



Regulatory Circular RG07-89

Date: August 17, 2007

To: Members and Member Organizations

From: Division of Member and Regulatory Services

Subject: Elimination of Grandfather Provision of Regulation SHO

The Securities and Exchange Commission has amended Regulation SHO to eliminate the grandfather provision effective October 15, 2007 (SEC Rule 203(B)(3)(i)).¹ In order to accommodate the transition, market participants that have any grandfathered fails in a threshold security as of the effective date will have 35 settlement days to close out. If the position is not closed out within those 35 days, the clearing firm and the broker-dealers for whom it clears may not accept any short sale orders or effect further short sales in the particular threshold security without borrowing, or entering into a bona-fide arrangement to borrow, the security until the participant closes out the entire fail position. This 35-day period is a one-time phase in period. If a security becomes a threshold security after the effective date of the amendment, any fails (whether established before or after the threshold date) would be subject to the 13-day close out requirement.

A copy of this final rule may be found at <http://www.sec.gov/rules/final.shtml>. Questions regarding Regulation SHO or this Regulatory Circular in particular can be directed to James Adams, (312) 786-7718, or Robert Gardner, (312) 786-7937 in the Exchange's Department of Member Firm Regulation.

¹ See Securities Exchange Act Release No. 56212 (August 7, 2007). Under the grandfather provision, a person was not required to close-out a fail to deliver position that existed prior to January 3, 2005, Regulation SHO's effective date, or that was established on or after January 3, 2005, but prior to the security appearing on a threshold securities list.