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January 13, 2009

By e-mail

Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090
rule-comments@sec.gov

Re: File Number S7-08-09
Amendments to Regulation SHO
Release No. 34-59748

Ladies and Gentlemen,

I am writing on behalf of Liquidnet, Inc. as a follow-up to the comment letter that Liquidnet filed on June 18, 2009 relating to the above-referenced rule proposal (the "rule proposal").

As noted in our prior comment letter, if the Commission were to re-introduce a bid test, we would recommend that short sale executions at one-half cent above the current national best bid be permitted where the spread is one cent.[1]

In determining whether this type of activity should be permitted, we should consider whether the activity would implicate the potential negative effects of short selling that the rule proposal attempts to address. We also should consider the potential benefits of the activity from the investor perspective. These two considerations should then be weighed against one another.

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The Commission writes in the proposing release for the rule proposal,

> "Although short selling serves useful market purposes, it also may be used to illegally manipulate stock prices. One example is the 'bear raid' where an equity security is sold short in an effort to drive down the price of the security by creating an imbalance of sell-side interest. This unrestricted short selling could exacerbate a declining market in a security by increasing pressure from the sell-side, eliminating bids, and causing a further

[1] The "spread" represents the difference between the lowest displayed offer and the highest displayed bid in the national market at the time of execution. The "current national best bid" refers to the highest displayed bid in the national market at the time of execution.

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> reduction in the price of a security by creating an appearance that the security price is falling for fundamental reasons, when the decline, or the speed of the decline, is being driven by other factors."[2]

As noted by the Commission, one potential concern is that any type of short selling activity could lead to increased selling pressure, which, in turn, could cause a reduction in the security price. This concern would apply equally to other types of short selling activity that would be permitted under the rule proposal – for example, short selling at one cent above the national best bid when the spread is two cents or even short selling at the best offer price – so we do not believe that this concern alone would be a basis for prohibiting this activity.

A second potential concern noted by the Commission is that the proposed short selling activity could eliminate bids, causing a reduction in the price of the security. Since executions at the mid-point of a one-cent spread do not eliminate bids, we do not believe that this concern would apply.

A third potential concern implicit in the excerpt above, and related to the second concern, is that when executions occur at the bid, it could evidence an aggressive seller or that selling interest is more aggressive than buying interest. However, executions at the mid-point are neutral in this regard and do not evidence that selling interest is more aggressive than buying interest, nor do they evidence that buying interest is more aggressive than selling interest.

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The other important factor to consider is that mid-point executions provide a benefit to investors in the form of price improvement, consistent with a broker's duty to buy or sell in a market "... so that the resultant price to the customer is as favorable as possible under prevailing market conditions"[3] (often referred to as the broker's "best execution" obligation). Mid-point executions, by definition, provide price improvement to both parties to the transaction, resulting in lower trading costs for investors.

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Since our recommendation would facilitate reduced trading costs for investors without implicating the concerns identified in the rule proposal, we request that the Commission consider our recommendation. If the Commission is not able to address this particular scenario as part of the current rulemaking process, we would request that the Commission consider addressing this issue through another means, such as an exemptive order or interpretive guidance.

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[2] Securities and Exchange Commission Release No. 34-59748, "Amendments to Regulation SHO", File No. S7-08-09, pp. 10-11.

[3] FINRA Manual – NASD Rules, NASD Rule 2320.

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Liquidnet appreciates the opportunity to comment on this proposal.

Very truly yours,

Howard Meyerson
General Counsel