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

RE: Release No. 34-64383; File No. 4-627: Short Sale Reporting Study Required by Dodd-Frank Act Section 417(a)(2)

Dear Ms. Murphy,

The Financial Information Forum (FIF)[1] would like to take this opportunity to provide feedback on implementation issues raised as part of the Request for Comment for the Short Sale Reporting Study required by Dodd-Frank. We have several concerns regarding the real-time position reporting and transaction reporting with additional markings and believe a review of current short sale data disclosure should be conducted as part of the Commission's study to determine if additional short sale disclosure is warranted.

Position Reporting

Q4.[2] Would real time reporting of the short positions of all investors, intermediaries, and market participants be feasible. Would real time data be more or less accurate than data reported on a delay? Please explain why or why not. /Q8. How should "position" be defined to help ensure any short sale position reports would be useful in detecting and deterring abusive short sale practices? Should short positions include derivatives and index components? In the case of broker-dealers, should position reporting be based on existing Regulation SHO aggregation units within broker-dealers, for the broker-dealer taken as a whole, or for its holding company? Please describe the feasibility of any incremental changes to the existing short sale reporting systems that would be necessary to report short sale "positions." Would any potential definitions of short positions be infeasible in real time?

The real time reporting of the short positions of investors would be challenging given that many institutional investors maintain accounts with more than one broker-dealer and also execute through broker/dealers where they do not maintain their positions. These investors would need to inform the

[1] FIF (www.fif.com) was formed in 1996 to provide a centralized source of information on the implementation issues that impact the financial technology industry across the order lifecycle. Our participants include trading and back office service bureaus, broker-dealers, market data vendors and exchanges. Through topic-oriented working groups, FIF participants focus on critical issues and productive solutions to technology developments, regulatory initiatives, and other industry changes. This comment letter is based on feedback from FIF broker-dealers and vendors.
[2] Questions may be truncated to focus on the part of the question for which FIF provided a response.

broker-dealer of their position with every order, a mechanism would need to be created to record and transmit that information; and the broker-dealer would have no way to verify whether the information is accurate. Also, institutional investors may not want the broker-dealers with whom they are placing the order to know their overall position.

From an implementation perspective, systems would need to be re-architected in order to communicate and calculate positions in real-time. Current end of day processes would require reengineering. In addition to requiring a new infrastructure at most firms, regulators would also require a modified architecture in order to process this data on a real-time basis.

From a broker dealer perspective, position reporting that is not based on existing aggregation units creates additional implementation costs and potentially makes the information less useful as it makes it even harder to analyze the reason behind the selling. Broker-dealers rely on aggregation units to calculate positions today. Requiring a position for the broker-dealer taken as a whole would require further integration of these systems.

We have a number of concerns with the feasibility of <u>accurate</u> position reporting without a significant modification to the current definitions and a major technology build. Please consider the following:

- Would the definition of "Short Position" include or exclude positions which are held to hedge a synthetic long position in a security;
- Depending upon the above item, if taking into account whether or not a position is hedged is required for accurate position reporting, this would be difficult for broker dealers to implement;
- The existing short sale reporting regime tracks gross shorts on a settlement day basis as opposed to net shorts on a trading day basis;

To address these issues would require a completely new build from current position reporting systems.

FIF urges the commission to adopt a uniform definition of a short position, so that it would be the same for purposes of Regulation SHO and otherwise, including but not limited to any and all provisions of the Dodd Frank Act. For sell trades to be marked long or short pursuant to Regulation SHO while other real time position reporting would be based on some other methodology would unnecessarily increase complexities, add to the cost, and to the extent that additional Consolidated Tape information was made public, as anticipated by the study, add to investor confusion.

Q9. What would be the benefits and costs of short position reporting if "position" was defined to mean short interest, which would be the aggregate number of shares short in each stock? Would real time public reporting of aggregate short interest be feasible?

If "position" had a simple definition to it, it still may not make reporting in real time feasible due to the system issues mentioned above.

Q10. What would be the feasibility, benefits, and costs of real time short position reporting to regulators only, and not to the public? What would the benefits and costs be if this real time reporting information were to be made public on a delayed basis? What length of delay might best balance any benefits and costs?

Currently there are a number of reports generated for FINRA. There may be an opportunity to modify existing reports since we believe not every investor is going to be interested in this data. Moving to real-time reporting even of existing FINRA reports would still entail many of the costs discussed in Q4.

We do believe that only reporting to regulators will help alleviate privacy concerns. In addition, it is readily apparent that to the extent real time information is valuable, it would follow that there will be a race to obtain and use that information, which use will benefit some, and be at the disadvantage, or appear to be to the disadvantage of investors who do not have the technology to obtain and process the information at high speed. We urge the Commission, to the extent it is determined that additional short sale information be made available, that it be done so on a significantly delayed basis, such as end of day reporting.

Importantly, FINRA currently publishes, on a monthly basis, a monthly short sale transaction file, providing public access to transaction data that includes transaction times, price and number of shares for every short sale transaction in an NMS stock, and daily short sale volume files that provide aggregate daily short sale volume data by security for NMS stocks and OTC equity securities. These files may be found online at *www.finra.org/trf/regsho* and *www.finra.org/adf/regsho.* The other SROs provide similar data as described on the SEC Short Sale Volume and Transaction Data web page. FIF members believe this already available information may be adequate and that FINRA and the other SROs could provide additional information regarding the extent to which this currently available information is accessed. It may also be useful to create a consolidated view of the Daily Short Sale Volume by security that covers FINRA and the other Exchange venues.

Q11. Who would be in a position to report short positions in real time? Would broker-dealers be able to accurately report customer short positions in real time? Would anyone else be better suited? Would short sellers themselves be equipped to report their own short positions in real time? Would anyone but the short seller be in a position to report the short seller's short position, whether or not the short position was defined as the short seller's economic position including derivatives? What would be the feasibility of adapting the technology infrastructure that supports existing reporting requirements to support real time short position reporting?

Broker dealers are not able to report all customer positions in real-time or even daily. Institutional Customers often prime many places making it impossible for a single broker dealer to accurately calculate positions. However, we do not believe all customers have the means to do it themselves. Their prime broker or custodian may have to perform this reporting and would probably need at least until the end of each business day.

Q12. Who would be in a position to collect and disseminate short positions in real time? Would it be feasible for listing exchanges to collect and disseminate this information? Would a consolidator be better suited to collect this information? What would be the feasibility of adapting the technology infrastructure supporting existing reporting requirements to support real time short position collection and dissemination? Would short position data developed from existing systems be less meaningful than data from a new system designed for this purpose? Why or why not?

FIF sees issues with getting accurate data. If the accuracy issues were somehow addressed, it is not clear who would be in the best position to disseminate the data but most likely a new system would be required. We would recommend a central repository using data standards.

Q13. What would be the direct, quantifiable costs of short position reporting for those compiling, reporting, collecting, or disseminating the data? Please differentiate implementation costs from ongoing costs and include opportunity costs. How feasible would it be for brokers, exchanges, and others to create or modify a reporting and dissemination system? What would be the particular technological challenges faced in creating or modifying a reporting and dissemination system? Responses based on the costs of implementing the 2007 modifications to short interest reporting31 or the 2008 implementation of Form SH32 are particularly requested.

Accurate, real-time position reporting represents a significant undertaking for the industry. It is very difficult to quantify costs without interpretative and technical guidance as well as a specific proposal that addresses the accuracy concerns we outline above. Depending on how position is defined, it may not be appropriate for broker dealers to provide short position reporting. As a point of reference, Regulation NMS was adopted in June 2005 and not fully implemented until August 2007 after a phase in period. We would expect requiring broker dealers to adopt some form of real-time position reporting would take a similar amount of time.

We request the opportunity to comment on implementation cost and timing once the SEC releases more details on their plans for disclosure.

Q14. How would the establishment of a significant reporting threshold, which would limit short position reporting requirements to holders of significant net short positions, affect costs and the utility of the short position information?

Establishing a threshold would mean that firms would need to calculate values to determine if a threshold had been reached. While it would reduce the amount of data reported, there is no reduction in the implementation effort required.

<u>Transaction Reporting</u>

Q16. What benefits, costs, or unintended consequences would flow from adding these transaction marks to the Consolidated Tape? Who would use these marks, and how?

Adding transaction marks to the Consolidated Tape has the potential to confuse retail investors who may not be able to adequately evaluate this data in real-time. We believe these markings would be of most use to professional traders. We are also concerned that some institutional customers would prefer not to disclose whether their activity is establishing/increasing or liquidating a position in a name. In certain large transactions, entities may actually be able to identify whom the customer was effecting the transaction. Thus, it is our recommendation that transaction reporting data with additional markings be provided on an end-of-day (EOD) basis.

Market makers will be at a disadvantage if “market-maker short” is required. High frequency traders could use that information against them which might lead market makers to be less willing to take a position. The Commission notes that equity market makers rely on short selling to facilitate customer buy orders. FIF members believe that market makers also rely on short selling to facilitate customer sell orders by selling short in the market and then immediately buying on a riskless basis from customers who are selling. Eliminating the “market maker short” marking would make a difference in terms of reducing market abuse associated with this new data. If there is a concern about over representing short activity by identifying market maker shorting activity with a “short sale” marking, alternatives to the "market maker short" should be considered. One alternative would be to mark all market maker trades with a single marking.

From an implementation perspective, there is also concern over "buy-to-cover" since this is not currently required by Exchange or TRF specs. Requiring "buy-to-cover" as a side that will be transmitted on orders sent to exchanges and trades reported to the TRF will require changes to those specifications as well as a review of order routing, trading, and trade reporting systems. If additional markings are added to the Tape, we recommend removing the "buy to cover" marking in order to reduce the industry's implementation efforts. If there was an initial pilot that did not require "buy to cover" marks, this would allow the SEC an opportunity to study the impacts of increased short sale disclosure with less implementation effort.

Q17. Please discuss the feasibility, benefits, and costs related to the "short sale," "market maker short," and "buy-to-cover" marks specifically, and the effects of any choices that would be made when defining such terms.

In order to minimize impact on market data capacity, and ensure that volume is not over-reported, FIF believes that a "sales condition" will be required that would represent both the buy and sell side of the trade in one report. (Today, the trade feeds only have one message for last sale so you'd need to represent the different combinations of buy and sell markings with a single value, i.e.., long sale/buy would be one code, short sale/buy another, etc.) Maintaining and mapping to this matrix would require an implementation effort not unlike the implementation of Amendments to Reg SHO (Rule 201) markings which lasted 12 months.

Q18. How would any additions to Consolidated Tape marks affect liquidity, volatility, price efficiency, competition, and capital formation? What would the feasibility, benefits, and costs be if this real time reporting information were to be made public on a delayed basis? What length of delay might best balance any benefits and costs?

If the Commission determines that this information would be useful to the public, we recommend a delay of 5 business days.

Q19. What would be the direct, quantifiable costs of adding the additional fields to the Consolidated Tape to support new marks? Please differentiate implementation costs from ongoing costs and include opportunity costs. How feasible would it be for brokers, exchanges, and others to modify order management systems, or other systems, for these marks? What would be the potential technological challenges faced in implementing these marks? Would the Consolidated Tape bear significant implementation or ongoing costs? For example, would capacity requirements be significantly higher? Would vendors and others who receive feeds from the Consolidated Tape bear significant implementation or ongoing costs? Responses based on the costs of implementing Regulation SHO Rule 201, Regulation NMS, and Form SH are particularly requested.

A significant amount of system work would be necessary to mark orders and report them to the consolidated tape properly. All front end OMS/EMS systems would need to be amended as well as any system the information is passed to for processing and reporting. In addition to properly mark the trades, firms will also need to update feed handlers and display the new market data. As a point of reference, Amendments to Reg SHO (Rule 201) took 12 months to fully implement.

Q20. What would be the benefits and costs (including the direct, quantifiable costs) of conducting a pilot for the Consolidated Tape marking? Would a pilot for Consolidated Tape marking be feasible? Would the direct, quantifiable costs of implementing and maintaining a pilot be any less, or more, than those of implementing and maintaining Consolidated Tape marking on all listed issuers?

A pilot would cause firms to incur all the associated costs plus additional work to only include 'pilot' stocks in the new requirements of each system. However, a pilot could be based on adding just "short sale" marks to the Consolidated Tape and studying the impact of that disclosure before expanding transaction reporting markings.

Q23. To what extent would Consolidated Tape marks be a substitute or compliment to real time short position reporting? How would the benefits and costs of any Consolidated Tape marks be impacted if real time position reporting existed and vice versa?

Real-time position reporting represents a much greater challenge from both an implementation and accuracy perspective. There are too many unanswered questions regarding the definition of position reporting and the rules around transaction reporting to address this question.

Conclusion

As part of the SEC Short Sale Disclosure study, we recommend evaluating current short sale disclosure as reported by the Exchanges and FINRA to determine usage and opportunities to provide existing data in a comprehensive, accessible manner. Additionally, a review of how the Exchanges and FINRA use the real-time data they receive on orders marked short sale today would be beneficial. If additional short sale disclosure is required, FIF recommends a careful analysis of the implementation considerations outlined. Additionally, we would like to strongly urge that any changes to Short Sale disclosure be done in the context of other proposed SEC regulations affecting order and transaction reporting (e.g., Consolidated Audit Trail) to avoid duplicative or conflicting requirements. Please contact me at 312-953-9228 or kimmel@fif.com if you have any questions or require further clarifications.

Regards,

Manisha Kimmel

Manisha Kimmel
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