THE PIPEs REPORT

PIPE Funds That Participate in CMPOs May Face Scrutiny of Short Selling

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PIPE funds that participate in confidentially marketed public offerings may be swept up in the Securities and Exchange Commission's current inquiry into possible violations of rules to prevent stock manipulation, attorneys said.

The SEC investigation involves possible violations of Rule 105 of Regulation M, which bars investors from shorting a stock within five days before a public offering. *The Wall Street Journal* reported today that the SEC is probing the activities of hedge funds including **Appaloosa Management** and **Carlson Capital**.

"If the SEC is being more aggressive on aggressive short selling, it has to affect PIPE funds," said Peter Chepucavage, a former SEC and NASD official and current consultant with Plexus Group in Washington, D.C. "My suspicion is that in many cases hedge funds are required to take secondary offerings to get access to the best ones. To avoid losses in some of these offerings, they are tempted to short the stock."

There have been only 24 actions or settlements so far involving Rule 105, said Ele Klein, an attorney who advises PIPE investors, with the law firm of **Schulte Roth & Zabel** in New York. He described the issue as "a bit of an annoyance" for PIPE funds.

"It can crop up as an issue from time to time," Klein said. "I don't think it will have an impact on the market for CMPOs."

The inquiry reflects changes to the rules that were made in 2007 and are only now beginning to be enforced, Klein said.

"I've seen some Rule 105 cases and they've yet to amount to anything," said Perrie Weiner, an attorney who defends hedge funds against regulatory actions, with the law firm of **DLA Piper** in Los Angeles.

"It's a very pro-issuer ruling," Weiner said. "It might put hedge funds back on their heels and rethink investing in companies."

Source: **Wall Street Journal**