

CLIENT ALERT

Short Sale Reporting on Form SHO on the Horizon

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It has been a little over one year since the Securities and Exchange Commission adopted a rule requiring institutional investment managers to file reports on Form SHO regarding their short positions and short sale activity.¹ Rule 13f-2 under the Securities Exchange Act of 1934 became effective on January 2, 2024.

Key Dates:

Compliance Date: January 2, 2025.

First Reporting Month: January 2025.

First Form SHO Reports Due: by February 14, 2025 (within 14 calendar days after the end of the reporting month).²

Who Must File?

Every institutional investment manager, as defined in Section 13(f)(6)(A) of the Exchange Act, that engages in short selling in excess of certain thresholds must file reports on Form SHO. In other words, this includes any person, other than a natural

¹ See "SEC Adopts New Short Position and Short Activity Reporting Rule for Institutional Investment Managers," Willkie Farr & Gallagher LLP Client Alert (Oct. 24, 2023), available [here](#).

² See "Corrected: SEC Staff Publishes Draft Taxonomy for Form SHO," Oct. 18, 2024, available [here](#).

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person, that invests in or buys and sells securities for its own account, and any person exercising investment discretion with respect to the account of any other person. The requirement to file is not limited to Form 13F filers or to managers of large portfolios.

If two or more institutional investment managers exercise investment discretion over the same security, only one of the managers must file the report. An institutional investment manager may use the cover page of Form SHO to indicate whether another manager(s) reports information pertinent to the reporting manager.

What Securities are Covered?

Rule 13f-2 requires institutional investment managers to report short positions and short activity with respect to two types of securities:

1. any equity security of a class of securities that is registered under Section 12 of the Exchange Act or for which the issuer is required to file reports under Section 15(d) of the Exchange Act (“Reporting Company”); and
2. any equity security of an issuer that is not a Reporting Company (including non-U.S. equity securities) as described in 1, above (“Non-Reporting Company”).

The scope of the reporting requirement is not limited to “13F securities” or to securities that are traded in the U.S.

When Must a Short Position or Short Activity be Included on Form SHO?

An institutional investment manager must include a Reporting Company security on Form SHO when the manager meets or exceeds either (1) a monthly average gross short position at the close of regular trading hours in the equity security with a U.S. dollar value of \$10 million or more; or (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.

An institutional investment manager must include a Non-Reporting Company security on Form SHO when the manager meets or exceeds a gross short position in the security 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.

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What are the Filing Requirements?

Reports must be filed on Form SHO via the SEC's EDGAR system within 14 calendar days after the end of each calendar month. An institutional investment manager must file Form SHO in an eXtensible Markup Language that is specific to Form SHO.³

What Information is Reported on Form SHO?

Form SHO includes a cover page providing basic information about the institutional investment manager (e.g., its name, contact information and the calendar month of the reporting period), and two information tables.

1. Information Table 1 captures the institutional investment manager's monthly gross short position in a reported equity security (i.e., the number of shares and dollar amount), the settlement date, and identifying information about the security and its issuer.
2. Information Table 2 captures daily activity affecting the institutional investment manager's gross short position during a reporting period (i.e., for each individual settlement date during the calendar month, the net change in short position), along with the settlement date and identifying information about the security and issuer.

What will the SEC do with this Information?

The SEC has stated that it will treat all information reported on Form SHO confidentially. The SEC intends to publish aggregated, anonymized data on a one-month delayed basis.

³ The SEC staff has published a draft taxonomy at [here](#).

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If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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