

April 23, 2012

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File No. SR-FINRA-2012-001 — Response to Comments

Dear Ms. Murphy:

This letter responds to comments submitted to the Securities and Exchange Commission (“SEC” or “Commission”) regarding the above-referenced rule filing, a proposed rule change to amend FINRA Rule 4560 (“Short-Interest Reporting” or the “Rule”). The SEC noticed the proposed rule on January 24, 2012¹ and received one comment letter.²

FINRA’s proposal seeks to: (1) delete three existing exceptions in the Rule for stabilizing activity, domestic arbitrage and international arbitrage; (2) propose that short interest positions must be reflected as of the ex-date of the corporate action; (3) codify that members must report “gross” short positions, including positions resulting from a sale transaction that 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; and (4) clarify that short-interest reports must reflect only those short positions that have settled or reached settlement date by the close of the reporting settlement date designated by FINRA.

The comment letter supports all but one provision proposed in the instant filing and raises certain other concerns about aspects of the existing rule. The comment letter supports FINRA’s proposed deletion of the three existing exceptions (for stabilizing activity, domestic arbitrage and international arbitrage), as well as the proposal to make explicit in the rule text the existing requirement that members report gross short positions. In addition, the commenter agrees with the clarification that members should report only those short interest positions that have reached settlement date.

¹ See Securities Exchange Act Release No. 66220, 77 FR 4599 (January 30, 2012) (Notice of Filing of File No. SR-FINRA-2012-001).

² See Letter to Elizabeth M. Murphy, Secretary, Commission, from Melissa MacGregor, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated February 23, 2012 (“SIFMA”).

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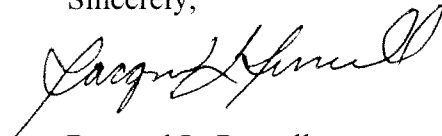
The commenter, however, disagrees with the proposal to require that reported short interest positions must be adjusted as of the ex-date (and if no ex-date is declared by an SRO, then the payment date) of a corporate action. The commenter states that firms' books are not adjusted to reflect corporate actions until payment date, expensive systems changes would be required to capture positions as of ex-date, and that this aspect of the proposal seems to be inconsistent with the approach taken by FINRA in other provisions of the Rule.

FINRA is engaged in a dialogue with members regarding adjustment of books and records to reflect corporate actions and the possible approaches for ensuring uniformity in short interest reporting across firms. Therefore, FINRA is amending the instant filing to delete this aspect of the proposal to provide FINRA additional time to gather further information on this issue and formulate a regulatory approach. FINRA intends to separately amend the Rule at a future date to propose a uniform requirement regarding the adjustment of corporate actions for short interest reporting purposes.

The additional comments raised by the commenter relate to the Rule as it currently exists, and are not specific to the proposed changes to the rule. Therefore, FINRA is not responding to those comments in this letter as they are not germane to the instant proposal or relevant to a consideration of whether the instant proposed rule change is consistent with the Exchange Act.³

FINRA believes that the foregoing responds to the material issues raised in the comment letters to this rule filing. If you have any questions, please contact me at (202) 728-8363.

Sincerely,



Racquel L. Russell
Assistant General Counsel

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In its letter, SIFMA advocated for the inclusion in short interest reports of short positions that result from options exercises or assignments that result in the firm having a short position. FINRA notes that FINRA currently expects short interest reports to reflect such short positions pursuant to the existing Rule.