INTERNATIONAL BANCSHARES
CORPORATION

May 23, 2022

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

John Zecca
Executive Vice President
Global Chief Legal, Risk and Regulatory Officer
Nasdaq, Inc.
151 W. 42nd Street
New York City, NY 10036

Re: Short Interest Position Reporting and Other Changes Related to Short Sale Reporting

Ladies and Gentlemen:

The following comments are submitted by International Bancshares Corporation ("IBC"), a publicly-traded, multi-bank financial holding company headquartered in Laredo, Texas. IBC maintains 170 facilities and 263 ATMs, serving 76 communities in Texas and Oklahoma through five separately state-chartered banks ranging in size from approximately $474 million to $9.5 billion, with consolidated assets totaling over $16 billion. IBC is one of the largest independent commercial bank holding companies headquartered in Texas.

The purpose of this letter is to express the desperate need for regulatory intervention to protect the market from the abusive and manipulative practices of short sellers. While IBC has been a longtime advocate for greater market transparency and the implementation of regulatory safeguards to defend against short-seller bad actors,[1] addressing short-sale predation is more important than ever

[1] *See e.g.,* Letter from Dennis Nixon, Chief Exec. Officer & Chairman, IBC, to Elizabeth M. Murphy, Sec'y, SEC (July 18, 2011), https://www.sec.gov/comments/4-627/4627-169.pdf (commenting in support of real-time reporting of short positions to "protect against market manipulation and panic-fueled stampedes" and for greater transparency to "allow security holders to more efficiently invest, analysts to better understand the market, and agencies to craft rules that more accurately reflect the behavior of market participants"); Letter from Dennis Nixon, Chief Exec. Officer & Chairman, IBC, to Robert E. Feldman, Off. Corp. Sec'y, FINRA (Apr. 24, 2012), https://www.fdic.gov/resources/regulations/federal-register-publications/2012/2012-ad91-c_07.pdf (warning of the short-sale abuse that would result from the publication of banks' stress-test results, which would "be used as

given the market's current vulnerability to exploitation.[2] In the past two weeks, IBC has been particularly impacted by baseless short sale speculation, causing short interest in IBC to rise approximately 18%.[3] While in theory, an increase in short interest should signal that the shorted stock has been overvalued or that an issuer's performance is cause for concern, in reality, an unexplained increase in short-sale activity may be indicative of manufactured market manipulation rather than symptomatic of an authentic downturn in market sentiment towards an issuer.[4] Such is the case with the heightened short interest in IBC, which is not only an outlier in the current financial sector[5] but also, as time will tell, wholly untraceable to any inauspicious news about IBC that short sellers have somehow uncovered before the rest of the market and unpredictive of IBC's future value.

The trading regulations meant to protect investors and to promote fairness of opportunity in the marketplace are only as effective as the regulatory system demanding compliance with them.[6] While unabusive short selling practices may theoretically facilitate pricing efficiency and offer

---

a tool by nefarious short traders to spread rumors and cause harm to banks"); Letter from Dennis Nixon, Chief Exec. Officer & Chairman, IBC, to Brent J. Fields, Sec'y, SEC (May 13, 2016), https://www.sec.gov/comments/4-691/4691-8.pdf (advocation for the adoption of Nasdaq's rulemaking petition (No. 4-691) to establish disclosure obligations for short sellers in parity with those required of long-term investors as a means to eliminate the information asymmetry that gives short position holders an unfair advantage over shareholders holding long positions).

2 See Alexandra Semenova, *Short Sellers Are Increasing Their Bets on a Stock Market Crash*, YAHOO! FIN. (Mar. 31, 2022), https://finance.yahoo.com/news/short-sellers-are-increasing-their-bets-on-a-stock-market-crash-163158831.html (arguing short sellers are betting on a market crash based on a short-interest growth in the S&P 500 of 11 basis points from December 2021 to March 2022); Paul R. La Monica, *Short Sellers Are Starting To Bet Against America's Economy*, CNN BUSINESS (Apr. 6, 2022), https://www.cnn.com/2022/04/06/investing/short-selling-oil-consumer-stocks/index.html ("Traders are making big bets against retailers as recession fears gain steam. . . . Short sellers are beginning to bet on a slowing economy — and against a number of industries that have fared well recently.").

3 *Quote: IBOC*, WALL. ST. J., https://perma.cc/6UTS-TYXX (last visited May 18, 2022) (reporting a 17.96% increase in short interest as of May 18, 2022 from the previous report date of April 29, 2022).

4 *See* Short Position and Short Activity Reporting by Institutional Investment Managers, Exchange Act Release No. 34-94313, 87 Fed. Reg. 14950, 14951 (proposed Mar. 16, 2022) (to be codified at 17 C.F.R. pts. 240, 242, and 249) ("While short selling can serve useful market purposes, it also may be used to drive down the price of a security, to accelerate a declining market in a security, or to manipulate stock prices."); *see also* Ferhat Akbas et al., Short Interest, Returns, and Unfavorable Fundamental Information, 46 FIN. MGMT. 455, 456 (2017) (citing studies that have "shown instances in which the trading patterns of some short sellers are consistent with a manipulative intent" as the basis for not "completely rul[ing] out that some short trades are manipulative or that some short sellers have manipulative intent" despite concluding that, "on average, short sales enhance the price discovery process").

5 *See* La Monica, *supra* note 2 (reporting that "bank stocks are not being ambushed by short sellers" and that "the financial services sector had the smallest increase in short interest through mid-March" 2022).

6 *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 929X, 124 Stat. 1376, 1870 (2010) (codified at 15 U.S.C. § 78o) (requiring the SEC to "prescribe rules providing for the public disclosure of the name of the issuer and the title, class, CUSIP number, aggregate amount of the number of short sales of each security, and any additional information determined by the [SEC] following the end of the reporting period").

market liquidity,[7] the current regulatory framework has become a free-for-all for virtually unchecked institutional short selling power and pervasive market manipulation. One investor's loss is a short seller's gain, and deceptive practices like naked short selling,[8] "short-and-distort" schemes,[9] and dark-pool trading[10] enable short sellers to exploit that gain by profiting from the artificial manipulation of stock prices.

Many unsuspecting companies have been the target of institutional short sellers' calculated and relentless short sale attacks, but the recent brawl between GameStop Corporation (GME) short sellers and long investors is perhaps one of the most memorable demonstrations of the radical information asymmetry and manipulative tactics that short sellers have long taken advantage of to the detriment of others. Throughout most of 2020, short interest in GME averaged around 100% of the public float.[11] By the first week of January 2021, the short interest of GameStop had risen to an illogical 141.8%[12] when trading volume averaged around 6.5 million shares.[13] By the

---

7 See SEC Concept Release: Short Sales, Exchange Act Release No. 34-42037, 6 Fed. Reg. 57996 (Oct. 28, 1999) https://www.sec.gov/rules/concept/34-42037.htm (demonstrating the SEC's longstanding belief that "[s]hort selling provides the market with two important benefits: market liquidity and pricing efficiency").

8 MARK JICKLING, CONG. RSCH. SERV., RS22099, REGULATION OF NAKED SHORT SELLING (2009) (noting that when a stock's short interest is high, the "virtually unlimited quantity of shares" that can be created by naked short selling can have a "strong impact on the share price" and allow for "a market based on supply and demand [to] be seriously distorted"); *see also* Press Release, Sec. & Exch. Comm'n, SEC Charges Broker-Dealer with Order Execution Violations (May 20, 2021) (discussing a broker-dealer's repeated naked short selling in violation of Rules 200(g) and 203(b)(1) of Regulation SHO).

9 Press Release, U.S. Sec. & Exch. Comm'n, SEC Charges Hedge Fund Adviser With Short-and-Distort Scheme (Sept. 12, 2018) (summarizing the SEC's complaint against a hedge fund adviser for participating in a typical short-and-distort scheme by establishing a short position in a company then "ma[king] a series of false statements to shake investor confidence in [the company], lower its stock price, and increase the value of his position).

10 Luis A. Aguilar, Comm'r, Sec. & Exch. Comm'n, Public Statement: Shedding Light on Dark Pools (Nov. 18, 2015), https://www.sec.gov/news/statement/shedding-light-on-dark-pools.html (warning of the dangers of alternative trading system "dark pools" that meet "institutional investors' growing need to trade large blocks of stock without causing markets to move against them" by "offering ever more trading on an anonymous basis, and without displaying specific order information before trades occur").

11 Staff Report on Equity and Options Market Structure Conditions in Early 2021, SEC Staff Report 21 n.61 (Oct. 14, 2021) [hereinafter "SEC Staff Report 2021"], https://www.sec.gov/files/staff-report-equity-options-market-struction-conditions-early-2021.pdf ("Through most of 2020, GME's short interested hovered around 100% as a percentage of public float.").

12 John McCrank, *Explainer: How Were More than 100% of GameStop's Shares Shorted?*, REUTERS (Feb. 18, 2021, 10:15 AM), https://www.reuters.com/article/us-retail-trading-shortselling-explainer/explainer-how-were-more-than-100-of-gamestops-shares-shorted-idUSKBN2AI2DD (reporting a peak short interest of 141.8% of GameStop's float according to the data of financial analytics firm S3 Partners); *see also See* Game Stopped? Who Wins and Loses When Short Sellers, Social Media, and Retail Investors Collide: Hearing Before the H. Comm. on Fin. Servs., 117th Cong. (2021) (statement of Kenneth C. Griffin, Chief Executive Officer, Citadel LLC) (attributing institutional investors' lending of GameStop shares that were purchased short as the explanation for how GameStop could be short-sold to over 140% in January 2021 without illegal naked short selling occurring).

13 Historical Price Data of GameStop Corp., YAHOO! FIN., https://finance.yahoo.com/quote/GME/history (click "time period"; then set the time period as Jan. 3, 2021 – Jan. 29, 2021; then click "apply") (reporting daily trading volume of GameStop, from which average weekly trading volumes were calculated to be 6,730,000 shares from Jan. 4-8, 2021 and 61,410,840 shares from Jan. 11-15, 2021).

following week, the number of shares exchanging hands increased nearly tenfold.[14] As short sellers scrambled to cover their positions, the stock price swung from less than $20 at the start of the year to its peak of $483 on January 28, 2021.[15] With more shares shorted than existed, short sellers were forced to cover at losses totaling billions of dollars,[16] while GameStop shares rose roughly 950% from January to September 2021.[17] GameStop's market volatility and the media frenzy surrounding it have been remarkable, but the abusive short selling practices and market manipulation that set the stage for the GameStop saga to unfold are unfortunately commonplace.

Recently, short sellers' abusive practices have gained the attention of the U.S. Department of Justice (the "DOJ"). In February 2022, the DOJ announced it was probing short sellers' "spoofing" and "scalping" techniques and "investigating whether short sellers conspired to drive down stock prices by sharing damaging research reports ahead of time and engaging in illegal trading tactics."[18] The hunt for possible trading abuses has expanded to nearly 30 short-selling and investment and research firms.[19]

The complete anonymity enjoyed by short sellers is one of the key factors that enables their unscrupulous abuse.[20] The ability for short sellers to operate without disclosing their identities

---

14 *Id.*

15 Bailey Lipschultz & Divya Balji, *Historic Week for GameStop Ends With 400% Rally as Shorts Yield,* BLOOMBERG (Jan. 29, 2021), https://www.bloomberg.com/news/articles/2021-01-29/historic-week-for-gamestop-ends-with-400-rally-as-shorts-yield.

16 Juliet Chung, *Hedge Fund Melvin Lost $6.8 Billion in a Month. Winning It Back Is Taking a Lot Longer*, WALL ST. J. (Jan. 28, 2022, 9:51 a.m.), https://www.wsj.com/articles/melvin-plotkin-gamestop-losses-memestock-11643381321 (reporting that Melvin Capital Management's loss in January 2021 from shorting GameStop amounted to "54.5%, or roughly $6.8 billion, one of the swiftest and steepest declines for a hedge fund since the financial crisis of 2008").

17 Saqib Iqbal Ahmed, *Analysis: With GameStop Earnings on Tap, Option Traders Bet on Muted Moves*, REUTERS (Sept. 8, 2021, 6:00 AM), https://www.reuters.com/business/with-gamestop-earnings-tap-options-traders-bet-muted-moves-2021-09-08/ ("GameStop is up about 950% for the year and down 8% so far this quarter."); *see also* Jen Wieczner, *Hedge Funds and Other Short-Sellers Have Lost an Astounding Amount Betting Against GameStop*, FORTUNE (Jan. 29, 2021, 3:51 PM), https://fortune.com/2021/01/29/gamestop-stock-how-much-hedge-funds-have-lost-sellers-losses-gme-steve-cohen-point72-andrew-left-citron-research-short-squeeze/ (explaining that by Friday, January 29, 2021, "short-sellers had lost $19.75 billion on GameStop so far [in the month of January] alone, according to S3 Partners").

18 Liz Hoffman & Justin Baer, *Justice Department Targets 'Spoofing' and 'Scalping' in Short Seller Investigation*, WALL ST. J. (Feb. 16, 2022, 2:24 p.m.), https://www.wsj.com/articles/justice-department-is-pursuing-wide-ranging-investigation-of-short-sellers-sources-say-11645019122.

19 Katia Porzecanski and Tom Schoenberg, Vast DOJ Probe Looks at Almost 30 Short-Selling Firms and Allies, BLOOMBERG (Feb. 4, 2022), https://www.bloomberg.com/news/articles/2022-02-04/vast-doj-probe-looks-at-almost-30-short-selling-firms-and-allies?sref=qMIA4tzu ("The long list of names [of firms and individuals being investigated by the DOJ] . . . shows how authorities are trying to map out alliances and understand how short sellers handle research and arrange bets that stocks will fall.").

20 Joshua Mitts, *Short and Distort*, 49 J. LEGAL STUD. 287, 330 (2020) ("[I]n financial markets, pseudonymity facilitates profitable manipulation of stock prices. Pseudonymous authors publish negative rumors about public companies that lead to significant short-term trading profits—and sharp reversals of the stock price decline. When markets realize that the pseudonymous author is spreading baseless rumors, the author switches to a new pseudonym and repeats the pattern. Pseudonymity thus undermines reputational sanctions and allows manipulators to exploit investors' trust.").

creates an information asymmetry that tips in short sellers' favor, equipping short sellers with an advantage in the marketplace that is inherently unfair to the vastly greater number of shareholders that hold long positions and depriving issuers of information on trading activity, which thereby inhibits their ability to communicate with all investors.[21]

There has never been a greater need for transparency of information than exists in our financial markets today. Just as a trend of hostile takeovers in the 1960s prompted the adoption of the Williams Act,[22] the information demands of today's market call for improved disclosure of short positions to level the playing field between long and short position holders and to balance the interests of investors and issuers.

The current reporting and disclosure regime leaves a hole where the market is susceptible to abusive short selling tactics and misinformation. There are no comparable disclosure requirements for short position holders, despite the serious effects short sellers can have on the market. Misleading rumors and short-and-distort schemes lead to market manipulation and panic-fueled stampedes. Steps must be taken to fill the regulatory gaps that have enabled short sellers to trade in the shadows with no real-time oversight of or consequences for the manipulative market practices that have gone on for years without being rectified.

IBC appreciates the opportunity to express its opinion regarding the short selling problems that plague today's markets, and requests that regulators do much more to level the playing field and stop abusive practices.

Thank you for your consideration of this letter.

Sincerely,

Dennis E. Nixon
President & CEO
INTERNATIONAL BANCSHARES CORPORATION

---

[21] *See* SEC Staff Report 2021, *supra* note 11 (listing dark-pool trading as an area that deserves greater study "in the interests of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation" after determining that off-exchange market makers executed "[m]uch of the retail order flow in GME[,]" which "raise[d] questions about the execution quality investors receive" when "trading interest is less visible to the wider market"); *see also* Gary Gensler, Chair, SEC, Prepared Remarks at London City Week (June 23, 2021), https://www.sec.gov/news/speech/gensler-speech-london-city-week-062321 (emphasizing the need to "bring more transparency to short selling" and noting that "[w]hen investors cannot access critical information, particularly when some other market participants may have such information, such information asymmetry can increase risk and reduce liquidity.").

[22] *See* Wilmer Cutler Pickering Hale and Dorr LLP, *The Williams Act: A Truly "Modern" Assessment*, HARV. L. SCH. F. CORP. GOVERNANCE AND FIN. REG., (Oct. 2011), http://blogs.law.harvard.edu/corpgov/files/2011/10/The-Williams-Act-A-Truly-Modern-Assessment.pdf.