

The International Association of Small Broker Dealers and Advisors

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The International Association of Small Broker-Dealers and Advisors www.iasbda.com submits the following comments on the above referenced proposal. This proposal is long overdue as the abuse of repos to manipulate balance sheets has been known for a long time in the broker-dealer regulatory regime. We only wish to warn that this information can be misused by abusive short sellers and manipulators primarily against small firms. European regulators are acting aggressively in this regard. <http://www.bloomberg.com/news/2010-09-15/naked-short-sellers-derivatives-traders-face-european-union-restrictions.html>. Short term borrowing can be characterized in different ways for different purposes. As Lehman and Bear deteriorated their inability to borrow short term was in the view of many the subject of abusive rumors. See <http://www.davispolk.com/files/Publication/7b58464d-67b7-4e4d-a0b7-29eff68f716f/Presentation/PublicationAttachment/5930344b-17ac-431b-8386-3af1dc6d280b/Colby.Portilla.PCRM.shortsales.article.sep-oct09.pdf> and <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aB1jlqmFOTCA> “Abusive short selling amounts to gasoline on the fire for distressed stocks and distressed markets,” said U.S. Senator Ted Kaufman http://search.bloomberg.com/search?q=Ted+Kaufman&site=wnews&client=wnews&proxystylesheet=wnews&output=xml_no_dtd&ie=UTF-8&oe=UTF-8&filter=p&getfields=wnnis&sort=date:D:S:d1, a Delaware Democrat and one of the sponsors of a bill that would make the SEC restore the uptick rule. The regulation required traders to wait for a price increase in the stock they wanted to bet against; it prevented so-called bear raids, in which successive short sales forced prices down.

Rumors about these firms inability to fund themselves over the short term were the most damaging to them. Our fear is that the small research and development firm that must rely continually on short term borrowings will be attacked by abusive short sellers using this disclosure. If Bear and Lehman could not defend against such rumors how can small firms defend against these tactics. But the Commission can take aggressive steps to insure that the disclosure is not so abused. Public statements by the commission and staff that negative comments will be scrutinized to be certain they are not accompanied by abusive rumors and naked shorting would be very useful. Indeed a statement that absent other evidence negative remarks should not be made about such disclosure. Public companies especially small public companies often cannot rebut such rumors because they are in a legally quiet period. This disclosure is not a simple solution. While good securities analysis should consider short term borrowing, its the characterization of such that can mean life or death for a small business. Exempting small businesses could be justified but they can handle this if they are not subject to abusive short selling for doing so. The release specifically asks for the impact on smaller reporting companies at p.41 and provides a number of exceptions

including an exception from quarterly reporting and a two year total borrowing requirement. We believe these are constructive attempts to help small companies. But we reiterate the need to protect this information from abuse by short sellers. Therefore we suggest that the staff specifically monitor such abuse for an initial time period of 3 years. The process is in place for doing so with the new whistleblower initiatives at the Commission and FINRA. The commission should establish a specific hot line for such information and aggressively investigate it. The staff should not make judgments based on the identity of the provider of the information. A 3 year study of such whistleblower complaints will inform the commission and staff of the real world costs of such disclosure and whether abusive short selling rumors persist.

Peter J.Chepucavage
Executive Director,CFAW
General Counsel
Plexus Consulting LLC