

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34-58785; File No. S7-31-08]

RIN 3235-AK23

**DISCLOSURE OF SHORT SALES AND SHORT POSITIONS BY
INSTITUTIONAL INVESTMENT MANAGERS**

AGENCY: Securities and Exchange Commission.

ACTION: Interim final temporary rule; Request for comments.

SUMMARY: The Commission is adopting an interim final temporary rule requiring certain institutional investment managers to file information on Form SH concerning their short sales and positions of section 13(f) securities, other than options. The new rule extends the reporting requirements established by our Emergency Orders dated September 18, 2008, September 21, 2008 and October 2, 2008, with some modifications. The extension will be effective until August 1, 2009. Consistent with the Orders, the rule requires an institutional investment manager that exercises investment discretion with respect to accounts holding section 13(f) securities having an aggregate fair market value of at least \$100 million to file Form SH with the Commission following a calendar week in which it effected a short sale in a section 13(f) security, with some exceptions.

DATES: Effective Date: §§ 240.10a-3T, 249.326T and temporary Form SH are effective from October 18, 2008 until August 1, 2009.

Compliance Dates: An institutional investment manager that is required to file a Form SH report on October 24, 2008 or October 31, 2008, must comply with Rule 10a-3T, except that it:

- filers to report their net long and short positions in addition to the information already required? Is it sufficient to simply track the net short positions and not to report the start and end of day positions and the aggregate activity?
- As adopted, Form SH no longer requires reporting of the daily value of securities sold short, the largest intraday short position and the time of day of that short position. We understand that some institutional investment managers have had significant difficulty identifying the largest intraday short position and the time of day of that short position. This information may be helpful in identifying manipulative short selling. How difficult is it for filers to track and report this information? Should we require filers to report this information? Is there an alternative way to track this kind of information and better identify when manipulative short selling may be taking place?
 - Rule 10a-3T provides that the information required by Form SH shall remain nonpublic to the extent permitted by law. Institutional investment managers have expressed concern about making this information public. Should the information required by Form SH be publicly reported? Would concerns about public reporting be alleviated if there was a delay in filing the information, such as a delay of 10 days, or 45 days after the end of a quarter in which the transaction occurred, similar to the 45-day deadline for Form 13F filings? Would concerns be alleviated if the information was reported by the institutional investment manager on a nonpublic basis, but made public after a delay on an issuer basis?

examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.”

