

MEMO# 23735

August 24, 2009

SEC Re-opens Comment Period on Short Sale Regulation Proposal

[23735]

August 24, 2009

TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 34-09
ETF ADVISORY COMMITTEE No. 27-09
EQUITY MARKETS ADVISORY COMMITTEE No. 35-09
EXCHANGE-TRADED FUNDS (ETF) COMMITTEE No. 6-09
SEC RULES MEMBERS No. 91-09 RE: SEC RE-OPENS COMMENT PERIOD ON SHORT SALE
REGULATION PROPOSAL

The Securities and Exchange Commission is re-opening the comment period on its proposal to determine whether to impose pricing restrictions on short selling in order to solicit additional feedback regarding an alternative price test (“alternative uptick rule”) that would allow short selling only at a price above the current national best bid. [\[1\]](#) The proposal sought comment on various iterations of two general approaches to restricting short selling: a price test or a “circuit breaker” test. [\[2\]](#) The Institute submitted a comment letter on the proposal on June 19 recommending that the SEC not impose any new restrictions on short selling. [\[3\]](#)

The supplemental request for comment seeks input on the adoption of the alternative uptick rule either as a market-wide, permanent price test restriction or in conjunction with a circuit breaker test. The alternative uptick rule would use the current national best bid, and would only permit short selling at an increment above the current national best bid, unless an applicable exception applies. The SEC states in its request for comment that the alternative uptick rule would not permit short sales to obtain immediate execution, even in an advancing market, and therefore would restrict short selling to a greater extent than either of the price tests in the original proposal. Consequently, the SEC seeks comment on what effect the alternative uptick rule would have on the benefits of short selling, such as

providing price efficiency and liquidity.

On the other hand, the SEC seeks comment on whether the alternative uptick rule would be easier to monitor, less costly and easier to program, and could be implemented more quickly than the other proposed pricing restrictions. It also seeks comment on whether the alternative uptick rule should be implemented using a policy and procedures approach or a straight prohibition. Finally, the SEC seeks comment on the appropriate exceptions from the alternative uptick rule.

Heather L. Traeger
Associate Counsel

endnotes

[1] SEC Release No. 34-60509 (August 17, 2009), 74 FR 42033 (August 20, 2009) available at: <http://www.sec.gov/rules/proposed/2009/34-60509.pdf>. Comments should be received by the SEC by September 21, 2009.

[2] SEC Release No. 34-59748 (April 10, 2009), 74 FR 18042 (April 20, 2009) available at: <http://www.sec.gov/rules/proposed/2009/34-59748.pdf>.

[3] See Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated June 19, 2009. The Institute letter further stated that if the SEC determined that some form of new short sale restriction was necessary, the Institute would support a circuit breaker test that triggers the “proposed modified uptick rule,” a price test based on the national best bid.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.