

September 21, 2009

Qtrade Capital Partners LLC
240-244 North Avenue West
Suite 301
Westfield, NJ 07090

Elizabeth Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: File Number S7-08-09

Dear Ms. Murphy:

Qtrade Capital Partners LLC appreciates the opportunity to comment on the proposed amendments to Reg SHO. Further, we join many other commentators in commending the commission for taking the time to carefully examine the intricacies of the issue and avoiding a rush to judgment in light of the emotions and pressures this issue engenders. By way of background, Qtrade is a New Jersey based LLC whose primary business is earning a profit by making markets in equities that trade on US exchanges and ECNs. We design, research and implement our own proprietary algorithms for pricing securities, and can accurately be described as a fully automated, or electronic, trading company. Qtrade uses sponsored-access with major broker-dealers to access all the major US venues.

Before addressing the commission's specific requests for comment, we would like to be on the record supporting the course of action we would prefer the commission to follow, and give some supporting reasons thereof. We note that in the commission's request you have correctly requested empirical research to support all arguments being made. While we fully agree with this and are heartened to see it stated so clearly, it is ultimately a matter of best use of our resources, and thus we have not undertaken additional research that we could share that would be sufficiently separated from our proprietary research and suitable for the public nature of these comments.

Qtrade would like to recommend to the commission that no modifications be made with respect to Reg SHO pertaining to price-test based short-sale rules. In particular, in light of the increased scrutiny being given to the settlement and clearing processes to crack down on fails-to-deliver, we feel the commission is taking the appropriate actions to combat illegal naked-shorting, and thereby improve or shore-up investor confidence.

As a firm that makes markets in equities, we can state unequivocally that inhibitions on ability to transact – all price tests are effectively that – make the timely reduction of risk less certain, and as such reduce our willingness to take on risk. A reduced willingness to take on risk necessarily leads to a reduced provisioning of liquidity. As a company that stands willing to buy and sell securities all day long, every day, we recall the ban on short-selling of financial securities of late 2008. We can say first hand

that this had the effect of our simply ceasing to trade in all of those securities for the duration of the ban, unfortunately doing our part to marginally decrease the liquidity in those names, thereby exacerbating the volatility in those names.

We believe that the ability to short-sell stocks plays an important and necessary component in making our equity markets healthy, and maintaining their role of being the site for fair price discovery. For example, on October 28, 2008, Volkswagen shares skyrocketed during a “short-squeeze” giving the company the largest market capitalization in the world. Restrictions on the ability to short sell allowed for this stock to trade far away from a reasonable value. The correct solution needs to seek a balance that minimizes conditions that allow for a disruption of true price discovery happening, and at the same time seeks to allow for the benefits of robust liquidity and low transaction costs to flow to the real-money investor (e.g. 401K’s, pensions, mutual funds, etc.).

When asked in a CNBC interview if he was concerned about growing short interest in Berkshire stock, Warren Buffet responded that he was unconcerned because that just meant that more people would have to buy Berkshire stock in the future. However, for stocks where confidence is paramount, such as with most financial institutions, the ability to materially impair an entity’s business exists if a stock could be naked shorted down to zero, scaring away depositors and/or counterparties, thus making an attack self-fulfilling. To avoid this, we, like many market participants, support the process of having to locate and then borrow shares that are shorted. While this is not the only conceivable solution – appropriate and timely disclosure of all short positions to regulatory authorities by way of the settlement and clearing processes in order that manipulative activity could be detected and prosecuted would be an alternative – it is already in place and has its own heavily entrenched interests, and would be difficult to discard. Thus, tightening up the settlement and clearing processes to rein in illegal naked shorting is the best way to restore confidence in the market from the specter of illegal bear raids. Again, we feel the commission has moved in the right direction with the now permanent changes to rule 204T.

Qtrade would like to recommend to the commission that they consider taking this a step further, in the following two ways.

- 1) Further tighten the enforcement mechanism against naked shorting by adding significant monetary penalties for repeat offenders who fail-to-deliver without having obtained a credible locate.
- 2) Further relax locate requirements for market makers, as well as the definition of a market maker. If a trader starts the day with zero position in a stock, and buys and sells the same amount, the net of their activity is zero and they are not shorting the stock. However, for many securities, in order to be a significant liquidity providing market maker in the security, a massive amount of the security has to be located a-priori. The amount that can be located is often very limiting, and thus detracts from the liquidity available in those securities.

In the event the commission does proceed with a price-test, we would like to add a word of caution that the commission not inadvertently end up picking winners and losers by way of handing out exemptions. As evidenced in the large amount of public press devoted to high-frequency trading firms and flash

orders, trading firms that are not official market makers – and without the corresponding obligations – account for a substantial part all market activity. As such, if the commission chooses to implement a price test rule, then as that rule becomes more restrictive, so too does the value of an exemption increase. If exemptions are given out asymmetrically, the commission risks inadvertently picking winners and losers from amongst varying business types. In the case that the commission does impose a price test, we encourage the commission to seek comment on exemptions so that they can be appropriately discussed in light of what the actual rule is. We would encourage an exemption that takes into account what fraction of shares traded are liquidity providing.

With respect to specific requests made by the commission, numbers 1) and 2), we would encourage the commission to do a pilot study, similar to that done when removing the price-test rule, particularly if any price-test rule is brought back market-wide without using the circuit breaker approach. Otherwise, any discussion of the magnitude of the effects will all be based on speculation.

Question 3) is directed to the exchanges and ECNs; trading companies like ourselves are nimble and quick and can code to any of the changes, as most of the onus for enforcement is put on the exchanges. However, we would like to strongly support the option to have market participants maintain their own NBBO and take on that onus if they so choose, in the same way participants are allowed to do so under Reg NMS to send ISOs.

Question 4) In the same way the frequency of any new price-test rule (circuit breaker vs. no circuit breaker) will affect net decrease in liquidity provision to the US equity markets, so too will the approach for compliance. A prohibition approach will unequivocally increase R&D costs for new trading models and systems, causing a slowdown in new liquidity coming to market. Enforcement, in our case for companies using sponsored-access, falls on our prime-broker and sponsoring broker-dealer. While they are ideally suited to answer the question, we maintain similar checks to ensure we adhere to current Reg SHO marking requirements. As such, we can say first hand that a non-prohibition based approach is no more difficult to maintain and monitor, and can be done without the substantial costs of the prohibition approach.

Question 5) In the case of using a circuit breaker, we don't feel that the imposed restriction should be any more severe than it would be if it were implemented market wide all the time.

In summary, we reiterate our belief that investor confidence can best be restored by actions already taken, or even further actions to combat naked-shorting that results in a fail to deliver. Specifically, this means that the commission should opt to not enact any price-based restrictions on trading.

If, however, the commission feels compelled to impose a price-test to restore confidence, we would strongly favor the use of circuit breaker based approach on the grounds that it targets only the stocks of concern and that it allows for normal liquidity providing in all other stocks. When the circuit breaker kicks in, we would advocate that it be a quote-based rule, like the "alternative uptick rule", rather than a last-sale based rule.

And finally, we would encourage the commission to give out price test exemptions that take into account the manner and multitude of liquidity providers in the market, such as an exemption defined by how much of an entity's trading is liquidity providing, rather than using solely traditional or existing market maker definitions.

Sincerely,

Barry Friedman

Llewellyn Jones

Derrick Kaiser

Founding Members, Qtrade Capital Partners LLC