
SEC Seeks Comment on Various Short Sale Restrictions

2009-04-09

At an open meeting today, the Securities and Exchange Commission (SEC) voted unanimously to publish a release requesting comment on several alternative proposed rules relating to short sales. Although the proposed rules have not yet been published, the discussion at the open meeting indicated that the SEC will seek information for its use in determining whether to adopt restrictions on short sales and, if so, what form such restrictions should take. The SEC suggested that, if short sale restrictions are adopted, there would be an implementation period before they take effect.

Specifically, the SEC intends to seek comment on two alternative forms of price restrictions on short sales. First, the SEC proposes a price restriction substantially similar to former Rule 10a-1 (the "uptick rule"), which would restrict orders for short sales unless at a price higher than the last sale price of a security. Alternatively, the SEC proposes a price restriction similar to Nasdaq's former bid test (the "modified uptick rule"), which would restrict the execution or display of short sales except at a price higher than the national best bid. The SEC proposes to apply such price restrictions, if adopted, on a market wide basis to all securities traded on a national securities exchange via policies and procedures implemented by market centers. The SEC Commissioners invited comment on whether certain market activities that promote liquidity should be exempt from any such

price restrictions.

In addition, the SEC intends to seek comment on a variety of circuit breaker proposals that could be imposed together with, or separate from, a price restriction on short sales. The SEC proposes that a circuit breaker would apply to any NMS Stock that experiences a 10% intraday decline in price. The tripping of a circuit breaker could trigger one of three different outcomes, namely: an outright ban on short selling; imposition of an uptick rule; or imposition of a modified uptick rule (as described above). The SEC proposes that these limitations on short selling would remain in effect for the remainder of the trading day in question.

In addition to soliciting public comment on the proposals, the SEC intends to conduct a roundtable on these topics, which is tentatively scheduled for May 5.

The SEC's press release is available at www.sec.gov/news/press/2009/2009-76.htm. WilmerHale will provide additional information once the rule release is published.

Authors



Andre E. Owens

PARTNER

Chair, Broker-Dealer Compliance
and Regulation Practice

Co-Chair, Securities and
Financial Regulation Practice

✉ andre.owens@wilmerhale.com

☎ +1 202 663 6350