

# millennium

June 19, 2009

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

**Re: File No. S7-08-09: SEC Release No. 34-59748--Proposed Short Sale Price Test/Circuit Breaker Rule ("Short Sale Proposal")**

Dear Ms. Murphy:

Millennium Management, LLC ("Millennium") is grateful for the opportunity to comment on the above referenced Short Sale Proposal. As a hedge fund manager, Millennium is actively involved in short sales, in the vast majority of instances as part of a hedged trade that involves a purchase of another security sharing some characteristics or correlation with the security sold short. In this way, we are better able to manage risk. To the extent that impediments to short sales also are indirect impediments to purchases and to risk management, we think they are ill-advised. That said, however, Millennium does not institutionally object to some short-sale price restrictions *provided* they are established in such a manner as to maintain a level playing field that does not discriminate against some market participants while favoring others.

We have previously communicated with the Commission on the subject matter of the Short Sale Proposal.<sup>1</sup> Our prior letter set out our views regarding the short sale pilot program that preceded the removal of the previous price test, which the Commission now proposes to reinstate (more likely by reference to the national best bid than by reference to the last sale) in either a tick/bid test or circuit breaker form ("price test"). The essence of our comment then was to suggest that the Commission review the pilot data and make a determination, based on its review, as to the utility of a price test. We did not think that a price test would, in fact, provide the benefits that the Commission sought to achieve (*e.g.*, reducing bear raids), or that any potential benefit outweighed the reduction in liquidity and other inefficiencies that necessarily result from a price test. In any event, we pointed out

---

<sup>1</sup> Letter from Simon Lorne, Chief Legal Officer, Millennium, and Martin Schwartz, Chief Compliance Officer, Millennium, to Nancy Morris, Secretary, Commission, dated October 10, 2006.

MILLENNIUM

666 Fifth Avenue, 8th Floor ■ New York, NY 10103 ■ Tel: (212) 841-4100 ■ Fax: (212) 841-4141

to the Commission that market participants devise methods to avoid the consequences of price tests, thereby opening a regulatory arbitrage that should not be allowed to exist. We are of that view notwithstanding that as a large market participant, such an environment would probably operate to our relative benefit.

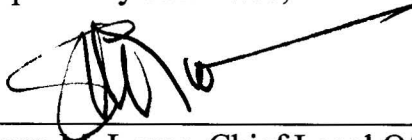
Our views on a price test are generally unchanged. Although we recognize the prevailing circumstances that may compel the Commission to adopt a rule of some sort, we do not think such a rule will enhance our markets or further the goals of the Commission. As we commented in 2006, we do feel strongly that if the Commission adopts a price test, in whatever form, it should be implemented uniformly across all markets, across all products, with no exceptions or ability to arbitrage. It should also be of such a nature that market participants cannot avoid the specific application of the rule while obtaining equivalent economic benefits through other means. We recognize that this is a difficult task, but the availability of such means of obtaining unregulated equivalent economic positions was an important reason for the Commission's decision to abandon a price test two years ago. We believe that if the Commission is now to reverse course, it is important to ensure an even playing field for all market participants, and provide uniformity and consistency in our markets. It is our view that rules that promote fairness and require equality foster true investor confidence, which the markets and our system crave. We urge the Commission, if it must adopt a rule, to do so in a manner that meets this standard.

While providing a level playing field intuitively promotes investor confidence, we harbor considerable doubts as to the extent to which investor confidence has actually been diminished by reason of the absence of a short sale price test, or would be restored by the restoration of such a test. We note that the Short Sale Proposal release cites no empirical evidence in support of the oft-stated view (in the release) that a short sale rule is necessary to restore investor confidence. In fact, the only reliable objective study of which we are aware is the one performed by the Commission in 2006, which was conclusive and resulted in the price test's removal. If the Commission is now concerned with the potential effect of short sales in enhancing volatility by increasing sales activity in securities suffering severe price declines (which in turn, we assume, is thought to undermine investor confidence), we would urge that the Commission adopt a price test of only the circuit-breaker variety. We see no rationale for burdening trading in all securities with price tests if the hope is to arrest declines in rapidly-declining securities. Why not limit the "remedy" to those situations in which the "ailment" is thought to exist? Moreover, if the goal is to curtail spiraling price declines in particular stocks, the Commission might consider halting all trading in such stocks when there has been a trigger of the circuit. This would allow for a pause in all trading in such stocks while any issues prompting the price declines are sorted out, properly disclosed and absorbed by the market.

We would also observe that in subject matters such as this, the Commission is rightly perceived as the world's leader in rational regulation. When the Commission adopted its emergency orders last year, many of the world's securities regulators followed suit. Often, the rules adopted by other jurisdictions were more draconian, and in many instances those rules remain in effect, unnecessarily distorting securities prices in those markets. The Commission's role as a leader in the world brings with it some responsibilities. We are encouraged by the thoughtfulness of the Short Sale Proposal itself, and hope that the Commission will give rigorous thought, and require compelling empirical analysis (such as the study it previously did to remove the price-test), before adopting any short sale rule.

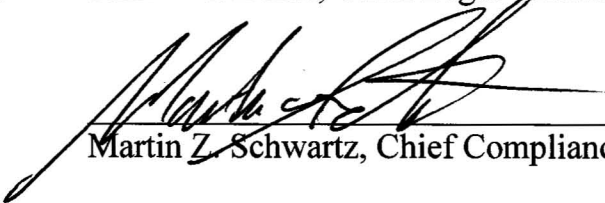
We also want to take this opportunity to comment on Rule 204T, which we believe has very significantly improved our markets' clearance and settlement processes. Prior to the adoption of Rule 204T there were significant problems with persistent "fails" that properly gave rise to concerns that there had been "abusive" short sales. With the new rule, those fails have been eliminated in all material respects. Accordingly, we believe that Rule 204T has been beneficial and should be made permanent, with the minor exception that market participants be given until the end of the day to effectuate buy-ins, rather than being subject to buy in at the opening of trading on the day after the fail occurs. This extra time period, we believe, would avoid unnecessary price swings and squeezes that result in significant artificial and inflated volatility. Allowing buy-ins to occur over a full day will provide for an orderly cleanup of fails and avoid these negative consequences.

Respectfully submitted,



---

Simon M. Lorne, Chief Legal Officer



---

Martin Z. Schwartz, Chief Compliance Officer

Cc: The Hon. Mary Shapiro, Chairman  
The Hon. Kathleen L. Casey, Commissioner  
The Hon. Elisse B. Walter, Commissioner  
The Hon. Luis A. Aguilar, Commissioner  
The Hon. Troy Paredes, Commissioner  
James Brigagliano, Acting Co-Director, Division of Trading and Markets  
Daniel Gallagher, Acting Co-Director, Division of Trading and Markets