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CHAMBER OF COMMERCE
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UNITED STATES OF AMERICADAVID CHAMBERN
DIVISION OF MARKET REGULATION
CHIEF OPERATING OFFICER
& SENIOR VICE PRESIDENT

January 23, 2007

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The Honorable Christopher Cox
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

cc
Bob
Jamie

Dear Chairman Cox:

The U.S. Chamber of Commerce is the largest business federation in the world, representing the interests of some three million companies of every size and industry. As we have noted in previous communications to the Commission, we believe that "short and distort" schemes continue to be a serious problem for a number of primarily small and mid-sized public companies. In that regard, we have engaged a diverse group of stakeholders to discuss the extent of the problem and, in particular, the role that naked or fraudulent short selling plays in it.

Solutions to this issue should be carefully crafted to ensure they do not discourage legitimate short selling or other legitimate practices that add liquidity to our capital markets and enable market participants to manage risk.

As stated in our comments to Release No. 34-54154/File No. S7-12-06 dated September 13, 2006, the Chamber believes that Regulation SHO was a well-intentioned attempt to address the volume of persistent *fails to deliver*, and as detailed in data released by the Commission, it has had some positive effect. However, serious settlement failures persist and some companies remain on the Threshold List for too long with an extremely limited capacity to redress this situation.

In examining this topic, we reached out to a diverse group of interest groups, including representatives from broker-dealers, companies, industry associations, exchanges, economists, securities lawyers, and former SEC staff. Despite the wide range of perspectives, these discussions have led us to affirmatively support those reforms already proposed by the SEC (i.e., elimination of the "grandfather provision" and tightening of the market maker exemption), as well as two additional reforms that should be instituted immediately:

- **Report the aggregate volume of failures to deliver daily for each threshold security.** Issuers and their investors need better information about settlement failures in their stock. Currently, the Threshold List simply contains lists of companies and dates and does not quantify the number of shares that have not been delivered. Companies and investors have very little information about the underlying settlement activity in the stock. As a first step, providing aggregate daily volume of fails in securities included on the Threshold List would be a welcome starting point with which to better understand their stock activity. This increased transparency may help allay concerns about the extent of settlement failures in a particular stock. We do not believe daily publication of this information would result in a significant expense or otherwise negatively affect the market.

Such aggregate fail information is already available to the various exchanges, and there would thus be no need to impose additional requirements upon broker-dealers. Some of the parties we reached out to expressed concern about possible unintended consequences of such disclosure for stocks listed on the Threshold List for a temporary period of time as a result of other factors outside abusive or illegal activity. For example, would disclosing the amount of fails in "temporary" threshold securities cause market participants to erroneously believe that particular issuers are experiencing problems – or that other market participants are taking short positions based upon negative views of the companies? While there may be some risk related to market reactions, we believe that such risks are more than offset by the benefits of more and better information for the market on trading activity.

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- **File 13-f submissions for short positions.** Pursuant to Section 13-f of the Securities Exchange Act of 1934, we recommend that institutional investors disclose short positions in a manner similar to current disclosures of long positions. This could be done by clarifying the definitions of "holdings" for Form 13-f to make it clear that holdings includes short positions. Such disclosure would help investors and issuers to understand trading activity without compromising the proprietary trading strategies of institutional investors. While there may be some initial negative market reaction to these disclosed short positions, we believe that the market will function more efficiently with this additional market information since it is equally important for the market to understand concentrated short positions as it is to understand concentrated long positions.

Legitimate short selling plays an important role in our capital markets. However, under the current system there are still too many illegitimate or naked short sales. We applaud the SEC's leadership to resolve the problems presented by abusive naked short selling, and we strongly encourage you to consider the above points in addition to the points made in our September 13 comment letter, and to take action quickly on this important issue.

Sincerely,



David C. Chavern
Chief Operating Officer and
Senior Vice President

cc: Paul S. Atkins, Commissioner
Roel C. Campos, Commissioner
Kathleen L. Casey, Commissioner
Annette L. Nazareth, Commissioner
Erik Sirri, Director, Division of Market Regulation
John W. White, Director, Division of Corporation Finance