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The SEC’s New Short Sale Rule: Implications and Ambiguities

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After months of deliberation and consideration of several alternatives, the Securities and Exchange Commission (the “SEC” or “Commission”) announced on February 24, 2010 the adoption of a new short sale rule — Rule 201 of Regulation SHO (the “Rule” or “Rule 201”). The Rule institutes what the marketplace has termed a “circuit breaker with a passive upbid requirement” rather than a full-time restriction on short sales. The restriction goes into place upon a 10% decline in the price of an NMS stock from its previous day’s closing price. Rule 201 effectively restricts the display or execution by exchanges and other trading centers of a short sale order in such stock to a price above the national best bid for the remainder of the trading day and the next trading day (the “Price Restriction”). The Rule will be implemented through policies and procedures of trading centers and broker-dealers that are not, themselves, trading centers.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Ray Ibrahim
+1 212 450 6155
ray.ibrahim@davispolk.com

Mark M. Mendez
+1 212 450 4829
mark.mendez@davispolk.com

Annette L. Nazareth
+1 202 962 7075
annette.nazareth@davispolk.com

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