



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

DIVISION OF  
MARKET REGULATION

July 2, 2007

Ira Hammerman  
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Securities Industry and Financial Markets Association  
120 Broadway, 35th Floor  
New York, NY 10271-0080

Re: Request for Temporary No-Action Relief from Rule 200(g)  
of Regulation SHO for "Short Exempt" Transactions  
TP File No. 07-11

Dear Mr. Hammerman:

In your letter dated July 2, 2007, as supplemented by telephone conversations with the staff of the Division of Market Regulation ("Division"), you requested on behalf of the Securities Industry and Financial Markets Association ("SIFMA") confirmation that the Division will not recommend to the Commission enforcement action against a broker-dealer that marks a short sale as "short exempt" rather than "short" for a transitional period of ninety days after the compliance date of the amendments to Regulation SHO that eliminate the marking requirement of "short exempt" from Rule 200(g) of Regulation SHO.

By including a copy of your correspondence, we avoid having to repeat or summarize the facts you presented. The defined terms in this letter have the same meaning as in your letter, unless otherwise noted.

In your letter, you represent that from your discussions with member firms, you understand that firms need additional time following the compliance date to make necessary and significant systems changes. You represent that absent relief, execution of certain short sales may be unnecessarily delayed until these systems changes can be made.

**Response:**

Rule 200(g) of Regulation SHO provided that a broker-dealer must mark all sell orders of any equity security as "long," "short," or "short exempt." Rule 200(g)(2) required that a short sale order must be marked "short exempt" if the seller is relying on an exception from the tick test of Rule 10a-1 of the Exchange Act or any short sale price test of any exchange or national securities association.

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Recently, the Commission adopted amendments to Rule 10a-1 and Regulation SHO that eliminated short sale price test restrictions and also removed the “short exempt” marking requirement.<sup>1</sup> Specifically, with respect to the latter, the Commission eliminated the “short exempt” marking requirement of Rule 200(g). Upon the official compliance date for the amendment to Rule 200(g), identified in the Adopting Release as July 6, 2007, broker-dealers will no longer be permitted to mark such sales “short exempt,” but rather all such sales will be required to be marked “short.”

You state that it is your understanding from your discussions with member firms that implementation of this change is not practical by the compliance date, due to necessary and significant systems changes. Specifically, you state that it is your understanding that, whereas instituting programming changes to remove short sale price test restrictions are generally straightforward (*e.g.*, due to the ability of firms to generally designate all securities as “Pilot” stocks; and, thus, firms are capable of extending existing programming logic to all stocks), logic on the “short exempt” modifier is embedded in firms’ systems and cannot be as readily extracted. In addition, you state that most firms’ systems recognize that certain transactions identified as “short exempt” are also excepted from the locate requirement of Rule 203(b) of Regulation SHO.

Rule 203(b)(1) of Regulation SHO provides that, a broker or dealer may not accept a short sale order in an equity security from another person, or effect a short sale in an equity security for its own account, unless the broker or dealer has borrowed the security, or entered into a bona-fide arrangement to borrow the security, or has reasonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due. The broker or dealer must also document its compliance with this “locate” requirement.

As your letter indicates, there were certain circumstances in which sales that were excepted from the price test, and thus marked “short exempt,” were also excepted from the locate requirement pursuant to Rule 203(b)(2). For instance, Rule 203(b)(2)(ii) provides an exception from the locate requirement for any sale of a security that a person is deemed to own pursuant to Rule 200 of Regulation SHO, provided that the broker or dealer has been reasonably informed that the person intends to deliver such security as soon as all restrictions on delivery have been removed. These sales were also excepted from Rule 10a-1(e)(1), which excluded from the tick test “[a]ny sale by any person, for an account in which he has an interest, if such person owns the security sold and intends to deliver such security as soon as is possible without undue inconvenience or expense.” Rule 200(g)(2) required that such sales be marked “short exempt.”

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<sup>1</sup> Exchange Act Release No. 55970 (June 28, 2007).









