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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—Amendments to Regulation SHO

Dear Ms. Murphy:

Barclays Global Investors N.A. and its affiliated asset management companies (collectively "BGI") welcome the opportunity to comment on the Commission's proposal to amend Regulation SHO to provide additional restrictions or limitations on short selling as set out in SEC Rel. No. 34-59748, 74 Fed. Reg. 18042 (April 20, 2009) (the "Proposing Release").

BGI is one of the world's largest institutional investment managers, and the world's largest provider of structured investment strategies such as indexing, tactical asset allocation and quantitative active strategies. Headquartered in San Francisco, BGI is a subsidiary of Barclay Bank PLC, one of the world's leading diversified financial services companies.

At December 31, 2008, BGI managed over US$ 1.5 trillion with approximately US $823 billion in long-only equity strategies and approximately US $17 billion in long-short and alternatives strategies. The clients that invest in these strategies are primarily defined benefit pension plans sponsored by corporations or public agencies, and endowments, foundations and similar pools of capital. All of our strategies rely heavily on the smooth functioning of the equity markets, and on the efficient price-discovery mechanism that is at the heart of a well functioning, well regulated marketplace.

Short Sale Bans

BGI is strongly supportive of the SEC taking appropriate actions that contribute to market stability, and supports the codification of Rule 204T to limit "naked" short selling.[1] We also believe that strong enforcement of market-manipulation laws is a

[1] 17 C.F.R. Section 242.204T. The GAO recently observed that section 204T is serving its intended purpose, concluding that further study is the appropriate course of action with respect to short sales regulation at this time. See, GAO Report To Congressional Requesters, Regulation SHO (May 2009) released June 3, 2009 (the "GAO Report"). BGI agrees that further study and/or a one year pilot period, similar to that which preceded suspension of prior short sale price tests, should also precede any new regulation of short sales.

more effective mechanism to target undesirable market behavior than outright bans on short-selling, and BGI therefore questions the need for any additional short sale restrictions at this time. As discussed in more detail below, if the SEC determines that some type of constraint on short sales is in fact necessary for investor confidence, then the constraint should be designed to minimize the attendant negative impact on market efficiencies.

Short Sale Constraints

The Proposing Release suggests five potential constraints on short sales (and additional variations thereof). We believe that in considering the adoption of any of these limitations to short sales, the Commission must consider a few basic market principles. One is that short sales are an integral part of the market that ensures that relevant information, positive or negative, is fully reflected in a stock's price. Another is that short sales can be a source of liquidity that helps to balance the supply and demand of order flows, stabilize the market and keep bid-ask spreads and volatility at reasonable levels.

Consistent with these market principles, we believe that any constraint on short sales should be simple, easy to implement through the use of existing technology and predictable in application. We also believe that such constraints should be designed so that they are in practice invoked infrequently and, once activated, remain in effect only temporarily.

These views lead us to conclude that if the Commission must adopt a limitation on short sales, then the least objectionable option would be what the Proposing Release denominates as the "Circuit Breaker with Modified Uptick Rule."[2] This rule would temporarily impose a short sale price test for a particular security based on the national best bid in the event of a severe price decline of the security. Specifically, if the price of any security traded on a national securities exchange (excluding options) dropped by 10% or more from the prior day's closing price, short selling in that security, wherever traded, would be subject to the modified uptick rule for the remainder of the trading day. The rule would specify that the modified uptick rule would not be imposed if the triggering threshold is reached between 3:30 p.m. and 4:00 p.m. ET, permitting the market to price securities without restraint at a time when liquidity is generally high. The modified uptick rule, as proposed, would be based on the national best bid, and would restrict the display or execution of short sales on a down-bid price.

We support a "Circuit Breaker with Modified Uptick" restriction that is narrowly tailored to apply only during substantial selloffs in a particular security (a 10% decline in market value). Such a restriction serves numerous significant Commission (and public) purposes. The Circuit Breaker with Modified Uptick provides a mechanism that would apply only to securities that have experienced a precipitous price drop and should help to limit further undue speculation and unlawful "bear raids" with respect to such securities.[3]

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[2] Our proposal corresponds generally with the changes proposed as Alternative II.B in the Proposing Release.

[3] We believe that using a modified uptick is less disruptive than a circuit breaker followed by a trading halt, which would slow the price discovery process and potentially increase volatility. Academic studies of trading halts and price continuity rules have failed to find evidence that they are effective over longer

Considerations in the "Circuit Breaker with Modified Uptick Rule"

One of the issues presented in any short sale constraint is its application beyond NMS traded equity securities. This is not just a question of application and systems for implementation. If the Commission believes a constraint is efficacious, it is difficult to justify not applying it to non-NMS stocks trading on the OTC bulletin board or elsewhere in the OTC market.

Further, there are a number of ways to achieve the economic equivalent of being short a particular issuer (stock futures, options and OTC derivatives), yet the market mechanisms for these instruments lack the transparency and, often, the predictability of the traditional equity markets. While applying similar constraints to these derivative markets is one way to prevent 'regulatory arbitrage', actual application in an equivalent manner will be extremely difficult. The Commission should be extremely cautious that its imposition of any short sale constraint does not merely transfer activity to other types of markets, and thus impair the price discovery, efficiency, safety or soundness of the public equity markets.

In response to the question of whether 10% is the appropriate intra-day price decline for a particular equity to trigger the modified uptick rule, BGI believes that a "one-size-fits-all" threshold is sub-optimal, and ideally the trigger should be based on several brackets of security-specific volatilities. However, keeping in mind that rules such as these need to be simple and easy to implement, we suggest that the Commission consider adopting an approach that would utilize a higher percentage decline for stocks that trade at low prices (for example, using 20% for stocks whose closing price as of the prior business day was $10 or less). The Commission should also be ready to modify threshold percentages as necessary to assure that this trigger would be hit infrequently and only in extreme circumstances—an important aspect of any short sale limitation.

We believe the markets are naturally very resilient, and that any constraint should be viewed as providing time for contra-side interest to be represented. Ideally, once triggered the constraint imposed by the "Circuit Breaker with Modified Uptick" need not be in place for a specific security for the remainder of the trading day, but rather could be lifted, for instance, when the security is no longer down by more than 5% for the day. Of course, such a test would need to be easily implemented. We do believe that there is no reason to extend the constraint beyond the end of the trading day.

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periods of time. Ackert, Lucy F., Church, Bryan K. and Jayaraman, Narayanan, "An Experimental Study of Circuit Breakers: The Effects of Mandated Market Closures and Temporary Halts on Market Behavior (March 1999)." Federal Reserve Bank of Atlanta Working Paper No. 99-1. Available at SSRN: http://ssrn.com/abstract= 162571; Chakrabarty, Bidisha, Corwin, Shane A. and Panayides, Marios A., "When a Halt is Not a Halt: An Analysis of Off-NYSE Trading During NYSE Market Closures" (February 1, 2009). Available at SSRN: http://ssrn.com/abstract=972803; Corwin, S. A., and Lipson, M. L., 2000, "Order flow and liquidity around NYSE trading halts," Journal of Finance 55(4), 1771-1801; Goldstein, Michael A. and Kavajecz, Kenneth A., "Liquidity Provision During Circuit Breakers and Extreme Market Movements." Rodney L. White Ctr for Financial Research Working Paper No. 01-00. Available at SSRN: http://ssrn.com/abstract=208292 or DOI: 10.2139/ssrn.208292..Trading halts present other issues as well. First, it is difficult to justify an asymmetric halt (only downside), as the underlying rationale for a halt is to allow dissemination of information, whether positive or negative, and to allow time for contra-side interest to appear. Also, if a halt is imposed in the cash market, the Commission will need to consider the potential of regulatory arbitrage through the use of non-equity instruments.

Short Sale Exceptions

If the Commission determines to adopt some form of short sale constraint, it will also need to adopt appropriate exceptions to the constraints. The Proposing Release requests comment on whether one of these exceptions should be for transactions in exchange traded funds ("ETFs") similar to the exception for ETFs under the prior price tests. The Commission has previously exempted ETFs from short sale price tests, subject to various conditions, because it found trading in ETFs would not be susceptible to the practices that the restrictions were designed to prevent. We believe this analysis is correct, and strongly support an exception for ETFs for any short sale constraints that are adopted.

Additionally, we support an exception for market makers that sell short as part of bona fide market making and hedging activity in derivative securities based on covered securities, or ETFs of which covered securities are a component. This will permit market makers to provide necessary liquidity to these products.

Pilot Program

Finally, although the "Circuit Breaker with Modified Uptick Rule" is likely to have the least impact on the markets, implementation of any of the constraints will have a negative impact on market liquidity, pricing efficiency and capital formation for all investors. As such, we suggest that the Commission consider implementation of any constraint on a pilot basis only.

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We thank the Commission for the opportunity to comment on the proposed amendments to Regulation SHO. Should you require any clarification or additional information, please do not hesitate to contact me.

Very truly yours,

Michael L. Crowl

Michael L. Crowl
Managing Director and Global General Counsel