

SEC ANNOUNCES ROUNDTABLE ON REGULATION SHO PILOT

On June 13, 2006, the Securities and Exchange Commission (the “SEC” or the “Commission”) announced that it will hold a roundtable on **September 15, 2006** to discuss the effectiveness of rules that limit the execution prices of short sales, such as the “tick test” (Rule 10a-1 under the Securities Exchange Act of 1934) and the “bid test” (NASD Rule 3350). The discussion will focus on empirical evidence associated with the Regulation SHO Pilot Program (“Pilot Program”). The roundtable will be coordinated by the SEC’s Office of Economic Analysis, and will include a panel discussion by academic experts and research paper presentations. The roundtable will be open to the public, on a first-come, first-served basis, and persons interested in attending are requested to notify the SEC by email at RegSHOPilot@sec.gov.

Interested persons are also invited to submit suggestions about potential roundtable papers and participants before **August 15, 2006**. The SEC seeks views on the effect of price restrictions on liquidity, volatility, and market efficiency, and on whether the evidence suggests that existing price restrictions should be amended or eliminated.

Background

Regulation SHO is a set of rules that comprehensively regulates short selling activity other than the prices at which short sales may be executed.¹ Short sale price regulation continues to be governed by Rule 10a-1 of the Securities Exchange Act of 1934 and NASD Rule 3350.²

The efficacy of short sale price regulation has been the subject of debate for decades. As part of Regulation SHO, the Commission introduced the Pilot Program that began on May 2, 2005 to suspend all price tests for identified groups of securities in order to collect data on short selling and study the market impact of short selling in the absence of price regulation.³ The Pilot Program was scheduled to end on April 28, 2006, but was recently extended until August 6, 2007.⁴ While the price tests remain suspended until August 2007, the staff will focus its empirical analysis on the data obtained through April 2006.

¹ Short selling is the sale of a security that the seller does not own or any sale that is consummated by the delivery of a security by or for the account of the seller. Regulation SHO was adopted in 2004, and its principal provisions became effective in January 2005. Securities Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008.

² Other national securities exchanges also have similar short sale price rules.

³ See “Regulation SHO - Pilot Program,” available at <http://www.sec.gov/spotlight/shortsales.htm>. A full list of the securities covered by the Pilot Program is available on the SEC’s website at <http://www.sec.gov/rules/other/34-50104.htm>.

⁴ Exchange Act Release No. 53684 (April 20, 2006). See Willkie Farr & Gallagher LLP Client Memorandum, “Short Selling: An Extension and a Deadline” (April 21, 2006) available at <http://www.willkie.com/firm/pubs.aspx>.

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If you have any questions concerning the foregoing or would like additional information, please contact Larry E. Bergmann (202-303-1103, lbergmann@willkie.com), Michael S. Didiuk (202-303-1280, mdidiuk@willkie.com), or the attorney with whom you regularly work.

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