

Certain Family Offices May Need to Report Short-sale Transactions on Form SHO

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In August 2021, we highlighted a potential “trap for the unwary” related to the “institutional investment manager” filing requirement under Section 13(f) of the Securities Exchange Act of 1934, as amended (Exchange Act). This trap applies to family offices, which, due to the exclusion for “family offices” under the Investment Advisers Act of 1940, as amended (Advisers Act),¹ are not required to register as investment advisers but may still be obligated to comply with the filing requirements set forth in Section 13(f).

As a refresher, Section 13(f) requires “any institutional investment manager that exercises investment discretion over the accounts of any other person holding ‘section 13(f) securities’ that have an aggregate fair market value of at least US\$100 million” to make certain periodic filings with the Securities and Exchange Commission (SEC) on Form 13F. The definition of “institutional investment manager” under the Exchange Act,² unlike the Advisers Act definition, does not exempt family offices, as a result of which, a family office, despite being exempt from registration under the Advisers Act, may be considered an institutional investment manager under Section 13(f), and may therefore be required to comply with the Form 13F filing requirements, and the Form N-PX filing requirement, which we discussed in our earlier Family Office Insights.³

With that in mind, family offices that are subject to Section 13(f) of the Exchange Act should be aware of another “trap for the unwary.” On October 13, 2023, the SEC adopted Exchange Act Rule 13(f)(2) and the associated Form SHO, which mandates that certain institutional investment managers report short-sale transactions to the SEC for transactions taking place after January 2, 2025. If applicable, the first Form SHO must be filed with the SEC by February 14, 2025.

An institutional investment manager will be required to file a Form SHO within 14 days of the end of the relevant calendar month if it exercises investment discretion over short positions in equity securities of both reporting and nonreporting issuers that exceed certain thresholds during the month.

In relation to equity securities of a reporting issuer, the manager must file a Form SHO to report each “gross short position” over which it and any person under its control collectively have investment discretion, if, at the end of a calendar month, either of the following conditions is met:

- The monthly average gross short position at the close of regular trading hours in the equity security is at least US\$10 million.
- The monthly average gross short position as a percentage of shares outstanding in the equity security is at least 2.5%.

In relation to short positions in equity securities of a nonreporting issuer, an institutional investment manager is required to disclose each gross short position with a value of US\$500,000 or more at the close of regular trading hours on any settlement date during the calendar month.

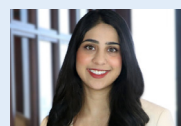
Finally, family offices that are required to make Form SHO filings should be aware that, while the Form SHO is a nonpublic, confidential filing, within one month of the end of each calendar month, the SEC will publish the aggregated short positions and daily activity data for each individual equity security reported on Form SHO.

The interplay between federal and state investment adviser regulation and the Exchange Act’s rules regarding the regulation of trading markets is complex. Family offices and their professional advisers need to consider the applicability of the full range of securities laws as part of an effective and comprehensive compliance program.

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¹ See [Advisers Act Section 202\(a\)\(11\)\(G\) and Advisers Act Rule 202\(a\)\(11\)\(G\)-1](#).

² See [Exchange Act Section 13\(f\)\(6\)\(A\)](#).

³ See “[Family Office Insights: Exchange Act Form 13F – New Requirements Effective July 1, 2024](#)” and “[Section 13\(f\)’s Disclosure Rules – A Trap for Family Offices?](#)”