CREDIT SUISSE

CREDIT SUISSE SECURITIES (USA) LLC
Eleven Madison Avenue
New York, NY 10010
Tel 1 212 325 2000
www.credit-suisse.com

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

September 21, 2009

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

Dear Ms. Murphy:

Credit Suisse welcomes the opportunity to comment on the proposed alternative uptick rule, published by the Securities and Exchange Commission (the "Commission") on August 17, 2009 (the "Second SEC Proposal"), which would only allow short selling above the current national best bid.

Credit Suisse Securities (USA) LLC ("Credit Suisse") is the United States broker-dealer subsidiary of Credit Suisse Group which has been operating continuously in the United States since 1932, when the First Boston Corporation was founded. As one of the world's leading banks, Credit Suisse Group provides its clients with private banking, investment banking and asset management services worldwide. The most recent Greenwich Survey named Credit Suisse the top broker in algorithmic trading, as well as a top broker in the overall US Equities market.[1]

We have not repeated all of the points that we made in our June 16, 2009 comment letter ("our prior comment letter") on Securities Exchange Act Release No. 59748 (the "First SEC Proposal"); instead, this letter focuses on those points that are most relevant to the newest alternative uptick rule proposal.

Executive Summary

As we stated in our prior comment letter, Credit Suisse shared the Commission's concerns about the negative effects of "naked short selling" and supported actions to prevent such abusive activities. We commend the Commission on its recent successful initiatives that have effectively solved this issue —final Rule 204 and Rule 10b-21. Rule 204T has been hugely effective in reducing fails to deliver; however, the remarkable results don't seem to have been recognized in the ongoing short sale debate. We believe no further action on short-selling is necessary.

If the Commission should disagree with our view, and should deem additional action on short-selling desirable, Credit Suisse suggests that any new restrictions be triggered by a "circuit breaker", as opposed to an "all-stocks, all-the-time" rule. The newly proposed alternative uptick rule has the virtue of relative simplicity, because it does not require monitoring the sequence of bids or ticks.

[1] Greenwich Survey, May 2009: Credit Suisse was #1 in Algorithmic Trading and #1 in Overall Equity Trading Quality, #1 in Direct Market Access, and #2 in Overall US Equity Volume. Tabb Report, November 2008: Credit Suisse was #1 in Algorithmic Trading.

However, it is even more draconian than any of the previous proposals, in that it *never* allows stocks to be sold short on the bid. We believe this rule could significantly impair liquidity, damage price discovery, widen bid/ask spreads and increase volatility, and therefore should be limited to stocks that are experiencing a significant decline in price, which could be accomplished by pairing the proposed rule with a circuit breaker.

Furthermore, even if activated by a circuit breaker, the proposed alternative uptick test is so restrictive, that we believe exemptions are even more necessary than with the old uptick rule for equity and derivative market makers, and for a variety of hedging activities.

Targeted Circuit Breakers vs. Market-Wide Price Restrictions

As the Commission has recognized, short sales provide important benefits to the market, including greater liquidity for both buyers and sellers, tighter bid/ask spreads, and lower volatility.[2] Appendix A illustrates the negative effects on bid/ask spreads of the Commission's September and October 2008 short sale ban. Despite the acknowledged benefits of short selling, concern has been raised that further restrictions are necessary to prevent "bear raids".

A "bear raid" refers to a theoretical strategy whereby a trader would aggressively short stocks with the intent of driving down the price and thereby causing investors and others to lose confidence in the company. The loss of confidence would then become a self-fulfilling prophesy, inducing further price falls and possibly impairing the financing of the company. As we acknowledged in our prior comment letter, bear raids in theory would be especially damaging to financial firms, whose ability to operate depends on perceived stability and solvency.

However, as detailed in our previous comment letter, our internal analysis and the study conducted by the SEC's Office of Economic Analysis do not support the notion that "bear raids" took place in September of 2008. That said, for the purpose of the remaining analysis, we assume that "bear raids" do occur in the real world, and need to be addressed by regulation.

Credit Suisse believes that an alternative uptick rule should target only the specific securities subject to significant price pressure, which may be evidence of a bear raid. A circuit breaker-based alternative uptick rule that bans shorting into the bid in a particular stock after a specified market decline, with appropriate exemptions, would address concerns regarding bear raids with less distortion of the markets, impairment of trading volume and liquidity, or excessive costs than an "all-stocks, all-the-time" rule.

[2] *See* the First SEC Proposal, page 9 and 26.

Misconception Concerning Circuit Breakers — The So-Called "Magnet Effect"

We would like to reiterate our prior comment on a misconception concerning the so-called "magnet effect" of circuit breakers. The "magnet effect" refers to stock prices being drawn down to the circuit breaker trigger level as sellers rush to sell short above the trigger price. Although it may sound logical, numerous academic studies that have analyzed circuit breakers in other contexts found no evidence of such trading patterns.[3]

It is possible that the reason the "magnet effect" does not exist is that it is generally not rational to aggressively sell a stock just before it hits a circuit breaker that will remove short selling pressure from the market.[4] If the Commission is concerned about a possible magnet effect of a rule that includes a circuit breaker approach, we suggest it test the rule for a small number of stocks during a pilot period to assess its impact.

Circuit Breaker Trigger Threshold

We have provided data in Appendix B on the number of times a circuit breaker would have been triggered based on a 10, 15 and 20% decline as measured from the previous day's closing price. We have also included data on the number of times a circuit breaker would have been triggered based on a 10, 15 and 20% decline as measured from that day's opening price. There will be many instances in which an issuer announces negative news after the close or before the open and its stock price will open down significantly to reflect that news. If the Commission is concerned about preventing "bear raids", we believe the more relevant test would be intra-day price declines as measured from the open.

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[3] *Abad and Pascual (2005)* found that prices reverse or decelerate as they approach price limits on the Spanish stock exchange, rejecting the magnet effect.

Chan, et al (2005) found that daily price limits on the Kuala Lumpur Stock Exchange did not exacerbate order imbalance prior to limit hits.

Hall and Korfman (2001) examined activity around price limits in five agricultural futures contracts and found no support for a magnet effect.

Berkman and Steenbeek (1998) investigated Nikkei 225 futures contracts traded on the Osaka Securities Exchange and the Singapore international Monetary Exchange (SIMEX) and found a lack of a magnet effect.

Kuserk et al (1989) examined treasury bond futures daily price limits and found no evidence of a magnet effect.

Arak and Cook (1997) also examined treasury bond futures 8 years after *Kuserk*, and also found no evidence of prices accelerating towards limit down or limit up.

[4] Furthermore, Subrahmanyam (1997) extends the work of Easley and O'Hara (1987) and develops a theoretical model for the strategic behavior of informed traders. He concludes that "an informed trader knows that trading large quantities will cause the limit to be crossed, which will cause him or her to lose profit potential. Therefore, the strategic action would be to scale back his or her trading in response to the closure, contrary to the magnet effect."

Need for Appropriate Exemptions

Credit Suisse strongly believes that appropriate exemptions are required to minimize distortions and inefficiencies that are created when short sale restrictions are applied. Any version of the alternative uptick rule that is adopted should have the same exemptions as were available under former Rule 10a-1, including exemptions granted through exemptive relief. (These prior exemptions included an exemption for market on close orders, which we believe should be provided for all short orders entered as market on close orders, and for transactions executed on a volume-weighted average price basis, which we believe should be extended to cover any orders executed on a similar formulaic basis.)

In addition, we believe that two additional exemptions are crucial to help maintain narrow spreads and sizeable quotes: (1) an exemption for market-makers and block positioners in equities (including Exchange Traded Funds), convertibles, options and derivatives (including futures, swaps, and listed and OTC derivatives); and (2) a Day ISO exemption.

Market-Makers

Credit Suisse believes that an exemption should apply for market-makers and block positioners in equities (including Exchange Traded Funds), convertibles, options and derivatives (including futures, swaps, and listed and OTC derivatives) so that they may continue to make two-sided markets to facilitate customer orders. This exemption would be similar to the exemption found in the Regulation SHO locate requirement and in the short sale ban implemented on an emergency basis last fall. However, this exemption needs to be expanded to include convertibles, futures, swaps, and listed and OTC derivative market-makers that regularly make two-sided markets. The exception should apply to market makers as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, which is based on the activities of the market maker rather than its registered status.

Day ISO

In addition, Credit Suisse believes that a new exemption, similar to the Regulation NMS ISO exemption to the order protection rule,[5] would be needed to make an alternative uptick rule workable for firms entering frequent electronic orders. The alternative uptick rule would prohibit entering short sale orders at or below the best bid; however, broker-dealers rely on data feeds with different latencies than the NBBO produced by the consolidated quotation systems, which may be 30 to 60 milliseconds slower than the individual exchange data feeds. Due to these latencies, the consolidated bid may at times be displayed at a price above the actual market bid. As under Regulation NMS, a market participant should be allowed to rely on the market data that it consistently uses in its business to enter orders compliant with the short sale rule. Broker-dealers could mark these orders ISO to show that they are compliant when entered and allow them to be executed on receipt even if the consolidated data shows the short sale to be at the bid.

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[5] *See* Regulation NMS Rule 611(b)(5).

Covered Securities and Applicable Trading Hours

Although it is not explicitly stated in the Second SEC Proposal, we assume that the alternative uptick bid would only apply to NMS Stocks, as was proposed for the modified uptick rule in the First SEC Proposal.[6] We would support this approach.

In the First SEC Proposal, the Commission proposed that the modified uptick rule would apply during the periods during which a national best bid is calculated, collected and disseminated.[7] However, this period can vary depending on whether a participant in the particular national market system governing quote consolidation for a security decides to pay the consolidator to extend the hours of the calculation of the bid. To avoid the vagaries of this process, and the risk the rule could be extended substantially beyond normal trading hours, Credit Suisse, believes that the alternative uptick rule should apply only during regular trading hours as defined in Rule 600(b)(64) of Regulation NMS.

Implementation Period

In the Second SEC Proposal, the Commission asked whether a two month implementation period following the effective date of the proposed alternative uptick rule would be appropriate.

We believe that a three month implementation period would provide firms with a more realistic window to program systems. Changes to real-time trading programs require four phases of development: 1) analysis and description of functional specifications, 2) software design and architecture, 3) programming and development, and 4) quality assurance and tests. The last one is particularly time-consuming, but absolutely critical for prudent roll-outs that do not introduce significant operational risk. It is our opinion that to attempt an implementation as described above in a period of less than three months would not leave enough time for proper testing, and would dramatically elevate operational risk. If done by everyone in the industry at the same time, this would create an unacceptable level of systemic risk.

Adding a circuit breaker based on the previous day's closing price would not significantly increase the required implementation period, in our opinion. The additional coding required to implement a circuit breaker is minimal and could be done concurrently with the Alternative Uptick Rule development. Then the quality assurance tests, which are by far the most time-consuming task, could be run on both changes simultaneously. Therefore, our implementation estimate remains at three months with or without circuit breakers.

Policies and Procedures Approach

We strongly believe that a policies and procedures approach is the only workable way to implement a price test proposal. Without a policies and procedures approach, there could be inadvertent violations of the rule, or application of uptick pricing when it is not necessary, due to various factors,

[6] *See* The First SEC Proposal, page 31.

[7] *See* The First SEC Proposal, page 67.

including delays in data feeds used by trading firms compared to exchange data feeds (as described above in the discussion of the need for a Day ISO exemption).

A Note on SRO Disclosure of Short Sale Transactions

When the Commission adopted final Rule 204, it announced that it would work with SROs to make short sale volume and transaction data available through SRO Web sites, including the aggregate short selling volume in each individual equity security on a given day on a one-month delayed basis. We believe that the SROs should also publish comparable volume data on long sales, marking and disseminating buys to cover short sales, so that the short selling information can be viewed in context of the total market activity for each individual equity security. While this would require marking each long order that covers a short sale as a buy to cover, requiring some additional coding, it is well worth the cost to ensure that the market data does not provide a distorted view of the extent and impact of short selling.

Summary

We believe that the adoption of Rules 10b-21 and 204 have sufficiently addressed abusive naked short selling. However, if the Commission determines that the successful implementation of Rule 10b-21 and Rule 204 were insufficient to address the risk of "bear raids," we recommend that the Commission adopt a "circuit breaker" approach to any new rule, with appropriate exemptions. It is our belief that a circuit breaker approach would limit the collateral damage to liquidity, price discovery, bid/ask spreads, and volatility, as opposed to the widespread damage that would occur from an "all-stocks, all-the-time" approach. We also emphasize that while easier to implement, the newly proposed alternative uptick rule is in many respects more restrictive than the previous proposed price tests, and it is critical to adopt appropriate exemptions to avoid harming the markets.

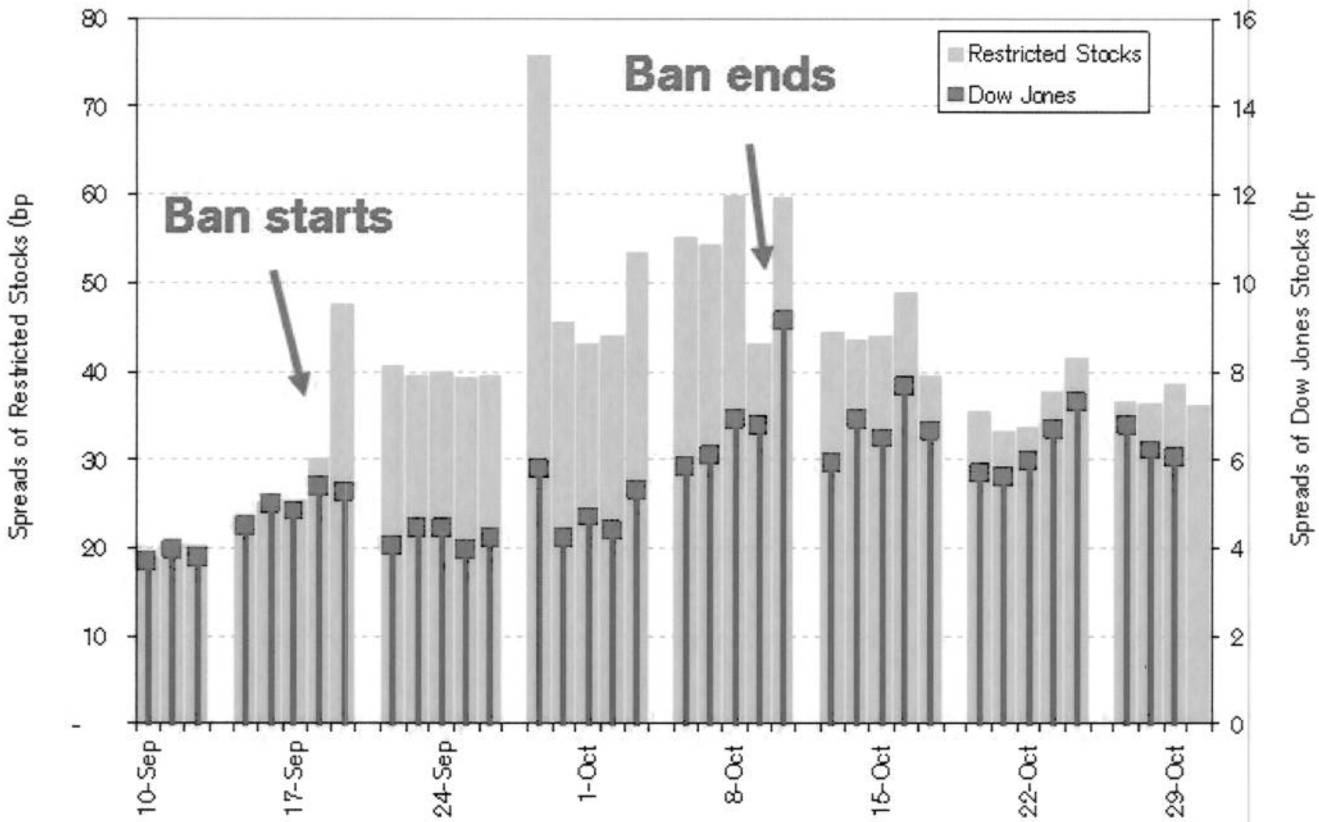
Finally, regardless of the alternative adopted, we strongly urge the Commission to implement any new rule on a pilot basis. Rule changes can have unintended consequences, and the best way to reduce the chance of introducing unforeseen problems is to test new rules on a small subset of stocks, as was done with decimalization, Regulation NMS, and the repeal of the original uptick rule.

Respectfully submitted,

Daniel Mathisson
Managing Director
On behalf of Credit Suisse Securities (USA), LLC

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

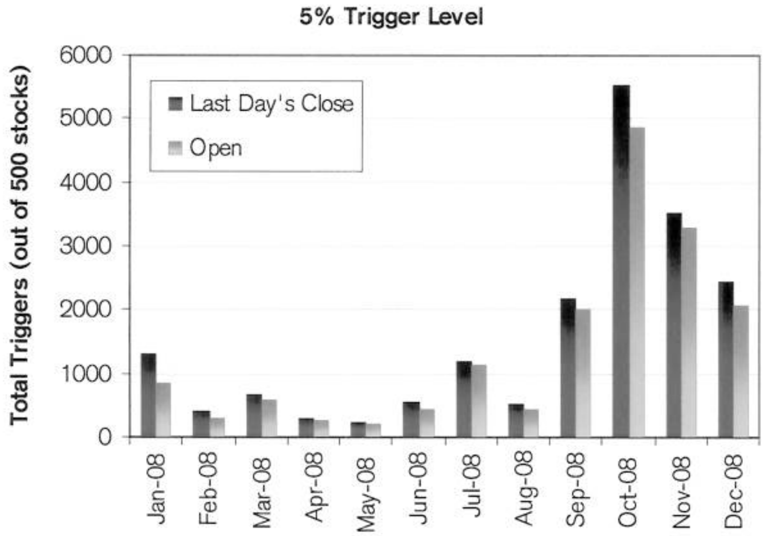
Appendix A: Effect of the Short Sale Ban on Bid/Ask Spreads

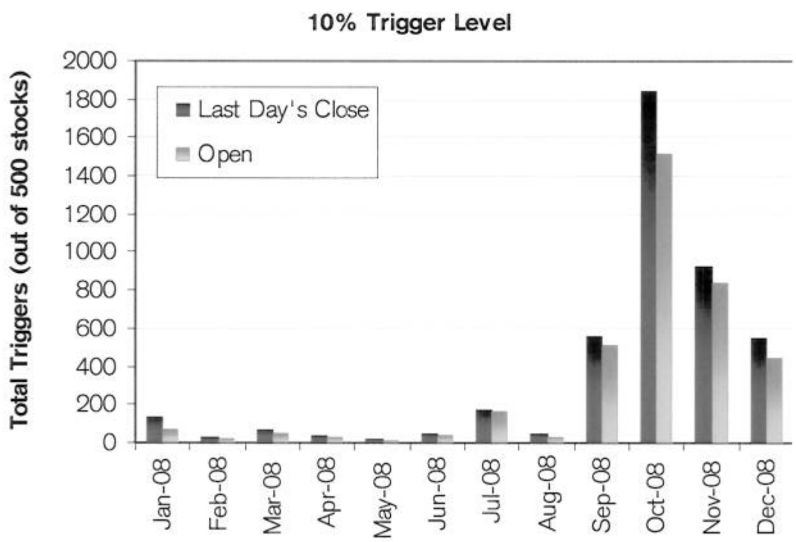


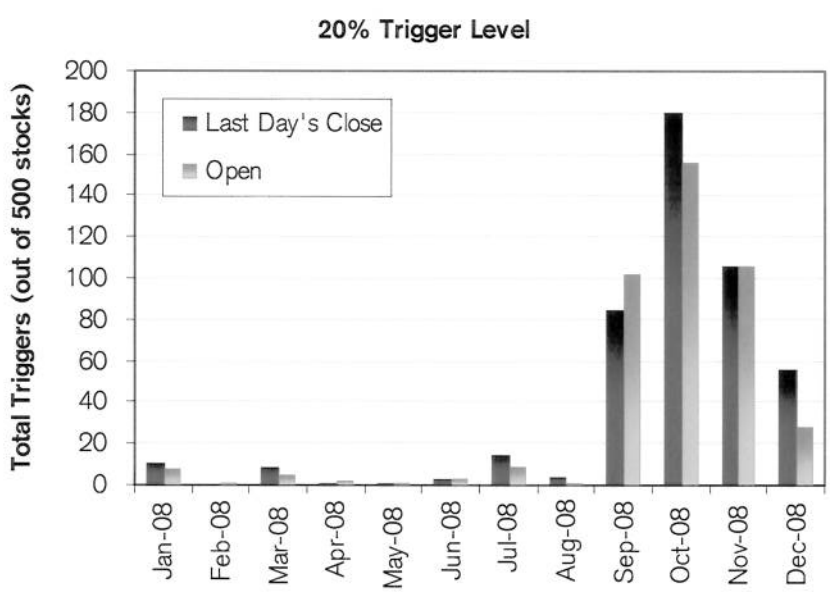
Appendix B: Circuit Breaker Historical Triggers at Various Thresholds

	Total Triggers using Last Day's CLOSE (out of 500 stocks)		
	5%	10%	20%
Jan-08	1309	132	11
Feb-08	417	30	0
Mar-08	661	67	9
Apr-08	302	34	1
May-08	232	16	1
Jun-08	548	48	3
Jul-08	1188	170	14
Aug-08	512	49	4
Sep-08	2193	558	85
Oct-08	5530	1850	180
Nov-08	3529	928	106
Dec-08	2455	550	56
Jan-09	2285	421	46
Feb-09	2115	444	58

	Total Triggers using OPEN Price (out of 500 stocks)			
	5%	10%	15%	20%
Jan-08	850	69	20	8
Feb-08	302	19	2	1
Mar-08	585	47	9	5
Apr-08	270	27	5	2
May-08	217	11	3	1
Jun-08	441	43	10	3
Jul-08	1150	168	46	9
Aug-08	432	28	5	1
Sep-08	2006	516	207	102
Oct-08	4872	1518	440	156
Nov-08	3305	842	277	106
Dec-08	2082	440	117	28


5% Trigger Level
Total Triggers (out of 500 stocks)
6000
5000
4000
3000
2000
1000
0
Last Day's Close
Open
Jan-08
Feb-08
Mar-08
Apr-08
May-08
Jun-08
Jul-08
Aug-08
Sep-08
Oct-08
Nov-08
Dec-08

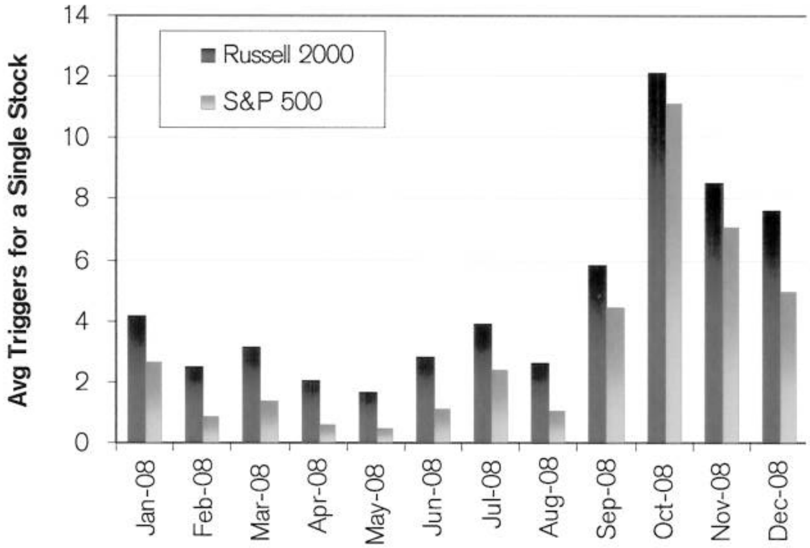

10% Trigger Level
Total Triggers (out of 500 stocks)
2000
1800
1600
1400
1200
1000
800
600
400
200
0
Last Day's Close
Open
Jan-08
Feb-08
Mar-08
Apr-08
May-08
Jun-08
Jul-08
Aug-08
Sep-08
Oct-08
Nov-08
Dec-08


20% Trigger Level
Total Triggers (out of 500 stocks)
200
180
160
140
120
100
80
60
40
20
0
Last Day's Close
Open
Jan-08
Feb-08
Mar-08
Apr-08
May-08
Jun-08
Jul-08
Aug-08
Sep-08
Oct-08
Nov-08
Dec-08

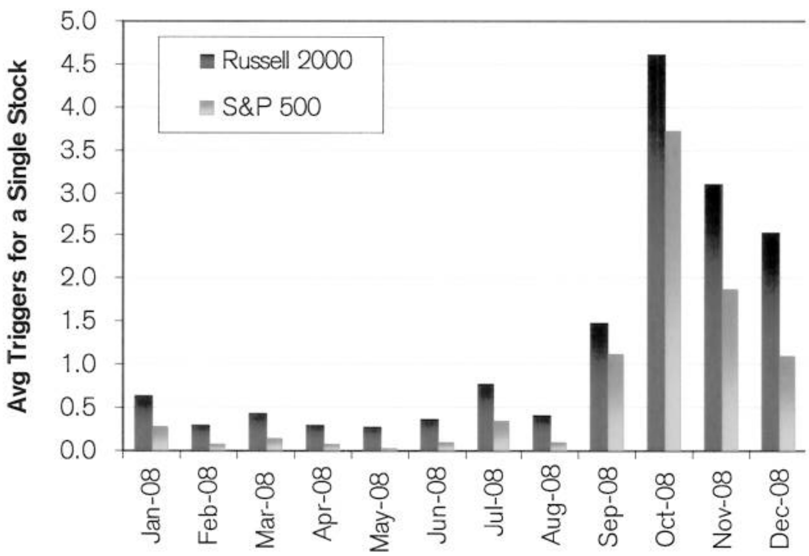
Russell 2000 Close Price total Triggers / Month	5%	10%	15%	20%
Jan-08	7991	1228	343	129
Feb-08	4732	569	184	98
Mar-08	6039	836	254	121
Apr-08	3906	567	210	97
May-08	3201	505	193	85
Jun-08	5346	680	181	82
Jul-08	7408	1461	523	220
Aug-08	4967	795	266	114
Sep-08	11047	2,811	947	417
Oct-08	23119	8,755	3098	1226
Nov-08	16268	5,888	2343	1019
Dec-08	14462	4,822	1851	742

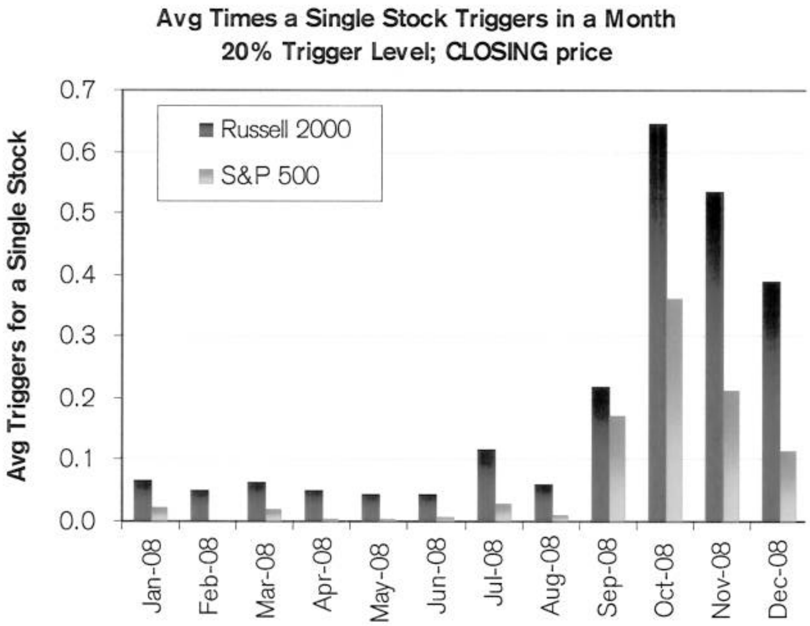
S&P 500 Close Price total Triggers / Month	5%	10%	15%	20%
Jan-08	1,309	132		11
Feb-08	417	30		0
Mar-08	661	67		9
Apr-08	302	34		1
May-08	232	16		1
Jun-08	548	48		3
Jul-08	1,188	170		14
Aug-08	512	49		4
Sep-08	2,193	558		85
Oct-08	5,530	1850		180
Nov-08	3,529	928		106
Dec-08	2,455	550		56

Avg Times a Single Stock Triggers in a Month
5% Trigger Level; CLOSING price



Avg Times a Single Stock Triggers in a Month
10% Trigger Level; CLOSING price




Avg Times a Single Stock Triggers in a Month
20% Trigger Level; CLOSING price
Avg Triggers for a Single Stock
0.7
0.6
0.5
0.4
0.3
0.2
0.1
0.0
Russell 2000
S&P 500
Jan-08
Feb-08
Mar-08
Apr-08
May-08
Jun-08
Jul-08
Aug-08
Sep-08
Oct-08
Nov-08
Dec-08