June 19, 2009

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

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

Dear Ms. Murphy:

Jordan & Jordan[1] would like to thank the Securities and Exchange Commission ("SEC" or "the Commission") for the opportunity to provide feedback on the Short Sale Amendments discussed in File Number S7-08-09.

Our purpose in responding to the Commission's request for comment is to provide background research and information that may be useful to the SEC in determining which approach will best accomplish its goal of building investor confidence, with the least potential for causing negative consequences. Leveraging our analytical capabilities and the historical quote data we maintain to support our Execution Analytics and Compliance Solution (ECS)[2], Jordan & Jordan produced a series of statistical summaries for selected stocks to illustrate the frequency of changes in direction of ticks and the potential for triggering a "circuit breaker".

Description of data and approach to analysis

Jordan & Jordan receives daily TAQ files (historical trades and quotes) from NYSE Euronext[3]. To support the Commission's pending selection of a short sale rule alternative, we examined TAQ data for the period from January 2, 2008 through June 10, 2009, and selected the following eleven days for in-depth analysis.

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[1] Jordan & Jordan (www.jandj.com) is a management and technology consulting firm focused specifically on the securities industry and financial technology. Our highly experienced consultants assist financial industry executives in evaluating business alternatives, developing practical strategies, selecting suitable technology solutions, developing mission critical software, creating action plans and managing project implementation.

[2] Jordan & Jordan's Execution Analytics and Compliance Solution (ECS) provides clients the ability to understand their execution performance versus the NBBO, rate the performance of their execution venues and analyze the performance of their traders.

[3] http://www.nyxdata.com/nysedata/default.aspx?tabid=730

On the following dates, the S&P 500 experienced a decline greater than 5%:

Trade Date	*S&P 500 Change*
10/15/2008	-8.72 %
9/29/2008	-8.49
12/1/2008	-8.15
10/9/2008	-7.94
11/20/2008	-6.63
11/19/2008	-6.11
10/7/2008	-5.80
10/22/2008	-5.77
1/20/2009	-5.23

On 10/10/2008, TAQ trade data reported record equity trade volume with 82,582,770 trades during market hours.

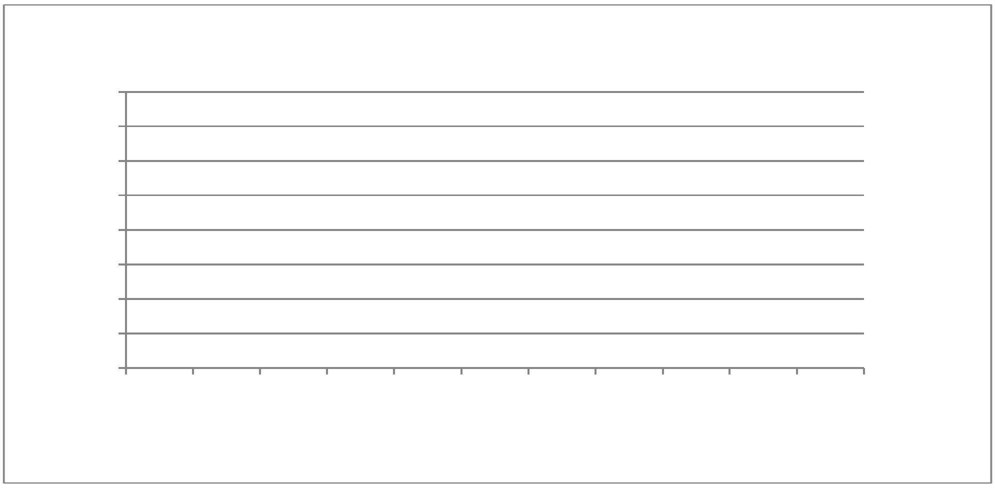
On 6/10/2009, TAQ trade data reported average equity trade volume with 35,819,478 trades during market hours.

Jordan & Jordan reviewed TAQ data in the context of the modified uptick and the circuit breaker alternatives proposed by the SEC. This letter highlights our findings; however, additional detail and further analysis can be provided at the Commission's request.

Frequency of Directional Changes in the National Best Bid

The modified uptick rule would require an uptick of the National Best Bid (NBB) to place an order to sell short. The number of NBBs generated for a single security can come close to a million, with thousands of directional changes ("flips") in the price of a stock on any given day. On a highly volatile day, several directional flips could occur every second. For example, Figure 1 describes the number of times the NBB changed direction for a small group of banking stocks on selected trading days. The stocks illustrated include: BAC-Bank of America; C-Citigroup; GS- Goldman Sachs; JPM-JPMorgan; MS-Morgan Stanley; and WFC – Wells Fargo. Our sample set shows Goldman Sachs had 144,273 directional tick changes on October 10, 2008, averaging more than 6 flips in each second of trading.

Figure 1. Number of Tick Flips on Selected Trading Days for Indicated Bank Stocks



Establishing Triggers and Price Limits for the Circuit Breaker

Jordan & Jordan examined the hypothetical impact of the "circuit breaker" approach to implementing the short sale rule.

As we understand the alternatives under consideration by the SEC, the circuit breaker may be implemented to have the effect of: a) prohibiting short sale totally, b) allowing short sales only by exception, or c) triggering the uptick or modified uptick rule to go into effect. Proposed variations of the circuit breaker would: a) prohibit short selling through the end of the trading session or beyond, or, b) allow the circuit breaker to be lifted once the stock price returned to a prescribed level.
To estimate the number of stocks that would have been restricted from short sale had a circuit breaker been triggered, Jordan & Jordan looked at all the stocks trading on the selected trading days, and tested "thresholds" at which a circuit breaker might be switched on. Further, we identified instances where the restrictions would be lifted during the day (switched off) if prior to market close, the NBB returns to the level it was on market open.

Three thresholds (10%, 15% and 20%) were applied to demonstrate the number of stocks that could be impacted if a circuit breaker were to be switched on, and subsequently switched off if bids increase to market open levels.

Figures 2 and 3 illustrate the number of stocks and percentages that would have been subjected to short sale restrictions on the selected trading days at each threshold. The chart indicates the number/percentage of securities that would have been "hit" if a circuit breaker was switched on to restrict short sales. Also indicated is the number/percentage of securities where the circuit breaker was in effect at the market close ("EOD").

Figure 2. Number of Stocks Impacted by Circuit Breaker on Selected Trading Days

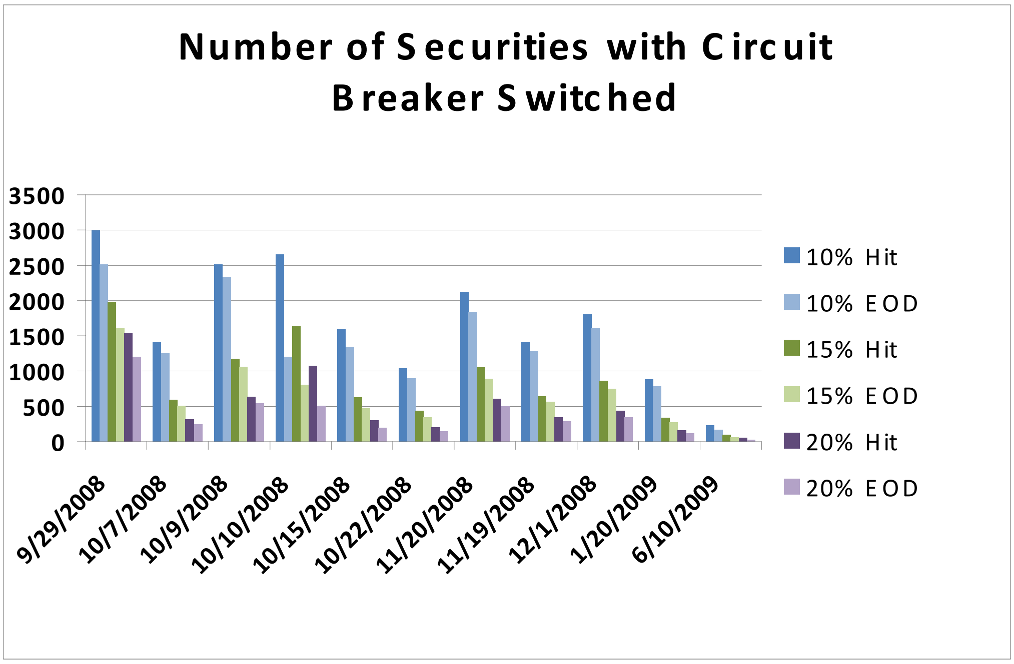
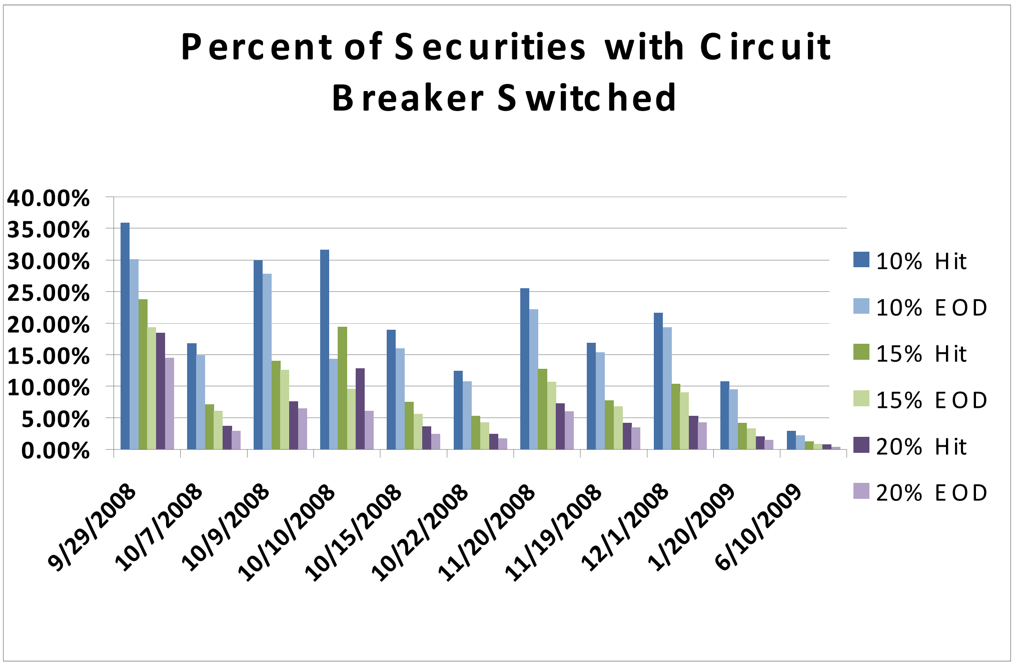


Figure 3. Percentage of Stocks Impacted by Circuit Breaker on Selected Trading Days



There are cases where a circuit breaker could be switched on and off multiple times in the course of a trading day if a threshold was reached and the price climbed back to its level at the open. We selected several stocks to represent activity in different market segments and identified circumstances where there would have been more than one switch. Figure 4 depicts the behavior of the following stocks at the 10% threshold: AAPL – Apple; AMR – American Airlines; BAC – Bank of America; GM – General Motors; JNJ – Johnson & Johnson; XOM – Exxon Mobil.

Figure 4. Number of Times a Circuit Breaker was Switched On in the Trading Day for Selected Stocks

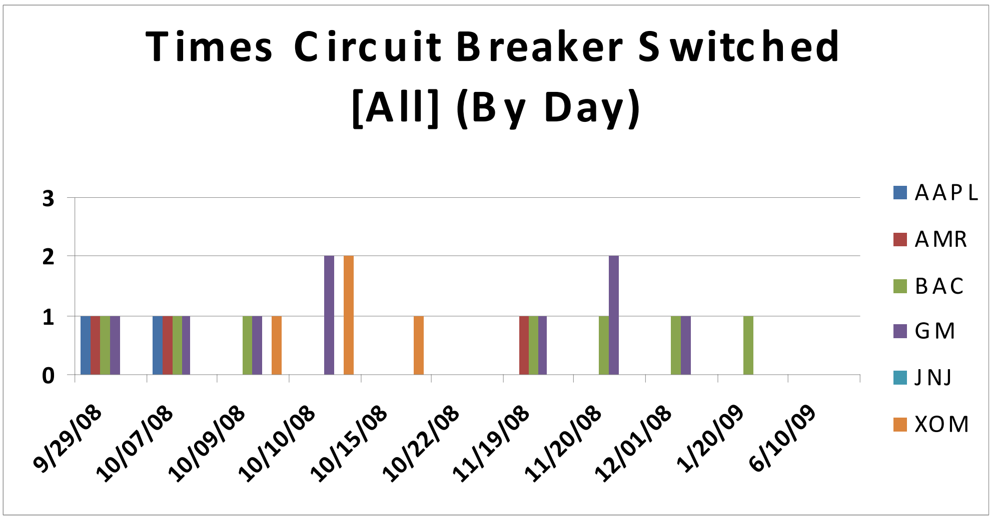
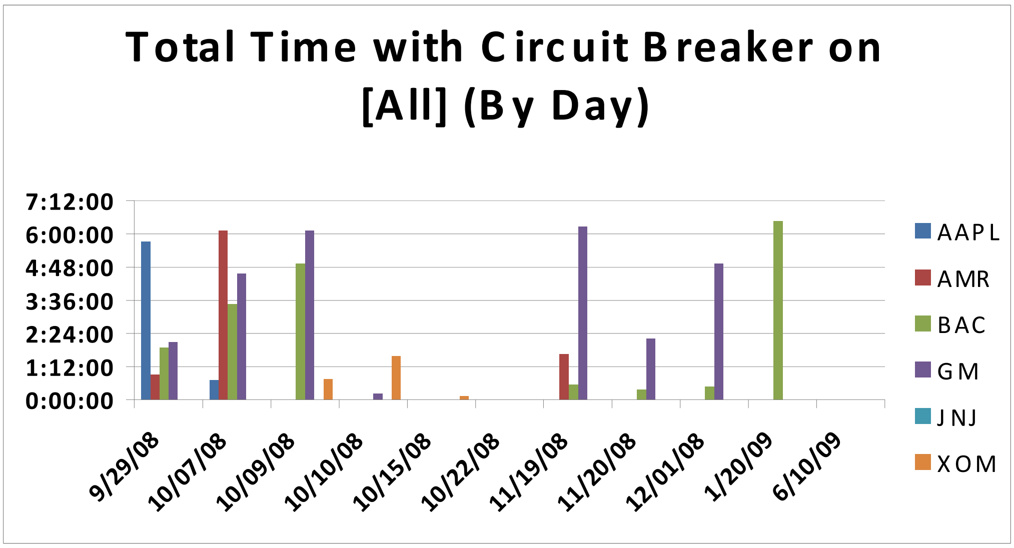


Figure 5. Period of Time a Circuit Breaker was Switched On in the Trading Day for Selected Stocks



Under the same scenario, Figure 5 provides an indication of the total length of time a short sale restriction would have remained in effect for selected stocks on each of the trading days. In cases where the circuit breaker was switched on, off and back on again, this chart represents the combined time period in hours and minutes on each of the trading days examined.

Exemption Provisions

In addition to weighing the various alternatives to determine the optimum approach to instituting a short sale rule, to avoid any unintended consequences the Commission must carefully consider the exemptions that should be permitted. Complete prohibition would have severe market impact, as certain short-selling trading strategies may ultimately be beneficial to the market from a risk mitigation, enhanced liquidity or financial stability perspective. For instance, short sale strategies are often used to hedge convertible bonds and other equity-linked derivatives. There are legitimate reasons to allow short sale activity, even in a down market, such as those designed to support market makers and issuers, and thus should be included in the list of allowable exceptions. At the same time, overuse of exemptions will undermine the effectiveness of the rule.

Post Trade Analytics Test Program Effectiveness

In adopting a "policies and procedures" approach, we recommend that firms be diligent in their internal surveillance, conducting regular post-trade analysis to test the effectiveness of their programs. To illustrate the industry's reliance on exemptions, Jordan & Jordan analyzed trade data collected since December 2007 in connection with the industry's implementation of Regulation NMS.

Using the NYSE Euronext TAQ files as a basis for analysis, with more than 131.5 million trades executed over the period from December 3, 2007 to May 29, 2009, an average of 47% were marked "exempt". Of those, 99.8% were flagged as using an Intermarket Sweep Order (ISO) exemption [4]. With nearly half of the market activity relying on exemption provisions under Reg NMS, we would hope that the consistency and reliability of firms' policies and procedures are being regularly tested internally for trade-through violations.

Similarly, should exemptions be permitted in the final adoption of the short-sale rule (as we believe they should be), the SEC should expect regular proactive internal surveillance of post-trade files (as a minimum requirement) to ensure the spirit of the rule is being upheld. Jordan & Jordan's Execution Analytics and Compliance Solution (ECS), currently used by proactive clients to analyze the effectiveness of their order management and order routing procedures, will be modified to provide analysis based on the SEC's final amendments to Reg SHO.

Jordan & Jordan hopes the Commission finds the data provided herein to be useful in crafting the final amendments. We would welcome the opportunity to provide further analysis to support the rulemaking process. Please do not hesitate to contact me at 212-652-4483 for clarification, additional detail or analysis.

Sincerely,

Mary Lou Von Kaenel

Mary Lou Von Kaenel
Managing Director, Management Consulting
Jordan & Jordan

[4] By definition, an ISO exemption places responsibility on the sender rather than on the market center to ensure proper execution under the SEC's order protection Rule 611, with the assumption that appropriate policies and procedures have been applied.