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June 22, 2009

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

**RE: File Number S7-08-09, Release No. 34-59748
Amendments to Regulation SHO**

Dear Ms. Murphy:

Fidelity Investments¹ (“Fidelity”) appreciates the opportunity to comment on the Securities and Exchange Commission’s (“SEC” or “Commission”) proposed amendments to Regulation SHO under the Securities Exchange Act of 1934 (the “Exchange Act”), issued in Release No. 34-59748 (the “Release”).

At the end of May 2009, Fidelity had roughly \$2.8 trillion in assets under management and administration, more than \$600 billion of which was managed equities. These assets represent the cumulative investments in approximately 77 million customer accounts from individuals, 401(k) participants and institutions. At Fidelity, less than 1% of the assets we manage are in short selling strategies and a relatively small percentage of institutional and brokerage trades we place on behalf of our customers are short sales. As a result, Fidelity generally approaches issues concerning equity market regulation with the perspective of a “long” investor representing millions of small investors saving to secure their financial futures.

After carefully reviewing the Release, as well as data relating to existing and recently repealed rules concerning short selling, we recommend the Commission not adopt any of the rules proposed in the Release. Fidelity recognizes that certain short selling practices can be abusive (such as “naked shorting”). We believe, however, that the SEC has already taken effective steps to reduce harmful short selling practices.² The

¹ Fidelity Investments, the largest mutual fund company in the United States, is also a diversified financial services company that includes several registered investment advisers, registered broker-dealers, including a retail broker-dealer and a clearing firm, registered transfer agents, and a retirement plan services administrator.

² Last fall, the Commission adopted a number of regulations that strengthened the SEC’s ability to combat naked shorting, including amendments to Regulation SHO that subject short sellers, and their brokers, to penalties if a short sellers fail to properly settle short sales as well as the elimination of the options market maker exception to these settlement requirements. In addition, the Commission adopted new anti-fraud rule 10b-21 under the Securities Exchange Act of 1934, which subjects short sellers to liability for



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SEC should be applauded for these efforts, which appear to have reduced specific abusive behaviors, and which we predict will have a more salutary effect on “market psychology” over the longer term than a potentially ineffective and costly reinstatement of any of the proposed rules in the Release.

We urge the Commission to consider three important points as it evaluates the merits of the additional short selling restrictions contained in the Release itself:

- First, despite the recent upheaval, the U.S. equity market functions as the most competitive, liquid and efficient market in the world. Daily trading volume is the largest, and spread costs are the lowest, of any global equity market.

Efficient markets benefit our shareholders and customers in the form of lower trading costs, which ultimately improve mutual fund performance and customer returns. Whether it is trading for our mutual fund or institutional clients, or executing the orders of our retail or institutional brokerage customers, one of Fidelity’s fundamental responsibilities is to trade securities as efficiently as possible.

As a stakeholder in our capital markets and as a fiduciary for millions of investors, it is important to Fidelity that the regulatory structure governing the U.S. trading market promotes liquidity, transparency and pricing efficiency. We believe that the vast majority of the time, short selling helps create efficient trading markets without harming the integrity of the markets, investors’ confidence or their interests.

- Second, in the last nine months we have experienced a virtually unprecedented equity market disruption.³ As deliberations continue over whether permanent short sale regulatory action is necessary, we encourage the Commission to

deceptive acts concerning the sellers’ ability or intent to settle short sales in a timely manner. Data from the SEC’s Office of Economic Analysis (“OEA”) suggests that these recently adopted Commission rules have proved effective as fails to deliver have been dramatically reduced. See OEA Memorandum: “Impact of Recent SHO Rules Changes on Fails to Deliver” (April 16, 2009). Available at <http://www.sec.gov/comments/s7-30-08/s73008-121.pdf>.

³ For example, at the end of 2008 the S&P 500 declined 30% over a four month period for the first time in 71 years.

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continue to evaluate the potential for harm to the robust equity market that currently exists, now and over the longer term. Well-functioning markets are vital to investor interests, and the potential for unintended consequences and unnecessary costs that can result from less-than-deliberate rulemaking is significant.

- Third, we encourage the Commission to continue to rely on empirical data related to short selling when evaluating additional regulatory action in this area. Fortunately, the SEC has developed a rich record of market impact of short selling through extensive, multi-year empirical studies of short selling activity.

For example, we note that the Commission's unanimous decision in 2007 to repeal the uptick rule was based in large part on the results of eight years of study and data review.⁴ Moreover, the findings that led to the 2007 repeal were largely consistent with numerous other empirical studies the Commission had undertaken or reviewed over approximately 45 years, several of which encompassed periods of significant market declines.⁵

More recent data also suggest that short selling restrictions can have negative effects. Last fall the Commission issued emergency orders that temporarily banned short selling in certain securities. Not only did the ban fail to arrest the decline in the prices of those securities, it also likely hampered market efficiency as restricted stocks experienced lower trading volumes and wider spreads than their non-restricted counterparts.

If in the interest of bolstering investor confidence, the Commission nevertheless believes some form of regulation is required, the Commission should implement a remedy that addresses the aberrant markets that occur from time-to-time, rather than imposing a potentially costly regulatory regime that could burden the market on a daily basis and ultimately increase trading costs for our shareholders and customers.

⁴ Before repealing the uptick rule, the Commission, among other actions, issued a 1999 concept release, conducted a 2004 pilot program that exempted approximately one-third of the Russell 3000 from the uptick rule, reviewed the empirical findings of the SEC's OEA and outside academic studies that were based on the pilot data, and convened a roundtable to review the data.

⁵ See OEA Study: "Economic Analysis of the Short Sale Price Restrictions Under the Regulation SHO Pilot" (February 6, 2007). Available at: <http://www.sec.gov/news/studies/2007/regshopilot020607.pdf>.

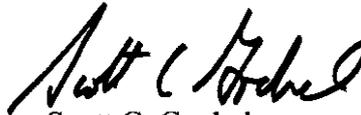
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Fidelity believes that at most, the individual security circuit breaker options should be the only proposals under consideration. If the Commission decides to pursue one of the circuit breaker options, however, we recommend a rulemaking process that demonstrates the same rigor that preceded the Commission's 2007 repeal of the uptick rule, including a robust cost-benefit analysis of the three options available.

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We would like to thank the Commission for considering our comments. Please contact me should you have any questions concerning this letter.

Sincerely yours,



Scott C. Goebel
Senior Vice President, General Counsel

cc: The Honorable Mary L. Schapiro, Chairman
The Honorable Kathleen L. Casey, Commissioner
The Honorable Elisse B. Walter, Commissioner
The Honorable Luis A. Aguilar, Commissioner
The Honorable Troy A. Paredes, Commissioner

Mr. David M. Becker, General Counsel and Senior Policy Director
Mr. James Brigagliano, Co-Acting Director, Division of Trading and Markets
Mr. Daniel M. Gallagher, Co-Acting Director, Division of Trading and Markets