

## **SUPPORTING STATEMENT FORM SH**

This submission pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Section 3501 et seq., consists of this supporting statement and the following exhibits:

- A. Statutory Authority
- B. Written Statement Supporting Need for Emergency Consideration

### **A. JUSTIFICATION**

#### **1. Necessity for the Information Collection**

On September 18, September 21 and October 2, 2008, the Commission issued Emergency Orders pursuant to Section 12(k)(2) of the Securities Exchange Act of 1934 to require institutional investment managers subject to the existing Form 13F filing requirements to file new Form SH on the first business day of each week in which the institutional investment manager has entered into any new short positions or closed part or all of any short positions with respect to any Section 13(f) securities except for options. Institutional investment managers that exercise investment discretion over accounts with an aggregate fair market value of at least \$100,000,000 of exchange-traded or NASDAQ-quoted equity securities are required to file quarterly reports with the Commission on Form 13F. The Commission issued the Orders due to the substantial threat of sudden and excessive fluctuations of securities prices that could threaten fair and orderly markets.

On October 15, 2008, the Commission adopted interim final temporary Rule 10a-3T under the Exchange Act to extend the Form SH filing requirement for a nine-month period after expiration of the filing requirement imposed by the Emergency Orders. Rule 10a-3T will expire on August 1, 2008.

#### **2. Purpose of the Information Collection**

The purpose of Form SH is to provide information, with respect to each Section 13(f) security, about the total amount of short positions entered into or closed by institutional investment managers on each calendar day of the prior week in which the manager engaged in trading activity with respect to short positions. Form SH requires disclosure of the number of securities sold short for each Section 13(f) security, except for short sales in options, and the opening and closing short position for the security during each calendar day of the prior week. Under Rule 10a-3T, institutional investment managers will be required to disclose less information on Form SH than they are required to disclose under the terms of the Emergency Orders. Specifically, filers no longer will be required to disclose the value of securities sold short during the day, the largest intraday short position, or the time of day of the largest intraday short position. Rule 10a-3T also changes the Form SH filing deadline so the form is due on the last

business day, rather than the first business day, of each week immediately following a week in which an institutional investment manager effects a short sale.

### **3. Role of Improved Information Technology**

The Commission's electronic filing system (Electronic Data Gathering, Analysis, and Retrieval System, or "EDGAR") is designed to automate the filing, processing and dissemination of disclosure filings. Institutional investment managers will file Form SH using EDGAR. Filers will be required to submit an XML tagged data file to the Commission providing the data.

### **4. Efforts to Identify Duplication**

The Commission consults with other regulatory agencies requiring information about the institutions reporting on Form SH to attempt to achieve uniform, unduplicated reporting by, and to minimize the compliance burden on, institutional investment managers. We are not aware of duplication of this information.

### **5. Effect on Small Entities**

Not applicable. An institutional investment manager is not subject to Form SH reporting unless it exercises investment discretion over, in the aggregate, at least \$100,000,000 in certain equity securities. The Commission certified that the rule would not have a significant impact on a substantial number of small entities.

### **6. Consequences of Less Frequent Collection**

Collecting the information on a less frequent basis would frustrate the purpose of the emergency action.

### **7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)**

Consistent with the Emergency Orders, Form SH will be filed on a weekly basis.

### **8. Consultation Outside the Agency**

The Commission has been coordinating extensively with other financial regulators to address the current threats to fair and orderly securities markets. Due to the exigent circumstances, the Commission is unable to solicit public comment on the collection and the estimated burden before collecting the information, although the Commission is soliciting comment on the PRA in the release.

### **9. Payment or Gift to Respondents**

Not applicable.

#### **10. Assurance of Confidentiality**

The Form SH information is filed with the Commission on a nonpublic basis. As the Commission explained in its October 2, 2008 Emergency Order, it is concerned that publicly available Form SH data could give rise to additional, imitative short selling. Accordingly, Rule 10a-3T states that all Forms SH filed with the Commission will be nonpublic to the extent permitted by law. The Freedom of Information Act provides at least two exemptions under which the Commission has authority to withhold the information.

#### **11. Sensitive Questions**

Not applicable.

#### **12. Estimate of Reporting Burden**

We estimate that 1,000 institutional investment managers subject to the Form 13F filing requirements will file Form SH to report the entry into short positions with respect to Section 13(f) securities other than options. We estimate that each will file 36 Form SH reports during the nine-month period that Rule 10a-3T will be in effect. We further estimate that each of the 1,000 institutional investment managers will spend an average of 20 hours preparing each Form SH. Therefore the estimated total reporting burden associated with Form SH is 720,000 hours (1,000 respondents x 20 hours per form x 36 forms).

#### **13. Estimate of Total Annual Cost Burden**

We estimate the legal costs of filing Form SH for institutional investment managers that retain an outside law firm to be approximately \$1000 per each of the 36 filings for an estimated cost of \$36,000. We further estimate EDGAR filing agent costs to be \$1500 per week for managers that retain an outside agent to assist them in filing Form SH on EDGAR for total of \$54,000. These are conservative estimates given that not all Form SH filers will retain an outside law firm or filing agent. The total estimated cost is \$90,000,000 (\$90,000 x 1,000 filers).

#### **14. Estimate of Cost to the Federal Government**

Form SH is received electronically, via the Commission's EDGAR system. While there were some costs associated with system changes to allow EDGAR to accept Form SH, those costs were not significant.

#### **15. Explanation of Changes in Burden**

When we made our initial request for approval of Form SH in connection with the Emergency Orders, we estimated that each of the 3,378 institutional investment managers would spend an average of 5 hours preparing four Form SH reports for a total reporting burden of 67,560 hours. We are changing the reporting burden estimate to 720,000 hours primarily because the weekly Form SH filing requirement has been extended until August 1, 2009. We also have added a cost estimate of \$90,000 per filer for the nine-month filing period based on actual information that we received from some of the Form SH filers.

**16. Information Collection Planned for Statistical Purposes**

Not applicable.

**17. Approval to not Display Expiration Date**

Not applicable.

**18. Exceptions to Certification Statement**

Not applicable.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

Not applicable.