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ATTORNEYS AT LAW

TO: U.S. SECURITIES AND EXCHANGE COMMISSION
FROM: MARY K. BLASY, ESQ.
SCOTT + SCOTT, LLP
DATE: OCTOBER 20, 2009
RE: OCTOBER 21, 2009 SUNSHINE ACT MEETING TO CONSIDER
RECOMMENDATIONS TO PROPOSE AMENDMENTS TO THE REGULATORY
REQUIREMENTS THAT APPLY TO NON-PUBLIC TRADING INTEREST, INCLUDING
SO-CALLED "DARK POOLS" OF LIQUIDITY

Thank you for considering my brief comments on short notice. I only became aware of the public hearing on the subject of "dark pools" transaction reporting today. This is an important subject and I appreciate the opportunity to weigh in from California.

By way of introduction, I am a plaintiffs' class action lawyer that has represented aggrieved investors in private securities class actions for the past ten years. It is from this perspective that I write.

Without belaboring the point, the continued non-disclosure of large volumes of transactions in "dark pools" poses significant threat to efforts to prosecute private rights of action under the federal securities laws. In *Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336 (2005), the U.S. Supreme Court considered whether the Ninth Circuit's "inflated purchase price" approach to *pleading* loss causation was consistent with the applicable federal securities laws, specifically the Private Securities Litigation Reform Act of 19952 (PSLRA). The Court held that it was not, explaining that plaintiffs must demonstrate through their pleadings, *even before discovery commences*, that they have suffered an actual economic loss in order to satisfy the loss causation requirement of a Rule 10b-5 securities fraud claim. There is no clear agreement on what *Dura* requires plaintiffs to plead, but all agree that under this regime, plaintiffs and their experts must demonstrate a material market reaction to the disclosure of the relevant truth. Continued non-disclosure of significant levels of trading activity render it extremely difficult (if not impossible) for the courts (and the experts they rely upon) to correlate disclosures of the relevant truth with high volume stock price movements.

Thank you. I remain available to provide further detail or answer questions if you wish.

Mary K. Blasy
Scott + Scott, LLP
600 B Street, Suite 1900
San Diego, California 92101
(P) 619/233-4565
mblasy@scott-scott.com
www.scott-scott.com

