

**SEC ENDS FORM SH FILING REQUIREMENT
AND ANNOUNCES INCREASED DISCLOSURE CONCERNING SHORT SALES**

In October 2008, the Securities and Exchange Commission adopted a temporary rule that required certain institutional investment managers to file with the SEC short sale and short position reports on Form SH.¹ That rule, and the Form SH filing requirements, expire on August 1, 2009. The SEC has announced that it will not renew the rule.² SEC staff has confirmed that July 31, 2009 is the last date on which a Form SH must be filed (for transactions during the week ending July 24). No Form SH will be required with respect to transactions during the week ending July 31, even if such transactions otherwise would have been reportable under the temporary rule.

In lieu of renewing the Form SH rule, the SEC announced this week that it is working with certain self-regulatory organizations (“SROs”) to make available through SRO websites short sale volume and transaction data.³

Short sale data expected to be made available by SROs with respect to individual equities includes:

- Daily aggregate short selling volume in each individual equity security;
- On a one-month delayed basis, individual short sale transactions in all exchange-listed equity securities, (the SEC staff has indicated that the data should not include the identity of the trader); and
- Twice monthly publication of fails to deliver⁴ data for all equity securities, regardless of the fails level, meaning that fails to deliver data will be provided even for equity securities experiencing relatively low levels of fails.

We will update our clients and friends with any further developments in this SEC initiative.

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¹ Disclosure of Short Sale and Short Positions by Institutional Investment Managers, Exchange Act Release No. 58785, 73 FR 178 (Oct. 17, 2008).

² See SEC Takes Steps to Curtail Abusive Short Sales and Increase Market Transparency, Press Release (July 27, 2009), available at <http://www.sec.gov/news/press/2009/2009-172.htm>.

³ *Id.*

⁴ Fails to deliver occur when a seller fails to deliver securities to the buyer when delivery is due.

If you have any questions regarding this memorandum, please contact Roger D. Blanc (212-728-8206, rblanc@willkie.com), Rita Molesworth (212-728-8727, rmolesworth@willkie.com), Martin R. Miller (212-728-8690, mmiller@willkie.com), Matthew B. Comstock (202-303-1257, mcomstock@willkie.com), or the attorney with whom you regularly work.

Willkie Farr & Gallagher LLP is headquartered at 787 Seventh Avenue, New York, NY 10019-6099 and has an office located at 1875 K Street, NW, Washington, DC 20006-1238. Our New York telephone number is (212) 728-8000 and our facsimile number is (212) 728-8111. Our Washington, DC telephone number is (202) 303-1000 and our facsimile number is (202) 303-2000. Our website is located at www.willkie.com.

July 29, 2009

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