Managed Funds Association
The Voice of the Global Alternative Investment Industry
Washington, D.C. | New York

April 26, 2022

Via Web Submission

Ms. Vanessa Countryman
Secretary
United States Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549

Re: Short Position and Short Activity Reporting by Institutional Investment Managers; File No. S7-08-22

Dear Ms. Countryman:

Managed Funds Association ("**MFA**")[1] appreciates the opportunity to submit these comments to the Securities and Exchange Commission ("**SEC**" or "**Commission**") in response to the Commission's request for comments on proposed Rule 13f-2 and proposed Form SHO ("**Proposal**").[2]

We want to begin by commending the Commission for its proposed approach of publishing aggregated, anonymized short position data, which is consistent with both Congressional intent and the plain language of Section 929X(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which calls upon the SEC to "prescribe rules providing for the public disclosure of the name of the issuer and the title, class, CUSIP number, [and] *aggregate amount* of the number of short sales of each security…." We also share the Commission's view that certain categories of short position data, if collected and reported appropriately, will promote greater risk management among market participants and may facilitate capital formation. We believe that transparency of certain aggregate short position data is beneficial to markets and market participants and are supportive of equal access to this information by all investors.

[1] MFA represents the global alternative investment industry and its investors by advocating for regulatory, tax and other public policies that foster efficient, transparent, and fair capital markets. MFA's more than 150 members collectively manage nearly $1.6 trillion across a diverse group of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors to diversify their investments, manage risk, and generate attractive returns over time. MFA has a global presence and is active in Washington, London, Brussels, and Asia.

[2] *Short Position and Short Activity Reporting by Institutional Investment Managers*, 87 Fed. Reg. 14950 (Mar. 16, 2022), available at: https://www.govinfo.gov/content/pkg/FR-2022-03-16/pdf/2022-04670.pdf.

We do, however, have strong concerns about the breadth of the short position data the SEC would collect and disseminate under Rule 13f-2 and the proposed onerous and duplicative collection via Form SHO of data that is already available through existing infrastructure.[3] Much of the data proposed to be collected and disseminated is not mandated by Section 929X(a), and the Commission does not adequately justify why it is going significantly beyond Congress's explicit mandate. In addition, the proposed rule and form would create an entirely new, unduly complicated, and very costly framework for managers when all of the information needed to satisfy the public disclosure mandate of Section 929X(a), and much of the additional information sought by the SEC, is already readily available for publication or, as applicable, use by regulators. Furthermore, any incremental benefits of the Proposal are far outweighed by risks created and disproportionate burdens placed on managers. In short, we believe the legislative goals and the public interest is best served by an SEC rule that leverages existing reporting sources and infrastructure to satisfy both Section 929X(a)'s mandate and any additional private reporting the SEC determines after rulemaking is beneficial, and thereby avoids significant and unnecessary costs to market participants.

Furthermore, as the Commission conducts its cost-benefit analysis and evaluates the burden on managers, we urge it to consider in aggregate the legal, regulatory, compliance, and operational costs to managers of all of the SEC's proposed rulemakings in their entirety. We are strongly concerned that the combined costs will be insurmountable for small and newly-formed advisers, and lead to industry consolidation, thereby decreasing investment competition and investor choice.

To the extent the SEC nonetheless determines to proceed with an entirely new framework, we recommend that the Commission amend its proposal in certain keys respects to provide clarity, reduce complexity, enhance data integrity, and mitigate the risk of potential negative consequences associated with individual manager level reporting to the SEC.

I. Executive Summary

MFA strongly supports the Commission establishing a rule to publish aggregated, anonymized short position data. We do not, however, support the Commission's approach of creating the entirely new reporting framework set forth in proposed Rule 13f-2 and proposed Form SHO.

First, we believe the SEC can obtain most of the information it proposes to collect from managers from existing sources without establishing a burdensome and costly new framework. In the decade since Congress instructed the SEC to prescribe rules for the public disclosure of aggregated short position information, key frameworks have *already been established*, most

[3] Relatedly, we urge the SEC to extend the comment period for the Proposal. The existing comment period is too short for market participants to provide adequate feedback on this complex rulemaking, which would impose an entirely new reporting framework for investment managers. We appreciate that the SEC is eager to complete the rulemaking, which was mandated by the Section 929X of the Dodd-Frank Act. However, we strongly believe that the SEC has an obligation to take the time necessary to complete the rulemaking in a manner that will optimize the benefits of any short reporting framework for market participants and regulators.

notably, through FINRA and CAT, that are capable of (i) providing the public with information to satisfy the mandate of Section 929X(a), and (ii) providing the Commission with significant additional data about short sale activity to help it better oversee the markets and understand the role short selling may play in market events. Indeed, the Staff acknowledges that certain amendments to CAT will be released in a matter of months and is currently proposing to require the reporting of "buy to cover" information to CAT. In addition, there are a number of significant new SEC rules and pending SEC rule proposals that could directly impact this Proposal and the value of the data the Commission intends to collect. As a result, we have strong concerns that the Commission is proposing to adopt sweeping reporting requirements that are in many respects duplicative, and before the Commission has appropriately considered the other options at its disposal for obtaining the same or similar information or the collective burden and risks of various new and potential requirements.

Second, we believe the cost and impact of the reporting and disclosure of short position data as proposed is not adequately weighed against the benefits thereof. Public disclosure of short position data in a manner that would enable market participants to identify specific managers or reverse engineer a given manager's investment and trading strategies will result in serious harms to market efficiency. Although publishing aggregated short position data can help mitigate the risk that trading and investment behavior will be attributed to a single manager (or set of managers), it is not foolproof, and the effectiveness will depend on what data is published and with what frequency. We also have significant concerns about the inadvertent disclosure of manager-level information the Commission intends to collect on an attributed basis. As described in more detail below, the information sought to be collected via Form SHO is extremely commercially sensitive and will provide insight into institutional managers' commercially sensitive investment and trading strategies. A consolidated database of manager-level positions and detailed daily trading activity (even one that is collected on a somewhat delayed basis) will undoubtably be an attractive target for malicious actors. We believe that the various risks associated with the disclosure of the information required by Form SHO, whether through public dissemination of aggregated Form SHO data or inadvertent disclosure of attributed data, may cause managers to alter their investment and trading strategies to stay below the thresholds. We believe this is likely to have negative effects on market efficiency because certain managers may not engage in shorting activity to the same extent they otherwise would. Reduced willingness to engage in investment and trading strategies that involve short selling (at least to the same extent absent Form SHO) could result in reduced fundamental research, reduced price discovery, and reduced liquidity.

Third, we believe that a number of aspects of the Proposal are unreasonably burdensome (especially given that alternative sources of short position and activity exist), difficult to interpret, and are likely to yield information that is not useful. Should the Commission move forward with the Proposal, we urge the Commission to make the following changes:

1. *Establish robust data security protocols to protect this information*. The SEC should establish robust data security protocols to protect the confidential and valuable manager-level position and trading activity data.

2. *Limit the reporting requirements to stocks of U.S. reporting issuers, excluding ETFs.* Providing reports on non-reporting companies is of limited value to public investors and would be costly to implement. Managers generally enter into ETF short positions for hedging purposes, and thus the motivations for these positions and benefits of public disclosure are different from short activities relating to operating companies.

3. *Implement dollar-based thresholds only.* A dollar-based approach would be more simple and less costly for managers to employ. In contrast, thresholds based on the percentage of outstanding shares held short would require firms to develop the tools to calculate, on a daily basis, fractional holdings data and shares outstanding on every short position exclusively for purposes of proposed Form SHO.

4. *Eliminate the daily activity table (Proposed Table 2) in favor of less burdensome alternatives*. The daily activity table would be extremely burdensome for managers, is unnecessarily complex, and includes several categories of information that are unclear and/or provide no meaningful information.

5. *Eliminate the requirement that managers designate each end-of-month gross short position as fully hedged, partially hedged, or not hedged*. Because (i) there is no universal definition of "hedging" in the industry, and (ii) the reported gross short position must encompass short positions aggregated across funds, clients and affiliated managers, any hedging-related designation would be meaningless. Inclusion of this data would result in inconsistent reporting and would be costly and time consuming for managers to produce.

6. *Extend the timeline of aggregated disclosures to 45 days.* Additional time between the reporting period and the act of reporting would provide at least some additional protection against the risk that their positions and strategies will be exposed, used as part of a replication strategy, or used in connection with a short squeeze or other market-driven reaction.

II. The SEC Should Mandate the Public Disclosure of Aggregate Short Sale Data from Existing Sources Rather than Establishing an Entirely New and Needlessly Burdensome Reporting Framework for Investment Managers

The SEC is proposing to create an entirely new manager-level short position reporting framework when a more efficient approach would be to adopt a rule that leverages FINRA's existing short interest reporting framework. FINRA already collects on a comprehensive and bi-monthly basis the short sale information that Section 929X(a) mandates be published no less frequently than monthly. The SEC could mandate that FINRA publish data at more frequent intervals, *e.g.*, end of week short interest. In addition, the SEC has the ability to supplement that data with more detailed information collected via the Consolidated Audit Trail ("**CAT**").

Notably, in several places throughout the Proposal generally, the Commission concedes that the Proposal would, if adopted, require managers to report much of the same information already available through FINRA and CAT.[4] Much of the incremental data that would be obtained under the Proposal could be obtained more efficiently leveraging the existing infrastructure. Obtaining such data directly from managers in the format proposed by Form SHO would be of limited additional value given the breadth and depth of market information already available. In addition, any benefit would be outweighed by the significant risks of the proposed reporting infrastructure and its attendant costs to investment managers (and thus to their clients and investors). In fact, we believe the existing data sources are significantly more valuable because they could be leveraged to provide a complete picture of outstanding short interest—including the timing of increases and decreases in reported short positions, whereas the Proposal is focused exclusively on short position information from institutional managers that meet the required thresholds.

The SEC briefly addressed, but failed to appropriately consider, the possibility of leveraging the existing FINRA short interest reporting framework to satisfy Section 929X(a)'s mandate. Pursuant to FINRA Rule 4560, member firms are required to report total gross short positions in all equity securities to FINRA on a bi-monthly basis. For exchange-listed securities, FINRA aggregates and provides the reported short interest data to the applicable listing exchange for processing and publication. For over-the-counter ("**OTC**") equity securities, FINRA aggregates across all firms and publishes total short interest on a per symbol-basis on the FINRA website along with additional FINRA-calculated metrics relating to short sale activity in the security (*e.g.,* days to cover). The SEC could readily and efficiently satisfy Section 929X(a)'s mandate by requiring FINRA to publish the short interest data for all equity securities reported to it on a consolidated basis and free of charge. As noted above, such a rule would comprehensively cover all short sale activity, instead of capturing data from those who qualify as institutional mangers under proposed Rule 13f-2 and Form SHO, and would impose minimal or no additional costs to market participants. Because broker-dealers already have experience reporting short interest to FINRA, this alternative would be less expensive and introduce less data security risk than the current proposal as it would only require modification of an existing process.

To the extent the SEC wishes to collect and publish information that "reflect[s] the timing with which short positions expand or shrink in the two-week period between the two reporting dates"—a shortcoming the SEC identified with leveraging existing FINRA short interest reporting, the SEC could mandate that broker-dealers report more frequent short interest information to FINRA, for example, each week's end-of-week short interest. This would facilitate publication of data reflecting the week-over-week expansion or shrinkage of short interest. Notably, the MFA (and others) recently supported a proposal by FINRA to *increase* the

[4] Proposal at 14993 ("There is likely significant overlap between the information about stock fundamentals contained in FINRA short interest data and in the data that would be aggregated from Proposed Form SHO filings"); *id.* at 15002 (noting that the SEC could obtain aggregated and individual manager-specific information on stock and option short sales, and will be able to obtain similar information on buys to cover assuming adoption of Rule 205 and corresponding changes to CAT NMS plan).

frequency of both collecting and publishing short interest data from bimonthly to weekly.[5] This approach would result in the publication of data on a more frequent and timelier basis, which would be more valuable to the markets, and to retail investors in particular, than the more delayed publication under the Proposal.

And, to the extent that the SEC wishes to better understand day-over-day or manager-by manager activity, for example, in order to reconstruct or respond to market events, the SEC has the ability to leverage significant additional information from CAT, to which market participants already dedicate significant reporting and compliance resources. CAT gives regulators access to comprehensive information regarding the lifecycle of stock and options trades. The CAT data contain an order mark that is a part of the "material terms of the trade" that specifically indicates whether an order is a short sale. At present, the SEC can extract short sale activity, and if proposed Rule 205 and the corresponding amendment to CAT NMS plan are adopted, the SEC will similarly be able to extract buy to cover activity.[6] In addition, when the Customer Account Information System ("**CAIS**") goes live in a matter of mere months (estimated to occur in July 2022), the SEC will be able to identify and aggregate activity by individual investment manager, even if the investment manager uses multiple broker-dealers. Furthermore, to the extent there are market events or other contexts in which the SEC determines it needs additional short sale activity data, for example for forensic purposes, the SEC retains its ability to obtain such information directly from managers at that time. The costs and burdens of requiring reporting of incredibly granular daily short activity information by all institutional managers (which includes a risk of inadvertent disclosure) far outweigh the proffered benefits.[7]

We also note that there are a number of significant new and pending SEC rules that could directly impact this Proposal and the value of the data the Commission intends to collect. In addition to the CAIS system, the SEC's security-based swap reporting rules under Regulation

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[5] Letter from Jennifer Han, Chief Counsel, MFA to Jennifer Piorko Mitchell, Office of Corporate Secretary, FINRA (Sept. 30, 2021), available at: https://www.managedfunds.org/wp-content/uploads/2021/09/MFA-Comment-Letter-to-FINRA-on-Short-Interest-Position-Reporting_9.30.21.pdf; *see also* Managed Funds Association Calls for Regulatory Action to Strengthen U.S. Markets (Feb. 8, 2022) (recommending enhancements to U.S. equity market structure including by "providing investors with greater transparency of short interest in equities through disclosure of aggregated short positions per security across all broker-dealers weekly), available at https://www.managedfunds.org/press-releases/managed-funds-association-calls-for-regulatory-action-to-strengthen-u-s-markets/.

[6] Proposed Rule 205 would require broker-dealers to mark an order to purchase for an account as "buy to cover" if the account has "any gross short position in the equity security in the same account." We urge the Commission to approach any new order marking requirement with caution, including because such a requirement would increase the burden on broker-dealers, and possibly managers, without in fact increasing market transparency.

[7] While the Proposal suggests that greater transparency into the activity of institutional investment managers holding large short positions in a security could help deter manipulative short selling campaigns, the Proposal offers no evidence to suggest that the proposed requirements will provide any additional deterrence relative to the existing reporting infrastructure. To the contrary, the Proposal goes on to note that, to the extent a manager still holds a short position when data is published, the Proposal could in fact facilitate potentially manipulative strategies. *See* Proposal at 14990 ("Proposed Rule 13f-2 and Proposed Form SHO also could in some cases facilitate potentially manipulative strategies, such as certain short squeezes").

SBSR went into effect only a few months ago.[8] Regulation SBSR provides an entirely new regulatory framework for the security-based swaps market that, among other things, includes reporting requirements aimed at increasing transparency and customer protection as well as mitigating the "risk of financial contagion."[9] The SEC is also considering changes to the collection and reporting of securities lending data that would require lenders of securities to provide substantial transaction-level information to be publicly disseminated in close to real-time.[10] CAIS, Regulation SBSR, and any rule adopted with regard to securities lending data are all interconnected. Rather than taking a scattershot approach to data reporting and dissemination requirements, the SEC should implement these frameworks thoughtfully and sequentially. This will allow the SEC to better assess its data needs, but also provide market participants the opportunity to provide the SEC with meaningful feedback on the data requested and the potential risks to the broader capital markets of disclosure.

In sum, the SEC will be able to achieve not only Section 929X(a)'s mandate but also its stated goals of having access to sufficient information to reconstruct and respond to market events using FINRA and CAT data. While the Proposal expresses concerns that it will be "inefficient" for the SEC to do so, including because CAT is not designed to track positions and any such tracking would require the use of estimates, it should first attempt to work with the existing data sources (as well as those expected to become available as a result of pending rule proposals) and to exercise its existing authority to request specific information from investment managers, before imposing an entirely new and largely duplicative reporting framework on managers. While we appreciate the SEC has limited resources, we do not believe the SEC's administrative convenience for its sporadic need to reconstruct market events justifies the significant ongoing costs and consequences of the Proposal, many of which are detailed below.

Underscoring this point, we believe the economic analysis accompanying the Proposal is deeply flawed. As set forth in more detail below, the economic analysis fails to appropriately weight the limited marginal benefit of the additional information that would be collected and published under the SEC's Proposal against the significant marginal costs associated with compliance.

III. The SEC Failed to Give Appropriate Consideration or Weight to the Consequences of Reporting Manager-Level Short Position Information

Manager-level short position reporting raises significant concerns and risks, including some that the SEC mentioned in the Proposal but then did not fully assess and others that the SEC failed to consider altogether. For this reason, the SEC should exhaust its efforts to utilize

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[8] *Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information*, 81 Fed. Reg. 53545 (Aug. 12, 2016); *Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information*, 80 Fed. Reg. 14563 (Mar. 19, 2015).

[9] 81 Fed. Reg. 53545 at 53557.

[10] *Reopening of Comment Period for Reporting Securities Loans*, 87 Fed. Reg. 11659 (Mar. 2, 2022).

existing or available data from other sources before adopting a reporting regime requiring managers to daily transaction data and monthly short positions to the SEC.

a. Disclosure of Commercially Sensitive Information and Data Security

In its analysis of the costs and benefits of the Proposal the SEC fails to adequately consider the most significant cost and consequence of manager-level reporting: the risk that commercially sensitive investment and trading information is disclosed on an attributed basis. Public disclosure of short position data in a manner that would enable market participants to reverse engineer a reporting firm's investment and trading strategies will result in serious harms to market efficiency. While aggregating reporting firms' short position data can mitigate the risk that trading and investment behavior will be attributed to a single manager, the effectiveness of aggregation as a mitigant will depend on what data is published and with what frequency. For example, the Commission's proposal to publish daily "net" activity for each reportable security could provide extensive information regarding a given reporting manager's (or set of managers') investment and trading strategies and enable sophisticated market participants to retaliate against that manager (or set of managers). The risk of manager attribution is heightened when only one manager or a small set of managers report a short position in the relevant security.

Moreover, although the release discusses the risks and harms to the capital market of purposeful, public disclosure of institutional manager short position and short activity information, the Proposal fails to capture the significant risks associated with inadvertent disclosure of the same information. [11] If the Proposal is adopted as proposed, the SEC would create a consolidated database of not only the month-end gross short positions of the largest and most sophisticated managers, but also all reporting managers' granular daily trading activity in the relevant securities (and although unclear from the Proposal, potentially even trading information regarding related securities). If compromised, this information would enable a malicious actor to reverse engineer a given manager's trading strategy or strategies, what many institutional investment managers consider to be their most valuable asset. MFA believes that the risk of increased cyberattacks or other breaches of confidential account information far outweigh any incremental benefit associated with requiring managers to individually report short position information – particularly when, as noted above, other more efficient and less risky ways of achieving 929X's mandate exist.

We believe that cyber security risks and the attendant risks of exposing manager-specific trading information must be considered—and should be weighed heavily—when the SEC is evaluating the costs of the Proposal in its economic analysis. This is not merely a theoretical risk. History has demonstrated that the SEC and other federal agencies are not immune from malicious actors. For example, in April 2020, the SEC settled fraud charges with two individuals who traded on nonpublic corporate earnings information obtained by hacking the SEC's EDGAR system.[12] In December 2020, nine federal agencies and more than 100 private sector groups were

[11] *See* Proposal at 14993-99.

[12] *See Foreign National and American Trader Settle Fraud Charges in EDGAR Hacking Case*, Securities and Exchange Commission (Apr. 9, 2020) available at: https://www.sec.gov/news/press-release/2020-85.

targeted in a cyberattack.[13] Moreover, in December 2021, the independent consultant engaged by the SEC's Office of Inspector General to evaluate the SEC's implementation of the Federal Information Security Modernization Act of 2014, found that "many of the weaknesses within the SEC's Data Protection and Privacy Program" identified in prior evaluations remained present in fiscal year 2021.[14] This finding is highly concerning given the already vast amounts of sensitive data the SEC has, let alone the additional data being requested.

In addition to failing to take into account the costs and risks of cyberattacks, the SEC also fails to adequately assess the impact of managers' confidential information being leaked through other means, such as theft or inadvertent disclosure. In addition, if such data resides on the SEC's database, it could be the subject of production and disclosure in lawsuits or other legal processes. As the SEC is aware, short sellers at times face the threat of retaliation, which is acute when the sizes of their positions are known, with retaliation ranging from short squeezes to nuisance lawsuits, intimidation, and physical violence. Beyond retaliation, managers with short positions could be subject to others trying to predict or reverse engineer their investment strategies, which could negatively impact the prices they receive or lead to copycat investing, which could cause exaggerated price adjustments and inefficiencies to the market.[15]

b. Other Significant Costs and Consequences

Active investors play a critical role in the success of the U.S. markets. We are strongly concerned that the Proposal may dissuade institutional investment managers from pursuing short strategies to the same extent they otherwise would absent a requirement to report, on an attributed basis, short position and related activity data that will be consolidated in an SEC database with the information of every other reporting manager. We believe these concerns could materially harm stock price efficiency, market liquidity, and competition in the U.S. markets, similar to the harms that would result if Form SHO were filed publicly with direct attribution. We anticipate these negative consequences will include:

- A lessening of managers' willingness to pursue active investing strategies that use short selling (or to use short selling to the extent they otherwise would but for the reporting requirement);

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[13] *See* Frank Downs and Dustin Brewer, ISACA, Top Cyberattacks of 2020 and How to Build Cyber Resiliency (last updated Feb. 3, 2021), available at: https://www.isaca.org/resources/news-and-trends/industry-news/2020/topcyberattacks-of-2020-and-how-to-build-cyberresiliency.

[14] Fiscal Year 2021 Independent Evaluation of the SEC's Implementation of the Federal Information Security Modernization Act of 2014, Office of Inspector General, U.S. Securities and Exchange Commission (Dec. 21, 2021), available at: https://www.sec.gov/files/FY-2021-Independent-Evaluation-SEC-Implementation-of-the-FISMA-of-2014-Report-No-570.pdf.

[15] For example, the SEC's own report on the irregular trading that occurred in January 2021 recognized that "some of the meme stock trading was described in news coverage as an act of rebellion against short-selling professional investors who had targeted GameStop and other stocks." *See Staff Report on Equity and Options Market Structure Conditions in Early 2021* at. 25, Securities and Exchange Commission (Oct. 14, 2021), available at: https://www.sec.gov/files/staff-report-equity-options-market-struction-conditions-early-2021.pdf.

- A corresponding decrease in the fundamental research necessary to root out poor corporate governance, potential fraud (*e.g*., increasing the risk of a Wirecard-type event in the United States), or simply to express that a company's stock is overvalued
- Higher volatility for stock markets, which has a direct impact on all household and institutional investors;
- Lower trading volumes, which inhibits capital formation and price discovery; and
- Lower market efficiency.[16]

In addition, as the Staff recognized, to the extent managers do individually report, public disclosure, even on a delayed and unattributed basis, can have negative consequences on the managers and the overall market, including

- An increase in imitative behavior (uninformed copy-cat type investing);
- An increase in "pile on" or herd behavior; and
- An increase in the potential for manipulative activities (*i.e.*, short squeezes).[17]

The SEC recognizes many of the potential harms of requiring the collection and publication of sensitive short sale data in the manner proposed, but as described above, severely overestimates the Commission's steps to mitigate these harms and underestimates the costs of inadvertent exposure and even the costs of the proposed disclosure.[18]

In addition, there are numerous other material costs, risks, and potential flaws in the Proposal, many of which are cited but not fully weighed by the SEC in the Release. For example, the SEC acknowledges the substantial compliance costs associated with filing Form SHO (compounded by the costs associated with accommodating the additional order marks, pursuant to Proposed Rule 205 and the SEC's proposal to Amend CAT), however, the SEC fails to acknowledge and capture the costs and expenses that will be forced upon a wide range of managers that will need to buy or develop systems to monitor for compliance with the SEC's proposed thresholds. Managers that may never have to even file Form SHO, or that only have to

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[16] *See* Peer N. Dixon, *Why Do Short Selling Bans Increase Adverse Selection and Decrease Price Efficiency?*, THE REV. OF ASSET PRICING STUDIES 122-168 (2021) (concluding that "costly short selling means that investors who do not own the asset have less incentive to gather information and thus information acquisition concentrates among investors who already own the asset" leading to less overall information acquisition and worse price efficiency), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3281046.

[17] *See* Proposal at 14955 & 14981; *see also* Asger Lunde et al., Copenhagen Economics, *Market Impact of Short Sale Position Disclosures* (2021), https://www.copenhageneconomics.com/dyn/resources/Publication/publicationPDF/3/573/1626345387/market-impact-of-short-sale-position-disclosures.pdf; *see also* Heater, Liu, Tan, and Zhang, Frank (2021), *Does Mandatory Short Selling Disclosure Lead to Investor Herding Behavior?*, https://ssrn.com/abstract=3923046 ("we document an undesirable consequence of mandatory short selling disclosure, which informs regulators when they are considering related disclosure policies. Short sellers herding behavior is not based on firm fundamental information and therefore could potentially drive stock prices away from firm fundamentals.").

[18] *See* Proposal at 14990-97.

do so sporadically, would still need to adopt and implement these systems in order to monitor compliance with the proposed rules, which will result in significant burdens and economic costs.[19]

IV. To the Extent the SEC Determines to Adopt Proposed Form SHO, The SEC Should Simplify Compliance and Provide Needed Clarity

As noted above, we believe the Commission significantly underestimates the costs and burdens of the Proposal on managers and market efficiency. In the event the Commission were to proceed with the existing Proposal rather than leveraging (and enhancing) existing infrastructure as described above, it is important that the SEC streamline Form SHO reporting requirements, adding clarity to the requirements, and addressing the numerous ambiguities in the Proposal. These changes will enhance the integrity of the data collected in Form SHO, as well as reduce in part the compliance burden imposed on managers.

a. Limit to Stocks of U.S. Reporting Issuers

To avoid ambiguity and associated costs, the Commission should limit the reporting requirements to stock of U.S. reporting issuers. In addition, the SEC should exclude ETFs from the reporting requirements. As an alternative to these suggestions, the SEC should publish a list of in-scope securities for purposes of Form SHO reporting.

- *Limit to Stock*. Proposed Rule 13f-2 would require that a manager calculate its "gross short position" in an equity security in determining whether it meets a reporting threshold. Under proposed Rule 13f-2, "gross short position" would mean the number of shares of the equity security that are held short, without inclusion of any derivative positions in the equity security. However, the term "equity security" is defined to have the same meaning as in Section 3(a)(11) of the Exchange Act and Rule 3a11-1 thereunder. Rule 3a11-1 defines "equity security" to include a number of derivatives, including "any security future … or any put, call, straddle, or other option or privilege of buying such a security from or selling such a security to another without being bound to do so." The SEC should clarify that the derivatives included in the definition of Rule 3a11-1 are not included in the underlying equity position for purposes of determining a manager's gross short position.

- *Limit to U.S. reporting issuers*. Requiring investment managers to report short position information in non-reporting company issuers would be extremely costly, provide little public benefit, and is not justified in the Proposal. The SEC provides no justification or economic analysis for extending reporting requirements to non-reporting issuers. For example, the SEC states the belief that the Proposal will lead to better investor protection and will improve the Commission's observation of systemic risks. Because these companies are not publicly traded, there is no evidence that the proposed short position information will have any effect on stock price efficiency or

[19] *See* Proposal at 14990-15001.

market liquidity.[20] There are, however, potential negative consequences to managers. For example, the limited trading volume of these securities heightens the risk of exposing managers, their positions, and their commercially sensitive investment and trading strategies relative to those applicable in the case of reporting company securities. Given the more limited trading volumes in such securities, reporting managers would also be more susceptible to retaliatory and manipulative trading strategies.

We also note that the SEC's overly broad proposal to include equity securities of *all* "non-reporting issuer securities" would require managers to report all foreign equity securities and foreign issuers, even though such issuers have limited U.S. jurisdictional ties and in many cases are subject to short-sale reporting regulations in their home jurisdictions. It is our strong view that foreign securities and foreign issuers should be clearly excluded from any reporting obligation.

- *Eliminate ETFs*. The SEC should exclude ETFs from the reporting-requirement. Under the Proposal, managers meeting a reporting threshold would be required to report a gross short position in an ETF and activity that results in the acquisition or sale of shares of the ETF. In the vast majority of circumstances. institutional managers short ETFs for hedging purposes, not for the same reasons that managers short operating companies. For example, as the Proposal explains, a manager that purchases a particular stock but does not want to expose itself to industry risk can hedge industry risk by short selling an industry index ETF.

  The policy arguments for reporting short positions in ETFs are thus completely different from those applicable to ordinary operating companies. The SEC should consider these differences in its economic analysis because there are fewer benefits to reporting short positions in ETFs. Short positions in ETFs will not "provide corporate managers with additional feedback on their decisions."[21] Nor will reporting short position information in ETFs that are established for hedging a long position in a stock serve as a deterrent to manipulators. Manager short positions in ETFs will provide the public, and the SEC, very little in terms of useful information. And yet, including ETFs in the proposed reporting regime will substantially increase the complexity and burden of completing Form SHO particularly with respect to Information Table 2.

To address the above concerns, MFA would support the SEC adopting a more limited "official list" of U.S. reporting company stocks that managers are required to analyze for purposes of Section 13(f)(2) reporting, similar to the SEC's construct for purposes of Section

[20] In the event the SEC were to retain the $500,000 threshold (or any similar threshold) for non-reporting companies we do not believe it would not be appropriate to use the last available sale data as the valuation methodology. This approach is inconsistent with valuation standards and GAAP requirements, and would result in inaccurate calculations.

[21] Proposal at 14996.

13(f)(1) and Form 13F. This would help reduce the substantial burden on managers to make judgments about whether a particular stock is required to be reported and would reduce inconsistencies among reporting managers based on differing interpretive judgments on such matters.

b. Implement Only Dollar-Based Reporting Thresholds

As currently drafted, the Proposal's Threshold A applicable to U.S. reporting companies is overly and unnecessarily complex. It would subject managers with short interest positions in such companies to two reporting thresholds: one dollar-based and one that requires companies to calculate their monthly average gross short position as a percentage of outstanding shares.[22] The Commission should reduce the burden on managers by eliminating the second prong of Threshold A.

The data required to calculate a manager's monthly average gross position expressed as a percentage of shares outstanding at the close of each settlement date is not currently readily available, and there would be significant costs to obtaining this data. We note that it has proven to be extremely burdensome for MFA member firms to obtain data regarding shares outstanding for purposes of reporting short sales in non-U.S. regimes.[23] MFA members in such jurisdictions routinely experience difficulties in identifying outstanding share figures and, where such data is available, there are frequent inconsistencies between different sources, resulting in the investment of significant internal and external resources to ensure calculations, and thus the associated regulatory reporting, are accurate. In order to comply with the second prong of Threshold A, it would be necessary for members to establish more elaborate new systems to monitor and track shares outstanding based on multiple sources, and to conduct the necessary calculations to determine whether the threshold has been met. The costs associated with establishing systems to monitor and track the second prong of Threshold A do not justify the limited additional data that would be included by the retention of such prong in the Proposal.

If the SEC believes different sized thresholds are necessary or appropriate for issuers of different size, we believe the SEC should define reporting thresholds in terms of clear dollar-based thresholds. To the extent the SEC were to publish an "official list" of stocks that managers are required to analyze for purposes of Section 13(f)(2) reporting, the SEC could readily indicate the corresponding thresholds there.

Nevertheless, should the SEC move forward without eliminating the second prong, it is necessary to have authoritative source for identifying shares outstanding of each reportable security to avoid cost, confusion, and inconsistency. For this reason, if the SEC determines to adopt the second prong of Threshold A the SEC should publish an authoritative list of the number of shares outstanding in each reportable equity security at the close of each settlement

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[22] Proposed Rule 13f-2(a).

[23] *See* Response Form to the Consultation Paper on the review of certain aspects of the Short Selling Regulation, Managed Funds Association (Nov. 30, 2021), available at: https://www.managedfunds.org/letters/mfa-recommends-changes-to-eu-short-selling-regulation/.

date. At the very least, the SEC should identify a controlling source that is readily available to managers, which managers can use to calculate average gross short positions to ensure consistent calculation and reporting.

c. Eliminate the Daily Activity Table in Favor of Less Burdensome Alternatives.

Proposed Form SHO would impose extremely burdensome and costly obligations on reporting managers to report, for each reporting security, each day's settlement activity that created, increased, reduced, or closed such short positions by transaction type (*e.g.*, short sale, buy to cover, conversions, options exercises and assignments) within the month. For each individual settlement date during the calendar month, the Commission intends to publish the "net" activity in the reported equity securities, as aggregated across all reporting managers.[24]

Several of the categories of information that would be required by Table 2 are unclear, require complicated judgments on the part of managers, and are likely to yield inconsistencies in reporting and results that are not accurate.

Aggregation of Affiliated Managers/Funds/Accounts. Because the Proposal would require that managers aggregate their activity among strategies, funds, client accounts, and other affiliated institutional investment managers, the "activity" reported on Table 2 will not accurately reflect whether a manager is increasing or decreasing a short position and will not "tie out" to the reported end-of-month gross short position.

For example:[25]

1. Assume that a manager serves as investment adviser to two funds (Fund A and Fund B). If Fund A has a gross short position of $20 million in a given stock as of the first of the month and as of the end of the month, and Fund B establishes a long position of $10,000 in the same stock later that month, would that purchase constitute a buy to cover reportable on Table 2 as "activity affecting" the short position that met the reporting threshold? If not, would it constitute "other activity" that reduces the short position? (We understand that the manager would be required to report an end-of month gross short position of $20 million.)

2. Assume the same manager has an affiliate that runs a separate wealth management business, and the financial advisors in that wealth management business collectively acquire long positions of $20 million or more in the stock in clients' accounts later in the month, would the fund manager report those acquisitions as purchases to cover or as other activity?

Requirement to Include all "Other Activity." The requirement to list all "other activity" that creates/increases or reduces/closes a short position required by columns 15 and 16 of Table

[24] *See* Proposed Information Table 2.

[25] These same concerns relating to aggregation among funds, accounts, and affiliated managers for purposes of Table 2 also apply to the hedging discussion below.

2 is vague and subject to multiple different interpretations and inconsistencies that would yield different results.

For example:

1. Assume Fund A holds a reportable short position in a given stock that is a component of the S&P 500 index as of the first of the month, and Fund A purchases an S&P 500 index ETF later in the month, would the manager be required to report the transaction as "other activity that reduces the manager's short position"?

2. If the above case is "yes," is a manager required to review ETF purchases by other funds, accounts, or affiliates under common control to ascertain whether any stocks required to be reported on Form SHO are components of those ETFs?

3. Assume Fund A holds a $10 million short position in Stock X as of the first of the month and enters later that month a total return swap with long exposure equal to $10 million in Stock X. Does the Manager report the position swap in the "other activity" column?[26]

The Proposal's economic analysis significantly understates the costs of preparing the proposed Table 2. The SEC based its Form SHO estimate on the Commission's 2008 time estimate for the now retired Form SH, which only required a manager to include 7 data points on a weekly basis.[27] In adopting Form SH, the SEC estimated managers would spend 20 hours to prepare and file each Form SH.[28] Now, surprisingly the SEC estimates that it will take *the same 20 hours* to prepare the far more complex Form SHO, which would require *daily* activity information for the reporting period with 16 different categories of information, including vaguely worded requirements to report on each daily instance of "other activity" that opens/increases or reduces/closes a reportable gross short position, potentially requiring subjective determinations regarding whether the activity affects the manager's short position (and this does not even account for the 9 categories of information required by Table 1).[29] Providing the daily activity information in Table 2 will require extensive resources to obtain, prepare, and confirm the required information. Each monthly filing will require firms to perform a holistic analysis of their trading activities and daily position changes, requiring the expertise of multiple teams including compliance, operations, and investment professionals.

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[26] Assuming the SEC retains the categories of information required by the proposed Table 2, the SEC should clarify that the category labeled "Other Activity" is limited to ETF redemptions and conversions, and does not include swaps or other derivatives (*e.g.*, buy or selling options).

[27] Proposal at 14973.

[28] *Id; see also Disclosure of Short Sales and Short Positions by Institutional Investment Managers*, 73 Fed. Reg. 61678 at 61686 (Oct. 17, 2008) (stating that "[t]he 20 hour per filing estimate is based on data received from a small sample of actual filers and a random sample of filings conducted by our Office of Economic Analysis").

[29] *Id.*

As discussed in Section II, above, providing such granular information to the Commission will also create a clear target for malicious actors looking for information on commercially sensitive investment and trading strategies. If the SEC's database were ever compromised, a malicious actor would have full access to a manager's daily trading activities and how the manager manages short positions daily. Notably, reporting this information less frequently, for example on a weekly or bi-monthly basis would be no less burdensome since it would still require an analysis of each settlement date's activity.

Given the significant burden, complexity, and intellectual property concerns associated with the requirements of Table 2, the SEC should eliminate the daily activity reporting table and instead adopt either weekly reporting or another incremental reporting system based on gross short position. For example, the SEC could require that once a manager has reached the $10 million reporting threshold, the manager must report, on its monthly Form SHO report, its end-of-week position for each week until the position falls below the $10 million reporting threshold. Alternatively, the SEC could require that once a manager has reached the $10 million reporting threshold, the manager must again report the position on Form SHO when it increases (or decreases) the relevant short position by $10 million aggregate increments until the position falls below the $10 million reporting threshold. We believe either approach would provide information about the expansion or shrinkage of short positions across time without placing undue burdens on institutional investment managers.

d. Eliminate Hedging-Related Information.

Column 9 of Table 1 would require a manager to indicate whether each aggregated gross position reported in Column 7 of Table 1 is fully hedged, partially hedged, or unhedged. The SEC should eliminate these requirements. The hedging data sought by the Commission on Proposed Form SHO will provide no useful information to either the SEC or market participants. The Proposal poses the question "is there a common understanding among Managers regarding what fully hedged or partially hedged means? Are those understandings different than the Commission's proposed instructions?" The answer is no. There is no universal definition of what constitutes a "hedge" in the market, and neither the Proposal nor the instructions provide clear guidance regarding how managers are expected to address this potential Form SHO requirement.[30]

Under the Proposal, the determination of whether a position is fully or partially hedged is based on whether the manager "holds an offsetting position" that reduces the risk of price fluctuations for its entire position in that stock (in the case of full hedging) or that is less than the identified price risk associated with the reported gross short position in that stock (in the case of partial hedging).[31] The Commission provides only one non-exclusive example of hedging for purposes of Form SHO, *i.e.*, the use of "delta" hedging in which the Manager's reported gross

[30] *See* Proposal at 14965.

[31] Proposal at 15018.

short position is offset one-for-one.[32] The Commission does not provide other guidance or instruction as to how a manager should determine or calculate whether or when a position is fully or partially hedged (or not hedged) for institutional managers with multiple clients pursuing different strategies.

A fundamental role of an investment manager is to balance and calculate risks. Managers may engage in any number of different hedging techniques, such as portfolio hedging, use of ETFs, use of baskets of securities or securities that have historic trading correlations such as competitors in a particular industry. Unless a manager's portfolio consists of a single short position, the manager likely holds positions that reduce the risk of a single stock price fluctuations. Thus, absent further clarification, we believe that a vast majority of positions will be marked "partially hedged," but that this marking will, at best, provide no real information to either the Commission or the public, and at worst, mislead investors and harm portfolio companies on the overall market sentiment of the issuer (*i.e.*, directional short versus portfolio hedging). The marking is further diminished because it fails to take into an account the degree of the partial hedge. Both a manager with $10 million short position and a $1 million long position and a manager with a $10 million short position $1,000 long position would be required to mark a security partially hedged. As a result, the marking will not provide the public, or the Commission, with any meaningful information.

In addition, this requirement raises the same questions as the information in Table 2 given the required aggregation among strategies, accounts, funds, and affiliated managers. Under the Proposal, it seems that almost all short positions held by a large manager will be partially hedged—for example, if a manager has discretion over one fund with a short position and another unrelated fund with a long position, the manager would be required to report the short position as "partially hedged" when in fact, the short position is not hedged at all. Similarly, it is unclear whether hedging techniques involving a different security that is correlated to the security that is held short would need to treat such security as partially hedged.

Should the SEC move forward with the requirement to designate short positions as fully hedged, partially hedged, or not hedged, we are also concerned the managers will be second guessed and challenged on their decisions to mark positions hedged. For example, to the extent a manager is required to report on Form SHO and marks a position partially hedged, will the SEC expect managers to document the rationale the led to the marking? How will the SEC determine whether a stock that is correlated, but not directly, amounts to a full or partial hedge? Can the same hedge be used to hedge more than one short position—for example does a $10K position in an ETF partially hedge 10 reportable short positions?

In sum because the proposed hedging information will be virtually meaningless in assessing the extent to which short sale activity is actually related to managers' hedging activity, this requirement should be eliminated.

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[32] *Id.*

e. Extend the Timeline of Aggregated Disclosure to 45 Days

The Proposal states that the Commission "estimates" that it will publish aggregate information "within one month after the end of the reporting calendar month." We believe that the Commission should commit to publishing information no sooner than 45 days after the end of the applicable calendar month, rather than estimating that it will publish such data "within" one month after each month-end. We believe that a minimum 45-day buffer will better protect managers from the risk that their positions and strategies will be used in connection with a short squeeze or other market-driven reaction and somewhat mitigate the use of the data as part of a replication strategy. This is particularly true for managers that establish large positions near the end of the month. We note this approach would also be consistent with the buffer to which institutional investment managers are entitled in connection with their Form 13F filings.

V. The SEC Should Not Publish Individual Yet Anonymized Manager-Level Data

The Commission also sought industry comment on an alternative reporting framework under which information reported on Form SHO would be published at the individual manager level, rather than aggregated across all reporting managers prior to publication, but only after the reporting manager's identifying information, including its name and active LEI was "removed in an effort to anonymize the information published."[33]

We strongly oppose this alternative. As discussed above and consistent with our past correspondence with the SEC, the disclosure of manager-level short position information (*i.e.*, not aggregated) would be inconsistent with both the policy and the plain language of Section 929X(a)[34] The potential risks and harms described above are magnified by this approach, and publishing manager-level data – even if anonymized – would almost certainly dissuade institutional investment managers from pursuing short strategies to avoid having to report manager level short position data into a database with significant amounts of sensitive manager-level position information.[35] This approach will result in real and material harm to stock price efficiency, market liquidity, and competition in the U.S. markets. In fact, the Commission acknowledges that "despite measures designed to help anonymize published information, it may still be possible for market participants to identify certain reporting Managers" and that "retaliation could result in a reduction in short selling, along with a reduction in the corresponding liquidity and price transparency benefits." We believe that it is not only possible, but actually quite likely, that market participants will use the Form SHO information, together with information filed publicly by managers in their Forms ADV and Forms 13F, to reverse engineer and thereby identify, with a high degree of precision, a range of potential managers that

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[33] Proposal at 14967.

[34] Letter from Bryan Corbett, President & CEO, MFA to Chairman Gensler, SEC (Dec. 22, 2022); Letter from S. Kaswell, General Counsel, MFA to Elizabeth Murphy, Secretary, SEC (June 22, 2011).

[35] Among other things this approach would provide a mechanism for the market to gather information about open merger arbitrage positions, which the SEC has previously recognized as being harmful to markets and which are subject to presumptive confidential treatment under Form 13F as long as certain conditions are met.

are likely to be attributable to any particular Form SHO filing. For these reasons we do not believe the proposed alternative approach is viable or appropriate.

VI. Administrative Procedure Act Considerations

We note that the Administrative Procedure Act ("**APA**") requires the SEC to build a comprehensive and rigorous record and assess the significant costs of regulation. Under the APA, the SEC has a foundational duty of reasoned decision-making when it comes to rulemakings. In order to conduct a proper rulemaking, the SEC will need to "examine the relevant data"—including quantitative and qualitative evidence submitted—"and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choices made.'"[36] This core APA requirement includes the obligation to "consider … important aspect[s] of the problem" before the agency,[37] and obligates the SEC to respond to significant points raised in public comments.[38] The SEC is further obligated to pay careful attention to the potentially significant costs, as well as supposed benefits, of additional regulation of market participants. As the Supreme Court has explained, "reasonable regulation ordinarily requires paying attention to the advantages *and* the disadvantages of agency decisions."[39] Here, the SEC will face a heightened obligation, as it is statutorily required to consider whether its rules will "promote efficiency, competition, and capital formation."[40] These requirements "impose[] on the [Commission] an obligation to consider the economic implications of certain rules it proposes."[41] A failure to give "proper[]" consideration to the economic implications of its rules renders the SEC's actions arbitrary and capricious, as many courts have concluded.[42/]

The Proposal fails to comport with the requirements of the APA in several key respects. As described in more detail throughout this letter, the SEC's economic analysis and, specifically, the Proposal's estimated costs are materially understated. MFA respectfully submits that the SEC has no defensible cost-benefit basis for imposing this entirely new reporting framework given the lack of potential benefits and the presence of substantially similar reporting frameworks the SEC could leverage. There is an obvious alternative approach from the Proposal to leverage FINRA's existing reporting framework and provide incremental enhancements as necessary. Doing so would avoid imposing significant costs on market participants associated with a brand-new

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[36] *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

[37] *Id.*

[38] *See PPL Wallingford Energy LLC v. FERC*, 419 F.3d 1194, 1198 (D.C. Cir. 2005); *Canadian Ass'n of Petroleum Producers v. FERC*, 254 F.3d 289, 299 (D.C. Cir. 2001); *Tesoro Alaska Petroleum Co. v. FERC*, 234 F.3d 1286, 1294 (D.C. Cir. 2000).

[39] *Michigan v. EPA*, 135 S. Ct. 2699, 2707 (2015).

[40] 15 U.S.C. § 80b-2(c).

[41] *American Equity Inv. Life Ins. Co. v. SEC*, 613 F.3d 166, 178 (D.C. Cir. 2010) (considering 15 U.S.C. § 77b(b)).

[42] *Id.*; *see also Business Roundtable v. SEC*, 647 F.3d 1144, 1148 (D.C. Cir. 2011); *Chamber of Commerce of U.S. v. SEC*, 412 F.3d 133, 144 (D.C. Cir. 2005).

report regime and developing the systems necessary to monitor compliance with the SEC's thresholds.

VII. Conclusion

While we support the SEC's initiative to publish anonymous, aggregated short position information related to the stock of U.S. reporting companies free of charge, we have strong concerns that the Proposal would impose significant costs, burdens, and risks on market participants, including risk of disclosure of commercially sensitive investment and trading information on an attributed basis, while yielding limited incremental benefits to the market. We believe these costs, burdens, and risks are largely avoidable by leveraging existing reporting infrastructure including FINRA's existing short position collection and dissemination infrastructure and CAT data.

Should the Commission nevertheless proceed with a version of Proposed Rule 13f-2 and Form SHO requiring manager reporting, the Commission should simplify its proposal as follows:

- Establish robust data security protocols to protect this information;
- Limit reportable short positions to those in stock of U.S. reporting companies or otherwise specify the securities subject to reporting via a list to be published and updated periodically by the Commission;
- Adopt dollar-based thresholds that can be easily determined and administered by reporting managers rather requiring complex calculations based on outstanding shares;
- Replace the complex and burdensome daily transaction component of proposed Form SHO with additional threshold-based position reporting so long as a manager's aggregate short position remains above the dollar-based reporting threshold;
- Eliminate the requirement that managers designate each end-of-month gross short position as fully hedged, partially hedged, or not hedged, and
- Make other clarifying changes to address the risks the SEC itself raised in the Release, enhance the integrity and usefulness of proposed Form SHO, and reduce the legal and operational burdens on reporting managers.

The Commission should also remember that the risks of unintended consequences are highest when piling on far-reaching regulatory changes one upon the other. This Proposal, for example, is closely related the SEC's complex initiative to obtain and disseminate transaction and aggregate information on securities loans under proposed Rule 10c-1. As proposed, these two initiatives will greatly alter information flows regrading short selling and are therefore likely to alter market behavior. We believe there is considerable risk that, if adopted as proposed, these new rules will discourage managers from using short selling as part of their strategies, reduce fundamental research which could decrease the relative ability of investors to detect and discover frauds, and increased hedging costs for managers which will ultimately harm capital formation.

The Commission and U.S. capital markets would be better served with a more disciplined approach that prioritizes resources and incrementally assess regulatory gaps, instead of rushing through dozens of far-reaching proposals with assessments that are necessarily incomplete because they cannot account for all the changes that will result from related initiatives.

Lastly, we note that the Proposal is only one of many recent proposals that could have wide-ranging effects on the U.S. financial system and the alternative investment industry in particular. We are concerned about the impact that the proposed regulations will have in aggregate on the alternative investment industry and thus its investors. Each new regulation raises the barrier of entry for new entrants and saddles existing market participants with significant additional costs. In considering these new proposals, we urge the Commission to consider the overall regulatory burden on managers when determining whether to impose additional costly, and potentially harmful regulations.

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We appreciate the opportunity to provide these comments on the proposed amendments and concept release. If you have any questions about these comments, or if we can provide further information, please do not hesitate to contact Matthew Daigler, Vice President & Senior Counsel, or the undersigned at (202) 730-2600.

Respectfully submitted,

Jennifer W. Han
Executive Vice President
Chief Counsel & Head of Regulatory Affairs

cc: The Honorable Gary Gensler, Chair
The Honorable Allison Herren Lee, Commissioner
The Honorable Hester M. Peirce, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
Dr. Haoxiang Zhu, Director, Division of Trading and Markets