

## ALERTS

## REMINDER: SEC Short Position (Form SHO) Filing Deadline Fast Approaching

**November 11, 2024**

As of Jan. 2, 2025, institutional investment managers (“Managers”) will need to comply with recently adopted SEC rule 13f-2 (“Rule 13f-2”) of the Securities Exchange Act of 1934, as amended (“Exchange Act”),<sup>[1]</sup> which establishes a mandatory short position reporting regime on Managers.<sup>[2]</sup> Specifically, starting in January 2025, Managers will need to assess on a monthly basis whether they exercise investment discretion over a gross short position in any equity security that reaches an applicable reporting threshold and, if so, submit a Form SHO filing regarding such position(s) to the SEC via Edgar within fourteen (14) calendar days of month end. While industry group efforts to delay or vacate the rule continue, the SEC recently published a draft EDGAR submission taxonomy for Form SHO<sup>[3]</sup> and reconfirmed that the first Form SHO filing deadline will be Feb. 14, 2025.<sup>[4]</sup>

Rule 13f-2’s reporting requirements are quite broad. Unlike Form 13F filing obligations, there is no exclusion under Rule 13f-2 for Managers who exercise investment discretion over securities below an aggregate threshold. Further, unlike Form 13F, the SEC will not be publishing a list of Rule 13f-2 securities; rather, the SEC has noted that *all* equity securities are potentially subject to reporting under Rule 13f-2.

Below is an overview of certain key considerations relating to Rule 13f-2. Additional information is available in Schulte’s Form SHO Alert.

- **Compliance Date**

- Rule 13f-2’s compliance date is **Jan. 2, 2025**.

- The initial report required by Rule 13f-2, which will cover gross short positions that exceeded the applicable threshold during January 2025 (which may include gross short positions entered into *prior to* January 2025), is due **Feb. 14, 2025**.

- **Reporting Thresholds**

- Reporting is triggered where a Manager exercises investment discretion over a gross short position in an equity security that exceeds the relevant threshold below.
  - Reporting Company Issuers (Threshold A):[5]
    - **Monthly average** gross short position in the relevant equity security that equals or exceeds (i) \$10 million (USD) or (ii) 2.5 percent of shares outstanding in the equity security.[6]
  - Non-Reporting Company Issuers (Threshold B):[7]
    - Gross short position in the relevant security that equals or exceeds \$500,000 at the close of regular trading hours on **any settlement day** during the month.
    - Managers will need to ensure they identify and report each position that exceeds the applicable reporting threshold. Notably, elective over-reporting may itself be viewed as non-compliant with Rule 13f-2.

- **Submission Timing**

- As indicated above, reports required by Rule 13f-2, which are made on Form SHO, are due within fourteen (14) calendar days of the end of each calendar month.
- Amended filings are required within 10 calendar days of discovering **any error** in a previously filed Form SHO, including “de minimis” errors.

- **Manner of Reporting**

- Submissions must be in XML format and submitted via EDGAR.

- **Public Dissemination**

- Information reported on Tables 1 and 2 of Form SHO will be published by the SEC on an aggregated and anonymized basis. Information

identifying reporting managers (e.g., cover page information) will *not* be publicly disseminated.

- The above data will be published approximately one (1) month following the end of calendar month covered in the report. For instance, information relating to short positions from June 2025 will be published by the end of July 2025.

## **Key Takeaways.**

Starting in January 2025, Managers will need to identify *each equity security* in which they met or exceeded an applicable Rule 13f-2 reporting threshold. This will require that Managers categorize equity securities as Reporting Company and Non-Reporting Company Issuer securities and pull third-party information necessary to determine whether a reporting threshold has been met (e.g., shares outstanding information for Threshold A calculations and pricing information for Thresholds A and B calculations) and identify all the information necessary to complete Form SHO. We anticipate this being a very involved process, and Managers will likely need to engage third-party vendors to identify certain information necessary to both identify reportable positions and accurately complete Form SHO, which must be submitted via EDGAR using a custom XML format within fourteen (14) calendar days of month end.

Managers are strongly encouraged to analyze recent monthly data related to short positions prior to January 2025 in order to test their ability to comply with Rule 13f-2's reporting requirements and troubleshoot their data sources and systems in relation to Rule 13f-2's requirements prior to the end of January 2025 (particularly given the fourteen (14) calendar day turnaround time after month end). Managers that anticipate having SRZ attorneys assist with their Rule 13f-2 reporting obligations, including with respect to the EDGARization and submission of their Form SHO filings, should contact their attorney at Schulte Roth & Zabel or one of this alert's authors promptly.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

[1] Exchange Act Release No. 34-98738 (Oct. 13, 2023), available at <https://www.sec.gov/files/rules/final/2023/34-98738.pdf> (“Adopting Release”).

[2] An institutional investment manager is broadly defined under Section 13(f)(6)(A) of the Exchange Act to cover “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.” The definition is the same as used in 13F.

[3] Available here.

[4] See the SEC’s Corrected Announcement: SEC Staff Publishes Draft Taxonomy for Form SHO, available here, (“The first reporting month is January 2025. The first Form SHO filings are due within 14 calendar days after the end of the reporting month.”)

[5] Applies to “each equity security that is of a class of securities that is registered pursuant to section 12 of the Exchange Act or for which the issuer of that class of securities is required to file reports pursuant to section 15(d) of the Exchange Act.”

[6] Calculated at the close of regular trading hours, as defined in Exchange Act rule 600(b)(88).

[7] Applies to any equity security that does not qualify for the Reporting Company Issuer thresholds.

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