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Via Email:*rule-comments@sec.gov*

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

Re: File No. S7-08-09
Amendments to Reg SHO (Short Sale Proposals)

Dear Ms. Murphy:

Wells Fargo Advisors ("WFA") appreciates this opportunity to comment on proposed amendments to Reg SHO concerning short sales. WFA consists of brokerage operations that administer over $900 billion in client assets. It accomplishes this task through 15,600 full-service financial advisors in 1,100 branch offices in all 50 states and 5,900 licensed financial specialists in 6,610 retail bank branches in 39 states.

After having eliminated the uptick rule for short sales in 2007, the Securities and Exchange Commission ("SEC" or "the Commission") has proposed several alternatives to address concerns many felt resulted from the lack of an uptick rule. Regardless of which proposal the SEC eventually selects, WFA thinks certain principles should underlie the SEC's choice. WFA believes the best solution in addressing the need for new regulations in the short sale arena is the bid test. Finally, there are some comments about the other choices that may help the Commission in finalizing the short sale rules.

I. Basic Principles for Amending the Short Sale Rule

Until its repeal in 2007, the uptick rule required that any short sale had to take place at a price that was higher than the last price. The purpose of the uptick rule was to avoid having short sellers exacerbate and accelerate a decline in a stock's price. The Commission only repealed the uptick rule after considerable study, including economic analysis, and one must regard any basic principles of reform against that backdrop. Despite the research underlying the rule's repeal, recent events have convinced many that the lack of an uptick rule was a key factor in the dramatic downturn the markets have experienced in the past few months. Though decimalization and even sub-penny pricing create a different world than the one in which regulators passed the original uptick rule in 1938, it appears that a version of the uptick rule is a requirement to restore any perceived loss of confidence in the U.S. stock markets.

Thus, one key underlying principle is that despite whatever conclusion empirical evidence leads one to make about the appropriate remedy for short sales, the SEC must choose a solution which has general popular support among investors. To do otherwise risks having the issue return to the Commission repeatedly in two-to-three-year cycles. Such inconsistency and unpredictability would undermine the very market confidence that the SEC seeks from this rule proposal.

A second key underpinning for any rule is that it must cover all National Market Stocks (NMS) traded in the U.S., or based on agreements made in the U.S., at almost whatever time executed. A rule that does not involve all market centers would result in an unlevel playing field and provide room to "game" the system. One can debate whether the rules should apply to after-hours trading. Since the SEC's proposals include certain exceptions where the short sale rule would apply to certain after-hours trades, it is likely market participants would prefer the uniformity and predictability of universal and extended hours application of the new uptick rules. More importantly, it is in keeping with the first principle, above, that the proposal has popular support which leads to the choice that there must exist few venues that can "escape" the application of the rule. Though there will often need to be exceptions, the amendments in the current form may have too many "outs".

II. The Bid Test

Of the options presented by the SEC, WFA supports the "proposed modified uptick rule" proposal. The proposed modified uptick rule is similar to the NASDAQ's bid test and would be based upon the national best bid. In this proposed test, broker dealers and exchanges and other trading centers must prevent the execution or display of a short sale order at a down-bid price. Focusing on bids instead of sales is a change from the previous uptick rule. The Commission itself noted that as opposed to last sales, bids are generally a more accurate representation of current prices for a security. Last sale prices are often subject to delays or are reported out of sequence.

As set out by the SEC, the proposed modified uptick rule would now involve all market centers. In the past, many ECNs (electronic communications networks) did not have an uptick rule, leaving many firms unprotected in certain trading situations. Basing a test on the national best bid is a key to garnering popular support for the short sale procedure as many are familiar with the national best bid. The decimalization of the securities market place also makes the bid test more feasible and easier to monitor than a price test based upon the last sale. Overall, the greater ease of educating the public coupled with better monitoring should create a short sale pricing system that satisfies the majority of those affected by short sales.

Though most firms would prefer to avoid making short sale systems changes every eighteen to thirty months, another factor recommending the proposed modified bid test is that it likely would not require significant systems alterations. The SEC nonetheless should allow sufficient minimum time from rule passage to the effective date of the rule so that all firms can get their programming in place in a timely and effective fashion.

Some of the exceptions and limitations in the proposed modified uptick rule deserve a brief mention. Though trading in the markets today arguably takes place 24 hours a day, the modified uptick rule will only take effect during the times when a national best bid is calculated and disseminated to a national market system plan. The SEC explains that in effect the national best bid is calculated from 4:00 a.m. to 8:00 p.m., and the application of a rule that applies during this time window is appropriate. While it is not 24-hour trading coverage, adopting the bid test of the modified uptick rule requires that the rule apply only when the national best bid is calculated.

The modified uptick rule will also permit marking certain trades “short-exempt”, meaning that a sale could be effected on a down-bid. Certain trades on a down-bid could take place in connection with riskless principal transactions. Marking these trades “short-exempt” would provide broker-dealers with flexibility to facilitate customer orders. Separately, however, the proposed modified uptick rule would not allow a broker-dealer to mark an order “short exempt” where the short sale order is in connection with bona fide market making activity. This provision is probably fine in the event the Commission adopts the modified uptick rule. It would require additional study should the eventual rule be one of the versions of the circuit breaker proposals.

III. The Other Issues

While WFA firmly supports the modified uptick rule, other provisions in the rule are worthy of comment. The rule proposals contain three alternative versions of the “circuit breaker” concept. Essentially, the first circuit breaker would ban short selling in a security for that day once a threshold price decline, for example 10%, is reached. A second alternative, rather than halt trading once the circuit breaker is tripped, would cause all remaining short selling in that stock on that day to follow the modified uptick rule described above. The third circuit breaker test would impose a price test once the circuit breaker is hit, prohibiting short sales below or at the last sale price.

The first key problem with the circuit breaker tests is that investors will have to watch the stock price suffer severe declines in a day before the circuit breaker is tripped. Regardless of whether short selling caused or contributed to the decline, the circuit breaker test would fail the basic prerequisite of creating a regulatory policy that restores investor confidence. In addition, it is likely that the circuit breakers will hurt liquidity and may do nothing to address the other abusive short sale practices such as lending the same shares multiple times simultaneously. The circuit breakers likely will lead to a marketplace where specialists are unwilling to make markets of any depth.

Another concern with circuit breakers is that in this volatile marketplace, it is likely that any triggers chosen will “trip” frequently. While some may contend that it is abusive short selling that causes the market volatility, the circuit breaker rule by definition only comes into play after that short selling has caused the severe market decline. Circuit breakers also would suffer from investor doubt concerning which trigger is selected. Set the trigger too low, and the circuit breakers would trip so often that trading may be ineffective for shareholders. Set the trigger too high, the popular view might be that there has been almost nothing done to stop short selling. Overall, it appears that the circuit breaker alternatives will not meet the Commission’s goals in revisiting the short sale rule.

In addition to the specific recommendations in the rule, the Commission likely will find that addressing other abusive short sale practices will help restore investor confidence. Those additional abuses can include the dissemination of false rumors which leads to market manipulation and the lending of the same shares multiple times. It is probable that the SEC can resolve many problems operationally and through facilitating more automation in the locate and delivery process in the U.S. markets.

IV. Conclusion

Thank you for providing WFA the opportunity to comment on the short sale rule proposals. We applaud the SEC’s decision to review, field and suggest alternatives to simply restoring the uptick rule. If you have any questions regarding this comment letter, please do not hesitate to contact me.

Sincerely,

Ronald C. Long
Director, Regulatory Affairs