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SEC Adopts Short Sale Disclosure Rules

The SEC has adopted [new Rule 13f-2](#) which will require institutional investment managers to confidentially disclose their short positions and net monthly activity in equity securities to the SEC monthly on new Form SHO. Based on these reports, the SEC will then publish, on an aggregated basis per security, the gross short position and net activity. The new rules will become effective 60 days after publication in the *Federal Register* and compliance will be required commencing 12 months after the effective date.

Who must file these disclosures?

Pursuant to new Rule 13f-2, institutional investment managers, which Section 13(f)(6)(A) of the Exchange Act defines broadly to include 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, will be required to file Form SHO if they meet either of the short position thresholds described below:

- if the equity security is registered pursuant to Section 12 of the Exchange Act, or the issuer of the equity security is subject to Section 15(d) of the Exchange Act (defined as “reporting company issuers”), and the institutional investment manager has a monthly average of daily short gross positions, as of market close of
 - \$10 million or more, or
 - 2.5% or more of the issuer’s outstanding shares; or
- for all other equity securities¹, if the institutional investment manager has a gross short position in excess of \$500,000 or more at market close on any settlement date during the month.

What must be disclosed on Form SHO?

In addition to certain identifying information about the filing institutional investment manager and the issuer(s) of any reported equity securities, Form SHO must include, for each equity security required to be reported (per the reporting thresholds described above):

¹ New Rule 13f-2 and Form SHO apply to all equity securities as defined in Section 3(a)(11) of the Exchange Act and Rule 3a11-1 thereunder – which includes both exchange-listed and over the counter equity securities, including, inter alia, ETFs, certain derivatives, and options, warrants and other convertibles, to the extent these establish a short position, and is consistent with the scope of Regulation SHO.

- the gross short position as of the last settlement date of the calendar month (both the number of shares of the short position as well as the corresponding U.S. dollar value must be reported); and
- the net activity in the security for each individual settlement date during the calendar month.

When and how must it be filed?

Form SHO must be filed via EDGAR within 14 calendar days after the end of each calendar month.

Will the information provided on Form SHO be confidential?

Yes, the SEC has explicitly stated the information filed on Form SHO will be deemed subject to a confidential treatment request. The SEC will, however, publish, on an aggregated basis (across all institutional investment managers, without naming any), the gross short position and net daily activity in reported securities within one month after the end of the reporting calendar month.

When will these disclosure requirements become effective?

As noted above, new Rule 13f-2 and Form SHO will become effective 60 days after publication in the *Federal Register* and compliance will be required commencing 12 months after the effective date.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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