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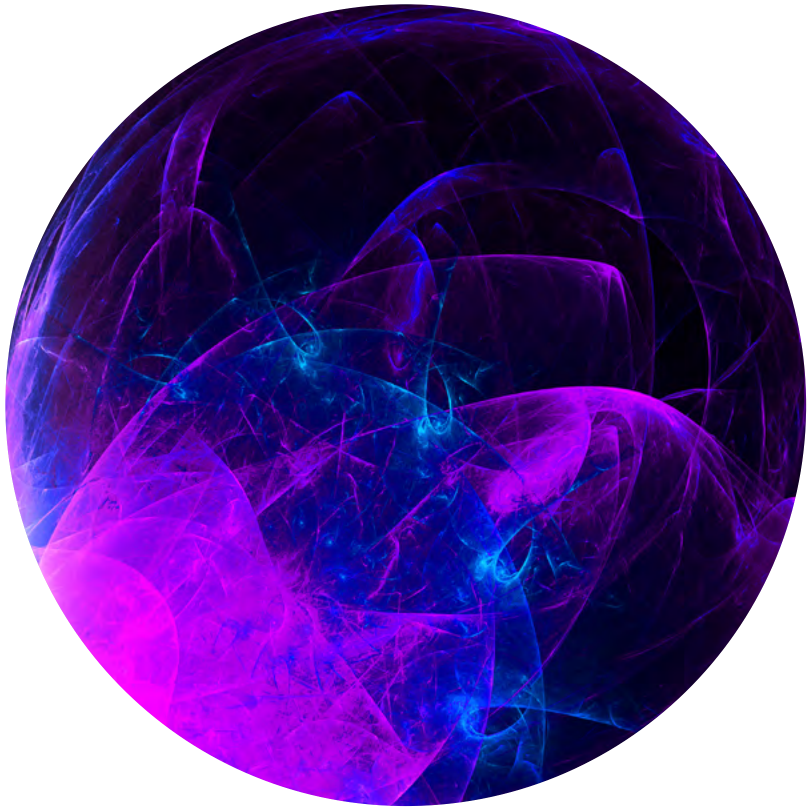

SEC approves short interest reporting proposal

On February 25, 2022, in a closed meeting, the Securities and Exchange Commission (SEC) unanimously approved a proposal to require reporting of large short interest positions.[1] Per the SEC's press release, the proposal "would provide greater transparency to investors and regulators by increasing the public availability of short sale related data."[2]

The most significant changes affect institutional money managers who would be required to report short interest monthly on a new Form SHO if a short position meets or exceeds $10 million or 2.5% of the shares outstanding on any given day of the reporting period.[3] Additionally, a new order marking requirement impacts the way broker-dealers would report certain information to the Consolidated Audit Trail (CAT).[4]

Here are Deloitte's five takeaways from the rule proposal:

- **The proposal is partly a reaction to meme stocks.** In his statement on the approval Chair Gensler said that the proposal "would address one of the four areas for potential study identified by Commission staff in their Report on Equity and Options Market Structure Conditions in Early 2021."[5]
- **The SEC is already expanding the information collected in the CAT.** As firms enjoy a maintenance phase for CAT reporting, the SEC is making its first attempt to expand the data collected. Under the short interest proposal, broker-dealers would be required to mark orders with a "buy to cover" flag when applicable.
- **The proposal will enhance the SEC's universe of market data.** While the proposal promises enhanced market transparency, the monthly periodicity of reporting suggests that the transparency provided primarily will be a tool for the SEC. Ultimately, this reporting will enhance the information at the SEC's disposal when it conducts autopsies of market events.

- **The proposal should help the SEC identify instances of "naked shorting."** The illegal practice is difficult to identify reliably with existing data. By requiring brokers to flag certain purchases "buy to cover," the proposal will enrich CAT data with helpful information that will make it easier for regulators to identify instances of naked shorting.
- **The proposal reflects bipartisan support for policy remedies meant to address market events in early 2021.** This is the second unanimous approval vote in one month's time, demonstrating broad enthusiasm for some of the policy salves hinted at by the Staff Report on Equity and Options Market Structure Conditions in Early 2021.[6] It is unclear whether this momentum will continue, but the current imbalance at the Commission suggests that the odds that future staff proposals gain approval are positive.[7]

Contacts

Josh Uhl
Managing Director
Deloitte & Touche LLP
juhl@deloitte.com
+1 212 436 4326

Robert Walley
Principal
Deloitte & Touche LLP
rwalley@deloitte.com
+1 917 952 5173

Meghan Burns
Manager
Deloitte & Touche LLP
megburns@deloitte.com
+1 202 220 2780

Endnotes

1. Securities and Exchange Commission (SEC), "Fact Sheet: Enhancing Short Sale Disclosure," accessed March 2022.
2. SEC, "SEC proposes short sale disclosure rule, order marketing requirement, and CAT amendments," press release 2022-32, February 25, 2022.
3. SEC, 17 C.F.R. Part 240, 242, and 249, accessed March 2022.
4. SEC, "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," accessed March 2022.
5. SEC Chair Gary Gensler, "Statement on rules to increase transparency of short sale activity," February 25, 2022.
6. SEC, *Staff Report on Equity and Options Market Structure Conditions in Early 2021*, October 14, 2021.
7. At the time of this writing, the SEC has three Democratic Commissioners to one Republican.