

SEC TAKES STEPS TO CURTAIL ABUSIVE SHORT SALES AND INCREASE MARKET TRANSPARENCY

Washington, D.C., July 27, 2009 – The Securities and Exchange Commission today announced several actions that would protect against abusive short sales and make more short sale information available to the public.

“Today’s actions demonstrate the Commission’s determination to address short selling abuses while at the same time increasing public disclosure of short selling activities that affect our markets,” said SEC Chairman Mary Schapiro.

First, the Commission made permanent an interim final temporary rule, Rule 204T, that seeks to reduce the potential for abusive “naked” short selling in the securities market. The new rule, Rule 204, requires broker-dealers to promptly purchase or borrow securities to deliver on a short sale. The temporary rule, approved by the SEC in the fall of 2008, was set to expire on July 31.

Second, the Commission and its staff are working together with several self-regulatory organizations (SRO) to make short sale volume and transaction data available through the SRO Web sites. This effort will result in a substantial increase over the amount of information presently required by another temporary rule, known as Temporary 10a-3T. That rule, which will expire on August 1, applies only to certain institutional money managers and does not require public disclosure.

Apart from these measures, the Commission is continuing to actively consider proposals on a short sale price test and circuit breaker restrictions <<http://www.sec.gov/news/press/2009/2009-76.htm>> .

Third, the Commission intends to hold a public roundtable on September 30 to discuss securities lending, pre-borrowing, and possible additional short sale disclosures. The roundtable will consider, among other topics, the potential impact of a program requiring short sellers to pre-borrow their securities, possibly on a pilot basis, and adding a short sale indicator to the tapes to which transactions are reported for exchange-listed securities.

Overview

Short selling often can play an important role in the market for a variety of reasons, including contributing to efficient price discovery, mitigating market bubbles, increasing market liquidity, promoting capital formation, facilitating hedging and other risk management activities, and importantly, limiting upward market manipulations. There are, however, circumstances in which short selling can be used as a tool to manipulate the market.

“Naked” Short Sales: In a “naked” short sale the investor sells shares “short” without first having borrowed them. Such a transaction is permitted because there is no legal requirement that a short seller actually borrow the shares before effecting a short sale.

But, before effecting a short sale, Rule 204T requires that the broker-dealer, as opposed to the seller, “locate” an entity that the broker reasonably believes can deliver the shares within three days after the trade – what’s known as T+3. Also, if reasonable, a broker-dealer may rely on a short seller’s assurance that the short seller has located his or her own lender that can deliver shares in time for settlement.

“Fails-to-deliver”: If an investor or its broker-dealer does not deliver shares by T+3, a “failure to deliver” occurs. Where an investor or its broker-dealer neither locates nor delivers shares, a “naked” short sale has occurred.

A “fail to deliver” can occur for legitimate reasons, such as mechanical errors or processing delays. Further, a “fail to deliver” could occur as a result of a long sale – that is the typical buy-sell transaction – as well as a short sale.

“Fails to deliver”, such as fails resulting from potentially abusive “naked” short selling, may have a negative effect on shareholders, potentially depriving them of the benefits of ownership such as voting and lending. They also may create a misleading impression of the market for an issuer’s securities.

Adopting Regulation SHO: Due to its concerns regarding persistent “fails to deliver” and potentially abusive “naked” short selling, the Commission adopted Regulation SHO, which became effective in early 2005. This regulation imposes, among other things, the requirement that broker-dealers locate a source of borrowable shares prior to selling short.

In addition, it requires that firms that clear and settle trades must purchase shares to close out these “fails to deliver” within a certain time frame, 13 days. This “close-out” requirement only applies to certain equity securities with large and persistent “fails to deliver,” known as threshold securities.

The requirement included two major exceptions: the so-called “grandfather” and “options market maker” exceptions. Both of these exceptions provided that certain “fails to deliver” in threshold securities never had to be closed out. The Commission eliminated both exceptions in August 2007 and September 2008, respectively.

Making Permanent A Rule to Curtail Naked Short Selling

Adopting Rule 204: The Commission has made permanent a temporary rule that was approved in 2008 in response to continuing concerns regarding “fails to deliver” and potentially abusive “naked” short selling. In particular, temporary Rule 204T made it a violation of Regulation SHO and imposes penalties if a clearing firm:

- *does not purchase or borrow shares to close-out a “fail to deliver”

- *resulting from a short sale in any equity security

*by no later than the beginning of trading on the day after the fail first occurs (T+4).

Cutting Down Failures to Deliver: An analysis conducted by the SEC's Office of Economic Analysis, which followed the adoption of the close-out requirement of Rule 204T and the elimination of the "options market maker" exception, showed the number of "fails" declined significantly.

For example, since the fall of 2008, fails to deliver in all equity securities has decreased by approximately 57 percent and the average daily number of threshold list securities has declined from a high of approximately 582 securities in July 2008 to 63 in March 2009.

Due to the success of these measures in furthering the Commission's goals of reducing fails to deliver and addressing potentially abusive "naked" short selling, the Commission has made permanent the requirements of Rule 204T with only limited modifications to address commenters' operational concerns.

Increasing Transparency Around Short Sales

In the fall of 2008, the Commission also adopted a short sale reporting interim rule, Rule 10a-3T. The rule requires certain market participants to provide short sale and short position information to the Commission.

The Commission made the rule temporary so that it could evaluate whether the benefits from the data justified the costs associated with the rule.

Instead of renewing the rule, the Commission and its staff, together with SROs, are working to substantially increase the public availability of short sale-related information through a series of other actions. These actions should provide a wealth of information to the Commission, other regulators, investors, analysts, academics, and the media.

Specifically, the Commission and its staff are working together with several SROs in the following areas:

- Daily Publication of Short Sale Volume Information. It is expected in the next few weeks that the SROs will begin publishing on their Web sites the aggregate short selling volume in each individual equity security for that day.
- Disclosure of Short Sale Transaction Information. It is expected in the next few weeks that the SROs will begin publishing on their Web sites on a one-month delayed basis information regarding individual short sale transactions in all exchange-listed equity securities.
- Twice Monthly Disclosure of Fails Data. It is expected in the next few weeks that the Commission will enhance the publication on its Web site of fails to deliver data so that fails to deliver information is provided twice per month and for all equity securities, regardless of the fails level. For current fails to deliver information, see <http://www.sec.gov/foia/docs/failsdata.htm>.

Hosting a Roundtable

Finally, the Commission also is examining whether additional measures are needed to further enhance market quality and transparency, as well as address short selling abuses.

As part of its examination, the Commission intends to hold a public roundtable on Sept. 30, 2009, to solicit the views of investors, issuers, financial services firms, self-regulatory organizations and the academic community regarding a variety of trading and market related practices. The roundtable will focus on issues related to securities lending, pre-borrowing, and possible additional short sale disclosures.

The roundtable panelists will consider, among other things, additional means to foster transparency, such as adding a short sale indicator to the tapes to which transactions are reported for exchange-listed securities, and requiring public disclosure of individual large short positions. Panelists will also consider whether it would be appropriate to impose a pre-borrow or enhanced “locate” requirement on short sellers, potentially on a pilot basis. Additionally, panelists will discuss issues related to securities lending such as compensation arrangements, disclosure practices, and methods of collateral and cash-**reinvestment.**