

September 27, 2021

Via email: pubcom@finra.org

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

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

Dear Ms. Mitchell:

The following comments are submitted by International Bancshares Corporation (“IBC”), a publicly-traded, multi-bank financial holding company headquartered in Laredo, Texas, with consolidated assets totaling over \$15 billion. This letter responds to the request by the Financial Industry Regulatory Authority (“FINRA”) for comment on potential enhancements to its regulation of the reporting, collection, and dissemination of short sale-related data under FINRA Rule 4560.¹ Specifically, FINRA is contemplating (i) consolidating the publication of short interest data for both exchange-listed and unlisted equity securities on the FINRA website; (ii) broadening the parameters of the types of short interest information that firms are required to report; (iii) increasing the frequency with which firms are required to report short interest data from twice a month to daily or weekly while decreasing the processing time for data dissemination; and (iv) requiring firms to make daily reports to FINRA of fail-to-deliver allocation information under Rule 204(d) of Regulation SHO.²

IBC is, and has always been, an advocate for data transparency and accessibility.³ We believe that the more transparent the marketplace, the better the market serves all

¹ Short Sales, FINRA Regulatory Notice 21-19 (June 4, 2021).

² 17 CFR § 242.204 (2021).

³ Letter from Dennis Nixon, Chief Exec. Officer & Chairman, Int’l Bancshares Corp., to Sec. & Exch. Comm’n (May 13, 2016), <https://www.sec.gov/comments/4-691/4691-8.pdf> (“Congress has called for, and today’s market requires, disclosure rules that address the lack of transparency and susceptibility to abuse and manipulation related to short selling.”); Letter from Dennis Nixon, Chief Exec. Officer & Chairman, Int’l Bancshares Corp., to Sec. & Exch. Comm’n (July 18, 2011), <https://www.sec.gov/comments/4-627/4627-169.pdf> (advocating for real time reporting of short sale positions because “[t]he only way to fully level the playing field is to require the same transparency from short sellers that we require from other investors”); Letter from Dennis Nixon, Chief Exec. Officer and Chairman, Int’l Bancshares Corp., to Sec. & Exch. Comm’n (June 17, 2009), <https://www.sec.gov/comments/s7-08-09/s70809-3685.pdf> (“IBC strongly believes the lack of reporting and transparency regarding short selling activities facilitates the nefarious

participants. For that reason, IBC commends FINRA's recognition of the critical need for greater market transparency and strongly supports the proposed amendments to FINRA's short sale reporting program. In its enhanced form, Rule 4560 will foster market integrity, level the playing field between short sellers and all other investors, and help prohibit nefarious short selling practices that undermine FINRA's responsibility to prevent fraud and manipulation and to promote fairness and equity in the marketplace.⁴

The trading regulations meant to protect investors and to promote fairness of opportunity in the marketplace are only as effective as the regulatory system demanding compliance with them.⁵ While unabusive short selling practices may theoretically facilitate pricing efficiency and offer market liquidity,⁶ the current regulatory framework has become a free-for-all for virtually unchecked institutional short selling power and pervasive market manipulation. One investor's loss is a short seller's gain, and deceptive practices like naked short selling,⁷ "short-and-distort" schemes,⁸ and dark-pool trading⁹ enable short sellers to exploit that gain by profiting from the artificial manipulation of stock prices.

actions of a handful of short selling predators to the detriment of thousands of legitimate shareholders holding long positions."); Letter from Dennis Nixon, Chief Exec. Officer & Chairman, Int'l Bancshares Corp., to Sec. & Exch. Comm'n (June 9, 2009), <https://www.sec.gov/comments/s7-08-09/s70809-3390.pdf> (supporting Regulation SHO amendments that would require more "transparency into the transactions of market makers").

⁴ 15 U.S.C. § 78o-3(b)(6).

⁵ See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 929X, 124 Stat. 1376, 1870 (2010) (codified at 15 U.S.C. § 78o) (requiring the SEC to "prescribe rules providing for the public disclosure of the name of the issuer and the title, class, CUSIP number, aggregate amount of the number of short sales of each security, and any additional information determined by the [SEC] following the end of the reporting period"). *But see Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act*, U.S. SEC. & EXCH. COMM'N, <https://www.sec.gov/spotlight/dodd-frank.shtm#> (Dec. 23, 2020) (click "Other") (indicating that the short-sale reform under Section 929X of the Dodd-Frank Act is one of three remaining mandatory rulemakings that the SEC has neglected to impose since Congress mandated the rulemaking more than a decade ago).

⁶ See SEC Concept Release: Short Sales, Exchange Act Release No. 34-42037, 6 Fed. Reg. 57996 (Oct. 28, 1999) <https://www.sec.gov/rules/concept/34-42037.htm> (demonstrating the SEC's longstanding belief that "[s]hort selling provides the market with two important benefits: market liquidity and pricing efficiency").

⁷ MARK JICKLING, CONG. RSCH. SERV., RS22099, REGULATION OF NAKED SHORT SELLING (2009) (noting that when a stock's short interest is high, the "virtually unlimited quantity of shares" that can be created by naked short selling can have a "strong impact on the share price" and allow for "a market based on supply and demand [to] be seriously distorted"); see also Press Release, Sec. & Exch. Comm'n, SEC Charges Broker-Dealer with Order Execution Violations (May 20, 2021) (discussing a broker-dealer's repeated naked short selling in violation of Rules 200(g) and 203(b)(1) of Regulation SHO).

⁸ Press Release, U.S. Sec. & Exch. Comm'n, SEC Charges Hedge Fund Adviser With Short-and-Distort Scheme (Sept. 12, 2018) (summarizing the SEC's complaint against a hedge fund adviser for participating in a typical short-and-distort scheme by establishing a short position in a company then "ma[king] a series of false statements to shake investor confidence in [the company], lower its stock price, and increase the value of his position).

⁹ Luis A. Aguilar, Comm'r, Sec. & Exch. Comm'n, Public Statement: Shedding Light on Dark Pools (Nov. 18, 2015), <https://www.sec.gov/news/statement/shedding-light-on-dark-pools.html> (warning of the dangers of alternative trading system "dark pools" that meet "institutional investors' growing need to trade large blocks

Many unsuspecting companies have been the target of institutional short sellers' calculated and relentless short sale attacks, but the recent brawl between GameStop Corporation short sellers and "long" investors has shone a spotlight on the radical information asymmetry and manipulative tactics that short sellers have long taken advantage of to the detriment of others. The short interest of GameStop was reported at an illogical 141.8%¹⁰ during the first week of January 2021 when trading volume averaged around 6.5 million shares.¹¹ By the next week, the number of shares exchanging hands increased nearly tenfold.¹² As short sellers scrambled to cover their positions, the stock price swung from less than \$20 at the start of the year to its peak of \$483 on January 28, 2021.¹³ With more shares shorted than existed, short sellers were forced to cover at losses totaling billions of dollars, while GameStop shares have risen roughly 950% since the start of the year.¹⁴ GameStop's market volatility and the media frenzy surrounding it have been remarkable, but the abusive short selling practices and market manipulation that set the stage for the GameStop saga to unfold are unfortunately commonplace.

Steps must be taken to fill the regulatory gaps that have enabled short sellers to trade in the shadows with no real-time oversight of or consequences for the manipulative market practices that have gone on for years without being rectified. The proposed amendments to FINRA Rule 4560 would hold short sellers accountable by reducing short sale-related information asymmetry, demanding data transparency, and ensuring investors holding

of stock without causing markets to move against them" by "offering ever more trading on an anonymous basis, and without displaying specific order information before trades occur").

¹⁰ John McCrank, *Explainer: How Were More than 100% of GameStop's Shares Shorted?*, REUTERS (Feb. 18, 2021, 10:15 AM), <https://www.reuters.com/article/us-retail-trading-shortselling-explainer/explainer-how-were-more-than-100-of-gamestops-shares-shorted-idUSKBN2AI2DD> (reporting a peak short interest of 141.8% of GameStop's float according to the data of financial analytics firm S3 Partners); see also *See Game Stopped? Who Wins and Loses When Short Sellers, Social Media, and Retail Investors Collide: Hearing Before the H. Comm. on Fin. Servs., 117th Cong. (2021)* (statement of Kenneth C. Griffin, Chief Executive Officer, Citadel LLC) (attributing institutional investors' lending of GameStop shares that were purchased short as the explanation for how GameStop could be short-sold to over 140% in January 2021 without illegal naked short selling occurring).

¹¹ Historical Price Data of GameStop Corp., YAHOO! FINANCE, <https://finance.yahoo.com/quote/GME/history> (click "time period"; then set the time period as Jan. 3, 2021 – Jan. 29, 2021; then click "apply") (reporting daily trading volume of GameStop, from which average weekly trading volumes were calculated to be 6,730,000 shares from Jan. 4-8, 2021 and 61,410,840 shares from Jan. 11-15, 2021).

¹² *Id.*

¹³ Bailey Lipschultz & Divya Balji, *Historic Week for GameStop Ends With 400% Rally as Shorts Yield*, BLOOMBERG (Jan. 29, 2021), <https://www.bloomberg.com/news/articles/2021-01-29/historic-week-for-gamestop-ends-with-400-rally-as-shorts-yield>.

¹⁴ Saqib Iqbal Ahmed, *Analysis: With GameStop Earnings on Tap, Option Traders Bet on Muted Moves*, REUTERS (Sept. 8, 2021, 6:00 AM), <https://www.reuters.com/business/with-gamestop-earnings-tap-options-traders-bet-muted-moves-2021-09-08/> ("GameStop is up about 950% for the year and down 8% so far this quarter."); see also Jen Wiczner, *Hedge Funds and Other Short-Sellers Have Lost an Astounding Amount Betting Against GameStop*, FORTUNE (Jan. 29, 2021, 3:51 PM), <https://fortune.com/2021/01/29/gamestop-stock-how-much-hedge-funds-have-lost-sellers-losses-gme-steve-cohen-point72-andrew-left-citron-research-short-squeeze/> (explaining that by Friday, January 29, 2021, "short-sellers had lost \$19.75 billion on GameStop so far [in the month of January] alone, according to S3 Partners").

long positions have an equal and fair opportunity to participate in the financial market against their short-selling adversaries. IBC appreciates the opportunity to express its support of the proposed enhancements to FINRA's short sale reporting program and urges FINRA to adopt them; however, IBC believes that these steps will not solve the short selling problems that plague the markets – much more needs to be done to completely level the playing field.

Thank you for your consideration of this letter.

INTERNATIONAL BANCSHARES CORPORATION

A handwritten signature in blue ink, appearing to read "Dennis E. Nixon", is written over the typed name and title. The signature is stylized and somewhat illegible due to the cursive nature of the handwriting.

Dennis E. Nixon
President & CEO