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Invested in America

June 18, 2026

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090

RE: Notice of Filing of a Proposed Rule Change to Adopt FINRA Rule 4321 (Allocations of Fail to Deliver Positions) and Amend FINRA Rule 4560 (Short-Interest Reporting)

Dear Ms. Countryman:

SIFMA[1] respectfully submits this letter to the Securities and Exchange Commission ("SEC" or "Commission") in response to the filing ("Proposal") by the Financial Industry Regulatory Authority, Inc. ("FINRA") to amend FINRA Rule 4560 (Short-Interest Reporting) and to adopt FINRA Rule 4321 (Allocations of Fail to Deliver Positions).[2] In the Proposal, FINRA stated that it is amending FINRA Rule 4560 to increase the frequency and granularity of short interest information reported to and disseminated by FINRA. FINRA also is proposing to adopt new FINRA Rule 4321 to require clearing members to report to FINRA on a monthly basis their daily allocations of fail to deliver positions to correspondent firms (these reports would not be publicly disseminated).

The Proposal is closely related to separate, ongoing Commission initiatives to require reporting and dissemination of gross settled short position information and related short activity information, as well as of securities lending activity. Specifically, in October 2023, the Commission adopted Rule 13f-2 (Short Position and Short Activity Reporting by Institutional Investment Managers) and Rule 10c-1a (Reporting of Securities Loans) to increase regulatory and public transparency of short sale and securities lending information. As discussed below, the

[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

[2] Notice of Filing of a Proposed Rule Change To Adopt FINRA Rule 4321 (Allocations of Fail To Deliver Positions) and Amend FINRA Rule 4560 (Short-Interest Reporting), Release No. 34-105482 (May 13, 2026), 91 FR 28699 (May 18, 2026).

Commission subsequently delayed the compliance dates for these rules until 2028 and is considering amending each of these rules.[3] Given the uncertain status of Rules 13f-2 and 10c-1a (including the possibility of forthcoming material amendments), and the potential for duplicative reporting and dissemination of short position-related information under FINRA and Commission rules, it is difficult for SIFMA and other public commenters to analyze how these separate regimes will overlap with each other.[4]

FINRA also has not demonstrated that the purported transparency benefits of the Proposal would outweigh the significant costs and operational burdens it would place on reporting firms. Cutting the short interest reporting due date in half, to one business day after the reporting settlement date, would require reporting firms to essentially double their work — and they would be required to do so more frequently under the proposed weekly reporting requirement. The Proposal does not adequately address or seek to balance these competing issues. Similarly, FINRA has not demonstrated that implementing a reporting regime requiring clearing firms to submit monthly reports of allocations of fails to deliver under new Rule 4321 is necessary because FINRA did not provide any information regarding the frequency or number of requests it currently makes to clearing firms regarding such allocations.

For these reasons, if FINRA does not withdraw the Proposal so that the Commission can take a holistic approach to FINRA's and the Commission's short position-related information reporting and dissemination regimes, we urge the Commission to disapprove it.

Executive Summary

- SIFMA urges the Commission and FINRA to carefully evaluate the separate rules requiring reporting and public dissemination of short position information, short activity information, and securities lending information and take a holistic, coordinated approach that efficiently provides the public with useful short position-related information without creating duplicative reporting requirements that unnecessarily increase confusion, operational burdens, and compliance costs.
- The Proposal would require short arranged financing positions to be reported as short interest based on FINRA's preliminary finding that such positions are economically equivalent to short positions. However, under Commission Rule 10c-1a as adopted, these short arranged financing positions are required to be reported as covered securities loans. To avoid

[3] *See* Order Granting Temporary Exemptive Relief, Pursuant to Sections 13(f)(3) and 36(a)(1) of the Securities Exchange Act of 1934 from Compliance with Rule 13f-2 and Form SHO, and Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934 from Certain Aspects of Rule 10c-1a, Release No. 34-104303 (Dec. 3, 2025), 90 FR 56813 (Dec. 8, 2025) ("SEC Exemptive Order").

[4] For purposes of this letter, SIFMA is using "Rule 10c-1a" to refer collectively to the SEC's covered securities loan reporting regime under Rule 10c-1a and the Securities Lending and Transparency Engine reporting regime under the FINRA Rule 6500 Series ("SLATE Rules") that FINRA, as the registered national securities association charged with collecting and publicly disseminating covered securities loan information, has implemented. While in implementing the current SLATE Rules, FINRA sought to adhere closely to the requirements in Rule 10c-1a, SIFMA notes that should FINRA propose any rule changes to the SLATE Rules that implicate arranged financing transactions, that could add yet another rule set to the mix.

duplicative reporting and the potential for investor confusion, the Commission should amend Rule 10c-1a to explicitly exclude customer short positions established via arranged financing transactions.

- FINRA has not demonstrated that the regulatory and public transparency benefits of the changes to FINRA Rule 4560 would outweigh their costs. The reduced reporting deadlines and increased frequency would impose material costs and operational burdens on reporting broker-dealers, but the Proposal did not include an assessment of these costs and burdens.
- FINRA should change the "Exhibit A" process it uses to verify initial short interest reports, as this process is primarily manual and time consuming and would be difficult to maintain in its current form if the Proposal is adopted.
- Instead of amending the reporting deadlines and frequency of short interest reports, FINRA should simplify the short interest information required to be reported pursuant to Rule 4560, including by eliminating the exception for deemed to own sales.
- FINRA has not demonstrated that proposed new Rule 4321 is necessary because the Proposal does not include any information regarding the number of regulatory requests it is currently required to make to identify allocated fail to deliver positions.

Background

On October 13, 2023, the Commission adopted Rules 13f-2 and 10c-1a under the Securities Exchange Act of 1934 ("Exchange Act").[5] The rules were challenged and the Fifth Circuit remanded the rules without vacatur to the Commission and ordered it to conduct a cumulative economic analysis of both rules, since their close relation should have been considered in each rule's respective economic analysis.[6] In the meantime, the Commission granted exemptive relief delaying the compliance dates until January 2, 2028, for Rule 13f-2, and September 28, 2028, for Rule 10c-1a.[7] The Commission also is considering potential amendments to the rules.[8]

Prior to the Commission's initial proposal to adopt Rule 13f-2, which was published on February 25, 2022,[9] FINRA published Regulatory Notice 21-19 on June 4, 2021, requesting comment on several contemplated changes to FINRA Rule 4560 as well as potentially adopting a new rule to require clearing members to report to FINRA daily allocations of fail to deliver

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[5] 17 CFR § 240.10c-1a; Adopting Release, Reporting of Securities Loans, Release No. 34-98737 (Oct. 13, 2023), 88 FR 75644 (Nov. 3, 2023); 17 CFR § 240.13f-2; Adopting Release, Short Position and Short Activity Reporting by Institutional Investment Managers, Release No. 34-98738 (Oct. 13, 2023), 88 FR 75100 (Nov. 1, 2023).

[6] *National Assoc. of Private Fund Managers, et al. v. SEC*, No. 23-60626, *slip op.* (5th Cir. Aug. 25, 2025), https://www.ca5.uscourts.gov/opinions/pub/23/23-60626-CV0.pdf.

[7] *See* SEC Exemptive Order, 90 FR at 56814.

[8] *Id.* ("The Commission finds these temporary exemptions to be necessary in the public interest and consistent with the protection of investors because they will allow the Commission time to respond to the Court's opinion and take any further appropriate actions, which may include proposing amendments to the Rules.").

[9] Proposing Release, Short Position and Short Activity Reporting by Institutional Investment Managers, Release No. 34-94313 (Feb. 25, 2022), 87 FR 14950 (Mar. 16, 2022).

positions.[10] FINRA received a significant number of comments in response to Regulatory Notice 21-19.[11] Yet, FINRA did not take any further action on any of the potential changes discussed in Regulatory Notice 21-19 up until the submission of the Proposal. Instead, in the Proposal, FINRA relied on Regulatory Notice 21-19 and comments it received in 2021, nearly five years after the comments were submitted.

In addition to the subsequent Commission rules described above, the equity markets have experienced significant changes in the past five years, including significant growth in volumes, implementation of the Consolidated Audit Trail ("CAT") for regulatory surveillance, the industry-wide reduction from T+2 to T+1 settlement, and growth in retail investing and overnight trading. In 2021, commenters responding to Regulatory Notice 21-19 did not have an opportunity to consider the proposed changes in the context of these developments. Therefore, the Proposal's review and response to comments received nearly five years ago based on then-existing market and regulatory conditions is not a reliable basis on which to proceed with a rulemaking.[12]

Instead of proceeding with the Proposal at this time, FINRA should work with the Commission to ensure FINRA Rule 4560 is appropriately tailored to minimize regulatory duplication (and corresponding duplicative operational burdens and costs) with similar reporting regimes adopted by the Commission, which is consistent with the goals of its FINRA Forward initiative.[13] In addition, the Commission should not evaluate FINRA's Proposal in isolation. The Commission should holistically consider how the Commission's short position reporting and securities lending reporting regimes and FINRA's short interest reporting regime should be designed to collectively achieve its policy goals, including those relating to transparency of short activity and securities lending activity as mandated by the Dodd-Frank Act.[14] Only after such

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[10] Regulatory Notice 21-19, *FINRA Requests Comment on Short Interest Position Reporting Enhancements and Other Changes Related to Short Sale Reporting* (June 4, 2021), https://www.finra.org/rules-guidance/notices/21-19 ("Regulatory Notice 21-19").

[11] Comments Submitted to FINRA in Response to Regulatory Notice 21-19, https://www.finra.org/rules-guidance/notices/21-19#comments. In the Proposal, FINRA summarized and responded to comments received in response to the Notice that are relevant to the Proposal.

[12] While commenters now have an opportunity to evaluate the Proposal based on current market and regulatory conditions, FINRA's reliance on these stale comments in support of the Proposal is not indicative of a robust rulemaking process. For example, average daily dollar volumes have grown by more than 100% from June 2021 ($538.1 billion) to May 2026 ($1,082.7 billion). Cboe, Historical Market Volume, https://www.cboe.com/markets/us/equities/market-statistics/historical-market-volume/. The Proposal does not address these significant changes when addressing comments received in response to the Regulatory Notice.

[13] For example, one of the primary focus areas for FINRA Forward is "Modernizing Oversight," which consists of "reviewing, updating and enhancing FINRA rules, guidance and processes to modernize requirements, facilitate innovation and eliminate unnecessary burdens." *See* FINRA, FINRA Forward, https://www.finra.org/about/finra-forward.

[14] Section 929X(a) of the Dodd-Frank Act directs: "The Commission shall prescribe rules providing for the public disclosure of the name of the issuer and the title, class, CUSIP number, aggregate amount of the number of short sales of each security, and any additional information determined by the Commission following the end of the reporting period. At a minimum, such public disclosure shall occur every month." Section 984(b) of the Dodd-Frank

consideration would the Commission and FINRA be able to propose rules that administer the necessary "minimum effective dose of regulation" and that work together in harmony to achieve their combined purpose, rather than impose a patchwork of mandates that increase compliance burdens and costs without meaningfully improving transparency or eliminating redundancy.[15]

I. Interaction Among SEC Rules 13f-2 and 10c-1a and FINRA Rule 4560

A. SEC Rule 13f-2 and FINRA Rule 4560 Include Overlapping Short Reporting Requirements

The short interest information broker-dealers are required to report under FINRA Rule 4560 is similar to the information institutional investment managers (which may also include broker-dealers) are required to report under SEC Rule 13f-2. The Commission therefore should consider whether Rule 13f-2 is necessary in light of the requirements of FINRA Rule 4560. Each rule takes a different approach to the various elements of reporting and publicly disclosing short sale position information. For example, if both the Proposal and Rule 13f-2 are implemented without any changes, there would be the reporting of overlapping information by multiple market participants on varying intervals, including:

- Pursuant to the Proposal, broker-dealers would be required to report, within one business day of a weekly reporting settlement date, all gross short positions as of that date, and FINRA would publish aggregated short interest information for each security within five business days of the reporting settlement date; and

- Pursuant to Rule 13f-2 as adopted, institutional investment managers, which include broker-dealers, will be required to report, within 14 calendar days after the end of each calendar month, gross short positions that exceed defined thresholds as of the close of the last settlement day of the calendar month, plus for each security in which the manager reported gross short positions, for each settlement date within the calendar month, the manager's net activity that increases or decreases the gross short position. The Commission will aggregate and publish the reported data, by security, within one month from the end of the reporting calendar month (e.g., by the last day of February, for January data).

These differences are just some examples of the distinct approaches taken in each regime even though they are both intended to improve transparency regarding short position information. In addition to potential regulatory duplication, investors may find the separate short position data sets difficult to reconcile and evaluate, which reduces the overall utility of the public disclosures. The Proposal, combined with the Commission's ongoing review of Rule 13f-

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Act directs: "Not later than 2 years after the date of enactment of this Act, the Commission shall promulgate rules that are designed to increase the transparency of information available to brokers, dealers, and investors, with respect to the loan or borrowing of securities." Pub. L. 111-203, secs. 929X(a), 984(b), 124 Stat. 1376, 1870, 1933 (2010).

[15] *See, e.g.*, Paul S. Atkins, Remarks at the Investor Advisory Committee Meeting (Mar. 12, 2026), https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-iac-031226.

2, provides a unique opportunity for the Commission to thoughtfully consider the best holistic method to achieve this transparency and its Dodd-Frank Act mandate with respect to publicly disseminating aggregate short sale information across securities.

As it reviews the Proposal and potential amendments to Rule 13f-2, the Commission should take a consistent, streamlined approach that will minimize operational and reporting burdens on broker-dealers and institutional investment managers (which include broker-dealers) and reduce potential confusion by public consumers of short interest data that could arise from the various differences in the current timing and content of publicly available short interest and short activity information. The Commission should also seek to avoid increasing broker-dealers' burdens and costs by not creating duplicative reporting regimes.

B. SEC Rules 10c-1a and 13f-2 and FINRA Rule 4560 as Modified by the Proposal All Would Separately Require Reporting of Short Arranged Financing Transactions

Prime brokers may offer securities financing programs commonly known as arranged financing (also referred to as "enhanced lending" or "short arranged financing") to their institutional customers. Arranged financing is best understood as a prime brokerage financing construct used to facilitate institutional customers' short sales. Specifically, in short arranged financing, a U.S. broker-dealer arranges for its institutional customers to borrow shares from the broker-dealer's U.S. or foreign affiliate in connection with financing a short position in the customer's account. For example, if an institutional customer that utilizes arranged financing is selling short 500 shares of ABC stock (resulting in a corresponding increase in the customer's short position of 500 shares), the customer will borrow 500 shares of ABC through its prime broker's arranged financing program. To facilitate the customer's short position via arranged financing, a prime broker typically lends securities to its affiliate, which in turn lends the relevant securities to the prime broker's customer. In this example, the customer will use the 500 shares borrowed to close an equivalent portion of a short in its account with the prime broker (thereby transferring the entity to whom the customer is short from the prime broker to the prime broker's affiliate).

FINRA acknowledged in the Proposal that arranged financing used in this manner is "economically equivalent to short interest positions[.]"[16] The Commission's Rule 10c-1a adopting release addressed arranged financing transactions primarily in the context of inter-affiliate securities loans, without any detailed analysis of their purpose, structure, or economic substance, and concluded they should be reported as "covered securities loans" under Rule 10c-

[16] Proposal, 91 FR at 28702. The Proposal noted: "FINRA is proposing also to require members to record and report to FINRA any position existing in a customer account that resulted from a securities loan obligation in connection with a customer's borrow of a security from a domestic or foreign affiliate of the member . . . In such instances, the original short position, which typically resulted from a 'short sale,' has been replaced by the securities loan established through the arranged financing program; nonetheless, the borrower remains obligated to close the position in its account by purchasing shares to satisfy the loan obligation. Therefore, the position, economically, reflects the type of short interest that FINRA believes should be captured by the rule to better represent short sentiment in the stock." *Id.* at 28700.

1a.[17] By giving short shrift to arranged financing transactions in the Rule 10c-1a adopting release, the Commission overlooked that the purpose of such transactions is to facilitate customer short sales and, therefore, would more appropriately be reported by institutional investment managers as short positions under Rule 13f-2 (which the Commission adopted on the same day).

Under the Proposal, these short arranged financing positions would be required to be reported not just under Rule 10c-1a and Rule 13f-2, but also under FINRA Rule 4560. This overlap would require the same position to be reported *three separate times at three separate intervals*, which will essentially triple the combined costs of these reporting regimes, without any meaningful additional transparency benefits.

In addition, the Commission must consider how these reporting regimes, operating together, could result in the inadvertent public disclosure of the identity of specific short positions or short investment strategies, which could significantly affect the liquidity and market quality benefits afforded by short selling. For example, under Rule 10c-1a as adopted, FINRA would publish securities loan data about each individual covered securities loan (including short arranged financing transactions), except for the loan amount, on the next business day after a loan is effected or modified. FINRA would publish individual securities loan amounts on the 20th business day after a loan is effected or modified. By comparison, the proposed changes to Rule 4560 would require the public dissemination of aggregated weekly short interest data, and Rule 13f-2 would require public dissemination of aggregated monthly gross settled short position and short activity data — but neither rule would require publication of information about individual short sales. In adopting Rule 13f-2, the Commission noted the careful balance between providing public transparency regarding short sale information and maintaining liquidity by avoiding the inadvertent disclosures of short investment strategies.[18] The Commission should therefore carefully evaluate how inclusion of short arranged financing transactions (which FINRA acknowledged is economically equivalent to a short position) in these reporting regimes, both individually and collectively, may risk disclosing highly sensitive, proprietary short position data.

For these reasons, SIFMA recently urged the Commission not to include arranged financing transactions in connection with customer short positions as reportable covered securities loans under Rule 10c-1a.[19] If FINRA ultimately concludes these positions are equivalent to short interest and should be reported as such, the Commission should amend Rule

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[17] 88 FR at 75661.

[18] For example, in adopting Rule 13f-2, the Commission supported its use of anonymized and aggregated gross short position and short selling activity reporting by institutional investment managers because "publicly disclosing the identity of individual reporting Managers may not be necessary to advance the policy goal of increasing public transparency into short selling activity, and [] aggregating across reporting Managers would help safeguard against the concerns noted above related to retaliation against short sellers, including short squeezes, and the potential chilling effect that such public disclosure may have on short selling." 88 FR at 75131. FINRA also acknowledged this balance in the Proposal. *See* Proposal, 91 FR at 28702, 28705.

[19] Letter from Robert Toomey, Head of Capital Markets, Managing Director & Associate General Counsel, SIFMA, Recommendations to Improve Rule 10c-1a for Reporting of Securities Loans (May 18, 2026).

10c-1a to explicitly exclude customer short positions established via arranged financing transactions. Including such positions under both Rule 10c-1a and FINRA Rule 4560 also would lead to unnecessary operational burdens and regulatory duplication and would be confusing to consumers of the data sets. Therefore, we urge FINRA and the Commission not to move forward with any changes to FINRA Rule 4560 that would require reporting of arranged financing until the Commission amends (or proposes amendments to) Rule 10c-1a to explicitly exclude customer short positions established via arranged financing from the definition of "covered securities loan" in Rule 10c-1a(j)(2).

II. Proposal to Amend FINRA Rule 4560 (Short-Interest Reporting)

SIFMA has previously raised concerns to FINRA in comment letters that the current short interest reporting regime under Rule 4560 has fundamental flaws in its reporting requirements that need to be fixed. These fundamental flaws result in reporting broker-dealers having to engage in highly manual and costly processes to identify, review, and understand the circumstances of various sale scenarios, many of which are done away from the firm, and determine whether they should be reported or excluded from short interest reporting. Rather than addressing these flaws and the challenges reporting broker-dealers face in properly reporting short interest under the current regime, FINRA has simply proposed that reporting firms now perform within one processing day what they struggle to do in two and to report weekly instead of every two weeks.

For example and as discussed further below, FINRA Rule 4560 currently requires that sales of deemed to own securities be excluded from reportable short positions. This filtering criterion is virtually impossible to ensure is accurate based solely on a clearing firm's records obtained in the ordinary course within a day or two of the relevant settlement date. Despite SIFMA raising concerns with this requirement in the past, FINRA has not provided interpretive guidance as to how a prime broker is supposed to practically determine for reporting purposes within current reporting timelines whether a sale marked short that was reported to it by its client, often executed away from the prime broker, comprises a sale of borrowed securities that should increase a reportable short position or comprises a sale of deemed to own securities that should be ignored for reporting. In either case, the trade is reported by the client as a short sale, and it is only in a post-trade reconciliation process that a prime broker can first get a clearer picture to determine whether it was a sale of deemed to own securities.

It does not appear that FINRA has sufficiently considered that prime brokers are reliant on their buy-side investment adviser clients to timely and accurately report the details of the trades they executed away, as well as to report the allocations of their bulk trades among their underlying clients' brokerage accounts. Squeezing the processing period into one day after the relevant settlement date likely would introduce data accuracy issues given the realities that institutional investment advisers often subsequently correct trade files sent to their prime brokers. Reporting so quickly (one business day) after the reporting settlement date introduces a higher risk of inaccuracy in the reported data.

A. Frequency and Related Reporting Concerns

1. FINRA Has Not Demonstrated that the Benefits of Reducing Reporting Timelines and Increasing the Frequency of Reports Outweigh the Associated Operational and Compliance Costs

The Proposal significantly reduces the amount of time a broker-dealer is provided to prepare and validate its short interest reporting by changing the due date from two days to one day after each reporting settlement date while at the same time increasing the frequency of reporting settlement dates from once every two weeks to once every week. FINRA stated that these changes "together would allow short interest data to be published weekly, five business days after the reporting settlement date" instead of the current seven business days after the reporting settlement date.[20] The Proposal to reduce the timing of the reporting due date would eliminate one of the days in the current timeline, but FINRA did not indicate how these changes would allow it to reduce the timing of publication by a second day, from seven business days to five business days after each reporting settlement date, or whether FINRA would make internal process changes to reduce the publication timeline. In addition, even without amending the rule to require weekly reporting within one business day of the settlement date, FINRA presumably could reduce the timeline for its publication of short interest data from seven business days to five business days after the current reporting settlement date. FINRA should clarify any changes it is planning to make to its internal processes to achieve more frequent publication of short interest reports.

As it currently does, under the Proposal FINRA would notify the market early in the year of the applicable reporting settlement dates and the reporting due dates for that year. Based on the information in the Proposal, it is our understanding that FINRA could, for example, identify every Friday that is a business day as a reporting settlement date. In this scenario, if Friday, June 5 is a reporting settlement date, short interest reports would be due to FINRA by Monday, June 8 at 6:00 p.m. (instead of Tuesday, June 9 at 6:00 p.m. under the current approach). And FINRA would publish the weekly aggregate short interest information on Friday, June 12, five business days after the reporting settlement date (instead of Tuesday, June 16 under the current approach).

FINRA has not demonstrated that the regulatory and public transparency benefits of these changes would outweigh their costs. As FINRA noted in the Proposal, many firms use a combination of automated and manual processes to identify, consolidate, and validate short interest reports they submit to FINRA pursuant to Rule 4560. Cutting the reporting due date timeline in half from two business days to one business day after the reporting settlement date would significantly increase the operational burdens associated with reporting firms' validation processes. Although there may be less short interest position information if reporting settlement dates are weekly instead of bi-monthly, there would not be less validation work for firms to ensure data accuracy before submitting reports to FINRA. Many firms identify and process short interest positions in batches that are later consolidated, and each batch takes time to run. After

[20] Proposal, 91 FR at 28700.

short interest reports are created, they must be reviewed and validated to ensure submissions to FINRA are accurate, and much of this validation work is manual. Without committing additional resources to this process, a due date of one business day after the reporting settlement date is not enough time for firms to complete these steps while ensuring the reports submitted to FINRA are highly accurate. For example, if one person was assigned to validate the reports within two business days of the reporting settlement date under the current rule, requiring submissions within one business day would require firms to assign one or more additional individuals to assist in the validation process. FINRA has not evaluated whether these additional costs are justified by the Proposal's purported transparency benefits.

2. FINRA Should Describe the "Exhibit A Process" It Uses to Monitor Short Interest Reporting Accuracy and Streamline the Process

In addition, the Proposal referenced FINRA's "oversight program with regard to the accuracy and completeness of firms' short interest reporting."[21] After reporting firms have submitted their short interest reports, FINRA sends firms questionnaires that ask them to reconfirm numerous reported short positions and provide explanations as to the underlying transactions with respect to a subset of these positions. This ongoing practice (which is sometimes referred to as the "Exhibit A" process, for the name of the document FINRA staff send to reporting firms containing specific reported data), has the effect of requiring firms to internally vet, reach out to internal trading desks, and prepare written explanations over a period of three business days past the reporting submission deadline and, at times, this may expand to additional days upon further questioning by FINRA (and often beyond and into the next reporting cycle).

FINRA should describe this process in detail in its rule filing so that the Commission has the necessary information to evaluate how the changes in the Proposal would affect market participants or cease engaging in such practice given the proposed timing changes. If member firms are required to submit short interest reports within one business day of each weekly reporting settlement date, it would increase the number of reports and reduce the amount of time firms have to review and validate the reports for accuracy. If FINRA plans to publish the information five business days after each reporting settlement date, there also would be less time to review, research, and respond to FINRA's inquiries following submission of the reports.

It is not evident from the Proposal how FINRA plans to reduce short interest reporting timelines without also reforming or eliminating the Exhibit A process. Depending on the number of specific items identified in FINRA's Exhibit A queries, it may not be possible for firms to review and respond to the requests in an efficient manner, especially given that firms would need to devote additional resources to more frequent reporting and validation. FINRA should consider changing its "oversight process," including adopting a de minimis threshold number of short interest reports below which it would not send an Exhibit A request.

[21] Proposal, 91 FR at 28705 n. 31.

If there are no changes to the Exhibit A process, the Proposal did not adequately address the costs and implications on reporting broker-dealers of having to continue to reply to FINRA's Exhibit A questionnaires within the first few days after they submit their short positions to FINRA. While FINRA referred to the Exhibit A questionnaire as "part of the ongoing oversight process," it has in fact become an integral ordinary course and recurring aspect of the Rule 4560 reporting obligations imposed on FINRA member broker-dealers.

In practice, the Exhibit A process is its own reporting scheme – a demand for reporting firms to adjust the quantity of the reported short interest on numerous positions listed by FINRA that are subject to corporate actions (like reverse splits and securities distributions), and report such adjusted numbers back to FINRA. This reporting regime occurs outside of the official Rule 4560 reporting system and yet must be completed by a FINRA-mandated deadline before it publishes the aggregate short interest.[22] Because FINRA has indicated that it intends to continue its Exhibit A "oversight process" in the future if the Proposal is adopted, FINRA should estimate and consider the costs and expenses that FINRA members would incur to comply with it.

3. FINRA Should Eliminate the Requirement that Deemed to Own Short Sales Be Suppressed from Reporting

SIFMA recommends that FINRA eliminate the exception in paragraph (c)(1) of Rule 4560 that requires members to exclude from short interest reporting short positions established by a sale of securities the seller is "deemed to own" as defined in Regulation SHO. Based on the nature of the definition of "deemed to own," identifying these sales in connection with short interest reporting is largely manual and therefore, very time consuming. Requiring such further analysis is incredibly difficult under the current twice monthly reporting regime, and would be even more challenging under more expedited filing schedules. Compressing the reporting deadline to one business day, and the reporting cadence to weekly, would require firms to dedicate additional resources to these processes to accurately capture this additional information under a shortened deadline. Therefore, SIFMA recommends that FINRA amend Rule 4560 to require firms to report their *gross* short positions in accounts recorded on their stock records that generally hold reportable short positions.[23]

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[22] Indeed, the existence of the Exhibit A process, and the necessity for FINRA to follow-up to correct initial reports before it publishes the bi-monthly short interest data on its website is evidence of the existence of inherent flaws in the Rule 4560 reporting regime.

[23] *See* Letter from Rob Toomey, Head of Capital Markets, Managing Director & Associate General Counsel and Joe Corcoran, Managing Director, Associate General Counsel, SIFMA, SIFMA Comment on FINRA Regulatory Notice 21-19, at 14-15 (Sept. 30, 2021), https://www.finra.org/sites/default/files/NoticeComment/Robert%20Toomey%20%26%20Joseph%20Corcoran_SIFMA_21-19_9.30.2021%20-%20SIFMA%20Comments%20on%20FINRA%20RN%2021-19%20Final%209-30-2021.pdf.

B. Granularity

1. Reporting of Short Arranged Financing

As discussed, SIFMA is concerned about the repetitive regulatory requirements (without demonstrated offsetting transparency benefits) that would exist if short interest positions established via arranged financing transactions are required to be reported under both the amendments to Rule 4560 and Commission rules. However, we also have substantive concerns regarding the Proposal to enlarge the scope of FINRA Rule 4560 to include short positions resulting from arranged financing.

If FINRA Rule 4560 is amended to include short arranged financing positions, prime brokers would have to confirm the information with the affiliated entity that ultimately loaned the securities to the prime broker's customer to accurately identify and report the short position established via short arranged financing. The Proposal would include arranged financing positions under Rule 4560 for the first time while at the same time both compressing the reporting timelines (from two days to one day after each reporting settlement date) and increasing the frequency of reporting (from bi-monthly to weekly). This combination would place additional operational and administrative burdens on reporting firms, which FINRA did not address in the Proposal. For example, based on the nature of arranged financing models, reporting parties may rely on their affiliated entities for some of the information required in short interest reports. This could create delays in accessing the information in a timely manner or in subsequently identifying and correcting previously reported information.

2. Proposal to Report Short Interest for Deleted Symbols as of their Last Settlement Date

Under the Proposal, FINRA would add Supplementary Material .01 to require that for deleted symbols, reporting members make a final report of the short interest outstanding as of the most recent settlement date the symbol was still active. FINRA stated that this aspect of the proposed rule change "would support the availability of more complete information to regulators and market participants" and that "[r]eceiving a final short interest report in such a security would allow FINRA to more efficiently monitor for compliance with Regulation SHO."[24] FINRA acknowledged firms would have to make system and process changes to report this information but stated that it "does not expect that firms would incur substantial costs associated with reporting this information because it would be a continuation of the same data that they are required to report for securities."[25]

FINRA has not demonstrated this rule change is necessary or would provide the market or regulators with meaningful or significantly more current information than what would be reported under the new timeline discussed in the Proposal. For example, if the Proposal to adopt

[24] Proposal, 91 FR at 28701-02.

[25] *Id.* at 28702.

weekly reporting is approved, a deleted symbol should never have more than four business days between the last short interest reporting date and the last settlement date a deleted symbol traded.[26] This close proximity would provide regulators and the public with highly accurate information about the level of short interest in a subsequently deleted symbol. FINRA has not demonstrated that the incremental benefit to transparency that might occur if this aspect of the Proposal is adopted is worth the time and resources necessary for member firms to implement it.

III. Proposal to Adopt FINRA Rule 4321

Pursuant to Rule 204(d) of Regulation SHO and SEC staff guidance, clearing firms may allocate fail to deliver positions to their correspondent firms.[27] Allocating these fail positions transfers to the correspondent firm the Rule 204 obligations with respect to the allocated position (i.e., the correspondent, and not the clearing firm, must take close-out action under Rule 204, including proper reliance on the exceptions for the extended close-out timeframes). FINRA is proposing to adopt new FINRA Rule 4321 to create a reporting regime that would require member clearing firms to submit to FINRA a monthly report of their daily allocations of fail to deliver positions to correspondent firms. In support of this new reporting regime, FINRA states that it reviews member compliance with Rule 204, and that when it identifies a fail to deliver position, it may contact the clearing firm member that appears to be responsible for the fail. In some instances (FINRA did not quantify the number or frequency of these instances), FINRA contacts a clearing firm regarding a fail to deliver position, and in some of these instances (FINRA did not quantify the number or frequency of these instances), the clearing firm responds that it has allocated the fail to deliver to one of its correspondent firms. FINRA then must contact the correspondent firm for information regarding the fail to deliver position to monitor the correspondent's compliance with Rule 204. FINRA states that creating this new reporting regime would make it unnecessary for FINRA to contact clearing firms or their correspondents about allocated fails.

FINRA, as an SRO, has the burden of demonstrating that the proposed rule is consistent with the Exchange Act. Specifically, the Commission has stated:

> *Under the Commission's Rules of Practice, the burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change. The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding, and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations. Moreover,*

[26] FINRA noted that in 2025, of the 2,426 equity securities with a deleted symbol, 1,122 had outstanding short interest on their last short interest reporting date, and that "[f]or these securities, the average time between the last short interest reporting date and the last settlement date for which a symbol existed was eight days." *Id.*

[27] Proposal, 91 FR at 28701, n. 13.

> *unquestioning reliance on an SRO's representations in a proposed rule change would not be sufficient to justify Commission approval of a proposed rule change.*[28]

FINRA has not met its burden with respect to proposed Rule 4321. FINRA generally stated that clearing firm allocations of fails to correspondent firms is a "common occurrence."[29] However, this does not shed any light on the number of times FINRA contacted a clearing firm regarding a fail to deliver position or the number of times that clearing firms responded that the fail to deliver position was allocated to a correspondent broker-dealer.[30] FINRA also did not identify how much additional time a follow-up request to a correspondent firm typically adds to its surveillance and reviews. These are critical details that would enable the Commission and the public to understand and evaluate whether the rule would achieve FINRA's stated purpose of conducting more efficient investigations, including by reducing delays in its surveillance and reviews.[31] The Commission cannot approve the rule on the current record without "unquestioning reliance" on FINRA's representations that the rule would allow it to be more efficient and to reduce investigative delays without introducing unreasonable costs on regulated broker-dealers.

Furthermore, even if FINRA quantifies the number of times it contacts clearing members regarding fails to deliver, the rate at which clearing members notify FINRA that the fail has been allocated, or the length of delays it experiences under the current process, FINRA must balance the efficiencies it is seeking to achieve with the burdens the new reporting regime would place on clearing members. It has not done so. Under the Proposal, clearing members would be required to build and maintain new systems to identify, collect, verify, and report the required information regarding allocated fail to deliver positions. Additionally, with any reporting regime there is not only the cost of carrying out the rule's requirements, but the cost of supervision to review and monitor for ongoing compliance with the rule. Firms would be required to build supervisory processes to ensure their systems are reasonably designed to comply with the rule, for example by sampling monthly reports and comparing the reports to the firm's books and records. FINRA also would update its examination program to include reviews for compliance with the new rule. FINRA has not evaluated any of these costs in a meaningful way in the

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[28] Release No. 34-99444 (Jan. 29, 2024), 89 FR 7424, 7428 (Feb. 2, 2024).

[29] Proposal, 91 FR at 28705. Anecdotal evidence from SIFMA members is that FINRA requests for allocation information occur infrequently (perhaps as infrequently as a few times per year depending on the firm).

[30] The only quantitative information FINRA provided in support of the new reporting regime is a statement that there were 158 firms in 2025 with at least one fail to deliver position and that the "median number of equity securities with any outstanding fail to deliver position" in 2025 was 5,261. Proposal, 91 FR at 28703 n.22. This is not specific to the number of times clearing firms allocated fails to a correspondent firm, the number of times FINRA contacted clearing firms about fails, or the number of times clearing firms responded that the fail was allocated.

[31] FINRA notes that its rulemaking process includes review by its "Regulatory Economics and Market Analysis (REMA) department and other FINRA departments to assess the economic impact of potential rulemakings." *See* FINRA Rulemaking Process, https://www.finra.org/rules-guidance/rulemaking-process.

Proposal, instead noting that members may incur costs to establish the reporting processes and that they may ultimately shift the costs by restructuring contracts with correspondent firms.[32]

There are significant operational and other resource costs associated with any regulatory reporting regime. FINRA's Proposal does not grapple with those costs and instead makes conclusory statements not supported by any quantitative data or other meaningful information. New FINRA Rule 4321 could potentially have net positive regulatory and economic impacts on clearing and correspondent broker-dealers by reducing the number of individual inquiries they receive from FINRA regarding allocated fails and allowing FINRA to conduct more efficient reviews, but FINRA has not demonstrated this to be the case.

Increasing reported data can be helpful, but that is insufficient by itself to justify the establishment of an entirely new reporting regime, which as discussed above, requires an investment in resources, and in this case could introduce cyber-security risk given the nature of the broker-dealer information to be provided. SIFMA members are struggling to understand the basis for FINRA concluding that this reporting regime under Rule 4321 is worth the costs, particularly if the data to be reported is significantly larger than the data historically requested by FINRA in targeted inquiries. Without this information, FINRA has not demonstrated that new FINRA Rule 4321 is necessary and that the benefits of the new rule would be worth broker-dealers' initial and ongoing compliance costs, which likely would be significant.

Conclusion

SIFMA appreciates the Commission's consideration of our recommendations regarding the Proposal. As discussed, the Proposal comes at a time when the Commission has announced that it is reviewing and considering amendments to two closely related Commission rules requiring reporting of gross short position and activity information and securities loan information. Instead of proceeding with the proposed changes to FINRA Rule 4560 and adopting new FINRA Rule 4321 at this time, the Commission and FINRA should carefully consider the overall transparency goals they are seeking to achieve and implement a reporting and dissemination regime designed to achieve those goals in the most efficient way possible. In addition, FINRA has not demonstrated that the Proposal's purported transparency benefits would outweigh the significant operational burdens and compliance costs broker-dealers would incur to adopt these changes. Therefore, if FINRA does not withdraw the Proposal, the Commission should disapprove it.

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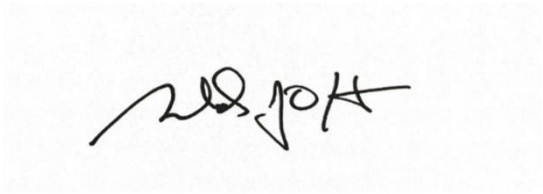
[32] Proposal, 91 FR at 28703.

If you have any questions or need any additional information, please contact Robert Toomey, Gerald O'Hara, or Joseph Corcoran at 212-313-1200.

Sincerely,



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