4000. FINANCIAL AND OPERATIONAL RULES

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4300. OPERATIONS

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4321. Allocations of Fail to Deliver Positions

(a) A member that is a participant of a registered clearing agency that allocates all or a portion of a fail to deliver position to another registered broker-dealer pursuant to Rule 204(d) of SEC Regulation SHO shall submit to FINRA within 10 business days after the end of each month a report of daily allocations of such fail to deliver positions to another registered broker-dealer during that reporting month in the form and manner prescribed by FINRA.

(b) The report of daily allocations required pursuant to paragraph (a) of this Rule must include the following information for each allocation:

- (1) security name and symbol;
- (2) identity of the registered broker-dealer to which the fail was allocated;
- (3) number of shares of the fail that are allocated to the registered broker-dealer;
- (4) settlement date on which the allocated fail developed;
- (5) allocation date; and

(6) such other information as specified by FINRA in a Regulatory Notice (or similar communication).

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4500. BOOKS, RECORDS AND REPORTS

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4560. Short-Interest Reporting

(a) Each member shall maintain a record of total “short” positions in all customer and proprietary [firm] accounts in OTC equity securities, as defined in Rule 6420, and securities listed on a national securities exchange [all equity securities (other than Restricted Equity Securities as defined in Rule 6420)] and shall regularly report such information to FINRA in such a manner as may be prescribed by FINRA. Reports shall be received by FINRA no later than the [second] business day after the reporting settlement date designated by FINRA.

(b) Members shall 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 (1) a “short sale,” as that term is defined in Rule 200(a) of SEC Regulation SHO, or (2) where the transaction(s) that caused the short position was marked “long,” consistent with SEC Regulation SHO, due to the firm’s or the customer's net long position at the time of the transaction. Members also shall record and report all positions resulting from a loan obligation in connection with an arranged financing program through which a customer borrowed shares from the member’s affiliate and used those shares to close out a short position in the customer’s account at the member. Members shall 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.

(c) No Change.

••• Supplementary Material: -----

.01 Short-Interest Reporting for Securities with Recently Deleted Symbols. If a symbol assigned by a self-regulatory organization to identify an OTC equity security or a security listed on a national securities exchange no longer exists as of the designated reporting settlement date, each member's recording and reporting pursuant to this Rule shall be as of the last settlement date on which a symbol for such security remained in effect.

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