

SEC Clarifies Intent of New Short Sale Reporting Transition Rules

On October 15, 2008, the SEC adopted new Rule 10a-3T, extending and modifying the SEC's short sale reporting rules. In our alert on [October 17](#), we noted that the transition rules set forth in the adopting release to Rule 10a-3T were open to multiple interpretations. The SEC clarified to us today that the intent of the rule is to present managers with a choice when filing Form SH on October 24 and/or October 31, 2008:

- Managers may elect to exclude short positions entered into prior to September 22, 2008 from the reports due on October 24 and October 31, in which case the dollar threshold for exempting short sales entered into during the reporting period or short positions held during the reporting period and entered into on or after September 22 from such reports will be \$1 million; or
- Managers may elect to include short positions entered into prior to September 22, 2008 in the reports due on October 24 and October 31, in which case the dollar threshold for exempting short sales or short positions from such reports will be \$10 million.

Please be aware that notwithstanding the above dollar thresholds, short sales and short positions continue to be subject to a separate reporting threshold of 0.25% of the outstanding shares of the security in question.

The first reports to be filed under new Rule 10a-3T, for the period from October 13-19, are due Friday, October 24. If you would like to learn more about Rule 10a-3T and the transition rules thereunder, please contact your regular Ropes & Gray attorney or a member of our [Investment Management Group](#).

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