FINANCIAL INFORMATION FORUM

June 24, 2024

By electronic mail

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Attn: Timothy M. Riley, Branch Chief

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

Dear Mr. Riley,

Financial Information Forum ("FIF")[1] is submitting the questions and requests below 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.[2] 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.[3] 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.[4] This letter is focused solely on implementation issues and questions and does not express any legal positions.

FIF members request that the Commission provide written guidance in response to the interpretive questions and requests below on an expedited basis. At this time, given the various open interpretive questions discussed in this letter (including certain interpretive questions that are fundamental to how managers will need to implement Form SHO reporting), FIF members are impeded in their ability to proceed with implementation. Even if the Commission could provide guidance in response to the

[1] FIF (www.fif.com) was formed in 1996 to provide a centralized source of information on the implementation issues that impact the securities industry across the order lifecycle. Our participants include broker-dealers, exchanges, back office service bureaus, and market data, regulatory reporting and other technology vendors in the securities industry. Through topic-oriented working groups, FIF participants focus on critical issues and productive solutions to technology developments, regulatory initiatives, and other industry changes.
[2] 17 CFR §240.13f-2; 17 CFR §249.332.
[3] Ibid.
[4] Ibid.

questions set forth in this letter within two weeks, this would still leave managers with just over six months to implement Form SHO reporting. FIF members also consider it important for the Commission to provide managers with a testing period of not less than 180 days; the current implementation timetable would not allow for this testing period for many managers, particularly in light of the open interpretive questions discussed below. Accordingly, FIF members believe that a reasonable extension of the current implementation timetable for Form SHO reporting will be necessary.

The following are some of the key points discussed below:

- Requiring managers to limit Form SHO reporting to gross short positions resulting from Regulation SHO short sales will impose an unreasonable burden on managers and result in inaccurate reporting. Such a requirement also would be inconsistent with the reporting requirements for Table 2 of Form SHO. Accordingly, the Commission should clarify that managers are not required to limit their Form SHO reporting to gross short positions resulting from Regulation SHO short sales.
- Managers will have a very difficult time identifying which securities are Threshold A securities, unless the Commission publishes a list. The Commission is the primary source for Threshold A securities, and it is far more efficient for one entity (the Commission) to publish this list as opposed to hundreds of reporting managers each having to create and maintain this list (whether internally or through a vendor). By providing this list, the Commission will also enhance the quality of Form SHO reporting, promote greater consistency in reporting across managers, and enhance the quality of the data that the Commission disseminates to the public.
- FIF members are concerned that they are now subject to at least three distinct and potentially inconsistent position reporting requirements -- Form SHO, Form 13F and Financial Industry Regulatory Authority (FINRA) Rule 4560 (short interest reporting) -- for equity securities.
- FIF members require interpretive guidance on various reporting topics and questions, including the following:
    - Whether Question 6 of the Form 13F FAQs applies to Form SHO reporting
    - Reporting for securities that have a CINS rather than a CUSIP
    - Reporting for securities that do not have a CUSIP or a CINS
    - Calculation of the closing price for inter-listed securities
    - Calculation of the closing price for various other scenarios (described below)
    - Reporting for convertible equity securities and ADRs
    - Calculation of shares outstanding
    - Reporting for stock splits, reverse stock splits and other corporate actions
    - Reporting for derivative positions
    - Calculation and reporting of the U.S.-dollar value of a position held in another currency
    - Reporting for scenarios where an issuer’s status changes during a calendar month
    - Reporting when multiple books or portfolios are held as one back office account
    - Publication of technical documentation and availability of the EDGAR system for test reporting.

1. List of Threshold A securities

Rule 13f-2 provides separate reporting thresholds for securities issued by reporting issuers (Threshold A securities) and securities issued by non-reporting issuers (Threshold B securities).[5] Accordingly, managers will need to distinguish between Threshold A and Threshold B securities. FIF members request that the Commission make publicly available a list of Threshold A securities. The Commission is in the best position to generate this list from the EDGAR filing system. This list would be broader than the Official List of Section 13(f) Securities that the Commission currently makes publicly available to assist managers with their Form 13F filings (required under Commission Rule 13f-1).[6] The list made available by the Commission for Form 13F filings is limited to exchange-listed securities, while the requested list for Form SHO filings would include Threshold A securities whether or not they are exchange-listed securities.

FIF members understand that managers would still need to obtain from another source a list of Threshold B securities. While the Commission, in the adopting release for Rule 13f-2 (the "adopting release"),[7] declined to provide a list of ***all*** securities that are subject to Form SHO reporting,[8] FIF members are requesting that the Commission provide ***only a list of Threshold A securities***.

FIF members further request that the Commission update this list on a daily basis with an indication of any date during a month in which a security becomes or ceases to be a Threshold A security. Since the Commission's EDGAR system is the defining source of reporting issuers and their associated registered securities, it is appropriate for the Commission to make the requested list of Threshold A securities available to managers. FIF members request that the Commission update this list on a daily basis to assist managers in reporting properly for the scenario where an issuer becomes a reporting issuer or ceases to be a reporting issuer during a calendar month. This scenario is discussed in further detail below under the heading "Scenarios where an issuer's status changes during a calendar month." FIF members request that the Commission, at a minimum, make this list available on a monthly basis with an indication, where applicable, of any date during the month that the issuer became or ceased to be a reporting issuer (please see further discussion below).[9] FIF members also request that the Commission make this list available for automated download.

By making a list of Threshold A securities available to managers, the Commission would achieve the following important policy objectives: reduce the reporting burden on managers; improve the quality of reporting by managers; achieve greater consistency in reporting across managers; and enhance the quality of the data that the Commission disseminates to the public.

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[5] 17 CFR §240.13f-2(a).

[6] See Official List of Section 13(f) Securities, available at https://www.sec.gov/divisions/investment/13flists.

[7] Securities Exchange Act Release No. 98738 (Oct. 13, 2023), 88 FR 75100 (Nov. 1, 2023) ("Rule 13f-2 Adopting Release").

[8] Id. at 88 FR 75108.

[9] As discussed below, FIF members also request that this list include the outstanding shares for each Threshold A security.

2. Definition of "gross short position"

The definition of a gross short position to be reported should not have anything to do with the long or short status of any individual trade that took place. If the rule and guidance seek to limit reporting to positions that result from short sales, this is a mistake. Short position reporting should only be dependent on an entity's final gross short position at the end of the reporting period, regardless of the transactions that contributed to that position.

* * * * *

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)*** [emphasis added], without inclusion of any offsetting economic positions such as shares of the equity security or derivatives of such equity security."[10]

However, Form SHO does not limit a gross short position to shares held short as a result of short sales as defined under Regulation SHO. For example, under the Form SHO instructions, a manager is required to report in Column 7 of Table 2,

> … the net change in short position (represented as a number of shares) reflecting how the reported gross short position in shares of the security for which information is being reported are being closed out—or increased—as a result of the acquisition or sale of shares of that equity security, by taking into account:
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> 1) Short sales of the security that settled on that date.
>
> …
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> 4) Shares of the security that were sold in a put option exercise that creates or increases a short position on that security and settled on that date.[11]
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> 5) Shares of the security that were sold in a call option assignment that creates or increases a short position on that security and settled on that date.[12]
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> …
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> 9) Shares of the security that resulted from other activity not previously reported on this form that creates or increases a short position on that security and settled on that date, or that reduces or closes a short position on that security and settled on that date.

[10] 17 CFR §240.13f-2(b)(4).

[11] FIF members are not clear how a manager exercising a put option would be selling shares. FIF members request clarification on this point.

[12] FIF members are not clear how a manager that has been assigned a call option would be selling shares. FIF members request clarification on this point.

10) Activity other than (1) through (9) above that creates or increases, or reduces or closes, a short position on that security, including, but not limited to, shares resulting from ETF creation or redemption activity.[13]

The Form SHO instructions indicate that a gross short position can be increased (or decreased) based on activity other than short sales of the security pursuant to Regulation SHO. This contradicts the definition of "gross short position" in Rule 13f-2.

Interestingly, the Commission's proposing release for Rule 13f-2 does not include the phrase "as a result of short sales as defined in 17 CFR 242.200(a) (Rule 200(a) of Regulation SHO)" in the definition of "gross short position."[14] The Commission writes in the adopting release that it is modifying the proposal from the proposing release to "provide context and enhance comprehensibility, such as — adding a reference in the definition of 'gross short position' to 'short sales' as defined in Rule 200(a) of Regulation SHO …."[15] The Commission does not appear to provide any additional clarification on this change in the adopting release.

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For the following reasons, FIF members oppose any requirement for managers to exclude positions resulting from long sales -- and positions resulting from other transactions described above for Column 7 of Table 2 -- from their gross short position calculations:

- Form SHO is a position reporting regime and not a transaction reporting regime.
- Requiring the exclusion of positions resulting from specific types of transactions would impose a significant cost and burden on managers as managers would need to maintain pro forma sub-accounts to try to filter out specified transactions from their gross short position reporting.
- The cost and burden of having to exclude positions resulting from specific types of transactions is significantly increased by the fact that Form SHO reporting is based on settlement date positions.
- For various reasons (for example, the fact that Form SHO does not allow a manager to aggregate account positions for the same beneficial owner), Form SHO will represent a very rough approximation of a manager's short positions. Requiring managers to exclude long sales and other transactions from Form SHO reporting would make this reporting even less representative of a manager's true short positions (potentially to the point of making this reporting more misleading than informative).
- If managers are required to exclude certain sell transactions, it is not clear whether managers are required to include all buy transactions or only certain buy transactions. If managers are required to include all buy transactions, this would result in the understatement of short positions because all buy transactions, but only certain sell transactions, would be included. If managers are required to exclude certain buy transactions, the Commission would need to

[13] 17 CFR §249.332.
[14] Securities Exchange Act Release No. 94313 (Feb. 25, 2022), 87 FR 14950 (Mar. 16, 2022), at 87 FR 15016.
[15] Rule 13f-2 Adopting Release, at 88 FR 75104.

provide specific guidance as to which buy transactions should be included and which buy transactions should be excluded.

- Last, but definitely not least, it is not possible for the Commission to reconcile the exclusion of long sales (and other transactions) from the reporting of gross short positions with the Commission's instructions for Table 2.

For all of these reasons, it is important for the Commission to make clear that managers should not exclude positions resulting from long sales -- and positions resulting from other transactions described above for Column 7 of Table 2 -- from their gross short position calculations on Form SHO.

The current lack of clarity on this issue is impeding managers in their ability to implement short position reporting as this is a fundamental issue for managers on how to report. Accordingly, it is important that the Commission address this issue on an expedited basis. The following are two of the scenarios that FIF members have identified where the current ambiguity prevents managers from moving forward with implementation (these are two of numerous scenarios that could be highlighted):

- A manager is required to determine whether it is long or short for purposes of Regulation SHO based on an aggregation of accounts[16] while Form SHO reporting is based on individual accounts. This means there could be scenarios where a manager executes a sale that increases its gross short position in an individual account but the sale is not, in fact, a short sale under Regulation SHO. FIF members request confirmation from the Commission that managers should include gross short positions resulting from these sales when reporting under Form SHO.[17]
- A manager could have a long position in one account and a short position in another account and then record a journal transfer from the account with the long position to the account with the short position (thereby reducing the gross short position in the 2nd account). FIF members request confirmation from the Commission that this transaction should be reportable by the manager in Table 2 as a change in its gross short position and would impact the gross short position reported by the manager in Table 1.

3. Parents and subsidiaries

The Form SHO instructions provide:

> With respect to each equity security to which the circumstances described in Threshold A or Threshold B applies, the Manager shall report the information, as described in the

[16] *See*, for example, 17 CFR §242.200(f) ("In order to determine its net position, a broker or dealer shall aggregate all of its positions in a security unless it qualifies for independent trading unit aggregation, in which case each independent trading unit shall aggregate all of its positions in a security to determine its net position.").

[17] As a separate matter, to the extent that the Commission's Regulation SHO requirements, Form SHO reporting requirements, and the short interest reporting requirements adopted by the Financial Industry Regulatory Authority ("FINRA") are not consistent, it is important for the Commission and FINRA to notify their respective examiners to ensure that managers are not improperly questioned about this during examinations.

> "Special Instructions" below, aggregated across accounts over which the Manager, or any person under the Manager's control, has investment discretion.[18]

Question 6 of the Form 13F FAQs 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.[19]

FIF members request guidance on whether Question 6 of the Form 13F FAQs would also apply for Form SHO reporting. FIF members note that this interpretation, if applied to Form SHO reporting, would impose a significant additional reporting burden on managers, including coordination with foreign subsidiaries.

4. Parent and subsidiary reporting scenarios

Assuming that Question 6 of the Form 13F FAQs applies for Form SHO reporting, FIF members request confirmation on Form SHO reporting for the following scenarios involving a parent company and its subsidiary.

Scenario 1

- The parent's gross short position in ABCD exceeds the gross short position reporting threshold (this could be based on the parent's own gross short position or a combination of the gross short positions of the parent and the subsidiary)
- The subsidiary's gross short position in ABCD is below the reporting threshold.

FIF members request confirmation that the following reporting approach would be permitted for Scenario 1:

- The parent includes the gross short position of the subsidiary in the parent's reported gross short position without identifying the subsidiary or separately reporting the subsidiary's gross short position (i.e., similar approach to Form 13F)
- The subsidiary is not subject to any filing requirement in this scenario (i.e., similar approach to Form 13F).

Scenario 2

- The parent (without considering the position of its subsidiary) has a gross short position in ABCD that might or might not exceed the reporting threshold
- The subsidiary has a gross short position in ABCD that exceeds the reporting threshold.

[18] 17 CFR §249.332.
[19] See Frequently Asked Questions About Form 13F, available at https://www.sec.gov/divisions/investment/13ffaq.

FIF members request confirmation that the following reporting approach would be permitted for Scenario 2:

- The parent includes the gross short position of the subsidiary in the parent's reported gross short position without identifying the subsidiary or separately reporting the subsidiary's gross short position
- The subsidiary files a Form SHO Notice identifying the parent (assume the subsidiary does not plan to file a Form SHO Entries Report or Combination Report).

FIF members note that there could be other permitted approaches for reporting.

5. CUSIP reporting

Securities that are U.S. exchange-listed or have an over-the-counter ("OTC") trading symbol in the U.S.

There are a significant number of securities that can trade in the U.S. that have a CINS (CUSIP International Number System) identifier rather than a CUSIP (Committee on Uniform Security Identification Procedures) identifier.[20] According to the CUSIP Global Services website, "CINS was developed in 1989 as an extension to CUSIP in response to U.S. demand for global coverage, and is the local identifier of more than 30 non-North American markets."[21] FIF members assume that for securities that have a CINS rather than a CUSIP a firm would report the CINS identifier. FIF members request confirmation on this point and also request clarification on how firms should report these securities.

Securities that do not have any reportable trading activity

There are some U.S. securities that are not U.S. exchange-listed and do not have an OTC trading symbol in the U.S. These securities would not have a CUSIP or CINS. We describe these securities as securities that do not have any reportable trading activity. A security could fall within this category if, for example, all transactions in the security are made in reliance on Section 4(2) of the Securities Act, as such transactions are exempt from reporting to the Trade Reporting Facilities jointly operated by the Financial Industry Regulatory Authority ("FINRA") and the New York Stock Exchange and by FINRA and Nasdaq and the OTC Reporting Facility operated by FINRA (the "TRF and ORF").[22] FIF members believe that short positions would occur very rarely in these securities. However, there could be isolated instances where a short position could occur in such a security (for example, a manager could acquire a short position through a transaction with an affiliate or in a transaction with a counter-party where the short position is a hedge to a long position for a derivative of the same security). FIF members recommend that the Commission exclude from Form SHO reporting securities that do not have

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[20] See, for example, https://www.cusip.com/identifiers.html#/CUSIP and https://www.cusip.com/identifiers.html#/CINS.

[21] https://www.cusip.com/identifiers.html#/CINS.

[22] See, for example, FINRA Rule 6380A(e)(1)(B). We separately discuss below the scenario where an issuer registers a class of equity securities with the Commission to support a listed ADR, but the underlying equity securities do not trade in the U.S. at all.

reportable trading activity. If the Commission does not exclude these securities from Form SHO reporting, it is important for the Commission to clarify that firms would not be required to report a CUSIP for these securities. FIF members note that the adopting release appears to have conflicting guidance as to whether a CUSIP is required for all securities. This is discussed in the next sub-section.

Ambiguity in adopting release as to whether a CUSIP is required for every security

The instructions for Information Tables 1 and 2 of Form SHO, provide: "Enter in Column 5 the nine (9) digit CUSIP number of the security for which information is being reported, if applicable."[23] While the instructions for Information Tables 1 and 2 appear to make reporting of a CUSIP conditional on the availability of a CUSIP for a security, it appears from various statements in the adopting release that a manager is required to report a CUSIP for every security that the manager reports on Form SHO. For example, Footnote 35 of the adopting release provides that "Rule 13f-2 requires that Managers provide CUSIP numbers for equity securities for which information is reported on Form SHO."[24] The adopting release further provides:

> In DFA section 929X, Congress specifically directed the Commission to include CUSIP in short sale disclosure rules. CUSIP is a universally recognized identifier that has been used for a wide array of financial instruments since 1964, allowing securities transactions to be easily identified, cleared, and settled, including short sales. Furthermore, market participants and investors are familiar with CUSIPs, which are widely and publicly available and used to identify most U.S. stocks. Many companies display their CUSIPs on their websites, and brokers and dealers often provide investors with search engines to look up stocks by CUSIPs. Accordingly, while the Commission recognizes that there are licensing costs associated with the CUSIP, the Commission is adopting, as proposed, the requirement that Managers report in Column 5 of each of the Form SHO Information Tables the CUSIP for the equity security for which information is reported to help facilitate market participants' understanding of the reported data.[25]

In contrast, the paragraph in the adopting release that follows the paragraph quoted above only requires reporting of a FIGI "… if a FIGI has been assigned."[26]

The adopting release further provides:

> Final Rule 13f-2 will require Managers (defined in section 13(f)(6)(A) of the Exchange Act) to report to the Commission, on a monthly basis on related Form SHO, certain short position data and short activity data for certain equity securities. In particular:
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> ….

[23] 17 CFR §249.332.
[24] Rule 13f-2 Adopting Release, at 88 FR 75104.
[25] Id. at 88 FR 75120.
[26] Ibid.

> With regard to each individual equity security reported on by Managers in the Information Tables of Form SHO, Managers will report: the issuer's name and LEI if it has one, and the equity security's title of class, CUSIP, and Financial Instrument Global Identifier ("FIGI") (if any has been assigned).[27]

While this passage from the adopting release provides that reporting of a FIGI is required "if assigned", the same qualifier does not appear to apply for CUSIPs.

6. Methodology to calculate gross short positions

FIF members request confirmation that it would be permissible for managers to apply relevant aspects of the methodologies they employ to determine short interest position reporting under FINRA Rule 4560 to the reporting required by Form SHO. If the Commission does not agree with this suggestion, FIF members would like to have a discussion with Commission representatives to discuss potential implementation and ongoing compliance challenges for managers in having to apply inconsistent methodologies for short interest reporting to FINRA and Form SHO reporting to the Commission.

7. Inter-listed securities

FIF members have been discussing various scenarios relating to the reporting of gross short positions for inter-listed securities. FIF might, at a future date, submit questions, comments or requests for clarification relating to the reporting of gross short positions for inter-listed securities.

8. Closing price

Inter-listed securities

Form SHO requires managers to calculate and, if applicable, report their positions at the "close of regular trading hours" for each equity security.[28] The same security could be listed in multiple countries, including the U.S. The same security also could be listed in a foreign country and traded OTC (but not listed on an exchange) in the U.S.[29] In this latter scenario, a manager could seek to report based on the closing price in the foreign country or based on the closing price in the U.S. There are justifications for either approach. For example, the security could be more actively traded in the foreign country; on the other hand, the U.S. closing price could reflect activity that occurred subsequent to the close of trading in the foreign market. Managers have documented internal pricing policies as part of their corporate governance and controls. FIF members request confirmation that a manager would be permitted to rely on its documented internal pricing policies when determining the closing price of a reportable inter-listed security for purposes of Form SHO reporting.

[27] Id. at 88 FR 75103-75104.
[28] 17 CFR §240.13f-2(a)(i); Rule 13f-2 Adopting Release, at 88 FR 75186.
[29] Technically, securities listed in a foreign market and traded OTC (but not exchange-listed) in the U.S. might not be considered "inter-listed". For purposes of this letter, we use the term "inter-listed" to include these securities.

Securities that do not have a closing auction on a U.S. exchange

Many securities that are subject to reporting will not have a closing auction on a U.S. exchange. FIF members request confirmation that a manager, for purposes of Form SHO reporting, would be entitled to rely on its documented internal pricing policies when determining the closing price of a reportable security that does not have a closing auction on a U.S. exchange.

OTC securities

FIF members further note that 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. FIF members request confirmation that a manager, for purposes of Form SHO reporting, would be entitled to rely on its documented internal pricing policies when determining the closing price of an OTC security.

Closing price not available

The instructions to Column 1, Table 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."[30] It is not clear what the Commission means when it refers to a closing price not being available. A security could have a closing price for a trading day whether or not it had trading activity that day (for example, the closing price could be based on the most recent trading day during which trading activity occurred in the security). FIF members request confirmation that a manager, for purposes of Form SHO reporting, would be entitled to rely on its documented internal pricing policies when determining the closing price of a security. In other words, if a manager can determine a closing price for a security based on its internal pricing policies, this should be considered as the closing price being available.

9. Convertible equity securities and ADRs

FIF members request confirmation that managers should report convertible equity securities and ADRs separately from the reporting of the underlying symbol. For example, when a manager calculates its gross short position in a convertible equity security or ADR as a percentage of outstanding shares, the denominator would be based on the outstanding shares of the convertible equity security or ADR. FIF members assume this to be the case because Form SHO reporting is based on the security identifier (for example, a CUSIP), and a convertible equity security or ADR would have a different identifier as

[30] 17 CFR §249.332.

compared to the underlying security. In other words, FIF members request confirmation that reporting is on a security-by-security basis without aggregation across securities with different identifiers.

Consistent with the discussion above, FIF members assume that, where an ADR is equivalent to ten ordinary shares of the underlying issuer, a manager would report the number of shares of its gross short position based on the number of ADR units held short and not based on the equivalent number of underlying ordinary shares. FIF members request confirmation on this point.

10. Securities registered with the Commission that do not have any U.S. trading activity

There are some securities that are registered with the Commission that do not have any trading activity in the U.S., whether on a U.S. exchange or in the OTC market in the U.S. One scenario that FIF members are aware of is where an issuer registers a class of underlying ordinary shares with the Commission to support a listed ADR, but the underlying ordinary shares do not trade in the U.S. at all. FIF members request confirmation that managers would not be required to report gross short positions in these underlying ordinary shares.

11. Shares outstanding

A manager, in determining whether it has met the threshold for reporting for a Threshold A security, is required to determine the number of shares outstanding for the security being reported. Pursuant to the Form SHO instructions,

> The number of shares outstanding of the security for which information is being reported shall be determined by reference to an issuer's most recent annual or quarterly report, and any subsequent update thereto, filed with the Commission.[31]

FIF members note that, in many cases, the shares outstanding reported by market data providers does not match the shares outstanding as reported pursuant to the most recent Commission filing. In addition, in many cases, the shares outstanding reported across different market data providers can differ by significant amounts. The following is one of many examples that could be cited (the amounts reported below are as of May 22, 2024):

- Symbol: TM
  - Toyota ADR listed on the NYSE
  - 1 ADR share = 10 ordinary shares
- Symbol: TOYOF
  - Toyota F-Share
  - Same identifier as symbol 7203 listed on the Tokyo Stock Exchange
- 2023 Form 20F for Toyota
  - Reports 13.565 billion shares for the underlying ordinary shares
  - Reports 292.0 million shares for the ADR

[31] 17 CFR §249.332.

- Looking up TM on May 22, 2024
    - Bloomberg: 1.579 billion shares
    - Yahoo Finance: 1.35 billion shares
    - Macrotrends: 1.349 billion shares
    - Reuters: 13.474 billion shares.

One immediate challenge is that the user is requesting the outstanding shares for the ADR, but the vendors are apparently providing the outstanding shares for the underlying ordinary shares. Three of the four vendors divide the number of underlying ordinary shares by ten. This example demonstrates the challenges with referencing vendor sources to determine the shares outstanding for each Threshold A security. It would also be unreasonably burdensome for managers to have to access shares outstanding data from the EDGAR website.

Given the above challenges, FIF members recommend the following:

- The Commission should publish a daily file of all Threshold A securities and the applicable number of shares outstanding for each Threshold A security. The Commission receives and maintains this data in structured XBRL format, which would enable the Commission to generate and publish this information in a daily file on an automated basis.
- If the Commission publishes this daily file, the Commission should require managers to report based on the shares outstanding as reported by the Commission in the daily file. This would enhance consistency in reporting across managers.
- If the Commission does not publish this daily file, the Commission should clarify that a manager is entitled to rely on reputable third-party vendors to obtain this data.

Consistent with the discussion in the section above on convertible securities and ADRs, FIF members assume that the shares outstanding for an ADR would be based on the shares outstanding for the ADR and not based on the shares outstanding for the underlying ordinary shares. This is because Form SHO reporting is based on the security identifier, and the ADR and the underlying ordinary shares have different security identifiers. FIF members request confirmation on this point.

12. Stock splits and reverse stock splits

FIF members assume that, for Table 2, a manager would report a change in its gross short position that results solely from a stock split or a reverse stock split. Presumably, the same approach for stock splits and reverse stock splits would apply for other corporate actions such as stock dividends. FIF members request confirmation on this point.

One scenario that will require further consideration is where there is no trade in a security on the current trading day and a stock split, reverse stock split or other corporate event has occurred subsequent to the most recent prior date on which a trade occurred. Presumably, a manager (based on its internal corporate pricing policies) would reflect this corporate event in the closing price that the manager calculates for the current trading day.

13. Reporting for derivative positions

The Commission writes as follows in the adopting release:

> Managers do not have to account for economic exposure to an underlying equity security created through the use of equity derivatives when calculating the reporting thresholds for reporting short sales of that underlying equity security. However, once a Manager meets or exceeds a reporting threshold for an underlying equity security, the Manager will then be required to report certain short activity for each settlement date during the reporting calendar month, and that disclosure will take into account activity in options, tendered conversions, secondary offering transactions, and other equity derivatives or activity that might affect the reported short positions on Form SHO, as discussed further below.[32]

FIF members request confirmation that when the Commission refers to activity "that might affect the reported short positions on Form SHO" the Commission is only referring to activity that increases or decreases a manager's gross short position in the reportable equity security that is underlying the derivative (an example of such activity would be the assignment of a call option to a manager where the manager transfers the underlying shares).

14. Calculating the U.S.-dollar value of a position held in another currency

FIF members request confirmation that a manager would be 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. This situation could arise, potentially, 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.

15. Reporting a short position of 0 in Table 1

FIF members request confirmation that a manager could end up reporting a gross short position of zero in Table 1 if the manager exceeds the reporting threshold for the security for the month but has a gross short position of zero (which could include having a gross long position) at the end of the month. In this scenario, for the applicable month, the manager would report activity for the security in Table 2 but would report a gross short position of zero in Table 1.

16. Signage

FIF members request confirmation that the gross short position in Table 1 of Form SHO should be reported as a positive number.

[32] Rule 13f-2 Adopting Release, at 88 FR 75107.

17. **Scenarios where an issuer's status changes during a calendar month**

There are various scenarios where an issuer's status could change during a calendar month. For example, during a calendar month:

- A non-reporting issuer could become a reporting issuer
- A reporting issuer could become a non-reporting issuer
- A reporting or non-reporting issuer could cease to have tradeable securities
- An issuer could first have tradeable securities.

FIF members request that the Commission provide guidance to industry members on how to report for these scenarios. FIF members have discussed various potential reporting approaches for these scenarios, and each approach has certain benefits and detriments. The following is one of multiple potential approaches that the Commission could adopt. FIF members are available to discuss with Commission representatives the approach presented below and other potential approaches.

Potential approach:

- An issuer's status would be determined as of the last settlement date of a calendar month
- If an issuer becomes a reporting issuer during a month and is a reporting issuer as of the last settlement date of the month, a manager would apply the Threshold A calculations based on an averaging of the manager's gross short positions for the settlement dates in the month during which the issuer was a reporting issuer
- If an issuer becomes a non-reporting issuer during a month and is a non-reporting issuer as of the last settlement date of the month, a manager would determine whether the manager's gross short position for the associated security exceeded Threshold B for any settlement date in the month during which the issuer was a non-reporting issuer.

Under this approach, a manager would only report one row for a security for a particular month (for each table).

To assist managers in reporting properly for these scenarios, it is important for the Commission to make available a list of Threshold A securities (based on the data available to the Commission in EDGAR) and to update this list on a daily basis (including a list of daily changes).

18. **New managers**

A manager (including a new manager) is not required to file a Form 13F Holdings or Combination Report, or a Form 13F Notice, until 45 days after the end of the quarter for which data is being reported. FIF members request that the Commission provide guidance that a new manager similarly would not be required to submit a Form SHO Entries, Combination or Notice report, as applicable, until 30 days after its first full month of operations.

19. Multiple books or portfolios held as one back office account

The adopting release clarifies that a gross short position should be determined at the account level:

> As discussed in the Proposing Release, under the proposal, a Manager would report its "gross" short position in an equity security without offsetting such gross short position with "long" shares of the equity security or economically equivalent long positions obtained through derivatives of the equity security. For example, if a Manager has investment discretion over multiple accounts, some of which have long positions in an equity security and some have short positions in the same equity security, only the total gross short position in the "short accounts" is reported, without being offset by the long positions in the "long accounts."[33]

Rule 13f-2 and Form SHO do not define or describe what is meant by an account. There are instances where a manager, through a global position system, could be managing multiple books or portfolios under the same account. The manager could maintain multiple books or portfolios based on the activity of each book or portfolio. The manager could maintain long and short positions in these books or portfolios, all under one back office account maintained at a third-party custodian.

Consider, for example, the following scenario:

Global position system
Book1 – long 15,000
Book2 – short 5,000
Book3 – short 8,000
Book4 – long 3,000

Back office
Account1 – long 10,000 (corresponds to Book1 and Book2)
Account2 – short 5,000 (corresponds to Book3 and Book4).

In this scenario, the gross short position for the global position system is 13,000 (reflecting the gross short positions of Books 2 and 3), while the gross short position for the back office is 5,000. If the back office accounts are custodied with a third-party custodian, the manager might not have easy accessibility to the account level positions and accordingly, might want to report based on its own view of its positions, which is by books or portfolios. Even if the manager custodies its own positions, multiple desks at the manager might be using the same back office account under an aggregation unit, but the manager might maintain separate long and short positions organized based on the manager's books or portfolios.

FIF members request confirmation that, in this scenario, it would be permitted for the manager to compute its gross short positions at the book or portfolio level. More generally, FIF members request

[33] Rule 13f-2 Adopting Release, at 88 FR 75114.

confirmation that managers have appropriate flexibility in how to define an account for purposes of Form SHO reporting, subject to the manager maintaining documented policies that define the manager's methodology. This approach would enable each manager to determine the most relevant and feasible approach for defining its accounts for purposes of Form SHO reporting.

20. Reporting based on trade date

FIF members request that the Commission provide guidance (and exemptive relief, if necessary) that would permit a manager, at the manager's option, to report based on trade date as opposed to settlement date. This would enable these managers to report on a consistent basis for Form SHO and Form 13F.

21. Publication of technical documentation; availability of the EDGAR system for test reporting

When does the Commission intend to publish technical documentation for filing through EDGAR, including XML formatting and the credentialing process? When will the EDGAR system be available for test reporting?

22. Implementation date

Given the open questions and issues set forth in this letter, FIF members request that the Commission extend the current implementation date for Form SHO reporting. The appropriate period for this extension will depend on the guidance that the Commission provides in response to the questions and issues raised above and other questions and issues raised by market participants. FIF members are available to provide clarification on any of the points set forth above to assist in the resolution of these issues on an expedited basis.

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FIF appreciates the Commission's attention to the items set forth above. Please contact me at howard.meyerson@fif.com if you would like clarification on any of the items set forth in this letter.

Very truly yours,

/s/ Howard Meyerson

Howard Meyerson
Managing Director, Financial Information Forum

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