

## **A Special Note on the SEC's New Short Sale Rule**

### **Background:**

On October 14, 2008 the Securities and Exchange Commission (SEC) adopted interim final temporary rule 204T of Regulation SHO governing short sales. The rule became effective on October 17, 2008. Rule 204T generally requires that all fail to deliver (FTD) positions resulting from short sale transactions be closed out no later than the open of trading on T+4, and that all FTD positions resulting from long sale transactions be closed out no later than the open of trading on T+6. To the extent a broker-dealer has FTD positions that are not closed out within the applicable time periods, then the rule prohibits that broker-dealer from effecting further short sales in that security for its own account or for the account of a customer without first pre-borrowing (or entering into an arrangement to borrow) the security.

### **What this means for you:**

In an effort to comply with the provisions of the above-referenced rule, each of Goldman, Sachs & Co. and Goldman Sachs Execution and Clearing, L.P. (each "Goldman Sachs") has adopted a policy pursuant to which we will endeavor to (a) prevent all FTDs in the first instance and (b) close out any FTDs that occur in a timely manner. Please be advised that, in connection with any customer sale transaction that results in a FTD, prior to the open of trading on T+4 (in the case of short sales) or T+6 (in the case of long sales, or short sales in connection with bona-fide market making activity), Goldman Sachs will immediately seek to resolve the fail through a "buy-in" transaction, whereby Goldman Sachs will purchase the securities in the market in satisfaction of its delivery obligation and charge the seller for the cost of doing so. To the extent we are unable to do so, your ability to effect short sales through Goldman Sachs in the failing security will be constrained. Accordingly, customers are advised to make every effort to settle their transactions with Goldman Sachs in a timely manner so as to avoid the possibility of a buy-in.

Please contact your Goldman Sachs representative if you have any questions regarding this matter.