

Shelly Max

October 15, 2008

Via E-Mail: rule-comments@sec.gov

Ms. Florence Harmon
Acting Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: *Division of Corporate Finance, Division of Investment Management, and Division of Trading and Markets Guidance Regarding the Commission's Emergency Order Concerning Disclosure of Short-Selling* (File No. S7-24-08)

Dear Ms. Harmon:

In this time of duress in our Markets, nothing could be more harmful than continuing a policy that allows for illegal market manipulation, we need full and fair disclosure. The lobbying effort of some Attorneys and SIFMA, seek to keep the public "in the dark." This serves no benefit except for illicit activities. The arguments against the emergency policy disclosures hold absolutely no validity or common sense, and serve as an added insult to the investing public and those implementing the policy.

Please allow me to point out that "options" are nothing more than "insurance premiums" not unlike the CDO's that have brought our market to it's knees. It is ludicrous to suggest that we allow these Institutional Investors to continue to collect these premiums using *Leverage* while operating in a "back alley" fashion which does not allow for full and complete transparency. It is quite telling that these Institutional Investors continue to take issue with disclosure; pressuring the SEC to keep non-public the Short Selling activities, while publically calling for transparency with respects to the value of real-estate loans made by the banks. This is the same issue.

We all agree, in instituting the Form SH disclosure requirements the SEC stated that it was "concerned about the potential for sudden and excessive fluctuations of securities prices and disruption in the functioning of the securities markets that could threaten fair and orderly markets" and correctly identified that it "continues to believe that some persons may take advantage of issuers that have become temporarily weakened by current market conditions to engage in inappropriate short selling in the securities of such issuers." This issue has not abated; in fact it is more of a concern! If proper Short Sales are being made, then the process for reporting said sales should be in place. It appears that SIFMA is making the contention that because they have not had to properly account for Short Sales in the past therefore they do not have the system in place to properly do their jobs. An Absolutely unacceptable contention. It is time they updated their work process to make certain they are operating within the Law.

The Commission must require Transparency. It is much easier to create fear “in the dark.” The Commission needs to recognize the smoke screens being manifest to hide what is unethical, at best. The weekly reporting required at present creates a loophole, to allow quarterly reporting will create a black hole. Weekly reporting must be maintained, if any change be made it should be to require more frequent reporting, not less. Please consider that Hedge Funds currently command a 20% commission, plenty of incentive for unsavory and illegal activities, more so if there is no accountability. The most effective form of compliance is to allow the public access to information that should already be available if our markets are considered open and transparent.

The public respectfully request that the SEC do not remove required information from the SH Form. The suggestion that information is not relevant is insulting. What is needed is the public disclosure of the information collected to date, and continued disclosure of all Short Sales. It is noted that the Commission is being lobbied by those who gain from keeping this information a secret; I implore the Commission to allow Public Scrutiny. The absurd contention that the public will misconstrue or misinterpret the data collected by the Form SH, is a sure sign that misdeeds exist. If not, then there should be no real reason to keep the public from obtaining this information. If an entity has an open Short Position that they feel will be difficult to explain, then it is most likely because said position is in direct conflict with the “Stated Position” of the entity.

These Firms lobbying against disclosure feel it will open them to litigation, which means they are operating outside the law. Market Makers must be held to the same letter of the Law. Please do not exclude the Market Makers from reporting Short Sales; it is not riskless activity, quite the opposite. It’s only riskless, if they (Market Makers) can rig the Market and “mark” a stock to a beneficial price point. A practice currently employed, but nowhere near legal. Market Makers have created the problem with “Fail to Deliver.” To exclude the Market Makers, traders for the very institutions operating with tax-payer funds, is to further exasperate the Leveraged Insurance problem we find ourselves coping with currently. Fiscal responsibility dictates that the Market Makers must be held to the same account as other participants.

SIFMA is requesting the exclusion of ETF’s. These expressly short ETF’s are a means by which to manipulate the market, a fact that the Commission already seems to acknowledge. To allow such a travesty would seem unconscionable, and irresponsible. These ETF’s require more regulation, not less.

SIFMA=2 0is requesting clarification with respects to optional de minimums exclusion. The public is requesting that all transactions be made public for reason of transparency and compliance. FOIA, dictates that these firms continue to use the Edgar system and that these filings be made public. While these Firms consider it burdensome to report their Short Sales, the Public finds it burdensome that these Firms have not been held accountable. The Public therefore pleads with the Commission to respect FOIA (Freedom of Information Act) and not only tighten the reporting of Short Sales, but make public the findings of Form SH.

It is my personal contention that Public Disclosure will create confidence, not destroy it. Again, it is insulting and reprehensible to suggest that making public this information, will “destroy public confidence.” Any Institutional Investor, who is privately trading a position that is opposed to its public stance, is in violation of FOIA and Reg FD. The SEC is an agent of the Public; please keep this in mind as the lobbyist continue their crusade against the necessary information contained in Form SH, including efforts to keep it a secret.” We need a completely transparent market. Any argument against a completely transparent market is disingenuous, to say the least.

Respectfully Submitted,

Shelly Max