SR-FINRA-2012-001

34-66872	Apr. 27, 2012	**Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendments No. 1 and 2, to Amend FINRA Rule 4560 (Short-Interest Reporting)** ***Comments due:*** May 24, 2012 **See also:** Notice: Rel. No. 34-66220 Submit comments on SR-FINRA-2012-001

as described, this rule determines what is supposed to be reported as short interest by brokers.

1) short interest should be reported by the originating broker, regardless of whether the order is placed by another broker as a customer of the originating broker. short interest should match reported failure-to-deliver.

2) short interest, as described in the rule, indicates a failure to deliver. all short interest should be covered by borrowed stock, regardless of whether the date of settlement has been exceeded. long orders that have not been delivered by T+3 is also short interest. any trades covered by options are also a failure to deliver until covered. options should be exercised promptly, by the date of settlement, since options are an expansion of the outstanding stock until they are exercised or not exercised. options cannot be used to prolong settlement.
if a broker borrows stock and does not deliver the lent stock the next day, then the broker should borrow stock again the next day. this can continue until the settlement date of the originating transaction. then the stock should be bought in by the originating broker, regardless whether the shortselling customer buys in or not.
brokers should seek to minimize failure to deliver. it doesn't matter if an order should be bought in by the shortseller, the broker also has an obligation to buy in such a failure to deliver. any deficiencies in the trading order should be resolved by the time the order should be cleared. if a customer has a long position AND a short position, those long stock certificates should be delivered on settlement day.

3) theoretically, there should not be any outstanding short position to report. all trades should be resolved by mandated settlement date, long trades or short trades.

4) if a shortselling broker does not resolve transactions by settlement date, then the buying broker should buy that transaction in the next day. this should be mandatory as the fiduciary duty to their client.

5) both not reporting outstanding positions and reporting outstanding positions on this report should be investigated by the regulatory authority. penalties for not reporting outstanding positions should be stronger than penalties of reporting outstanding positions. however, both situations should have penalties.

6) if practices in the securities industry differ from rules, the practices need to conform to the rule. the defense of "everybody does it" does not excuse any broker, clearinghouse or financial entity trading in the stock market.

7) if a broker engages a licensed clearinghouse, the broker is still responsible for following this rule regarding settlement and reporting. brokers should choose their subcontracted services well.

there should be a recognition that practices of the brokerage industry that are contrary to the rules cost the public much $. any calculation of cost to the industry should include the cost to the public of brokers not following the rule. since many practices in the industry do not conform to the rules and law, there should be a recognition in the securities industry that these failures cost the public money and are an attempt to shift the risk for transactions onto the buyer. this trend is against the public interest. short interest is expanding the # of outstanding shares, without public notice, without regulatory notice. the public does not hire a lobbyist to lobby for rules. as such, the SEC needs to weight public input much higher than the input from financial firms or their lobbyists.

many rules have been written to accommodate brokers. however, brokers are driven by the profit motive. brokers make $ by accommodating frequent trading activity, however this is a capital outflow from the stock market. traders want to take $ out of the market, while investors want to put $ into the market. there should not be accommodations to make frequent trading activity the main source of income for brokers, nor to make frequent trading activity profitable. the public interest in a fair stock market far outweighs the interest of the few.

i think shortselling, failure to deliver, and derivatives activity are against the public interest since all may too easily affect the capital markets. and since high frequency trading uses all of these mechanisms and cannot be shown to benefit the public interest, high frequency trading needs to be reviewed. providing "liquidity" sucks demand out of the market, which means that the price cannot rise appreciably. investors have discovered this, which means that there is less capital coming into the market at this time.

all things being equal, stock prices should have risen as 401K money and investment $ comes into the market. however, people have been taking $ out of the market faster than the money has been coming in, so prices trend lower. this situation has been going on for several years. as a result, in the last year, many investors have been sitting on the sidelines, not investing. we need brokers audits immediately, as the public wants to know that their portfolios have not been impacted by the brokers. investors should not have to fund shortselling.

as a result of lower prices, many traders have wanted to take the same side of the transaction, against the investor. i just bristle when i hear the media promote negative stories to explain lower stock prices. the fact is that the stock prices are going lower because there is more $ to be made by the stock prices going lower. this is not investing, this is removing risk for the short side and transferring it to the investor. how is the economy going to get better if there continues to be more $ made on the short side than on the long side. so far, the regulators have not sufficiently protected the investor from these illegal practices.

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