CENTER FOR CAPITAL MARKETS COMPETITIVENESS

DAVID T. HIRSCHMANN
PRESIDENT AND CHIEF EXECUTIVE OFFICER

1615 H STREET, NW
WASHINGTON, DC 20062-2000
(202) 463-5609 | (202) 463-3129 FAX

December 16, 2008

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

Re: File No. S7-30-08, Release No. 34-58773, Amendments to Regulation SHO

File No. S7-31-08, Release No. 34-58785, Disclosure of Short Sales and Short Positions by Institutional Investment Managers

Dear Ms. Harmon:

The U.S. Chamber of Commerce (the "Chamber") is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region. We commend the U.S. Securities and Exchange Commission ("SEC" or "Commission") on these proposals to institute permanent changes in the regulatory and disclosure framework that applies to short selling in the public equity markets.

The Chamber has long advocated for reforms that will maintain the liquidity and price discovery benefits of short selling while ensuring that public companies are adequately protected against abusive and fraudulent trading practices. We applaud the Commission for its efforts to move from emergency rulemaking to explore long term solutions to these issues. We also reiterate our call for the Commission to develop an effective market mechanism that would help thwart abuse during periods of significant downward pressure. Such a mechanism must be designed to minimize manipulative trading ahead of the trigger while not impeding trading in normal market conditions. These actions are critical to eliminating abusive naked short selling and other abusive trading practices and restoring certainty and confidence to the marketplace.

I. Amendments to Regulation SHO Delivery Requirements

It appears that the recent amendments to Regulation SHO ("Reg SHO") have been successful in reducing the extended settlement failures that facilitate abusive naked short selling. Pursuant to Interim Final Temporary Rule 204T ("Rule 204T"), issuers now have to borrow or purchase securities to close out the amount of the fail to deliver position by the close out date. Since the implementation of Rule 204T, there has been a substantial drop in the number of new companies suffering from settlement failures serious enough to be placed on the Regulation SHO Threshold List ("Threshold List"). The SEC Office of Economic Analysis indicated in a recent memorandum that, since the implementation of Rule 204T and the elimination of the options market maker exception, failures to deliver declined by 37.6% across all securities and 52.8% for Threshold stocks.[1]

Although the hard close out requirement in Rule 204T has provided substantial relief for issuers that experienced extended settlement failures in their stock, the problem with failures to deliver has not been completely eliminated. There are still dozens of companies that end up on the Threshold List, including the recent addition of one of America's largest corporations. As we have noted in our past comment letters to the SEC, there are additional reforms that would provide necessary safeguards against abusive practices without imposing unduly burdensome costs or diminishing market efficiency:

- As we have previously urged, the SEC should consider requiring sellers of Threshold List securities, prior to executing a short sale in such securities, to either (i) have possession of the stock in question or (ii) have entered into a bona fide contract to borrow in advance of the sale. Such a narrowly tailored requirement would prevent additional settlement failures without diminishing market efficiency.

- More frequent and complete disclosure of fail to deliver data would demonstrate to the market that the amendments to Reg SHO have been successful in resolving this problem. Issuers that have been harmed by

[1] *See* Office of Economic Analysis Memorandum to File, *Impact of Recent SHO Rule Changes on Fails to Deliver*, (Nov. 26, 2008), http://www.sec.gov/comments/s7-30-08/s73008-37.pdf.

excessive failures to deliver have had an extremely limited capacity to identify and redress the situation because they are unable to obtain the relevant data in a timely manner. The SEC currently publishes the daily volume of fails in each stock on a quarterly basis. This publication should be disseminated more frequently, with only a minor delay to prevent the use of the data to manipulate the market.

- In addition to these longstanding positions, significant questions have been raised regarding failures to deliver that occur outside of the National Securities Clearing Corporation ("NSCC"). The SEC should carefully examine this issue in order to identify whether greater transparency and regulation is needed to prevent further problems associated with settlement failures that are not within the purview of the SEC's current fail to deliver disclosure framework. This information should also be disseminated publicly with the data related to failures to deliver that occur within the NSCC. The SEC should also determine if these failures should be included in the calculation of whether an issuer appears on the Threshold List.

II. Enforcement

We applaud the SEC for initiating specific actions to combat fraud and the intentional spread of false information to manipulate the short side of the market. If appropriately enforced, Securities Exchange Act Rule 10b-21 ("Rule 10b-21") should deter abusive naked short selling and other manipulation on the short side of the market.

We anticipate that the announcements by the Commission and self-regulatory organizations ("SRO") of enhanced examinations of market participants will facilitate the identification and prosecution of those who spread false and misleading information into the markets with the intention to manipulate stock prices. These efforts should work to deter fraud and manipulation in our marketplace, especially those abuses that can be prevalent during periods of market volatility. We urge the Commission to institute greater coordination across operating divisions to strictly enforce the borrowing and delivery regulations. Such coordination should increase the effectiveness of these rules, which have been unevenly enforced in the past.

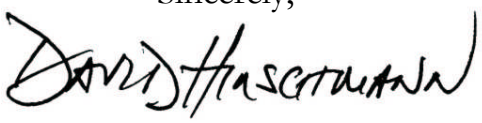
III. Disclosure of Short Sale Positions and Market Transparency

The Chamber has advocated for a disclosure framework for reporting short positions that would ensure the Division of Enforcement has the information necessary to investigate fraud and abuse in our markets. Interim Final Temporary Rule 10a-3T ("Rule 10a-3T") and Form SH require large institutional money managers to report short position information to the Commission on a delayed weekly basis. We believe these requirements will provide the SEC with the necessary access to market data that will assist SEC Staff in detecting and prosecuting fraud on the short side of the market.

The recent market distress has exposed an urgent need to reevaluate the entire framework for significant position reporting. To this end, the SEC should move quickly to convene an advisory committee to study the broader questions related to position reporting and recommend a permanent, rational, and effective framework for disclosure of significant long and short positions. This advisory committee should include representatives from the appropriate segments of the market along with academic participants and SEC Staff observers.

We would be happy to discuss these issues with the Commission or SEC Staff. Thank you for your consideration.

Sincerely,



cc: The Honorable Christopher Cox, Chairman, Securities and Exchange Commission
The Honorable Luis A. Aguilar, Securities and Exchange Commission
The Honorable Kathleen L. Casey, Securities and Exchange Commission
The Honorable Troy A. Paredes, Securities and Exchange Commission
The Honorable Elisse B. Walter, Securities and Exchange Commission
Andrew J. Donohue, Director, Division of Investment Management
Erik R. Sirri, Director, Division of Trading and Markets
John W. White, Director, Division of Corporation Finance