No. 23-60626

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NATIONAL ASSOCIATION OF PRIVATE FUND MANAGERS, MANAGED FUNDS ASSOCIATION, AND ALTERNATIVE INVESTMENT MANAGEMENT ASSOCIATION

Petitioners,

v.

UNITED STATES SECURITIES & EXCHANGE COMMISSION,

Respondent.

On Petition for Review of an Order of the
United States Securities and Exchange Commission

BRIEF OF INVESTOR CHOICE ADVOCATES NETWORK AND CALIFORNIA ALTERNATIVE INVESTMENTS ASSOCIATION AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Fifth Circuit Local Rule 28.2.1, Amici Investor Choice Advocates Network ("ICAN") and California Alternative Investments Association ("CalALTs") state that in addition to the persons listed in Petitioners' Opening Brief (Doc. 19) (filed March 5, 2024), the following persons and entities have an interest in the outcome of this case:

1. ICAN, *Amicus Curiae;*
2. Brown, Angela Laughlin, *Counsel for Amicus ICAN*;
3. Gray Reed & McGraw, LLP, *Counsel for Amicus ICAN*;
4. Morgan, Nick, *Founder & President, ICAN,*
5. CalALTs, *Amicus Curiae,* and
6. Rizvi, Ghufran, *Board President, CalALTs.*

ICAN certifies that it is a not-for-profit corporation that has no parent company and no publicly-held corporation owns 10 percent or more of its stock.

CalALTs certifies that it is a California not-for-profit mutual benefit corporation. It has no parent company and no publicly-held corporation owns 10 percent of more of its stock.

March 12, 2024

Respectfully Submitted,

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IDENTITY AND INTEREST OF AMICI CURIAE[1]

Investor Choice Advocates Network ("ICAN") is a not-for-profit public interest litigation organization committed to serving as legal advocate and voice for investors and entrepreneurs seeking to enter the capital markets. Through its advocacy efforts, ICAN seeks to draw official attention among the judiciary and regulatory bodies to the serious challenges facing investors and entrepreneurs.

California Alternative Investments Association ("CalALTs") is a not-for-profit membership organization whose members include alternative asset managers, investors and service providers who are dedicated to the continuing evolution of the alternative asset management industry in California. CalALTs connects its members with a vast network of their peers and thought leaders focused on disseminating best practices and industry intelligence across the alternative asset management industry in California.

Arbitrary regulation and government overreach negatively impact individual investors and the public markets as a whole. In this case,

[1] All parties consent to the filing of this brief. No party's counsel authored this brief in whole or part, and no party or party's counsel made a monetary contribution to fund preparation or submission of this brief. No person or entity other than *Amici* made a monetary contribution to the preparation or submission of this brief.

arbitrary rulemaking by respondent, the United States Securities and Exchange Commission ("SEC" or "Commission") cannot be ignored. On October 13, 2023, the SEC simultaneously adopted two rules – the rule regarding *Reporting of Securities Loans* (the "Securities Lending Rule"),[2] and the rule regarding *Short Position and Short Activity Reporting by Institutional Investment Managers* (the "Short Sale Rule")[3] – both of which impose extensive, and contradictory, requirements for the reporting and public disclosure of information pertaining to short sales of securities or loans of securities to facilitate short sale activity. Petitioners, other commenters on the Rules proposals, and the SEC itself have articulated many of the legal and public policy shortcomings of publicly disclosing data regarding short positions in equity securities. However, the SEC substantially disregarded the risks of such disclosures, adopting detailed short-sale reporting despite recognizing that market transparency is served through aggregated, delayed reporting under the Short Sale Rule. The Securities Lending Rule requires daily publication of individual securities loan transaction

[2] 88 Fed. Reg. 75,644 (Nov. 3, 2023) (to be codified at 17 C.F.R. pt. 240).

[3] 88 Fed. Reg. 75,100 (Nov. 1, 2023) (to be codified at 17 C.F.R. pts. 240 and 249).

information, despite the SEC acknowledging in the Short Sale Rule the risks that frequent, detailed disclosures about short sale activity pose to markets and market participants.

In addition to the reasons set forth in Petitioners' Opening Brief, the SEC's Rules threaten development and implementation of optimal investment strategies, risk misleading market participants regarding the value of individual investments, and increase the risk of manipulative market behavior such as copy-cat investing, "herd" behavior among investors, and manipulative activities such as short squeezes.[4] For this reason, ICAN and CalALTs submit this amicus brief and urge the Court to grant Petitioners' petition and vacate the Rules.

[4] Managed Funds Association, Comment Letter on Proposed Rule on Short Position and Short Activity Reporting by Institutional Investment Managers (Apr. 26, 2022), https://www.sec.gov/comments/s7-08-22/s70822-20126815-287523.pdf at 10 ("MFA Apr. 2022 Comment Letter").

ARGUMENT

I. The Short Sale Rule Exposes Investment Strategies to Misinterpretation, Dissection, and Increased Costs.

A. Individual Position Reporting on Form SHO Risks Public Disclosure of Distorted Data That Is Open to Misinterpretation.

Although the SEC heeded its own warnings regarding the harm of disclosing individual short sale positions on a daily basis and will publish only aggregate monthly short position data under the Short Sale Rule, risks of public disclosure remain even if the confidential Form SHO is available only to the SEC. Private reporting is not enough to protect individual trading activity from public disclosure.

Malicious network attacks are a real threat, and an attacker could exfiltrate data on 89% of all individual short positions by accessing the confidential Form SHO filings.[5] The risk of a cyberattack is never far away, and the SEC itself was the victim of a breach in 2016 when individuals illicitly accessed the EDGAR filing system. *See SEC v. Ieremenko,* Civil Action No. 2:19-cv-505-MCA-ESK (D.N.J. Jan 15, 2019)

[5] Two Sigma, Comment Letter on Proposed Rule on Short Position and Short Activity Reporting by Institutional Investment Managers, RIN 3235-AM34, File No. S7-08-22 (Apr. 26, 2022), https://www.sec.gov/comments/s7-08-22/s70822-20126808-287518.pdf at 3 ("Hedge Fund Comment Letter").

(Doc. 1) (action arising from a fraudulent scheme to hack into the SEC's online EDGAR system to obtain nonpublic documents containing earning announcements of publicly-traded companies, and then to use that information to profit by trading in advance of the information becoming public). As noted by Petitioner Managed Funds Association ("MFA"), questions remain regarding the security of the SEC's systems, the OIG having found in December 2021 that the "many weaknesses" previously identified in the SEC's Data Protection and Privacy Program had not been resolved.[6] This is *after* the SEC implemented the "[s]ecurity and modernization enhancements" to the EDGAR system in June 2020.[7] This breach was not an isolated event.[8] Another breach of the SEC's systems could enable improper access to individual short sales data that would reveal managers' confidential investment strategies and, if distributed,

[6] MFA Apr. 2022 Comment Letter, *supra* n.4 at 9.

[7] *See* 88 Fed. Reg. at 75,117.

[8] *See* Statement by Chair Gary Gensler on Unauthorized Access to the SEC's @SECGov X.com Account (Jan. 12, 2024), https://www.sec.gov/secgov-x-account#jan12, and Commission Statement Regarding Certain Administrative Adjudications (Apr. 5, 2022), https://www.sec.gov/news/statement/commission-statement-relating-ertain-administrative-adjudications (describing internal control deficiencies permitting improper access to SEC data),

would arm sophisticated market participants with information that could be used to undermine legitimate trading.

The SEC cannot disregard other avenues of improper disclosure of individual short positions. As noted by Petitioner MFA and other commenters, Form SHO data may be inadvertently disclosed by the SEC, leaked by someone who seeks to discredit the SEC or individual managers, or made the subject of production demands in litigation or other legal processes.[9] Thus, the Short Sale Rule's aggregate position publication does not safeguard individual short position data from public disclosure, nor does it shield investment managers from disclosure of confidential, proprietary, and highly valuable investment strategy details.

The SEC has not provided sufficient explanation for requiring individual short position reporting when only aggregate positions will be made publicly available. As noted in a comment letter, "the regulatory benefit of the information the Commission is asking market participants to provide is far outweighed by the potential commercial harm from

[9] MFA Apr. 2022 Comment Letter, *supra* n.4 at 9; Hedge Fund Comment Letter, *supra* n.5 at 4-5.

misappropriation or other disclosure of this information after it is provided to Commission."[10] The SEC has failed to articulate any additional benefit investors or the market will gain from the costly, burdensome individual position reporting under the Short Sale Rule or what use the SEC intends to make of that information.

B. The Short Sale Rule's Chilling Effect on Taking Short Positions Will Increase Costs and Decrease Price Discovery.

Risks of public disclosure of managers' individual short positions will discourage the use of short sales and could incentivize managers to limit short positions to the reporting threshold to avoid the risks and costs associated with the Short Sale Rule and Form SHO. Short positions used as part of "process-driven, systematic investment strategies" can signal future use of shorting activity for various, legitimate reasons such as hedging other investments or maintaining a market-neutral portfolio, among others.[11] Unlike short positions taken in the open market without a broader investment strategy, they do not reflect a manager's sentiment of a security's value. Thus, individual short position data can only provide

[10] Hedge Fund Comment Letter, *supra* n.5 at 3.

[11] *Id.* at 2.

incomplete information regarding that position, and is open to broad misinterpretation.

The concern is not allayed by limiting disclosure to monthly publication of aggregate short market positions. First, as the SEC acknowledges, even the publication of aggregated data carries a risk of short squeezes or other manipulative activities that is only exacerbated by increasing the frequency of such publication.[12] Second, market participants could use the monthly aggregate short position data to chart changes in the collective short positions in individual securities. Sophisticated market participants could use this to deduce the value of security short positions within an investment strategy, unblemished by speculative shorting that occurs across the entire market. Changes in the overall short position may create a misleading impression of a "genuine signal of overall investor views regarding an issuer," discourage individual research, and encourage copy-cat short positions, all of which could incite distorted movements in the market based upon a misleading impression created by the aggregate short position data.[13]

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[12] 88 Fed. Reg. at 75,710 n.891.

[13] *See* Hedge Fund Comment Letter, *supra* n.5 at 2.

The Short Sale Rule may provide other market distorting effects by altering the way managers trade in response to the rule. Specifically, managers may trade up to – but not beyond – the disclosure thresholds in order to avoid reporting information to the SEC regarding their confidential investment strategies.[14] Empirical evidence from a study of EU short selling disclosure requirements and German short selling data confirms "a significant share of positions accumulate just below the disclosure threshold." In other words, information that would otherwise be incorporated into stock prices is withheld from the market because some traders refrain from some short sales to avoid disclosure requirements. The study shows "a direct link between investors' disclosure avoidance and slower price discovery for stocks affected." The Short Sale Rule will have similar market price distorting effects. Some traders will refrain from short selling to avoid the compulsory disclosure, which will slow price discovery in the stocks affected. The Short Sale Rule's distortions of market prices will undermine market transparency and trustworthiness.

[14] Stephen Jank, at al., *Flying under the Radar: The Effects of Short Sale Disclosure Rules on Investor Behavior and Stock Prices*, Journal of Fin. Econ., Vol. 139, Issue 1, at 209-23 (Jan. 2021), *available at* https://doi.org/10.1016/j.jfineco.2020.07.010.

C. The SEC has Not Explained How the Daily Data Will Assist Its Mission.

The SEC has not described how the Short Sale Rule provides the SEC with information valuable to its mission to proactively protect investors and capital markets, relying instead on the general proposition that "greater transparency bolsters confidence in the markets" and the *potential* benefits to investors' investment risk assessment and markets' capital formation.[15]

Rather, the SEC rests on the rationale that Form SHO disclosures will help combat market manipulation: the disclosures will create "improved detection capacity" that may deter manipulative market behavior.[16] The SEC also surmises that "it would have had a clearer view [during the meme stock events of January 2021] as to which Managers held large short positions prior to the volatility event and thus which Managers could have been at greatest risk of suffering significant harm from a short squeeze."[17] As noted by a commenter, the SEC "does not state what market interventions it anticipates or how the short data will

[15] 88 Fed. Reg. at 75,102.

[16] *Id.* at 75,160.

[17] *Id.* at 75,161.

facilitate those interventions."[18] And the Standards Board for Alternative Investments warns that "creating the expectation that regulators have the tools to intervene in markets to protect investors from price movements could have the opposite effect, by encouraging more risk taking by market actors who will rely on such regulatory intervention going forward."[19] If this is the intent of the rule, it constitutes a new method of regulating short sales and, as such, the SEC must follow rulemaking procedures for the proposal and adoption of such procedures.

Retroactive analysis of market events does not justify the Short Sale Rule's costly and risky disclosures. The SEC states that Form SHO data could help "reconstruct market events and better understand" manipulative or disruptive trading.[20] This rationale also fails to justify the new and largely duplicative reporting regime of the Short Sale Rule.[21] As noted by Petitioner MFA and commenter Two Sigma, the SEC's existing investigative powers can compel specific, event-related short

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[18] Hedge Fund Comment Letter, *supra* n.5 at 11.

[19] Standards Board for Alternative Investments, Comment Letter on Proposed Rule on Short Position and Short Activity Reporting by Institutional Investment Managers (File No. S7-08-22) (Apr. 26, 2022), https://www.sec.gov/comments/s7-08-22/s70822-20126850-287575.pdf.

[20] 88 Fed. Reg. at 75,158.

[21] Hedge Fund Comment Letter, *supra* n.5 at 12.

sale activity data from managers in order to assess systemic risk or reconstruct unusual market events.[22] The Short Sale Rule Imposes Costly, Burdensome Requirements That Are Not Justified by the Information Obtained.

D. The SEC Did Not Consider Sufficiently the Costs of the Short Sale Rule.

"More disclosure isn't always better." *Chamber of Com. of the USA v. SEC*, 85 F.4th 760, 776 n.18 (5th Cir. 2023). Here, the costs of obtaining and disclosing the information required by the Short Sale Rule (which will ultimately be borne by investors) far outweigh any benefits, and the SEC has not offered any evidence to suggest otherwise.

The SEC used the former Form SH – a filing requirement under Rule 10a-3T which the SEC allowed to lapse shortly after implementation – in favor of working with self-regulatory organizations to obtain short sale data more efficiently.[23] Despite numerous commenters expressing concern that using the Form SH 20-hour burden estimate was "not realistic"[24], the SEC does not provide sufficient support

[22] MFA Apr. 2022 Comment Letter, *supra* n.4 at 6; Hedge Fund Comment Letter, *supra* n.5 at 9.

[23] Hedge Fund Comment Letter, *supra* n.5 at 6.

[24] *Id.* at 5.

for this benchmark. In response, the SEC revised Form SHO and now touts the "streamlined" disclosures without acknowledging the complex and time-consuming underlying analysis required of managers – an analysis that is not affected by this change – that was absent from reporting on Form SH.

The SEC adopted a revised Form SHO that replaces ten columns detailing "how and when reported gross short positions were closed out or increased," claiming that the revision helps to "reduce the costs and burdens of complying with the reporting requirements." (Short Sale Rule at 96.) These ten columns detailing various gross short sale transactions are replaced with a "net activity" column, calculated by the manager, and reflecting all offsetting purchase and sale activity for each reported equity security. While this change may marginally impact "data security concerns" by removing some granularity from the information provided to the SEC, the underlying analysis required by the manager is the same. As Two Sigma noted, managers will have to "dissect their trading activity" to formulate the net activity comprised of the various short sale transactions detailed in the proposed Form SHO.[25] By disregarding the

[25] *Id.*

"considerable input from traders and investment professionals" detailing what is required to complete Form SHO, the SEC fails to support using the Form SH cost and burden estimate.

E. The Short Sale Rule Requires Significant Expansion of Compliance Procedures and Has Real Operational Implications For Reporting Managers.

Form SHO will require significant changes to procedures to gather required information regarding drivers of short positions.[26] Certain information, such as the LEI and FIGI of the issuer, may not be standard data included in a manager's short position reporting. Managers will have to supplement current technology systems to account for all data elements required by Form SHO.

There is no off-the-shelf software product readily available to meet the SEC's reporting demands, leaving managers to engage third-party vendors to design bespoke programs to meet reporting needs. This comes at the cost of exposing confidential data and investment strategies to build the technology, creating another risk of public disclosure of

[26] Managed Funds Association, Comment Letter on Proposed Rule on Short Position and Short Activity Reporting by Institutional Investment Managers; File No. S7-08-22 (June 15, 2023), https://www.sec.gov/comments/s7-08-22/s70822-206120-414822.pdf at 7 ("MFA June 2023 Comment Letter"); Hedge Fund Comment Letter, *supra* n.5 at 7.

manager-specific trading data. Some sophisticated asset managers have developed proprietary software applications that are incompatible with third party programs. A manager's development and implementation of software to meet the reporting requirements will be a complex and expensive undertaking that will require functionality and security testing, delaying its use for months or longer.[27]

The Short Sale Rule also requires that managers revise their operational procedures around SEC reporting to meet the Rule's new data element reporting demands. This includes developing and implementing new policies and procedures that will place additional demands on compliance, legal, technology, investment, and trading personnel.[28] This will be no small feat for large managers that already have extremely complex internal controls that involve dozens, if not hundreds, of personnel and leverage proprietary software and technology systems that will require significant retooling to meet the Short Sale Rule reporting requirements. New or small managers face an even more daunting task of formulating business and compliance operations at a

[27] MFA June 2023 Comment Letter, *supra* n.26 at10.

[28] *See* MFA Apr. 2022 Comment Letter, *supra* n.4 at 15.

very high cost, despite potentially filing a Form SHO infrequently or sporadically. The costs of this "entirely new reporting regime"[29] are too great to impose for the scant additional information that SEC will receive on short positions.

F. The SEC Disregards The Use of Existing Data to Avoid Burden of Short Sale Rule

The SEC's short position reporting system is unnecessary given that the SEC already has full access to short position information through FINRA's short interest reporting requirements.[30] The SEC should leverage FINRA's existing reporting framework for several reasons: 1) FINRA already collects on a bi-monthly basis the short sale information required under Section 929(X) of the Dodd-Frank Act; 2) the SEC can require FINRA to publish the short interest data for equity securities reported to it on a consolidated basis; and 3) the SEC can increase the frequency of publication from monthly to weekly.[31] The SEC

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[29] MFA June 2023 Comment Letter, *supra* n.26 at 6.

[30] AIMA, Comment Letter on Proposed Rule on Short Position and Short Activity Reporting by Institutional Investment Managers (File No. 57-08-22) (Apr. 26, 2022), https://www.sec.gov/comments/s7-08-22/s70822-20126829-287533.pdf ("AIMA Apr. 2022 Comment Letter); MFA Apr. 2022 Comment Letter, *supra* n.4 at 4-5; Hedge Fund Comment Letter, *supra* n.5 at 7.

[31] MFA Apr. 2022 Comment Letter, *supra* n.4 at 4-5.

also has the ability to expand the information manager's report to FINRA to meet the needs for more granular information.[32]

The benefits of expanding the FINRA short interest reporting requirement are the creation of a unified data set pertaining to short positions.[33] Additionally, FINRA's reporting framework does not limit reporting to threshold amounts, providing the SEC with a fuller picture of short positions in the market. Leveraging FINRA's data will meet the stated goal of increased transparency while avoiding the significant burdens that come along with the rule.

II. The Securities Lending Rule Is Inconsistent with the Short Sale Rule

A. Concerns Regarding Daily Disclosures Under the Short Sale Are Disregarded in the Securities Lending Rule.

The Securities Lending Rule is inconsistent with the Short Sale Rule, disregarding many of the risks and burdens the SEC acknowledged were created by that rule. Petitioner MFA explained that "the economic analysis of the proposed [Securities Lending Rule] purports to treat the public disclosure of loan-by-loan information as an unmitigated benefit

[32] Pet'rs' Br. at 16; AIMA Apr. 2022 Comment Letter, *supra* n.29 at 9.

[33] MFA June 2023 Comment Letter, *supra* n.26 at 4.

to the short selling market, even though the Commission concluded the opposite in the proposed [Short Sale Rule]."[34]

This contradiction occurred despite the SEC acknowledging that the Securities Lending Rule and the Short Sale Rule are closely linked, noting a "close correlation between information about aggregate Customer loan sizes and short interest."[35] The SEC reopened the comment period for the Securities Lending Proposed Rule in order to allow commenters to assess the overlap with the Short Sale Rule. Nevertheless, the SEC ignored the inconsistent approaches of the Rules pointed out by commenters.

Of particular note, as Petitioner MFA pointed out in its comments, "the Commission recognized that public disclosure of [short position and related trading activity information] could (1) reveal participants' short position information, (2) reveal participants' trading strategies, and (3) increase threats of retaliation" as key considerations in drafting the

[34] Managed Funds Association, Comment Letter on Proposed Rule on Reporting of Securities Loans; File No. S7-18-21 (Apr. 1, 2022), https://www.sec.gov/comments/s7-18-21/s71821-20122184-278025.pdf at 3.

[35] 88 Fed. Reg. at 75,155.

Short Sale Rule.[36] Publication of daily securities loan data utterly disregards the SEC's stated concerns regarding risks of short position disclosure. The Securities Lending Rule serves as a sort of "proxy" for short sales.[37] As Petitioner AIMA notes, "immediately disclosing short selling activity would signal to all other market participants that a short position is being established."[38] As the SEC acknowledged in the Short Sale Rule, daily disclosures regarding short positions and related securities loans will increase the cost of building a short position and expose managers' investment strategies through potential reverse engineering based on securities loan activity. Thus, the proposed disclosure regime is unworkable and the rules should be vacated.

B. The Securities Lending Rule Disregards Congress's Statutory Limits on Short Sale Information Disclosure.

As noted above, securities loans, as a proxy for short positions, are also subject to the limitations of Dodd-Frank Section 929(X). The

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[36] Managed Funds Association, Comment Letter on Proposed Rule on Reporting of Securities Loans; File No. S7-18-21 (Aug. 4, 2023), https://www.sec.gov/comments/s7-18-21/s71821-247819-543682.pdf at 3.

[37] Pet'rs' Br. at 47.

[38] AIMA Apr. 2022 Comment Letter, supra n.29 at 2. *See e.g.*, Steven Lecce, *The Impact of Naked Short Selling on the Securities Lending and Equity Market* (Macquarie Business School Research Paper, Feb. 1, 2012) at 83, *available at* https://ssrn.com/abstract=3591994 ("securities lending is a commonly used proxy for the level of covered short selling").

Securities Lending Rule's daily disclosure of transaction-level information goes beyond the statutory authority of Section 929X(a) which limits short sales information to disclosure of the "aggregate amount of the number of short sales of each security." In light of the SEC's recognition of the close ties between the Securities Lending Rule and the Short Sale Rule, it is clear that the Rules lack the requisite consistency to protect against market manipulation, disclosure of investment strategies, and increased costs of obtaining short positions.

C. The Securities Lending Rule Exposes Short Positions and Allows Reverse Engineering of Investment Strategy.

As noted by several commenters, the SEC's attempts to "protect the confidential securities lending information," are ineffective, and sophisticated market participants can still track the data elements over time and determine who owns the securities loan. The anonymization of each individual securities loan doesn't help protect the identity of individual managers or their commercially sensitive information. Sophisticated managers are generally aware of the size and trading strategies of their competitors. Also, anonymized individualized short position data will be compared with long position reports on Form 13F to ferret out the likely identity of managers holding certain securities

loans.[39] Nor does the 20-day publication delay of the exact size of an individual securities loan prevent the use of the loan data to track short sales and to deduce specific investment strategies.[40] The next-day security loan data elements already reveal significant and sensitive information about short positions. Holding back the loan-size data does nothing to stop market participants from uncovering confidential investment strategies. It only gives them motivation to follow through with continuing research on individual managers. This will of course chill some market activity, resulting in distorted price discovery and market opacity.

CONCLUSION

The SEC's arbitrary and unsupportable aggregate disclosure requirements under the Short Sale Rule must be vacated. Further, the risky, unhelpful, and potentially misleading disclosure requirements coupled with the inconsistencies between the two Rules require that the Short Sale Rule and the Securities Lending Rule both be vacated.

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[39] Hedge Fund Comment Letter, *supra* n.5 at 14.

[40] Pet'rs' Br. at 37.

March 12, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6), because this document has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century font. This document complies with the word limit of Federal Rule of Appellate Procedure 27(d)(2)(a) because, excluding parts of the documents that are exempted by Federal Rule of Appellate Procedure 32(f), this document contains 5,009 words.

/s/ Angela Laughlin Brown
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CERTIFICATE OF SERVICE

I hereby certify that on March 12, 2024, I electronically filed the foregoing document with the Clerk of Court for the United States Court of Appeals for the Fifth Circuit using the CM/ECF system, which will cause it to be served on all parties and counsel of record.

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