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## Beach Volleyball in August

We exited July without a decision from the Fifth Circuit Court on the *NATIONAL ASSOCIATION OF PRIVATE FUND MANAGERS, et al. v. SECURITIES AND EXCHANGE COMMISSION* case, but they mailed it in from the beach in August.

In a little game of beach volleyball, the Court hit it over the net back to the SEC and left the 13f-2 and securities lending rules standing.

Highlights from the [29-page brief](#).

- The rules were remanded back to the SEC for their consideration of the cumulative economic impact.
- Gives the SEC the ability to rescind one or both sets of these rules by concluding their cumulative costs outweigh their cumulative benefit.
- The Court did reject the challenge to the 13f-2 on its own.
- Determined that the rule does not have impermissible extraterritorial effect because it is expressly limited to those securities covered by Regulation SHO, and Regulation SHO solely applies to equity securities traded in the US.
- Did not express a timeframe for when the SEC should issue new orders.

With the volleyball back with the SEC, the question remains: what's next for the 13f-2 rule? Before the decision, most market participants would have put this as being a successful challenge but point to the SEC as that was not how the Court ruled.

Now, however, the SEC needs to set its next move. It seems unlikely that they would move to rescind the 13f-2 rule altogether as the Court rejected the challenge giving support to the SEC. As a result, it is unlikely that the SEC will want to amend the rule(s) as this would then restart the entire process. Therefore, we think there are two plausible outcomes, the SEC can prepare the economic benefits analysis and perhaps delay the requirement until this is completed; or, it can separate the rules by rescinding or delaying one or both.

Regardless, for now, the line in the sand remains, the 13f-2 reporting deadline is 17 February, and firms would be wise to begin implementing new processes and procedures to meet that first reporting requirement.

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