

**UNITED STATES OF AMERICA  
BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION**

**Securities Exchange Act of 1934  
Release No. 53684 / April 20, 2006**

**ORDER EXTENDING TERM OF SHORT SALE PILOT**

On June 23, 2004, the Securities and Exchange Commission (“Commission”) approved new and amended short sale regulations in Regulation SHO under the Securities Exchange Act of 1934 (the “Act”).<sup>1</sup> On July 28, 2004, the Commission issued an order (“First Pilot Order”) creating a one year Pilot (“Pilot”) suspending the provisions of Rule 10a-1(a) under the Act<sup>2</sup> and any short sale price test of any exchange or national securities association for short sales<sup>3</sup> of certain securities.<sup>4</sup> The Pilot was created pursuant to Rule 202T of Regulation SHO, which established procedures to allow the Commission to temporarily suspend short sale price tests so that the Commission could study the effectiveness of short sale price tests.<sup>5</sup> The First Pilot Order provided that the

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<sup>1</sup> Securities Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004) (“Adopting Release”).

<sup>2</sup> 17 CFR 240.10a-1.

<sup>3</sup> “Short sale” is defined in Rule 200 of Regulation SHO, 17 CFR 242.200.

<sup>4</sup> Securities Exchange Act Release No. 50104 (July 28, 2004), 69 FR 48032 (August 6, 2004). Specifically, the First Pilot Order suspended price tests for the following: (1) short sales in the securities identified in Appendix A to the First Pilot Order; (2) short sales in the securities included in the Russell 1000 index effected between 4:15 p.m. EST and the open of the effective transaction reporting plan of the Consolidated Tape Association (“consolidated tape”) on the following day; and (3) short sales in any security not included in paragraphs (1) and (2) effected in the period between the close of the consolidated tape and the open of the consolidated tape on the following day.

<sup>5</sup> 69 FR at 48012-13. We stated in the Adopting Release that conducting a pilot pursuant to Rule 202T would “allow us to obtain data on the impact of short selling in the absence of a price test to assist in determining, among other things, the extent to which a price test is necessary to further the objectives of

Pilot would commence on January 3, 2005 and terminate on December 31, 2005, and that we might issue further orders affecting the operation of the First Pilot Order.<sup>6</sup> On November 29, 2004, we issued an order (“Second Pilot Order”) resetting the Pilot to commence on May 2, 2005 and end on April 28, 2006 to give market participants additional time to make system changes necessary to comply with the Pilot.<sup>7</sup> We are issuing this Order (“Third Pilot Order”) to extend the termination date of the Pilot to August 6, 2007, the date on which temporary Rule 202T expires. Extension of the Pilot termination date will maintain the status quo with regard to price tests for Pilot securities and system designs of market participants while the staff completes its analysis of the Pilot results and the Commission conducts any additional short sale rulemaking. All other terms of the First Pilot Order remain unchanged. We may issue further orders affecting the operation of the Pilot. For the reasons discussed below, the Commission finds that extension of the Pilot is necessary and appropriate in the public interest and consistent with the protection of investors.<sup>8</sup>

#### I. New Pilot Termination Date

We established the Pilot as part of our review of short sale regulation in conjunction with the adoption of Regulation SHO.<sup>9</sup> The Pilot is designed to assist us in

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short sale regulation, to study the effects of relatively unrestricted short selling on market volatility, price efficiency, and liquidity, and to obtain empirical data to help assess whether a short sale price test should be removed, in part or in whole, for some or all securities, or if retained, should be applied to additional securities.” Id. at 48009.

<sup>6</sup> 69 FR at 48033.

<sup>7</sup> Securities Exchange Act Release No. 50747 (November 29, 2004), 69 FR 70480 (December 6, 2004).

<sup>8</sup> See Section 36 of the Act. In addition, pursuant to Section 3(f) of the Act, we considered the impact of this extension on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 69 FR at 48032; See Adopting Release at 48013.

assessing whether changes to short sale regulation are necessary in light of current market practices and the purposes underlying short sale regulation.<sup>10</sup> The Pilot is currently set to terminate on April 28, 2006.

To determine whether additional rulemaking is necessary, our staff will evaluate the results of the Pilot. Although we do not plan to extend the period being studied beyond April 28, 2006, our staff's analysis will help them determine whether to recommend changes to the current short sale regulatory scheme. If we determine that any new or amended rules are necessary, we will commence the rulemaking process. This customarily involves issuing a proposing release soliciting comments on the proposed changes, analyzing such comments and, finally, adopting any final rules. The process of reviewing the data and completing any rulemaking will necessarily continue beyond the study period.

We believe that it is in the interest of the markets and investors to maintain the price test scheme established by the Pilot until any rulemaking resulting from our analysis of the data is complete. Market participants made significant changes in their systems and practices to comply with the Pilot. Absent an extension of the Pilot's end date of April 28, 2006, the pre-Pilot short sale price tests would be restored, and market participants would be required to make changes to their systems and practices to ensure that they comply with these rules. If the Commission thereafter adopts rules that remove or change the nature of price tests for some or all securities, market participants would be required to change their systems and procedures again, which could result in substantial

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<sup>10</sup> 69 FR at 48032.

additional costs. Extending the Pilot ending date would keep the costs of changes to a minimum and help avoid market disruption.

Prior to commencement of the Pilot, some market participants expressed concern about the duration of the Pilot.<sup>11</sup> We do not believe that this concern has borne out. The Second Pilot Order delayed the start of the Pilot period because market participants were not ready to begin the Pilot during the period specified in the First Pilot Order. The Pilot will be in place for slightly more than two years, with this extension. Based on our experience with the Pilot for nearly a year, the concerns regarding a prolonged time span have proven unfounded. Indeed, it would be more disruptive to end the Pilot prior to any Commission action rather than to continue it. Market participants have already undertaken the costs and burdens of systems changes, and have informed us that they would not face any additional burdens or costs from continuing the Pilot. The staff has found no evidence of market disruption during the Pilot thus far, and we do not anticipate that continuing the Pilot will trigger any problems in the future.

In the Regulation SHO adopting release, the Commission stated that it “expects to make information obtained during the pilot publicly available.”<sup>12</sup> Correspondingly, the Commission's staff arranged for the appropriate self-regulatory organizations to make transactional short selling data public on a monthly basis on their internet Web sites.<sup>13</sup> To promote the best quality studies and to encourage transparency, the Commission

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<sup>11</sup> See Adopting Release, 69 FR at 48012 (discussing comment letters regarding the Pilot’s duration from the Nasdaq, the NYSE, and the STA).

<sup>12</sup> *Id.* at n. 9.

<sup>13</sup> A list of the internet Web sites making the monthly trading data public is available at <http://www.sec.gov/spotlight/shopilot.htm>.

expects the SROs to continue releasing this transactional data until the end of the Pilot on August 6, 2007.

Based on the forgoing, we believe that it is necessary and appropriate in the public interest and consistent with the protection of investors to extend the termination date of the Pilot to August 6, 2007. Accordingly, the Pilot will now terminate on August 6, 2007, unless otherwise ordered by the Commission.

## II. Conclusion

We find that extending the termination date of the Pilot to August 6, 2007, for the reasons stated above, is necessary and appropriate in the public interest and consistent with the protection of investors.

Accordingly,

IT IS HEREBY ORDERED that the suspension of the provisions of Rule 10a-1(a) and any short sale price test of any exchange or national securities association for certain securities and time periods, as set forth in the First and Second Pilot Orders, shall terminate on August 6, 2007, instead of April 28, 2006. The Commission from time to time may issue further orders affecting the operation of the Pilot.

All other provisions of the First Pilot Order and Second Pilot Order shall remain in effect.

By the Commission.

Nancy M. Morris  
Secretary