

**Wellington Management Company, LLP**

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December 16, 2008

Ms. Florence E. Harman  
Acting Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

**Re: Comment on Amendments to Regulation SHO, Release No. 34-58773 (S7-30-08)**

Dear Ms. Harman:

I am writing on behalf of Wellington Management Company, LLP ("Wellington Management") to comment on the Interim Final Temporary Rule 204T under Regulation SHO under the Securities Exchange Act of 1934, adopted by the U.S. Securities and Exchange Commission ("Commission") on October 14, 2008 in Securities Exchange Act Release No. 34-58773 ("Release").<sup>1</sup> Wellington Management generally supports the Commission's actions in the Release, particularly the clarification that the close out requirements for fails to deliver of securities under Rule 204T(a)(2) apply to sales of restricted securities sold "long" pursuant to an effective registration statement pursuant to the Securities Act of 1933 ("1933 Act").<sup>2</sup> However, we urge the Commission to reference the inclusion of these qualifying transactions in the text of Rule 204T(a)(2) to avoid confusion in the marketplace.

As the Commission is aware, Rule 204T provides that a clearing firm has until T+6 to settle "long" sales. If a "long" seller of securities has not delivered the securities by that time, the clearing firm is required to close out the sale or become subject to the so-called "penalty" provisions of Rule 204T, which require pre-borrowing of short sale orders. Rule 204T(a)(2) provides, however, that if the "long" sale is made pursuant to Rule 144 under the 1933 Act, the clearing firm has until the beginning of trading on the thirty-sixth day after trade date before it is required to close out any resulting "fail to deliver." The thirty-five days close out requirement for sales under Rule 144 is based on similar provisions in existing Regulation SHO and is consistent with Regulation SHO's treatment of Rule 144 sales.

In the Release, the Commission stated that:

We understand that sellers that own restricted equity securities that wish to sell pursuant to an effective resale registration statement under Rule 415 under the Securities Act experience similar types of potential settlement delays as sales of securities pursuant

<sup>1</sup> As of September 30, 2008, Wellington Management served as an investment adviser to approximately 1600 clients and had investment management authority with respect to approximately \$407 billion in client assets.

<sup>2</sup> See letter from Cynthia M. Clarke, General Counsel, Wellington Management Company, llp dated October 1, 2008 commenting on Securities Exchange Act Release No. 34-58577 and asking for clarification on the close out requirements for long sales of restricted securities for which a registration statement is effective.

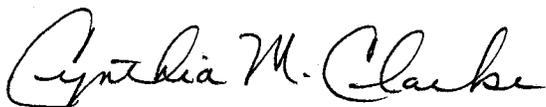
Ms. Florence E. Harman  
U.S. Securities and Exchange Commission  
December 16, 2008  
Page 2

to Rule 144 under the Securities Act. Thus, fails to deliver in such securities may be closed out in accordance with temporary Rule 204T(a)(2) if the fails to deliver resulted from sales of securities that were outstanding at the time they were sold and the sale occurred after a registration has become effective. In addition, we understand that sales pursuant to broker-assisted cashless exercises of compensatory options to purchase a company's stock, may result in potential settlement delays and, therefore, fails to deliver. Such fails to deliver may be closed out in accordance with temporary Rule 204T(a)(2).<sup>3</sup>

Wellington Management often purchases securities in privately negotiated transactions for its clients. These shares are subsequently sold pursuant to a selling shareholder shelf registration statement pursuant to the 1933 Act. In our experience, the steps necessary to obtain deliverable shares to settle the shelf registration sales are identical, in substance, to those for Rule 144 sales, and the shares are often not available for delivery prior to T+6. The client account has clear ownership of the shares and the sale transaction does not result in any direct or indirect "short selling" of the shares. The sole reason for the delay in delivery is due to processing delays inherent with selling shares pursuant to a selling shareholder registration statement which are outside of the control of the seller. Accordingly, we support the Commission's treatment of the close out requirements for sales of restricted equity securities pursuant to an effective registration statement under Rule 415 under the Securities Act in the same manner as Rule 144 sales under Rule 204T(a)(2). We recommend, however, that the Commission explicitly include these qualifying transactions in the text of Rule 204T(a)(2) to avoid confusion in the marketplace.

Please feel free to contact me at (617) 790-7426 if you have any questions or require any further information.

Sincerely,



Cynthia M. Clarke  
General Counsel

cc: The Honorable Christopher Cox, Chairman  
The Honorable Kathleen L. Casey, Commissioner  
The Honorable Elisse B. Walter, Commissioner  
The Honorable Luis A. Aguilar, Commissioner  
The Honorable Troy A. Parades, Commissioner

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<sup>3</sup> 73 FR 61706, at 61716.