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SEC Releases Statement on Short Sale and Securities Lending Rules Following Remand by 5th Circuit U.S. Court of Appeals

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A three judge panel of the U.S. Court of Appeals for the Fifth Circuit recently remanded two rules adopted by the SEC in 2023 for further consideration – Rule 13f-2 (the short sale rule) and Rule 10c1-a (the securities lending rule), stating that the agency did not properly consider the cumulative economic impact of the two rules.[1] The court, however, made a point to emphasize the limited nature of its holding and rejected the other arguments raised by the petitioners against the adoption of Rule 10c-1a, the adoption of Rule 13f-2, and the reporting approaches under the two rules, including arguments based on the Commission's statutory authority for adopting the securities lending rule and the extraterritorial application of the short sale rule.[2] On September 5, 2025 , the SEC Chairman issued a statement that he has asked the agency's staff to evaluate the rules in light of the Court's opinion, including "potential changes to the rules and adjustments to the related compliance dates." The statement is available here: SEC.gov | Statement Regarding Rule 10c1-a and Rule 13f-2 and Related Form SHO.

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. New Rule 10c-1a (also discussed in a previous Alert) requires the reporting of certain securities lending transactions to a registered national securities association.[3]

The SEC had previously extended the reporting deadlines under both rules. The first reporting deadline for reporting short position information on Form SHO confidentially with the SEC pursuant to Rule 13f-2, covering the January 2026 reporting period, is currently February 14, 2026. The deadline for reporting on securities lending transactions is currently September 28, 2026. FINRA would begin its public dissemination of covered securities loan information on March 29, 2027.

Although these rules were proposed and adopted under the prior Commission, we expect that the current Commission will make a thorough review of the rules, but almost certainly will keep them with certain modifications, unless Congress revises the statutory basis for one or both of the rules. Some of these changes may include limiting their scope and extending the deadlines for reporting, as well as potentially extending the time between the end of a reporting period and the deadline for filing the relevant report with the SEC. Chairman Atkins is focused on carefully tailoring regulation and balancing associated economic burdens to the problems sought to be addressed.

The SEC might also respond by vacating the current rules and re-proposing alternatives along with the requested support on economic burden. We expect that the SEC will respond to the Court relatively quickly or further extend the deadlines for compliance given the impending deadlines and need for firms to prepare in advance of those deadlines.

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[1] National Association of Private Fund Managers v. SEC, No. 23-60626 (5th Cir. Aug. 25, 2025).

[2] In rejecting this argument, the court stated that "the proposed version of the Rule only aimed to apply to "equity securities consistent with the Commission's [existing] short sale regulations (i.e., Regulation SHO[]),"" which do not reach securities traded outside of the United States."

[3] Certain material terms of securities lending transactions relating to "reportable securities" are required to be reported to a registered national securities association ("RNSA") by the end of the day on which the loan is agreed or modified. The RNSA is required to make the information – other than that deemed confidential as defined below – public on the morning of the next business day. FINRA is the only RNSA.

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