

MEMO# 34125

April 28, 2022

ICI Files Comment Letter to SEC on Short Sale Disclosure Proposal for Institutional Investment Managers

[34125]

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TO: ICI Members

Equity Markets Advisory Committee

ETF (Exchange-Traded Funds) Committee

ETF Advisory Committee SUBJECTS: Trading and Markets RE: ICI Files Comment Letter to SEC on Short Sale Disclosure Proposal for Institutional Investment Managers

ICI has filed the attached comment letter with the SEC on its short position and short activity disclosure rule proposal.[\[1\]](#) The proposal would require institutional investment managers under new Rule 13f-2 to report certain gross short position and related activity data for equity securities on a monthly basis through a new confidential Form SHO.

ICI's letter emphasizes that proposed Rule 13f-2 would impose significant initial and ongoing compliance costs and burdens on funds and their advisers, in particular, continuous monitoring requirements. Accordingly, the letter recommends that the Commission develop a more cohesive approach to obtaining short sale data that leverages existing reporting obligations (CAT, FINRA short interest reporting, Form N-PORT filings), rather than build a completely new and additional short sale reporting regime via Form SHO.

Notwithstanding this recommendation, however, the letter expresses support for (i) the proposed use of reporting thresholds; (ii) anonymous aggregated reporting of gross short positions; and (iii) amending Rule 205 under Regulation SHO to require a broker-dealer to mark transactions as "buy to cover," rather than requiring customers to provide such information on positions held across multiple accounts. The letter also emphasizes ICI's opposition to any potential disclosure of an individual reporting manager's identity, unaggregated gross short position, and/or individual transactions affecting that short position.

Notwithstanding this overall recommendation, ICI also recommends certain changes to the SEC's proposed approach, including

- simplifying the thresholds by establishing a single percentage-based, net short position reporting threshold of 5 percent (instead of 2.5 percent) of shares outstanding of an issuer and eliminating the additional proposed dollar value thresholds, as well as the hedging designation requirement;
- allowing a manager to determine whether it has met or exceeded the proposed thresholds based on its position at the end of the trading day on the last settlement date of the month instead of its end-of-day position on any settlement date during a given calendar month;
- adopting an alternative to daily monitoring and reporting of activities that increase or decrease a short position; and
- aligning the proposed timelines for preparing and submitting Form SHO filings with other existing filing requirements, such as those for Form N-PART filings (i.e., 30 days after the end of the month, rather than 14 calendar days).

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endnotes

[1] ICI Memorandum No. 34059 (March 4, 2022), available at <https://www.ici.org/memo34059>.

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