PRINCIPAL TRADERS GROUP

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April 27, 2022

Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0609

Re: File Number S7-08-22: Short Position and Short Activity Reporting by Institutional Investment Managers and Notice of the Text of the Proposed Amendments to the National Market System Plan Governing the Consolidated Audit Trail for Purposes of Short Sale-related Data Collection

Dear Ms. Countryman:

The FIA Principal Traders Group ("FIA PTG")[1] appreciates the opportunity to submit this letter to the Securities and Exchange Commission ("SEC" or the "Commission") in response to the above captioned rule proposals (the "Proposal"). According to this Proposal, the Commission seeks, among other things, to (i) prescribe a new "buy to cover" order marking requirement, and (ii) to amend the national market system plan governing the consolidated audit trail ("CAT") to require the reporting of (x) this new "buy to cover" order marking information and (y) a market maker's reliance on the bona fide market making exception in the Commission's short sale rules. While FIA PTG supports innovation and transparency, this Proposal marks a significant and relatively undefined departure from Reg SHO, which is otherwise the subject of multiple clarifying FAQs developed and issued over the years. As such, we are concerned that this Proposal will inevitably introduce confusion into the marketplace and significantly increase operational costs, without any corresponding meaningful benefits. Absent additional clarity, we respectfully urge the Commission to rescind this Proposal.[2]

[1] FIA PTG is an association of firms, many of whom are broker-dealers, who trade their own capital on exchanges in futures, options and equities markets worldwide. FIA PTG members engage in manual, automated and hybrid methods of trading, and they are active in a wide variety of asset classes, including equities, fixed income, foreign exchange and commodities. FIA PTG member firms serve as a critical source of liquidity, allowing those who use the markets, including individual investors, to manage their risks and invest effectively. The presence of competitive professional traders contributing to price discovery and the provision of liquidity is a hallmark of well-functioning markets. FIA PTG advocates for open access to markets, transparency and data-driven policy and has previously made recommendations about a variety of equity market structure issues, including Regulation NMS.

[2] Our comments will be limited to the 'buy to cover' requirement and the bona fide market making reporting requirement but will not address the separate reporting requirements relative to institutional investment managers.

I. Proposed new Reg SHO order marking requirement for "buy to cover" trades is inconsistent with existing Reg SHO requirements.

The proposed new order marking requirement introduces a completely new calculation method for processing a buy order. Before noting the operational complexity, this change necessitates, we must inquire as to what additional benefit this change offers. We see none. In accordance with Reg SHO, firms are already currently required to calculate their short positions and mark orders as sell, sell short or sell short exempt, as applicable. With this level of transparency in place, it is unclear to us what additional benefit marking buy orders is intended to have. Instead, by introducing a new and separate methodology for buy orders this Proposal only serves to increase operational complexity and cost. This new requirement will require the development of a new methodology quite different from the methodology currently used to comply with Reg SHO, thereby requiring broker-dealers, clearing firms and exchanges to revise all relevant protocols with the new value or field and propagate that throughout their systems—a costly endeavor to be sure.

Furthermore, the Commission has not sufficiently identified what additional regulatory purpose is achieved by the proposed approach. The new requirement requires position calculations at the account level whereas current Reg SHO requirements call for position calculations at the Aggregation Unit ("AGG Unit") level. In addition, there is no guidance as to whether any other factors should be considered when calculating this new account level position. For example, under existing Reg SHO requirements, open sell orders are included when determining AGG Unit position. Should open sell orders be included for this new account level position? Do firms need to include open buy orders when calculating account level positions? Calculating positions at the AGG Unit level, as well as factoring into account open sell orders, etc., as is currently the case per REG SHO, is designed to accurately reflect a firm's position and risk of a fail to deliver. Identifying this risk on a lesser non-aggregated basis could actually create confusion and increase false impressions of a firm's actual position, bearing no relation to actual risk. Proposals that add unnecessary cost and enhance the risk of operational confusion must be reconsidered. This is particularly true with respect to changes impacting Reg SHO order marking, an area of significant prior industry discussion and Commission guidance. If the Commission decides to move forward with the Proposal, FIA PTG requests that guidance and clarification as to if, and how, these additional factors are to be handled be included in the final rule.

II. Hardware and development costs will be significant.

Creating a calculation process at the account level as required by the Proposal, will require significant development time, and will be complicated by the need to run these new programs in parallel with the existing programs required to comply with Reg SHO. Specifically, this will require creation of a new value in both outbound message protocols and internal systems (e.g., databases, clearing systems, other systems that pass order information internally, etc.)

The costs in connection with the additional marking requirement can be broken down into two categories: one-time and recurring. In addition to the steep one-time development costs incurred in connection with designing software to perform the new account level computations, there will potentially be significant hardware costs associated with running two completely different methodologies side-by-side and propagating the results of those calculations throughout market makers' networks and internal systems. There will also be recurring ongoing software and hardware maintenance costs on par with existing Reg SHO ongoing costs. Finally, any implementation will also require a significant buildout with respect to a firm's monitoring and compliance surveillance systems.

III. The Commission should not require additional reporting obligations under the CAT NMS Plan regarding "Buy to Cover' or a Firm's Reliance on the Bona Fide Market Making Exception.

Further to the question posed by the Commission in the Proposal, FIA PTG does not believe that the Commission should require identification on an order-by-order basis of either 'buy to cover' or a firm's reliance on the bona fide market making exception to Reg SHO. This represents an expansion of the original context for the present CAT reporting obligations, namely accurately identifying the message traffic between counterparties, exchanges, venues, etc. Not only will these additional proposed requirements necessitate costly development time, we again question the purported benefit gained. Firms are currently required to mark orders short and report their positions. In addition, clearing firms handle both the buy-in process and applicable locates, and clearing firms also report positions. Furthermore, contrary to the underlying assumptions in the Proposal, there is no order-by-order advantage to firms that avail themselves of the locate exception to Reg SHO. Clearing firms facilitate locates on an end of day basis, with costs applied to market makers with remaining short positions. As market makers are frequently on both sides of the market, facilitating two-sided liquidity consistent with their obligations, an end of day assessment and charge is a reasonable approach, particularly since the locate facilitation is secured in advance and is not otherwise a real-time order by order function. Requiring the reporting of orders on an order-by-order basis with either a 'buy to cover' or bona fide market making attestation appears unnecessary from an added transparency perspective and therefore unnecessarily costly. Absent enhanced benefits, enhancing the complexity of CAT reporting hardly seems worth the effort and attendant costs required for implementation of this proposal.

Conclusion

Considering the significant costs and questionable added value, FIA PTG urges the Commission to not move forward with finalizing this Proposal. If you have any questions or need more information, please contact Joanna Mallers (jmallers@fia.org).

Respectfully,

FIA Principal Traders Group

Joanna Mallers

Joanna Mallers
Secretary

cc: Gary Gensler, Chair
Hester M. Peirce, Commissioner
Allison H. Lee, Commissioner
Caroline A. Crenshaw, Commissioner