

Final Rules: Enhancing Short Sale Disclosure



The Securities and Exchange Commission adopted new Rule 13f-2 and related Form SHO and an amendment to the national market system plan (“NMS Plan”) governing the consolidated audit trail (“CAT”) to provide greater transparency of short sale-related data.

- Under Rule 13f-2, institutional investment managers (“Managers”) that meet or exceed certain prescribed reporting thresholds will report on Form SHO certain short position and short activity data for equity securities. The Commission will thereafter aggregate and publish certain data collected from Form SHO.
- Under the amendment to the NMS Plan governing CAT (“CAT NMS Plan”), CAT reporting firms will indicate whether an order is a short sale effected by a market maker in connection with bona fide market making (“BFMM”) activities for which the BFMM exception in Rule 203(b)(2)(iii) of Regulation SHO is claimed.

Why This Matters

Section 13(f)(2) of the Securities Exchange Act of 1934 (“Exchange Act”), added under Section 929X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, requires the Commission to prescribe rules to make certain short sale related data publicly available. The data reported in Form SHO filings and the aggregated data from Form SHO filings that are published by the Commission pursuant to Rule 13f-2 will among other things, help inform market participants regarding the overall short sale activity by reporting Managers and will bolster the Commission’s and other regulators’ oversight of short selling.

The amendment to the CAT NMS Plan will supplement the short sale data made available to the Commission in Form SHO filings and provide the Commission and other regulators with an additional tool regarding the use of the bona fide market making exception to the “locate” requirement of Regulation SHO by CAT reporting firms.

Rule 13f-2, Form SHO, and the amendment to the CAT NMS Plan will fill an information gap for the Commission and other regulators by providing insights into the lifecycle of a short sale that are not available under existing data sources.

How the Rules Apply

Rule 13f-2 and Form SHO: Rule 13f-2 will require a Manager to file a Form SHO report via the Commission’s EDGAR system within 14 calendar days after the end of each calendar month with regard 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 (“Reporting Company Issuer”) over which the Manager and all accounts over which the Manager (or any person under the Manager’s control) has investment discretion with respect to a monthly average gross short position that meets or exceeds a prescribed reporting threshold; and

- Each equity security that is of a class of securities of an issuer that is not a Reporting Company Issuer over which the Manager and all accounts over which the Manager (or any person under the Manager’s control) has investment discretion with respect to a gross short position that meets or exceeds a prescribed reporting threshold.

For each reported equity security, a Manager will be required to report on Form SHO certain information, including:

- The Manager’s end-of-month gross short position in the equity security at the close of regular trading hours on the last settlement date of the calendar month; and
- For each individual settlement date during the calendar month, the Manager’s “net” activity in the reported equity security, which includes activity in derivatives, such as options.

The Commission will then publish, through EDGAR, and on a slightly delayed basis, certain aggregated short sale related information regarding each equity security reported by Managers on Form SHO, including, for example:

- As an aggregated number of shares across all reporting Managers, the Managers’ gross short position in the reported equity security at the close of regular trading hours on the last settlement date of the calendar month, as well as the corresponding dollar value of that reported gross short position; and
- For each settlement date during the calendar month, the “net” activity in the reported equity security, as aggregated across all reporting Managers.

Amendment to the CAT NMS Plan: The amendment to the CAT NMS Plan will require CAT reporting firms to report to the CAT, for the original receipt or origination of an order to sell an equity security, whether the order is a short sale effected by a market maker in connection with bona fide market making activities in the equity security for which the bona fide market making exception in Rule 203(b)(2)(iii) of Regulation SHO is claimed.

What’s Next

Rule 13f-2, Form SHO, and the amendment to the CAT NMS Plan will become effective 60 days following the date of publication of the adopting release in the Federal Register. The compliance date for Rule 13f-2 and Form SHO will be 12 months after the effective date of the adopting release – with public aggregated reporting to follow 3 months later. The compliance date for the amendment to the CAT NMS Plan will be 18 months after the effective date of the adopting release.