

SEC Staff Issues New FAQs on Regulation SHO

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On March 17, the staff of the Securities and Exchange Commission's ***Division of Trading and Markets (Staff)*** issued three new *frequently asked questions (FAQs)* relating to Regulation SHO. The current guidance under FAQ 2.5 provides that where a seller is net long 1,000 shares and simultaneously enters multiple orders to sell 1,000 shares owned, only one such order would constitute a long sale. Any additional orders must be marked "short." In new FAQ 2.5(A), the Staff clarified that the guidance in FAQ 2.5 is not limited to scenarios of simultaneous order entry. Specifically, the Staff states that FAQ 2.5 also applies to marking multiple orders that are entered in rapid succession. In addition, in new FAQ 2.5(B), the Staff reiterates that unexecuted orders to sell a security are presumed to decrease a seller's net long position. To the extent that a member believes the guidance on marketing multiple orders in FAQ 2.5 does not apply to sale orders that have no realistic possibility of being executed, the Staff reminds such member to be prepared to demonstrate, upon request, that applicable sale orders are never or rarely executed.

The Staff also published new FAQ 2.6 to clarify when sellers are required to re-mark a pending sell order. If a member accurately marked a sell order based on the seller's net position at the time of order entry, an unchanged, pending sell order would not need to be re-marked to reflect a change in the seller's net position. If such pending sell order is canceled and replaced, any new sell order must reflect the seller's net position at the time the new order is entered. Likewise, an increase in the quantity of a pending sell order will be treated as a new order and thus must be re-marked by the member. However, sellers are not required to re-mark a pending sell order if the seller decreases the quantity of such order.

In addition, the Staff states in new FAQ 2.6 that modifications to the price of an order to sell a covered security should be considered as a new order and thus the member's procedures should prevent new sale orders marked "short" from being executed at a price that is less than or equal to the current national bid. In order to mark the new order "short exempt," the member's procedures would need to identify that the new order is priced above the current national best bid at the time of submission.

The new FAQs are available [here](#).

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