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May 22, 2008

Via Electronic Mail (rule-comments@sec.gov)

Nancy M. Morris

Secretary

Office of the Secretary

U.S. Securities and Exchange Commission

100 F Street, N.E.

Washington, D.C. 20549

Re: File No. S7-08-08

Dear Ms. Morris:

The Security Trader's Association (the "STA" or the "Association") welcomes this opportunity to comment on the proposal of the Securities and Exchange Commission (the "SEC" or the "Commission") to promulgate Rule 10b-21, a new anti-fraud rule under the Securities Exchange Act of 1934 (the "Exchange Act"). Specifically, new Rule 10b-21 would address fails-to-deliver securities that are associated with naked short selling.¹ With the new rule, the Commission intends to highlight the liability of persons that deceive specified persons about their intention or ability to deliver securities in time for settlement, including persons that deceive their broker-dealer about their locate, source, or ownership of shares and that fail to deliver securities by settlement date. The Commission is concerned that fails-to-deliver associated with naked short selling may have a negative effect on the market and shareholders, and thus seeks to add proposed Rule 10b-21 to its arsenal of tools to combat manipulative short selling.

The STA is a worldwide professional trade organization that works to improve the ethics, business standards, and working environment for our members. There are approximately 5,200 members, all engaged in the buying selling and trading of securities. Members participate in STA through 27 national and international affiliate organizations and represent the interests of the trading community and institutional investors. The STA provides a forum for our traders, representing institutions, broker-dealers, ECNs, and floor brokers to share their unique perspective on issues facing the securities markets. They work together to promote their shared interests in efficient liquid markets as well as in investor protection.

The STA commends the Commission for continuing its efforts to combat the practice of "naked short selling". While there exists no precise definition of the term "naked short

¹ Securities Exchange Act Release No. 57511 (March 17, 2008); 73 FR 15376 (March 21, 2008).

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Dictum Meum Pactum

selling” in the federal securities laws or in any of the rules or regulations of the self regulatory organizations (SROs), it is generally believed to be the practices of selling short without undertaking the effort to locate the securities necessary to make delivery. It is commonly believed that naked short selling is associated with bear raids and when done so amounts to a deceptive and manipulative scheme, which is illegal under the general anti-fraud provisions of the federal securities laws, including Rule 10b-5 of the Exchange Act.

The Association and its members have a history of opposing manipulative short selling, and believe that the most effective prevention of such abuse is through enforcement of Regulation SHO by the Commission and the various SROs.² There is no substitute for vigorous surveillance, examination, and investigative techniques of short selling practices to combat the abusive trading practices of a few. Effective regulatory oversight does more to reduce the amount of naked short selling than any one rule or set of regulations.

Accordingly, we believe that the SEC and SRO staffs should pay particular attention to the close-out requirements of Regulation SHO. Typically naked short selling is only successful if the seller is can maintain his short position by avoiding the buy in requirements of Rule 203(b)(3)(iii) of Regulation SHO. This provision contains the close out requirement that applies only to broker-dealers for securities in which a substantial amount of fails-to-deliver a have occurred, also know as “threshold securities.” Specifically, Rule 203(b)(3)’s close out requirement requires a participant of a clearing agency registered with the Commission to take immediate action to close out a fail-to-deliver position in a threshold security in the Continuous Net Settlement (CNS) system that has persisted for 13 consecutive settlement days by purchasing securities of like kind and quantity. Not only would this close procedure eliminate the fail-to-deliver position it would also reverse any bear raid efforts by the person(s) so failing to deliver.

Even though the Association believes that the most effective way to combat naked short selling is to enforce the close out requirement of Regulation SHO, the Association supports the Commission efforts to promulgate Rule 10b-21. We embrace the Commission’s effort to highlight the potential liability for failing to locate the securities necessary to make delivery on one’s short sale. In this way the Commission puts more force and effect behind the locate requirement of Regulation SHO. In particular, Rule 203 of Regulation SHO contains a locate requirement that provides that, “[a] broker or dealer may not accept a short sale order in an equity security from another person, or effect a short sale in an equity security for its own account unless the broker or dealer has: (1) Borrowed the security, or entered into a bona fide arrangement to borrow the security; or (2) Reasonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due; and (3) Documented compliance with this paragraph (b)(1).”

While we embrace the Commission’s efforts to highlight potential liability of those failing to locate securities to make delivery on short sales, our support for proposed Rule 10b-21 would be stronger if fewer ambiguities existed with the locate requirement. We believe in the value of undertaking the effort to locate the securities, but as the requirement reads now, the Association has great concern for the potential liability for its members and their customers. We note the ambiguities in our recent Special Report: The STA’s Perspective on U.S. Market Structure (May 2008).³ Specifically on page 18 of the Special Report we say:

² See generally STA comment letter dated February 12, 2007 in File No. S7-21-06

³ <http://www.securitytraders.org/>.

Footnotes in the Regulation SHO release and the responses to the SEC's frequently asked questions, which address how broker-dealers satisfy the "locate requirement" under Rule 203(b)(3),⁴ serve to create more uncertainty. These interpretations seem to allow registered broker/dealers to rely on other entities, some of which are not registered with the SEC, for their performance under the rule. These non-registered entities have become some of the broker/dealers largest customers making it more probable that the broker/dealer would readily accept any assurances provided to them.

We invite the Commission to review our Special Report and pay particular attention to our views on Regulation SHO and its locate requirement. We caution the Commission to show restraint in its efforts to enforce Rule 10b-21 until all ambiguities are resolved. Until such time, STA members and their customers undertake to locate securities at their regulatory peril.

We look forward to working with the staff on clarifying the ambiguities of the locate requirement. If we can provide further clarification or further information on our comments to this proposal, please do not hesitate to contact us at (212) 867-7002

Very truly yours,



Bart Green
Chairman



John C. Giesea
President & CEO

Cc: The Honorable Christopher Cox, Chairman
The Honorable Paul S. Atkins, Commissioner
The Honorable Kathleen L. Casey
Dr. Erik R. Sirri, Division of Trading and Markets
Robert L.D. Colby, Deputy Director, Division of Trading and Markets

⁴ For more information, reference the SEC's Division of Market Regulation: "Responses to Frequently Asked Questions Concerning Regulation SHO," Questions 4.1 and 4.3 at <http://www.sec.gov/divisions/marketreg/mrfaqregsho1204.htm>.