

have to make changes to exclude these securities from the uniform bid test.

F. Duplicative, Overlapping or Conflicting Federal Rules

The Commission believes that there are no federal rules that duplicate, overlap or conflict with the proposed rules and the proposed temporary rule.

G. Significant Alternatives

Pursuant to Section 3(a) of the RFA,²⁴¹ the Commission must consider the following types of alternatives: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the Rule for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the Rule, or any part thereof, for small entities.

The primary goal of the proposed amendments and the temporary rule is to promote uniformity in short sale regulation wherever trades in certain securities occur. As such, we believe that imposing different compliance or reporting requirements, and possibly a different timetable for implementing compliance or reporting requirements, for small entities would undermine the goal of uniformity. In addition, we have concluded similarly that it would not be consistent with the primary goal of the proposals to further clarify, consolidate or simplify the proposed amendments for small entities. The Commission also preliminarily believes that it would be inconsistent with the purposes of the Exchange Act to use performance standards to specify different requirements for small entities or to exempt broker-dealer entities from having to comply with the proposed rules and temporary rule.

H. Request for Comments

The Commission encourages the submission of written comments with respect to any aspect of the IRFA. Those comments should specify costs of compliance with the proposed temporary rule, and suggest alternatives that would accomplish the objective of proposed amendments and temporary rule.

XXIII. Statutory Authority

Pursuant to the Exchange Act and, particularly, Sections 2, 3(b), 9(h), 10, 11A, 15, 17(a), 17A, 23(a) thereof, 15 U.S.C. 78b, 78c, 78i, 78j, 78k-1, 78o,

78q, 78q-1, 78w(a), the Commission proposed to adopt § 240.200, 240.201, 240.202(T), 203, along with amendments to Regulation M, Rule 105.

Text of Proposed Regulation SHO, Amendments and Temporary Rule

List of Subjects in 17 CFR Parts 240 and 242

Brokers, Fraud, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Title 17, Chapter II, of the Code of Federal Regulations is proposed to be amended as follows.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, 7202, 7241, 7262, and 7263; and 18 U.S.C. 1350, unless otherwise noted.

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2. Sections 240.3b-3, 240.10a-1, and 240.10a-3 are removed and reserved.

PART 242—REGULATIONS M, SHO, ATS, AND AC AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

3. The authority citation for part 242 continues to be read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k-1(c), 78l, 78m, 78mm, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78g(h), 78w(a), 78dd-1, 80a-23, 80a-29, and 80a-37.

4. The part heading for part 242 is revised as set forth above.

5. Part 242 is amended by adding §§ 242.200 through 242.203 to read as follows:

Regulation SHO—Regulation of Short Sales

Sec.

242.200 Definition of “short sale.”

242.201 Price test and marking requirements.

242.202(T) Temporary short sale rule suspension.

242.203 Borrowing and delivery requirements.

Regulation SHO—Regulation of Short Sales

§ 242.200 Definition of “short sale.”

(a) The term *short sale* shall mean any sale of a security which the seller does not own or any sale which is consummated by the delivery of a

security borrowed by, or for the account of, the seller.

(b) A person shall be deemed to own a security if:

(1) He or his agent has title to it; or
(2) He has purchased, or has entered into an unconditional contract, binding on both parties thereto, to purchase it, but has not yet received it, and the contract specifies the price and amount of the securities to be purchased; or

(3) He owns a security convertible into or exchangeable for it and has tendered such security for conversion or exchange; or

(4) He has an option to purchase or acquire it and has exercised such option; or

(5) He has rights or warrants to subscribe to it and has exercised such rights or warrants; or

(6) He holds a security futures contract to purchase it and has received notice that his position will be physically settled and is irrevocably bound to receive the underlying security.

(c) A person shall be deemed to own securities only to the extent that he has a net long position in such securities.

(d) A broker or dealer shall be deemed to own a security, even if it is not net long, if:

(1) It acquired that security while acting in the capacity of a block positioner; and

(2) To the extent that the broker or dealer's short position in the security is the subject of offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities.

(e) In order to determine its net position, a broker or dealer shall aggregate all of its positions in a security unless it qualifies for independent trading unit aggregation, in which case each independent trading unit shall aggregate all of its positions in a security to determine its net position. Independent trading unit aggregation is available only if:

(1) The broker or dealer has a written plan of organization that identifies each aggregation unit, specifies its trading objective, and supports its independent identity;

(2) Each aggregation unit within the firm must continuously determine its net position for every security that it trades that is subject to § 242.201;

(3) Each trader pursuing a particular trading objective or strategy must be included in one aggregation unit; and

(4) Individual traders must be assigned to only one aggregation unit at a time.

(f) When unwinding index arbitrage positions involving long baskets of stock

²⁴¹ 5 U.S.C. 603 (c).