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OFFICE OF THE SECRETARY

100 22nd Avenue  
Brookings, SD 57006  
T 605-696-7200  
F 605-696-7250  
www.verasun.com

June 26, 2008

Nancy M. Morris, Secretary  
Securities and Exchange Commission  
100 F St. NE  
Washington, DC 20509-1090

**Re: Release No. 34-57511; File No. S7-08-08  
Regulation SHO Proposed Amendments re: "Naked" Short Selling**

Dear Ms. Morris:

I write to urge the SEC to (i) adopt the proposed anti-fraud rule 10b-21, (ii) eliminate the options market maker exemption to Regulation SHO and (iii) aggressively enforce and/or reform Regulation SHO to protect against the abuses being caused by illegal "naked" short selling.

Our company, VeraSun Energy Corporation ("VeraSun"), has been targeted by short sellers consistently since July 2007, which, we believe, has at times artificially depressed the price of our stock. As such, stopping the practice of illegal naked short selling is an important issue for our company.

While we support the adoption of the proposed anti-fraud rule, we question how its adoption, absent other significant actions, would halt the continued practice of naked short selling. Today, naked short selling is a clear violation of the anti-fraud provisions of Rule 10b-5. As a consequence, we believe that restating in the proposed rule that this type of fraud is a violation will not significantly change the current situation. That said, the SEC's adoption of the proposed rule will further increase the attention being focused on this problem and, therefore, is another positive step in addressing this problem. We support the SEC's adoption of the proposed rule. In addition, we believe the SEC needs to take additional steps to bring about meaningful change.

**Additional Regulatory Changes Sought**

We believe serious settlement failures will persist unless there is aggressive enforcement of current rules or the SEC implements significant additional reforms. We support:

- **Elimination of the options market maker exception.** This exception exempts failures to deliver ("FTDs") created by short sales effected by a registered options market maker to the extent that they establish or maintain a hedge on an options position that was created before the security became a threshold security. There is no time limit.

While the SEC last proposed changes to the options market maker exemption in June 2007, no action has been taken to date. Because the options market maker exemption is a well known tool of manipulation, we believe that it must be eliminated promptly to ensure a level playing field for public companies and shareholders. [Comment: Let's try to address the other side of the argument – why is this not a bad thing for option market makers?] We urge the SEC to do so along with its more recently proposed amendments to Regulation SHO.

- **Aggressive enforcement of current rules.** The sheer quantity of companies on the Regulation SHO Threshold Securities List (nearly 7,000 companies have appeared on the Threshold Securities List, with nearly 700 companies appearing for over 100 trading days) indicates naked short sellers are acting with impunity. VeraSun was on the Threshold Securities List for 120 total trading days starting on July 7, 2007 and then came back on the list on April 23, 2008. An economist's analysis of our stock found that FTDs during the first period were large and coincided with a steep price decline in our stock.

It is our view that a well-functioning capital market should not have many, if any, instances of failures to deliver large enough and protracted enough to merit inclusion on the Regulation SHO Threshold Securities List. Certainly, it is difficult to comprehend the reasons for hundreds of companies being on the list for over 100 days. We urge the SEC to aggressively enforce Regulation SHO to punish already-illegal market manipulation and deter other naked short sellers from doing so.

- **Enactment of more stringent locate requirements.** The “locate” requirement of Regulation SHO provides that a broker or dealer may not effect or accept a short sale order unless the broker or dealer has either (i) borrowed the security, or entered into a contract to borrow it, or (ii) has reasonable grounds to believe that the security can be borrowed such that it can be delivered when due. Broker-dealers can rely on a customer's assurances that the customer has identified a source of securities, if it is reasonable for the broker-dealer to do so.

The “reasonable grounds” prong of the locate requirement is difficult to understand and enforce and, consequently, prone to abuse. Instead, Regulation SHO should be amended to clearly require all short sellers of Threshold Securities to either (i) have possession of the stock in question or (ii) have entered into a bona fide contract to borrow the stock in advance of the sale.

- **Increased transparency with regard to short selling and settlement failures.** We support full and prompt disclosure of FTDs, including the aggregate volume and the number of new FTDs, listed by broker-dealer and by company, to bring some daylight to these potentially abusive practices.

The U.S. Chamber of Commerce and other notable commentators have called repeatedly for such changes. SEC Chairman Christopher Cox has also raised his concerns about “abusive

naked short selling” and “persistent failures to deliver.” I urge you to adopt, implement and enforce the proposals discussed in this letter without delay.

I appreciate your consideration on this matter and would be happy to discuss this issue with you further.

Sincerely,



Gregory S. Schlicht  
Senior Vice President, General Counsel and  
Corporate Secretary