XR SECURITIES LLC

April 25, 2022

Securities and Exchange Commission
Ms. Vanessa A. Countryman

File # S7-08-22 – XR Securities LLC - Comments regarding Release NO. 34-94313 - Proposed rule – Short Position and Short Activity Reporting by Institutional Investment Managers

Ms. Countryman,

I am writing to address some concerns as related to this proposed rule and I appreciate the opportunity to do so. While I believe transparency in the markets is good for all participants, I often suspect that a few bad actors along with observed market events can prompt rule proposals but, I believe that different types of market participants along with the SEC need to engage in a productive and iterative dialog to achieve reasonable rule proposals. Some recent proposals, including this one, appear to be seeking data/information that will be costly and burdensome for firms to produce. Also, this proposal, while related to existing rules and processes in place, appears to be seeking requirements that are different or proposed to be done via a different methodology, or interpretation, than what exists at present. That can create inconsistencies between rules with regard to definitional standards.

RE: 13f-2 – Threshold and Form SHO Filing:

If appears, that by crossing certain thresholds, the original 13F Rule captures Proprietary Trading Firm Broker-Dealers as "Institutional Investment Managers" per the FAQs issued MAR 2017. Speaking to the first item of this new rule proposal (13f-2) – Proposed Form SHO – I could be misunderstanding the Form's filing requirements as drafted as it appears you would be seeking "settled shares" – hence T+2 value, that exceeds the $10MM threshold. While Firms are quite conscious of financing costs, many do not maintain internal systems denoting settled versus unsettled positions and respective dollar values, as most focus on Trade Date positions and risk. While that information exists from Clearing Firm data/files, firms will incur costs related to systems and programming, a reliance on external data sources or, a new build within internal systems along with dedicated data management practices.

It appears, if interpreting this proposal correctly, should a month-end be on a FRI the 31st, if a Firm had sold XYZ shares valued at $10MM on both THU (30th) and again on FRI (31st), the gross short shares held on Trade-Date FRI the 31st would have a value of $20MM however, would there not be a filing required for this month-end period because nothing has settled yet? If true, I'm guessing it would fall to report on the following month's report with $10MM settled value on MON the 3rd and, $20MM settled value on TUE the 4th. The whole process of this reporting would be crossing months and could get convoluted. Not to mention extra complications for holidays that change settlement dates throughout the year. Another subject to consider; plans for the upcoming move to a T+1 settlement date. Assuming this rule takes effect prior to that change, Firms would then incur more costs to retool this process to reflect that. One would think that the SEC already has access to settled share information or could easily obtain it directly from a firm's clearing firm or the DTC if granted permission for it to be shared.

Another comment. While I'm aware this proposal is concerned with short positions, another existing Rule 13F as I'm sure you're aware, requires quarterly reporting related to long shares / $ value that meet a certain threshold for a quarter-end period (not month-end). Firms (even Broker-Dealers) are captured under this filing should their total long "trade date" (not settled) value in all equities exceed $100MM on any given month. That filing seeks Trade Date positions /values by symbol, if they meet/exceed (10,000 shares or $200K value) for that quarterly

filing. So a firm could have a 13f for longs and now a proposal a 13f-2 for shorts with disparate processes, dates, etc. I would respectfully request that any final rule issued adds more clarity or is followed with FAQs or Industry outreach to make sure all understand what is actually being sought for this form/filing. Also, while I don't have hard figures to provide, we feel initial and ongoing costs to implement would be punitive.

Related to Q6 – I feel strongly that highly liquid, higher priced, active and efficient ETFs (and perhaps even some single name equities) with limited or no settlement issues (e.g. SPY) should be excluded from this proposal. As an example, considering firms that engage in a Proprietary Options Market-Making business, it's quite easy to breach the $10MM gross short threshold. Using a SPY price of $445, just having a gross short position of 22,472 SPY shares breaches the threshold. Hence, again unless I'm misunderstanding this proposed rule as drafted, in this example, a registered options Broker-Dealer market-making firm could be long 225 SPY Call Options contracts (long delta) hedged with 22,500 short SPY shares (valued at $10,012,500 utilizing the aforementioned price) and then, they hit the onerous requirement of having to generate and compile data and file a monthly detailed report. It seems like quite the burden. Similar examples apply to Equity Options market-makers using short stock as a hedge, again with higher priced names (e.g. TSLA) which begs the question, could the $10MM threshold be too low to require this 13f-2 filing?

RE: Buy-to-Cover – (new) Reg SHO Marking:

One comment on this as it appears this proposal is inconsistent and contradictory with existing Reg SHO guidance/rules. The current requirement for all Reg SHO marking is done at the Aggregation Unit level. Also, short marking requirements include the consideration of the AGG Unit's current position + pending orders to sell. This proposal appears to introduce inconsistency by seeking Buy-to-Cover marking at the Account level, not the Aggregation Unit level. Also, there appears to be no guidance if any other factors would be considered for additional or outstanding buy orders similar to short marking. This would require more guidance or clarification if any Final rule is imposed. While I have no figures, there are costs here as well for new development ("code"), systems and processes that would function differently than what is currently in place.

RE: CAT Reporting – (new field for sales) Bona-fide M/M:

I believe that CAT has been and continues to be a challenging effort as it has not been an easy project. One could argue there are already too many CAT data fields and, many have to be derived rather than allowing Firms to simply report the data FIX-Tag fields/values already being sent directly to Exchanges and other Trading Venues. CAT already has an Account-Holder-Type for market maker ("O") so a CAT field exists albeit, the CAT FAQs are a misleading with regard to different scenarios when "O" might not be used, even if all of the activity is bona-fide market making – more inconsistencies. Finally, Firms who engage in market making that clear at other Broker-Dealer Clearing Firms, do so in clearing accounts that are already specified or tagged as market-making (i.e. 15c3-1(a)(6)) – "Net Capital Rule". All of the activity in these accounts should be that of bona-fide market making.

I'm of the opinion that seeking another CAT field (self-reported by firms at that) would not really be that helpful - at least when considering proprietary trading firms engaged in market making. The example scenario below implies that a firm is already demonstrating that it is meeting the indicia of bona-fide market making as delineated in prior SEC releases. Consider a registered SPY Options market making firm. SPY options are multiply listed contracts so a firm could be a registered market maker or specialist on several Exchanges. Many firms also have memberships and will route options orders to one or more of the other exchanges where they may not be registered. Where registered, these firms have requirements to engage in bona-fide market making activity but per the guidance, firms cannot simply rely on the Exchange quoting requirements. Hence, firms are obligated to engage in market-making activities: continuously providing two-sided quotations, dealing on a regular basis with other broker-dealers, actively buying/selling, being competitive, providing liquidity, deploying capital and taking on market risk, etc.

Per 15c3-1, the SPY ETF "stock" is an allowable offset and risk hedge to these options contracts hence, firms may buy/sell that ETF with changes in their options position/risk. Also, some firms are members of the CME Group Futures Exchange whereby again, per 15c3-1 Net Capital guidance, the ES and ES Options contracts are also allowable offsets/hedges to this SPY options market making position/activity. The highlight here is, per the Net Capital Rule, these products are components of bona-fide marking making. On any given day, the market opens and fluctuates hence, sans doing anything, the overall position from a delta/risk perspective may be continually changing. The Firm commences quoting and quote updates. Other related activity, Options and Stock orders are being placed and modified, trades happen as a result of quotes and orders, unexecuted orders can be cancelled, etc. The same is happening in the Futures market where deployed. The gist is, this is one fungible, correlated "book" keying off of, in this example, the Options market making activity and position management. All of this is happening in sub-second timestamp granularity and any firm acting in this capacity would and should, respectfully in my opinion, consider all of this to be bona-fide market making activity. The facts and circumstances surrounding this activity should demonstrate that if it were to be reviewed. Should this new CAT field become required, I believe what you'll end up with is that most market making firms will simply tag that new field with the affirmative. Firms that are not engaging in market making should be doing so in NON-market-making accounts. Also, they should be entering the applicable non-market-making Account-Holder-Type in the CAT field that already exists. There is no need for yet another field specifically for stock short sales.

In closing, while we do not interact directly with the investing public, we respect the Commission and its goal to protect the investing public. We simply seek reasonable regulations and requirements that ensure the overall integrity of the Securities Markets without making it so task-difficult that it prohibits new entrants or discourages participation by existing firms. Respectfully, this rule proposal will need some fine tuning to make it less convoluted and burdensome to liquidity providing market-making firms if it is going to be of any benefit to the overall market.

Respectfully Submitted,

Frank Vivirito
Compliance Officer