



## SEC Seeks Comments on Short Sale Price Test and Circuit Breaker Restrictions

### FOR IMMEDIATE RELEASE 2009-76

Washington, D.C., April 8, 2009 — The Securities and Exchange Commission today voted unanimously to seek public comment on whether short sale price restrictions or circuit breaker restrictions should be imposed and whether such measures would help promote market stability and restore investor confidence. In June 2007, the SEC voted to eliminate price restrictions.

The Commission decided to re-evaluate the issue due to extreme market conditions and the resulting deterioration in investor confidence.

"Clearly, the practice of short selling has both strong supporters and detractors," said SEC Chairman Mary L. Schapiro. "Today, we begin what will be a very deliberative process to determine what is in the best interests of investors."

The Commission voted to propose two approaches to restrictions on short selling. One would apply on a market wide and permanent basis, while the other would apply only to a particular security during severe market declines in that security. They include:

#### *Market-Wide, Permanent Approach*

*Proposed Modified Uptick Rule:* A market-wide short sale price test based on the national best bid (a proposed modified uptick rule).

*Proposed Uptick Rule:* A market-wide short sale price test based on the last sale price or tick (a proposed uptick rule).

#### *Security-Specific, Temporary Approach*

*Circuit Breaker:* A circuit breaker that would either:

Ban short selling in a particular security for the remainder of the day if there is a severe decline in price in that security (a proposed circuit breaker halt rule).  
Impose a short sale price test based on the national best bid in a particular security for the remainder of the day if there is a severe decline in price in that security (a proposed circuit breaker modified uptick rule).

Impose a short sale price test based on the last sale price in a particular security for the remainder of the day if there is a severe decline in price in that security (a proposed circuit breaker uptick rule).

"Since the Commission eliminated short sale price tests two years ago, we have seen market conditions and events that differ sharply from those of previous years," said Erik Sirri, Director of the SEC's Division of Trading and Markets. "In that time, the Commission has received many requests to reinstate short sale price test restrictions. The proposals we have recommended today are part of an overall effort to seek comment and input from all market participants, analyze and if necessary modify our previous actions, and boost investor confidence."

In addition, the Commission proposed amendments to Regulation SHO to require that a broker-dealer mark a sell order "short exempt" if the seller is relying on an exception to a short sale price test restriction or a circuit breaker rule.

### *Background*

In 2004, the Commission initiated a year-long pilot that eliminated short sale price test restrictions from approximately one-third of the largest stocks. The purpose of the pilot was to study how the removal of such short sale price test restrictions impacted the market for those subject securities.

Short sale data was made publicly available during this pilot to allow the public and Commission staff to study the effects of eliminating short sale price test restrictions. Third-party researchers analyzed the publicly available data and presented their findings in a public Roundtable discussion in September 2006. The Commission staff also studied the pilot data extensively and made its findings available in draft form in September 2006, and final form in February 2007.

At the time the SEC acted in 2007, there were two different types of price tests in place, covering significant numbers of securities. The Nasdaq "bid" test, which was based on the national best bid, covered approximately 2,900 Nasdaq securities in 2005 (or 44 million short sales). The SEC's former uptick test (former Rule 10a-1), based on the last sale price, covered approximately 4,000 exchange-listed securities (or 68 million short sales).

In July 2008, when the restrictions were no longer in place, the SEC issued an emergency order imposing borrowing and delivery requirements on short sales of the equity securities of certain financial institutions. And in September 2008, the SEC issued another emergency order prohibiting short selling in the publicly traded securities of certain financial institutions.

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