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Via Electronic Mail

October 10, 2008

The Honorable Christopher Cox
Chairman
U.S Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: Emergency Order Taking Temporary Action to Respond to Market Developments, Release No. 34-58754

Dear Chairman Cox:

As a follow up to our October 1, 2008 letter to you, we are writing to express our views about the Securities and Exchange Commission's action to require institutional money managers to report weekly new short sales of certain publicly traded securities on new Form SH (Release No. 58754—the "Extended Disclosure Order") and its stated intention to make this reporting requirement permanent under an interim final rule.

Barclays Global Investors ("BGI") is one of the world's largest institutional investment managers, and the world's largest provider of structured investment strategies such as indexing, tactical asset allocation and quantitative active strategies. Headquartered in San Francisco, BGI is a subsidiary of Barclays PLC, one of the world's leading diversified financial services companies.

At June 30, 2008, BGI managed over US$1.9 trillion with approximately US$ 1.25 trillion in long-only equity strategies and US$ 18 billion in long-short and alternative strategies. The clients that invest in these strategies are primarily defined benefit pension plans sponsored by corporations or public agencies, and endowments, foundations and similar pools of long-term investment capital. In a majority of the mandates for these alternative strategies (measured by AUM), BGI specifically undertakes its responsibility as manager as a fiduciary under ERISA or similar local laws of the jurisdiction to which the client is subject.

BGI is strongly supportive of the SEC taking appropriate action to bring stability to the market in light of recent global market conditions, and support the SEC's recent actions designed to limit 'naked' short selling. As our strategies rely heavily on the smooth functioning of the equity markets, and on the efficient price-discovery mechanism that is at the heart of a well functioning, well regulated marketplace, we are pleased that the Commission did not extend the blanket ban on short selling of "financial firms" beyond October 8, 2008. A cursory review of the market data generated during the pendency of the ban indicates that not only did the ban not provide any meaningful downside protection to the companies covered by the ban, but that liquidity in the stocks of these companies declined and the bid-offer spreads maintained by market makers widened considerably. Despite continued volatility in the equity markets, we urge that the Commission resist pressures to reinstitute bans on short selling. BGI believes strong enforcement of market-manipulation laws is a more effective mechanism to target undesirable market behaviour.

We also want to express our support for the Commission's decision under the Extended Disclosure Order to not make publicly available the information required to be reported on new Form SH.

For the reasons set out below, we urge that the Commission not proceed with an interim final rule on the reporting of short positions, but rather to undertake such action in a rulemaking process that provides a meaningful opportunity for notice and public comment.

The reporting of newly initiated gross short positions aggregated across an organization for each day of the prior week, and with intraday information, has raised numerous questions of application and interpretation. The Commission's staff has engaged frequently since September 18th with industry groups and individual firms subject to the Extended Disclosure Order to seek to shed light on such questions. It is just these types of issues that are best raised and handled through the usual rulemaking process, which provides for transparency and deliberation in a manner that informal engagement does not.

Another issue that would be better resolved through meaningful notice and comment is whether the collection of the information sought by the Commission is sufficiently targeted to achieve the goals of the rule, and whether the burden of production is outweighed by the benefits to be achieved.[1] In proposing a rule for comment, the

[1] At the time of issuing the Order, understandably the Commission had little information on which to base its Paperwork Reduction Act estimate (on average 5 hours) to complete Form SH. The burden should be now capable of better estimation. Based on BGI's experience to date, the amount of time required is considerably greater, in the range of several multiples of the previous estimate.

Commission could seek information on alternatives that may be less burdensome yet achieve the objective of improved market oversight and the deterrence and detection of market manipulation[2]. And in the interim, the Commission could continue to use the surveillance techniques it has had in place for some time.

An interim final rule also does not permit adequate notice and sufficient time for reporting firms to implement automated data collection for Form SH. For many firms, reporting to date has been a highly manual process. Automation would reduce burdens and likely improve accuracy.

If the Commission decides that it will proceed with an interim final rule, we believe that the Commission should consider several changes to reduce the reporting burden. The current reporting levels of both the dollar value ($1 million) and percentage of outstanding shares (.25%) are such that for managers with substantial assets under management, nearly every short position it holds is reportable, producing a considerable amount of data which is not that meaningful when put into context. The reporting thresholds should be increased to levels that approximate where there is a potential for market impact. The potential for market impact, of course, varies depending on a number of factors, including liquidity. While a tiered system, perhaps based on market cap or 'free float', would be one approach, we suggest that for simplicity the Commission set the level at not lower than 1% of the outstanding shares.

Next, we believe that the Commission should eliminate the requirement to report the largest intraday short position in each name, and the time of day. Trading systems generally are not designed to permit ready access to such information, and reporting this data would be particularly burdensome when positions have to be aggregated across several funds and/or strategies managed in different parts of the organization that may be short the same stock. The Commission, of course, has the ability to request this information on an as-needed basis.

Last, we believe that the Commission should change the reporting cycle such that a firm would have not less than two weeks between the end of a reporting period and the due date for the report[3]. If necessary, the Commission could state in the interim final rule that in certain circumstances, such as volatile markets, it reserves the right to require the reports to be prepared and filed in a shortened time frame, such as in the Extended Disclosure Order.

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[2] The interim final rule could also make a request for alternatives, but by the time these were evaluated, and the interim final rule amended, the reporting firms likely will have already made the 'start up' expenditures, which could be significant, of time and money to put processes in place to comply with the interim final rule.

[3] Reports of long positions under Section 13(f) of the Exchange Act are due 45 days after the end of the quarter.

We desire to work constructively with the Commission on these matters, and would welcome and greatly appreciate the opportunity for further discussion. If you require any additional information, please feel free to call me at (415) 597-2436.

Yours sincerely,

Michael L. Crowl
Managing Director and Global General Counsel

cc: The Honorable Luis A. Aguilar
The Honorable Kathleen L. Casey
The Honorable Troy A. Paredes
The Honorable Elisse B. Walter
Erik Sirri, Director, Division of Trading and Markets
John W. White, Director, Division of Corporation Finance