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SEC Rule 204 of Regulation SHO

The Securities and Exchange Commission ("SEC") Rule 204 of Regulation SHO, requires CNS participants such as Jefferies LLC ("Jefferies" or the "Firm") to close out any failing equity security that exists on settlement date which is the business day after trade date, or "T+1". If the close-out does not take place on conventional settlement date, Rule 204 requires the Firm to take appropriate action before the opening of trading on T+2 (in the case of short sales), T+4 (in the case of long sales) or T+35 (in the case of long sale shares that are deemed-to-own, such as a sale of restricted securities). Additionally, Rule 204 imposes restrictions on Jefferies' ability to effect future short sales in that security if a close-out doesn't take place. Jefferies has prepared this summary for your convenience. It is not intended to be legal advice or to be conclusive. You should consult your own counsel to assess the impact of Rule 204 on you. In addition to Rule 204, SEC Rule 10b-21 is an anti-fraud provision designed to deter "naked" short selling.

Some of the essential elements of Rule 204 are set forth below.

- Rule 204 applies to all equity securities[1].
- Rule 204 requires that Jefferies track all fail-to-deliver positions (unsettled trades) resulting from both long and short sales and then borrow or buy in sufficient securities to close out those fails at the beginning of regular trading on T+2 (in the case of short sales) T+4 (in the case of long sales) and T+35 (in the case of sales of shares that are deemed- to-own, such as a sale of restricted securities).
- If Jefferies does not close out the position within that time period, it may be temporarily prohibited from effecting short sales in that security for any client unless it pre-borrows that security[2].
- Jefferies will generally attempt to close out fail-to-deliver positions (unsettled trades) by borrowing securities. However, Jefferies will buy in open fails when necessary.
- You should expect to be bought in without notification from Jefferies if you fail to deliver securities to settle your trades by the close of business on settlement date or T+1, by T+3 (in the case of long sales) and before T+35 (in the case of long sale shares that are deemed-to-own, as with the sale of restricted securities) and Jefferies is unable to borrow sufficient securities to close out the fail. Jefferies will commence buy-ins of failed securities at the beginning of regular trading as a Volume Weighted Average Price (VWAP) order on close-out date (T+2, T+4 or T+35, as applicable). VWAP is calculated by adding up the dollars traded for every transaction (price multiplied by the number of shares traded) and then dividing by the total shares traded for the day. Jefferies will commence buy-ins of failed securities (unsettled trades) on close-out date (T+2, T+4 or T+35, as applicable) at the beginning of regular trading (9:30 AM ET) as a Market order.
- You may purchase securities to close out a short position on settlement date as pre-fail credit toward the failed quantity of shares.
- There are additional Firm costs associated with pre-borrowing. These additional costs may be passed on to you. Please contact your Jefferies Account Executive or Relationship Manager directly to discuss the impact this may have on you.
- The SEC anti-fraud rule, Rule 10b-21, is aimed at short sellers who deceive specified persons, such as a broker or dealer, about their intention or ability to deliver securities in time for settlement, and who then fail to deliver securities by settlement date. Among other things, Rule 10b-21 targets short sellers who deceive their broker-dealers about their source of borrowable shares for purposes of complying with Regulation SHO's "locate" requirement. Rule 10b-21 also applies to sellers who misrepresent to their broker-dealers that they own shares being sold.

The adopted final release for Rule 204 may be found on the SEC's website at [http://www.sec.gov/rules/final/2009/34- 60388.pdf](http://www.sec.gov/rules/final/2009/34-60388.pdf).

[1] As defined in Rule 3a11-1 of the Securities Exchange Act of 1934.

[2] A "locate" is an approval from the Firm that is required to be obtained prior to effecting a short sale in an equity security, i.e., to "locate" securities the Firm reasonably believes will be available to borrow to make timely delivery on settlement date. A "pre-borrow" is effected when the securities being sold short are actually borrowed <u>prior to</u> the execution of a short sale.