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United States Securities and Exchange Commission
100 F. Street, N.E.
Washington, DC 20549-1090

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OFFICE OF THE SECRETARY

May 19, 2009

Re: File No. S7-08-09 Amendments to Regulation SHO

Commissioners,

I set forth a humble alternative to the proposed short sale rules: Require SROs to make real-time disclosure of short sales when certain thresholds are met. This will solve a market problem with a market solution. As Louis Brandeis said: "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman."

The Commission is looking for ways to limit the effect of abusive short selling. The evidence that such short selling has contributed to recent market turmoil is anecdotal at best. The various solutions put forth by the Commission all share a common trait in that they impose artificial limits on trading. Such limits may decrease liquidity and slow the pace of trading. Such limits will be costly to implement and of questionable effectiveness. The effectiveness of these solutions cannot be tested without incurring significant implementation costs. Building the capacity to handle the proposed rules will require a lengthy process.

The Commission's traditional remedies for market imperfections have been to provide more transparency and to bring enforcement actions for fraud. Increased transparency is the thrust of required filings under the Securities Act of 1933, such as Form S-1. Transparency motivates the periodic filings required by the Securities Exchange Act of 1934. Transparency is the goal of equity, options, RTRS, and TRACE reporting. Rules 604, 605 and 606 under Regulation NMS increased transparency towards the goal of best execution and thus improved market efficiency and fairness. Existing transparency in the short sale area is provided by Form SH, SRO short interest reporting, and fails information. Each of these windows into short sales has serious limitations and latency issues.

The Commission should look to better transparency to improve the securities markets with respect to short sales. Exchanges and FINRA should be required to disclose short sale activity on a real time basis when certain market conditions are present. Broker-dealers already report sales as buy, sell, sell short or short exempt. It would be a simple improvement to require exchanges and FINRA to disclose on a real time basis some information about short sales when certain triggers are met, such as the triggers discussed in the Commission's short sale proposals. Only exchanges, FINRA and news organizations would need to change their systems to adopt this proposal, broker-dealers are already reporting the information. Market makers could be encouraged to provide liquidity by not requiring the disclosure of short exempt trades. This proposal could easily be the subject of a pilot program with limited scope and/or duration. The proposal could be adopted quickly and inexpensively. Finally, the market impact would be felt most directly by those engaging in the questionable conduct. As the extent of short selling is made public those engaging in abusive short selling will have their activities revealed on a real time basis.

For example, if the price of a security declined by more than a specified threshold in a single trading day, all venues to which trades in the security are reported would disclose the percentage of trades and/or the number of shares sold short after the threshold was reached. This would allow the market to identify and respond to excessive short sales. The threshold and exact nature of the disclosure could be worked out based on economic data. Alternatively, disclosure of short sales could be triggered if short selling in a particular security crossed a certain percentage of total reported trades. Thus if short selling in a single security exceeded a specified threshold over a period of time, the amount of short selling in that security could be disclosed. Under this alternative, the markets would operate as usual in cases of price declines unless there were uncharacteristic short sales. When combined with the Commission's anti-fraud rules this could prove a powerful market driven solution to the problem of excessive short sales.

Please consider my humble suggestion.

Sincerely,

B.T.U.D.