June 3, 2009

The Honorable Mary L. Shapiro
Chairman, U.S.
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: File Number S7-08-09

Dear Chairman Shapiro:

FlexTrade Systems, Inc. appreciates the opportunity and respectfully submits the following comments with regard to the proposed changes to Regulation SHO.

Background

In the discussions surrounding the adoption of Regulation SHO and its subsequent enhancements, the SEC placed an emphasis on eliminating “failure-to-deliver” and so-called “naked” short selling. Recent research partly sponsored by the SEC indicated that delivery failures at settlement were the true source of short sale problems, and the Commission was correct in placing emphasis in this area. This broad result was re-affirmed during the tumultuous trading in the market during the fall of 2008. In an Office of Economic Analysis (OEA) report about the impact of short selling during this period, posted on the SEC website, the OEA stated “Our results are inconsistent with the notion that, on a regular basis, episodes of extreme negative returns are the result of short selling activity. On average, short sale volume as a fraction of total volume is higher for periods of positive returns than for periods of negative returns.”

We are faced with two facts. First, as the OEA analysis shows, short sales are not solely, if at all, responsible for declines in stock prices. Second, reinstating a short sale price test does not address the problem – which is naked short selling - but instead creates another set of problems for arbitrage-related activities, such as convertible bond and ETF arbitrage.

Rather than create a range of new problems that would most likely complicate matters by prompting additional rules and regulations, I want to alert you to a simple technology solution – <u>currently in use today</u> -- that would enable the SEC to extend the test for naked short selling back to the actual time of execution, rather than at settlement three days later. (In addition, applying the test at the time of execution would also address an area not covered by current regulation, namely the intra-day naked short selling and subsequent covering by day-traders and other short-term traders.)

Outline of Proposal

I propose that the SEC require lenders of securities to establish real-time databases of the available levels of stock eligible for borrowing (the “borrow database”). Orders sent into the market tagged as a “Short Sale” would be required to identify the broker from whom the security is borrowed (typically, this is done today via setting a value in FIX Tag 5700). Once the national securities exchange or ECN (the “marketplace”) effects a trade with an order marked as short, the marketplace would inspect the values in the FIX tags of the short sale order and forward information on that execution to the broker indicated as the source of the borrow in FIX Tag 5700 (this information would typically include the identity of the entering broker, security, symbol, and number of shares shorted).

The broker from whom the borrow was obtained would be required to decrement in real-time the amount of stock in that name available for other short sale borrows upon receipt of the message from the marketplace. In this manner, a real-time count of borrows available from every lending broker may be maintained. The SEC could, through its auditing process, review the records of the broker/dealer's borrow database, or a view-only access could be provided to the SEC for real-time surveillance and compliance.

When the stock is covered, the process is reversed. A FIX tag again identifies that the customer is covering a short sale and the information is passed onto the broker/dealer providing the original borrow and their borrow database is incremented share for share for each share covered. A pictorial depiction of this proposal appears in Figure 1.

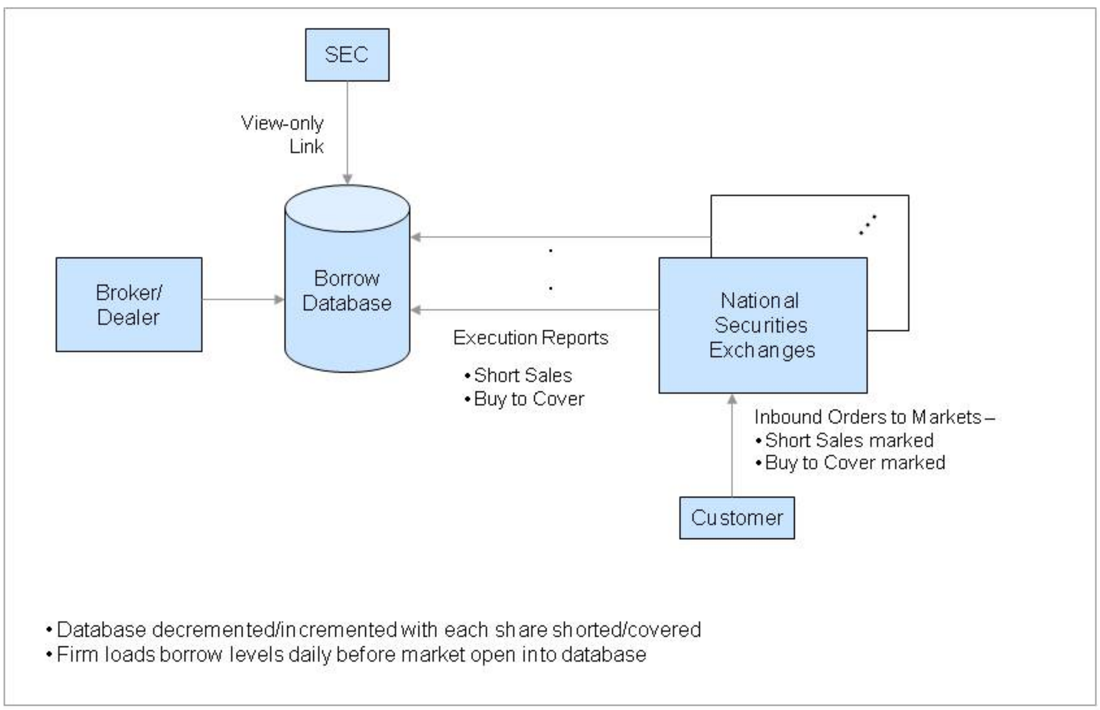

Figure 1: FlexTrade Proposal for Real-Time Short Sale Borrow Monitoring

The advantages of this proposal are:

1. Real-time monitoring of borrows rather than at settlement. This can be used to monitor intra-day naked short selling.
2. Uses proven technology that is in place today among national securities exchanges and broker dealers (e.g., FIX-based messaging, dedicated links among national securities exchanges for meeting trade through requirements of Regulation NMS, and the drop copy interfaces supported by national securities exchanges offering sponsored access).

I note that the technology required to support this approach roughly corresponds to that implemented by various national securities exchanges and broker/dealers in offering sponsored access, a service approved by the SEC. In some instances of sponsored access, brokers provide real-time borrows to their customers, cutting off their trading when their level of short selling exceeds that provided to them for the day. This, however, represents a more sophisticated approach than I recommend here. I only mention it to indicate that this proposal presents no new technology or procedural challenges to exchanges and brokers, and requires far fewer technology resources than required by Regulation NMS.

I believe this proposal directly addresses the key issues identified by the SEC in the short selling of equities.

Sincerely,

Vijay Kedia
President and CEO
FlexTrade Systems, Inc.