



Asset Management

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September 14, 2009

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

Re: Amendments to Regulation SHO
Release No. 34-60509; File No. S7-08-09 (the "Release")

Dear Ms. Harmon:

TD Asset Management¹ appreciates the invitation to comment on the Release issued by the Securities and Exchange Commission (the "Commission") on the Alternative Uptick Rule in the proposed amendments to Regulation SHO. We take this opportunity to comment specifically on the proposal regarding potential impact of the Alternative Uptick Rule on the markets and our clients.

We recognize that recent market events have called into question the behavior of certain short sellers. We fully support the Commission's goal of improving market integrity and strengthening enforcement against abusive short selling. We believe the commission's recent amendment to formalize the close-out requirement to address abusive "naked" short selling is the right approach.²

However, we are concerned the proposed Alternative Uptick Rule fails to distinguish between abusive short selling and legitimate short selling (i.e. based on borrowing of the security or a bona-fide arrangement to borrow the security). Unfortunately, legitimate short selling has been demonized alongside abusive short selling, which impairs investor confidence. Legitimate short selling promotes price discovery and improves liquidity in the marketplace. Restricting legitimate short selling therefore, harms the market. A recent study in Canada has shown that stocks subject to

¹ TD Asset Management operates in Canada as TD Asset Management Inc. and in the United States as TDAM USA Inc. TD Asset Management is a highly diversified investment manager with leading market positions in active, quantitative and passive portfolio management. Both TD Asset Management Inc. and TDAM USA Inc. are wholly-owned subsidiaries of The Toronto Dominion Bank (TD Bank). As of July 31, 2009 TD Asset Management's investment professionals managed in excess of CA\$165 billion (US\$153 billion).

² See *Amendments to Regulation SHO*, SEC Release No. 34-60388 (July 27, 2009).



the short sale ban had lower market quality as measured by spreads and volatility³. We strongly urge the Commission to refrain from restricting legitimate short selling. We believe imposing the Alternative Uptick Rule to restrict short selling would harm the market's price discovery mechanism and impair liquidity, both an integral part of an efficient marketplace.

More specifically, the Alternative Uptick Rule significantly limits legitimate short selling, as short sellers can only participate passively by offering stocks at an increment above the best bid; a constraint that would not only delay execution, but also impair price discovery grounded on the principles of supply and demand. The result is increased trading costs to client portfolios due to delays in execution and opportunity cost of not being able to complete intended trades. For program or portfolio trading baskets that include short-sell orders, maintaining cash-neutrality through the progression of trading would be a challenge, potentially causing increased implementation shortfall. In addition, for hedged strategies the proposal would impair the progression of trade execution on the long-side of the trade that is being backed by or tied to the short-side of the trade. Our concern is this restrictive Alternative Uptick Rule proposed by the Commission will harm our clients' overall portfolio performance.

We encourage the Commission to continue to focus on abusive short selling. If the Commission must adopt a price restriction on short selling, we support one that is targeted at abusive short selling.

In this respect, we would strongly support rules based on a circuit breaker related to a particular security that has undergone a severe price decline and not to all securities. We believe this would be practical and risk-focused, and would minimize unintended impairment to the overall marketplace.

We appreciate the opportunity to submit our comments on the Release. If you have any questions or if you need additional information, please feel free to contact me at 416-982-6681.

Sincerely,



Barbara Palk
President

³ "IIROC releases two studies on marketplace trends related to short sales", February 4, 2009, Investment Industry Regulatory Organization of Canada, (Toronto, ON) available online at <http://docs.iiroc.ca/DisplayDocument.aspx?DocumentID=1BB3A789F8A04628A1C1D2CE68FEDEB4&Language=en>