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Ms. Elizabeth Murphy  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

July 2, 2009

Re: Amendments to Regulation SHO; Proposed Rule (File Number S7-08-09)

Our firm welcomes the opportunity to comment on the Commission's proposed Amendments to Regulation SHO (SEC Release No. 34-59748 (April 20, 2009)). In sum, without expressing a view on the advisability of restoring some form of uptick rule, we encourage the Commission to (1) consider carefully the unintended consequences of any circuit breaker-based rule, particularly a short sale ban and (2) adopt exceptions to any rule adopted to permit productive market behaviors to continue unimpeded.

We are a registered investment adviser which pursues, on behalf of private investment funds and managed accounts with assets in excess of \$1 billion, an event-driven strategy which includes analysis and investment in publicly announced merger transactions. Our comments reflect our views of the impact of the proposed rules on the market as a whole as well as on the strategies we pursue as a firm.

## Circuit Breakers Should Be Implemented Selectively

We are grateful that the Commission recognizes the important benefits that short selling provides to the markets. It is beyond question that legitimate short selling provides both liquidity and price efficiency to the market. Accordingly, the benefits accruing from any restriction on short selling should be carefully considered against the costs such a restriction would impose. While we express no opinion on whether some form of uptick rule would bring benefits that outweigh such costs, we believe that any form of "circuit breaker", most particularly one that leads to a halt of short sales on a security, should be implemented selectively, in recognition that there are many legitimate reasons for an issuer's stock price to decline.

While a circuit breaker-based rule would target short selling of the securities most likely to be the target of a "bear raid" or other manipulative behavior, if applied reflexively it also restricts important price discovery during stock price declines unrelated to abusive short selling. For example, stock price declines of 10% or more are often experienced by issuers disclosing adverse

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news such as poor financial results, or announcing significantly dilutive stock issuances such as certain stock-for-stock acquisitions, rights offers or exchange offers. In each of these cases, we submit that the markets' need for liquidity and price discovery is more important than in normal market circumstances, yet a circuit breaker-based rule applied automatically would limit (or in the case of a short sale ban, eliminate) liquidity and price discovery at this critical point. We suggest that the Commission accordingly consider requiring action by an SRO to trigger a circuit breaker based on the facts and circumstances of an issuer's price decline, in an effort to distinguish between these times when short sales provide important efficiency to the markets and those where abusive behavior is suspected.

#### The Commission Should Revisit Exemptions From Uptick Rule

Should the Commission elect to adopt some form of uptick rule or short sale ban, we urge the Commission to revisit the numerous ideas put forth over the years as ways to lessen the negative impact of the uptick rule during its years of effectiveness. Most critically, we would encourage the Commission to except bona fide hedging transactions from the impact of any uptick rule or short sale ban. The Commission requested comment on this idea in its concept release (Concept Release) on short sales (SEC Release No. 34-42037 (Oct. 28, 1999)) addressing ways to ameliorate the burdens imposed by the then-effective uptick rule. Such an exception makes a great deal of sense - because gains from any short position in a properly maintained arbitrage position would be offset by the losses from the correlative long position, there is no incentive for manipulation so long as the hedge is complete. Historically, this reasoning has given rise to some latitude for so-called "short-exempt" issues; however, as recognized in the Concept Release, the exemptions available in former Rule 10a-1 cover only a small portion of the bona fide hedging transactions in the market today. In order to recognize the benefits of a "bona fide hedging" exemption from any short sale uptick rule or ban, we believe the Commission should include in the exemption any set of transactions that in good faith achieve or seek to achieve a complete or near-complete hedge of the market price risk associated with the set of transactions.<sup>1</sup>

In the Concept Release, the Commission asked for comment on ways to ensure compliance with such an exception to the then-effective uptick rule. We believe such an exception could only be managed by the market participant themselves, especially given that many of these hedging transactions are proprietary to the market participant. The Commission could, however, make use of its existing powers to gain awareness of and review trades done making use of the exception to ensure that the exception is not being abused by market participants. To the extent more reporting to the Commission would facilitate such oversight, market participants could decide

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<sup>1</sup> Such an exception for short sales entered into as part of a bona fide hedging transaction clearly gives rise to a number of further questions as to compliance, proof of good faith, completeness of hedge required for qualification and other details. Many of these questions were asked in the Concept Release and deserve meaningful comment; rather than attempt to answer all of these questions here we suggest that the Commission submit such an exception for public comment.

whether or not they wished to participate in such a reporting system as a cost of taking advantage of the exception.

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Thank you for the opportunity to comment on these important rules. Please feel free to contact the undersigned on (212) 649-9590 if we can be of further assistance to the Commission in its deliberations.

Very truly yours,



John K. Robinson  
General Counsel  
P. Schoenfeld Asset Management LP

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