

13 October 2023

by Anna Monteiro

## SEC ADOPTS SHORT SELLING REPORTING

In a vote of 3-2, the SEC adopted [new rule 13f-2](#) and related Form SHO to provide greater transparency of short sale data from which is in response to Section 929X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which requires the Commission to prescribe rules to make certain short sale related data publicly available.

Until now, some 13 years after the passage of Section 929X, the SEC had not taken up its obligation to meet this provision of the Act. “Today’s adoption will promote greater transparency about short selling both to regulators and the public,” said Chair Gary Gensler. “Given past market events, it’s important for the Commission and the public to know more about short sale activity in the equity markets, especially in times of stress or volatility.”

There were two “past market events” mentioned during the meeting: AIG’s leverage during the 2008 collapse and the GameStock (GME) short squeeze of 2021 whereby retail investors banded together to drive the price of GME to atmospheric heights reaching as high as \$380 causing prominent hedge funds to lose billions.

[Rule 13f-2](#) will apply to institutional investment managers whether in the U.S. or abroad and foreign nationals who are conducting short selling and meet the reporting thresholds outlined below.

So how will this new rule work?

Institutional investment managers would need to report gross short positions – across all accounts over which it exercises investment discretion – whenever they meet or exceed either of these thresholds:

- 1- Threshold A (Reporting Company Issuer):** *For any equity security of an issuer that is registered pursuant to Exchange Act section 12 or for which the issuer of that class of securities is required to file reports pursuant to Exchange Act section 15(d): **either (1) a monthly average of daily gross short positions at the close of regular trading hours in the equity security with a U.S. dollar value of \$10 million or more, or (2) a monthly average of daily gross short positions at the close of regular trading hours as a percentage of shares outstanding in the equity security of 2.5 percent or more.***
- 2- Threshold B (Non-Reporting Company Issuer):** *For any equity security of an issuer that is not registered as described in Threshold A: **a gross short position in the equity security with a US dollar value of \$500,000 or more at the close or regular trading hours on any settlement date during the calendar month.***

**Reporting Requirements:** For each reported equity security, a Manager will be required to report monthly 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.

**When and how to reporting:**

- 1- Within 14 calendar days after the end of each calendar month
- 2- Form SHO to be submitted in English via the EDGAR system

**Compliance date:** Rule 13f-2 and Form SHO 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.

This change, along with the adopted changes earlier this week for Schedule 13D/G adds additional reporting responsibilities to already resource constrained compliance departments. Perhaps it's time you consider automating your global shareholding reporting process. Not only will it codify your process, but it will reduce the risk, free up cycles in your compliance and operations teams and give you peace of mind that you're responding to reporting requirements the best way possible.

**About Solutions Atlantic:** [Solutions Atlantic](#) is a market leader in providing shareholding disclosure solutions to the global financial services industry. For over 20 years, its [Regulatory Reporting System \(RRS\)](#) has been at the forefront of global shareholding disclosure obligations and currently supports a client base having over \$11 trillion in aggregated assets under management. With regulatory rules for over 100 jurisdictions, RRS leads the way in complete workflow automation including monitoring, alerting, and generating submission-ready disclosures reports. Solutions Atlantic serves a global customer base and is headquartered in Boston, MA. ■