

REGULATORY CIRCULAR RG 95-69

DATE: August 23, 1995
TO: Members and Member Organizations
FROM: The Department of Financial Compliance
RE: Delivery of Securities when Short Selling

Member organizations effecting short sales of securities for customers or their proprietary accounts must make prior arrangements to borrow the stock or have other assurances that delivery can be made on settlement date. These arrangements are required even when a short sale position is part of an options strategy. Assurances must include the understanding that the security is available for borrowing prior to settlement in a tight market; or that if delivery is to be made through conversion or exercise of another security, that there is no incumbrance attached to rights, exercises, or conversion privileges on the long security.

Exceptions to this requirement include short sales of listed and over-the-counter securities by specialists, odd lot dealers and market makers (including option market makers in both equity options and index options (i.e., stock baskets)) in fulfilling their market making responsibilities. Also exempt are short securities positions related to exercises of put option positions and assignments of call option positions.

Although a specialist, market maker or odd lot dealer is not required to make prior borrowing arrangements for short stock positions described above, the failed position may be subject to a buy-in on or after settlement day. Please be aware that members may have no prior notice before being bought in. Should a buy-in occur, any loss in the position will be realized. Further, if the short security is part of a hedge, the remaining position will be unhedged.

This circular is for information purposes only and is not intended to replace any procedures or policies related to short selling or borrowing of securities which have been established by clearing members. Members should be aware that clearing firms may have different policies with respect to the allocation of buy-in notices. If you are unfamiliar with your clearing member's procedures and/or requirements related to this topic, contact your clearing firm.

Questions concerning this memorandum should be directed to Richard Schell at (312) 786-7929 or Richard Lewandowski at (312) 786-7183 in the Exchange's Department of Financial Compliance.