

RECENT SEC ENFORCEMENT ACTION HIGHLIGHTS SHORT SALES

Below is a brief summary of some recent SEC actions in connection with short selling.

Short Sales and PIPES

In CompuDyne, the SEC brought an action against an investor in a PIPE transaction for executing short sales prior to the public announcement of the PIPE transaction and prior to the effective date of the resale registration statement. The SEC alleged that short selling the issuer's shares prior to the effective date of the resale registration statement for the PIPE shares and covering such short sales with the shares obtained in the PIPE transaction violated the registration requirements of the Securities Act. The SEC also alleged that the investor executed short sales prior to the issuer publicly announcing the PIPE transaction in violation of insider trading rules.

In SG Cowen, the SEC charged a former managing director in charge of investing the firm's proprietary funds in PIPE transactions for short selling prior to the public announcement of such PIPE transactions and prior to closing of such transactions in violation of insider trading rules.

Short Sales and Regulation M

The SEC brought and concluded actions against three hedge fund advisors for violations of Rule 105 under Regulation M. Rule 105 substantially provides that an investor may not cover a short sale with securities obtained in a follow-on public offering purchased from an underwriter or broker-dealer participating in the offering if the short sale occurred within five business days before the pricing of that offering.