

Financial Crisis Alert: SEC Seeks to Combat Market Manipulation

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Since the current financial crisis escalated, the SEC has indicated that market manipulation is an area of emphasis and it will use its enforcement authority to combat it.

Chairman Christopher Cox and Division of Enforcement Director Linda Chatman Thomsen announced that the Commission will investigate “any suggestion of manipulative trading” in order to “ensure that hidden manipulation, illegal naked short selling, or illegitimate trading tactics do not drive market behavior and undermine confidence.”¹ They also announced that those under investigation will be required, under oath, to disclose their positions to the SEC.² Chairman Cox also testified that the Division of Enforcement “has undertaken a sweeping investigation into market manipulation of financial institutions, focused on broker-dealers and institutional investors with significant trading activity in financial issuers and with positions in credit default swaps. The reason for this aggressive enforcement investigation is the significant opportunities that exist for manipulation in the \$58 trillion CDS market, which is completely lacking in transparency and completely unregulated.”³

NYSE Regulation and FINRA will conduct separate investigations, in coordination with the SEC, by making on-site visits to various broker-dealers to address concerns about recent short-selling activity.⁴

Chairman Cox and Director Thomsen intend “to ensure that hidden manipulation, illegal naked short selling, or illegitimate trading tactics do not drive market behavior and undermine confidence.”⁵ Director Thomsen further commented that “abusive short selling, market manipulation and false rumor mongering for profit by any entity cuts to the heart of investor confidence in our markets. Such behavior will not be tolerated. We will root it out, expose it, and subject the guilty parties to the full force of law.”⁶

The SEC is “committed to using every weapon in [its] arsenal to combat market manipulation that threatens investors and capital markets,”⁷ and will “expand their ongoing investigations by undertaking a series of additional enforcement measures against market manipulation,” and “obtain disclosure from significant hedge funds and other institutional traders of their past trading positions in specific securities.” Institutions under investigation will be required to immediately “secure all of their communication records in anticipation of subpoenas for these records.”⁸

Mintz Levin will continue to monitor the SEC’s wide-ranging investigations into alleged market manipulation as they relate to the financial crisis. For the latest developments, visit Financial Crisis Central at Mintz.com.

Endnotes

¹ SEC Press Release, No. 2008-209 (Sept. 17, 2008).

² SEC Press Release, No. 2008-214 (Sept. 19, 2008) (emphasis added).

³ Chairman Cox Testimony Concerning Turmoil in U.S. Credit Markets: Recent Actions Regarding Government Sponsored Entities, Investment Banks and Other Financial Institutions before the Committee on Banking, Housing, and Urban Affairs, United States Senate (Sept. 23, 2008).

⁴ SEC Press Release, No. 2008-214 (Sept. 19, 2008).

⁵ SEC Press Release, No. 2008-209 (Sept. 17, 2008).

⁶ SEC Press Release, No. 2008-214 (Sept. 19, 2008).

⁷ SEC Press Release, No. 2008-209 (Sept. 17, 2008).

⁸ SEC Press Release, No. 2008-209 (Sept. 17, 2008).

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