



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

750 First Street N.E., Suite 1140

Washington, D.C. 20002

202/737-0900

Fax: 202/783-3571

www.nasaa.org

Via Electronic Submission

June 29, 2009

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

**Re: Comments on Amendments to Regulation SHO
Release No. 34-59748; File No. S7-08-09**

Dear Secretary Murphy:

The North American Securities Administrators Association, Inc. (“NASAA”)¹ supports the efforts of the Securities and Exchange Commission’s (“Commission”) most recent proposed amendments to Regulation SHO under the Securities and Exchange Act of 1934 (“Exchange Act”) and appreciates the opportunity to comment on these amendments.

A. Uptick Rule

In response to the Commission’s most recent proposal to reinstate a new short sale price test or circuit breaker rule, NASAA supports the adoption of a short sale price test restriction that provides investors with the greatest amount of protection. NASAA agrees with the Commission’s preliminary assessment that a short sale price test restriction based on the national best bid offers certain advantages over a test based on the last sale price of a security. In addition to reflecting a less accurate view of real-time share price, a short sale price test based on the last sale price remains susceptible to manipulation. For example in NASAA’s 2006 letter to the Commission, we provided an illustration of the potential for such manipulation—despite the presence of a last-price uptick rule—by describing a situation in which a trader may circumvent the rule by having another broker

¹ NASAA is the association of all state, provincial, and territorial securities regulators in North America. Its membership consists of the securities regulators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada, and Mexico. Their core mission is protecting investors from fraud and abuse in the offer and sale of securities. Organized in 1919, NASAA is the oldest international organization devoted to investor protection.

enter an initial trade for 100 shares at an uptick price, thereby permitting the trader to follow with a short sale order of 100,000 shares.² Based in part on this simple illustration, NASAA strongly urges the Commission to adopt and enforce a short sale price test restriction based on the national best bid or a similar rule that will afford investors with the highest level of protection.

B. *Firm Locates*

While NASAA concurs with the Commission's decision to re-evaluate the need for a new short sale price test, we strongly encourage the Commission to bolster all its positions against improper short selling. As regulators charged with the responsibility of protecting investors in our capital markets, we must remain steadfastly committed to providing a marketplace devoid of fraud and manipulation. As such, NASAA firmly believes that the Commission should take this opportunity to revisit and strengthen previous amendments to Regulation SHO.

With respect to the Commission's previous amendments to Regulation SHO, NASAA supports the Commission's decision to eliminate the "grandfather" and "options market maker" exceptions to the close-out requirement. NASAA further commends the Commission's permanent adoption of Exchange Act Rule 10b-21, which precludes sellers from engaging in deceptive practices relating to their intentions or abilities to locate or deliver securities by settlement date. More recently, NASAA has been encouraged by the Commission's decision to adopt Rule 204T as an interim final temporary rule to Regulation SHO. However, despite the Commission's latest efforts in heightening the delivery requirements of securities (e.g., through stricter "close-out" and "locate" requirements), more must be done. NASAA reiterates its belief that the Commission should consider adopting what is now referred to as "interim final temporary Rule 204T" as a permanent close-out rule.

In relation to the "close-out" requirement of Regulation SHO, NASAA believes that the Commission should refrain from adopting an exemption that would allow for a *de minimus* amount of fails to be excluded from the mandatory close-out requirement. As stated in our 2006 letter, *de minimus* exemptions by their very nature should not require additional close-out time. Considering that extended close-out periods are primarily aimed at avoiding market disruptions and short squeezes that might occur when a trader has to buy in securities to close out a position, there should be few concerns about the negligible effect of *de minimus* fails on the market. In addition, employing a uniform standard to close-outs could decrease costs for broker-dealers and other market participants, as well as increase investor confidence as a result of a uniform and predictable close-out requirement.

In regard to the "locate" requirement of Regulation SHO, although Rule 10b-21 has the potential to impose primary liability on a seller for misrepresenting the validity of its locate source, the rule stops short of requiring a seller to "reserve" the shares located. As

² See NASAA comment letter ("2006 letter") to Commission in response to Exchange Act Release No. 54154 (July 21, 2006).

stated in our 2006 letter, NASAA remains deeply concerned about the market's exposure to the over-hypothecation of shares to multiple individuals. In many instances, the illusion that more shares are available than actually exist can lead to inaccurate recordkeeping and the impairment of shareholder voting rights. Therefore, NASAA actively encourages the Commission to take the additional step of requiring stock lenders to identify firm locates of shares as a way to reduce the occurrences of fails to deliver.

NASAA continues to be concerned that a large number of brokerage firms are failing to accurately report the short selling activities of their respective clients. As first discussed in our 2006 letter to the Commission, whether intentional or accidental, these reporting errors can have a significant influence on the accuracy of public information. Today, NASAA reaffirms its position that more must be done to ensure that brokerage firms are accurately reporting the short selling activities of their clients.

C. *Disclosure Rule*

In our 2006 letter to the Commission³, NASAA supported the Commission's approval of an emergency order requiring that certain institutional money managers report their involvement in new short sales of certain publicly traded securities. In effect, the rule required all money managers who exercised discretion over accounts with at least \$100 million in traded securities to report all new short sale positions to the SEC on a weekly basis. NASAA reiterates its belief that the Commission should consider adopting what is now referred to as interim final temporary Rule 10a-3T as a permanent disclosure rule.

NASAA applauds the Commission's continued efforts to combat the practice of "abusive" naked short selling and reduce the frequency of fails to deliver through the adoption of more proactive measures such as Regulation SHO. Since our first correspondence with the Commission on Regulation SHO back in 2006, NASAA has remained dedicated to assisting the Commission in developing a more transparent and efficient market for capital formation. NASAA hopes that the Commission's latest measures and these rule proposals will provide a clearer and more level playing field for all and that they will become a permanent and integral part of the comprehensive regulatory scheme to further the integrity of our financial marketplace.

Sincerely,

/S/

Rex A. Staples
General Counsel
North American Securities Administrators Association

³ NASAA comment on Amendments to Regulation SHO, File No. S7-12-06, available at <http://www.sec.gov/comments/s7-12-06/jpborg7410.pdf>