NATIONAL ASSOCIATION OF PUBLICLY TRADED PARTNERSHIPS

June 19, 2009

By email to: rule-comments@sec.gov
The Honorable Mary Schapiro
Chairman
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: File Number S7-08-09

Dear Chairman Schapiro:

The National Association of Publicly Traded Partnerships (NAPTP) welcomes the proposals by the Securities and Exchange Commission (the Commission) to amend Regulation SHO under the Securities Exchange Act of 1934 (the "Exchange Act") to restrict abusive short selling.[1] NAPTP is a trade association representing the interests of publicly traded partnerships (commonly known as master limited partnerships or MLPs) and those who work with them. Our membership currently comprises some seventy-two partnerships, representing the vast majority of those trading on the exchanges.

Abusive short selling has had a serious impact on the pricing of follow-on equity offerings by many of the MLPs that are members of NAPTP. Pricing of follow-on offerings typically is based on a stock's closing price prior to the time of the pricing. MLP's have relatively low floats and hence are particularly vulnerable to price manipulation through short selling prior to pricing of a public offering. Therefore, short sales preceding pricing can result in a significantly lower offering price, harming the issuer and its security holders. The resulting losses in proceeds to MLP issuer's have been severe in some cases and the integrity of the capital markets has been gravely compromised.

NAPTP believes that among the various alternatives proposed by the Commission in the Regulation SHO Release, the implementation of the "proposed modified uptick rule" in conjunction with the "proposed circuit breaker halt rule" would best restrict abusive short selling. In addition, NAPTP suggests the Commission should also consider amending Rule 105 of Regulation M under the Exchange Act to further restrict abusive short selling in connection with public offerings.

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[1] See *Amendments to Regulation SHO*, Exchange Act Release No. 34-59748 (Apr. 10, 2009) (the "Regulation SHO Release"), currently available at: http://sec.gov/proposed/2009/34-59748.pdf.

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Adoption of Market Wide Price Test

NAPTP believes the Commission should adopt a market wide price test. While either of the proposed alternative price tests is an improvement over the current absence of any price test, our view is the proposed modified uptick rule is superior to the proposed uptick rule. As the Commission noted, the national best bid is a more accurate reflection of current prices than the last sale price due to possible delays in reporting the last sale information.[2] By basing the price test on the national best bid, the possibility of creating artificial "upticks" due to out of sequence reporting is limited.

The reinstitution of an uptick rule on a market wide basis is essential to help prevent manipulative short selling. Therefore, NAPTP recommends that the Commission adopt the proposed modified uptick rule.

Adoption of Circuit Breaker Halt Rule

The NAPTP also believes the Commission should adopt the proposed circuit breaker halt rule. This proposed rule would prohibit short selling in a particular security for the remainder of the trading day following a specified price decline from the prior trading day's closing price.

The proposed circuit breaker halt rule is a valuable adjunct to, but not a substitute for, the proposed modified uptick rule. A circuit breaker rule alone still allows for short sellers to manipulate the price until the threshold for triggering the circuit breaker is crossed. Particularly within the context of a follow-on public offering, a market price degradation substantially less than the threshold percentage can significantly reduce the proceeds of the offering and harm the issuer and its security holders.

We believe the proposed circuit breaker halt rule would supplement the proposed modified uptick rule. The proposed circuit breaker halt rule would shield a security that had suffered a severe market decline from short selling on the upticks, which otherwise would be permitted. Therefore, the proposed rule would prevent short sellers from forestalling the recovery of the market price of the security in order to preserve their spread. The alternative proposed circuit breaker rule, which would merely trigger a short sale uptick test, does not accomplish this objective.

Amendments to Rule 105 of Regulation M

In addition to adopting the modified uptick rule and circuit breaker halt rule, the NAPTP respectfully suggests the Commission consider amending Rule 105 of Regulation M.

Rule 105 of Regulation M under the Exchange Act generally prohibits a person from selling short the security that is the subject of a public offering and purchasing that security in the offering, if the short sale was made during a restricted period.[3] The restricted period generally begins five business days before the pricing of the public offering and ends with the pricing.[4]

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[2] See Regulation SHO Release at 6.

[3] See *Short Selling in Connection with a Public Offering; Final Rule*, Exchange Act Release No. 34-562-6 (August 6, 2007), 72 FR 45094 (Aug. 10, 2007) (the "Rule 105 Release").

[4] See Rule 105 Release at 45094.

One of the principal purposes of Rule 105 is to prevent certain kinds of short selling immediately prior to a public offering, which can artificially depress the price of the issuer's securities and reduce the issuer's offering proceeds.[5] Rule 105 also seeks to prevent persons with access to the offering securities from engaging in aggressive short sales just prior to pricing, from covering such short sales at the lower offering prices.[6]

Rule 105 is subject to various exceptions. More fundamentally, Rule 105 only prohibits the purchase of securities in the public offering to settle the short position. Rule 105 does not in any manner restrict a purchase of such securities immediately following pricing, when a substantial aftermarket exists of shares that were purchased in the offering and are available for prompt resale. Such aftermarket purchases may have the same effect as direct purchases in the offering from the underwriter, because the aftermarket price of the security may not have recovered significantly from the combined effect of the pricing discount and the downward pressure of the short sales themselves. Indeed, the securities so purchased in the aftermarket are likely to consist of the very same shares that were purchased in the underwriting and promptly resold.

We respectfully suggest the Commission consider extending Rule 105 to also prohibit short sellers who sell after the public announcement of an offering from purchasing the security for an additional period of 24 hours after the pricing of the offering. This proposed extension of Rule 105 is necessary to fill the regulatory lacuna through which Rule 105 has been circumvented. There are substantial resales of securities immediately following public offerings. As a result, short sellers are easily able to settle their short positions in the immediate aftermarket without violating Rule 105 as it is currently drafted, but with the same effect as having purchased the security directly from an underwriter. Prohibiting such purchases for a 24 hour period beginning at the pricing of the offering would inhibit abusive short selling by lowering the short seller's expectation that it could effectively capture the discount to the pre-announcement market price of the securities.

In addition, the Commission should consider further regulation that would prohibit long sellers from selling securities following public announcement of an offering and then purchasing such securities either in an offering, or within the 24 hour period beginning at the pricing of the offering. Such sellers are in effect acting as short sellers, trading in order to capture a discount to the pre-announcement market price of the securities, and their sales and purchases have the same depressive economic effect on the market price of the securities as selling short and settling the short position in the offering.

Conclusion

The National Association of Publicly Traded Partnerships would like to thank the Securities and Exchange Commission for their commitment to addressing abusive short selling. Since all regulatory price test restrictions were eliminated in July 2007 we have witnessed numerous instances of what we believe to be abusive short selling activity in connection with MLP follow-on offerings. To help prevent this manipulative and abusive behavior, NAPTP believes the Commission should adopt multiple layers of protection. First, the Commission should adopt both the proposed modified uptick rule and the proposed circuit breaker halt rule as set forth in

[5] See Rule 105 Release at 45094.
[6] See Rule 105 Release at 45096.

the Regulation SHO release. Additionally, the Commission should consider amending Rule 105 of Regulation M under the Exchange Act to regulate the settlement of short positions in the immediate aftermarket of the pricing of the offering. In addition, the Commission should consider adopting supplemental regulation covering long sales following the announcement of a public offering to help prevent abusive and manipulative selling, practices that are the functional equivalent of short sales.

The NAPTP is grateful to the Commission for providing the opportunity to comment on its proposals to restrict abusive short selling, and would be happy to discuss our comments with the Commission in greater detail.

Sincerely,

Mary S. Lyman

Mary S. Lyman
Executive Director
National Association of Publicly Traded Partnerships