

# FINANCIAL INFORMATION FORUM

May 15, 2025

**By electronic mail**

Financial Industry Regulatory Authority  
1735 K St NW  
Washington, DC 20006

Attn: Philip Shaikun, Vice President and Associate General Counsel, Office of General Counsel  
Heather Seidel, Chief Counsel, Office of Regulatory Economics and Market Analysis

**Re: FINRA Regulatory Notice 25-04: Rule Modernization**

Dear Mr. Shaikun and Ms. Seidel,

Financial Information Forum (“FIF”) is submitting this comment letter in response to Regulatory Notice 25-04 (Rule Modernization) published by the Financial Industry Regulatory Authority (“FINRA”) on March 12, 2025 (the “Regulatory Notice”).<sup>1</sup> In the Regulatory Notice, FINRA seeks feedback on “What specific FINRA rules should be a focus for modernization based on their economic costs and benefits; changes in markets, products, services, or technology; or otherwise?”<sup>2</sup> FIF members support FINRA’s publication of the Regulatory Notice and FINRA’s focus on modernizing its rules.

This comment letter is specifically focused on FINRA Rule 4560, Short Interest Reporting. This letter does not seek to address issues of concern for FIF members relating to other existing FINRA rules. This letter reflects the discussions of the FIF Short Sales / Reg SHO / Short Reporting Working Group.

FINRA writes that the policy objective for short interest reporting is “to help investors gauge the market sentiment surrounding a security or exchange.”<sup>3</sup> This policy objective can only be achieved through an accurate reporting of short positions. FIF members have identified at least two issues with the current implementation of Rule 4560 that impede this objective. First, the rule introduces transaction reporting elements into a position reporting system. This introduces significant and unnecessary complexity into short interest reporting and reduces the quality of the data that is disseminated to the public by

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<sup>1</sup> FINRA Regulatory Notice 25-04, Rule Modernization: FINRA Launches Broad Review to Modernize Rules Regarding Member Firms and Associated Persons (Mar. 12, 2025), available at <https://www.finra.org/sites/default/files/2025-03/Regulatory-Notice-25-04.pdf>.

<sup>2</sup> Id. at 5.

<sup>3</sup> FINRA, Equity Short Interest Files, available at <https://www.finra.org/finra-data/browse-catalog/equity-short-interest/files>.

distorting the short positions that firms report. FINRA and the exchanges separately disseminate information about short sale transactions.<sup>4</sup> Positions and transactions should be reported separately, without commingling of the two concepts. Second, the current ambiguity regarding how a firm should define a principal “account” for short interest reporting could restrict firms from netting principal long and short positions, thereby materially overstating the economic short positions of reporting firms.

### ***Conflation of transaction and position reporting***

FINRA should revise Rule 4560 to provide for firms to report based on their actual short positions without regard to the underlying transactions.

Under FINRA Rule 4560(b), firms are required to report short positions only if they result from (1) “short sales” or (2) certain sales that are marked “long”. This provision introduces transaction reporting elements into a position reporting system. This creates two significant problems. First, it means that the short interest report that FINRA purports to be disseminating is not in fact a true short interest report. Instead, it is a short interest report distorted by transaction reporting elements. Second, Rule 4560(b) imposes a significant and unnecessary burden on firms to track the details of the underlying transactions as opposed to reporting based on their current positions. This is often a complex process given the complexity of the short and long marking requirements of Regulation SHO, including the complexity relating to “deemed to own” determinations.<sup>5</sup>

The following are additional examples of the challenges caused by the current conflation of transaction and position reporting:

- ***Trades executed away from a prime broker.*** Under FAQ Q13, with respect to trades that are not executed by a prime broker, the prime broker “... should not automatically assume that such trades are ‘short sales,’ as defined by Rule 200(a) of Regulation SHO, and must take steps to verify the true nature of the position before reporting it as short interest pursuant to Rule 4560.”<sup>6</sup> This imposes a significant and unnecessary burden on the prime broker.
- ***Errors.*** Under FAQ Q9, “Short positions in error accounts resulting from transactions placed into the error account, e.g., journaled from a firm or customer account or re-booked to an error account, shall be reported as short interest if, prior to being placed or re-booked into the error account, the original, underlying transaction was a ‘short sale’ as defined by Rule 200(a) of Regulation SHO, or a transaction that was marked ‘long,’ consistent with Regulation SHO, e.g. aggregation units.”<sup>7</sup> This imposes a significant and unnecessary burden on the reporting firm. It is also noteworthy that a short position in an error account is a principal short position of a firm regardless of the nature of the associated customer transactions.

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<sup>4</sup> See, for example, FINRA, Monthly Short Sale Volume Files, available at <https://www.finra.org/finra-data/browse-catalog/short-sale-volume-data/monthly-short-sale-volume-files>.

<sup>5</sup> See 17 CFR §242.200.

<sup>6</sup> FINRA, Frequently Asked Questions (FAQ) about Short Interest Reporting, available at <https://www.finra.org/filing-reporting/regulatory-filing-systems/short-interest/faq>.

<sup>7</sup> Ibid.

These burdens can be avoided by having firms report based on their short positions without regard to the underlying transactions. This approach also would result in reporting of short positions without the distortion caused by introducing transaction reporting elements into a position reporting system. As one example of this approach, error account positions should be counted as part of a firm's principal position without regard to the underlying transactions.

### ***Reporting based on economic short positions***

FINRA Rule 4560(a) requires that firms report "gross short positions existing in each individual firm or customer account." Rule 4560 does not define what is meant by an "account". This creates an ambiguity as to whether firms can define this based on the firm's economic position.

For example, consider the following scenario: Firm A has a short position of 10,000 shares in Account A1 and a long position of 6,000 shares in Account A2; and Firm B has a short position of 4,000 shares in Account B1. Both firms have an economic short position of 4,000 shares. Firm B reports a short position of 4,000 shares, but it is not clear whether Firm A is required to report a short position of 10,000 shares, which would overstate Firm A's economic short position. Firm A also could journal its short position in Account A1 into Account A2. This would result in Firm A reporting a short position of 4,000 shares rather than 10,000 shares even though Firm A's economic position has not changed. We could also consider Firm C, which has a trading unit with a short position of 10,000 shares, a long position of 6,000 shares, and an economic short position of 4,000 shares. It is not clear whether Firm C should classify its trading unit as an account for purposes of short interest reporting and/or whether it can classify a structure (e.g., an aggregation unit) in which the unit sits as the account for short interest reporting.

Stated more generally, a firm's account structure is distinct from its economic position. A firm could establish separate accounts for individual traders, for individual desks or for any number of other reasons, but whether a firm holds its positions in a security in one or multiple accounts does not change the firm's economic position.

When making investment decisions, market participants consider the short interest data disseminated by FINRA. FIF members are concerned that the over-reporting of short positions that results from the current lack of clarity on this issue, in addition to providing inaccurate data to market participants, has led to unnecessary market instability in the past and will continue to do so in the future, if not addressed.

To address this issue, FIF members recommend that FINRA provide interpretive guidance (or alternatively provide exemptive relief) to allow a firm to net principal short and long positions for purposes of short interest reporting (i.e., to treat these positions as a single account). This guidance or relief should include the following conditions:

- The positions are principal positions for the same beneficial owner (i.e., the principal positions being netted are for the same beneficial owner)
- These principal positions are for the same aggregation unit within the firm

- These principal positions are in the same reportable security (in other words, a short equity position would not be offset by a long option or other derivative position).

As noted above, a firm's account structure often has no bearing on a firm's true economic short position. Failing to define what constitutes an "account" within the rule potentially leads to inconsistent reporting of short interest across similarly situated firms with principal positions and distorts what would be considered truly a short position (i.e., the "market sentiment") from the investing public's perspective.

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FIF members appreciate the opportunity to comment on the Regulatory Notice and support FINRA's solicitation of input on rule modernization. FIF members recommend that FINRA consider how this process could be formalized into a longer-term process that would enable market participants, on an ongoing basis, to provide recommendations relating to existing FINRA rules.

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Please contact me at [howard.meyerson@fif.com](mailto:howard.meyerson@fif.com) if you would like clarification on any of the points discussed above.

Very truly yours,

/s/ Howard Meyerson

Howard Meyerson  
Managing Director, Financial Information Forum