

Regulatory Alert

Regulatory Insights for Financial Services

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Short Sales Reporting: SEC Final Rule

Regulatory Insights:

- *New short sale reporting requirements under new Rule 13f-2 and new Form SHO*
- *SEC will aggregate data and publish the data, increasing market transparency and filling an existing data gap*
- *Reporting requirements were called for by the Dodd-Frank Act (2010)*

The Securities and Exchange Commission (SEC) adopts a [final rule](#) introducing new Rule 13f-2, related new Form SHO, and an amendment to the national market system plan governing the consolidated audit trail (CAT NMS Plan). The rule will require institutional investment managers (Managers) that reach a prescribed reporting threshold to report short position data and short activity data for certain equity securities to the SEC via Form SHO.

The final rule is intended to provide increased transparency regarding short selling activities in the securities market and to augment short sale-related information that is publicly available or accessible for a fee from existing short sale reporting regimes provided by some registered national securities exchanges and registered national securities associations.

For purposes of the rule, a “Manager” includes “any person, other than a natural person, investing in or buying and selling securities for its own account, and any person exercising investment discretion with respect to the account of any other person.” As such, a Manager “typically can include brokers and dealers, investment advisers, banks, insurance companies, pension funds and corporations.”

Reporting Requirements. As adopted, Rule 13f-2 requires Managers to file Form SHO with the SEC via the EDGAR system within 14 days after the end of each

calendar month for each equity security and account for which the Manager, or any person under the Manager’s control, has investment discretion that collectively meets or exceeds a prescribed threshold. The information to be provided for each equity security reported includes the:

- Issuer’s name, LEI, equity security’s title of class, CUSIP, and Financial Instrument Global Identifier (FIGI).
- End-of-month gross short position data and the “net” activity, including derivatives (e.g., options) for each settlement date during the calendar month reporting period (Information Tables 1 and 2 of Form SHO).

Note: Managers will be required to submit information for equity securities issued by both Section 15(d) “Reporting Company Issuers” and non-Reporting Company Issuers though subject to different reporting thresholds (see below).

Reporting Thresholds. Rule 13f-2 requires Managers to report information for each equity security if the following thresholds are met or exceeded:

- **Threshold A:** For equity securities registered under Section 12 of the Securities Exchange Act or for which the issuer is required to report under section

15(d) of the Exchange Act, i) a monthly average of daily gross short positions at the close of regular trading hours in the equity security with a U.S. dollar value of \$10 million or more, or ii) a monthly average of daily gross short positions at the close of regular trading hours in the equity security as a percentage of shares outstanding in the equity security of 2.5 percent or more. *Note:* the final rule adopts a monthly average of daily gross short positions for the dollar value prong rather than the proposed daily calculation.

- **Threshold B:** For equity securities of an issuer that is not a Reporting Company Issuer, gross short position with a U.S. dollar value of \$500,000 or more at the close of regular trading hours on any settlement date during the calendar month.

SEC plans to publicly release, through EDGAR, aggregated information based on the data reported in Information Tables 1 and 2 from all reporting managers.

Amendment to the CAT NMS Plan. The SEC adopted, “substantially as proposed,” the amendment to the CAT NMS Plan to require broker-dealers with a reporting obligation to CAT to report whether an original receipt or origination of an order to sell an equity security is a short

sale effected by a market maker in connection with bona fide market making (BFMM) activities in the equity security for which the bona fide market making exception in Rule 203(b)(2)(iii) of Regulation SHO is claimed.

Proposed Rule 205 and CAT "Buy to Cover" Reporting Requirements

The SEC did not adopt proposed Rule 205 and the related CAT "buy to cover" reporting requirements citing questions raised by commenters regarding potential “operational issues” with the requirement as proposed. The SEC states it will continue to evaluate the issues raised to determine if further action is appropriate.

Compliance Dates

The final rules will become effective sixty (60) days after publication in the Federal Register. The final rules provide a compliance period of twelve (12) months from the effective date for Rule 13f-2 and Form SHO and public aggregate reporting to follow three (3) months later. The compliance date for the CAT NMS Plan will be eighteen (18) months after the effective date.

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