



590 Madison Avenue  
25<sup>th</sup> Floor  
New York, NY 10022  
Tel (212) 715 4300  
<http://www.s3partners.com>

May 20, 2022

*Submitted electronically*

Ms. Vanessa Countryman  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

Re: Release No. 34-94313; File No. S7-08-22 Short Position and Short Activity Reporting by Institutional Investment Managers

Dear Ms. Countryman:

S3 Partners welcomes the opportunity to comment on the Commission’s proposal to require Short Position and Short Activity Reporting by Institutional Investment Managers (“the Proposal”). As a recognized industry leader in bringing transparency to the securities lending marketplace and short interest data for the past 19 years, S3 Partners<sup>1</sup> has the proven expertise to provide a reporting service based on the Proposal’s requirements. S3 stands ready to assist clients with short position and activity reporting but believes a measured approach to reporting would be prudent.

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<sup>1</sup> S3 Partners, LLC, together with its affiliate, Blacklight Technology Partners, LLC, is a market leading financial data and technology company that provides pricing and analytics for capital markets and technology solutions that connect clients to their critical investment data. Clients use S3’s technology and data to create better outcomes at every point in the investment process -- Portfolio Management, Trading and Execution, Risk Management, and Treasury Operations. Its most used product, the BLACK APP®, is the market standard for real-time Short Interest and Securities Finance data for more than 50,000 securities on desktops globally. S3 is the market standard source for the financial news media such as Bloomberg, WSJ, CNBC and FT. Learn more about S3 at [www.s3partners.com](http://www.s3partners.com).

S3 Partners supports the Commission’s efforts to implement the requirements of Dodd-Frank Act DFA Section 929X through its proposed addition of Rule 13f-2 (the “Proposed Rule”) under the Exchange Act.<sup>2</sup> However, S3 Partners recommends limiting reporting under the Proposal to public disclosure of only those data elements required by Section 13(f)(2) of the Exchange Act and taking a data-driven approach to additional reporting requirements. Our rationale for this approach is discussed below.

The Commission acknowledges throughout the Proposal that its impact is uncertain<sup>3</sup>. We support the Commission’s candor that:

“Consequently, to the extent that the Proposals discourage short selling they may also lower overall portfolio returns, including for institutional investors that engage in securities lending.”<sup>4</sup>

and

“However, as explained in more detail below, because the Commission does not have, and in certain cases does not believe it can reasonably obtain, data that may inform the Commission on certain economic effects, the Commission is unable to quantify certain economic effects. Further, even in cases where the Commission has some data, quantification is not practicable due to the number and type of assumptions necessary to quantify certain economic effects, which render any such quantification unreliable. Our inability to quantify certain costs, benefits, and effects does not imply that the Commission believes such costs, benefits, or effects are less significant.”<sup>5</sup>

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<sup>2</sup> 15 U.S.C. 78m(f)(2) (“The Commission shall prescribe rules providing for the public disclosure of the name of the issuer and the title, class, CUSIP number, aggregate amount of the number of short sales of each security, and any additional information determined by the Commission following the end of the reporting period. At a minimum, such public disclosure shall occur every month.”).

<sup>3</sup> See, e.g., 87 FR 14993 (“The Commission believes that the Proposals may have uncertain effects on stock price efficiency.”), 87 FR 14996 (“The effect of the Proposals on liquidity is uncertain;” “The Commission believes that Proposed Rule 13f-2 and Proposed Form SHO could have mixed effects on corporate decision making.”)

<sup>4</sup> See 87 FR 14997.

<sup>5</sup> See 87 FR 14981.

In that same spirit, we note respectfully that, in the instance of the Proposal, the Commission may be exceeding the requirements of Section 13(f)(2) despite an admitted paucity of empirical evidence.

“While the Commission notes that there is currently no empirical evidence that these types of manipulation occur or are widespread, should they be suspected, these types of manipulation could better be identified with the positions and activity data.”<sup>6</sup>

We would note that direct costs associated with this rule are a given. S3 Partners has reviewed the Proposal’s requirements, and we believe that we can offer a solution to both satisfy the Commissions’ goals and meet the needs of investment managers<sup>7</sup>. However, we believe an iterative approach would also be conducive to reducing implementation time and be consistent with the Commission’s mandate to consider costs and benefits in promulgating new rules. Moreover, even with the support S3 Partners can provide reporting parties, certain provisions of the Proposed Rule, including the activity monitoring required by Information Table 2, will be a substantial lift on the part of the investment managers’ internal systems. We also believe that limiting the Proposed Rule’s scope to Section 13(f)(2) of the Exchange Act will reduce cybersecurity risk by limiting the data elements and maintaining aggregation in the data provided to regulators and the public.

S3 Partners believes data-driven decision-making is the hallmark of good government. It is also the hallmark of good technology implementation. S3 Partners has the expertise to empower industry participants to achieve the Proposal’s requirements, but we believe strongly that an iterative, agile approach to new requirements provides for a better outcome. As such, we recommend the Commission start with the specific mandate of Exchange Act Section 13(f)(2) and monitor the impact before expanding the scope of its rulemaking. Further, we believe that the Proposal should also be considered in the context of other recent rulemaking, specifically proposed Rule 10c-1 and FINRA Regulatory Notice 21-19.

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<sup>6</sup> See 87 FR 14992.

<sup>7</sup> Please see our attached product fact sheet for additional details.



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<http://www.s3partners.com>

Sincerely,

/s/

Robert Sloan  
Managing Partner  
S3 Partners, LLC

Attachment.



# SEC New Short Sale 13F-2 Rule: Prepare Now to Remain Compliant

## Executive Summary

- On February 25, 2022, the SEC announced a new short sale disclosure rule that requires institutional investment managers to report short sale related information to the SEC on a monthly basis
- Daily trading activity that affects an investor's gross short position for each date of settlement must also be reported
- To help investors prepare, S3 Partners has developed a new 13F-2 reporting and monitoring dashboard that allows you to **monitor and file all positions daily with one click of a button**

## How the New Rule Impacts Investors

Within 14 calendar days after the end of each calendar month, investors will be required to report and file the following information via EDGAR:

- Any equity security of an issuer that is registered pursuant to Section 12 of the Exchange Act
- Any equity security for which the issuer is required to file reports pursuant to section 15(d) of the Exchange Act in which the manager has a gross short position greater than or equal to \$10 million or a monthly average gross short position greater than or equal to 2.5% (as a percentage of shares outstanding)
- For any equity security of an issuer that is not a reporting company issuer as described above, managers are required to report when a gross short position is greater than or equal to \$500,000 at the close of any settlement date during the calendar month

## What managers need to report:

- The name of the eligible security
- End of month gross short position information
- Daily trading activity that affects a manager's reported gross short position for each settlement date during the calendar month reporting period

## File All Positions Daily with One Click of a Button

- Stay compliant with S3's easy-to-use 13F-2 dashboard and reporting tool
- Monitor gross short positions and quickly see daily trading activity that requires reporting

