Shawbrook

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Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F. Street, NE
Washington, DC 20549-1090

Re: File No. S7-08-09. Release No. 34-59748.

Shawbrook is a registered investment advisory firm based in Alexandria, VA, that since 2001 has helped investors who do not have the time, interest or knowledge to manage their retirement accounts and other investments. Although a state-registered advisor, Shawbrook and its clients have a legitimate interest in this rulemaking as any decisions by the Commission to reduce the effectiveness of short-selling pose a threat to the risk-management strategies effected for client portfolios.

Shawbrook's risk management strategies have in the past included shorting an exchange-traded fund that tracks the S&P 500. Prior to the market's downturn the firm had also placed some client assets in such mutual funds as the Hussman Strategic Growth fund and the Ivy Asset Allocation Fund, which at various times obtain short exposure to hedge downside market risk.

Shawbrook's main concern is that with this proposed rulemaking the Commission seems to be willing to change, based on the slimmest of analysis, policies that were set in place only a couple of years ago after a much more deliberate and well-documented process. Furthermore the Commission has already picked out a set of possible solutions to a problem that has been neither well described nor analyzed.

It is always important to be allowed to weigh in on policies of such importance in a national forum. However neither Shawbrook nor anyone else has the data and distance from recent events to simultaneously separate and analyze the effects of fraudulent short-selling, which the Commission commendably, but apparently only recently, began to properly enforce, and legal short-selling, nor between the effects of whatever bear "raids" were levied against individual companies and the effects of the overall-market downturn. Further complicating this mottled picture is the intermingling of legitimate short-selling with largely unregulated securities markets, such as credit default swaps; the relatively recent sway of an enlarged population of hedge funds, and fundamental problems in the economy itself, notably the housing market. It is simply not credible that the Commission or anyone else has had time to properly assess this very recent history and, with all due respect, that lack of time to prepare a reasoned argument for changing the rules is evident in the rulemaking itself.

Nor is it clear why the Commission feels compelled to rush into this uncertainty, given that the waterfall stock market decline that ended only a few months ago is largely believed to have been a once-in-a-lifetime occurrence that is now behind us (of course the market could decline some more but not in the same fashion and not with the same near-collapse of the financial system). In effect, the hardworking response of the Commission, the Federal Reserve and other components of the Federal government has given the Commission the breathing room to be deliberate on these important matters and Shawbrook believes the Commission should take advantage of that opportunity and postpone this rulemaking.

Shawbrook understands that the Commission felt, and perhaps still feels, under some pressure to do anything to soothe the legitimate anger and worries of investors. A rush to judgment against short-selling, is a quick and easy, if overused, way to relieve some of the visceral frustration felt by those who were not prepared for the risk of owning equity securities and who, as a result, had done little or nothing to offset that risk. However the cause of their anger and frustration has far more to do with the investment bankers and mortgage brokers whose activities the government is only beginning to address.

This asymmetric approach to policy is unfortunately consistent with the history of regulation, according to the Commission's own former chief economist, Lawrence

Harris. Now a professor of finance at the USC business school, Harris noted in his highly regarded book "Trading and Exchanges" (Oxford University Press, 2003) that most regulatory initiatives following a crash "…tend to address problems that have more to do with crashes than with the formation of the bubbles that ultimately led to the crashes."

This is not just an academic question. It wasn't that long ago that we had a Commission, several of whose initiatives were overturned in court in part because that Commission had acted in haste. The June 12 comments of the National Association of Active Investment Managers [NAAIM], of which Shawbrook is a member, adequately demonstrate that the arguments the Commission has given for proceeding hastily in this case are not convincing.

Shawbrook thinks the Commission should take a step back from this proposed rulemaking or any similar rush to judgment, giving some time for its recent enforcement activities against fraudulent short-selling and for the recent market stabilization to work. The Commission will have plenty to do, focusing on both the causes of the bubble leading to the crash along with areas of financial activity that previously were outside the Commission's domain. With that and some distance in hand, we would expect the Commission would be in a better position to properly ask of the public and industry what changes, if any, need to be made to hedging and other legitimate short-selling activity.

Sincerely,

Geoffrey F. Foisie
Investments Manager
Shawbrook