

# THE PIPEs REPORT

NEWS, INFORMATION, AND ANALYSIS OF PRIVATE INVESTMENTS IN PUBLIC EQUITY

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## THE MID-MONTH REPORT

**FEATURE:** TPR examines the critical role of transfer agents in the PIPE market.

**TRENDWATCH:** Public comments tendered to the SEC regarding the agency's proposed amendments to Regulation SHO overwhelmingly seek stricter rules governing stock borrowing and settlement of short sale trades, and greater disclosure of short sale trade failures data.

**PIPELINE:** Investor redemptions balloon at Palisades Equity Fund amid poor returns; OTC short interest reports leave questions; Massachusetts stock promoter indicted; Biopure settles with SEC; Top brokers sanctioned for short reporting violations; Goldman backs Foothills deal; HyperSpace secures funding to dodge delisting; deals of interest; and all the hirings and firings in the business; p. 2.

**DEALFLOW:** During the period August 15th through September 15th, deal activity comprising 118 corporate issuers included 94 closed transactions, 17 definitive agreements, 11 announced placements, and three cancellations; p.9.

**SCORECARD:** Comprehensive industry rankings of the year-to-date PIPE activity; p. 13.

## STOCK TRANSFER TENSION

### Agents, Investors, Issuers Clash Over Conversion, Transfer Instructions

by Joe Gose

The PIPE concept's simplicity ultimately unravels in the minutiae documenting the obligations of each party in every deal. But perhaps no other part in the life of a PIPE fuels more apprehension than the physical conversion of restricted stock into freely trading securities and the subsequent transfer of those securities to investors. To be sure, the mechanics of the transfer are mundane stuff – in most cases agents convert certificates to electronic securities and enter them into an investor's brokerage account through the Deposits/Withdrawal At Custodian system (DWAC). Reaching that critical point, however, frequently ignites consternation among transfer agents and PIPE investors.

Why? Under any other type of transaction that transfer agents handle – issuing restricted shares to an employee who exer-

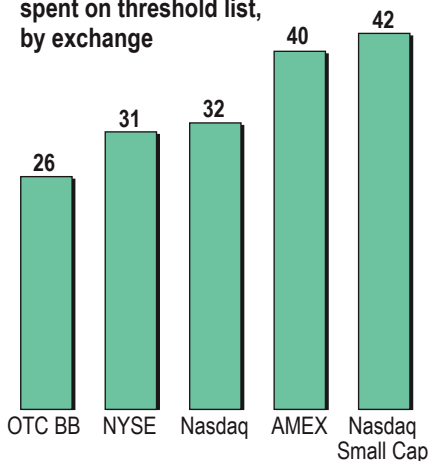
cises a stock option, for example – companies give the transfer agents specific instructions to issue certificates with legends reflecting the restricted nature of the securities. Later, once a registration statement is effective and a sale of the shares and a prospectus delivery are confirmed, the company provides the agents with an opinion that the legends can be removed.

But PIPE investors want to all but cut issuers out of that process. Typically, investors require the companies in which they're investing to issue "irrevocable" instructions to transfer agents, which essentially outline when and how the agents should remove the legends and transfer the shares to the investors. Such instructions depart from a transfer agent's normal course of business in a couple of ways: The instructions on when to remove legends, for

*Continued on page 19*

## AVERAGE TENURE OF REG SHO THRESHOLD STOCKS

Average days a company spent on threshold list, by exchange



Source: Nasdaq, American Stock Exchange. NYSE, NASD

## TREND

Watch

## LOUD AND CLEAR

### Public Comments Uniformly Seek Stricter Reg SHO Rules

by Tracey Ryniec

The SEC continues to move forward in its exploration of the effectiveness of Regulation SHO. On Sept. 15 the SEC held a roundtable discussion on the Regulation SHO Pilot program, which suspended in a "test" the provisions of Rule 10a-1(a) regarding the short sale price restrictions on a group of 1000 mid and large cap stocks selected from the Russell 3000 index. The SEC also has been collecting comments regarding proposed amendments to Reg SHO regarding the grandfather provision which covers failures to deliver.

The Pilot Program was intended to assess whether or not the "tick test" restrictions on short sales should be retained or removed, in part or fully. The Pilot Program originally commenced on Jan. 3, 2005 and was to end on Dec. 31, 2005 but the SEC extended the Pilot three times, with the

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## PALISADES RETURNS DROP OFF A CLIFF

### Fund Halts Investments to Conserve Cash

by Dan Carlson

A rash of portfolio writedowns and investor redemptions is buffeting the **Palisades Equity Fund**, leading its managers to close the fund to new investments to conserve cash for anxious limited partners looking to get out.

Founded in 2002 by Paul Mannion and Andy Reckles, Palisades had reported substantial positive returns through the end of 2005. However, the fund has reported a 2006 loss of over 16% through June. The losses sparked investor redemptions that led the fund to adopt a “gating” provision for redeeming investors in July, and to halt new investments for at least two months so that cash could be devoted to redemptions. An analysis of the fund’s past deals suggests that there could be more potential downside left in the portfolio’s reported value.

A large portion of the losses appear directly related to deals banked by **HPC Capital**, a firm that lists Mannion as a senior managing director.

Palisades, which grew to more than \$75 million at its peak, has managed to string together an impressive list of poorly performing PIPE investments. While the fund claimed returns of over 10% in 2005, following a stronger 2004, an end-of-year audit of the Palisades portfolio by Baker Tilly BVI Ltd. calls into question the 2005 returns as well as current valuations.

To achieve the 2005 returns, Palisades sidepocketed a large investment in **World Health Alternatives** (WHAI). At year end, the carrying value of WHAI was over \$10.5 million, but the true value was probably much lower. According to the fund’s auditor in the 2005 year end audit, “We were unable to satisfy ourselves as to whether the value attributed to the debt investments side-pocketed

by the Fund represented fair value.”

Furthermore, while the stated valuation policy of the fund for convertible securities calls for a decrease “by 50% of the amount by which the publicly traded common stock exceeds the conversion price,” the valuation methodology employed on side-pockets was much more lenient. “These assets were set aside for valuation on a monthly basis based on the expectations of the recovery the Fund might expect,” states the auditors.

Therefore, while Palisades valued their side-pocketed WHAI at \$10.59 million, their normal valuation methodology would have resulted in a valuation closer to \$5.5 million, based on WHAI’s year end closing price of five cents per share. This difference represents the bulk of 2005’s \$6.8 million gain for the entire fund. Palisades’ managers took a 2005 incentive bonus of just over \$1 million, paid from the fund’s assets, based on the reported performance.

World Health declared bankruptcy earlier this year, with the CEO currently being pursued by the IRS for tax fraud, including non-payment of payroll taxes. Palisades did finally write down the value of their WHAI holding in February.

Even the fund’s standard valuation policy, by only discounting in-the-money convertibles, tends to overprice relative to conversion price those convertible securities that are trading at a loss. This methodology affects Palisades in particular, due to the large percentage of convertible deals (about 75%) that it holds and the weak performance of its deals on average.

Multiple calls to Palisades to discuss the carrying valuations of convertible preferreds, like those for World Health, were not returned.

Since its inception, Palisades has invested in 78 PIPE transactions, according to PrivateRaise. While it is impossible to determine the trading strategy employed by Palisades, it is difficult to imagine one that would have created the positive returns reported by the fund to date: the average PIPE investment made by Palisades since 2004 is down 32% from the original purchase or conversion price.

Equally concerning for the investors in the fund is that, in a letter to investors in March, the GPs announced their intention to redeem their personal stakes in the fund. While the partners later announced in June they would forgo the redemptions, the timing of these actions is certainly of note. Between the time of the redemption announcements and the subsequent cancellation, there were additional significant valuation markdowns.

Subsequent to the final writedown in World Health was the bankruptcy fil-

ing of **One Travel** in June. Palisades made a \$12 million convertible debt investment in One Travel last October. While One Travel's stock is currently trading at three cents, far below the \$2.55 conversion price of last fall's deal, Palisades management remains optimistic about its debt holdings, and has been providing bridge financing to One Travel since May.

Further convoluting the One Travel situation is Mannion's position within HPC Capital, the placement agent for the financing. Mannion, as a senior managing director, risks being in conflict whenever Palisades invests in an HPC deal. As it turns out, Palisades has been the largest or one of the largest investors in every PIPE deal that HPC has placed.

HPC has placed eight PIPE transactions since July 2005. They have raised just under \$34 million in these transactions, with \$27 million of that coming from the Palisades Equity Fund. Fees

on these deals ranged to levels as high as 14% on a \$1.4 million investment in **Viragen**; Palisades contributed \$1.21 million of that amount.

Palisades' relationship with HPC was fully disclosed. While there is nothing inherently wrong with a fund being associated with an investment bank, Palisades' involvement with HPC was certainly very close and involved.

Meanwhile, the fund continues to redeem investor positions, albeit at a slower rate due to the gating feature implemented in the second quarter. While the carrying value of the current holdings is not public, unless there is an unexpected rally in the underlying shares, investors will either see increased losses as holdings are converted and sold, or they will find themselves invested in Palisades for a long time as management bets that its convertible debt is repaid without additional defaults. ■

## SHORT INTEREST AND THE THRESHOLD LIST

by Paul Springer

This summer, monthly SRO short reporting for OTC Bulletin Board and Pink Sheets stocks caught up with the reporting already in place for listed issues, and there was considerable speculation that enhanced reporting, in conjunction with the daily Reg SHO Threshold List, would uncover a scandalous Pink Sheets universe of long standing fails to deliver and correspondingly enormous open positions.

But the two consecutive monthly Pink Sheets short reports actually betray correlation between large short positions and ongoing, chronic delivery failures, while just the opposite appears true in the more liquid exchange-listed issues.

The twelve Pink Sheets issues with the longest tenures on the threshold list, indicating excessive share delivery failures due predominantly from short sales,

mostly have reported short positions of only a few hundred thousand shares. In fact, most of the Pink Sheets stocks do not appear to have enough shares short to meet one of the Threshold List's criteria for inclusion, namely that fails involve more than 0.5% of an issue's outstanding shares. (NASD Rule 3210 allows regulators to place non-reporting issuers on the threshold list based on a delivery failure position exceeding \$50,000 in value, rather than a percentage of shares outstanding.)

Ten of the 14 Pink Sheets stocks on the list for 30 days or longer reported short interest of less than 0.5% of their outstanding shares, and five of these had short positions ranging from 0% to 0.01%. Only three reported short interest exceeding 1% of their outstanding, with the highest at 3.4%. In contrast, many Nasdaq stocks with tenure on the thresh-

old list maintain short positions representing 20% to 45% of their outstanding for months on end.

At the same time, Pink Sheets stocks tend to be relatively short lived additions to the list. Based on data from the Sept. 14 threshold list, the most delinquent Pink Sheets issue has been on the list 52 days. While 52 days is an extremely long period in the world of T+3 settlement, a number of Nasdaq stocks have been on the list for periods ranging from 100 days to almost a year.

In short, it appears that highly capitalized listed stocks like **Overstock.com**, **Medis Instruments**, and **Atherogenix** can remain on the threshold list perpetually as their huge but seemingly static short positions appear month after month in the short position reports.

Because the short interest report and the threshold list have different reporting time frames, investors should be cautious in combining data from the reports.

Claims of aggressive or naked shorting are hard to assess. A beleaguered company may state that short sellers have hammered its stock price, but it would actually require access to proprietary trading data to confirm—or deny—such a claim. In such a situation, short selling could take place after the trade date—announced well in advance—for the most recent short position report. At the same time, an issue on the threshold list might actually have cured its trade fails but remain on the list for the five days after closure as required by Reg SHO.

Serious questions remain. Stocks like Overstock and Medis seem to maintain huge short positions and remain near-permanent residents on the threshold list, despite their relative liquidity. And the lack of correlation of the data between the threshold list and the monthly short interest report among Pink Sheets issuers suggests human error, reporting deficiencies, or possible abuse of the system. Assessing the relative significance of each area depends on more and more transparent short reporting procedures from the SROs. ■

Name	Symbol	August short interest	August short interest as % of TOS	Current Days on SHO List	.5% of TOS
<b>Nasdaq</b>					
Overstock.com	OSTK	7,558,808	34.00%	353	111,250
Medis Instruments	MDTL	6,868,854	21.30%	279	161,055
True Religion Apparel	TRLG	5,970,506	26.00%	261	114,800
ClickCommerce	CKCM	2,883,264	23.60%	224	61,000
Pacific Ethanol	PEIX	5,977,293	16.10%	216	186,100
Zoltek	ZOLT	4,259,095	16.60%	155	128,350
Atherogenix	AGIX	12,606,456	32.00%	115	197,250
Northfields Labs	NFLD	6,195,198	23.10%	109	133,900
Escala Group	ESCL	5,794,763	20.70%	83	140,250
Ionatron	IOTN	11,965,488	16.30%	68	366,600
<b>Pink Sheets</b>					
BiCoastal Comm.	BCLC.PK	23,270	0.00%	52	1,500,000
GHL Tech	GHLT.PK	476,649	1.40%	52	175,313
IDS Worldwide	IDWD.PK	570,006	1.10%	49	250,000
Wisdom Tree Invest.	WSDT.PK	192,789	0.20%	49	392,553
WireMedia	WRMA.PK	136,225	0.30%	49	250,000
Pinetree Capital	PNPFF.PK	121,018	0.30%	49	185,300
Paramount Gold	PGDP.PK	42,994	0.10%	49	151,293
Alhambra	AHBRF.PK	100	0.00%	49	338,600
UTS Energy	UEYCF.PK	1,149,700	0.30%	49	2,123,750
Mega Uranium	MGAFF.PK	7,341	0.00%	39	540,000
Consolidated Gfld	CDGF.PK	144,375	3.40%	35	21,194
Winning Brands	WNBD.PK	17,700	0.00%	30	937,500

## Massachusetts Stock Promoter Indicted

Massachusetts Secretary of State William Galvin charged newsletter publisher Geoffrey Eiten with illegally promoting stocks in a “pump and dump” scheme. The Sept. 6 complaint alleges that Eiten offered investment advice through a website, emails, and a newsletter, while falsely claiming that he was a registered investment adviser.

Many of the securities pushed by Eiten were PIPE issuers, including: **XStream Beverage, Pediatric Prosthetics, Transax International, AVVAA World Health**

## Care Products, Dynamic Leisure Group, and Bravo! Foods.

Another company that Eiten was promoting, **Magic Lantern**, received financing from **Laurus Funds**. An email exchange between Eiten’s firm and Eugene Grin, the founder of Laurus, gives the appearance of a working relationship between the two, and suggests Eiten was trying to help Laurus sell part of its position in the stock. The exchange was included as an exhibit filed with Gavin’s complaint.

“Would you have any interest in tendering a block of 500,000 to one million shares of GML stock to a fund I work

with,” Gary Geraci, a vice president with Eiten’s National Financial Communications, wrote to Grin. “They are looking for a total discount of no more than 12.5% to 15% from the average 10 day closing bid price.”

“Let’s work on it,” Grin wrote in response.

An attorney for Laurus said in response to the disclosure that there “had never been professional or contractual relationships between Laurus and Eiten’s enterprises,” the *New York Post* reported last week.

## Goldman Backs Foothills Deal

**Goldman Sachs** played a major role in **Foothills Resources'** acquisition of four Texas oilfields.

Foothills placed \$22.5 million in common stock and warrant units to finance the deal, of which Goldman took \$7.5 million. As placement agent, **Sanders Morris Harris** received \$1.05 million in fees and warrants to buy 466,666 shares of common at \$2.25. That was a 26% discount to Foothills' closing share price before the announcement of the deal on Sept. 8.

Foothills will also receive a four-year \$42.5 million mezzanine loan from Goldman.

## Biopure Settles with SEC, Issues PIPE (Again)

Chronic PIPE issuer **Biopure** and its general counsel, Jane Kober, settled a legal action filed by the Securities and Exchange Commission, accusing the company of misleading investors about set-backs in its effort to get a new drug approved.

The commission's complaint, filed in September of 2005, alleged that "beginning in April 2003, Biopure received negative information from the FDA regarding its efforts to obtain FDA approval of its synthetic blood product Hemopure but failed to disclose the information, or falsely described it as positive developments."

Biopure has issued 13 PIPEs since 2001, with five of the issuances occurring during the eight months that the SEC alleges that the company was withholding information. Biopure raised over \$35 million in these offerings.

To settle the SEC's charges, Biopure consented, without admitting or denying the allegations, not to violate anti-fraud provisions of the federal securities laws in the future. The agreement was

announced by the SEC on Sept. 12.

Prior to reaching the settlement, Biopure issued another PIPE on Aug. 17.

The most recent issuance is a \$5.4 million common stock and warrant offering. The shares were issued at 71 cents, a 20% discount to market, and the 100% warrant coverage was priced at the prior days close. **Dawson James Securities** placed the deal, largely with individual investors. Biopure recently traded near \$1.

## Big Players Sanctioned for Short Reporting Violations

Securities regulators are increasingly scrutinizing and imposing more sanctions related to short selling practices.

The NASD, for example, recently fined **Morgan Stanley** \$2.9 million for numerous violations. The 28-page letter of acceptance, waiver, and consent stated that in one seven-day period alone Morgan processed over 60,000 deficient short sale orders for clients and also failed to locate stock for another 1,257 short sales in the firm's proprietary accounts.

The New York Stock Exchange specifically mentioned abuses of Regulation SHO on Sept. 13 when it announced a \$400,000 fine against **JPMorgan Chase** for short selling and share location violations. This sanction comes not long after the exchange fined several other large firms for problems with borrowing and short selling practices.

On July 10, the NYSE announced a fine of \$3.5 million against **Van der Moolen Specialists USA** for stock loan violations. NYSE Regulation alleged that Van der Moolen paid millions of dollars in finder's fees to individuals who actually did no work towards finding lenders or borrowers.

Only two weeks later the NYSE levied a total of \$1.25 million in fines against **Daiwa Securities, Goldman Sachs Exe-**

**cution & Clearing, Citigroup Global Markets, and Credit Suisse Securities**, claiming numerous violations related to the marking of short sale trades and proper location of shares for borrowing by short sellers.

These developments suggest increased scrutiny of short selling behavior in recent months, but serious concerns remain. The sanctions reported amount to about \$10 million, a negligible amount in relation to the trading and brokerage activity of these firms. In 2005, Goldman Sachs alone reported *net* income of over \$24 billion.

## Big Advertising Company Invests in Social Networking

**WPP Group**, one of the world's largest communications and advertising companies, joined several other investors who took a private placement of \$2 million in stock from **LiveWorld Inc.**, an online service provider that helps brand advertisers set up online social networking communities.

The placement, which represents 15.5% of the firm's capitalization, consisted of common stock priced at about 54 cents per share. That was a 6.7% premium over LiveWorld's closing share price on Sept. 11, the day prior to closing. Other investors include **Allegis Capital, Dragonbridge Capital, and Think Capital Management**.

Social networking web sites such as MySpace and Facebook are currently among the most popular on the Internet. LiveWorld, based in Los Gatos, Calif., offers services meant to help companies promote their brands with web sites that include social-networking-like features. The company's clients include home-shopping television network QVC and **Campbell Soup**.

The firm's Pink Sheet-quoted shares remained at around 55 cents on very low volume after the closing.

## Uroplasty Shares Rally After Financing

Upon receiving a key product approval from the Food and Drug Administration, shares of **Uroplasty** surged to over \$3, generating possible gains of more than 100% for recent PIPE investors.

Uroplasty received pre-market approval for its Macroplastique Implants. The implants are designed to treat female stress urinary incontinence.

Uroplasty has undertaken three PIPE transactions, the most recent on Aug. 7. That placement consisted of common stock at \$1.50 with 50% warrant coverage at \$2.50. On paper, that results in a gain of over 110% on the \$2.1 million invested.

Investors in the deal include **SF Capital** and **Iroquois**. Proceeds will go towards building out Uroplasty's U.S. sales and marketing organization

## Chinese Gas Company Does Reverse Merger, PIPE

Chinese natural gas distributor **Beijing Zhong Ran Wei Ye Gas** went public through a reverse merger with shell company **Dolce Ventures** and immediately placed \$6.88 million in convertible stock and warrants with **Coronado Capital Partners**, **Vision Capital Advisers**, and several pension funds and trusts.

The preferred stock pays no dividend and is convertible into common stock at a 40% discount to Beijing Zhong's share price on Sept. 7, the day the deal closed, according to data provider PrivateRaise. The shares traded at 1.5 cents that day.

Several types of warrants were issued at various prices ranging from 34% below current levels to 32% above. The \$6.88 million raised in the placement, which is subject to various considerations relating to an imminent reverse split, is more than four times Beijing

Zhong's market capitalization before the deal and results in warrant coverage of 377.6%.

As placement agent, **Kuhn Bros.** received an \$80,000 signing fee, \$687,600 in commissions, and warrants for about 450,000 shares of common at a 1-for-344 reverse split-adjusted \$3.84 share price. Beijing Zhong also agreed to pay \$100,000 to Vision Capital for due diligence. Attorneys were **Kramer Levin Naftalis & Frankel** for the investors and **Guzov Ofsink** for the issuer.

The firm's Bulletin Board stock spiked upward from 20 cents to 40 cents on the day of the reverse merger, then returned to the 20 cent range on low volume.

## HyperSpace Secures Funding to Avoid Delisting

An effort to avoid delisting from the American Stock Exchange led **HyperSpace Communications** to raise two different types of funding, a private placement of \$4.55 million in convertible debentures and a revolving credit line of \$25 million.

HyperSpace, the owner of PC-maker MPC Computers, has had increasingly negative cash flows from operating activities and negative net income in the last few years, and in April the American Stock Exchange said the company was in danger of being delisted because of deficiencies in liquidity and working capital. Shortly thereafter, HyperSpace obtained capital through a \$5 million convertible debt PIPE offering placed with **Crestview Capital Funds** and **Toibb Investment**. The firm also raised additional capital earlier in the year and obtained a \$5 million bridge loan, but as of Sept. 15 HyperSpace is still below current AMEX listing standards.

The new PIPE's debentures are convertible at 75 cents per share of common and bear interest of 12% that may be reduced to 8%, payable in cash or

stock-in-lieu. Investors also received 2.28 million five-year warrants priced at \$1.10.

Several investors, including **Crestview**, **Toibb**, and **Viking Asset Management** purchased the debentures. **Maxim Group** was the placement agent. Attorneys were **Feldman Weinstein Smith** for the investors and **Perkins Coie** for the issuer. **Wachovia Capital Finance** arranged the credit line.

HyperSpace stock ended the day at \$1.40 when the deals closed and moved up a few pennies in following days.

## Canadian Agents Have Busy Month

Resource companies continue to keep Canadian placement agents busy raising capital. **Pacific International Securities** served as placement agent for three private stock and warrant placements in the last month. The firm helped **Cash Minerals** place \$10.8 million, **Goldbrook Ventures** place \$3.17 million, and **Fury Explorations** place \$5 million, all with investors who weren't publicly identified.

In recent weeks **Canaccord Capital** served as placement agents for common stock PIPEs issued by **International Barytex Resources** for \$9.4 million, **Mega Uranium** for \$6.3 million, **Celtic Exploration** for \$15.6 million, **Buffalo Gold** for \$15 million, and co-agented with Pacific International on the Cash Minerals deal.

## Gemini Fund Changes Strategy

Steve Winters has reconfigured his three-year-old **Gemini Investment Strategies** fund into what is now called the **Gemini Strategies** fund and shifted strategy away from convertible arbitrage and more toward catalyst-driven investing. The new fund launched in August with about \$20 million in assets under management.

The prior fund was split between convertible arbitrage and PIPEs. Winters is changing strategy with his partner, Richard Yakomin, leaving to join **Milkenium Partners**. The new fund shifts its focus entirely to PIPEs and other catalyst-driven equity opportunities.

Gemini will be sector agnostic. "We are looking for companies with a current high cost of capital," Winters said, adding that he is targeting companies at an inflection point in their business where the risk associated with the investment is less than the current cost of capital the firm faces.

Gemini has yet to close a PIPE investment, but has several in the works. The fund is targeting \$100 million in assets within the next 12 to 18 months

## Pluris Opens as Valuation Issues Gaining Spotlight

How do hedge funds value illiquid securities?

Well, setting the proper valuation on securities, especially illiquid ones, can be exceedingly difficult. Most hedge funds employ proprietary methodology, resulting in greatly varying valuations of similar securities from one fund to the next. The degree to which the valuations can differ is dramatic in some circumstances. This variance, especially at funds which charge a performance fee, has the potential to impair investors and could possibly lead to fraud.

"There is an increased focus on hedge funds in how they value and mark portfolios," said Barry Silbert of Restricted Stock Partners (RSP), whose firm is trying to profit from that focus.

The Securities and Exchange Commission, always concerned about risks associated with the growth of hedge funds, is indeed turning its attention to valuation methodology.

"A key element of monitoring the risk

of hedge funds is to understand the valuation used by said funds and counterparties to the funds," SEC commissioner Roel Campos said in a speech he gave in June.

Often hedge funds are self-determining in the value of their portfolios, needing only a blessing from their auditors.

With the increased scrutiny, however, third party valuers are becoming much more prevalent. RSP, through its newly launched affiliate Pluris Valuation Advisors, is looking to build a business as a valuation source for PIPE investors.

Pluris believes it has an edge in valuing illiquid securities, especially unregistered equities, through its access to RSP's historical trading data. RSP is in the business of crossing blocks of unregistered securities and thus can use a proprietary data set of market values of unregistered securities to ascertain values relative to their registered counterparts.

Pluris does not, however, have a formulaic approach to valuing illiquid securities. Instead, each case is considered separately.

Still, having independent third party valuations could answer some investors' concerns over hedge funds' methodology.

Historically, valuing of unregistered securities has been an area of abuse by more than one fund. For example, Edward Strafacci, the portfolio manager of four **Lipper** hedge funds, was indicted by the SEC in 2003 for allegedly overstating the value of convertible holdings in the fund by as much as 49%.

More recently Brian Lauer of the **Lancer Fund's** indictment by the SEC alleged massive abuse in the valuing of the fund's holdings. In the Lancer case, Lauer is accused of marking highly illiquid positions at a premium to mar-

ket on the basis that it was "difficult to purchase a large block."

Lack of a brand-name fund auditor was not to blame for the abuses in these two cases. In both the Lipper and Lancer cases, PricewaterhouseCoopers was the auditor for the funds. The trustee in the Lancer case has accused the auditor and its administrator, Citco, of abetting the valuation fraud and of stymieing the subsequent investigation.

## Hirings & Firings

Kahlil Reid joined **Galen Capital Group** as the director of investment banking for its West Coast operations.

Former **Goldman Sachs** trader Christopher Clarke and ex-**Tudor Capital** trader Hans Summers started a new fund, **Westferry Capital**.

Bill Rastetter and David Molowa have joined **Venrock Associates** as venture partners.

Elie Wurtman joined **Benchmark Capital** as a general partner in Israel. He spent the past three years as CEO of **JVP Studio**.

**WR Hambrecht & Co.** named Gordon "Rusty" Johnson head of investment banking and Brian Bristol head of capital markets.

Grand Cayman offshore specialist **dms Management** hired veteran executive Ronan Guilfoyle, formerly of **Ernst & Young**.

Georganne Perkins has joined **Fisher Lynch Capital** as a managing director.

Bal Johal and Ian Wallis both have left **3i Group** to join **Mezzanine Management** as London-based directors, effective November 1.

Portfolio managers Mathew Grimes and Mariusz Mazurek and research associates Frazer Burkart and Michael Protz left **Tennenbaum Capital Partners**, according to data provider BigDough. ■

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### FEATURED SPEAKERS

**Barton Biggs**, author of the acclaimed book *Hedgehogging* gives a humorous look at the current state of the investment management industry.

**Harvey Pitt**, former Chairman, Securities & Exchange Commission, draws from his rich experience in the worlds of finance and corporate governance, as he navigates the path toward SEC compliance.

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ACTIVITY FOR THE PERIOD AUGUST 15 THROUGH SEPTEMBER 15, 2006

During the period August 15th through September 15th, deal activity comprising 118 corporate issuers included 94 closed transactions, 17 definitive agreements, 11 announced placements, and three cancellations.

Status* C/A Date**	Issuer	Ticker	Exchange	Amount	Security Type
A 9/15/2006	Alberta Star Development Corp.	ASXSF	OTC BB	\$9,868,120	Common Stock
C 9/15/2006	Brooke Corporation	BXXX	NASDAQ-GM	\$14,600,000	Pref: Conv
C 9/15/2006	Empire Petroleum Corporation	EMPR	OTC BB	\$1,450,000	Common Stock
C 9/15/2006	St. Andrew Goldfields Ltd.	SASXF	OTC	\$9,927,451	Prepaid Warrant
C 9/15/2006	St. Andrew Goldfields Ltd.	SASXF	OTC	\$8,954,667	Prepaid Warrant
DA 9/14/2006	Auxilium Pharmaceuticals Inc.	AUXL	NASDAQ-GM	\$46,750,000	Common Stock
DA 9/14/2006	Barrier Therapeutics, Inc.	BTRX	NASDAQ-GM	\$25,305,000	Common Stock
C 9/14/2006	Global Matrechs, Inc.	GBMR	OTC BB	\$15,000,000	Equity Line
DA 9/14/2006	International Assets Holding Corporation	IAAC	NASDAQ-CM	\$27,000,000	Debt: Conv
DA 9/13/2006	Akorn, Inc.	AKN	AMEX	\$3,560,000	Common Stock
DA 9/13/2006	Alteon Inc.	ALT	AMEX	\$1,400,000	Common Stock
A 9/13/2006	Madison Minerals Inc.	MMRSF	OTC BB	\$4,781,700	Common Stock
C 9/12/2006	American Racing Capital, Inc.	ANRC	OTC	\$1,300,000	Debt: Conv
C 9/12/2006	Delek Resources, Inc.	DLKR	OTC BB	\$2,000,000	Debt: Conv
DA 9/12/2006	Evolve One, Inc.	EVOO	OTC BB	\$3,500,000	Common Stock
C 9/12/2006	Homeland Security Network, Inc.	HSYN	OTC BB	\$5,000,000	Equity Line
C 9/12/2006	LiveWorld, Inc.	LVWD	OTC	\$2,000,000	Common Stock
C 9/11/2006	Cyber Defense Systems Inc.	CYDF	OTC BB	\$1,700,000	Debt: Conv
C 9/11/2006	Interpharm Holdings, Inc.	IPA	AMEX	\$10,000,000	Pref: Conv
A 9/11/2006	Mega Uranium Ltd.	MGAFF	OTC	\$6,357,600	Common Stock
DA 9/11/2006	Schuff International Inc.	SHFK	OTC	\$29,400,000	Debt: Conv
A 9/8/2006	Cash Minerals Ltd.	CHXMF	OTC	\$10,809,000	Common Stock
C 9/8/2006	Foothills Resources, Inc.	FTRS	OTC BB	\$22,500,000	Common Stock
C 9/8/2006	GlobalNet Corporation	GLBT	OTC	\$1,035,000	Debt: Conv
A 9/8/2006	Goldbrook Ventures Inc.	GBKVF	OTC	\$3,166,275	Common Stock
DA 9/8/2006	Orion HealthCorp Inc.	ONH	AMEX	\$4,650,000	Common Stock
DA 9/8/2006	Standard Management Corporation	SMAN	OTC	\$2,000,000	Debt: Conv
C 9/7/2006	AZCO Mining Inc.	AZMN	OTC BB	\$1,000,000	Debt: Conv
C 9/7/2006	Celtic Exploration Ltd.	CEXJF	OTC	\$15,599,566	Common Stock
C 9/7/2006	Dolce Ventures, Inc.	DLCV	OTC BB	\$6,876,800	Pref: Conv

\* Status: C = Closed, DA = Definitive Agreement, A = Announced, I = Intended, P = Postponed, X = Cancelled \*\* C/A Date: Best available of (i) Closing Date, (ii) Definitive Agreement Date or (iii) Announced Date

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A	9/7/2006	Genoil Inc.	GNOLF	OTC BB	\$3,000,000	Common Stock
C	9/7/2006	Southeastern Bank Financial Corporation	SBFC	OTC BB	\$2,037,693	Common Stock
C	9/7/2006	Sunrise Energy Resources Inc.	SEYR	OTC BB	\$20,000,000	Equity Line
C	9/6/2006	Cano Petroleum, Inc.	CFW	AMEX	\$49,116,000	Pref: Conv
C	9/6/2006	Cano Petroleum, Inc.	CFW	AMEX	\$31,801,913	Common Stock
C	9/6/2006	GlobeTel Communications Corp.	GTE	AMEX	\$1,075,000	Debt: Conv
C	9/6/2006	HyperSpace Communications, Inc.	HCO	AMEX	\$4,550,000	Debt: Conv
C	9/5/2006	Clearly Canadian Beverage Corporation	CCBEF	OTC BB	\$1,000,000	Common Stock
A	9/5/2006	Goldbelt Resources Ltd.	GLDRF	OTC	\$7,207,080	Common Stock
C	9/5/2006	International Barytex Resources Ltd.	IBYXF	OTC	\$9,483,209	Common Stock
DA	9/4/2006	NYFIX, Inc.	NYFX	OTC	\$75,000,000	Pref: Conv
C	9/1/2006	Bookham, Inc.	BKHM	NASDAQ-GM	\$23,479,200	Common Stock
C	9/1/2006	Connected Media Technologies, Inc.	CNCM	OTC BB	\$1,000,000	Debt: Conv
C	9/1/2006	FBO Air, Inc.	FBOR	OTC BB	\$5,025,000	Common Stock
C	9/1/2006	Lorus Therapeutics Inc.	LRP	AMEX	\$1,631,000	Common Stock
C	9/1/2006	Oxford Media, Inc.	OXMI	OTC BB	\$5,500,000	Debt: non-Conv
C	9/1/2006	SaVi Media Group Inc.	SVMI	OTC BB	\$2,470,000	Debt: Conv
C	9/1/2006	True North Energy Corporation	TNEN	OTC BB	\$2,000,000	Unknown
A	9/1/2006	UniPro Financial Services, Inc.	UPRO	OTC BB	\$8,000,000	Common Stock
C	8/31/2006	Acusphere, Inc.	ACUS	NASDAQ-GM	\$30,000,000	Equity Line
C	8/31/2006	Charys Holding Company Inc.	CHYS	OTC BB	\$20,000,000	Debt: Conv
C	8/31/2006	Cytori Therapeutics, Inc.	CYTX	NASDAQ-GM	\$16,779,966	Common Stock
C	8/31/2006	Dynavax Technologies Corporation	DVAX	NASDAQ-GM	\$30,000,000	Equity Line
C	8/31/2006	Harold's Stores, Inc.	HLDI	OTC BB	\$5,000,000	Debt: Conv
C	8/31/2006	Image Entertainment, Inc.	DISK	NASDAQ-GM	\$17,000,000	Debt: Conv
DA	8/31/2006	Petaquilla Minerals Ltd.	PTQMF	OTC BB	\$20,333,140	Common Stock
C	8/31/2006	Telkonet, Inc.	TKO	AMEX	\$6,000,000	Common Stock
C	8/31/2006	Traceguard Technologies, Inc.	TCGD	OTC BB	\$1,395,295	Common Stock
C	8/31/2006	Trade Winds Ventures Inc.	TWDIF	OTC	\$2,028,150	Common Stock
A	8/30/2006	Buffalo Gold Ltd.	BYBUF	OTC BB	\$15,000,125	Common Stock
C	8/30/2006	De Beira Goldfields Inc.	DBGF	OTC BB	\$2,500,000	Common Stock
C	8/30/2006	Epicept Corporation	EPCT	NASDAQ-GM	\$10,000,000	Debt: non-Conv

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C	8/30/2006	Lorus Therapeutics Inc.	LRP	AMEX	\$9,360,000	Common Stock
C	8/30/2006	Micromet, Inc.	MITI	NASDAQ-GM	\$25,000,000	Equity Line
C	8/30/2006	Mobilepro Corp.	MOBL	OTC BB	\$2,300,000	Debt: Conv
C	8/30/2006	NeoStem, Inc.	PHSM	OTC BB	\$1,750,000	Common Stock
C	8/30/2006	Trans-Orient Petroleum, Ltd.	TOPLF	OTC BB	\$4,540,250	Common Stock
C	8/29/2006	Advanced Biotherapy, Inc.	ADVB	OTC BB	\$1,100,000	Common Stock
DA	8/29/2006	Attunity Ltd.	ATTU	NASDAQ-GM	\$5,000,000	Common Stock
C	8/29/2006	CirTran Corp.	CIRT	OTC BB	\$1,500,000	Debt: Conv
C	8/29/2006	GA Computer Sciences Inc.	GACU	OTC BB	\$1,000,000	Common Stock
C	8/29/2006	Gift Liquidators, Inc.	GFLQ	OTC BB	\$25,000,000	Equity Line
C	8/29/2006	Index Oil & Gas Inc.	IXOG	OTC BB	\$7,097,898	Common Stock
DA	8/29/2006	Tradequest International, Inc.	TRDQ	OTC BB	\$1,500,000	Debt: Conv
X	8/28/2006	Farallon Resources Ltd.	FRLLF	OTC	\$26,450,361	Common Stock
C	8/28/2006	Ingen Technologies, Inc.	IGTG	OTC	\$1,300,000	Debt: Conv
C	8/28/2006	Research Frontiers Incorporated	REFR	NASDAQ-CM	\$2,000,000	Common Stock
C	8/28/2006	Roca Mines Inc.	ROCAF	OTC	\$4,508,451	Common Stock
X	8/25/2006	Advanced Cell Technology, Inc.	ACTC	OTC BB	\$11,295,000	Debt: Conv
C	8/25/2006	Blast Energy Services, Inc.	BESV	OTC BB	\$40,600,000	Debt: non-Conv
C	8/25/2006	Blast Energy Services, Inc.	BESV	OTC BB	\$15,000,000	Common Stock
DA	8/25/2006	Bois d'Arc Energy, Inc.	BDE	NYSE	\$35,865,000	Common Stock
C	8/25/2006	InforMedix Holdings, Inc.	IFMX	OTC BB	\$2,895,000	Pref: Conv
C	8/25/2006	Nanophase Technologies Corporation	NANX	NASDAQ-GM	\$5,000,000	Common Stock
C	8/25/2006	Sutura, Inc.	SUTU	OTC BB	\$2,000,000	Common Stock
C	8/25/2006	Tricell, Inc.	TCLL	OTC BB	\$1,700,000	Pref: Conv
C	8/25/2006	Tvia, Inc.	TVIA	NASDAQ-CM	\$11,925,000	Common Stock
C	8/24/2006	Applied Digital Solutions, Inc.	ADSX	NASDAQ-CM	\$13,500,000	Debt: non-Conv
C	8/24/2006	NeoMedia Technologies, Inc.	NEOM	OTC BB	\$5,000,000	Debt: Conv
C	8/24/2006	On2 Technologies, Inc.	ONT	AMEX	\$1,750,000	Common Stock
C	8/24/2006	Tut Systems, Inc.	TUTS	NASDAQ-GM	\$7,000,000	Debt: Conv
C	8/24/2006	VuBotics, Inc.	VBTC	OTC BB	\$2,219,940	Common Stock
C	8/23/2006	Biopure Corporation	BPUR	NASDAQ-GM	\$5,378,785	Common Stock

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C 8/23/2006	Inverness Medical Innovations, Inc.	IMA	AMEX	\$151,250,000	Common Stock
C 8/23/2006	Manaris Corporation	MANS	OTC BB	\$2,112,917	Debt: Conv
A 8/22/2006	Emgold Mining Corporation	EGMCF	OTC	\$4,026,000	Common Stock
C 8/22/2006	Money Centers of America, Inc.	MCAM	OTC BB	\$1,200,000	Common Stock
C 8/22/2006	Palladon Ventures Ltd.	PLLVF	OTC	\$2,462,713	Common Stock
C 8/21/2006	GigaBeam Corp.	GGBM	NASDAQ-CM	\$10,000,000	Pref: Conv
C 8/21/2006	Oscient Pharmaceutical Corporation	OSCI	NASDAQ-GM	\$10,000,000	Common Stock
C 8/21/2006	Pharmacyclics, Inc.	PCYC	NASDAQ-GM	\$20,000,000	Equity Line
C 8/21/2006	Sweet Success Enterprises, Inc.	SWTS	OTC BB	\$3,300,000	Debt: Conv
DA 8/18/2006	EduLink, Inc.	MYIQ	OTC	\$1,500,000	Debt: Conv
C 8/18/2006	ROO Group Inc	RGRP	OTC BB	\$5,506,250	Common Stock
C 8/18/2006	Spectre Gaming, Inc.	SGMG	OTC BB	\$4,434,118	Debt: Conv
DA 8/17/2006	Amaru, Inc.	AMRU	OTC	\$3,000,000	Common Stock
C 8/17/2006	Environmental Energy Services, Inc.	EESV	OTC	\$10,000,000	Unknown
A 8/17/2006	Fury Explorations Ltd.	FURXF	OTC	\$5,002,200	Common Stock
C 8/17/2006	Interleukin Genetics, Inc.	ILI	AMEX	\$15,615,537	Common Stock
C 8/17/2006	Interleukin Genetics, Inc.	ILI	AMEX	\$14,384,463	Debt: Conv
C 8/17/2006	IsoRay, Inc.	ISRY	OTC BB	\$5,158,000	Common Stock
C 8/17/2006	Open Energy Corporation	BBSE	OTC BB	\$11,500,000	Debt: Conv
C 8/17/2006	Stellar Technologies, Inc.	SLLR	OTC BB	\$1,860,000	Pref: Conv
C 8/17/2006	Valence Technology, Inc.	VLNC	NASDAQ-CM	\$1,000,000	Common Stock
C 8/16/2006	B.O.S. Better Online Solutions Ltd.	BOSC	NASDAQ-GM	\$1,500,000	Debt: Conv
C 8/16/2006	Canadian Spirit Resources Inc.	CSPUF	OTC	\$5,847,680	Common Stock
C 8/16/2006	Cyber Merchants Exchange, Inc.	CMXG	OTC BB	\$7,650,000	Pref: Conv
C 8/16/2006	Foldera, Inc.	FDRA	OTC BB	\$2,779,074	Common Stock
C 8/16/2006	InNexus Biotechnology Inc.	IXSBF	OTC	\$4,563,916	Prepaid Warrant
C 8/16/2006	Klondike Silver Corp.	KLSVF	OTC	\$1,390,740	Common Stock
C 8/16/2006	Klondike Silver Corp.	KLSVF	OTC	\$1,376,476	Common Stock
DA 8/16/2006	Millennium Biotechnologies Group, Inc.	MBTG	OTC BB	\$2,600,000	Pref: Conv
C 8/15/2006	Enbridge Energy Partners, L.P.	EET	NYSE	\$496,800,000	Other: Conv
X 8/15/2006	Inco Limited	N	NYSE	\$3,000,000,000	Debt: Conv
C 8/15/2006	Sapiens International Corporation N.V.	SPNS	NASDAQ-CM	\$2,000,000	Common Stock

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## INDUSTRY RANKINGS FOR 2006 YEAR-TO-DATE

## PIPEs ISSUANCE BY SECURITY TYPE

Security Type	#	Total \$	Avg. \$
Common Stock	729	\$16,205,034,061	\$22,229,128
Preferred Stock: Conv	103	\$1,886,900,706	\$18,319,424
Preferred Stock: non-Conv	2	\$151,800,000	\$75,900,000
Debt: Conv	314	\$2,064,978,134	\$6,576,363
Debt: non-Conv	49	\$465,543,275	\$9,500,883
Other: Conv	6	\$1,228,946,226	\$204,824,371
Prepaid Warrant	17	\$491,124,176	\$28,889,657
Equity Line	65	\$1,586,055,500	\$24,400,854
Unknown	8	\$148,000,000	\$18,500,000
<b>Totals</b>	<b>1,293</b>	<b>\$24,228,382,078</b>	<b>\$18,738,115</b>

## PIPEs BY ISSUER MARKET CAPITALIZATION

Issuer Market Cap	#	Total \$	Avg. \$
Less than \$50 m	699	\$4,028,509,426	\$5,763,247
\$50 m - \$99 m	229	\$2,362,630,761	\$10,317,165
\$100 m - \$249 m	219	\$4,433,780,365	\$20,245,572
\$250 m - \$499 m	57	\$2,130,612,732	\$37,379,171
\$500 m - \$999 m	41	\$2,360,764,398	\$57,579,619
\$1 b - \$4.9 b	22	\$4,300,424,230	\$195,473,829
Greater than \$5 b	4	\$4,342,218,341	\$1,085,554,585
<b>Totals</b>	<b>1,271</b>	<b>\$23,958,940,253</b>	<b>\$18,850,464</b>

## TOTAL PLACEMENTS (ISSUER MARKET CAPITALIZATION &amp; SECURITY TYPE)

Security Type	Less	\$50 m -	\$100 m -	\$250 m -	\$500 m -	\$1 b -	Greater
	\$50 m	\$99 m	\$249 m	\$499 m	\$999 m	\$4.9 b	\$5 b
Common Stock	317	148	164	41	28	17	3
Pref: Conv	73	11	11	3	2	2	-
Pref: non-Conv	1	-	-	1	-	-	-
Debt: Conv	221	52	23	4	7	1	-
Debt: non-Conv	37	8	3	-	-	-	1
Other: Conv	1	-	1	1	1	2	-
Prepaid Warrant	8	1	7	-	1	-	-
Equity Line	37	8	10	6	2	-	-
Unknown	4	1	-	1	-	-	-

## TOTAL DOLLARS RAISED/SECURED (ISSUER MARKET CAPITALIZATION &amp; SECURITY TYPE)

Security Type	Less	\$50 m -	\$100 m -	\$250 m -	\$500 m -	\$1 b -	Greater
	\$50 m	\$99 m	\$249 m	\$499 m	\$999 m	\$4.9 b	\$5 b
Common Stock	\$1,853	\$1,347	\$2,818	\$1,221	\$1,414	\$3,158	\$4,332
Pref: Conv	\$414	\$150	\$556	\$140	\$100	\$525	-
Pref: non-Conv	\$2	-	-	\$150	-	-	-
Debt: Conv	\$876	\$541	\$326	\$50	\$187	\$27	-
Debt: non-Conv	\$304	\$81	\$71	-	-	-	\$10
Other: Conv	\$8	-	\$53	\$217	\$360	\$590	-
Prepaid Warrant	\$124	\$38	\$303	-	\$25	-	-
Equity Line	\$425	\$205	\$307	\$350	\$275	-	-
Unknown	\$23	\$1	-	\$2	-	-	-

## PIPE ACTIVITY - BY PRICE TYPE

Security Type	#	Fixed-Price		Reset-Price			Variable-Price		
		Total \$m	Avg. \$m	#	Total \$m	Avg. \$m	#	Total \$m	Avg. \$m
Common Stock	727	\$16,188.17	\$22.27	2	\$16.86	\$8.43	-	-	-
Preferred Stock: Convertible	84	\$1,771.16	\$21.09	14	\$61.90	\$4.42	5	\$53.84	\$10.77
Debt: Convertible	188	\$1,585.83	\$8.44	25	\$176.29	\$7.05	100	\$301.85	\$3.02
Other: Convertible	6	\$1,228.95	\$204.82	-	-	-	-	-	-
Prepaid Warrant	17	\$491.12	\$28.89	-	-	-	-	-	-
Equity Line	1	\$1.20	\$1.20	-	-	-	64	\$1,584.86	\$24.76

\*Data shown in millions

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## INDUSTRY RANKINGS FOR 2006 YEAR-TO-DATE

RANKED BY TOTAL DOLLARS INVESTED					RANKED BY # OF INVESTMENTS				
Rank	Investment Manager	Total \$m	Avg. \$	#	Rank	Investment Manager	Total \$m	Avg. \$	#
1	Banco Santander Central Hispano.	\$2,395.04	\$2,395.04	1	1	Nite Capital, L.P.	\$35.53 *	\$0.38 *	94
2	Fortress Investment Group LLC	\$650.00	\$650.00	1	2	Iroquois Capital L.P.	\$84.14 *	\$0.96 *	89
3	Caisse de depot et placement	\$266.90	\$88.97	3	3	N.I.R. Group (The), LLC	\$83.21 *	\$1.57 *	55
4	Enbridge Energy Partners L.P.	\$248.40	\$248.40	1	4	Yorkville Advisors, LLC	\$207.36	\$3.84	54
5	Laurus Capital Management, L.L.C.	\$242.65	\$6.39	38	5	Highbridge Capital Management	\$112.75 *	\$2.30 *	50
6	ZAO Interros Holding Company	\$217.25	\$217.25	1	5	Downsview Capital, Inc.	\$34.47 *	\$0.72 *	50
7	Yorkville Advisors, LLC	\$207.36	\$3.84	54	7	Enable Capital Management	\$68.80 *	\$1.46 *	48
8	Chieftain Capital Management Inc.	\$200.00	\$100.00	2	8	Bristol Capital Advisors, LLC	\$20.91 *	\$0.46 *	46
9	Prentice Capital Management, LP	\$176.07	\$35.21	5	9	LH Financial Services Corp.	\$18.57 *	\$0.43 *	44
10	Warburg Pincus LLC	\$150.00	\$50.00	3	10	SF Capital Partners LTD.	\$112.11 *	\$2.87 *	40
11	Fidelity Management & Research	\$138.47 *	\$23.08 *	7	11	Heights Capital Management, Inc.	\$93.83	\$2.41	39
12	Energy Transfer Equity, L.P.	\$132.39	\$66.19	2	12	Laurus Capital Management, LLC	\$242.65	\$6.39	38
13	Massachusetts Mutual Life	\$126.05	\$42.02	3	13	Beacon Capital Management	\$29.52	\$0.82	36
14	Lehman Brothers Holdings Inc.	\$123.87 *	\$5.90 *	23	14	UBS AG	\$70.65 *	\$2.28 *	34
15	Sandell Asset Management Corp.	\$114.94	\$6.39	18	15	Whalehaven Fund Ltd.	\$15.61 *	\$0.58 *	28
16	Highbridge Capital Management	\$112.75 *	\$2.30 *	50	16	Hudson Bay Capital Management	\$22.46	\$0.86	26
17	SF Capital Partners LTD.	\$112.11 *	\$2.87 *	40	17	Ramius Capital Group, LLC	\$82.10 *	\$3.42 *	25
18	Royal Bank of Canada	\$103.39 *	\$17.23 *	8	18	Cantara (Switzerland) SA	\$8.76	\$0.36	24
19	HBK Investments	\$99.90 *	\$14.27 *	8	19	Lehman Brothers Holdings Inc.	\$123.87 *	\$5.90 *	23
20	Kayne Anderson, et al	\$94.91	\$18.98	5	19	Atoll Asset Management, LLC	\$14.38	\$0.63	23
21	Magnetar Capital LLC	\$94.23 *	\$5.54 *	21	21	Fort Mason Capital, LLC	\$74.75 *	\$3.56 *	22
22	Heights Capital Management, Inc.	\$93.83	\$2.41	39	22	Magnetar Capital LLC	\$94.23 *	\$5.54 *	21
23	Ipsen SA	\$92.30	\$46.15	2	22	DKR Management Company, Inc.	\$52.64 *	\$2.63 *	21
24	Polygon Investment Partners LP	\$86.45	\$6.17	14	22	Paramount Capital Asset Mgt., Inc.	\$5.27	\$0.25	21
25	Iroquois Capital L.P.	\$84.14 *	\$0.96 *	89	25	Balyasny Asset Management, LLC	\$57.40	\$2.87	20

\* EXCLUDES transactions where Investment Amount has not yet been disclosed

\* EXCLUDES transactions where Investment Amount has not yet been disclosed

RANKED BY TOTAL DOLLARS PLACED					RANKED BY # OF PLACEMENTS				
Rank	Placement Agent	Total \$m	Avg. \$	#	Rank	Placement Agent	Total \$m	Avg. \$	#
1	Pareto Private Equity ASA	\$1,357.06	\$452.35	3	1	Canaccord Capital Corp.	\$920.47	\$18.41	50
2	Carnegie ASA	\$1,291.70	\$645.85	2	2	Rodman & Renshaw, LLC	\$377.41	\$13.98	27
2	Enskilda Securities Inc.	\$1,291.70	\$645.85	2	2	Dundee Securities Corporation	\$336.30	\$12.46	27
4	Canaccord Capital Corp.	\$920.47	\$18.41	50	4	Haywood Securities Inc.	\$178.08	\$7.74	23
5	GMP Securities Ltd.	\$802.45	\$50.15	16	5	Roth Capital Partners, LLC	\$311.58	\$15.58	20
6	Fearnley Fonds ASA	\$756.02	\$756.02	1	6	Cowen and Company, LLC	\$735.58	\$38.71	19
7	Cowen and Company, LLC	\$735.58	\$38.71	19	7	GMP Securities Ltd.	\$802.45	\$50.15	16
8	Deutsche Bank AG	\$601.80	\$120.36	5	7	CIBC World Markets Inc.	\$372.07	\$23.25	16
9	Sprott Securities Limited	\$585.68	\$39.05	15	9	Sprott Securities Limited	\$585.68	\$39.05	15
10	Jefferies & Company Inc.	\$530.17	\$48.20	11	10	Westwind Partners Inc.	\$149.29	\$12.44	12
11	J.P. Morgan Chase & Co.	\$510.51	\$127.63	4	10	C.E. Unterberg, Towbin	\$142.56	\$11.88	12
12	Lehman Brothers Inc.	\$456.00	\$65.14	7	10	Midtown Partners & Co., LLC	\$35.51	\$2.96	12
13	Orion Securities, Inc.	\$424.73	\$42.47	10	13	Jefferies & Company Inc.	\$530.17	\$48.20	11
14	Citigroup Global Markets Inc.	\$400.00	\$400.00	1	13	Banc of America Securities LLC	\$349.22	\$31.75	11
14	Goldman, Sachs & Co.	\$400.00	\$400.00	1	13	Dawson James Securities	\$65.38	\$5.94	11
14	Merrill Lynch & Co.	\$400.00	\$400.00	1	16	Orion Securities, Inc.	\$424.73	\$42.47	10
14	Wachovia Securities, Inc.	\$400.00	\$400.00	1	16	Piper Jaffray & Co.	\$253.59	\$25.36	10
18	BMO Financial Group	\$387.32	\$43.04	9	16	TD Bank Financial Group	\$240.30	\$24.03	10
19	Rodman & Renshaw, LLC	\$377.41	\$13.98	27	16	Sanders Morris Harris, Inc.	\$195.85	\$19.58	10
20	CIBC World Markets Inc.	\$372.07	\$23.25	16	16	Oppenheimer & Co. Inc.	\$156.16	\$15.62	10
21	Banc of America Securities LLC	\$349.22	\$31.75	11	16	Pacific International Securities Inc.	\$72.05	\$7.20	10
22	Raymond James & Associates, Inc.	\$348.67	\$38.74	9	22	BMO Financial Group	\$387.32	\$43.04	9
23	Dundee Securities Corporation	\$336.30	\$12.46	27	22	Raymond James & Associates, Inc.	\$348.67	\$38.74	9
24	Roth Capital Partners, LLC	\$311.58	\$15.58	20	22	Bolder Investment Partners, Ltd.	\$140.91	\$15.66	9
25	Broadband Capital Management	\$282.53	\$56.51	5	22	Research Capital Corporation	\$92.54	\$10.28	9

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## INDUSTRY RANKINGS FOR 2006 YEAR-TO-DATE

RANKED BY TOTAL DOLLARS ADVISED					RANKED BY # OF PLACEMENTS ADVISED				
Rank	Investor Legal Counsel	Total \$m	Avg. \$	#	Rank	Investor Legal Counsel	Total \$m	Avg. \$	#
1	Davis Polk & Wardwell	\$2,395.04	\$2,395.04	1	1	Ballard Spahr Andrews & Ingersoll	\$81.05	\$1.88	43
2	Simpson, Thacher & Bartlett	\$1,400.00	\$1,400.00	1	2	Schulte Roth & Zabel LLP	\$969.09	\$25.50	38
3	Schulte Roth & Zabel LLP	\$969.09	\$25.50	38	3	Feldman Weinstein & Smith LLP	\$203.15	\$6.55	31
4	Baker Botts, L.L.P.	\$964.75	\$160.79	6	4	Grushko & Mittman, P.C.	\$58.51	\$3.08	19
5	Vinson & Elkins L.L.P.	\$617.50	\$154.38	4	5	Lowenstein Sandler PC	\$135.21	\$9.66	14
6	Andrews & Kurth L.L.P.	\$550.70	\$137.68	4	6	Kramer Levin Naftalis & Frankel LLP	\$55.36	\$5.03	11
7	Blackwell Sanders Peper Martin	\$540.00	\$270.00	2	7	Katten Muchin Rosenman LLP	\$173.50	\$21.69	8
7	Seward & Kissel LLP	\$540.00	\$270.00	2	7	Malhotra & Associates LLP	\$54.18	\$6.77	8
9	Torys LLP	\$496.80	\$496.80	1	9	Baker Botts, L.L.P.	\$964.75	\$160.79	6
10	Debevoise & Plimpton LLP	\$425.00	\$212.50	2	9	Greenberg Traurig, LLP	\$57.65	\$9.61	6
11	Feldman Weinstein & Smith LLP	\$203.15	\$6.55	31	9	Krieger & Prager, LLP	\$46.92	\$7.82	6
12	Dechert LLP	\$192.14	\$64.05	3	12	Vinson & Elkins L.L.P.	\$617.50	\$154.38	4
13	Katten Muchin Rosenman LLP	\$173.50	\$21.69	8	12	Andrews & Kurth L.L.P.	\$550.70	\$137.68	4
14	Paul, Weiss, et al	\$154.32	\$38.58	4	12	Paul, Weiss, et al	\$154.32	\$38.58	4
15	Alston & Bird LLP	\$150.00	\$150.00	1	12	Gunderson Dettmer, et al	\$135.00	\$33.75	4
16	Wilson Sonsini, et al	\$141.79	\$47.26	3	12	Drinker Biddle & Reath L.L.P.	\$95.56	\$23.89	4
17	Lowenstein Sandler PC	\$135.21	\$9.66	14	12	Latham & Watkins	\$92.75	\$23.19	4
18	Gunderson Dettmer, et al	\$135.00	\$33.75	4	12	Loeb & Loeb LLP	\$59.10	\$14.78	4
19	Drinker Biddle & Reath L.L.P.	\$95.56	\$23.89	4	12	Proskauer Rose LLP	\$40.50	\$10.12	4
20	Latham & Watkins	\$92.75	\$23.19	4	12	Gottbetter & Partners, LLP	\$38.17	\$9.54	4
21	Freshfields Bruckhaus Deringer LLP	\$92.32	\$46.16	2	12	Bryan Cave LLP	\$29.60	\$7.40	4
22	Willkie Farr & Gallagher	\$90.17	\$45.08	2	12	Sheppard, Mullin, et al	\$8.40	\$2.10	4
23	Goodwin Procter LLP	\$83.00	\$41.50	2	12	Dorsey & Whitney LLP	\$6.77	\$1.69	4
24	Ballard Spahr Andrews & Ingersoll	\$81.05	\$1.88	43	24	Dechert LLP	\$192.14	\$64.05	3
25	Cahill Gordon & Reindel LLP	\$75.00	\$75.00	1	24	Wilson Sonsini, et al	\$141.79	\$47.26	3

RANKED BY TOTAL DOLLARS ADVISED					RANKED BY # OF PLACEMENTS ADVISED				
Rank	Issuer Legal Counsel	Total \$m	Avg. \$	#	Rank	Issuer Legal Counsel	Total \$m	Avg. \$	#
1	Stevens & Lee, P.C.	\$2,425.04	\$1,212.52	2	1	Sichenzia Ross Friedman Ference	\$193.45	\$4.12	47
2	Shearman & Sterling	\$1,400.00	\$1,400.00	1	2	Kirkpatrick & Lockhart, et al	\$140.36	\$8.77	16
3	Skadden, Arps, et al	\$1,142.50	\$142.81	8	3	Greenberg Traurig, LLP	\$154.50	\$10.30	15
4	Vinson & Elkins L.L.P.	\$1,010.17	\$202.03	5	3	Anslow & Jaclin, LLP	\$26.60	\$1.77	15
5	Baker Botts, L.L.P.	\$586.92	\$146.73	4	5	Cooley Godward LLP	\$386.55	\$27.61	14
6	Cooley Godward LLP	\$386.55	\$27.61	14	6	Morgan, Lewis & Bockius LLP	\$320.20	\$29.11	11
7	Mayer, Brown, Rowe & Maw, LLP	\$348.52	\$116.17	3	7	Dorsey & Whitney LLP	\$182.21	\$18.22	10
8	Morgan, Lewis & Bockius LLP	\$320.20	\$29.11	11	7	Preston Gates & Ellis LLP	\$124.51	\$12.45	10
9	Mintz, Levin, et al	\$297.53	\$37.19	8	9	DLA Piper Rudnick, et al	\$204.18	\$22.69	9
10	Goodwin Procter LLP	\$268.90	\$67.22	4	9	McGuire Woods LLP	\$170.26	\$18.92	9
11	Foley Hoag LLP	\$265.60	\$66.40	4	9	Heller Ehrman/Venture Law Group	\$158.78	\$17.64	9
12	Seward & Kissel LLP	\$224.77	\$112.38	2	12	Skadden, Arps, et al	\$1,142.50	\$142.81	8
13	Patton Boggs LLP	\$219.79	\$36.63	6	12	Mintz, Levin, et al	\$297.53	\$37.19	8
14	DLA Piper Rudnick, et al	\$204.18	\$22.69	9	12	Clark Wilson LLP	\$44.21	\$5.53	8
15	Wilmer Cutler, et al	\$200.26	\$28.61	7	12	Richardson & Patel, LLP	\$34.48	\$4.31	8
16	Sichenzia Ross, et al	\$193.45	\$4.12	47	16	Wilmer Cutler, et al	\$200.26	\$28.61	7
17	Dorsey & Whitney LLP	\$182.21	\$18.22	10	16	Bryan Cave LLP	\$110.93	\$15.85	7
18	McGuire Woods LLP	\$170.26	\$18.92	9	16	Stradling Yocca Carlson & Rauth	\$106.26	\$15.18	7
19	Heller Ehrman/Venture Law Group	\$158.78	\$17.64	9	19	Patton Boggs LLP	\$219.79	\$36.63	6
20	Greenberg Traurig, LLP	\$154.50	\$10.30	15	19	Andrews & Kurth L.L.P.	\$124.86	\$20.81	6
21	Rutan & Tucker, LLP	\$154.27	\$38.57	4	19	Latham & Watkins	\$93.75	\$15.62	6
22	Kirkpatrick & Lockhart, et al	\$140.36	\$8.77	16	19	Edwards Angell Palmer & Dodge	\$69.66	\$11.61	6
23	Ropes & Gray LLP	\$126.14	\$25.23	5	19	Gottbetter & Partners, LLP	\$47.85	\$7.98	6
24	Andrews & Kurth L.L.P.	\$124.86	\$20.81	6	19	Troy & Gould Professional Corp.	\$25.30	\$4.22	6
25	Preston Gates & Ellis LLP	\$124.51	\$12.45	10	25	Vinson & Elkins L.L.P.	\$1,010.17	\$202.03	5

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*Continued from front page*

latest extension terminating the test on Aug. 6, 2007.

“The commission has never taken the view that all short selling is illegitimate. Rather, we’ve always recognized that short-selling within proper bounds can have legitimate benefits,” said SEC Chairman Christopher Cox at the roundtable discussion. “We also historically recognize that abusive short selling can be a form of unlawful market manipulation.”

The draft SEC staff analysis of the empirical data released on Sept. 15 in conjunction with the roundtable found that the removal of the tick test price restrictions on short selling had an effect on the mechanics of short selling, order routing decisions, displayed depth and intraday volatility, but on balance did not have a negative impact on market quality or liquidity.

The SEC is also still accepting comments regarding the grandfather provision of Regulation SHO which exempts failures to deliver that occur in a security prior to reaching the Reg SHO “threshold” level, whereupon the rule’s trading and settlement restrictions are imposed. The SEC announced on July 14 proposed amendments to Regulation SHO which were “intended to reduce the number of persistent fails to deliver attributable to the grandfather provision and, secondarily, to reliance on the options market maker exception.” The proposals would also include a 35 settlement day phase-in period following the effective date of the amendment. The full commission met on July 29 to discuss the proposal.

Rule 203 under Regulation SHO went into effect in January 2005 with the intention of addressing the problem of failures to deliver. Regulation SHO

imposed mandatory close-out requirements on clearing broker-dealers which required them to close out a failure to deliver position in a threshold security that persisted for 13 consecutive settlement days by purchasing the securities. A security becomes a threshold security if there is an aggregate fail to deliver position of 10,000 shares or more for five consecutive settlement days and if the aggregate fails equal 0.5% or more of the issuer’s total outstanding shares.

From the beginning, the grandfathering clause became a

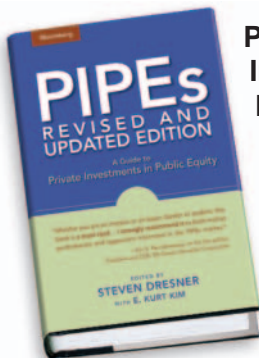
major bone of contention for many in the securities industry. Rule 203(b)(3)’s original close-out requirement did not apply to positions that were established prior to the security going on the threshold list or to positions prior to the effective date of the regulation. The second provision – the options market maker provision – also provided an exception for the mandatory close-out provision if the failure to deliver resulted from short sales by an option market maker, for the purpose of establishing or maintaining a hedge on option positions created before the underlying security became a threshold security.

David Patch, who heads up the website *InvestigateTheSEC.com* and who has been an advocate for reforming short sale rules to eliminate naked short selling and the settlement failures that result, wrote in a 19 page comment letter that the DTCC’s stock lending program needs to be completely eliminated and that penalties for violating Reg SHO must be more severe. He stated that the SEC should follow the NASD’s March 2004 short sale reform proposal wherein all fails to deliver would have been required to be closed out immediately if the fails persisted beyond 10 trade days.

Patch has used the Freedom of Information Act to obtain trading records regarding the aggregate number of fails for the NASDAQ and NYSE between April 2004 and April 2005 which covered the period from when the commission passed SHO in June 2004 and when it went into effect in January 2005. The data show that, despite SEC pronouncements that the rule is working to curb settlement failures, the average daily fails in the system increased by 35% since SHO was adopted.

“Due to the mechanics of the grandfather clause, and the six-month window of opportunity for the industry to generate fails [after SHO was adopted but prior to its implementation,] I believe

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the industry took total advantage of this opportunity and used the six months to generate additional leverage on their positions through abusive trading practices,” he wrote.

The International Association of Small Broker Dealers and Advisors also turned to the NASD for inspiration. The IASBDA’s comments, submitted on July 28 under the name of Peter Chepucavage at Plexus Consulting, who formerly worked as an attorney fellow at the SEC and helped to draft Regulation SHO, addressed the locate requirement, stating that IASBDA believed that it has been the main cause of naked shorting and that a simple fix would be to adopt the NASD’s version of the requirement.

“Simply stated, the failure to deliver on a short sale should be deemed a violation of the rule with the burden then

shifting to the seller to explain mitigating circumstances,” Chepucavage wrote. Chepucavage went on to explore the historical evolution of the locate rule from the original requirement to “locate and borrow” shares to today’s more tenuous “affirmative determination” rule, which Chepucavage called the “mother of all loopholes.” He also urged the SEC to keep the amendments simple, stating that “adding to the complexity of Regulation SHO will only harm the regulators’ ability to enforce it.”

Susan Trimbath, CEO and economist at STP Advisory Services, and a consultant for the last three years to plaintiffs law firms involved in naked shorting cases called for a greater role for the states in market regulation and for more transparency at the SEC and the DTCC in her Aug. 29 comment.

“The DTCC is obfuscating the real

magnitude of the problem by using poor metrics and biased statistics,” she argued. In an example, she cited data that the DTCC had used to show that Regulation SHO was “significantly reducing fails to deliver”. It listed statistics from the time period April 1, 2004 to Dec. 31, 2004 and compared it to Jan. 1, 2005 to May 31, 2006. She pointed out that not only was the length of time different, with the first period being nine months and the second being 17 months, but that it is well known that “market data exhibit seasonal variation.”

No discussion of the naked short selling phenomena would be complete without **Overstock.com** somehow involved. **Research Capital Corporation**, a Canadian investment dealer headquartered in Toronto that is registered with the IDA, wrote that they have been a “victim” of

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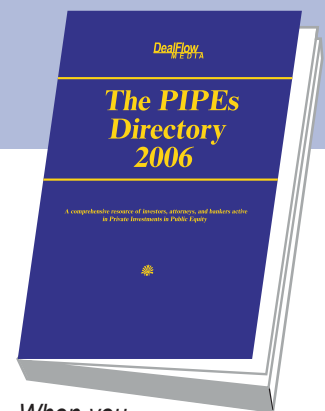


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failures to deliver in Overstock's shares. The firm wrote that it first had a failure to deliver on Feb. 24, 2006 and as of the date of the comment letter, September 6, still have not been able to obtain the shares. RCC attempted the buy-in process on 39 separate occasions, but each was unsuccessful in obtaining delivery of the shares purchased. RCC said that it is now deficient under Canadian securities regulations, which requires them to segregate those assets that are fully owned by the clients.

One of the states at the forefront of trying to curb naked shorting abuses, Utah, has gone for the full court press. Utah submitted three comment letters; from Gov. Jon Huntsman, from Francine Giani, executive director of the Utah Department of Commerce, and from Wayne Klein, director, Division of Securities, Utah Department of Commerce.

Gov. Huntsman urged the commission to move quickly to adopt the proposed changes to Regulation SHO but he felt that the current proposals were "inadequate to counter the abuses that appear to be occurring by those engaging in abusive short selling." He asked the commission to take additional steps, including, among other things, shortening the 13-day close-out deadline, requiring that "locates" be confirmed and that lenders decrement their offers of a "lend"; and require additional disclosure of fails information by clearing agencies and broker-dealers, including disclosure of fails resulting from ex-clearing transactions.

Recently, Utah stipulated to an injunction against its May law requiring broker-dealers to report failures to deliver to the Division of Securities in order to await the results of the SEC's current rulemaking process. The Securities Industry Association, which had filed suit in July to block the new law, had argued that Utah's law was preempted by federal law and that the state had to defer to the SEC.

"If the states are to be preempted from imposing additional recordkeeping requirements," Klein, the Director of the Division of Securities, wrote, "the SEC must assume greater responsibility for protecting investors by ensuring transparency and fair market practices by short sellers. Market integrity will be compromised if the SEC maintains exclusive access to the data necessary to investigate abuses – then fails to ensure that all abuses are eliminated."

Utah's most prominent anti-naked shorting advocate, Patrick Byrne, CEO of Overstock.com, also chimed in with a 19 page letter.

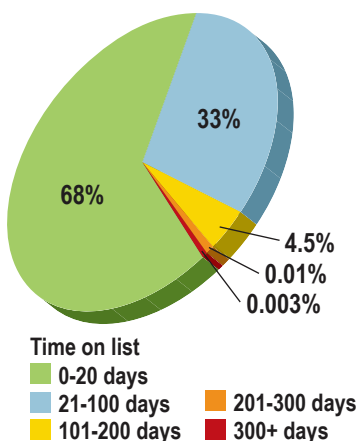
"Overstock was continuously on the Regulation SHO threshold list throughout 2005 and 2006, and, despite Regulation SHO's aim to curb fails to deliver, during 2005, fails in Overstock's shares grew 63 times their original size from 36,681 in January to over 2,321,990 in December," Byrnes wrote in his submission.

Byrne said that the proposed amendments were a good first step but that he also wants the SEC to implement two more procedures. First, the SEC should disclose the volume of fails, including reporting the volume of fails to deliver daily for each threshold security, including fails to deliver that occur within the DTCC and outside the DTCC in ex-clearing transactions. Second, the SEC must require a pre-borrow for all short sales, where the trader must have the stock in his possession or have entered into a bona fide contract to borrow in advance of the sale.

Robert Shapiro, chairman of Sonecon LLC and former Under Secretary of Commerce for Economic Affairs in the Clinton administration, and also an advisor to the naked shorting plaintiff law firms of O'Quinn, Laminack and Pirtle and Christian, Smith and Jewell, echoed Byrne's sentiment about more transparency in the ex-clearing transactions in his letter, urging the Commission to investigate the "substantial and persistent" fails to deliver which occur through the ex-clearing arrangements.

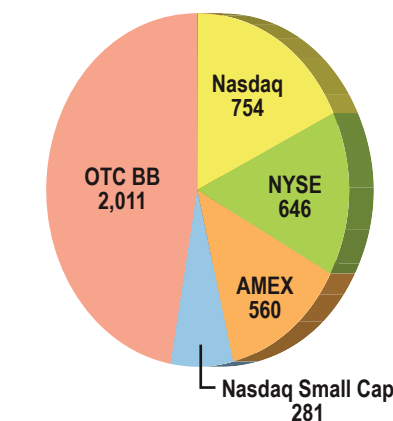
The SEC has received over 200 comments on the proposed amendments. The vast majority of commentators expressed a desire for increased restrictions on short selling and more stringent enforcement of close-outs of failed settlements resulting from short sales. Comments are being collected through Sept. 19.

Distribution of tenure periods for companies placed on threshold list



Source: Nasdaq, American Stock Exchange, NYSE, NASD

Distribution by market of companies placed on threshold list since 1/1/2005



Source: Nasdaq, American Stock Exchange, NYSE, NASD

*Continued from front page*

instance, are delivered at the front-end of the process rather than the back-end. The big concern, however, centers on the fact that the instructions establish a contract between investors and transfer agents – whose clients are the issuers – which puts the agents in an odd and uncomfortable position.

“That contractual relationship between the investor and the transfer agent doesn’t exist in any other situation that I can think of,” says Herb Lemmer, general counsel for American Stock Transfer & Trust Co. “I don’t see why PIPEs should get any treatment different from any other stock

transaction. There’s no reason why transfer agents should enter into contracts with their clients’ investors.”

Indeed, such a relationship creates potential liability for transfer agents,

*When it came to restricted securities, the commission was looking to a company’s counsel and the transfer agent “to act as deputy marshals on the street.”*

even though the agents try to limit language to avoid it. But whether investors would take action against an agent is open for debate, experts suggest, because transfer agents have no obligation to agree to the irrevocable instructions. Any suit brought against the agents could convince them to refuse such instructions for good.

From a fund’s point of view, the irrevocable instructions provide a hedge against potentially rebellious companies who refuse to tell transfer agents – or provide them with the necessary opinions – to take off the legends. In fact, Samuel Krieger, a securities attorney with the **Krieger & Prager** law firm,

maintains that transfer agents have an obligation to investors: In an early release related to Rule 144, the Securities and Exchange Commission said that when it came to restricted securities, the commission was looking to a company’s counsel and the transfer agent “to act as deputy marshals on the street,” Krieger says.

“A lot of these companies are very small, they’re understaffed, and getting hold of counsel sometimes to issue the

opinions – if opinions are required – can be time consuming,” he says. “And if you get in a dispute with the company, or another investor gets into a dispute with the company, you don’t want the works gummed up.” Additionally, given the volatility of the majority of companies that issue PIPEs, a delay in the transfer could translate into potentially millions of dollars gained or lost.

Marc Ross, an attorney with **Sichenzia Ross Friedman Ference**, says the instructions also provide a mechanism for investors to secure their shares even if an issuer is defaulting on the broader PIPE contracts. “If the issuer’s breaching other agreements, then the odds are damn good that it’s not going to give investors their shares,” he says.

To Lemmer, the extra security irrevocable instructions provide to investors begs the question as to why funds are putting money into the companies in the first place. “If investors are lending money to an issuer and don’t trust the issuer to give the instructions to the transfer agent at the appropriate time to take the legends off, maybe they shouldn’t do the deal,” he says.

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“They shouldn’t try to involve the transfer agent and make the agent responsible to see that the issuer fulfills its obligations.”

**Client Accommodation**

Despite the distaste transfer agents have for irrevocable instructions, they obviously agree to them judging from the alive-and-well PIPE market. While transfer agents are under no obligation to agree to irrevocable instructions, the agents nevertheless are sensitive to the capital needs of their client companies. (Though in many cases, Lemmer says, American Stock Transfer has refused to agree to instructions

that included egregious demands.) Frequently the issuers are in dire need of financing and see the PIPE market as the last resort to keep their doors open. And once a transfer agent agrees to irrevocable instructions in one deal,

*Once a transfer agent agrees to irrevocable instructions in one deal, PIPE investors are hardly shy about pointing out that fact to other potential issuers.*

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Thus, while Lemmer says he would rather not see irrevocable instructions at all, he acknowledges that some instructions are more reasonable than others. The most palatable, he says, provide that when an investor sends a notice of conversion or warrant exercise to the transfer agent, the issuer will authorize that notice by a signature on the document or on a separate document. The transfer agent also wants notification of an effective registration statement as well as written confirmation of a sale and the deliv-

ery of a prospectus. Typically, brokers or investors would provide the sale and prospectus confirmation in other types of transactions.

But PIPE investors often resist the requirement to provide the confirmation of a sale and prospectus delivery; instead, they want instructions that remove legends immediately after the registration statement becomes effective. The chief concern from those instructions centers on the possibility that a registration statement loses its effectiveness:

Once the legends are removed and the shares are transferred electronically to an investor’s brokerage account, there’s no way for a transfer agent to control those shares, Lemmer says. In other, more typical stock transactions, in which the transfer agent still has the shares, the agent typically puts a “stop transfer” on the securities.

“The biggest problem with these instructions is at what stage do you remove the legend?” he says. “The best practice in the industry is that you do not remove the legend until there has actually been a sale of the shares and confirmation of that sale.”

**Off Limits**

Still, many investors have agreed to changes requested by transfer agents, despite resistance to certain terms. In early versions of irrevocable instructions, for example, investors often wanted to be able to give instructions to transfer agents for future stock issuances – that is, the agent would act on an investor’s notification that it was exercising a warrant or converting a debenture. American Stock Transfer, however, insisted that the issuer be a party to those issuances. In fact, SEC

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rules governing transfer agents prevent the agents from issuing stock except on the instructions of a duly authorized agent of the company.

But while most investors have changed instructions to reflect that request, some still want to minimize an issuer's involvement. How? In some cases, the instructions provide that the issuer appoint somebody associated with the investment group to act as the issuer's agent, who then can provide the authorization on behalf of the company. "That we have a prob-

lem with," Lemmer says.

What instructions can investors

*SEC rules governing transfer agents prevent the agents from issuing stock except on the instructions of a duly authorized agent of the company.*

expect a transfer agent to absolutely reject? Those on Lemmer's list of the most-egregious include investors asking the transfer agents to carve out shares of a company's capital stock

as a reserve for the PIPE funds. Ultimately such a practice could leave the transfer agent short of shares to cover a client's employees who have exercised their stock options, among other conflicts.

Investors also have attempted to prevent the agent from resigning as the transfer agent for a company except under certain conditions. "This is a ridiculous thing; we absolutely refuse to sign those," Lemmer says. "We have all sorts of reasons we might want to resign – the mere fact that the client's not paying us." ■

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