



Regulatory Circular RG08-132

To: Members

From: Division of Member and Regulatory Services  
Legal Division

Date: October 16, 2008

Re: SEC Issues New Rules Regarding Short Sales

On Tuesday, October 14, 2008, the SEC issued orders pertaining to one interim and two final rules with respect to short sales. These rules take effect on October 17, 2008. The actions the SEC took are:

- Delivery Requirements (Rule 204T): On September 17, 2008, the SEC issued an order (the "September Emergency Order") that temporarily adopted Rule 204T, which imposes enhanced delivery requirements. The temporary rule is effective through October 17, 2008. On Tuesday, the SEC issued an order that will extend the temporary rule, with some modifications to address technical and operational concerns, on an "interim final temporary" basis from October 17, 2008 until July 31, 2009. The SEC is requesting comments on the temporary rule and will carefully consider the comments they receive and respond to them in a subsequent release. Setting a termination date for the rule will necessitate further SEC action no later than the end of that period if the SEC intends to continue the same, or similar, requirements contained in the temporary rule. The SEC order extending the effectiveness of Rule 204T can be viewed at: <http://www.sec.gov/rules/final/2008/34-58773.pdf>. Comments on the SEC order may be submitted through December 16, 2008.
- Options Market Maker Hedge Exception (Rule 203(b)(3)): In the September Emergency Order, the SEC temporarily eliminated the options market maker hedge exception to the Reg SHO "threshold security" close-out requirements of Rule 203(b)(3). The temporary elimination of this exception is effective through October 17, 2008. On Tuesday, the SEC issued an order permanently eliminating this exception as a final rule change that will become effective on October 17, 2008. The order also stated that the 35 consecutive settlement days that had been granted to close-out previously excepted fail positions attributable to the options market maker hedge exception will continue to run from the effective date of the September

Emergency Order. In addition, the order provides guidance regarding bona fide market making activities for purposes of the market maker exception to Reg SHO's locate requirement. This order can be viewed at: <http://www.sec.gov/rules/final/2008/34-58775.pdf>.

- Antifraud Rule (Rule 10b-21): Also in the September Emergency Order, the SEC temporarily adopted Rule 10b-21, which is a "naked" short selling antifraud rule. This temporary rule is effective through October 17, 2008. On Tuesday, the SEC adopted Rule 10b-21 as a final rule that will become effective on October 17, 2008. This order can be viewed at: <http://www.sec.gov/rules/final/2008/34-58774.pdf>.

We understand that there may be questions related to the SEC orders and that the orders are very complicated. The goal of this circular is simply to make you aware of the changes. This is not a comprehensive summary and we encourage you to review the orders. CBOE Staff is in the process of reviewing the orders and will issue further guidance as we learn more. Any questions on this circular may be directed to Jim Adams at [adams@cboe.com](mailto:adams@cboe.com) or 312-786-7715, Bob Gardner at [gardner@cboe.com](mailto:gardner@cboe.com) or 312-786-7937 or Jennifer Lamie at [lamie@cboe.com](mailto:lamie@cboe.com) or 312-786-7576.