FINANCIAL INFORMATION FORUM

January 24, 2025

By electronic mail

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Attn: Mark T. Uyeda, Acting Chair
Hester M. Peirce, Commissioner
Caroline A. Crenshaw, Commissioner

Re: Short Position and Short Activity Reporting by Institutional Investment Managers

Ladies and Gentlemen,

The Financial Information Forum ("FIF") is submitting this letter as a supplement to the letters that FIF submitted on November 8, 2024[1] and December 20, 2024[2] requesting an extension of the implementation date for Rule 13f-2 and the associated Form SHO reporting adopted by the Securities and Exchange Commission (the "Commission") on October 13, 2023.[3] This letter is focused on the concern that if managers do not take into account offsetting long positions when reporting, this will result in misleading data being disseminated to the public. Allowing managers to take into account offsetting long positions would result in more accurate data being disseminated to the public and would more effectively achieve the Commission's goal in adopting Rule 13f-2 "… to increase transparency regarding short position and short activity data …."[4] The primary concern of FIF members is the quality of the data that will be publicly disseminated.

FIF members request that the Commission, prior to any public dissemination of short position data, review the short position data that managers submit to consider whether short positions are being

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[1] Available at https://fif.com/index.php/working-groups/category/271-comment-letters?download=3037:fif-letter-to-the-sec-requesting-an-extension-of-the-implementation-date-for-form-sho-reporting&view=category ("November 8 FIF Letter").
[2] Available at https://fif.com/index.php/working-groups/category/271-comment-letters?download=3062:fif-supplemental-letter-to-the-sec-relating-to-the-fif-member-request-for-an-extension-of-the-current-implementation-period-for-form-sho-reporting&view=category ("December 20 FIF Letter").
[3] 17 CFR §240.13f-2; 17 CFR §249.332.
[4] Securities Exchange Act Release No. 98738 (Oct. 13, 2023), 88 FR 75100 (Nov. 1, 2023) (Short Position and Short Activity Reporting by Institutional Investment Managers), at 88 FR 75102.

materially overstated because of the inability of managers to offset long positions. FIF members further recommend that, during this period of reporting prior to public dissemination, the Commission allow individual managers to present to the Commission data showing how the data reported by the manager has been overstated because of the manager's inability to offset long positions.

FIF members continue to believe -- based on the issues discussed in the November 8 and December 20 FIF letters -- that an extension of the current implementation date for short position reporting is appropriate. An extension is also appropriate based on the January 20, 2025 Executive Order titled "Regulatory Freeze Pending Review".[5] FIF members also have encountered various challenges with testing through the EDGAR system, as discussed below.

Whether or not the Commission decides to extend the current implementation date, FIF members request that the Commission take the following three steps to prevent the dissemination of misleading data to the public and avoid penalizing managers that make good faith determinations on reporting issues for which no written guidance has been provided:

- The Commission should not commence public dissemination of short position data (currently planned for April 2024) until the Commission has published written FAQs in response to the questions previously submitted by FIF members and other market participants and managers have had a reasonable opportunity to make any necessary modifications to their reporting based on these written FAQs.[6] This would address the risk of misleading data being disseminated to the public based on managers reporting inconsistently. FIF members and FIF are preparing a list of FAQ questions that are important for the Commission to address in writing; FIF intends to submit this FAQ list to the Commission in the near future.

- The Commission should take into account that managers could not be expected to conform to verbal guidance provided by Commission representatives to a subset of managers until this guidance has been documented through written FAQs and managers have had a reasonable opportunity to make any necessary modifications to their reporting based on these written FAQs. This is appropriate given the current lack of written guidance on a number of interpretive questions raised by FIF members[7] and other market participants.

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[5] Available at https://www.whitehouse.gov/presidential-actions/2025/01/regulatory-freeze-pending-review/.

[6] While the Commission could provide written guidance through means other than FAQs, the Commission's standard method for providing written guidance for reporting has been through written FAQs. This is discussed in a letter submitted by FIF on August 9, 2024, available at https://fif.com/index.php/working-groups/category/271-comment-letters?download=2983:fif-follow-up-letter-to-the-sec-relating-to-the-implementation-of-short-position-and-short-activity-reporting&start=20&view=category ("August 9 FIF Letter"), at 15-17. As noted in the November 8 FIF Letter, Commission representatives have provided verbal guidance in response to a number of interpretive questions raised by FIF members, but verbal guidance is problematic because it is only communicated to a limited number of market participants and lacks the necessary clarity that can only be provided through written guidance. November 8 FIF Letter, at 2.

[7] Please see, for example, (i) letter submitted by FIF on June 24, 2024, available at https://fif.com/index.php/working-groups/category/271-comment-letters?download=2955:fif-letter-to-the-sec-relating-to-the-implementation-of-short-position-and-short-activity-reporting&start=20&view=category ("June 24

- The Commission should review the data reported by managers, and engage in discussions with managers, to consider whether short positions are being materially overstated because of the inability of managers to offset long positions.

Prior FIF letters requesting an extension for Form SHO reporting

FIF submitted a request for extension on November 8, 2024.[8] In the November 8 letter, FIF identified the concern that given the lack of written guidance from the Commission in response to a number of interpretive questions raised by FIF members and other market participants, different managers will adopt different approaches for reporting. As a result, the Commission will receive inconsistent data and will disseminate misleading data to the public.[9] The Commission's failure to publish FAQs also is problematic from an operational standpoint and is inconsistent with the Commission's publication of FAQs for similar reporting requirements.[10]

In a subsequent letter submitted by FIF on December 20, 2024, FIF members identified the concern that on December 16, 2024 the Commission published an update to the Edgar Filer Manual relating to Form SHO reporting that significantly increases the implementation work that is required because managers must now look beyond their position systems to the underlying transaction systems in order to implement Form SHO reporting.[11] In addition to the burden of this last-minute change, during December and January FIF members have encountered a number of challenges in testing through EDGAR, including: (i) EDGAR rejecting submissions by managers based on the number of securities included in the file when the number of securities reported by the manager is permitted based on the Commission's Form SHO Technical Specification;[12] (ii) file rejections based on EDGAR validations that are not documented (such as validations based on date ranges); (iii) file rejection messages that do not properly describe the reason for the rejection; (iv) EDGAR rejecting test submissions that include data for January 9, 2025 in Table 2 even though January 9 was a settlement data for which reporting in Table 2 is required; and (v) file submissions by managers that crash or take hours to load. FIF members also are concerned about potential EDGAR system load management issues on February 14.

FIF Letter"), (ii) August 9 FIF Letter, and (iii) letter submitted by FIF on November 5, 2024, available at https://fif.com/index.php/working-groups/category/271-comment-letters?download=3033:fif-letter-to-the-sec-relating-to-the-implementation-of-short-position-and-short-activity-reporting&view=category.

[8] November 8 FIF Letter. FIF also requested extensions in the June 24 FIF Letter, at 15, and the August 9 FIF Letter, at 17-21, but the June and August letters were primarily focused on obtaining guidance on various interpretive questions.

[9] November 8 FIF Letter, at 2.

[10] See August 9 FIF Letter, at 15-17.

[11] December 20 FIF Letter, at 2.

[12] See, EDGAR Form SHO XML Technical Specification, accessible from https://www.sec.gov/submit-filings/technical-specifications, at 9-10.

Prohibiting managers from taking into account offsetting long positions will result in misleading data being disseminated to the public

This letter is focused on an issue not included in the November and December FIF letters: specifically the concern that prohibiting managers from taking into account offsetting long positions will result in the dissemination of misleading data to the public.

Commission Rule 13f-2 and Form SHO require a manager to report based on its "gross short positions."[13] Rule 13f-2 defines "gross short position" as

> … the number of shares of the equity security that are held short as a result of short sales as defined in 17 CFR 242.200(a) (Rule 200(a) of Regulation SHO), without inclusion of any offsetting economic positions such as shares of the equity security or derivatives of such equity security.[14]

FIF members have identified various problematic scenarios, including the following:

- A broker-dealer has a short position in a security held at one clearing firm and an offsetting long position in the same security held at another clearing firm. The broker-dealer has a net flat position in the security. If the broker-dealer is not able to offset these two positions, the broker-dealer will be reporting a short position even though the broker-dealer's economic position is flat.

- While a retail account could have separate long and short positions in the same security, a single institutional or proprietary account typically would have either a short or a long position with purchases and sales for the same account being netted to a single short or long position. This means that the manner in which a manager structures or classifies its accounts would impact the short position reported by the manager. For example, two similarly situated broker-dealers (Broker-Dealers A and B) with only proprietary positions in their respective aggregation units could have the same economic position in a security. Broker-Dealer A could hold its positions through a single account while Broker-Dealer B could hold its positions through multiple accounts. This will result in Broker-Dealer B reporting a higher gross short position in many cases where Broker-Dealers A and B have the same economic position. A related challenge is that Rule 13f-2 does not define the term "account", which means that, in many cases, a broker-dealer that interprets the term "account" more narrowly will end up reporting a larger gross short position as compared to a second broker-dealer with the same economic position that defines the term more broadly.

In each of these scenarios, restricting a manager from offsetting long positions results in misleading data being disseminated to the public.

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[13] 17 CFR §240.13f-2(a); 17 CFR §249.332, Instructions for Calculating Reporting Threshold.

[14] 17 CFR §240.13f-2(b)(4).

Request for interpretive guidance or exemptive relief

Based on the concerns above, FIF members request that the Commission provide interpretive guidance (or, alternatively, grant exemptive relief) to allow managers to take into account offsetting long positions under certain circumstances. More specifically, as proposed:

- Offsetting would only be permitted for two accounts that have the same beneficial owner.
- For a broker-dealer with multiple aggregation units, offsetting would only be permitted for positions within the same aggregation unit.
- Offsetting would only be permitted based on positions in the same reportable security. For example, a manager would not be permitted to offset based on a long-position in a derivative security (i.e., a security that can be exercised for, or converted into, the reportable security) or across different securities of the same issuer.

FIF members believe that if the guidance (or relief) requested above were provided (or granted), all or nearly all managers would report on this basis. FIF is not aware of any FIF member that would not report on this basis. FIF members further note that this approach follows the same principles that managers are required to apply for Regulation SHO order marking purposes (as mandated by the Commission).[15]

If the Commission is concerned about granting exemptive relief while there is outstanding litigation challenging Rule 13f-2, FIF members request that the Commission delay public dissemination of data until the outstanding litigation has been resolved. As recommended above, the Commission should use the reporting period prior to public dissemination to review the short position data that managers submit to consider whether short positions are being materially overstated because of the inability of managers to offset long positions.

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FIF members appreciate the Commission's consideration of the requests set forth above. Please contact me at howard.meyerson@fif.com if you have any questions or requests for clarification.

Very truly yours,

/s/ Howard Meyerson

Howard Meyerson
Managing Director, Financial Information Forum

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[15] See, for example, 17 CFR §242.200(b), (c), (f) and (g).

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