

October 29, 2022

Vanessa A. Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 205499-1090  
[rule-comments@sec.gov](mailto:rule-comments@sec.gov)

**Re: Release No. 34-94313; File No. S7-08-22 Short Position and Short Activity Reporting by Institutional Investment Managers**

Ms. Countryman:

I am writing out of concern for the lax approach to short-selling activity reporting suggested by the Proposed Rule's current state, and have some suggestions for how the rule might be brought in better alignment with the Commission's repeatedly-stated first priority of investor protection. Given the threats to investors and to the fairness of the markets themselves, I was shocked to learn that the Commission sees fit to deliver the bare minimum in Proposed Rule 13f-2.

Reporting must be more frequent to allow better and more efficient detection of manipulation and fraud. Why delay reporting? If investors must wait several weeks to learn of short-selling activity, they are essentially unequipped to protect themselves against fast and violent movements of the market. In this, the Commission is choosing to prioritize the comfort of short sellers at the cost of pushing the low bar set within the Dodd-Frank Act.

Section 929X of the Dodd-Frank Act clearly and specifically states that short-selling activity should be reported in aggregate, and clearly and specifically empowers the Commission to determine any other information necessary for the protection of investors and the public interest. This suggests a balance must be struck: reporting must be as frequent as possible to protect the public and promote its interests, yet also not so frequent that it strains the concept of "aggregate".

Given the Commission's proposal of a 15-minute aggregate reporting period in Proposed Rule 10c-1, that seems to be a reasonable point. This allows investors, the Commission, and the Department of Justice to review short-selling at a strong resolution, while still preventing moment-by-moment, manager-level examination of flash crashes, short attacks, and the like. I urge the Commission to publish aggregate short activity data at intervals of at least one day.

**ETF Short-Selling, Creation, and Redemption**

ETF activity is growing steadily and potentially accelerating. The popularity of shorting via ETF results in some ETFs being shorted at 200%, 400%, all the way over 1000%. This consistently huge level of short interest may in fact indicate regular and significant abuse of particular thinly-traded securities included in those ETFs.

ETF short-selling is clearly used to ignore the Commission's orders and regulations, and it tends to occur in situations the Commission states is ripe for investor abuse and deserving of special focus. Further, operational shorting (creation and redemption) is (a) a fundamental part of the aforementioned short-selling activity, (b) carries significantly profit incentives for APs, (c) tends to occur in the same abusive situations, and (d) represents a source of profound systemic risk which on its own warrants closer observance by the Commission. Notably, creation and redemption occur at exceptionally different times, and sometimes redemption does not occur at all. For the Commission and the public to have a useful view into the potential abuses and threats of operational shorting, reporting of both creation and redemption of ETFs should be required.

Sincerely,  
A Concerned Investor