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Via Electronic Filing

Florence E. Harmon
Acting Secretary
US Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: File No. S7-31-08 (Comments on the Commission's Interim Final Temporary Rule Concerning Disclosure of Short Sales and Short Positions by Institutional Investment Managers)

Dear Secretary:

Wellington Management Company, LLP ("Wellington Management") appreciates the opportunity to comment on the Interim Final Temporary Rule, Exchange Act Release No. 58785, October 15, 2008 (the "Temporary Rule") requiring institutional investment managers to report short sales and positions of certain publicly traded securities to the Securities and Exchange Commission (the "Commission").

Introduction

Wellington Management is a privately owned, investment management firm registered under the Investment Advisers Act of 1940 (the "Advisers Act") that provides investment services to investment companies, employee benefit plans, endowments, foundations and other institutions. As of November 30, 2008, Wellington Management served as an investment adviser to more than 1600 clients and had investment management authority with respect to approximately $407 billion in assets. Wellington Management's investment services include portfolio management styles and approaches in equities, fixed income securities, currencies and commodities, and asset allocation across these asset categories.

In response to the recent market turmoil, the Commission has undertaken a range of actions designed to maintain fair and orderly securities markets, including requiring investment managers to report short sales of certain publicly traded securities. Although the Commission needs information on short selling to combat market manipulation, we believe that public disclosure of this information would undermine the Commission's stated goal of preventing further market disruption. As a result, we strongly agree with the Commission's recent decision to maintain the confidentiality of short sale transactions reported on Form SH.

We also believe that non-public reporting of short sale transactions can be improved to better match the Commission's goals. Although short sales by themselves represent appropriate and legitimate trading activity, in connection with other activities like coordinated trading activity or rumor mongering, they can serve as part of an attempt to manipulate markets. Distinguishing legitimate transactions from illegal activities is central to the Commission's goals, yet this difficult task is made even more challenging by the current requirement to report gross short positions. Given that an entity engaged in market manipulation designed to drive security prices lower would only profit to the extent that it held a net short position, we believe that the Commission would be better served by requiring net reporting. This change would reduce the number of transactions that the Commission would need to review and thus allow it to identify actual instances of market manipulation more effectively. Reporting of net short positions would also provide the Commission with the necessary context, absent from gross reporting, to evaluate the effects of short sales on particular issuers.

Unintended Consequences of Public Disclosure of Short Positions

We believe that the public disclosure of short sale activity would likely increase price volatility and overall market instability for the following reasons.

Disclosure of Short Positions May Be Misinterpreted by the Market

Institutional investors may engage in short sales for reasons unrelated to any negative outlook on the underlying fundamentals or prospects of an issuer or industry. For example, an institutional investor may engage in a short sale to hedge a long position in a correlated security or other instrument. Indeed, in the context of this hedged position, the investment manager may have a neutral or even a positive bias with respect to the issuer or its industry. Market participants, however, may misinterpret this short sale activity to reflect a lack of confidence. Stock sales resulting from such a misinterpretation could then result in a sharp decline in the issuer's securities or even in a broader market sell-off. As recent events have shown, sudden fluctuations in securities prices, even if initially based on erroneous market speculation, can in fact cause the negative consequences for issuers and industries that these price movements are meant to reflect or predict. More importantly, this volatility can have broader consequences by further undermining confidence in the fair and orderly operation of the securities markets generally.

Other Participants May Seek to Duplicate Institutional Investors' Short Transactions

Public disclosure of institutional investors' short sale activity may encourage other market participants to duplicate these transactions by easily identifying heavily shorted issuers or industries. In these situations, reported short sales and short positions would likely result in additional short selling, causing securities prices to fall further. This process could easily accelerate as further price declines make short sales more profitable and new short sale transactions are disclosed to the market. This activity would also contribute to market volatility by magnifying the effect of institutional trading. As a result, the public disclosure of this information would likely result in exactly what the Commission's recent actions have sought to avoid – sudden and excessive fluctuations of securities prices and disruptions in the fair and orderly functioning of the securities markets.

Public Disclosures of Long Positions Have Resulted In Similar Unintended Consequences

It is common for a stock's value to rise or fall simply on a report or rumor that well-known institutional investors have been buying or selling. Indeed, the Commission staff has recognized that public, quarterly disclosure of institutional investment manager's holdings can materially impact the securities markets.[1] In one well known example, numerous press accounts mistakenly reported, based on information contained on a Form 13F filed by Berkshire Hathaway, that the company had sold its holdings in a large commercial bank.[2] Within an hour the bank had lost $1.3 billion in market value, a decline of 5.8 percent, as a result of this misunderstanding.[3] Public disclosure of short sale activity would likely have similar or even more disruptive consequences on individual companies and the securities markets as a whole.

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[1] See Commission Notice: Re: Section 13(f) Confidential Treatment Requests (June 17, 1998), http://www.sec.gov/divisions/investment/guidance/13fpt2.htm.

[2] See, e.g., Norris, A Misinterpretation of a Buffet Filing Stings Wells Fargo, The New York Times (Aug. 22, 1997) at A1.

[3] Id.

Reporting of Net Short Positions – A More Effective Alternative[4]

Reporting of gross short positions may hinder effective oversight of the securities markets by making it more difficult to distinguish legitimate and appropriate short sale transactions from instances of actual market manipulation. Managers may enter into short sale transactions for a broad range of purposes and would be required to report all of these transactions under the Temporary Rule. The challenge to effective market oversight that this presents is that short sales by themselves represent appropriate and legitimate trading activity. Only in connection with other activities, like coordinated trading or rumor mongering, that are designed to manipulate markets will short sales be part of an illegal activity. Although the Commission staff will inevitably be forced to review many legitimate short sales in order to identify any market manipulation designed to drive security prices lower, reviewing short sales of securities in which a firm holds a net long position serves no purpose. Given that an entity engaged in this form of market manipulation would only profit to the extent that it held a net short position, we believe that only the reporting of net short positions should be required. In addition, an effective analysis of the effects of short sales on a particular issuer must take into account any offsetting long exposures. For all of these reasons, we believe that implementing this change would reduce the number of transactions that the Commission would need to review, provide valuable context to the data reported and allow for more efficient oversight and enforcement.

Conclusion

We urge the Commission to preserve the confidentiality of information reported on Form SH and to consider requiring the reporting of net short positions in any further amendments to the Temporary Rule. Our firm appreciates your consideration of this letter and looks forward to working with the Commission and its staff on these issues.

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[4] We note that several of the major European regulators, including the UK Financial Services Authority, the Netherlands Authority for Financial Markets, the Belgian Banking, Finance, and Insurance Commission, the French Autorité des Marchés Financiers, the Irish Financial Regulator and the Spanish Securities Market Commission, have adopted this approach to the reporting of short positions. We strongly agree with Chairman Cox's assessment at a recent IOSCO Technical Committee meeting that "[t]o be effective, the regulation of trading abuses must be coordinated across major markets." For example, global consistency in reporting approaches will ensure that global regulators are reviewing comparable information and will remove any incentives to direct manipulative short selling to a jurisdiction with different reporting standards. See Press Release, SEC Chairman Cox Statement on Meeting of IOSCP Technical Committee (Nov. 24, 2008), http://www.sec.gov/news/press/2008/2008-279.htm.

Sincerely,

Cynthia M. Clarke

Cynthia M. Clarke
General Counsel
Wellington Management Company, LLP

cc: The Honorable Christopher Cox, Chairman
The Honorable Kathleen L. Casey
The Honorable Elisse B. Walter
The Honorable Luis A. Aguilar
The Honorable Troy A. Paredes