

Memorandum to Our Investment Management Clients and Friends

**U.S. SECURITIES AND EXCHANGE COMMISSION ADOPTS NEW RULE THAT
EXTENDS SHORT SALE REPORTING REQUIREMENTS**

On October 15, 2008, the U.S. Securities and Exchange Commission (the “SEC”) adopted interim final temporary rule 10a-3T (the “Rule”) and Temporary Form SH (“Form SH”), to extend and modify the short sale reporting requirements established by the Emergency Orders dated September 18, 2008, September 21, 2008 and October 2, 2008 (collectively, the “Emergency Orders”).¹ The Rule and Form SH are effective as of October 18, 2008 and expire on August 1, 2009.

Modifications to the Emergency Orders

- **Extension of the Filing Deadline.** For the week that commenced on October 12, 2008, and for each week thereafter, the Form SH filing deadline will be the last business day of the calendar week following a calendar week in which reportable short sales are effected instead of the first business day, as required by the Emergency Orders. For example, the filing deadline for the week that commenced on October 12, 2008 will be 5:30 p.m. Eastern time on October 24, 2008.
- **Increase of the De Minimis Threshold.** The de minimis threshold has been increased such that Form SH filers are not required to report short sales or short positions otherwise reportable if: (i) the short sale or short position in the section 13(f) security constitutes less than one-quarter of one per cent of that class of the issuer’s securities issued and outstanding; and (ii) the fair market value of the short sale or short position in the security is less than \$10 million. The Rule modifies the Emergency Orders by raising the threshold for reporting short sales or short positions from a fair market value of \$1 million to a fair market value of \$10 million.
- **Elimination of the “Grandfather Provision.”** Except as described under the heading “Form SH Filings During the Transition Period” below, and subject to the de minimis threshold described above, Form SH filers will be required to include in the report all short positions, including short positions in section 13(f) securities held prior to September 22, 2008 (“Pre-Existing Short Positions”).

¹ The full text of the SEC Release can be found on the SEC website at <http://www.sec.gov/rules/final/2008/34-58785.pdf>

- **Exceptions to the Filing and Reporting Requirements.** The Rule does not require an institutional investment manager to file a Form SH if: (i) the institutional investment manager has not effected any short sales of section 13(f) securities during the relevant reporting period, or (ii) on each calendar day during the reporting period, the start of day short position, the gross number of securities sold short and the end of day short position (the “Data Elements”) each (a) constitute less than one-quarter of one per cent of that class of the issuer’s securities issued and outstanding; and (b) the fair market value of the short sale or short position in the security was less than \$10 million. Once a determination is made that Form SH filing is required for a reporting period, the Rule permits a Form SH filer to disclose “N/A” in any of the appropriate Data Elements for which the de minimis exclusion applies.
- **Modification of Definition of Form SH Filer.** Consistent with extended duration of the applicability of the Rule, Form SH is required to be filed by those institutional investment managers that as of the most recent calendar quarter end, filed, or were required to file a Form 13F. As a result, the requirement to file Form SH will no longer be tied to an institutional investment manager’s Form 13F filing obligation for the calendar quarter ended June 30, 2008. Therefore, institutional investment managers that are obliged to file Forms 13F in 2009 will be obliged to file Forms SH in 2009 if they have reportable short positions.

Modifications to Form SH

New Form SH no longer requires reporting of the daily value of securities sold short, the largest intraday short position and the time of day of the largest intraday short position. However, Form SH now requires inclusion of the Central Index Key (CIK) of each reporting institutional investment manager.

Form SH Filings During the Transition Period

The effect of the adoption of the Rule is that the reporting of short positions by institutional investment managers will continue on an uninterrupted basis from the date of the Emergency Orders until the expiration of the Rule. The SEC has stated that in order to assist with the transition, institutional investment managers that are required to file a Form SH report on October 24, 2008 or October 31, 2008, must comply with the Rule, except that they may elect to exclude disclosure of Pre-Existing Short Positions from the Form SH report filed on either or both of those dates, in which case, the original lower de minimis thresholds specified in the Emergency Orders will apply to the short positions and short sales required to be reported therein.

Non-Public Status of Form SH

The Rule states that all Form SH filings made with the SEC will be non-public to the extent permitted by law. The SEC Release states that a Form SH filer should not submit a confidential treatment request under the FOIA procedures to the SEC. However, Form SH filings should be labeled non-public, in accordance with the instructions to the Form.

Comments to the Rule and Form SH

The SEC is soliciting comments on all aspects of the Rule and Form SH, and will continue to do so until 60 days after the publication of the rule in the Federal Register². The SEC has indicated its intent to carefully consider the comments received and address such comments in a subsequent release. As a result, provisions of the Rule and Form SH may change in the future.

General

If you have any questions concerning the Rule and Form SH, or if you need assistance with your Form SH filings, please contact an attorney in the investment management or capital markets groups at Seward & Kissel.

Seward & Kissel LLP

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² The Rule is scheduled for publication in the Federal Register on October 17, 2008.