

FINANCIAL INFORMATION FORUM

November 5, 2024

By electronic mail

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Attn: Patrice M. Pitts, Special Counsel, Division of Trading and Markets
Timothy M. Riley, Branch Chief, Division of Trading and Markets

Re: File Number S7-08-22: Short Position and Short Activity Reporting by Institutional Investment Managers

Ladies and Gentlemen,

Financial Information Forum (“FIF”) is submitting this letter on behalf of our members relating to the implementation of Rule 13f-2 and the associated Form SHO adopted by the Commission on October 13, 2023.¹ Rule 13f-2 and Form SHO require “institutional investment managers” (as defined in the rule) to report to the Commission their end-of-month gross short positions in equity securities where the managers exceed specified gross short position thresholds.² Rule 13f-2 and Form SHO also require institutional investment managers (referred to below as “managers”) to report daily changes in their gross short positions during any month where the manager has exceeded the specified gross short position threshold for the applicable security.³ Managers are required to report their end-of-month gross short positions in Table 1 of Form SHO and to report daily changes in gross short positions in Table 2 of Form SHO.⁴

¹ 17 CFR §240.13f-2; 17 CFR §249.332.

² Ibid.

³ Ibid.

⁴ Ibid.

1. Draft technical documentation

On October 16, 2024, the Commission published draft technical documentation for Form SHO reporting, including (i) a draft Technical Specification,⁵ (ii) Form SHO Stylesheets, (iii) Form SHO XML Samples, and (iv) Form SHO XML Schema Files.⁶

FIF members have the following comments on the draft Technical Specification:

Maximum number of records in Tables 1 and 2. The Technical Specification sets as 100 the maximum number of records that a manager can report in Tables 1 and 2 (Section 3.4). FIF members are concerned that a manager could have more than 100 records to report for Tables 1 and 2 for a calendar month. FIF members request that the Commission increase this maximum from 100 to either of the following: (i) an unlimited number; or (ii) the total number of potential Threshold A and Threshold B equity securities.

Net change of shares. The Data Type for this data element is String, which would allow for reporting negative numbers, but the choice list for this data element is “Integer or ‘None’”, and the definition of the integer data type in the document provides that the integer data type cannot include a minus sign. FIF members request that the Commission update the choice list for this data element to make clear that a manager can report a negative number for this data element. FIF members further request that the Commission update the choice list for this data element to provide that managers should report a 0 value by reporting the integer 0 rather than by reporting the string “None”.⁷ FIF members further request that the Commission include in the Technical Specification the guidance from the Form SHO instructions that a decrease in a gross short position should be reported as a positive net change of shares while an increase in a gross short position should be reported as a negative net change of shares.

Value of shares; data dictionary. While Table 1 of Form SHO provides for reporting the value of shares rounded to the nearest USD, it would be helpful to also include this requirement within the Technical Specification. More generally, FIF members request that the Commission provide a data dictionary for each data element.

Table 2 data elements. Form SHO provides for reporting the following data elements for Tables 1 and 2: Issuer Name; Issuer LEI; Title of Class; CUSIP Number; and FIGI. In the Technical Specification, these five data elements are included in the schema for Table 1, but only the Issuer Name is included in the schema for Table 2. Because an issuer could have multiple associated securities, a manager, based on the current schema, would not be able to report at the security level, as required by Form SHO. FIF members request that the Commission conform the schema to Form SHO by including the five data elements above in the schema for Tables 1 and 2.

FIF members have the following comments on the Form SHO XML Samples:

⁵ EDGAR Form SHO XML Technical Specification, Version 1.0 (Dec. 2024).

⁶ The public can access these documents from www.sec.gov/submit-filings/technical-specifications under the Form SHO sub-heading.

⁷ It is unclear from the Technical Specification as to whether this string is case sensitive.

End of reporting period. The XML Samples show September 26, 2024 reported as the end of the reporting period for Table 1 and show Table 2 reporting through September 25, 2024, but the last settlement date in September 2024 is September 30. The samples should show September 30 as the end of the reporting period for Table 1 and should show reporting through September 30 for Table 2.

2. Test file submissions

FIF members request that the Commission communicate when managers can begin submitting test files to EDGAR.

3. Convertible bonds

Based on the following guidance from the adopting release for short position reporting, FIF members understand that positions in convertible bonds are not taken into account for Form SHO reporting (unless actually converted):

Requiring options data to be reported on Form SHO would increase the compliance costs to Managers of reporting on Proposed Form SHO. One commenter stated that the inclusion of derivatives, warrants, convertible debt, and ETFs would be costly. Adopted Rule 13f-2 will compel Managers to track their gross short positions in individual equities in a month. Tracking of ETFs for the purposes of adopted Rule 13f-2 is the same as tracking any equity security with the exception of tracking shares outstanding, which might be marginally more costly. ***Additionally, securities that may be used to change a gross short position, such as options or convertible debt, are unaffected by Rule 13f-2 unless they are used in a manner that changes the gross short position in an equity security.*** [emphasis added] The alternative discussed here would require explicit tracking and reporting of such securities.⁸

FIF members also note the following:

- Rule 13f-2 defines “gross short position” as “... the number of shares of the equity security that are held short”⁹
- Rule 13f-2 defines the reporting threshold for registered securities based on the “... percentage of shares outstanding”¹⁰
- Columns 7 of Tables 1 and 2 of Form SHO and the instructions for Columns 7 and 8 of Table 1 and the instructions for Column 7 of Table 2 refer to the reporting of gross short positions, and activity affecting gross short positions, in shares.¹¹

⁸ Securities Exchange Act Release No. 98738 (Oct. 13, 2023), 88 FR 75100 (Nov. 1, 2023), at 88 FR 75179.

⁹ 17 CFR §240.13f-2(b)(4).

¹⁰ 17 CFR §240.13f-2(a)(1)(ii).

¹¹ 17 CFR §249.332.

Based on the above, FIF members request confirmation that positions in convertible bonds are not taken into account for Form SHO reporting (unless actually converted).

4. Section 15(d) reporting issuers

Pursuant to Rule 13f-2, reporting applies to “Each equity security that is of a class of securities that is registered pursuant to section 12 of the Exchange Act or for which the issuer of that class of securities is required to file reports pursuant to section 15(d) of the Exchange Act.”¹² FIF members understand that any class of security registered pursuant to Section 12 would be a Threshold A security and further understand that this would not cause other classes of securities for the same issuer to be Threshold A securities (unless the other classes of securities were also registered pursuant to Section 12).

FIF members request clarification for the scenario where an issuer is required to file reports pursuant to Section 15(d) based on the issuer having filed a registration statement for a class of security (and that class of security not being subject to Section 12(b) or Section 12(g) registration). FIF members are not clear, in this scenario, whether all classes of securities of the Section 15(d) issuer are considered Threshold A securities or whether only the class of security that gives rise to the Section 15(d) reporting obligation (along with any class of security registered pursuant to Section 12) is considered a Threshold A security. Either approach presents challenges for managers. For example, a manager might take the approach of reporting as Threshold A only the classes that give rise to the Section 15(d) reporting obligation (along with any class of security registered pursuant to Section 12), but many issuers do not identify in their public filings the specific classes that give rise to this obligation. On the other hand, a manager might take the approach of reporting all classes of a Section 15(d) reporting issuer as Threshold A, but it is unclear how a manager taking this approach would report when a Section 15(d) reporting issuer deregisters a class of securities. FIF members request that the Commission provide guidance on this scenario. If a manager is required to change its currently-planned reporting approach on this issue based on such guidance from the Commission, it is unlikely that the manager would be able to make such change within the current implementation timeframe for Form SHO reporting.

5. Monthly reporting deadline

FIF members request confirmation that a manager can submit its Form SHO report for a calendar month at any time prior to the close of the EDGAR system on the due date for the report.

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¹² 17 CFR §240.13f-2(a)(1).

Please contact me at howard.meyerson@fif.com if you would like further clarification on any of the comments set forth above.

Very truly yours,

/s/ Howard Meyerson

Howard Meyerson
Managing Director, Financial Information Forum

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