

## Start planning policies and procedures to comply with new uptick rule

Design policies and procedures that will enable your firm to monitor the national best bid on a real-time basis, the SEC says in the final uptick rule published in the March 10 *Federal Register*. That's the only way to ensure that the price at which you submit a short sale order complies with the rule. And it's the minimum a firm will be required to have.

That's just one of the details to keep in mind as you come up with the written policies and procedures the SEC is requiring by Nov. 10, 2010.

In general, short sales would be prohibited for securities sold on national exchanges or OTC when the security's price drops by at least 10% in a day. The sale would be prohibited for the rest of that trading day and the following day.

Concerns already have been raised about the technological burden this rule will place on firms (*BD Week*, March 1, 2010). But as you write your new policies and procedures, consider that:

✓ A short sale order for the covered security may be submitted to a trading center if the order is marked "short exempt" and you identify it as being at a price above the current national best bid at the time the order was submitted. It can only be marked short exempt *after* the circuit breaker has been triggered for that security, the SEC stresses. You must establish, maintain and enforce WSPs designed to prevent an order from being incorrectly identified as

short exempt. (You've got to conduct surveillance to make sure the policies and procedures are effective, and act quickly if there's a remedy.)

You also can label an order short exempt when you're facilitating customer buy or sale orders where the customer is net long and you are net short, but effecting the sale as riskless principal as long as certain conditions are met. Other short sales that may be marked short exempt include those dealing with seller's delay in delivery, odd lots, domestic arbitrage, international arbitrage, over-allotments and lay-off sales and volume-weighted average price basis transactions, according to an analysis of the rule by the law firm **Mintz Levin**.

Market makers won't be exempt.

Note: One challenge will be developing procedures for the "short exempt" orders without creating loopholes that allow the rule to be circumvented, warns **Steve Ganis**, an attorney in Mintz Levin's Boston office.

✓ The SEC is strongly encouraging you to have "snapshot" technology. The Commission says it has recognized complaints about the cost of complying with the rule, and says that most BDs might already have snapshot technology in connection with Reg NMS.

"A policies and procedures approach that provides for a snapshot of the applicable current national best bid of the security are justified" because it would help deal with time lags in getting data about the national best bid from different sources, the SEC says. It also would help verify whether a short sale order was executed or displayed at a permissible price.

Note: It also will give FINRA something to look at to see if you complied.

✓ The policies and procedures will need to implement reasonable steps to monitor latencies on a continuing basis, as well as contingencies for when

*(Uptick rule, continued on page 2)*

Get all the benefits of a seminar without leaving your office!

**Protecting Confidential Client Communications: Getting Ahead of the Massachusetts Data Protection Rule**

Webinar recorded February 23, 2010

**ORDER TODAY!** [www.bdweek.com](http://www.bdweek.com) • 888-234-7281

Now Available on CD!

**Uptick rule** *(cont. from pg. 1)*

a problem develops.

✓ Developing some policies and leaving it at that won't be enough, the SEC says. You must "regularly" assess their effectiveness.

✓ You'll also have to make sure you are *enforcing* the policies effectively. For example, those policies and procedures could include exception reports, the SEC says. If you do use exception reports, make sure they're examined to affirm the P&Ps have been followed.

Note: Ganis warns that your policies, procedures and controls, and your system to keep tabs on short sales, will need to encompass not just all of your retail and institutional trade execution systems throughout your business lines, but also any systems or ad hoc arrangements for principal and agency cross trading. ■

**BDWEEK** SUBSCRIPTION CERTIFICATE

Name \_\_\_\_\_  
 Title \_\_\_\_\_  
 Firm \_\_\_\_\_  
 Address \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Telephone (\_\_\_\_\_) \_\_\_\_\_  
 Fax (\_\_\_\_\_) \_\_\_\_\_  
 E-mail address \_\_\_\_\_

- PAYMENT OPTION 1** — Charge \$1,595 to my credit card.
- PAYMENT OPTION 2** — Enclosed is my check or money order for \$1,595 made payable to UCG (TIN: 52-1130564).
- PAYMENT OPTION 3** — Bill my company for \$1,595.



Card # \_\_\_\_\_

Exp. Date \_\_\_\_\_ Signature \_\_\_\_\_

\* Discount applies to new subscribers only.



For fastest service, call TOLL FREE (866) 777-8567 or fax this card to (301) 287-2535.

BD Week • 9737 Washingtonian Blvd., Suite 100 • Gaithersburg, MD 20878-7364 • Fax (301) 287-2535