



## Regulatory Circular RG06-46

Date: May 4, 2006  
To: Members and Member Organizations  
From: Division of Regulatory Services  
Subject: Regulation SHO (Short Sales)

### Recent Guidance Issued by the SEC Concerning Close-out of Fail to Deliver Positions in Threshold Securities

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The Securities and Exchange Commission recently published guidance on its website for participants of a registered clearing corporation concerning the close-out requirements for fail to deliver positions in threshold securities under Rule 203(b)(3) of Regulation SHO. This guidance was presented in Q&A format (Q&A 5.8, dated March 17, 2006<sup>1</sup>).

The Q&A specifies that any reductions in a participant's end-of-day fail to deliver position that occur prior to the 13<sup>th</sup> consecutive settlement day must be applied to any increases in the end-of-day fail to deliver position that occurred prior to the 13<sup>th</sup> consecutive settlement day on a last-in / first-out basis. Thus, this methodology can necessitate a close-out transaction even if more recent fails-to-deliver would account for the participant's current end-of-day fail to deliver position.

Reductions that are effected on the 13<sup>th</sup> consecutive settlement day (or morning of the next settlement day) are an exception. They are applied to that day's close-out requirement first.

The Q&A contains an example of the application of methodology. Questions concerning Regulation SHO may be directed to Robert Gardner, (312) 786-7937, or James Adams, (312) 786-7718, in the Exchange's Department of Member Firm Regulation.

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<sup>1</sup> See SEC, Division of Market Regulation, Responses to Frequently Asked Questions Concerning Regulation SHO, Q&A 5.8 (March 17, 2006). <http://www.sec.gov/divisions/marketreg/mrfaqregsho1204.htm>