Comments on File No. S7-08-09
Amendments to Regulation SHO

Subject: Disorderly recall of loaned securities sold short

When the commission adopts new short-sale rules, please also issue revised rules to avoid disorderly recalls of lent securities and the consequent harm to investors who have properly sold short.

Primary problem: Lenders may recall loaned securities at any time and without sufficient notice to permit orderly unwinding or re-hedging of positions involving short sales. Discretionary recalls (as opposed to recalls due to sale by the ultimate owner) may be controlled by a single large entity and thus are potentially a form of market manipulation.

Secondary problem: Brokers of short-sellers are not required to notify affected customers when securities are recalled, either before or after the fact (except for eventual notice via ordinary account statements and trade confirmations). Brokers may cover their customers' short positions at the market price and take no other action.

Complex hedged portfolios generally require multiple simultaneous transactions to unwind any position. For example, when a sold-short stock is repurchased, an offsetting options or futures position may need to be closed simultaneously. Simultaneity is key. Therefore, investors should be timely notified and permitted to unwind their own positions if possible, or if not possible, then to make offsetting transactions nearly simultaneously.

<u>PROPOSED DISCRETIONARY-RECALL REGULATIONS (content, not wording):</u>

1. *Discretionary* recall of loaned publicly-traded securities (that is, not because of a sale or transfer by the ultimate owner) must provide two trading days notice for short-sellers to unwind positions. This implies the lender may not receive the securities in-house until up to 5 days later (2 days to trade + 3 settlement). If the ultimate owner sells in the interim, then the notice period is truncated and settlement is handled through the exchanges as if no discretionary recall had occurred.

2. Brokers who receive recall notices, discretionary or not, must make a good-faith effort to "immediately" notify customers who have short positions which might be affected, and shall not involuntarily close customers' short positions sooner than 3 hours before the deadline to do so (i.e. the end of 2nd trading day for discretionary recalls).

As a safe-harbor provision, brokers shall be deemed to have met the notification requirement if they send an email or text message, to an address previously provided by the customer for such purposes, before the earlier of: (a) 4 hours after receipt of the recall notice, if such time occurs during a regular trading session; or (b) Before the start of the next regular trading session; or (c) Within 12 hours of receipt of the recall notice.

(END)