



September 30, 2021

VIA ELECTRONIC DELIVERY

Marcia E. Asquith, Esq.
Executive Vice President, Board and External Relations
FINRA
1735 K Street, NW
Washington, DC 20006-1506

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

Dear Ms. Asquith:

Virtu Financial, Inc. (“Virtu”)¹ respectfully submits this letter in response to the above-referenced request for comment issued by the Financial Industry Regulatory Authority (“FINRA”) on June 4, 2021 (the “RFI”).² As stated in the RFI, FINRA’s purpose in collecting short sale-related information is to support FINRA’s oversight of member compliance with Regulation SHO and other short sale obligations and to provide market participants with insight into short sale activity and position information. Virtu applauds and supports initiatives designed to introduce greater transparency to our markets and to ensure marketplace integrity. We believe the current methodology for reporting short interest should be enhanced and Virtu advocates for short interest reporting that is useful to market participants and provides an accurate picture of short interest.

Virtu Responses

Publication of Short Interest for Exchange-listed Equity Securities: FINRA is considering consolidating the publication of short interest data that is reported to FINRA for both listed and unlisted securities. 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.

¹ Virtu is a leading financial firm that leverages cutting edge technology to deliver liquidity to the global markets and innovative, transparent trading solutions to its clients. Virtu operates as a market maker across numerous exchanges in the U.S. and is a member of all U.S. registered stock exchanges. Virtu’s market structure expertise, broad diversification, and execution technology enables it to provide competitive bids and offers in over 25,000 securities, at over 235 venues, in 36 countries worldwide. As such, Virtu broadly supports innovation and enhancements to transparency and fairness which enhance liquidity to the benefit of all marketplace participants.

² FINRA Regulatory Notice 21-19 (June 4, 2021), available at <https://www.finra.org/sites/default/files/2021-06/Regulatory-Notice-21-19.pdf>.

Response: Virtu believes that consolidating the publication of short interest data on the FINRA website for both listed and unlisted securities is a reasonable amendment and will make short interest data more easily accessible to market participants.

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 and 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.

Response: Virtu strongly encourages FINRA to carefully consider the utility of separating short interest data into the categories “proprietary” and “customer”. We note that for member oversight purposes, FINRA has a variety of tools to collect information related to Reg SHO and short sale activity even without short interest reporting. With respect to providing transparency to market participants, it is not clear that separating the data into “customer” and “proprietary” is useful. We note that there are a variety of types of transactions undertaken by member firms and customers that involve short sales of one security offset by other instruments which result in economically neutral positions. As a gauge of market sentiment, reporting these transactions may not provide useful information on whether market sentiment is bullish or bearish with regard to an issuer. Similarly, separating the reporting as “proprietary” and “customer” does not necessarily shed further light on the market’s view.

However, if FINRA adopts this amendment, we believe it is important to carefully define the terms “reportable short interest positions”, “proprietary account” and “customer account”. In our view, it would be simplest and easiest to implement these amendments if the latter terms were defined as follows: “proprietary” means any position beneficially owned by the reporting firm and held on its books in a firm account(s), and “customer” means any position in any other account beneficially owned by a client and held on the books of the broker-dealer.

We take the view that account-level position short interest reporting is potentially a significant amendment to the current systemic process and needs additional consideration.

Furthermore, analyzing whether or not an account, or two or more related accounts (with the same “beneficial owner”) held three percent or more of total shares outstanding is potentially a significant complicating factor. We submit that FINRA should consider the concept of combining short interest positions across accounts with the same “beneficial owner” against the current rule, which requires the reporting of positions on a gross by account basis.

We firmly believe that FINRA should consider the definition of “account” and whether reporting pursuant to the current requirements of FINRA Rule 4560 (“...gross short positions existing in each individual firm and customer account...”) would result in the intended short interest position information. The methodology by which member firms establish proprietary accounts on their books to reflect proprietary positions is subject to variation based upon business models, trading and clearing systems used, and potentially other reasons. As such, we further believe that allowing member firms to aggregate proprietary positions and report the aggregated positions at the firm level will normalize these variations.

In addition, firms must consider the source from where reliable “total shares outstanding” data will be received and in what format. Further, FINRA should consider existing CAT requirements for ways to identify account holders across reporting firms and not create another account identifier (if this consideration is made final).

Finally, with respect to hedging-related data, Virtu hedges positions on a trade date basis; therefore, it is our view that it would be difficult to submit hedge-related information against settlement date short interest position balances. In addition, a firm may not know a client’s trading strategy and, therefore, will not be able to ascertain if a short position is fully or partially hedged. Also, clients may have relationships with two or more broker-dealers where a short position is held with one broker-dealer and the “hedge” is held with another. In this scenario, broker-dealers would not be able to report hedging information.

Synthetic Short Positions: 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.

Response: Virtu also strongly encourages FINRA to consider the utility of reporting synthetic short positions. We are not convinced that there is utility in reporting this data. There is already significant reporting of options data. Other forms of synthetic short positions frequently involve short stock positions that may also be captured in the short interest data which may be interpreted in a manner that overstates the market sentiment value of the data. Further, Virtu respectfully submits that new programmatic processes may be needed in order to generate and submit synthetic short interest positions

(as opposed to an amendment to the existing process). We urge a cost benefit analysis be conducted specifically to define the expected utility of the data measured against the cost of generating it. If FINRA ultimately decides to adopt a requirement to report synthetic short interest we encourage FINRA to specifically define “synthetic short” in a way that allows firms to accurately target the intended position. We believe the example provided by FINRA (*i.e.* “*a sale of a call option and purchase of a put option where the options have the same strike price and expiration month*”) is helpful in describing an example of a reportable synthetic position. We submit that there are many permutations that would need to be defined and that firms would be required to program.

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.

Response: Virtu recognizes that making available TSO and public float information in disseminated short interest data may be useful to market participants, but takes no position on the proposal.

Threshold Security Field: 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.

Response: Virtu recognizes that indicating if a security is a “threshold security” may make this information more easily accessible to market participants; however, we take no position as to whether or not market participants will use this information in assessing an investment decision.

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). 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).

Response: Virtu appreciates the potential usefulness to market participants of more frequent reporting of short interest data and a reduction in the processing time to disseminate such data to the industry. We believe that it is reasonable to move from twice a month reporting to weekly reporting, and believes it can support submission by the end of the business day following the designated settlement date.

However, we have concerns with respect to the consideration of daily submissions, especially in combination with a reduction in processing time by FINRA. Reporting firms may need additional time to determine the impact of corporate actions on settlement date positions because the expectations are that firms process against “ex-date”, which is inherently on a trade date basis. A move to daily submissions would constrain the ability of reporting firms to assess the impact of corporate actions on short interest positions. Relatedly, FINRA’s Short Interest Reporting Department follows each short interest data submission with an “Initial Short Interest Letter” requesting the confirmation of short interest positions for a listing of securities. Summarily, FINRA requests the confirmation of short interest positions in securities that fall into one of the following verification codes: (1) Split / Dividend Adjustments, (2) New Issues, (3) Symbol Changes, (4) Exchange Moves, (5) Stock Position Records, and (6) Verify / Correct Positions. As FINRA considers an increase in the frequency by which firms are required to submit short interest data, and a reduction in the time in which short interest data is processed and disseminated, we recommend a review of this follow up process to ensure both firms and FINRA can meet their respective obligations.

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.

Response: Virtu does not believe “loan terms, loan amounts and contra-party information” is necessarily relevant to short interest reporting and this information is broader than categorizing it as “Other Short Sale-Related Initiatives”. Furthermore, specifically

submitting securities borrow data seems more relevant to the close out requirements of Rule 204 of Reg SHO, but this information on an aggregated basis may not significantly improve FINRA Reg SHO oversight efforts.

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Virtu appreciates the opportunity to submit this response to the FINRA's RFI on short interest reporting. We are firm believers in the benefits that flow from a robust regulatory disclosure regime and are supportive of appropriately tailored enhancements that will contribute to the transparency and competitiveness of our markets. We would welcome the opportunity to provide any additional information that would assist FINRA in its consideration of this topic and encourage other market participants to share their views as well.

Respectfully submitted,



Thomas M. Merritt
Deputy General Counsel

cc: Robert W. Cook, President and CEO
Robert L. D. Colby Executive Vice President and Chief Legal Officer