

FINANCIAL INFORMATION FORUM

November 8, 2024

By electronic mail

Securities and Exchange Commission

100 F Street, NE

Washington, DC 20549-1090

Attn: Gary Gensler, Chair

Hester M. Peirce, Commissioner

Caroline A. Crenshaw, Commissioner

Mark T. Uyeda, Commissioner

Jaime Lizárraga, Commissioner

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

Ladies and Gentlemen,

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

FIF members have been actively working on implementing Form SHO reporting. During 2024, FIF has hosted 36 Working Group calls on Form SHO reporting. There are often more than 100 participants on these calls, evidencing the broad industry effort to implement Form SHO reporting. Based on discussions during these Working Group calls, FIF members have identified a number of complex reporting issues

¹ 17 CFR §240.13f-2; 17 CFR §249.332.

² Ibid.

³ Ibid.

⁴ Ibid.

where further interpretive guidance from the Commission is required. FIF submitted letters to the Commission on June 24 and August 9, 2024 requesting guidance on these reporting issues.⁵ FIF members continue to identify issues that require further interpretive guidance, and FIF submitted a third letter to the Commission on November 5, 2024.⁶ FIF members have requested, and participated on, calls with Commission representatives to discuss these interpretive questions. FIF members appreciate that Commission representatives have participated on these calls and provided verbal guidance in response to interpretive questions raised by FIF members in the June and August letters. FIF members understand that other market participants also have raised interpretive questions to the Commission.

To date, the Commission has not provided written guidance in response to these interpretive questions, which is contrary to standard Commission practice.⁷ The Commission has provided verbal guidance on a number of issues, 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. In some cases, the FIF members participating on these calls have differing interpretations as to the guidance communicated by Commission representatives during these calls. Because of the lack of written guidance, different FIF members are adopting different approaches for reporting. This inconsistent reporting will negatively impact the quality of the data that managers report to the Commission. The result is that, in many cases, the Commission will receive inconsistent data and will disseminate misleading data to the public. This, in turn, could negatively impact issuers, financial markets and the members of the investing public who will rely on the accuracy of the data disseminated by the Commission. It is also problematic that managers will be subject to future examination by the Commission and the Financial Industry Regulatory Authority if these reporting requirements are not clearly defined.

The November letter submitted by FIF includes comments on the draft Technical Specification⁸ and other technical documentation⁹ published by the Commission on October 16, 2024. The Commission has written that the Technical Specification will be finalized on or about December 16, 2024.¹⁰ FIF members consider it highly problematic for the Commission to require reporting for activity that occurs beginning on January 2, 2025 when the Technical Specification will not be finalized until 17 days prior to such date.

⁵ 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=10&view=category>. 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&view=category> (“August 9 FIF Letter”).

⁶ FIF letter to the Commission (Nov. 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>.

⁷ See Section D of the August 9 FIF Letter, which discusses the standard practice of the Commission and self-regulatory organizations regulated by the Commission to publish FAQs for regulatory reporting requirements. August 9 FIF Letter, at 15-17.

⁸ EDGAR Form SHO XML Technical Specification, Version 1.0 (Dec. 2024) (“Draft Technical Specification”).

⁹ The public can access the draft Technical Specification and other draft technical documentation from www.sec.gov/submit-filings/technical-specifications under the Form SHO sub-heading.

¹⁰ Draft Technical Specification, at 2.

It is also important to highlight that many managers, consistent with standard industry practice, will have code freezes in effect during the 2nd half of December. FIF members understand that the Commission will be publishing additional guidance as part of the EDGAR instructions and are further concerned that managers will not have sufficient time to implement any changes or new requirements included in such instructions. FIF members also are concerned that they cannot submit test filings at this time.

In the Commission's open meeting to approve Rule 13f-2, Director Haoxiang Hsu of the Commission's Division of Trading and Markets responded as follows in response to a question from Commissioner Hester Peirce as to the Division's plans for addressing issues that may arise in connection with the implementation of Form SHO reporting:

Trading and Markets staff will continue to work with market participants and if there are any issues our door is always open to talk with us and flag any issues we see.... It is hard to speculate exactly what issues people may have but Commissioner we certainly do want to and will continue to work with market participants to make sure that there is a smooth transition of reporting.¹¹

FIF members appreciate this statement by Director Hsu. Given the complexity of the Form SHO reporting issues that FIF members have identified and submitted to the Commission, FIF members believe that a smooth transition of reporting can only occur if the Commission provides clear written guidance in response to the interpretive questions raised by FIF members and other market participants.

Based on the challenges described above, FIF members request that the Commission grant an extension of the implementation date for Form SHO reporting. More specifically, FIF members request that the Commission grant a six-month extension of the current implementation date, with such six-month period to run from the date that the Commission publishes written FAQs (or equivalent written guidance) in response to the interpretive questions raised by FIF members and other market participants. FIF members believe that, given the complexity of Form SHO reporting, it could take several months for the Commission to finalize such written guidance. FIF members are prepared to assist the Commission in this process.

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¹¹ Available at [2023 10 13 Open Meeting - YouTube](#).

FIF members appreciate your consideration of this extension request. Please contact me at howard.meyerson@fif.com after you have had an opportunity to review and consider this request.

Very truly yours,

/s/ Howard Meyerson

Howard Meyerson
Managing Director, Financial Information Forum

cc: Roland Lindmayer, Attorney Advisor, Division of Trading and Markets
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Haoxiang Zhu, Director of the Division of Trading and Markets