

SEC Rule 13f-2: Enhancing Short Sale Disclosure

Regulation Overview and Form SHO Reporting Requirements

Rule Overview

On October 13, 2023 the SEC adopted new Rule 13f-2, as well as an amendment to the NMS Plan which governs the consolidated audit trail (CAT).

- **New Rule 13f-2:** Under the new rule, “managers” that meet or exceed certain specified reporting thresholds are required to report, on a monthly basis using Form SHO via EDGAR, specified short position data and short activity data for equity securities.
- **CAT NMS Plan Updates:** CAT firms will indicate whether an order is a short sale effected by a market maker with bona fide market making activities.

The new rules are designed to provide greater transparency of short sale-related data. The compliance date for Rule 13f-2 and Form SHO will be 12 months after the effective date (expected late 2024/ early 2025), and amendment to the CAT NMS Plan will be 18 months after (expected summer 2025).

Form SHO Reporting

“Managers” shall file a report on Form SHO with the SEC via EDGAR within **14 calendar days** after the end of each calendar month, with regard to a gross position that crosses any of the following three thresholds (A-1, A-2, B):

Threshold	Applicable Securities/ Issuers	Threshold Description
Threshold A	Securities that are registered with the SEC, or Issuers subject to SEC periodic reporting requirements (i.e., Forms 10-K, 10-Q, 8-K)	① A monthly average gross short position at the close of regular trading hours in the equity security of USD\$10 million or more.
		② A monthly average gross short position at the close of regular trading hours as a percentage of shares outstanding in the equity security of 2.5% or more.
Threshold B	Securities that are <u>not</u> registered with the SEC, or Issuers <u>not</u> subject to SEC periodic reporting requirements (i.e., Forms 10-K, 10-Q, 8-K)	A gross short position in the equity security of USD\$500,000 or more at the close of regular trading hours on any settlement date during the calendar month.

“Managers” has a much more broad definition than the name implies and includes (i) entities that invest in or buy/sell securities for its own account, and (ii) entities or natural persons that exercise investment discretion with respect to the account of any other entity or natural person.

“Gross short position” means the number of shares of the equity security that are held short, without inclusion of any offsetting economic positions such as shares or derivatives of the equity security.

If a manager determines that it has filed a Form SHO with errors that affect the accuracy of the short sale data reported, it must file an amended and restated Form SHO within **10 calendar days** of discovering the error.

Securities In Scope of Rule 13f-2

To be accounted for when calculating the “gross short position” reporting thresholds for reporting short sales	“Equity securities” of both public and private issuers, which includes common and preferred stock, certificate of interest, transferable share, and preorganization certificate.
Short activity to be reported once a manager meets or exceeds a reporting threshold	Same products as above, as well as equity futures, security convertibles, warrants/ rights, options, and constituents of ETFs.

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Threshold Calculation Methodologies and Reporting Requirements

Calculation Methodology for Each Reporting Threshold

Threshold A, for “reporting company issuers”, apply once per month on a security-by-security basis, and are calculated as follows:

Threshold	Calculation Formula
A-1	Monthly Avg = $\frac{\text{Sum across each settlement date in the month: (Gross Short Position in Shares Units) x (Closing Share Price)}}{\text{Number of settlement dates in the month}}$
A-2	Monthly Avg = $\frac{\text{Sum across each settlement date in the month: (Gross Short Position in Shares Units) / (Number of Shares Outstanding)}}{\text{Number of settlement dates in the month}}$

Threshold B, for “non-reporting company issuers”, includes issuers listed on non-US exchanges and applies on each settlement date:

Threshold	Calculation Formula
B	Gross Short Position = (Gross Short Position in Shares Units) x (Closing Share Price)

Form SHO Information Tables

Form SHO includes two Information Tables which must be filled out for each reported equity security by the manager holding the gross short position.

- Manager’s Gross Short Position:** The Manager’s end-of-month gross short position (in number of shares and U.S. dollar value) in the equity security at the close of regular trading hours on the last settlement date of the calendar month;
- Daily Activity Affecting Manager’s Gross Short Position During the Reporting Period:** For each individual settlement date during the calendar month, the Manager’s “net” activity (in number of shares) in the reported equity security, including activity in derivatives and constituents of ETFs.

Public Reporting by the SEC

All information provided in Form SHO will be subject to a confidential treatment request under Rule 83. So the information that the SEC will publish will be on an aggregate basis across all reporting Managers. SEC will publish the information on EDGAR within 1 month after the end of each calendar month:

- The aggregate gross short position at the close of the calendar month’s last settlement date;
- The corresponding U.S. dollar value of that aggregated gross short position;
- The aggregated “net” activity in the reported equity security for each settlement date during the calendar month.

The additional time prior to publication of data by the SEC is aimed to help reduce the risk of imitative trading activity by market participants and help to protect report Managers’ proprietary trading strategies.

Amendment to the CAT NMS Plan

The amendment to the CAT NMS Plan requires broker-dealers with a reporting obligation to CAT, to report to the CAT whether an original receipt or origination of an order to sell an equity security is a short sale for which a market maker is claiming the “bona fide market making” locate exception.

SEC Rule 13f-2

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