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June 1, 2009

Ms. Elizabeth Murphy
Acting Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: File No. S7-08-09

Dear Ms. Murphy:

As an experienced professional trader and clearing executive in the options markets, I attended and was fascinated by your May 5th roundtable hearing on shortselling and the possibilities of a reinstated uptick rule. I thought the roundtable was a healthy and honest discussion about the realities of trying to limit short sales in today's world of penny pricing, algorithmic market making, and robust listed and OTC derivatives markets where participants can take synthetic short positions without shorting the underlying equity . Quite honestly, I don't see how the Commission can come away from that roundtable discussion and conclude that the reinstatement of any version of the uptick rule would have any effect on shortselling at best, and at worst likely to damage the underlying efficiency of the equities and options markets. Certainly if the Commission does adopt one of the five alternatives, appropriate exemptions must be included for dealers making markets in the underlying equities and listed options, along with rules to discourage abuse of the exemption among those dealers.

Yet the underlying issue of public confidence in our markets as described by Chairwoman Mary Shapiro is real, and the investing public and their representatives are rightly looking for action by this Commission, the Administration and the Congress to restore their confidence in our equities markets. These actions should assure the public that the markets will not be abused by market manipulation, bear raids, or abusive short selling. Congressional action for financial regulatory reform hopefully will have a major impact on rebuilding that confidence and the Commission actions to date to crack down on "fails to deliver" have certainly had a significant impact on potential abusive shortselling already.

However, I do agree with the comments of Chairwoman Shapiro that further action may be necessary to convince our investing public and the Congress that the Commission has taken all actions necessary to prevent market manipulation, bear raids and abusive naked short selling. However, to rollout 5 tired proposals for some version of an uptick rule that most everyone agrees will be ineffective and/or damaging to the markets, is not the answer. I do believe that we can be more creative and, with time, explore other proposals that can be more effective in restoring public confidence, while at the same time improving the efficiency of our markets. Please consider the following alternatives to your current proposed actions; there would be more work involved to define the details of these proposals in order to meet their goals, but I do believe that they are a better approach to the public confidence issue than an uptick rule.

A. ALLOW MORE CONTROL TO THE RETAIL AND MUTUAL FUND CUSTOMER OVER THE AVAILABILITY OF THEIR STOCK FOR LENDING.

1. Currently all customers in margin agreements agree, as part of their margin agreement, to allow their brokers to lend out their stock. There is no way for a retail customer to opt out of agreeing to lend his or her stock if he or she wants a margin agreement. There is no operational reason for stock lending to be a requirement of a margin agreement, and brokers routinely lend out margin stock, without compensation, of their retail customers. The Commission could require brokers to allow customers to choose whether to lend out their stock in margin accounts, or at least require that retail customers affirmatively agree to allow their stock to be lent out by their brokers, in a separate agreement, that spells out the consequences of allowing their stock to be lent out. **SUCH A PROPOSAL WOULD RETURN SOME POWER TO THE RETAIL PUBLIC IN DETERMINING THE AVAILABILITY OF THE SUPPLY OF STOCK TO BORROW FOR SHORT SELLING**.

2. Similarly, mutual funds can determine whether to lend their equities and most have a rigorous due diligence process so that their Boards can affirmatively determine, in their fiduciary capacity, to initiate a stock loan program from their portfolios. However, mutual fund investors do not have a vote (except by market action) in that decision. The Commission could require better disclosure of their stock loan practices in their prospectuses. Disclosure could include the percentage of each equity held that the fund makes available for stock loan, the average number of days that equity is lent out every year, and the contribution of a stock loan program to the performance of the fund. **SUCH A PROPOSAL WOULD ALLOW MUTUAL FUND CUSTOMERS MORE INFORMATION IN CHOOSING FUNDS WHO LEND OUT THEIR PORTFOLIO AND THOSE WHO DON'T.**

B. INCREASE THE TRANSPARENCY OF INDIVIDUAL SHORT POSITIONS BY REQUIRING COMPARABLE REPORTING AS IS REQUIRED FOR THRESHOLD INDIVIDUAL LONG POSITIONS, AND SPEED UP REPORTING OF SHORT INTEREST CURRENTLY REPORTED MONTHLY.

1. The Commission has already taken action with Interim Rules in Section 10a-3T to require the reporting of short positions to the Commission by investment managers subject to section 13f requirements. However, these reports are not for public release. I believe that that longstanding requirements for the public reporting of long positions above the threshold

5% and 10% levels of the float under Sections 13d and 13g need to be mirrored for short positions. Such transparency is only fair should any one individual or entity take a significant short position, as it is for long positions.

2. Currently, short interest by stock is reported monthly by the exchanges; it would be very helpful to the public if such information were published on a more regular basis such as on a weekly or daily basis. The Commission should examine a requirement that the exchanges publish such information on a more regular basis. **INCREASING TRANSPARENCY FOR SHORT POSITIONS WILL ALLOW THE PUBLIC TO MAKE MORE EFFECTIVE INVESTMENT DECISIONS, AND DAMPEN THE POTENTIAL FOR ABUSIVE SHORT SELLING OR MARKET MANIPULATION.**

C. USE MARGIN REQUIREMENTS TO REGULATE SHORTSELLING IN VOLATILE MARKETS

1. Currently, margin requirements to hold a short stock position mirror the requirements to hold a long stock position. However, the risk of holding a short stock position and a long position are not symmetrical. The Commission and the exchange SROs have defined rules under Regulation T on margin requirements, and individual firms govern the application of the margin rules in conjunction with their risk management programs.

There is no restriction on the Commission to be able to mandate stricter margins where market conditions warrant. For example, instead of restricting short selling by an uptick rule when a particular security declines by some predetermined percentage (say for example the 10% threshold used in this proposed rule filing), the commission could mandate that the initial Reg. T margin be higher than 50% an any new short sale in that security for a specified period of time. (For example the requirement could be raised to 100% for 5 days after the market trigger is hit). This would not affect existing positions, but would financially discourage "piling on" of additional short positions by restricting the use of leverage to put on new short positions. Of course, exemptions for dealers making equity and options markets would be necessary, as well as exemptions for certain bona fide hedge strategies.

2. Similarly, margin requirements for short positions that are in "fail to deliver" status could also be used to further discourage those practices. There is a risk rationale for this requirement, as "buy-ins" and short squeezes have an increased risk for loss in covering the short position. Therefore a 100% or even 200% margin requirement imposed for any day the position is in a "fail to deliver" status would be a strong discouragement for fail to deliver positions to continue. **MARGIN REQUIREMENTS ARE A SIMPLER AND MORE EFFECTIVE TOOL IN REGULATING SHORTSELLING DURING TIMES OF MARKET VOLATILITY THAN OTHER REGULATIONS THAT ATTEMPT TO CHANGE THE WAY TRADING IS CONDUCTED.**

D. CAREFULLY REVIEW THE APPROVAL OF LISTED ETF PRODUCTS WHOSE ONLY PURPOSE IS TO AVOID THE MARGIN REQUIREMENTS OF REGULATION T IN TAKING SHORT POSITIONS .

1. Several new products, commonly known has "double or triple negative", ETFs, have been launched recently, which allow for investors to profit when the market declines, in an amount much higher than the market's actual decline. These products, while very popular among investors, have little economic or hedging or risk management rationale aside from allowing the investor to avoid the leverage requirements of Reg. T. These products have already been identified by market participants as having a significant impact on the volatility of the overall market. Particularly in certain industry sectors where these ETFs have been introduced, there has been significant volatility in the issues underlying these ETFs. As these products are expanded to more narrow sectors, the increases in volatility will be dramatic. Aside from the other issues of the market impacts of allowing products such as these to trade, certainly concerns about allowing investors to avoid the requirements of Reg. T and leverage their short positions would mandate a close review of these ETFs. **THE COMMISSION MUST CAREFULLY REVIEW NEW PRODUCTS THAT ALLOW LEVERAGED SHORT POSITIONS WHICH CAN EXACERBATE THE VOLATILITY IN THE MARKETS OF THE UNDERLYING ISSUES OF THOSE NEW PRODUCTS.**

I believe the Commission can be more creative in dealing with the issue of public confidence in our securities markets, and consider proposals such as those mentioned above and others which can address the those problem in a more effective manner.

Thank you for the opportunity to comment on this issue.

Sincerely,

Douglas Engmann,
President
Engmann Options, Inc.