

FUNDamentals™
Investment Management
Client Alert Series

Author

Michael Renetzky
312-443-1823
mrenetzky@lockelord.com

Interim Final Temporary Rule Adopted Regarding Form SH

At the end of last week, the Securities and Exchange Commission ("SEC") publicly released Securities Exchange Act of 1934 Release No. 34-58785 and an interim final temporary rule requiring certain institutional investment managers to file reports of short sales on a weekly basis. This interim final temporary rule, Rule 10a-3T, replaces the Emergency Order issued by the SEC at the end of September. See Locke Lord Bissell & Liddell LLP's Client Alert dated September 19, 2008, **Form 13F Filers Required to Report Short Sales Weekly**.

When is the rule effective?

Rule 10a-3T and the revised Form SH are effective from October 18, 2008 until August 1, 2009. The new rule will impact filings as soon as October 24. However, there are transition provisions applying to filings due on October 24 and October 31. (See "What are the transition provisions?" below.)

Who is required to file Form SH?

The universe of investment managers subject to filing Form SH has not changed since the issuance of the Emergency Order. Form SH filing requirements continue to apply to any person required to file a Form 13F for the quarter ended June 30, 2008. A person is required to file a Form 13F if they are an institutional investment manager that exercises investment discretion with respect to accounts holding Section 13(f) securities (generally these are equity securities listed on an exchange) having an aggregate fair market value on the last trading day of any month of any calendar year of at least \$100 million. Any person subject to Form SH filing requirements must, with certain limited exceptions, make a filing with respect to any week in which the investment manager executes a short sale.

What has changed from the Emergency Order?

Deadline for Filing.

The deadline for filing Form SH has changed from the deadline provided in the Emergency Order. Form SH is now due on the last business day of the calendar week following a calendar week in which short sales are effected. The filing deadline was extended to allow additional time for investment managers to gather and verify information. The new filing deadline applies to short sales effected on or after the effective date of Rule 10a-3T.

Information Contained in Form SH.

The SEC has revised Form SH to eliminate the requirement for some information and add requirements for other information. The new Form SH is contained at the end of the SEC's Release which is available at: <http://www.sec.gov/rules/final/2008/34-58785.pdf>. One of the more significant changes is that if an investment manager is required to file Form SH, short positions existing prior to September 22, 2008 are now required to be included when reporting data in columns 5 (Short Position -- Start of Day), 6 (Number of Securities Sold Short -- Day) and 7 (Short Position -- End of Day). Note, however, that if an investment manager had a position that existed prior to September 22 that was not required to be reported pursuant to the Emergency Order, holding that position will not trigger a filing requirement. That position will simply be reflected on a Form SH (i.e. in columns 5, 6 and 7) at such time as a Form SH must be filed based upon the investment manager executing a short sale during a week beginning after the effective date of Rule 10a-3T.

Impacts on Edgar Filing.

Beginning with the first filing after October 31, 2008, Rule 10a-3T now requires that Form SH be filed in XML format in order to facilitate the SEC's use of the information.

www.lockelord.com

This *Client Alert* is provided solely for educational and informational purposes. It is not intended to constitute legal advice or to create an attorney-client relationship. Readers should obtain legal advice specific to their enterprise and circumstances in connection with each of the topics addressed.

If you would like to be removed from our mailing list, please contact us at either unsubscribe@lockelord.com or Locke Lord Bissell & Liddell LLP, 111 South Wacker Drive, Chicago, Illinois 60606, Attention: Marketing. If we are not so advised, you will continue to receive *Client Alerts*.

Attorney Advertising

© 2008 Locke Lord Bissell & Liddell LLP

Offices

Atlanta

Austin

Boston

Chicago

Dallas

Houston

London

Los Angeles

New Orleans

New York

Sacramento

Washington DC

Interim Final Temporary Rule Adopted Regarding Form SH (cont'd.)

Increased Threshold for Reporting.

The SEC has also raised the threshold for short positions that do not have to be reported from a fair market value of \$1 million to a fair market value of \$10 million. Therefore, a short position may be omitted from a Form SH so long as it constitutes less than 1/4 of 1 percent of the class of the issuer's securities outstanding and is believed to have a fair market value of less than \$10 million.

What are the transition provisions?

The transition provisions with regard to Rule 10a-3T apply to Forms SH filed on October 24, 2008 and on October 31, 2008. In those filings, an investment manager may exclude disclosure of short positions reflecting short sales prior to September 22, 2008 so long as those positions are below the threshold for reporting that existed under the Emergency Order. (That is, the pre-September 22 positions must constitute less than 1/4 of 1 percent of the class of the issuer's securities outstanding and be believed to have a fair market value of less than \$1 million in order to be omitted under the transition provisions.)

About the Author

Michael Renetzky's practice focuses on investment management, securities and corporate law. Mr. Renetzky devotes a substantial portion of his time to representing buyers and sellers in mergers and acquisitions transactions. Additionally, he has considerable experience counseling clients on securities law compliance, debt and equity financing matters, investment adviser, investment company and broker-dealer regulation.

Mr. Renetzky is a member of the firm's Board of Directors and the head of the firm's Investment Adviser and Fund Management practice.