

**MEMO# 20822**

January 29, 2007

## **SEC Issues Rule Proposals Relating to Short Selling**

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TO: EQUITY MARKETS ADVISORY COMMITTEE No. 2-07  
CLOSED-END INVESTMENT COMPANY COMMITTEE No. 3-07  
SEC RULES COMMITTEE No. 9-07 RE: SEC ISSUES RULE PROPOSALS RELATING TO SHORT SELLING

The SEC has issued two rule proposals relating to short selling. The first rule proposal relates to short selling in connection with a public offering. The second rule proposal removes restrictions on the execution prices of short sales.

Comments on both proposals are due to the SEC no later than February 12. We have scheduled a conference call for Wednesday, January 31 at 1:30 pm Eastern to discuss the proposals and their impact on funds. The dial-in number for the conference call will be 888-324-6860 and the passcode for the call will be 22132. If you plan to participate on the call, please contact Jennifer Odom by e-mail at [jodom@ici.org](mailto:jodom@ici.org) or by phone at 202-326-5833.

### **Short Selling in Connection With A Public Offering**

The SEC has proposed amendments to Regulation M concerning the anti-manipulation rules for securities offerings. [\[1\]](#) Rule 105 of Regulation M currently prohibits a person from covering a short sale with securities sold in an offering, if such person sold short within five days prior to pricing or the period beginning with the filing of the registration statement and ending with pricing, whichever is shorter. The amendments to Regulation M would

eliminate the covering component of Rule 105 and make it unlawful for a person to effect a short sale during the Rule 105 restricted period and then purchase the security in an offering.

The proposal specifically requests comment on a number of items relating to funds and investment advisers. For example, in order to determine a net long position, a seller of an equity security must aggregate all of that person's positions in that security. The proposal seeks comment about the application of the aggregation principles in the context of Rule 105 to non-broker-dealers, including investment companies, and whether non-broker-dealers should be provided certain exceptions similar to that provided to broker-dealers under Regulation SHO based on these aggregation principles.

### **Amendments to Regulation SHO and Rule 10a-1**

The SEC has proposed amendments to Regulation SHO and Rule 10a-1 to amend the short sale price test under the Securities Exchange Act. [2] The proposed amendments are intended to provide a more consistent regulatory environment for short selling by removing restrictions on the execution prices of short sales ("price tests" or "price test restrictions"), as well as prohibiting any SRO from having a price test. In addition, the SEC is proposing to amend Regulation SHO to remove the requirement that a broker-dealer mark a sell order of an equity security as "short exempt," if the seller is relying on an exception from a price test.

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#### **endnotes**

[1] The proposal can be found on the SEC's website at <http://www.sec.gov/rules/proposed/2006/34-54888.pdf>.

[2] The proposal can be found on the SEC's website at <http://www.sec.gov/rules/proposed/2006/34-54891.pdf>.