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

**Re: Request for Comments on Interim Final Temporary Rule 10a-3T Requiring Certain Institutional Investment Managers to File Information on Form SH (File Number S7-31-08)**

Dear Ms. Harmon:

We are writing in response to the request of the Securities and Exchange Commission (the "Commission") for comments regarding the Commission's interim final temporary rule requiring certain institutional investment managers to file Form SH reporting certain short sales and short positions ("Rule 10a-3T"). Specifically, we are responding to the Commission's request for comment on which persons or entities should be required to file Form SH.<sup>1</sup>

A Form SH filing should not be required from any person or entity if the public disclosure of that report would identify the securities positions of a natural person. In section 13(f) Congress adopted a specific safeguard against the public disclosure of information in 13(f) reports that would identify the securities positions held by the account of a natural person.<sup>2</sup> Rule 10a-3T does not have this statutory protection, and the Commission cannot guarantee that Form SH reports will not be made public. Thus, the Commission should exempt from the Form SH filing requirement, by interpretive guidance or in its final rule, any person or entity whose Form SH report necessarily would identify the securities positions held by the account of a natural person or an estate or trust (other than a business trust or investment company). By doing so, the Commission would ensure that the investments of any such natural person, estate or trust are protected from public disclosure with respect to Form SH filings, as is true presently for Form 13F filings under section 13(f)(3).<sup>3</sup>

<sup>1</sup> III. (A), 1. Institutional Investment Managers Required To Report Short Sales, Request for Comment, Release No. 34-58785, File No. S7-31-08; October 15, 2008.

<sup>2</sup> See Section 13(f)(3) of the Securities Exchange Act of 1934 ("Exchange Act").

<sup>3</sup> Section 13(f)(3) of the Exchange Act provides in relevant part that "information [disclosed in section 13(f) reports] identifying the securities held by the account of a natural person or an estate or trust (other than a business trust or investment company) shall not be disclosed to the public." The Congressional policy of safeguarding the confidentiality of individual investor holdings is well documented (See e.g. Senate Committee Report No. 94-75 at 260, 265 (1975)) and has been recognized by the Commission (See e.g. Form 13F General Instructions "INSTRUCTIONS FOR CONFIDENTIAL TREATMENT REQUESTS" and Division of Investment Management:

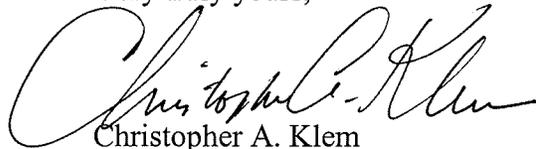
The Commission has said that Form SH will be “nonpublic to the extent permitted by law.” However, without statutory protection against public disclosure specific to Form SH, there is no guarantee that the Form SH can be protected in response to Freedom of Information Act (“FOIA”) requests. In fact, blanket FOIA requests have already been made by the New York Times Company, among others, for all Forms SH that have been filed with the Commission to date.<sup>4</sup> These requests were made despite the Commission’s statement in the Rule 10a-3T adopting release that FOIA “provides at least two exemptions under which the Commission has authority to withhold the information.”<sup>5</sup>

Moreover, the Commission has advised Form SH filers not to “submit a confidential treatment request.”<sup>6</sup> This further impairs the ability of natural persons to protect the confidentiality of investment information provided on Form SH. Under current Commission practice, when a filing is made pursuant to a confidential treatment request, the Commission will notify the filer of any FOIA request for information contained in the filing. In the case of blanket FOIA requests made for all Forms SH, however, it is our understanding that filers will not be notified of the FOIA request or of any appeal to the General Counsel of the Commission, unless an appeal is made to the General Counsel requesting disclosure of a specified filer’s Form SH. As a result, a person making a blanket FOIA request could exhaust all administrative procedures and proceed to federal court before a Form SH filer would be informed of the FOIA request or its status.

Accordingly, to ensure that information Congress required the Commission to safeguard in the context of Form 13F is safeguarded in the context of Form SH, the Commission should exempt from Rule 10a-3T persons or entities whose reports would necessarily identify the securities positions held by the account of a natural person or an estate or trust (other than a business trust or investment company).

We appreciate this opportunity to comment on the interim final temporary rule and hope that you will take our comments under consideration.

Very truly yours,



Christopher A. Klem

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Frequently Asked Questions About Form 13F "What About Confidential Treatment?" available at <http://www.sec.gov/divisions/investment/13ffaq.htm> (May 2005)). Of course, any person or entity who files a Form 13F with respect to aggregate positions of multiple clients would not fit this exemption and would therefore be required to file Form SH (assuming no other exemption applied to such person or entity under Rule 10a-3T).

<sup>4</sup> See attached FOIA requests as of November 19, 2008.

<sup>5</sup> III. B .1, Timing and Nonpublic Nature of Form SH, Release No. 34-58785, File No. S7-31-08; October 15, 2008.

<sup>6</sup> *Id.*



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
STATION PLACE  
100 F STREET, NE  
WASHINGTON, DC 20549

Office of Freedom of Information  
& Privacy Act Operations

Mail Stop 5100

November 21, 2008

Mr. Thomas Holden  
Ropes & Gray LLP  
One International Plave  
Boston, MA 02110-2624

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552  
Request No. 09-00397-FOIA

Dear Mr. Holden:

This letter is in response to your request dated October 27, 2008 and received in this office on October 29, 2008. As per our conversation this date, your request has been amended to be for all FOIA requests made for any Form SH from September 1, 2008 through November 19, 2008.

We have determined to grant access to the attached records, except for third party names, email addresses, telephone numbers, facsimile numbers and a work address, the release of which would constitute a clearly unwarranted invasion of personal privacy under 5 U.S.C. § 552 (b)(6), 17 CFR § 200.80 (b)(6).

Regarding the withheld information, you have the right to appeal to our General Counsel under 5 U.S.C. 552(a)(6), 17 CFR 200.80(d)(5) and (6). Your appeal must be in writing, clearly marked "Freedom of Information Act Appeal," and should identify the requested records. The appeal may include facts and authorities you consider appropriate.

Send your appeal to the FOIA/Privacy Act Office of the Securities and Exchange Commission located at Station Place, 100 F Street, NE, Mail Stop 5100, Washington, D.C. 20549, or deliver it to Room 1120 at that address. Also, send a copy to the SEC Office of the General Counsel, Mail Stop 9612, or deliver it to Room 1120 at the Station Place address.

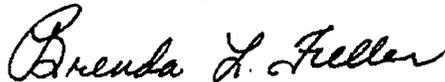
Mr. Thomas Holden  
November 21, 2008  
Page 2

09-00397-FOIA

Please be advised, we are consulting with other Commission staff regarding additional information that may be responsive to your request. We will advise you of our findings as soon as we receive a response.

In the interim, if you have any questions, please contact Mark Siford of this office at (202) 551-7201.

Sincerely,  
FOIA/Privacy Act Officer



By: Brenda L. Fuller, Branch Chief  
FOIA/Privacy Act Office

7-66

C

foiapa

09-00143

From: [redacted]  
Sent: Tuesday, October 07, 2008 3:46 PM  
To: foiapa  
Subject: FOIA

Senior Vice President & Corporate Counsel  
RAIT Financial Trust  
2929 Arch Street, 17<sup>th</sup> Floor  
Philadelphia, PA 19104

RECEIVED  
2008 OCT -8 A 11:44  
SEC  
FOIA/PA OFFICE

October 7, 2008

U.S. Securities & Exchange Commission  
100 F Street, NE  
Mail Code 5100  
Washington, DC 20549

To The U.S. Securities & Exchange Commission (the "SEC"):

Under the Freedom of Information Act, please send me all Form SHs that have been filed with the SEC that report short sales in the securities of RAIT Financial Trust (NYSE: RAS, RASA, RASB, RASC) from and including September 18, 2008. RAIT Financial Trust will pay up to \$1,000 for search and review fees. My contact information is set forth above.

Very truly yours,

/s/ [redacted]

Senior Vice President-Corporate Counsel  
RAIT Financial Trust  
Cira Centre  
2929 Arch Street, 17th Floor  
Philadelphia, PA 19104

Fax: 215.243.9039

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10/8/2008

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09-0233

M

foiapa

RECEIVED

From: [redacted]  
Sent: Monday, October 20, 2008 7:48 PM  
To: foiapa  
Subject: FOIA Request for Short Sale Reporting of certain institutional investors

2008 OCT 21 A 8:31

SEC  
FOIA / PA OFFICE

U.S. Securities & Exchange Commission  
100 F Street, NE  
Mail Code 5100  
Washington, DC 20549

Dear Sir:

Under the Freedom of Information Act (FOIA), please send me, where applicable, the short positions reported by the following Institutional investors that I believe to have accounts holding at least \$100 million in securities, required to be reported under the short sale reporting interim rule on Form SH.

I understand that some companies may not meet your requirements or have complied.

Please send all short positions that were open beginning Sept. 22, through those that were taken up until the latest data that is available:

- Downsview Capital
- Enable Capital Management
- Whalehaven Fund Ltd.
- Victus Capital, LLC
- Iroquois Capital L.P.
- Yorkville Advisors, LLC
- Hudson Bay Capital Management LP
- Chestnut Ridge Capital
- Highbridge Capital Management, LLC
- Guerrilla Capital Management
- Whitebox Advisors
- Vision Capital Advisors
- UBS AG (NYSE: UBS)
- Sandell Asset Management Corp.
- Crestview Capital Funds

My daytime telephone number is [redacted]

Sincerely,

[redacted]  
Staff Writer

DealFlow Media  
615 Second Street  
Petaluma, CA 94952  
pipes.dealflowmedia.com

10/21/2008

09-00398 M

October 27, 2008

Securities and Exchange Commission  
Office of FOIA and Privacy Act Operations  
100 F Street, NE  
Washington, DC 20549-5100

RECEIVED

2008 OCT 28 A 8:23

SEC  
FOIA/PA OFFICE

Phone: 202-551-8300  
Fax: 202-772-9336  
e-mail: [foiapa@sec.gov](mailto:foiapa@sec.gov)

Re: Freedom of Information Act Request

To whom it may concern:

This is a request under the Freedom of Information Act (FOIA).

I request that a copy of the following documents be provided to me: all Form SH filings submitted to date. These forms were mandated as part of the agency's Amendments to Regulation SHO, as outlined in Release No. 34-58775; File No. S7-19-07. I am interested in seeing all SH filings that were submitted since the rule went into effect in September of 2008 through Nov. 3.

If you are unable to provide me with all SH filings during that time frame, my second choice would be to have all SH filings in that time frame submitted by the following companies:

- SAC Capital Advisors
- Greenlight Capital
- Citadel Investment Group
- Tudor Investment Corp.
- Lone Pine Capital
- AQR Capital
- Paulson & Co
- Atticus Capital
- Harbert Management Corp (or "Harbinger Capital")
- D.E. Shaw Group

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I am requesting these documents for use in an article in The New York Times, and I believe it is in the public's interest to understand the frequency with which investment managers are using short-selling. If there are any fees for searching for or copying the documents, I am willing to pay fees for this request up to a maximum of \$150. If you estimate that the fees will exceed this limit, please contact me.

If you deny all or any part of this request, please cite each specific FOIA exemption that justifies your denial of the information and notify me of appeal procedures available under the law. If you have any questions about processing this request, you may telephone me during business hours at [ ]

Sincerely,

Business Section

The New York Times  
620 Eighth Avenue

New York, NY 10018

[ ]

[ ] = b6

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foiapa

09-00540-FOIA

From: [redacted]  
Sent: Thursday, October 30, 2008 6:32 PM  
To: foiapa  
Subject: FOIA Request

RECEIVED

2008 NOV -4 P 1:25

SEC  
FOIA/PA OFFICE

U.S. Securities & Exchange Commission  
100 F Street, NE  
Mail Code 5100  
Washington, DC 20549

Dear Member of the Securities & Exchange Commission:

Under the Freedom of Information Act (FOIA), please send me the records of all Form SH reports that the SEC received between 3 October 2008 and 10 October 2008 that include the short selling of Magna International (Ticker Symbol: MGA) shares for the period of time between 29 September 2008 and 3 October 2008.

I will pay all necessary costs for search and review fees, but request that you contact me should they exceed \$500. My daytime telephone number is [redacted]

Sincerely,

10/30/2008

7 Times Square Tower  
STE 1601  
New York, NY  
10036

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10/31/2008

foiapa

09-00716-FOIA

FE

From: [redacted]  
Sent: Friday, November 14, 2008 10:16 AM  
To: foiapa  
Subject: Form SH data

RECEIVED

2008 NOV 17 A 8:00

SEC  
FOIA/PA OFFICE

Dear Sir or Madam:

Under the Freedom of Information Act (FOIA), please send me the filings for all institutions required to file Form SH since the SEC instituted the form in September 2008. I will pay up to \$1000 for search and review fees. However, I request that the fees be waived given that any academic research which stems from this data is likely to contribute to the public's understanding of securities markets, short selling, and SEC oversight and regulation. Further, this FOIA request is being filed only because of the SEC's reversal of its policy to make available the Form SH filings 2 weeks after the filing is received.

The purpose of this request is for academic research alone and with no intent for commercial use. My contact information is below.

[redacted]

11/17/2008