



GLOBAL ELECTRONIC TRADING COMPANY

September 21, 2009

Elizabeth Murphy  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

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

Dear Ms. Murphy:

Global Electronic Trading Company (“GETCO”)<sup>1</sup> appreciates the opportunity to further comment on the above referenced proposal to amend Regulation SHO.

***I. Introduction***

The Securities and Exchange Commission (“Commission” or “SEC”) initially proposed to amend Regulation SHO by re-implementing some form of a short selling price test restriction, either an uptick rule or modified uptick rule, with or without a circuit breaker, or a circuit breaker halt rule (the “Initial Proposal”). GETCO filed a Comment Letter on June 19, 2009, outlining our positions on the Initial Proposal.<sup>2</sup> The Commission has re-opened the comment period and specifically requested additional feedback regarding an alternative uptick rule that would allow short sales only at a price above the current national best bid (the “Alternative Proposal”).

GETCO reiterates its continued support of the Commission’s efforts to promote market stability and restore investor confidence. Combating certain abusive trading practices is an important component of that initiative. GETCO shares the Commission’s concerns about the effects of manipulative short selling, including abusive “naked” shorting and intentional failures to deliver, and supports action to prevent these abusive activities.

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<sup>1</sup> GETCO, with offices in Chicago, New York, London, and Singapore is a privately-held, electronic trading firm that provides liquidity to exchanges and Alternative Trading systems (“ATs”) in the US, Europe and Asia. GETCO, an early entrant in electronic trading, is an electronic market maker on various exchanges and ATs. GETCO is a registered market maker on various equities and options exchanges, including BATS Exchange, Chicago Board of Options Exchange, Nasdaq Exchange, and NYSE Arca.

<sup>2</sup> See Letter to Elizabeth Murphy, Secretary, Securities and Exchange Commission, regarding Amendments to Regulation SHO, Release No. 34-59748, File no. S7-08-09 from GETCO (June 19, 2009).

GETCO believes, however, that recent regulatory actions adopted by the Commission (most notably adoption of "hard delivery" requirements in Regulation SHO) have effectively addressed these concerns. In order to preserve the benefits of legitimate short selling, and in light of the dramatic drop in fails to deliver since the Commission's implementation of hard delivery requirements, it is GETCO's position that further amendments to Regulation SHO are unwarranted.

Consistent with our comments to the Initial Proposal, GETCO continues to oppose re-implementation of a short sale price test restriction, in any form. An artificial constraint on short sales will make today's equities and options markets less efficient, less liquid, and more costly; it will not effectively prevent manipulative trading practices, which may ultimately undermine the goals of restoring investor confidence and promoting market stability. Moreover, we have seen no convincing empirical evidence to support a reversal by the Commission of its 2007 decision to eliminate all short sale price test restrictions.

Should the Commission nonetheless determine that additional short selling regulations are necessary, as we advocated in our comments to the Initial Proposal, the best option for investors and the markets would involve a circuit breaker triggering either a modified uptick rule (bid-test) or a trading halt. If the Commission determines that the alternative uptick rule would be easier and less costly to implement, we would view that approach as a reasonable alternative to the modified uptick rule or a trading halt. Regardless of the price test restriction adopted by the Commission, it should be combined with a circuit breaker and contain an exception for equities and options market makers engaged in bona-fide market making activity.

Below are GETCO's comments regarding specific aspects of the Alternative Proposal.

## **II. Comments on the Alternative Proposal**

### **A. Implementation and Impact of an Alternative Uptick Rule**

The alternative uptick rule would allow short selling only at a price above the current national best bid and only on a passive basis (i.e., short sales could not hit bids). The Commission requested comments on the implementation differences between the alternative uptick rule and the other price test proposals, as well what effects the alternative uptick rule may have on beneficial short selling activity.

The alternative uptick rule would not require monitoring of the sequence of bids or last sale prices. Given the lack of a sequence monitoring requirement, a number of commenters - including several exchanges - stated the alternative uptick rule would be less complex, easier to implement, and less costly than the uptick rule or the modified uptick rule. We do not disagree with these views, and thus are not opposed to the alternative uptick rule, in combination with a circuit breaker, if the Commission institutes some form of a price test restriction.

As the Commission noted in the Alternative Proposal, because the alternative uptick rule would only permit short selling at an increment above the national best bid, short sales would not receive immediate executions, even in an advancing market. As a result, the alternative uptick rule would be more restrictive than either the modified uptick rule or the uptick rule. GETCO believes these greater restrictions would lessen the recognized benefits of legitimate short selling activity, including market liquidity and pricing efficiency, unless the alternative uptick rule includes an appropriate market maker exception.

**B. A Market Maker Exception is Necessary for Any Price Test Restriction**

The Alternative Proposal did not include a general exception for market makers engaged in bona fide market making. Similar to the reasoning it provided in the Initial Proposal with respect to the modified uptick rule, the Commission declined to propose a market maker exception believing provisions relating to when a broker-dealer may mark an order “short exempt” should be limited in scope. The Commission, however, specifically requested comment on the importance of a market maker exception, as well as the conditions that should be imposed to ensure it is used only for bona fide market making.

**1. The Importance of a Market Maker Exception**

GETCO believes that any short sale price test rule adopted must include an exception for registered market makers engaging in bona fide market making in equities and options. Failure to include such an exception would jeopardize market makers’ abilities to continue making two-sided markets, and cause wider spreads, increased trading costs, and further deterioration of investor confidence.

As explained in our initial comment letter, market makers engaged in bona fide market making are directionally neutral with respect to stock price; they do not have a bias concerning whether the stock price goes up or down. Thus, there is no incentive to establish short positions to drive the stock price down or engage in “bear raids.”

Because it would be more restrictive than either the uptick rule or the modified uptick rule, the Alternative Proposal would have an even greater impact on natural market operations. For that reason, it is imperative to include a market maker exception. Lack of a market maker exception would lead to: limited market making strategies; increased frictions for options market makers engaged in hedging; increased barriers to entry for new market makers; decreased competition among market makers in less liquid stocks; and decreased overall liquidity.

Moreover, providing a market maker exception from the price test would be consistent with market maker exceptions currently found in Regulation SHO concerning the locate requirement and delivery requirement, as well as the short sale bans implemented on an emergency basis last year.

2. Conditions Regarding a Bona-Fide Market Making Exception

As we indicated in our initial comment letter, an exception from a price test restriction for market makers should be carefully crafted to ensure it is used only in appropriate circumstances. Accordingly, GETCO believes the market maker exception should be strictly limited to those engaged in bona fide market making. The Commission has consistently recognized the importance of bona fide market making activity, as well as the incurrence of economic or market risk as one of its primary hallmarks.<sup>3</sup> GETCO thus reiterates its recommendation from its initial comment letter that exchanges adopt more stringent market making standards consistent with SEC guidance. Several exchanges currently define market making broadly as a broker-dealer willing to buy and sell on a regular and continuous basis, and the associated requirements to meet this broad definition are easily met and impose relatively low quoting and liquidity obligations.

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GETCO appreciates the opportunity to submit these additional comments. Please do not hesitate to contact us at (312) 242-4600 if you have any questions regarding these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "John McCarthy", is written over a horizontal line.

John McCarthy  
General Counsel

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<sup>3</sup> See Exchange Act Release No. 34-58775 (October 14, 2008).