

FINANCIAL INFORMATION FORUM

January 30, 2025

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: Short Position and Short Activity Reporting by Institutional Investment Managers

Dear Ms. Pitts and Mr. Riley,

On behalf of Financial Information Forum ("FIF") members, FIF is submitting on the attached Schedule A a list of proposed FAQs and responses for short position reporting.

Please contact me at howard.meyerson@fif.com with any questions or comments.

Very truly yours,

/s/ Howard Meyerson

Howard Meyerson
Managing Director, Financial Information Forum

cc: Caroline A. Crenshaw, Commissioner
Andrew Durand, Counsel to Commissioner Hester M. Peirce
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Schedule A
List of FAQ Questions for Short Position Reporting

The list of FAQ questions below includes FIF member recommendations for the guidance that the Commission should provide in response these FAQ questions. Please note the following about these recommendations:

- To the extent that the Commission determines that exemptive relief would be necessary to apply any of the FIF member recommendations below, FIF members request that the Commission grant such exemptive relief.
- Given the current lack of written guidance from the Commission, different FIF members have adopted different approaches for reporting. FIF members would need a reasonable time period to adapt their reporting to any FAQs published by the Commission, including for FAQ responses that are consistent with the FIF member recommendations below.
- FIF members are not proposing specific wording for the FAQ responses.

Proposed FAQ	FIF Member Recommendation
Calculating the gross short position to report in Table 1	
In calculating its gross short position and reporting its gross short position on Table 1, should a manager take into account all activity (including a corporate action) that increases or decreases its gross short position in a security?	The Commission should clarify that since short position reporting is a position reporting system and not a transaction reporting system, a manager should take into account all activity (including a corporate action) that increases or decreases its gross short position in a security.
In calculating its gross short position and reporting its gross short position on Table 1, should a manager take into account long sales?	Please see recommendation above.
In calculating its gross short position and reporting its gross short position on Table 1, should a manager take into put and call option exercises and assignments?	Please see recommendation above.
In calculating its gross short position and reporting its gross short position on Table 1, should a manager take into account stock splits, reverse stock splits and similar corporate events?	Please see recommendation above.
In calculating its gross short position and reporting its gross short position on Table 1, should a manger offset its long positions in a security?	The Commission should clarify that a manager is permitted to offset long positions where all of the following conditions apply: the positions have the same beneficial owner; for a broker-dealer, the positions are in the same aggregation unit; and the positions are in the same reportable security. This offsetting is necessary to avoid a manager overreporting short positions relative to its actual economic short position.

Proposed FAQ	FIF Member Recommendation
<p>For managers that carry proprietary positions, how does the Commission define “account?” In the absence of a defined term by the Commission, does a manager that holds proprietary positions have flexibility to define “account” in a way that clearly reflects true economic short positions? For example, is a manager able to offset proprietary long/short positions with the following conditions: the positions are held by the same beneficial owner; the positions are in the same aggregation unit; and the positions are in the same reportable security?</p>	<p>The Commission has not defined “account” for short position reporting. The Commission should clarify that a manager that carries proprietary positions should apply the concept of “account” to reflect how it carries positions that reasonably reflects its true economic short position.</p>
<p>Reporting for parents and subsidiaries</p>	
<p>Does Question 6 of the Form 13F FAQs apply to Form SHO. Question 6 provides: “For example, by virtue of their corporate relationship, bank holding companies share investment discretion with their bank trust departments, and parent corporations share investment discretion with their subsidiaries.”¹</p>	<p>This guidance also should apply for Form SHO.</p>
<p>FIF members request that the Commission publish FAQs that address Scenarios 1 and 2 in Item 4 of the letter that FIF submitted to the Commission on June 24, 2024.²</p>	<p>The Commission should provide the proposed guidance set forth in the June 24, 2024 FIF letter.</p>
<p>Scope of reportable securities</p>	
<p>Are managers required to report gross short positions in securities that do not have any reportable trading activity (for example, all transactions in the security are made in reliance on Section 4(2) of the Securities Act)?</p>	<p>The Commission should clarify that these securities are not reportable on Form SHO.</p>
<p>Is a manager required to report a security that does not have a CUSIP?</p>	<p>The Commission should clarify that a security without a CUSIP is not reportable on Form SHO.</p>
<p>Is a CINS considered a CUSIP for purposes of Form SHO reporting?</p>	<p>The Commission should clarify that a CINS is considered a CUSIP for purposes of Form SHO reporting.</p>
<p>In the scenario where (i) a class of foreign ordinary shares is registered in the U.S. in connection with a foreign issuer’s registration of U.S. ADRs, and (ii) the foreign ordinary shares do not have a U.S. trading symbol (either listed or OTC), are gross</p>	<p>The Commission should clarify that, in this scenario, gross short positions in the foreign ordinary shares are excluded from Form SHO reporting.</p>

¹ Available at <https://www.sec.gov/rules-regulations/staff-guidance/division-investment-management-frequently-asked-questions/frequently-asked-questions-about-form-13f>.

² 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>, at 7-8.

Proposed FAQ	FIF Member Recommendation
short positions in the foreign ordinary shares excluded from Form SHO reporting?	
Are all convertible bonds excluded from Form SHO reporting (unless actually converted)? If not, how should a manager (i) calculate and report share-based amounts, and (ii) calculate its percentage of shares outstanding?	The Commission should clarify that all convertible bonds are excluded from Form SHO threshold monitoring and reporting. The adopting release for Rule 13f-2 provides as follows: “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.” ³ In addition, “gross short position” is defined based on number of shares and Tables 1 and 2 of Form SHO require reporting of gross short positions in shares.
Are all warrants excluded from Form SHO reporting (unless actually exercised)? If not, how should a manager (i) calculate and report share-based amounts, and (ii) calculate its percentage of shares outstanding?	Please see recommendation above.
Are all options excluded from Form SHO reporting (unless actually exercised)? If not, how should a manager (i) calculate and report share-based amounts, and (ii) calculate its percentage of shares outstanding?	Please see recommendation above.
In 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), (i) are all classes of securities of the Section 15(d) issuer considered Threshold A securities, or (ii) are 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) considered Threshold A securities?	The Commission should clarify that, for this scenario, 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) are considered Threshold A securities. FIF members note that in many cases managers would not be able to obtain the outstanding shares for the classes of securities that did not give rise to the Section 15(d) reporting obligation and are not registered pursuant to Section 12.
Closing price	
If a security is listed in multiple countries, including the U.S., is a manager required to report based on the closing price in the U.S. or can the manager report based on its documented internal pricing policy for this scenario?	The Commission should clarify that a manager is permitted to report based on its documented internal pricing policy. It would be burdensome to require a manager to establish and apply different pricing for Form SHO reporting.

³ Securities Exchange Act Release No. 98738 (Oct. 13, 2023), 88 FR 75100 (Nov. 1, 2023), at 88 FR 75179.

Proposed FAQ	FIF Member Recommendation
<p>If a security is listed in a foreign country and traded OTC (but not listed on an exchange) in the U.S., is a manager required to report based on the closing price in the foreign market? Alternatively, is the manager required to report based on the OTC closing price in the U.S.? Alternatively, is the manager permitted to report based on its documented internal pricing policy for this scenario?</p>	<p>Please see recommendation above.</p>
<p>If a security does not have a closing auction on a U.S. exchange, can a manager rely on its documented internal pricing policy when determining the closing price of the security?</p>	<p>Please see recommendation above.</p>
<p>Different managers and vendors could have different policies for determining the closing price for an OTC security. For example, if there are no trades in an OTC security during the current trading day, a manager or vendor could look to pre-market trades that day or post-market trades the prior day. Alternatively, a manager or vendor could ignore pre-market and post-market trades and look to trades during the prior trading day. As another example, a manager or vendor could exclude from the closing price certain trades such as benchmark and average price trades. Is a manager permitted, for purposes of Form SHO reporting, to rely on its documented internal pricing policies when determining the closing price of an OTC security?</p>	<p>Please see recommendation above.</p>
<p>The instructions to Table 1, Column 8 of Form SHO provide: “In circumstances where such closing price is not available, the Manager shall use the price at which it last purchased or sold any share of that security.” What does it mean when the Form SHO instructions refer to a closing price not being available? For example, if an OTC security does not have trading activity during the current trading day but a vendor makes available a closing price for the security for the current trading day based on trading activity that occurred during the prior trading day, would this be considered as a closing price being available on the current trading day?</p>	<p>The Commission should clarify that this scenario would be considered as a closing price being available on the current trading day.</p>
<p>Calculating the shares outstanding for a Threshold A security</p>	
<p>If a manager knows that the shares outstanding for a security as reported in the issuer’s most</p>	<p>Consistent with Commission Rule 13d-1(j) (which applies to Schedules 13D and 13G beneficial</p>

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<p>recent EDGAR filing is materially incorrect (for example, as a result of a stock split, reverse stock split, buy-back, follow-on offering, ETF creation, or ETF redemption that is not reflected in EDGAR), is the manager permitted to calculate the shares outstanding for the security (and report) based on the shares outstanding that the manager believes to be correct?</p>	<p>ownership reporting), the Commission should clarify that if a manager knows or has reason to believe that the outstanding shares for a security reported in EDGAR is inaccurate, the manager is permitted to calculate the shares outstanding for the security (and report) based on the shares outstanding that the manager believes to be correct.</p>
<p>Vendors do not always report the shares or units outstanding for a security. For example, in some cases, a vendor will report the shares or units outstanding for an ADR (or other convertible equity security) based on the outstanding shares of the underlying security as opposed to reporting the outstanding shares or units of the ADR (or other convertible equity security). How should a manager report in these scenarios?</p>	<p>As a short-term solution, the Commission should clarify that, for these scenarios, a manager is permitted to report based on the outstanding shares of the underlying security. As a long-term solution, the Commission should clarify that managers are required to report based on the shares or units outstanding of the ADR (or other convertible equity security). The Commission should provide a reasonable time period (after written guidance from the Commission) for data vendors to adapt their products to this requirement.</p>
<p>ADRs and other convertible equity securities</p>	
<p>When a manager calculates its gross short position in an ADR (or other convertible equity security) as a percentage of outstanding shares, should the denominator be based on the outstanding shares or units of the ADR (or other convertible equity security) as opposed to the outstanding shares of the underlying security?</p>	<p>Please see recommendation above.</p>
<p>Should an ADR (or other convertible equity security) be reported based on its own identifier (for example, CUSIP) as opposed to the identifier of the underlying security?</p>	<p>The Commission should clarify that an ADR (or other convertible equity security) should be reported based on its own identifier.</p>
<p>Where an ADR is equivalent to ten ordinary shares of the underlying issuer, should a manager report the number of shares of its gross short position based on the number of ADR units held short rather than reporting based on the equivalent number of underlying ordinary shares?</p>	<p>The Commission should clarify that, for this scenario, a manager should report based on the number of ADR units held short.</p>
<p>Scenarios where an issuer's status changes during a calendar month</p>	
<p>How should a manager report if a non-registered security becomes a registered security during a month? More specifically: Does one threshold (Threshold A or B) or do both thresholds apply to the security? If one threshold applies, which threshold is this? For which period is the applicable threshold applied (or for which periods</p>	<p>The Commission should provide guidance for this scenario that: (i) the manager should apply the Threshold A test for the period that the security is a Threshold A security; (ii) the manager should apply the Threshold B test for the period that the security is a Threshold B security; (iii) if the security is reportable based</p>

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are the applicable thresholds applied)? Which settlement dates should be reported and how should they be reported?	on either test, the manager should report the security for the month; and (iv) in Table 2 the manager should report for all settlement dates when the security was a Threshold A or Threshold B security.
How should a manager report if a registered security becomes a non-registered security during a month? FIF members have the same questions as set forth in the preceding bullet.	Please see recommendation above.
How should a manager report if a tradable security (Threshold A or Threshold B) ceases to be a tradeable security during a month? More specifically: Is the manager subject to reporting this security for the month? If so, over what period should the manager calculate its monthly average gross short position? Which settlement dates should be reported and how should they be reported?	The Commission should provide guidance for this scenario that: (i) the manager should apply the applicable test (Threshold A or Threshold B) for the period during the month that the security was a tradeable security; (ii) if the security is reportable based on the calculation for this period, the manager should report the security for the month; and (iii) in Table 2 the manager should report for all settlement dates when the security was a tradeable security. This would presumably require changes to current EDGAR validations that require a manager to report all settlement dates for a month in Table 2.
How should a manager report if a security first becomes a tradeable security during a month? More specifically: Is the manager subject to reporting this security for the month? If so, and if the security is a registered security, over what period should the manager calculate its monthly average gross short position? Which settlement dates should be reported and how should they be reported?	Please see recommendation above.
Calculating the U.S.-dollar value of a position held in another currency	
Is a manager permitted to adopt any reasonable policy for calculating and reporting the U.S.-dollar value of a gross short position that is held in another currency? As an example, this situation could arise for a gross short position of a Canadian subsidiary of a U.S. manager where the Canadian subsidiary executes a sale in the U.S. and maintains the resulting gross short position in Canadian dollars.	The Commission should clarify that a manager is permitted to adopt any reasonable policy for calculating and reporting the U.S.-dollar value of a gross short position that is held in another currency.
Reporting based on settlement date	
Form SHO requires reporting based on settlement date rather than trade date. Is a manager permitted to report based on the contractual	The Commission should clarify that a manager is permitted to report based on the contractual settlement date.

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settlement date (i.e., the date that a transaction is agreed to settle)?	
Reporting changes in gross short position on Table 2	
In reporting its daily change in gross short position for any settlement date on Table 2, should a manager take into account all activity (including a corporate action) that increases or decreases its gross short position in the security relative to the prior settlement date?	Since short position reporting is a position reporting system and not a transaction reporting system, a manager should take into account all activity (including a corporate action) that increases or decreases its gross short position in a security from the prior settlement date.
In reporting its daily change in gross short position for any settlement date on Table 2, should a manager take into account long sales?	Please see recommendation above.
In reporting its daily change in gross short position for any settlement date on Table 2, should a manager take into account put and call option exercises and assignments?	Please see recommendation above.
What should a manager report on Table 2 for a settlement date if it has no change in gross short position from the prior settlement date?	The Commission should clarify that, in this scenario, the manager can either (i) report "0" in Table 2 for this settlement date; or (ii) exclude this settlement date from its Table 2 reporting.
In reporting its daily change in gross short position for any settlement date on Table 2, should a manager take into account stock splits, reverse stock splits and similar corporate events? For example, (i) if a manager has a gross short position of 50,000 shares in a class of common stock on a settlement date, (ii) the stock has a 2 for 1 split on the following settlement, and (iii) the manager does not have any transactions in the stock on this following settlement date, should the manager report an increase of 50,000 shares in its gross short position for the following settlement date?	Please see recommendation above.
Form SHO filing	
What is the purpose of the overrideInternetFlag data element? Under what conditions should a manager report this data element as false? Under what conditions should a manager report this data element as true?	The Commission should provide clarification on this point.
Is a manager required to report the issuerName and shortIssuerName data elements with the same value? If so, why do these data elements have different names?	The Commission should clarify that these two data elements should have the same value.
Is a manager permitted to report the issuerName and shortIssuerName data elements based on the data provided by a reputable vendor?	The Commission should clarify that a manager is permitted to report the issuerName and

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	shortIssuerName data elements based on the data provided by a reputable vendor.
Is a manager permitted to report the issuerName and shortIssuerName data elements based on how the manager records and maintains this data in the manager’s systems?	The Commission should clarify that a manager is permitted to report the issuerName and shortIssuerName data elements based on how the manager records and maintains this data in the manager’s systems.
Is a manager permitted to report the securitiesClassTitle data element based on the data provided by a reputable vendor?	The Commission should clarify that a manager is permitted to report the securitiesClassTitle data element based on the data provided by a reputable vendor.
Is a manager permitted to report the securitiesClassTitle data element based on how the manager records and maintains this data in the manager’s systems?	The Commission should clarify that a manager is permitted to report the securitiesClassTitle data element based on how the manager records and maintains this data in the manager’s systems.
Is a manager permitted to submit its Form SHO report for a calendar month at any time period prior to the close of the EDGAR system on the due date for the report?	The Commission should clarify that this is permitted.
Where can managers find documentation of all of the file-level and data-level validations applied by the EDGAR system to Form SHO filings, including a description of each validation and the text used by EDGAR to communicate each type of validation failure to managers?	The Commission should provide the requested documentation and the location.
What is the maximum number of securities that a manager can submit on Form SHO?	The Commission should increase the current maximum from 1,000 securities to a maximum (such as 25,000 securities) that would avoid a manager having to submit multiple files for a month.