

Client Alert

Corporate Department

August 2009

Weekly Reporting of Short Sale Activity on Form SH No Longer Required

Temporary Rule Addressing Abusive “Naked” Short Selling Now Permanent

On July 27, 2009, the U.S. Securities and Exchange Commission (the “SEC”) issued final rules and a press release addressing important developments in the regulation of short sales of equity securities.

First, the SEC let expire regulations that require certain institutional investment managers to report short sales on Form SH. As a result, beginning on August 1, 2009, institutional investment managers who were required to report short sales on Form SH are not required to file a Form SH with respect to short sale activity occurring on or after Sunday, July 26, 2009. The SEC noted, however, that it is working with several self-regulatory organizations (“SROs”) to increase the public availability of short sale-related information in the coming weeks through the following expected alternative methods:

- SROs will begin publishing on their websites aggregate short selling volume in each individual equity security for each day.
- SROs will begin publishing on their websites on a one-month delayed basis information regarding individual short sale transactions in all exchange-listed equity securities.
- The SEC will enhance the publication on its website of fails to deliver data so that fails to deliver information is provided twice per month for all equity securities, regardless of the fails level.¹

Second, the SEC made permanent a rule originally approved as a temporary measure in October 2008 in response to continuing concerns regarding fails to deliver and potentially abusive “naked” short selling, subject to certain modifications.

¹ For current fails to deliver information, see <http://www.sec.gov/foia/docs/failsdata.htm>. A fail to deliver occurs when an investor or its broker-dealer does not deliver securities within three days after the trade.

Please feel free to contact any of the partners listed below or any corporate partner with whom you work if you would like to discuss the content of this alert and its potential ramifications.

Steve Wolosky
swolosky@olshanlaw.com

Ken Silverman
ksilverman@olshanlaw.com

Ron Berenblat
rberenblat@olshanlaw.com

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