

Reminder of Form SH Filing Deadline Today at 5:30 PM (EDT) and Clarification Regarding Short Selling Filing Requirements by Institutional Investment Managers

Institutional investment managers who filed or were required to file Form 13F for the calendar quarter ended June 30, 2008, are reminded that the first filing deadline for Form SH is tonight, Sept. 29, 2008, at 5:30 pm Eastern Daylight Time. The filing requirements, including that the form must be filed electronically, are described in our earlier Investment Management Alert dated Sept. 19, 2008. Form SH can be found at <http://www.sec.gov/about/forms/formsh.pdf>, the instructions are at http://www.sec.gov/about/forms/formsh_instructions.pdf, and guidance regarding Frequently Asked Questions can be found at <http://www.sec.gov/divisions/marketreg/shortsaledisclosurefaq.htm>.

Many managers have expressed concern as to the public disclosure of the information contained in Form SH. There is a procedure discussed in the Form to request non-public treatment of the information. However, the SEC believes that release of such information is in the public's interest, and the Staff has said that they will maintain confidentiality for two weeks, and then make the information available to the public.

Managers also should note that the Form requires that the value of short positions must be based on the NYSE closing price for such securities on the transaction date, regardless of the actual execution price.

The SEC also provided some guidance with respect to options. Put options and short sales of options are not Form SH securities subject to reporting. However, if an investment manager exercises a put with respect to a Form SH security and becomes net short such equity security, it must report this position on Form SH. Also, if a manager sells a call option with respect to a Form SH security and the manager is assigned the obligation to deliver the underlying securities as a result of the exercise of the option, the manager must disclose this position on Form SH as a short sale. The SEC also confirmed that short swaps involving equity securities are excluded from reporting on Form SH.

The SEC has acknowledged that some managers may not be in possession of certain information required on the Form, e.g., the time of day of the largest intra-day short position. A manager is not required to provide information if it makes a statement on

the Form that the information is unknown and not reasonably available (U-NRA), i.e., that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information.

The SEC also has provided verbal clarification that for the limited purpose of reporting short sales on Form SH, a sale by a customer of shares it owns that are lent and not returned by settlement date needs to be reported as a short sale. Regulation SHO treats sales as short if it is not reasonably believed that the shares can be delivered by settlement date (T+3).

The SEC's order that creates these filing obligations will terminate on Oct. 2, 2008, unless extended. If the SEC extends the order, managers would need to report new short sales on each Monday for new short sales occurring the prior week.

As questions arise in connection with complying with or interpreting recent SEC actions, please contact your regular Drinker Biddle lawyer or any member of the Investment Management Group.

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