

ES128408

McElveen, Josephine

From: Kevin McGann [kevin.mcgann@suntrust.com]
Sent: Monday, February 23, 2009 10:35 AM
To: CHAIRMANOFFICE
Subject: SEC Release No 58166/July 15, 2008

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February 23, 2009

Mary L Schapiro
SEC Chair
100 F Street, NE
Washington, DC 20549

Dear Mary Schapiro:

The Security Traders Association(1) (STA) has historically engaged in productive dialogue with the Commission on behalf of our members, and we are respectfully submitting this letter to offer our perspective on the recent Emergency Order regarding short selling in the securities of certain financial institutions.

The STA recognizes the critical role the Commission plays in protecting the integrity and confidence that investors rightfully place in the U.S. markets. We believe (and have consistently maintained) that an appropriate balance between regulation and competition is critical to the development of market structure. Further, we acknowledge the Commission's right to intervene in extraordinary market circumstances. We recognize that the current conditions are unique.

We believe that the Emergency Order of July 15, 2008 should terminate after the July 29th extension expires. Should the Commission determine that any further action, either via emergency powers or rule promulgation, is warranted, it should not be implemented without a detailed analysis of the impact on market participants. Such an analysis should focus in particular on the effect on liquidity providers and widely used clearing systems. Further, we urge that any proposed extension of the Order be issued first for public comment.

We believe that regulatory intervention in the markets should not be done in such a way as to inhibit competitive market forces and practices, which otherwise would have determined prices. While we acknowledge the extraordinary market conditions that prompted the Commission to act, we believe that the effects of such regulatory actions are transitory and unsustainable. The markets will find the equilibrium price, which will match supply and demand.

It is our view that the most effective remedy to the current situation is rigorous enforcement of existing laws, rules, and regulations. The current regulatory regime, properly enforced, is sufficient. We believe that additional regulation is neither necessary nor would it be helpful. In particular, the STA has long supported the strong enforcement of the locate and delivery rule designed to prevent abusive or illegal short selling. The STA has previously questioned the appropriateness of certain interpretations of the locate rules and would respectfully suggest that these interpretations are a probable cause for the same piece of stock being used for multiple locates. Further, we support the strong enforcement of regulation and law aimed at those who engage in market

manipulation through the dissemination of rumors, collusive schemes, or other conduct intended to manipulate securities prices.

Our perspective is based on the consensus view, as we represent constituents from both the buy and sell sides of the street(2). We have articulated our views publicly prior to the recent Order.

We noted with regard to short selling in our Special Report: The STA's Perspective on U.S. Market Structure, issued May 2008:

"STA has long held that short selling enhances overall liquidity and represents a valid investment alternative....

Media reports often suggest concerted efforts to drive the prices of certain securities down. Existing SEC regulations make it illegal to collude, act in concert with others and prohibit market manipulation. These regulations should be more aggressively enforced. We strongly agree with House Financial Services Committee Chairman Barney Frank's statement in a letter to SEC Chairman Christopher Cox on April 4, 2008, that: "Under appropriate conditions, short selling contributes to the efficiency of capital markets. But manipulative or collusive short selling threatens the market's integrity.(3)"

The Commission and the industry have assiduously worked together over the last decade to avoid the unintended consequences of regulatory action.

There is a relationship between market liquidity and short selling, as evidenced by the Commission's recent suggested exemption to the Emergency Order for market makers. As the Commission considers market intervention, both in the current Order and future possible intervention, consideration should be given to such unintended consequences for market efficiency.

Paste the following link to view an excerpt from the STA Special Report on Regulation SHO:
http://www.securitytraders.org/file_download/145

Footnotes:

(1) The STA is a worldwide professional trade organization that works to improve the ethics, business standards and working environment for our members. There are approximately 5,200 members, all engaged in the buying, selling, and trading of securities. Members participate in STA through 27 national and international affiliate organizations and represent the interests of the trading community and institutional investors. The STA provides a forum for our traders, representing institutions, broker-dealers, ECNs, and floor brokers to share their unique perspectives on issues facing the securities markets. They work together to promote their shared interest in efficient, liquid markets as well as in investor protection.

(2) The STA has made comments on Reg SHO and short selling in its Special Report: The STA's Perspective on U.S. Market Structure. May 2008, pp. 17-19. See also the STA's Comment Letter on Reg SHO to the Commission Comment Letter: STA Supports Enhanced Reg SHO Rule Proposal--S7-08-08, May 22, 2008; see also STA's STA Comments on Amendments to Reg SHO and Rule 10a-1, February 12, 2007.

(3) Special Report: The STA's Perspective on U.S. Market Structure. May 2008, pp. 18-19.

The STA enjoys a practitioner's viewpoint with broad grassroots support in the U.S. equity markets. As market professionals with a keen awareness of market structure, we are concerned with any unintended consequences of the SEC's emergency short sale rule as well as any further regulation or legislation that might follow. The U.S. enjoys the most transparent and liquid markets in the world. Any short-term "fix" to a perceived market failure made through hurried regulation will certainly be transitory and unsustainable and may cause unintended problems not limited to a loss of liquidity, a loss of competitiveness, and a loss of confidence in our markets. Our markets have evolved over a long period of time and we advise prudence and thorough research before making further regulatory or legislative market structure changes.

As a constituent of yours, my opinion is:

Sincerely,

Kevin McGann
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