

MEMORANDUM

TO: File No. S7-08-09

FROM: Sarah Casey Otte
Office of Commissioner Aguilar

DATE: July 2, 2009

RE: Meeting with Representatives of Credit Suisse and Davis Polk &
Wardwell

On June 24, 2009, Dan Mathisson, Frank Preite, John Anderson and Mary Whalen of Credit Suisse, and Annette Nazareth of Davis Polk & Wardwell, met with Commissioner Aguilar and his counsel, Sarah Casey Otte. They discussed, among other things, short sale restrictions, including the circuit breaker approach, outlined in the Commission's proposing release titled Amendments to Regulation SHO, Rel. No. 34-59748. Representatives of Credit Suisse also provided the attached presentation titled "Perspectives on Short Selling Restrictions."

Attachments

Credit Suisse

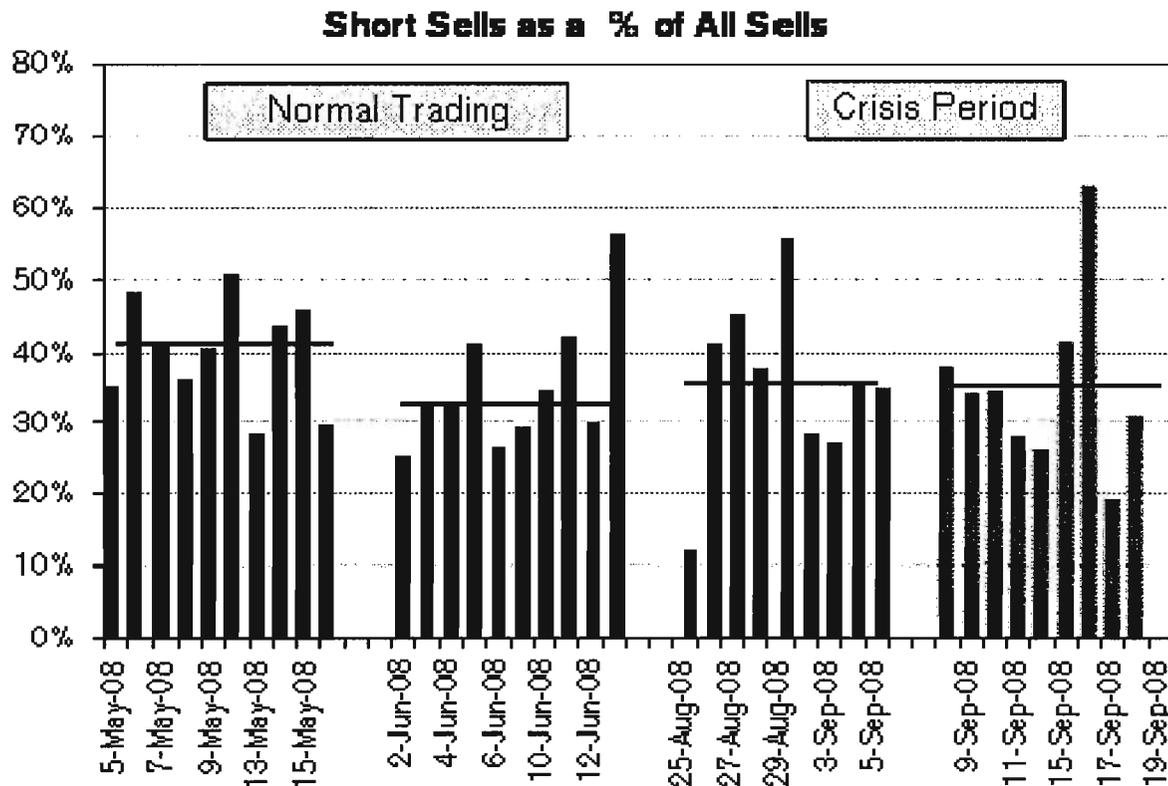
Perspectives on Short Selling Restrictions

June 24, 2009

Introduction

Did the shorts go wild?

We analyzed % of Credit Suisse sells that were short across 30 prominent financials in crisis period vs. the two lowest volatility weeks of the year. No significant difference as per below:



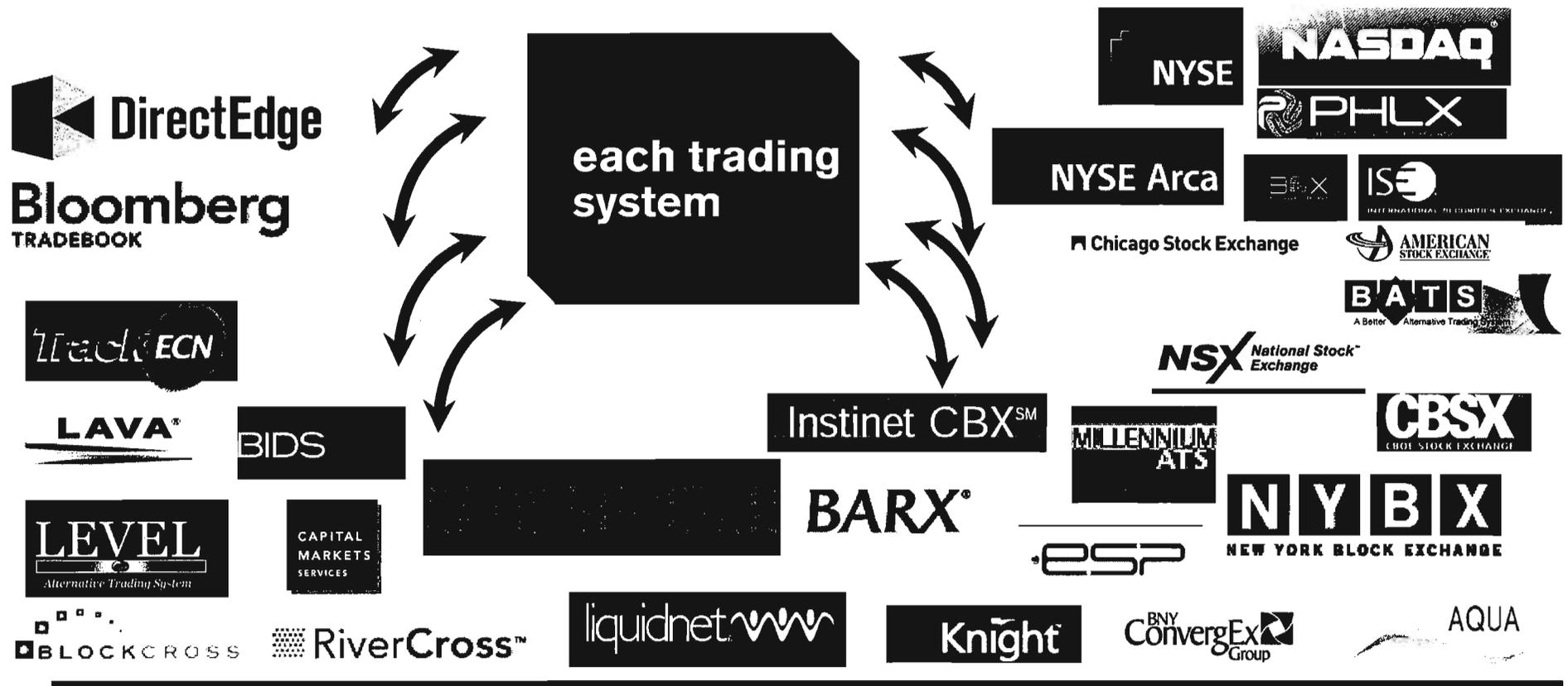
Stocks studied:

AFLAC, AMBAC, AMERICAN FINANCIAL GROUP, AMERICAN INTERNATIONAL GROUP, AMERIPRIS, BANK OF AMERICA, BANK OF NEW YORK MELLON, BARCLAYS PLC-SPONS ADR, CITIGROUP, E*TRADE, FANNIE MAE, FREDDIE MAC, GENWORTH FINANCIAL, GOLDMAN SACHS, JANUS CAPITAL, JPMORGAN CHASE, LEHMAN BROTHERS, LEUCADIA NATIONAL, LINCOLN NATIONAL, MBIA, MERRILL LYNCH, MORGAN STANLEY, NATIONAL CITY, PNC FINANCIAL SERVICES, PRINCIPAL FINANCIAL, PRUDENTIAL FINANCIAL, ROYAL BANK OF CANADA, SCHWAB (CHARLES) CORP, SLM CORP, SUN LIFE FINANCIAL, UBS, WACHOVIA CORP, WASHINGTON MUTUAL, WELLS FARGO.

Circuit Breaker Halt

Only one that avoids data sequencing

Post-NMS, trading “apps” get quotes directly from each source. This is more reliable and more efficient than centralization.



Circuit Breaker Halt Implementation times

Proposal	Work Involved	Estimated Time to Implement	Risks
Uptick, Upbid	Build server farms on new high-power linux blades to aggregate all quote feeds through one sequencing point. Write code to sequence ticks or bids and calculate if each is up or down. Publish new up/down field, pick up by all downstream apps, code apps to comply. Code compliance databases / monitoring tools to monitor / save all relevant tick and order data.	12 months	"Pinch point" created by centralization of data can lead to outages.
CB-Uptick, CB-Upbid	Build server farms on new high-power linux blades to aggregate all quote feeds through one sequencing point. Write code to sequence ticks or bids and calculate if each is up or down. Publish new up/down field, pick up by all downstream apps, code apps to comply. Code compliance databases / monitoring tools to monitor / save all relevant tick and order data. Code sequencing apps to read published CB trigger flag.	12 months	"Pinch point" created by centralization of data can lead to outages.
Exchanges' "bid+1" proposal	Code SOR (smart order router) to read published CB trigger flag and then send short sales using pre-existing pegged order type. Code compliance databases / monitoring tools to monitor / save relevant order data.	5 months	Trading centers must be able to handle surge of pegged order types in triggered names.
CB-Halt	Code Order Management System to read published CB trigger flag, cancel all short orders not marked exempt, reject all incoming short orders in that stock. Code compliance databases / monitoring tools to monitor / save relevant order data.	3 months	Risk of false triggers leading to rejected shorts.
Nothing further	Do nothing.	0 months	No new risks.

doesn't require sequencing

All proposals are expensive and will require significant work.

Alternatives that require data sequencing will more than double implementation time.

Circuit Breaker Halt Necessary Exemptions



hedged traders are
impartial too

Exemptions are particularly critical if the Circuit Breaker Halt is selected, since it is only one that *stops* shorting completely. We propose exemptions for:

- Market-makers and block positioners in equities, convertibles, options and derivatives.
- Riskless principal transactions
- Arbitrage situations
- Delta-hedging for convertible securities and derivatives
- Equities index futures and index arbitrage
- Exchange traded funds

Circuit Breaker Halt Summary - advantages

Advantages of circuit breaker halt vs. other proposals:

No conflicts with Reg NMS, no new order types or complex rules required.

No moving benchmarks, no need to change US market data infrastructure.

Only alternative that does not require data sequencing, resulting in fast implementation at low cost to industry.

Only alternative that completely stops shorting, making it more effective at stopping “bear raids.”

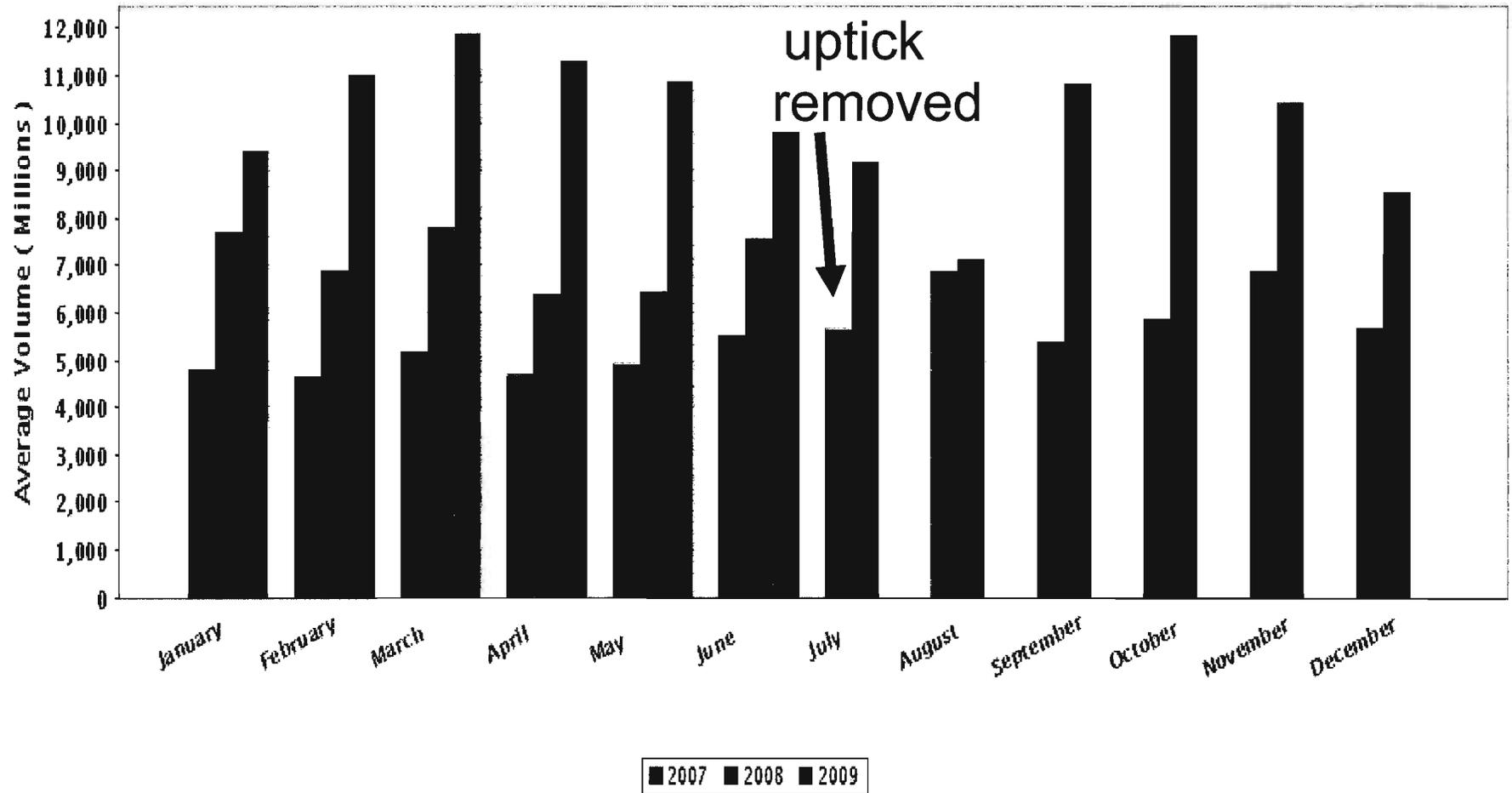
Allows most stocks on most days to trade normally, keeping US liquidity best in the world and bid/ask spreads tightest in world.



Keep US markets
on top

Appendix

Current volume dwarfs pre-repeal volume



Appendix

Bid/ask spreads during short sale ban

