

SECURITIES AND EXCHANGE COMMISSION

17 CFR PART 242

[Release No. 34-60509; File No. S7-08-09]

RIN 3235-AK35

Amendments to Regulation SHO

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; notice of re-opening of comment period and supplemental request for comment.

SUMMARY: The Securities and Exchange Commission is re-opening the comment period to the “Amendments to Regulation SHO” it proposed in Securities Exchange Act Release No. 59748 (Apr. 10, 2009), 74 FR 18042 (Apr. 20, 2009) (the “Proposal”). As a supplement to our request for comment on the Proposal, we are soliciting additional feedback regarding an alternative price test, on which we solicited comment in the Proposal, that would allow short selling only at a price above the current national best bid (the “alternative uptick rule”). We are publishing this supplemental request for comment and reopening the comment period to help ensure that the public has a full opportunity to provide comments on the alternative uptick rule.

DATES: Comments should be received on or before September 21, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/proposed.shtml>); or

- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-08-09 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-08-09. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. We will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/proposed.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Jo Anne Swindler, Acting Associate Director; Josephine J. Tao, Assistant Director; Victoria Crane, Branch Chief; or Katrina Wilson, Staff Attorney, Division of Trading and Markets, at (202) 551-5720, at the Commission, 100 F Street, NE, Washington, DC 20549-6628.

SUPPLEMENTARY INFORMATION: On April 8, 2009, we proposed to re-examine and seek comment on whether to impose price test restrictions or circuit breaker restrictions on short

selling.¹ The Proposal was published for comment on April 20, 2009 and the comment period initially closed on June 19, 2009.²

I. INTRODUCTION

In the Proposal, we proposed two approaches to restrictions on short selling: one that would apply on a market-wide and permanent basis (“short sale price test” or “short sale price test restriction”) and one that would apply only to a particular security during a severe market decline in the price of that security (“circuit breaker”).³ With respect to the first approach, we proposed two alternative short sale price tests: one based on the current national best bid (the “proposed modified uptick rule”) and the second based on the last sale price (the “proposed uptick rule”). With respect to the second approach, we proposed two alternative circuit breaker tests: one that would temporarily prohibit short selling in a particular security when there is a severe decline in the price of that security; and one that would temporarily impose either the proposed modified uptick rule or the proposed uptick rule on short sales in a particular security when there is a severe decline in the price of that security. Although we sought comment on the alternative uptick rule, it was not one of the proposed approaches.

The Proposal sought comment on all aspects of the proposed approaches to restrictions on short selling. Among other things, the Proposal inquired whether the alternative uptick rule, which would permit short selling at a price above the current national best bid, would be preferable to the proposed modified uptick rule and the proposed uptick rule.⁴ We sought comment regarding the application of the alternative uptick rule as a market-wide permanent

¹ See Proposal, 74 FR 18042.

² See *id.*

³ See *id.*

⁴ See Proposal, 74 FR at 18072, 18081, 18082.

price test restriction or in conjunction with a circuit breaker.⁵ We have received almost 4,000 unique comment letters in response to the Proposal, as well as over 250 copies of 4 different standard letter types, and a petition with 5,605 signatures.⁶ We have received one comment letter that favored adoption of the alternative uptick rule on a market-wide permanent basis.⁷ Six commenters who stated that there is not any need for the Commission to enact any further restrictions on short selling expressed support for applying the alternative uptick rule in combination with a circuit breaker if some form of a price test were to be instituted.⁸ One commenter who stated that a price test could contribute to the goal of restoring investor confidence expressed support for the alternative uptick rule, but expressed a preference for the proposed modified uptick rule.⁹ In addition, the Commission hosted a roundtable on May 5,

⁵ See id.

⁶ The full text of comments to the Proposal, including the text of standard letter types and a petition, is publicly available at: <http://www.sec.gov/comments/s7-08-09/s70809.shtml>.

⁷ See letter from Glen Shipway, dated June 19, 2009.

⁸ See letter from Erik Swanson, SVP and General Counsel, BATS Exchange, Inc., dated May 14, 2009 (“BATS”); letter from Johnny Peters, ChFC, dated May 20, 2009; letter from Dan Mathisson, Managing Director, Credit Suisse Securities (USA), LLC, dated June 16, 2009 (“Credit Suisse”); letter from Ira D. Hammerman, Senior Managing Director and General Counsel, SIFMA, dated June 19, 2009 (“SIFMA”); letter from Paul M. Russo, Managing Director, Head of U.S. Equity Trading, Goldman, Sachs & Co., dated June 19, 2009 (“Goldman Sachs”); letter from Eric W. Hess, General Counsel, DirectEdge, dated June 23, 2009. In addition, we note that prior to the Commission issuing the Proposal, four exchanges, NYSE Euronext, The Nasdaq OMX Group, Inc., BATS Exchange, Inc., and National Stock Exchange (the “national securities exchanges”), submitted a comment letter recommending a circuit breaker combined with a price test that would allow short selling only at an increment above the current national best bid, like the alternative uptick rule. NYSE Euronext, in its subsequent comments, stated that it supported the proposed modified uptick rule rather than the position expressed in the earlier March 24, 2009 letter. See statement of Larry Leibowitz, Group Executive Vice President and Head of Global Technology and US Execution, NYSE Euronext, dated May 5, 2009 (“statement of NYSE Euronext”); letter from Janet M. Kissane, Senior Vice President, Legal and Corporate Secretary, NYSE Euronext, dated June 19, 2009 (“NYSE Euronext”).

⁹ See statement of NYSE Euronext; letter from NYSE Euronext.

2009 to examine short sale price test and circuit breaker restrictions, at which several panelists expressed support for the alternative uptick rule.¹⁰

We want to further consider the alternative uptick rule and whether adopting it would achieve our objectives. Accordingly, we are publishing this supplemental request for comment and reopening the comment period to help ensure that the public has a full opportunity to provide comments on the Proposal, the alternative uptick rule, and any other matters that may have an effect on the Proposal and to assist the Commission in its consideration of the same.

II. DISCUSSION

A. The Alternative Uptick Rule

As noted in the Proposal, the alternative uptick rule would allow short selling only at a price above the current national best bid such that short selling would occur only at a higher price than the current national best bid.¹¹ The alternative uptick rule would be similar to the proposed modified uptick rule in that both would use the current national best bid as a reference point for short sale orders. Unlike the proposed modified uptick rule (and the proposed uptick rule), the alternative uptick rule would not allow short selling at the current national best bid (or last sale price). Instead, in an advancing or declining market, the alternative uptick rule would only permit short selling at an increment above the current national best bid, unless an applicable exception applies.¹²

¹⁰ See Unofficial Copy of Roundtable Transcript available at <http://www.sec.gov/spotlight/shortsales.htm>. (the following individuals commented on the alternative uptick rule during the roundtable: Richard Ketchum, Chairman and CEO, FINRA; Dan Mathisson, Managing Director, Credit Suisse Securities (USA) LLC; Lawrence Leibowitz, Group Executive Vice President, Head of US Markets and Global Technology, NYSE Euronext; and Dr. Frank Hatheway, Chief Economist, Nasdaq OMX Group).

¹¹ See Proposal, 74 FR at 18072, 18081, 18082.

¹² See *infra* discussion in Section II.B., “Exceptions.”

Because it would only permit short selling at an increment above the national best bid, the alternative uptick rule would not allow short sales to get immediate execution, even in an advancing market, and therefore the alternative uptick rule would restrict short selling to a greater extent than either the proposed modified uptick rule or the proposed uptick rule. We note, however, that because the alternative uptick rule would reference only the current national best bid in determining permissible short sales, it would not require monitoring of the sequence of bids or last sale prices (i.e., whether the current national best bid or last sale price is above or below the previous national best bid or last sale price). As a result, in the view of at least one commenter, the alternative uptick rule would likely be easier to monitor¹³ and, in the view of several commenters, could likely be implemented more quickly than the proposed modified uptick rule or the proposed uptick rule.¹⁴ For the same reason, at least two commenters stated that the alternative uptick rule could potentially be less costly to implement than the proposed modified uptick rule or the proposed uptick rule.¹⁵ In addition, several commenters noted that the alternative uptick rule would be easier to program into trading and surveillance systems than the proposed modified uptick rule or the proposed uptick rule because it would not require bid sequencing.¹⁶

However, because the alternative uptick rule would restrict short selling to a greater extent than either the proposed modified uptick rule or the proposed uptick rule, it could also potentially lessen some of the benefits of legitimate short selling, including market liquidity and

¹³ See, e.g., letter from SIFMA.

¹⁴ See, e.g., statement from NSYE Euronext; letter from Credit Suisse; letter from SIFMA; letter from Glen Shipway; letter from Goldman Sachs.

¹⁵ See, e.g., letter from BATS; letter from Glen Shipway.

¹⁶ See, e.g., letter from the national securities exchanges; letter from Glen Shipway; letter from Goldman Sachs.

pricing efficiency¹⁷ to a greater extent. Thus, there may be potential costs associated with the alternative uptick rule in terms of potential impact of such a price test on quote depths, spread widths, market liquidity, execution and pricing inefficiencies.

In the Proposal, we proposed a policies and procedures approach with the proposed modified uptick rule, such that the rule would require trading centers¹⁸ to have policies and procedures reasonably designed to prevent the execution or display of short sales at impermissible prices.¹⁹ In contrast, we proposed a straight prohibition approach with the proposed uptick rule, such that the rule would prohibit any person from effecting short sales at impermissible prices.²⁰ We also discussed in the Proposal that in adopting a final rule, we could take several different approaches, or a combination of approaches.²¹ Similarly, as discussed in the Proposal, the alternative uptick rule could ultimately be implemented through a policies and procedures approach or through a straight prohibition approach or some combination thereof.²²

¹⁷ See, e.g., Securities Exchange Act Release No. 54891 (Dec. 7, 2006), 71 FR 75068, 75069 (Dec. 13, 2006); Securities Exchange Act Release No. 48709 (Oct. 28, 2003), 68 FR 62972, 62974 (Nov. 6, 2003); Securities Exchange Act Release No. 29278 (June 7, 1991), 56 FR 27280 (June 13, 1991); Securities Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48009, n. 6 (Aug. 6, 2004); Boehmer, Ekkehart and Wu, Julie, Short Selling and the Informational Efficiency of Prices (Jan. 8, 2009).

¹⁸ A “trading center” means a national securities exchange or national securities association that operates a self-regulatory organization trading facility, an alternative trading system, an exchange market maker, an over-the-counter market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent. See 17 CFR 242.600(b)(78); see also Proposal, 74 FR at 18043, 18051.

¹⁹ See Proposal, 74 FR at 18051 – 18052.

²⁰ See Proposal, 74 FR at 18052, 18062.

²¹ See Proposal, 74 FR at 18049.

²² See Proposal, 74 FR at 18072. For instance, the approaches could be combined so that persons are prohibited from selling short at or below the current national best bid and trading centers are also required to have reasonable policies and procedures to prevent the execution or display of a short sale at or below the current national best bid.

In addition, as was noted in the Proposal, the alternative uptick rule could be implemented in combination with a short selling circuit breaker.²³ Specifically, in the Proposal, we requested comment regarding whether a circuit breaker that would temporarily impose the alternative uptick rule on short sales in a particular security when there is a severe decline in the price of that security would be preferable to a circuit breaker that would impose either the proposed modified uptick rule or the proposed uptick rule.²⁴

Similar to a circuit breaker that would impose either the proposed modified uptick rule or the proposed uptick rule, as discussed in the Proposal, a circuit breaker that would impose the alternative uptick rule would be triggered by an intraday decline in the price of an individual equity security by a set percentage (for example 10, 15 or 20 percent) from the prior day's closing price.²⁵ A circuit breaker that would impose the alternative uptick rule would include the same exceptions as discussed with respect to the market-wide permanent alternative uptick rule.²⁶ In addition, like the market-wide permanent alternative uptick rule, discussed above, a circuit breaker that would impose the alternative uptick rule would restrict short selling to a greater extent and would likely be easier to implement than a circuit breaker that would impose either the proposed modified uptick rule or the proposed uptick rule. However, a circuit breaker that would impose the alternative uptick rule would be less restrictive than a circuit breaker halt rule, which would temporarily prohibit short selling in a particular security if there is a severe decline in price in that security.²⁷

²³ See Proposal, 74 FR at 18081, 18082.

²⁴ See id.

²⁵ See Proposal 74 FR at 18069.

²⁶ See infra discussion in Section II.B., "Exceptions."

²⁷ See Proposal, 74 FR at 18066.

B. Exceptions

In the Proposal, the proposed modified uptick rule and the proposed uptick rule included types of short sales that would not be subject to the requirements of the proposed rules.²⁸ For example, the proposed modified uptick rule would require that a trading center's policies and procedures be reasonably designed to permit the execution or display of a short sale order marked "short exempt" without regard to whether the order would otherwise be impermissible.²⁹ The proposed uptick rule included a number of exceptions to its price test restrictions on short sales that, for the most part, paralleled the provisions in the proposed modified uptick rule relating to short sale orders that could be marked "short exempt."³⁰

We believe that, because the alternative uptick rule would be most similar to the proposed modified uptick rule, in that both approaches would use the current national best bid as their reference point, the rationale discussed in the Proposal for the "short exempt" marking provisions under the proposed modified uptick rule would be similarly applicable to the alternative uptick rule.³¹ Whether requiring a policies and procedures approach, or a prohibition approach, the alternative uptick rule could also include "short exempt" provisions or exceptions for: (i) a seller's delay in delivery as set forth in Section III.A.2.b of the Proposal;³² (ii) odd lots,

²⁸ See Proposal, 74 FR at 18054 – 18059, 18062 – 18064.

²⁹ See Proposal, 74 FR at 18054 – 18059.

³⁰ See Proposal, 74 FR at 18062 – 18064.

³¹ We have received comments noting that a more restrictive form of price test or circuit breaker would require additional exemptions. See e.g., Unofficial Copy of Roundtable Transcript, available at <http://www.sec.gov/spotlight/shortsales.htm> (statement by Lawrence Leibowitz, Group Executive Vice President, Head of US Markets and Global Technology, NYSE Euronext). See also letter from the Investment Company Institute, dated June 19, 2009.

³² 74 FR at 18055.

as set forth in Section III.A.2.c. of the Proposal;³³ (iii) domestic arbitrage, as set forth in Section III.A.2.d. of the Proposal;³⁴ (iv) international arbitrage, as set forth in Section III.A.2.e. of the Proposal;³⁵ (v) over-allotments and lay-off sales, as set forth in Section III.A.2.f. of the Proposal;³⁶ (vi) transactions on a VWAP basis, as set forth in Section III. A.2.h. of the Proposal;³⁷ and (vii) riskless principal transactions,³⁸ as set forth in Section III.A.2.g. of the Proposal.³⁸ As we recognize that the alternative uptick rule would be more restrictive than the proposed modified uptick rule, we also renew our request for comment on the importance of a market maker exception. We ask for comment on the scope of any such exception and the conditions that should be imposed to ensure that it is used only for bona fide market making.

III. REQUEST FOR COMMENT

A. General Request for Comment

We renew our request for comment on all aspects of the alternative uptick rule. Commenters are requested to provide empirical data in support of any arguments and/or analyses. In addition to the questions posed above, commenters are welcome to offer their views on any other matter raised by the alternative uptick rule and the Proposal. With respect to any comments, we note that they are of the greatest assistance to our rulemaking initiative if

³³ Id.

³⁴ 74 FR at 18056.

³⁵ Id.

³⁶ 74 FR at 18057.

³⁷ 74 FR at 18058.

³⁸ 74 FR at 18057. We note that the proposed uptick rule included exceptions that paralleled the “short exempt” marking provisions for the proposed modified uptick rule, as well as three exceptions specific to a price test based on last sale price. In addition, one exception (error in marking a short sale) was specific to a prohibition approach, rather than a policies and procedures approach, and would be applicable to the alternative uptick rule if it were adopted with a prohibition approach. See Proposal, 74 FR at 18063.

accompanied by supporting data and analysis of the issues addressed in those comments and by alternatives to our proposals where appropriate. We note that while there were questions in the Proposal that were specific to the alternative uptick rule, the Proposal also included discussion and solicited comment throughout that may be relevant to consideration of the alternative uptick rule and we refer commenters to the Proposal.

B. Specific Comment Request

We renew our request for comment in response to the following specific questions that were originally published in the Proposal.³⁹ We request comment on the questions set forth under the “Supplemental Comment Request” below.

Renewal of Comment Request

1. Would the alternative uptick rule be more effective at preventing short selling, including potentially manipulative or abusive short selling, from being used as a tool to drive down the market or from being used to accelerate a declining market than the approach set forth in the proposed modified uptick rule or proposed uptick rule? If so, how? If not, why not?⁴⁰
2. What effect would the alternative uptick rule have on the benefits of short selling, such as providing price efficiency and liquidity?⁴¹
3. Would the alternative uptick rule be easier to program into trading and surveillance systems than the approach in the proposed modified uptick rule or proposed uptick rule? If so, why? If not, why not?⁴²

³⁹ See Proposal, 74 FR at 18072, 18081.

⁴⁰ See Proposal, 74 FR at 18072.

⁴¹ See *id.*

⁴² See *id.*

4. If adopted, should the alternative uptick rule be combined with a policies and procedures approach similar to that discussed under the proposed modified uptick rule or a prohibition approach similar to that discussed under the proposed uptick rule? What would be the advantages and disadvantages, including costs and benefits of each of these approaches as combined with the alternative uptick rule?⁴³
5. If the Commission were to adopt a circuit breaker rule, should the circuit breaker, when triggered, result in the alternative uptick rule? If so, why? If not, why not?⁴⁴

Supplemental Comment Request

1. How effective would the alternative uptick rule be at helping to prevent short selling, including potentially abusive or manipulative short selling, from being used as a tool for driving the market down or from being used to accelerate a declining market by exhausting all remaining bids at one price level? Please explain and provide empirical data in support of any arguments and/or analyses. Could the alternative uptick rule be modified to better meet these goals? If so, how? Please explain and provide empirical data in support of any arguments and/or analyses.
2. How would the alternative uptick rule affect short selling in an advancing market? How would the alternative uptick rule affect short selling in a declining market? Please explain and provide empirical data in support of any arguments and/or analyses.
3. To the extent that there are concerns regarding investor confidence based on the numerous requests for reinstatement of short sale price test restrictions, would adopting the alternative uptick rule help restore investor confidence? If so, why? If not, why not?

⁴³ See id.

⁴⁴ See Proposal, 74 FR at 18081.

Please explain and provide empirical data or other specific information in support of any arguments and/or analyses.

4. In addition to investor confidence and market volatility, we have stated that we are concerned about potentially abusive short selling. Would the alternative uptick rule help address potentially abusive short selling? If so, how? If not, why not? Please explain and provide empirical data in support of any arguments and/or analyses.
5. In the Proposal, we also noted that short selling may be used to illegally manipulate stock prices.⁴⁵ What impact, if any, would the alternative uptick rule have on short selling used to illegally manipulate stock prices? Please explain and provide empirical data in support of any arguments and/or analyses.
6. What impact, if any, would the alternative uptick rule have on “bear raids”? Please explain and provide empirical data in support of any arguments and/or analyses.
7. Would the alternative uptick rule be an appropriate short sale price test in the current decimals environment? Would the alternative uptick rule be more suitable than the proposed modified uptick rule or the proposed uptick rule in a decimals environment with multiple trading centers? Please explain and provide empirical data in support of any arguments and/or analyses.
8. How would trading systems and strategies used in today’s marketplace be affected by the alternative uptick rule? How might market participants alter their trading systems and strategies in response to the alternative uptick rule, if adopted?
9. What impact, if any, would the trading requirements of Regulation NMS have on implementing the alternative uptick rule?

⁴⁵ See id.

10. The proposed modified uptick rule and the proposed uptick rule have as their reference point for a permissible short sale the current national best bid, and the last sale price, respectively, in relation to the last differently priced national best bid, and the last differently priced sale price, respectively. In contrast, the alternative uptick rule would have as its reference point the current national best bid. Accordingly, the sequence of bids would not play a role in determining when short sales are permissible. How would removing bid or sale price sequencing from the requirements of a short sale price test restriction, if adopted, affect implementation costs, ongoing costs, the effectiveness of the restriction in achieving the Commission's goals, market liquidity, pricing efficiency, and investor confidence?
11. If we were to adopt the alternative uptick rule, would a two month implementation period following the effective date of the alternative uptick rule be appropriate? Would a shorter or longer implementation period be more appropriate for the alternative uptick rule? Please explain.
12. Because the alternative uptick rule would not require monitoring of the sequence of bids or last sale prices (i.e., whether the current national best bid or last sale price is above or below the previous national best bid or last sale price), could this type of rule be implemented more quickly than the proposed modified uptick rule or the proposed uptick rule?
13. What would be the impact of the alternative uptick rule on off-exchange trading? Specifically, would there be any special concerns with respect to off-exchange trading in connection with the alternative uptick rule, such as systems and/or implementation issues, or additional or alternative provisions that should be considered?

14. As discussed above, if adopted with a policies and procedures approach, similar to the proposed modified uptick rule, the following short sale orders could be marked as “short exempt” and could, therefore, be exempt from the requirements of the alternative uptick rule: (i) a seller’s delay in delivery as set forth in Section III.A.2.b of the Proposal;⁴⁶ (ii) odd lots, as set forth in Section III.A.2.c. of the Proposal;⁴⁷ (iii) domestic arbitrage, as set forth in Section III.A.2.d. of the Proposal;⁴⁸ (iv) international arbitrage, as set forth in Section III.A.2.e. of the Proposal;⁴⁹ (v) over-allotments and lay-off sales, as set forth in Section III.A.2.f. of the Proposal;⁵⁰ (vi) transactions on a VWAP basis, as set forth in Section III. A.2.h. of the Proposal;⁵¹ and (vii) riskless principal transactions as set forth in Section III.A.2.g. of the Proposal.⁵² In addition, if adopted with a prohibition approach, the exception specific to the proposed uptick rule for error in marking a short sale, as set forth in Section III.B.2.a. of the Proposal,⁵³ would also apply to the alternative uptick rule. Are these “short exempt” provisions or exceptions necessary or appropriate? If so, why? If not, why not?
15. Are there other “short exempt” provisions or exceptions that should apply to the alternative uptick rule? If so, please explain. Should a general market maker exception

⁴⁶ 74 FR at 18055.

⁴⁷ Id.

⁴⁸ 74 FR at 18056.

⁴⁹ Id.

⁵⁰ 74 FR at 18057.

⁵¹ 74 FR at 18058.

⁵² 74 FR at 18057.

⁵³ 74 FR at 18063.

apply to the alternative uptick rule? Should an options market maker exception apply?

What should be the scope of any such exceptions? Should additional conditions apply to a market maker exception under the alternative uptick rule to ensure that only bona fide market making is captured by the exception?

16. The Proposal includes a discussion of estimated annual reporting and recordkeeping burdens with respect to provisions of the proposed rules that would require a new “collection of information” under the Paperwork Reduction Act of 1995.⁵⁴ We invite comment on these estimates with respect to the alternative uptick rule.⁵⁵
17. The Proposal includes a discussion of estimated costs and benefits of the proposed rules.⁵⁶ We are sensitive to the costs and benefits of the alternative uptick rule, and encourage commenters to discuss any additional costs or benefits specific to the alternative uptick rule and/or beyond those discussed in the Proposal, as well as any reduction in costs. What would be the costs and benefits of the alternative uptick rule versus the proposed modified uptick rule, the proposed uptick rule, the circuit breaker halt rule or a circuit breaker triggering either the proposed modified uptick rule or the proposed uptick rule? What would be the general costs and benefits of short sales being subject to the alternative uptick rule? Commenters should provide analysis and

⁵⁴ 44 U.S.C. 3501 *et seq.* *See* Proposal, 74 FR at 18084 – 18090.

⁵⁵ Persons submitting comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090, with reference to File No. S7-08-09. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, with reference to File No. S7-08-09, and be submitted to the Securities and Exchange Commission, Office of Investor Education and Advocacy, 100 F Street, NE, Washington, DC 20549-0213. As OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

⁵⁶ *See* Proposal, 74 FR at 18090 – 18103.

data to support their views of the costs and benefits associated with the alternative uptick rule.

18. The Proposal includes a discussion of whether the proposed rules would promote efficiency, competition, and capital formation.⁵⁷ We request comment on whether the alternative uptick rule would likely promote efficiency, capital formation, and competition.
19. The Proposal includes an Initial Regulatory Flexibility Analysis (“IRFA”), in accordance with the provisions of the Regulatory Flexibility Act,⁵⁸ regarding the proposed rules.⁵⁹ We solicit written comments regarding our IRFA analysis. In particular, the Commission seeks comment on the number of small entities that would be affected by the alternative uptick rule. We request that commenters provide empirical data to quantify the number of small entities that could be affected by the proposed amendments. We request comment on whether the proposed amendments would have any effects that we have not discussed. We also request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

⁵⁷ See Proposal, 74 FR at 18103 – 18104.

⁵⁸ 5 U.S.C. 603.

⁵⁹ See Proposal, 74 FR at 18105 – 18107.

20. A number of commenters stated that their first preference would be for the Commission not to adopt any of the short sale regulations set forth in the Proposal, and this option along with the alternative uptick rule and all other options discussed in the Proposal are under active consideration. We request comments on the position that the best result for investors and the markets would be for the Commission not to adopt any additional short selling regulations at this time. If the Commission determines that additional short selling regulations are necessary, what option, including the alternative uptick rule, would produce the best result for investors and the markets?

By the Commission.

Florence E. Harmon
Deputy Secretary

Dated: August 17, 2009