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SEC Extends Compliance Date for Short Sale Reporting Rule to 2026

February 10, 2025

On February 6, 2025, the SEC announced that it was providing a temporary exemption from compliance with Rule 13f-2 under the Securities Exchange Act of 1934 (the “Exchange Act”), which establishes a mandatory short reporting requirement for institutional investment managers. As a result, the first reporting deadline for reporting short position information on Form SHO confidentially with the SEC, covering the January 2026 reporting period, will be February 14, 2026. The extension follows concerns raised by market participants regarding operational and technical issues in developing the systems necessary to comply with the rule, as well as the SEC’s failure to release technical specifications for the reports until just before the winter holidays. This is a welcome respite for managers, provided one week in advance of the initial reporting deadline. In addition to the operational and technical issues noted by the SEC, we anticipate that the SEC will address the interpretive issues that managers and practitioners have identified when seeking to prepare their Form SHO filings, including providing additional clarity on the scope of equity securities subject to the reporting requirement.

As described in our previous Alert, Rule 13f-2 was originally adopted in October 2023 and requires certain institutional investment managers to report short sale data to the SEC on a confidential basis, which the agency would subsequently publish in aggregated form. The rule has faced legal challenges from industry groups, which argue that it exceeds the SEC’s authority under the Exchange Act. The lawsuit is in the Fifth Circuit U.S. Court of Appeals, which has already ruled against the SEC in the last year on challenges to other rules, although the agency has also prevailed in the circuit in recent years on cases involving its shareholder proposal rule and its modifications to Form N-PX. Oral arguments in the proceeding in this case on short sales reporting were heard in October 2024, but the court has not yet issued a ruling and so it remains ongoing.

Despite the change in Administration, it is likely that the SEC will continue to support the new short sale reporting rule and vigorously defend the agency's position in court based on comments from the interim SEC Chairman. Indeed, if the rule is invalidated, the agency may well seek review in the Supreme Court, and might use its enforcement arm and other approaches more actively to address what the interim Chairman described last week, in announcing the compliance extension, as "abusive naked short selling as part of a manipulative scheme. . . ."

The SEC's Exemptive Order can be found here.

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