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VIA ELECTRONIC MAIL

October 13, 2021

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

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

Dear Ms. Mitchell:

Nasdaq, Inc. ("Nasdaq") appreciates the opportunity to comment on the proposed changes to FINRA's short interest position reporting requirements and related changes. The Request for Comments is an important step towards ensuring that the rapidly changing mix of investors in public securities continue to have confidence in the fairness of U.S. capital markets. Like all regulations, short selling rules must be continually evaluated and updated as technology and social change transform the trading ecosystem.

Nasdaq has long advocated for enhanced disclosures to the public regarding short sale positions, and therefore we applaud FINRA's effort to bring more transparency to the market. Transparency enables legitimate short selling, which contributes to efficient price formation, enhances liquidity, facilitates risk management, and benefits the market and investors in important ways. Transparency also protects issuers and shareholders of public securities by helping to identify and ferret out instances of fraud andmanipulation in publicly-traded securities.

Nasdaq has repeatedly emphasized the need for short interest transparency.[1] The same reporting requirements that apply to investors with long positions should apply to those with short positions. Asymmetries in such reporting deprives companies of insights into trading activity and limits their ability to engage with investors, and deprives investors of information

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[1] See, e.g., Petition for Rulemaking to Require Disclosure of Short Positions in Parity with Required Disclosure of Long Positions submitted by Edward Knight (December 7, 2015), available at https://www.sec.gov/rules/petitions/2015/petn4-691.pdf (advocating for parity in disclosure requirements for investors with both long and short positions); Nasdaq, "The Promise of Market Reform: Reigniting America's Economic Engine," available at https://www.nasdaq.com/docs/Nasdaq_Blueprint_to_Revitalize_Capital_Markets_April_2018_tcm5044-43175.pdf.

necessary to make meaningful investment decisions.[2] Moreover, the absence of a strong disclosure regime around short positions has allowed a small number of market participants with short positions to profit from spreading inaccurate or misleading information about the underlying company.[3] Without disclosure of information about short positions, investors and the market are forced to speculate on the extent and motives of investor activity and, as a result, stock prices may be influenced by rumor, speculation and innuendo, instead of facts.

Nasdaq supports transparency in synthetic short positions, though not at the expense of meaningful, incremental progress on equities short selling. Short positions established through derivative instruments often have the same direct and material impact on trading in securities as any other short position. Enhancing disclosures for synthetic short positions provides a more complete view of short interest, helps identify the systemic risk associated with short positions in general, and minimizes the opportunity for some market participants to engage in manipulative or abusive conduct that can potentially result from large, undisclosed short interest.

Nasdaq believes that some aspects of the proposal, such as the timing of disclosures, require further analysis. As noted in the release, FINRA Rule 4560 (Short-Interest Reporting) currently requires firms to report to FINRA their aggregate short position in each equity security twice a month, with reports due to FINRA by 6:00 p.m. ET on the second business day after the designated reporting settlement date. FINRA currently disseminates short interest data for OTC equity securities on its website seven business days after the designated settlement date. FINRA proposes to increase the frequency of reporting to daily or weekly submissions, and to reduce processing time in disseminating short interest data.

Determining the proper frequency of reporting requires rigorous analysis, as each alternative is likely to have very different implications. A study by Comerton-Forde et al. (2016) is cited for the proposition that, where information on both short interest and short sale volume are disclosed at a daily frequency, the two metrics provide distinct information, but no analysis at all is presented on the impact of daily or weekly reporting on short-selling activity.

In light of the need for further analysis, Nasdaq recommends a measured approach. Increasing the frequency of reporting will place a high administrative burden on the industry, and its benefits may not exceed its costs. Daily reporting in particular may reflect too many random fluctuations in information to extract useful information. The possibility that increasing the frequency of reporting may not be useful, coupled with the high cost of gathering such information, indicates that the cost of reporting may exceed its benefits. As such, Nasdaq

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2 See id.

3 See, e.g., Securities and Exchange Commission (September 12, 2018) "SEC Charges Hedge Fund Adviser With Short-and-Distort Scheme," available at https://www.sec.gov/news/press-release/2018-190; United States Attorney for the Southern District of Florida (July 21, 2011) "Barry Mindow Sentenced to Five Years' Imprisonment on Stock Manipulation Conspiracy," available at https://www.justice.gov/archive/usao/fls/PressReleases/2011/110721-02.html; Paul S. Berliner, Exch. Act Release No. 34-57774, 93 SEC Docket 545 (May 5, 2008), available at https://www.sec.gov/litigation/litreleases/2008/lr20537.htm.; SEC v. Mark S. Jakob, Litig. Release No. 16671, 73 SEC Docket 415 (Aug. 31, 2000), available at https://www.sec.gov/litigation/litreleases/lr16671.htm.

recommends that FINRA undertake a rigorous analysis on the frequency of reporting, and publish the results of that analysis, before undertaking that specific change.

Thank you for your consideration of our views.

Sincerely,

Jeffrey Davis
Senior Vice President,
North American Regulation