



Regulatory Circular RG05-127

To: Members and Member Organizations

From: Division of Regulatory Services

Date: December 9, 2005

Subject: Short Sales
Regulation SHO Threshold Securities List

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KEY POINTS

- Pursuant to Regulation SHO, CBOE is required to disseminate a list of threshold securities.
- To date, none of the four equity securities listed and traded on the CBOE have reached threshold security status. Therefore, a threshold securities list has not been necessary.
- CBOE has commenced daily publication of a threshold securities list (even if blank) on an internet website, consistent with the practice of other securities exchanges.
- Members and member organizations are advised to check CBOE's threshold securities list daily at <https://www.cboe.org/legal/SHOthreshold.aspx>. CBOE's list will be available after 8:30 AM CT.

DISCUSSION

Regulation SHO under the Securities Exchange Act of 1934 (the "Act"), defines "threshold securities" as equity securities subject to reporting requirements under the Act **(1)** for which there is an aggregate fail to deliver position at a registered clearing agency for five consecutive settlement days of 10,000 shares or more **and** that is equal to at least .5% of the issue's total shares outstanding and **(2)** are included on a list disseminated by a self-regulatory organization.

Under Rule 203, paragraph (b)(3), of Regulation SHO, a clearing broker-dealer is required to close-out any fail to deliver position resulting from the short sale of a

“threshold security” that has remained open for 13 consecutive settlement days (trade date plus 13 business days or settlement date plus 10 business days) by immediately purchasing securities of like kind and quantity. Until the close-out is executed, the clearing broker-dealer and any broker-dealer for which it clears, **including a market-maker**, is prohibited from effecting further short sales in the subject threshold security, unless, prior to a new short sale, the security is borrowed or an arrangement to borrow the security is in place.¹

Each exchange and securities association is required to publish a daily list of the threshold securities listed on its respective market, or for which the SRO bears the primary surveillance responsibility. The exchanges have determined to disseminate lists of threshold securities via their internet websites. In the event that a threshold security is traded on more than one exchange, it will appear only on the threshold securities list of the exchange that is the primary listing exchange. The lists will be a text file in a pipe-delimited format.

Any questions regarding Regulation SHO and threshold securities may be directed to Robert Gardner, (312) 786-7931, or Jim Adams, (312) 786-7718, in the Department of Member Firm Regulation.

¹ There is a limited exception for options market-makers. If the short sale of a threshold security is effected to establish or maintain a hedge on option positions that were opened before the security became a threshold security, neither the close-out requirement nor the pre-borrow requirement for a new short sale are applicable.