



**CalPERS  
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June 19, 2009

Via E-Mail: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

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

Dear Ms. Murphy and Commissioners:

**Re: File Number S7-08-09; Amendments to Regulation SHO**

I am writing to you on behalf of the California Public Employees' Retirement System (CalPERS) whose mission is to advance the financial and health security for over 1.6 million public employees, retirees, and their families. CalPERS is the largest public pension system in the United States with a total fund market value of approximately \$180 billion. Acting as fiduciaries first and foremost, the goal of the CalPERS investment program is to achieve the highest possible long-term, sustainable, risk-adjusted returns. To discharge that responsibility, we are inherently long-term investors in the global capital markets.

CalPERS is pleased to provide comment to the Securities and Exchange Commission on the proposed amendments to Regulation SHO. As a long-term investor in the capital markets, we strongly support the SEC's mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. The ability to invest, consistent with fiduciary responsibilities, in an unconstrained investment opportunity set is critical to enable investors, including public pension funds, to meet their obligations. Limitations on the universe of available investment strategies will potentially reduce the ability of these funds to generate the needed returns and may increase the risk of the plan. Therefore, CalPERS does not support an outright ban on short-selling due to our belief that this practice can contribute to the market in terms of liquidity and price discovery.

CalPERS strongly believes that the SEC must maintain robust regulatory and enforcement authority while at the same time, executing its duties with minimal political interference which could lead to unintended consequences from rushed rulemaking or overly constrained investment strategies. Effective SEC enforcement authority over securities transactions, trading practices, policing of market professionals, information disclosure and oversight of accounting standards are critical from CalPERS perspective. For example, the practice of naked short-selling, a

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trading practice that CalPERS does not support, is prohibited under existing regulatory rules. We encourage the SEC to implement its existing enforcement authority to put a halt to naked short-selling. To this end, CalPERS believes the SEC must be given the staffing and budgetary resources necessary to be a vigorous regulator.

In closing, regulatory actions that encourage responsible innovation and capital formation without sacrificing investor protections are important characteristics of an efficient and effective SEC. CalPERS is not convinced that the implementation of the SEC proposed price test or circuit breaker amendments to restrictions on short selling can be effective without first emphasizing reporting mechanisms that promote greater and more timely transparency. The apparent intent of short selling constraints is to circumvent short sellers' ability to drive prices lower. To the best of our knowledge, it has not been demonstrated conclusively that such activity is widespread in the markets. Specifically, regulatory action that focuses on innovation through exchange modifications to create greater transparency by reporting or flagging short-sale transactions as they happen on a real-time basis should be considered in conjunction with, if not before, added restrictions to Regulation SHO are implemented.

Thank you for considering our comments. If you would like to discuss any of these points, please do not hesitate to contact me at (916) 795-4079, or Eric Baggesen, Senior Investment Officer – CalPERS Global Equity, at (916) 795-0549.

Sincerely,



Joseph A. Dear  
Chief Investment Officer

cc: Eric Baggesen, Senior Investment Officer - CalPERS