

FINANCIAL INFORMATION FORUM

February 25, 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 Mr. Riley and Ms. Pitts,

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 Securities and Exchange Commission (the “Commission”) on October 13, 2023.¹ On February 7, 2025, the Commission published an Order granting an extension of the implementation date for Form SHO reporting.² As a result of the February 7 Order, managers are required to commence reporting on Form SHO for the month of January 2026 and are required to submit this report by February 17, 2026.³ FIF and our members would like to thank you and your colleagues for the granting of this extension.

A. Three issues to address to prevent the dissemination of misleading data to the public

The primary concern of FIF members is to ensure that the short position data that is disseminated to the public is accurate. FIF members have identified three fundamental reporting issues that, if unresolved, would lead to misleading data being disseminated to the public. As discussed below, FIF members believe that each of these issues can be resolved in a manner that will further the Commission’s objectives in adopting Rule 13f-2.

¹ 17 CFR §240.13f-2; 17 CFR §249.332.

² Securities Exchange Act Release No. 102380 (Feb. 7, 2025), 95 FR 9568 (Feb. 13, 2025) (Order Granting Temporary Exemption Pursuant to Section 13(f)(3) of the Securities Exchange Act of 1934 from Compliance with Rule 13f-2 and Form SHO).

³ Id. at 5-6. Because February 14, 2026 is a Saturday and February 16, 2026 is a holiday, the first Form SHO report is due on February 17, 2026.

1. Lack of written guidance

Without written guidance on Form SHO interpretive questions, managers will report inconsistently. This will result in the dissemination of misleading data to the public. FIF members request that the Commission publish written FAQs in response to requests for guidance that are submitted by managers. On January 30, 2025, FIF submitted a list of proposed FAQs identified by FIF members.⁴ FIF members request that the Commission publish written FAQs that incorporate these FAQs and FAQs submitted by other managers.

2. Netting

Disallowance of netting of long positions will result in a significant overstatement of short positions being disseminated to the public. FIF members request that the Commission provide exemptive relief to allow managers to net long positions, subject to the following conditions previously proposed by FIF members in a letter submitted by FIF to the Commission on January 24, 2025: the accounts have the same beneficial owner; for a broker-dealer, the accounts are in the same aggregation unit; and offsetting would only be permitted based on positions in the same reportable security.⁵ Please see the January 24 FIF letter for additional detail.⁶ As an alternative to granting exemptive relief, the Commission could provide guidance that such netting is permitted.

3. 2.5% threshold for reporting Threshold A securities

Under Rule 13f-2, a manager is subject to Form SHO reporting for a Threshold A security if the manager meets the \$10,000,000 threshold or the 2.5% threshold.⁷ Form SHO requires managers to calculate whether they meet the 2.5% threshold for reporting Threshold A securities based on the shares outstanding in EDGAR.⁸ This data is inaccurate for many securities (for example, ETFs and ADRs)⁹ and in many scenarios (for example, in many scenarios involving stock splits or buy-backs).¹⁰ In addition, the shares outstanding from vendors for many ADRs and similar derivative securities is unreliable because vendors often report the shares outstanding based on the shares of the underlying common stock.

⁴ FIF letter to the Commission (Jan. 30, 2025), available at <https://fif.com/index.php/working-groups/category/271-comment-letters?download=3113:faqs-for-short-position-reporting-submitted-by-fif-to-the-sec&view=category>.

⁵ FIF letter to the Commission (Jan. 24, 2025), available at <https://fif.com/index.php/working-groups/category/271-comment-letters?download=3083:fif-letter-to-the-sec-relating-to-the-offsetting-of-long-positions-for-form-sho-reporting&view=category>, at 3-5.

⁶ *Ibid.*

⁷ 17 CFR §240.13f-2(a)(1).

⁸ 17 CFR §249.332 (see Instructions for Calculating Reporting Threshold).

⁹ See, for example, FIF letter to the Commission (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=30&view=category>, at 12-13, and FIF letter to the Commission (Aug. 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 2024 FIF Letter”), at 21.

¹⁰ See, for example, August 2024 FIF Letter, at 8-10.

If managers are calculating reporting thresholds based on outstanding shares data that is inaccurate, this will result in misleading data being disseminated to the public.

The following are potential approaches recommended by FIF members (in order of preference) to address the issues above relating to application of the 2.5% threshold:

- ***Provide a permanent exemption from the requirement to apply the 2.5% threshold for reporting Threshold A securities.*** With this approach, only the \$10,000,000 threshold would apply for Threshold A securities. FIF conducted a survey of FIF members relating to the Form SHO reports that they had prepared for January 2025. The FIF members that responded to the survey had a total of 8,466 reportable securities for January. One hundred and twenty five (125) of these securities were Threshold A securities that were reportable based on the 2.5% threshold and not based on the \$10,000,000 threshold. This means that only 1.48% of all reportable securities would not have been reportable if the 2.5% threshold were not applied. Given the reporting burden, likelihood of inconsistent reporting and open interpretive questions relating to the reporting of the 1.48% of reportable securities where this scenario applies (i.e., where reporting is only required based on the 2.5% threshold), FIF members recommend excluding this scenario from reporting. These 125 securities also represent a small portion of the approximately 50,000 to 100,000 Threshold A and Threshold B securities estimated by FIF members.¹¹
- ***Provide a two-year extension from the requirement to apply the 2.5% threshold for reporting Threshold A securities.*** A two-year extension would provide additional time to address this challenge.
- ***Provide a list of Threshold A securities with outstanding shares.*** If the Commission were to provide a list of Threshold A securities with the outstanding shares for each security, this would not resolve the issue discussed above that the shares outstanding in EDGAR in many cases does not accurately reflect the issuer's shares outstanding, but it would at least ensure that managers determine their reportable securities consistently with other managers.
- ***Provide guidance or an exemption to allow managers to calculate the shares outstanding based on the data provided by a reputable vendor (consistent with Commission Rule 13d-1(j)),¹² which applies to Schedules 13D and 13G beneficial ownership reporting); provide a two-year extension from the requirement to apply the 2.5% threshold for ADRs and similar derivative securities.*** This set of more targeted relief would address certain challenges and provide additional time to address other challenges.

¹¹ The wide range of potential reportable securities that different managers have estimated supports the need for further clarity from the Commission as to the scope of reportable securities.

¹² 17 CFR §240.13d-1(j).

B. Other issues to be addressed

In addition to the three issues above, FIF members request that the Commission address the following issues previously raised by FIF members:

- **Scope of reportable products.** FIF members request that the Commission provide written guidance that convertible bonds and other convertible debt securities are not subject to reporting.¹³ FIF members further request that the Commission provide written guidance that a manager, when reporting the “number of shares” for a warrant in Table 1 or Table 2, should report the number of units of the warrant.
- **Position vs. transaction reporting.** FIF members request that the Commission provide written guidance that, since Rule 13f-2 is a position reporting system and not a transaction reporting system, managers should report based on their positions and not based on the underlying transactions. For example, the current Form SHO requires that if a manager does not have a change in gross short position from the prior settlement date, the manager must look beyond its position reporting system to its transaction reporting system to determine whether (i) it had no transactions after the prior settlement date, or (ii) it had multiple transactions after the prior settlement date that netted to a zero change in gross short position.¹⁴ In this scenario, it should be sufficient for the manager to report on Form SHO that it had no change in gross short position without having to look-through to the underlying transactions.
- **List of Threshold A securities.** Managers have different interpretations about whether certain securities are Threshold A securities. Accordingly, the quality of Form SHO reporting would be enhanced if the Commission were to maintain and make available to managers an updated list of Threshold A securities. It is also more efficient for the Commission to generate and provide this list as opposed to thousands of managers having to separately create this list (or source this list from a vendor). FIF members understand that providing such a list could be challenging for the Commission given the limited timeframe prior to the compliance date for Form SHO reporting. FIF members request that the Commission make such a list available within a reasonable timeframe, whether prior to or after commencement of Form SHO reporting. Given the lack of clarity as to whether certain securities are Threshold A or Threshold B, FIF members also request that the Commission provide guidance that if a manager is unclear as to whether a security is Threshold A or Threshold B, the manager is permitted to classify the security as a Threshold B security.

¹³ This guidance would be consistent with the following statement from the adopting release for Rule 13f-2: “... 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.” Securities Exchange Act Release No. 98738 (Oct. 13, 2023), 88 FR 75100 (Nov. 1, 2023), at 88 FR 75179.

¹⁴ See: Filer Manual – Volume II, EDGAR Filing, Version 72 (Dec. 2024), available at [efmvol2.pdf](#), at 8-309 and 8-310; and EDGAR Form SHO XML Technical Specification, Version 1.1 (Jan. 2025), accessible from https://www.sec.gov/submit-filings/technical-specifications#form_sho, at 3-4.

C. Requested timing

The list above is not intended to be a list of all issues identified and previously submitted by FIF members, but FIF members consider the issues above to be fundamental to Form SHO reporting. To the extent that the Commission determines that it could only implement one or more of the recommendations above by granting exemptive relief, FIF members request that the Commission grant such exemptive relief. FIF members believe that each of the recommendations set forth above, if implemented, would improve the quality of Form SHO reporting and further the Commission's policy objectives in adopting Form SHO reporting. FIF members are available to work with Commission representatives to help achieve meaningful Form SHO reporting.

To provide sufficient time for managers to properly implement Form SHO reporting, FIF members request that the Commission address the issues discussed in this letter (including the publication of FAQs and the granting of any exemptive relief) on or before June 1, 2025.

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Please contact me at howard.meyerson@fif.com after you and your colleagues have had the opportunity to review the items set forth above.

Very truly yours,

/s/ Howard Meyerson

Howard Meyerson
Managing Director, Financial Information Forum

cc: Commissioner Caroline A. Crenshaw
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