



June 19, 2009

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

**Re: Amendments to Regulation SHO
(Release No. 34-59748; File No. S7-08-09)**

Dear Ms. Murphy:

The American Business Conference (ABC) is a Washington-based coalition of CEOs of midsize growth companies founded in 1981 by Arthur Levitt, Jr. The current chairman of ABC is Alfred West, Chairman and CEO of SEI Investments, Oaks, Pennsylvania. ABC is submitting this comment letter in response to the Commission's proposed rule entitled *Amendment to Regulation SHO*.

In this proposal, the Commission contemplates putting in place short sale price restrictions, commonly known as an "uptick" rule. It does so even though the Commission eliminated all price-based short sale restrictions in July 2007 after "a careful, deliberative rulemaking process" carried out over nearly seven years. This painstaking process, a model of its kind, included an extraordinary "year-long pilot to study the removal of short sale price tests for approximately one-third of the largest stocks," that culminated in a public Roundtable to discuss and dissect the pilot's findings.

In publishing this new proposal, the Commission does not conclude that its July 2007 decision to eliminate short sale price restrictions was incorrect. Instead, this proposal is a reaction to understandable public and political frustration with what the Commission accurately identifies as the "extreme market conditions" of the past year.

These conditions, the Commission asserts, have led to an erosion of “investor confidence.” The Commission notes that “many commenters,” including past and present members of the U.S. Congress, believe that a restoration of some sort of short sale price restriction “would help restore investor confidence.” The Commission also notes that while it has received many requests to restore the uptick rule, “such requests have not included empirical data, but rather focus *on what such commenters believe might be the impact on the markets of reinstating such restrictions*” [emphasis added].

ABC does not have any empirical data to support the beliefs of those who blame short selling for the decline in the market over the last year and who therefore want the uptick rule reinstated. Moreover, as a general matter, ABC is wary of regulatory changes that are sparked by a downturn in the business cycle or equity markets – even a downturn as severe as the one the nation continues to endure.

Under such conditions, everyone hankers for a regulatory or legislative “fix” especially if it targets activities that are not, under the best of circumstances, terribly popular, however useful they may be for market liquidity and pricing efficiency. In the case at hand, it is hardly a secret that short sales, in particular short selling by hedge funds, are disliked by politicians, business pundits, and for that matter, many leaders of public companies.

Our concern is that some people reflexively hostile to short selling and intent upon not wasting the current crisis have chosen to urge the reversal of the Commission’s 2007 decision, without thinking through whether the decision was in any sense complicit in the collapse of the stock market in late 2008. ABC made a similar point earlier this year in our comment letter regarding an ill-considered and uninformed proposal by the New York Stock Exchange to eliminate the broker vote in uncontested director elections:

We understand that we have entered a period that is likely to be characterized by new regulation. What the Commission must guard against, we think, will be the tendency of all sorts of interests to submit proposals for regulatory action in the hope that, in the current environment, they might just get enacted.¹

¹ See letter of John Endean, President, American Business Conference to Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, Re: Proposed Amendment to New York Stock Exchange Rule 452 (Release No. 34-59464; File No. SR-NYSE-2006-92), March 31, 2009.

We still hold this view and, for that reason, ABC believes the Commission ought to have produced its own data, however preliminary, that would indicate that the beliefs of the many commenters on restoration of the uptick rule might be supported by fact.²

If it merely puts itself at the service of peoples' impulses, the Commission risks further buffeting in the future from new commenters pushing whatever the latest conventional wisdom might be to explain our current troubles. It seems to us that, "investor confidence" is an awfully thin reed for the Commission to use in support of initiating a regulatory action.

Transparency and Naked Short Sales While we remain agnostic about the desirability of restoring an uptick rule, ABC encourages the Commission to pursue better short-sale market transparency. For example, we support making permanent Rule 10a-3T reporting requirements. We also believe the data gathered should be made public in a manner, and at a time, that preserves an appropriate level of confidentiality for proprietary trading strategies and ownership positions.

On a related topic, ABC applauds efforts by the Commission over the past year to address the manipulation of stock prices through naked short sales. We agree, however, with the recent report from the U.S. General Accountability Office concluding that more can and should be done by the Commission to address this problem, beginning with the delivery of better guidance to the broker-dealer industry.

Additionally, we recommend:

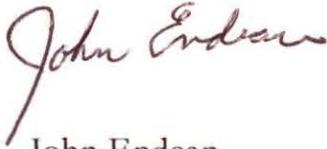
- making the close out requirements of Rule 204T permanent;
- encouraging SRO market regulators to develop better tools for identifying suspicious trading activity;
- stepping up enforcement against intentional or reckless communication of false information that has the clear result of driving a stock price down; and,

² ABC, for its part, has supported recent SEC effort to capture data on short sales. See, *e.g.*, Letter of John Endean, President, American Business Conference to the Honorable Christopher Cox, Chairman, U.S. Securities and Exchange Commission, September 18, 2008.

- examining the merits of a “pre-borrow” requirement in appropriate circumstances.

In summary, we believe that greater disclosure of short selling and better policing of naked short sales represents a more fruitful use of the Commission’s time than reviving the uptick rule absent supporting data.

Sincerely,

A handwritten signature in dark ink that reads "John Endean". The signature is written in a cursive, flowing style with a long, sweeping underline that extends to the left.

John Endean
President