



Obama adviser: Short selling must be disclosed

Ambiguous rules limiting naked short selling must be clarified, attorneys say

By [Ronald D. Orol](#), MarketWatch

WASHINGTON (MarketWatch) -- A top adviser to President-elect Barack Obama on securities regulation on Tuesday said he wants the Securities and Exchange Commission to require public disclosure of short selling.

"We're looking for disclosure of positions, with a small delay, after a short sale is made," said Roel Campos, a former Democratic SEC commissioner and member of Obama's transition team.

After the precipitous drop in stocks of major investment and some commercial banks including Citigroup Inc. ([C](#) [LEHMQ](#)) in September, the agency implemented a series of short sell rules, many of which were temporary in nature. Among these, the SEC temporarily banned short sales in roughly 800 financial institutions. That ban expired on October 8.

Regulators and others argued that many short sellers -- who make bets that a stock price will decline -- contributed heavily to the financial crisis and the collapse of many financial institutions.

The next agency chairman is expected to grapple with whether the agency is doing enough to chill manipulative short selling of shares, particularly when it comes to financial institutions.

Campos is seeking to have the next SEC chairman introduce new rules requiring short sellers to publicly disclose their positions in a manner that is similar to how equity investors are required to reveal their equity stakes.

For example, to comply with the SEC's 13F rule, investors with \$100 million in capital or more are required to publicly disclose their positions 45 days after every calendar quarter. Equity investors with 5% or greater stakes are also required to disclose that information to the agency in either an activist Schedule 13D or passive Schedule 13G filing.

But Campos argues that four-times-a-year public disclosure of short sell positions isn't enough. He wants to see a requirement that hedge funds and other short sellers disclose their positions publicly more quickly after stakes are made, perhaps as fast as two weeks after each position is taken.

Among the temporary regulations put into place in the fall is a requirement for confidential weekly disclosure of short positions to the agency.

According to the rule, investors with \$100 million or more in capital must disclose on a weekly basis to the agency their short positions. However, these investors only must provide that position information to the agency on a confidential basis. The expiration date for the provision was extended in October to Aug. 1 of 2009.

Short seller critics argue that public disclosure will mean their proprietary strategies will be disclosed, enabling rivals to copy their approach. Campos said the delay in public disclosure is intended to protect some proprietary strategies, but that there should be some parity with equity disclosure requirements.

Other ways to rein in short selling

In addition to disclosure, securities attorneys and academics discussed other mechanisms that the SEC could impose that could reign in short selling at an event hosted by the Coalition Against Market Manipulation in Washington.

Participants argued that the agency needs stronger rules limiting illegal naked short selling, the practice of selling shares without arranging to borrow the securities up-front.

The SEC in September adopted rules requiring short sellers and their broker dealers to deliver securities within three days of a trade. Participating investors who fail to arrange to borrow shares in advance are prohibited from making future short sales in the same securities.

But securities attorneys at the event argued that there are too many qualifiers on the naked short selling rule.

Rex Staples, general counsel for the North American Securities Administrator's Association Inc., said there is a "reasonable" qualification on the delivery requirement. "To the extent you can qualify a word like reasonable, you are going to get that time after time," said Rex Staples, general counsel for the North American Securities Administrator's Association Inc.

Former SEC chairman Harvey Pitt, who participated in the discussion agreed that the SEC should eliminate ambiguity when it comes to the agency's naked short selling provision. The agency should also take steps to enforce the rules.

"The agency must make it extremely clear that any naked short selling is illegal and it has to remove the ambiguities so the rules are very clear," Pitt said.

Participants also debated bringing back the so-called up-tick rule, a regulation removed last year that allowed short sales only if a preceding trade boosted a company's stock price.

Georgetown Finance professor James Angel said he wants to see an up-tick rule that would take effect when a stock has fallen 5%. He also sought additional prohibitions when a stock price falls 10% and 15%. Staples argued that the SEC should bring back the same up-tick rule it eliminated in 2007. "It is very helpful in times of financial turmoil," Staples said. ■

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