



November 25, 2024

**By electronic mail**

Vanessa Countryman  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

**Re: File Number S7-08-22: Short Position and Short Activity Reporting by Institutional Investment Managers**

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association (“SIFMA”), its Asset Management Group (“SIFMA AMG”), the Investment Company Institute (“ICI”), the Insured Retirement Institute (“IRI”), the FIA Principal Traders Group (“FIA PTG”) and the Investment Adviser Association (“IAA”) (the “industry associations”)<sup>1</sup> are submitting this letter on behalf of our respective members (the “association members”) relating to the implementation of Rule 13f-2 and the associated Form SHO adopted by the Securities and Exchange Commission (“Commission”) on October 13, 2023 to request an 18-month extension of the compliance date for the rule, which is currently January 2, 2025.<sup>2</sup> The industry associations are happy to work with the Commission on the legal form of any such relief. As the Commission is aware, Rule 13f-2 and Form SHO require “institutional investment managers” (“managers”) to report to the Commission on Table 1 of Form SHO their end-of-month gross short positions in equity securities where the managers exceed specified gross short position thresholds. They also require managers to report on Table 2 of Form SHO daily changes in their gross short positions during any month where the manager has exceeded the specified gross short position threshold for the applicable security.

The association members subject to the new Rule 13f-2 and Form SHO reporting requirements have been working very diligently on compliance with the new requirements since the Commission adopted them in October 2023. This has included, for example, developing and implementing system changes needed to capture the relevant data so that association members are in a position to report it to the Commission consistent with the rule’s requirements, as well as developing robust policies and procedures governing the overall reporting process. Despite these significant efforts, association members are very concerned about their ability to meet the January 2, 2025 compliance date given the deficiencies with the technical specifications so far

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<sup>1</sup> Descriptions of each industry association signatory to this letter are included in an appendix.

<sup>2</sup> 17 CFR §240.13f-2; 17 CFR §249.332.

released by the Commission as well as other deficiencies, and the lack of a scheduled testing environment for Form SHO EDGAR reporting.

Association members are concerned that in the event the compliance date is not extended, reporting will, at a minimum, likely result in inconsistent data sets being reported to the Commission. This inconsistency is a result of the lack of engagement with market participants to provide necessary reporting guidance in advance of the compliance date. To address certain outstanding interpretative questions related to reporting under the new Rule 13f-2 and Form SHO reporting requirements, certain industry associations have previously sought, but have not received, reporting guidelines from the Commission/its staff on these questions.<sup>3</sup> Although association members continue to expend significant efforts to develop their systems and processes to comply with the new Rule 13f-2 and Form SHO reporting requirements, they are concerned that firms may be taking different interpretative approaches to complying with the new reporting requirements.

An example of an area where reporting guidelines remain unavailable is how reporting managers should address the limitation on the number of short positions that can be reported under EDGAR. In its current configuration, the EDGAR submission portal currently caps reporting to only 100 short positions, raising questions as to how reporting managers will report short positions more numerous than this cap. In addition, the current version of the Form SHO technical specification indicates that an “Invalid Issuer CIK” would be considered a submission error with a corresponding “SUSPENDED” severity, without regard to whether the issuer is a non-reporting issuer, raising questions of how to address rejected submissions.

An example of an area where no formal written guidance has been issued is how (or even if) reporters can report convertible bonds, given that the specification for Column 7 in each of Tables 1 and 2 of Form SHO does not allow for the reporting of a short position in units other than “number of shares”, as well as the potential irrelevance of “shares outstanding” as a metric for such securities for purposes of calculating the reporting thresholds for convertible bonds. In addition, the industry associations understand that the final Form SHO XML technical specification is not expected to be published until December 16, 2024, providing reporters with very little time for any final builds and testing before the January 2, 2025 compliance date if any changes are made to it. Moreover, certain association members note that they may not be able to make such changes because they are subject to full code freezes at year-end to help manage and mitigate IT risk.

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<sup>3</sup> See, e.g., FIF letter to the Commission (June 24, 2024), available at <https://fif.com/index.php/working-groups/category/271-comment-letters?download=2955:fif-letter-to-the-sec-relating-to-the-implementation-of-short-position-and-short-activity-reporting&start=10&view=category> and FIF letter to the Commission (Aug. 9, 2024), available at <https://fif.com/index.php/working-groups/category/271-comment-letters?download=2983:fif-follow-up-letter-to-the-sec-relating-to-the-implementation-of-short-position-and-short-activity-reporting&view=category>. Any oral guidance that may have been provided in discussions with Commission staff is limited because it is not memorialized and is only communicated to a limited number of market participants.

Given the imminent compliance date for the rule and the lack of reporting guidelines or formal guidance, association members are now making their own judgments on how to comply, and how to design and build their systems to comply, with the new Rule 13f-2 and Form SHO reporting requirements. The industry associations believe that this could very well result in inconsistent data sets being reported to the Commission initially, which in turn puts the Commission in the position of having to potentially compile and publish inconsistent and misleading data to the public. Further, the absence of such guidance by the compliance date increases the likelihood that initial builds may have to be redesigned and rebuilt later when guidance is provided.

Accordingly, the industry associations respectfully request an 18-month extension of the January 2, 2025 compliance date with Rule 13f-2 and Form SHO.<sup>4</sup> As noted, the industry associations are happy to work with the Commission on the legal form of any such relief (e.g., a Commission order, no-action relief, some form of good faith compliance time period, and/or another form consistent with the Commission's views). Such an extension will provide association members with additional time to work through outstanding reporting and interpretative questions with the goal of providing uniform data to the Commission. The industry associations would welcome the participation of the Commission in these efforts, as we all share the collective goal of making the new reporting regime work and provide useful data to the public. These efforts in turn should help the Commission to seamlessly disseminate publicly the data required under the rule in the manner contemplated by the rule.

Sincerely,

SIFMA

SIFMA AMG

ICI

IRI

FIA PTG

IAA

cc: Gary Gensler, Chair  
Hester Peirce, Commissioner  
Caroline Crenshaw, Commissioner  
Mark Uyeda, Commissioner  
Jaime Lizárraga, Commissioner

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<sup>4</sup> 17 CFR §240.13f-2; 17 CFR §249.332.

## **Appendix – Description of Industry Association Signatories**

**SIFMA** - SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

**SIFMA AMG** - SIFMA AMG brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG's members represent U.S. and global asset management firms whose combined assets under management exceed \$45 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds. For more information, visit <https://www.sifma.org/committees/amg/>.

**ICI** - The ICI is the leading association representing the asset management industry in service of individual investors. ICI's members include mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in other jurisdictions. Its members manage \$37.8 trillion invested in funds registered under the US Investment Company Act of 1940, serving more than 120 million investors. Members manage an additional \$8.7 trillion in regulated fund assets managed outside the United States. ICI also represents its members in their capacity as investment advisers to collective investment trusts (CITs) and retail separately managed accounts (SMAs). ICI has offices in Washington DC, Brussels, and London.

**IRI** - The IRI is the leading association for the entire supply chain of insured retirement strategies, including life insurers, asset managers, broker dealers, banks, marketing organizations, law firms, and solution providers. IRI members account for 90 percent of annuity assets in the U.S., include the foremost distributors of protected lifetime income solutions, and are represented by financial professionals serving millions of Americans. IRI champions retirement security for all through leadership in advocacy, awareness, research, diversity, equity, and inclusion, and the advancement of digital solutions within a collaborative industry community.

**FIA PTG** - FIA PTG is an association of firms, many of whom are broker-dealers, who trade their own capital on exchanges in futures, options and equities markets worldwide. FIA PTG members engage in manual, automated and hybrid methods of trading, and they are active in a wide variety of asset classes, including equities, fixed income, foreign exchange and commodities. FIA PTG member firms serve as a critical source of liquidity, allowing those who

use the markets, including individual investors, to manage their risks and invest effectively. The presence of competitive professional traders contributing to price discovery and the provision of liquidity is a hallmark of well-functioning markets. FIA PTG advocates for open access to markets, transparency and data-driven policy. For more information, visit <http://www.fia.org/ptg>.

**IAA** - The IAA is the leading organization dedicated to advancing the interests of fiduciary investment advisers. For more than 85 years, the IAA has been advocating for advisers before Congress and U.S. and global regulators, promoting best practices and providing education and resources to empower advisers to effectively serve their clients, the capital markets, and the U.S. economy. The IAA's member firms manage more than \$35 trillion in assets for a wide variety of individual and institutional clients, including pension plans, trusts, mutual funds, private funds, endowments, foundations, and corporations. For more information, please visit [www.investmentadviser.org](http://www.investmentadviser.org).