

Client Alert

Corporate Department

October 21, 2008

SEC Issues Final Rule Requiring Institutional Investment Managers to File Forms SH Disclosing Daily Short Sales and Short Positions until August 1, 2009

On October 15, 2008, the Securities and Exchange Commission (the “SEC”) adopted interim final temporary Rule 10a-3T requiring certain institutional investment managers to file information on Form SH concerning their short sales and short positions in Section 13(f) securities. The interim rule effectively extends the reporting requirements established by the Emergency Orders issued by the SEC on September 18, 2008, September 21, 2008 and October 2, 2008 (collectively, the “Emergency Orders”), while also making important modifications.

Background

On September 18, 2008, the SEC issued an Emergency Order requiring institutional investment managers to report on new Form SH information concerning their short positions in Section 13(f) securities, excluding options, on a weekly basis. The order was amended on September 21, 2008 to address certain technical matters and was further amended on October 2, 2008 to extend the order’s effectiveness through October 17, 2008.

Under the terms of the Emergency Orders, institutional investment managers who had filed, or were required to file, a Form 13F for the calendar quarter ended June 30, 2008 were required to file a report on Form SH disclosing information concerning their daily short sales and short positions involving Section 13(f) securities. The Form SH was due on the first business day of each week immediately following a week in which the investment manager effected any new short sale with respect to Section 13(f) securities, excluding options. The Form SH, which must be filed electronically with the SEC, disclosed for each calendar day the number and value of securities sold short for each Section 13(f) security, the opening short position, the closing short position, the largest intraday short position and the time of the largest intraday short position.

A short position that constituted less than one-quarter of one percent of the class of the issuer’s Section 13(f) securities issued and outstanding as reported in the issuer’s most recent annual or quarterly report and any subsequently filed current report (unless the manager knew or had reason to believe the information contained therein was inaccurate) and had a market value of less than \$1,000,000 (the “De Minimis Threshold”) was not required to be disclosed (the “Initial De Minimis Exception”).

The Emergency Orders contained a “grandfather” provision that did not require disclosure of existing or outstanding short positions in Section 13(f) securities held before the September 22, 2008 effective date of the initial order.

Modifications Under Interim Rule

Rule 10a-3T effectively extends the Form SH filing requirements under the Emergency Orders until August 1, 2009, subject to certain modifications, including the following:

- Changing the weekly filing deadline to the last business day of the calendar week following a calendar week in which short sales are effected;
- Eliminating the requirements to disclose: (i) the value of securities sold short, (ii) the largest intraday short position and (iii) the time of day of the largest intraday short position;
- Requiring disclosure of all short positions, including those effected prior to September 22, 2008, when reporting (i) the opening short position, (ii) the aggregate number of securities sold short during the day and (iii) the closing short position;
- Increasing the De Minimis Threshold to \$10,000,000 in fair market value; and
- Requiring the Forms SH to be filed via EDGAR in XML format.

A copy of Form SH, as amended to reflect these modifications, is attached hereto as Exhibit A.

Summary of Form SH Disclosure Requirements, as Modified

Pursuant to Rule 10a-3T, beginning October 18, 2008, institutional investment managers that, at the end of the most recent calendar quarter, filed, or were required to file, a Form 13F for the calendar quarter and effected a short sale in a Section 13(f) security, other than options, during a calendar week must file a Form SH with the SEC on the last business day of the ensuing calendar week. The Form SH will be a non-public filing. The Form SH must disclose the following information, for each calendar day of the previous week, concerning all short positions in Section 13(f) securities (including short positions effected prior to September 22, 2008), excluding options¹:

- the opening short position;
- the number of securities sold short during the day; and
- the closing short position.

Institutional investment managers who do not effect short sales of a Section 13(f) security during a calendar week will not be required to file a Form SH. Additionally, if on each calendar day an opening short position, closing short position and daily aggregate number of securities sold short constitute less than one-quarter of one percent of the class of the issuer's

¹ However, certain transactions involving options are required to be reported on Form SH, including the following: (i) if an institutional investment manager exercises a put and is net short, the resulting transaction is a short sale for purposes of Form SH disclosure; and (ii) if an institutional investment manager effects a short sale as a result of assignment to it as a call writer, upon exercise, the resulting transaction is a short sale for purposes of Form SH disclosure.

Section 13(f) securities issued and outstanding as reported in the issuer's most recent annual or quarterly report and any subsequently filed current report (unless the manager knows or has reason to believe the information contained therein is inaccurate) and have a market value of less than \$10,000,000, no disclosure is required on Form SH with respect to the Section 13(f) security for that day (the "New De Minimis Exception"). Note that these calculations must take into account short positions effected prior to September 22, 2008.

To the extent a filing obligation is triggered for a calendar week, the institutional investment manager may still apply the New De Minimis Exception on a day-by-day and data element-by-data element basis. "N/A" can be used to populate the applicable data elements any time a filer has a filing obligation and is omitting information under the New De Minimis Exception.

Transition Rules Applicable to Forms SH Due on October 24, 2008 and October 31, 2008

Rule 10a-3T allows a two-week transition period. Institutional investment managers that are required to file a Form SH on October 24, 2008 and October 31, 2008 may exclude from the Forms SH filed on either or both of those dates disclosure of short positions reflecting short sales effected before September 22, 2008. However, if the manager seeks to exclude such disclosure, the Initial De Minimis Exception for reporting short sales or short positions will apply. In addition, investment managers are not required to file their Forms SH due on October 24, 2008 and October 31, 2008 in XML format.

Please feel free to contact any of the partners listed below or any corporate partner with whom you work if you would like to discuss the interim order or if you require assistance with the preparation of your Form SH.

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EXHIBIT A

OMB APPROVAL
OMB Number: 3235-0646
Expires: April 30, 2009
Estimated average burden hours per response: 20.0

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM SH

WEEKLY REPORT OF SHORT SALES AND SHORT POSITIONS

GENERAL INSTRUCTIONS

1. Rule as to Use of Temporary Form SH ("Form SH"). Institutional investment managers ("Managers") that exercise investment discretion with respect to accounts holding section 13(f) securities, as defined in rule 13f-1(c) under the Securities Exchange Act of 1934 [15 U.S.C. 78m(f)] ("Exchange Act"), who have filed or were required to file a Form 13F for the previous calendar quarter, must file a nonpublic report on Form SH with the Commission to report certain information about short sales and short positions. The nonpublic Form SH filing must be made on the last business day of each calendar week immediately following a Form SH reporting period (i.e., the preceding Sunday-Saturday calendar week) in which the Manager entered into any new short positions with respect to any section 13(f) securities except for any short positions for options ("SH Short Positions"). The nonpublic Form SH will report SH Short

Positions for the Sunday-Saturday calendar week that precedes the date on which the Form SH is due to be filed.

2. Rules to Prevent Duplicative Reporting. If two or more Managers that are required to file a report on Form SH for the reporting period exercise investment discretion with respect to the same securities, only one such Manager must include information in its reports on Form SH. A Manager whose information is reported on Form SH by another Manager (or Managers), must identify the Manager(s) reporting on its behalf.

3. Filing of Form SH. A Form SH report that is filed by a Manager with the Commission shall be nonpublic to the extent permitted by law. A Manager must label its Form SH as non-public by adding the phrase NONPUBLIC (in bold and capital letters) at the top and bottom of each page of the form with the exception of the XML tagged data file containing transaction data. A Manager must file a Form SH report with the Commission on the last business day of each calendar week immediately following the preceding calendar week period (Sunday – Saturday) in which the Manager has entered into any new SH Short Position(s) in accordance with Rule 232.13 of Regulation S-T [17 CFR 232.13]. The Form SH must be filed electronically using the Commission’s EDGAR system.

4. Official List of Section 13(f) Securities. The Official List of Section 13(f) Securities published by the Commission (the “13F List”) lists the securities the holdings of which a Manager is to report on Form 13F. See rule 13f-1(c) [17 CFR 240.13f-1(c)]. Form SH filers may rely on the current 13F List in determining whether they need to report on Form SH information about any particular equity security, excluding short

positions for options that are on the 13F List. The 13F List is available on the SEC's Web site, at <http://www.sec.gov/divisions/investment/13flists.htm>. Paper copies are available at a reasonable fee from the Securities and Exchange Commission, Public Reference Room, 100 F Street, NE, Washington, DC 20549-1520.

Paperwork Reduction Act Information

The Office of Management and Budget has approved this collection of information pursuant to 44 U.S.C. § 3507 and 5 C.F.R. § 1320.13. The OMB control number for this collection of information is 3235-0646. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. We estimate that providing the requested information will take, on average, approximately 20 hours. Any member of the public may direct to the Commission any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden.

Filings with the form types set forth in this instruction will be filed on a nonpublic basis.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

TEMPORARY FORM SH

WEEKLY REPORT OF SHORT SALES AND SHORT POSITIONS

Report for the Period Ended: _____ [Month, Day, Year] _____

Check here if Amendment []; Amendment Number: _____

This Amendment (Check only one): [] is a restatement.

[] adds new entries.

Institutional Investment Manager Filing this Report:

Name: _____

Address: _____

Form 13F File Number: 28- _____

Central Index Key (CIK) Number: _____

The institutional investment manager filing this report and the person by whom it is signed hereby represent that the person signing the report is authorized to submit it, that all information contained herein is true, correct and complete, and that it is understood that all required items, statements, schedules, lists, and tables, are considered integral parts of this form.

Person Signing this Report on Behalf of Reporting Manager:

Name: _____

Title: _____

Phone: _____

Signature, Place, and Date of Signing

[Signature]

[City, State]

[Date]

Report Type (Check only one):

- FORM SH ENTRIES REPORT. (Check here if all entries of this reporting manager are reported in this report.)
- FORM SH NOTICE. (Check here if no entries reported are in this report, and all entries are reported by other reporting manager(s).)
- FORM SH COMBINATION REPORT. (Check here if a portion of the entries for this reporting manager is reported in this report and a portion is reported by other reporting manager(s).)

List of Other Managers Reporting for this Manager:

Provide a list of the name(s), Form 13F file number(s) and CIK numbers of all institutional investment managers who are reporting for this manager.

[If there are no entries in this list, state "NONE".]

Number of Other Included Managers: _____

Total Number of Transactions Reported: _____

List of Other Included Managers:

Provide a numbered list of the name(s), Form 13F file number(s) and CIK numbers of all institutional investment managers with respect to which this Form SH report is filed, other than the manager filing this report.

[If there are no entries in this list, state "NONE".]

INFORMATION TABLE

Element 1	Element 2	Element 3	Element 4	Element 5	Element 6	Element 7
Date	CIK of Manager	Name of Issuer	CUSIP	Short Position (Start of Day)	Number of Securities Sold Short (Day)	Short Position (End of Day)

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