June 30. 2009

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

By email: rule-comments@sec.gov

SUBJECT: Proposed Rule for Amendments to Regulation SHO Release No, 34-59748

Dear Ms. Murphy:

I. Background

Issuer Advisory Group (IAG) very much appreciates this opportunity to comment on the Securities and Exchange Commission's (the "Commission") proposed rules described in Exchange Act Release No. 59748 - Amendments to Regulation SHO (the "Proposing Release"). We salute and support the Commission's focus on providing a 21st Century approach to short selling, especially during this time of heightened market volatility and deteriorating investor confidence.

IAG serves as a leading advisor and independent expert representing the interests of issuers in the capital markets. We have had, and continue to have, substantial dealings with both the NYSE and Nasdaq listed companies. To include the activities of our predecessor firm (Issuer Network), the aggregate market capitalization of publicly traded companies represented by IAG exceeds $500 Billion. As such, our comments are written exclusively from an issuer perspective.

In preparing these comments, we have read every comment letter submitted to the SEC regarding this proposal. To be sure, this topic elicits strong opinions and emotions as evidenced by the thousands of comment letters submitted. We have discussed the major themes with many issuer financial executives. While there were many high quality letters submitted, we found several letters to be especially persuasive on certain key issues. These letters were submitted by: Glen Shipway (Private Investor), James Angel (Georgetown University), Ed Herlihy/ Ted Levine (Wachtell Lipton), Michael McAlevey (GE), Paul Russo (Goldman Sachs), and Jesse Green (IBM). We cite these specific letters because of their unique recommendations and their linkage to our discussions with issuers.

We have consciously chosen not to repeat the extensive commentary submitted by the various trading firms and experts who have staunchly represented their respective interests. Rather, our response seeks to closely focus upon:

- Providing some context to recent actions taken by the SEC and the securities industry with respect to protecting investors and the companies in which they have invested.
- Conveying selected key observations about the SEC's proposal.
- Identifying those areas that the SEC needs to further consider in order to fully address issuer concerns regarding potentially abusive short selling.
- Residual considerations

II. Context of recent actions taken by the SEC and the securities industry

- Efforts by the SEC with respect to Rule 204T ["fail-to-deliver" (or FTD's)] have been very effective. While many critics continue to voice concerns about naked short selling, give yourself some credit for progress made. Celebrate your successes and stay focused upon eliminating naked shorting. We all agree that naked short selling needs to stop.
- While the SEC's April Panel Discussion was very informative and helpful, the issuer community was grossly under-represented. Broad input directly from issuers has consistently been lacking throughout the implementation of Reg NMS.
- The SEC has missed the point with respect to issuer concerns regarding the elimination of the Uptick Rule in 2007. Issuers generally accept the analytics that were the basis for this decision. Their concern is that there was no replacement for the Uptick Rule as part of Reg NMS. So, while there are many calls for the return of the Uptick Rule, informed issuers really seek a 21st Century solution to the absence of some form of protection in the post NMS environment – as was the case with the Uptick Rule over the last 70 years.
- The SEC's suspension of shorting in financial stocks last fall did nothing to solve the perceived problem and, in fact, made the problem worse.

III. Selected key observations about the SEC's proposal

- Issuers simply want some form of a shock absorber. They are happy to defer to the trading experts whether this is based upon last sale, an up bid or any other kind of price improvement criteria. So, yes to a price test.
    - It is quite curious as to how the trading community can discuss the difficulties of sequential trading without proposing a meaningful solution. One would think that with the massive technology advances that have swept the industry, we would see a material reduction in the 90 second trade reporting requirement that has been around for decades.
    - Ditto for the notion of three day settlement (as noted in the Shipway comment letter). Surely we can do this faster.

- The concept of utilizing a circuit breaker, as described in the proposal, should be also be adopted. However, it needs to be expanded to apply to all trading and at the individual stock level (as noted in the Angel letter). Case in point: Dendreon (DNDN). On April 28, in the span of 70 seconds, the company lost over 50% of its market cap. The combination of short selling, stop loss orders and bogus information created a confluence of unfortunate events. This is ridiculous. The simple truth is that humans cannot respond as quickly as electronic circuit breakers. As part of this reform effort, the SEC should mandate that certain percentage changes (say 10%) in a given period of time (say an hour or less) would result in an immediate electronic suspension of trading across all markets. Let the humans reopen the stock. They can surely do this better than the machine. The consensus in the issuer community is that this kind of a logical stoppage in trading is a "no brainer".
- Finally, we encourage you to reject arguments by various constituencies who maintain that trading constraints on shorts should be parallel with trading constraints on longs. They do so, of course, not because they perceive unfairness in a bullish market but rather to advance their own agenda in a bear market. The cold reality is that the potential for misconduct that creates real economic harm across the entire economy is greatest with short selling in a bear market. It exacerbates fear. For example: two people walk into a crowded theatre. The first yells "Free ice cream". The second yells "Fire". You know the rest. This sentiment is at the heart of issuers' strong belief that some level of increased scrutiny and protection against fear-induced short selling is needed as soon as possible.

IV. Areas that the SEC needs to further consider in order to fully address issuer concerns regarding potentially abusive short selling

- There is little question that there is a linkage between coordinated efforts in the derivatives markets and the equity markets. Synthetic short positions are created through the usage of options and ETF's with remarkable efficiency. Hence, any final rules designed to curb manipulative short selling must have sufficient application beyond simply policing the short selling of equity securities (as noted in the Herlihy letter).
- Combining a short sale of a company's stock in concert with the purchase of a CDS sends a dangerous and false signal to the market regarding a company's financial health – and becomes a self-fulfilling financial prophecy. There are multiple potential solutions to this dilemma to include a ban on naked CDS's, a time delay or disclosure (as noted in the Herlihy and Green letters). Issuers strongly agree with this logic.
- In a post Reg NMS environment, the first half hour and last half hour of the trading day have become pivotal. For example, on the NYSE, market-on-close (MOC) orders continue to be processed in the same timeframe and format established in the former market model. This creates far too wide

of a window and fosters too many opportunities for gamesmanship. This process needs to be reengineered and shortened in concert with technological advances and market reforms that have taken place.

- Short sellers have for far too long received preferential treatment in terms of disclosure. The time has come to achieve parity with the longs, at a minimum. Indeed, if one were to take into consideration the aforementioned "fire" versus "free ice cream" analogy, disclosure requirements for short sellers would exceed those of longs (See McAlevey letter).
- Some professional traders act in concert for the express purpose of driving down a stock price. While this is not collusion, per se, it is on its face sinister and unfair to issuers and their investors. The vast majority of issuers with whom we discussed this topic acknowledge that it is far too prevalent in the marketplace. We refer to this as "gang tackling a stock" and recommend to the SEC that they require disclosure of all contracts, relationships or other arrangements between parties engaged in the unified shorting of stocks. This would have the effect of not banning the practice while still making the investing public aware of the relationships.

V. Residual Considerations

- Timing is always a difficult issue when implementing such market reforms. Given the current trauma in the markets and the proclivity for opportunists to grandstand for political gain, the SEC needs to walk a fine line between expediency and haste. A pilot program would provide some near-term indication of progress and still permit some fine tuning before becoming permanent. The mistake here was made in 2007 when no replacement for the Uptick Rule was envisioned. Rushing to a false solution for the sake of political expediency now would only make things worse and weaken regulatory credibility. Do it quickly – but do it right.
- We highly recommend that you follow the advice of Dr. Angel and mandate that the exchanges resume the release of trade-by-trade short sale data. Sunshine can be a very strong antiseptic.
- A number of respondents attempted to lobby for selected "exemptions". This struck us as "being willing to accept the inevitable so long as it does not apply to me". Obviously, issuers with whom we spoke feel that such exemptions should be few and far between.

It's a new day at the SEC and we welcome the opportunity to contribute to the long standing issue of reining in abusive short selling.

Kindest Regards,

Patrick J. Healy

Hotlink to comments referenced in our letter:

http://www.sec.gov/comments/s7-08-09/s70809-3863.pdf

http://www.sec.gov/comments/s7-08-09/s70809-3809.pdf

http://www.sec.gov/comments/s7-08-09/s70809-3758.pdf

http://www.sec.gov/comments/s7-08-09/s70809-3757.pdf

http://www.sec.gov/comments/s7-08-09/s70809-3802.pdf

http://www.sec.gov/comments/s7-08-09/s70809-3690.pdf

http://www.sec.gov/comments/s7-08-09/s70809-3795.pdf