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December 12, 2008

The Honorable Christopher J. Dodd
Chairman
The Honorable Richard C. Shelby
Ranking Minority Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Barney Frank
Chairman
The Honorable Spencer Bachus
Ranking Minority Member
Committee on Financial Services
House of Representatives

Subject: *Securities and Exchange Commission: Amendments to Regulation SHO*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Securities and Exchange Commission (Commission), entitled “Amendments to Regulation SHO” (RIN: 3235-AK22). We received the rule on October 16, 2008. It was published in the *Federal Register* as an “interim final temporary rule; request for comments” on October 17, 2008. 73 Fed. Reg. 61,706.

The interim final temporary rule addresses abusive “naked” short selling in all equity securities by requiring that participants of a clearing agency registered with the Commission deliver securities by settlement date, or if the participants have not delivered shares by settlement date, immediately purchase or borrow securities to close out the fail to deliver position by no later than the beginning of regular trading hours on the settlement day following the day the participant incurred the fail to deliver position. A participant that does not comply with the close-out requirement, and any broker-dealer from which it receives trade for clearance and settlement, will not be able to short sell the security either for itself or for the account of another, unless it has previously arranged to borrow or borrowed the security until the fail to deliver position is closed out. The interim final temporary rule adopts, with some modifications, Rule 204T which was issued as an emergency order under section 12(k) of the Securities Exchange Act of 1934 on September 17, 2008. 73 Fed. Reg. 54,875.

Enclosed is our assessment of the Commission's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that the Commission complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Michael R. Volpe, Assistant General Counsel, at (202) 512-8236.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Florence E. Harmon
Acting Secretary
Securities and Exchange Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
SECURITIES AND EXCHANGE COMMISSION
ENTITLED
"AMENDMENTS TO REGULATION SHO"
(RIN: 3235-AK22)

(i) Cost-benefit analysis

The Securities and Exchange Commission (Commission) prepared a cost-benefit analysis in conjunction with the interim final temporary rule. The rule will help maintain fair and orderly markets against the threat of sudden and excessive fluctuations of securities prices. The Commission believes the interim final temporary rule will benefit investors by facilitating the receipt of shares so that more investors receive the benefits associated with ownership and ensuring confidence that trading can be conducted without the influence of illegal manipulation. The Commission believes the interim final temporary rule will benefit issuers by increasing investor confidence in the market for their securities which will facilitate investments in their securities. The Commission notes that the interim final temporary rule may result in increased short selling costs for investors and the securities lending market. However, the Commission believes that the costs are justified by the fact that the temporary rule may help restore, maintain, and enhance investor confidence in the market by preventing potentially abusive “naked” short selling.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The Commission prepared a regulatory flexibility analysis as required under the Act. The Commission estimates that as of 2007 there were approximately 896 registered broker-dealers that qualified as small entities that might be affected by the final rule, and that no bank, U.S. registered exchange or clearing agency that is subject to the requirements of Regulation SHO would be considered small entities. The Commission considered alternatives that would accomplish the objective of addressing abusive “naked” short selling while minimizing any significant adverse impact on small entities. However, the Commission believes that imposing different requirements for small entities would undermine its stated goal.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The Unfunded Mandates Reform Act of 1995 is inapplicable to the Commission, because it is not an agency for purposes of the Act. 2 U.S.C. § 658(1).

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The Commission found good cause to have the temporary rule take effect immediately and that notice and public procedure in advance of effectiveness of the rule would be impracticable, unnecessary, and contrary to the public interest. 5 U.S.C. § 553 (c) and (d). The Commission issued Rule 204T as an emergency order on September 17, 2008, and the interim final temporary rule adopts, with some modifications, that rule, and makes it effective on a temporary basis until July 31, 2009.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

Temporary Rule 204T contains information collection requirements under the Act, which the Commission has submitted to the Office of Management and Budget (OMB) for review and approval. OMB has approved the collection of information on an emergency basis with an expiration date of April 30, 2009, and will review the rule under standard procedures during that time. The interim final temporary rule includes a request for comment on the information collection requirements.

Temporary Rule 204T has six provisions that will impose new requirements which are mandatory for broker-dealers relying on the rule. The Commission estimates that the provisions relating to the allocation notification requirement, certification requirement, and pre-fail demonstration requirement will each result in a total estimated annual burden hours per year of approximately 394,626 burden hours, or 71.0 burden hours per year for each broker-dealer. The Commission estimates that the demonstration requirements for fails to deliver on long sales will result in total estimated annual burden hours per year of 270,063 burden hours, or 1,371 burden hours per year for each participant in the demonstration. The Commission estimates that the pre-borrow notification requirement will result in total estimated annual burden hours per year of 397,152 burden hours, or 2,016 burden hours per year for each participant. Finally, the Commission estimates that the market maker demonstration requirement will result in total estimated annual burden hours per year of 396,749 hours, or 604.8 burden hours per year for each Market Maker.

Statutory authorization for the rule

The final rule is authorized by various sections of the Securities Exchange Act of 1934.

Executive Order No. 12,866

The Commission is not subject to Executive Order 12,866, because it is an independent regulatory agency, as defined by 44 U.S.C. § 3502(5).

Executive Order No. 13,132 (Federalism)

The Commission is not subject to Executive Order 13,132, because it is an independent regulatory agency, as defined by 44 U.S.C. § 3502(5).