SUTHERLAND

1275 Pennsylvania Avenue, NW
Washington, DC 20004-2415
202.383.0100 Fax 202.637.3593
www.sutherland.com

ATLANTA
AUSTIN
HOUSTON
NEW YORK
TALLAHASSEE
WASHINGTON DC

STEVEN B. BOEHM
DIRECT LINE: 202.383.0176
E-mail: steven.boehm@sutherland.com

CYNTHIA M. KRUS
DIRECT LINE: 202.383.0218
E-mail: cynthia.krus@sutherland.com

July 31, 2008

The Honorable Christopher Cox
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Emergency Order Pursuant to Section 12(k)(2) of the Securities Exchange Act of 1934 Taking Temporary Action to Respond to Market Developments
File No. S7-20-08

Dear Chairman Cox:

We are submitting this letter on behalf of our clients in the business development company ("BDC") industry. Our clients are very concerned about pervasive, abusive and manipulative short sale practices targeting the BDC industry.

As you know, the Small Business Investment Incentive Act of 1980 (the "1980 Amendments") added BDCs as a new category of closed-end investment company under the Investment Company Act of 1940 (the "1940 Act"). Interestingly, the 1980 Amendments were enacted to alleviate a credit crisis in the capital markets not dissimilar to today's current credit crisis. Specifically, the 1980 Amendments were designed to encourage the establishment of public vehicles that invest in private equity in order to increase the flow of capital to small, growing businesses that lacked access to traditional sources of financing. In the 28 years since the adoption of the 1980 Amendments, the Congressional vision for BDCs has been fulfilled as BDCs have collectively invested in thousands of small, growing businesses across the United States.

Given the Congressional intent behind the creation of the BDC, we believe that the Securities and Exchange Commission (the "Commission") should act to curtail the activities of abusive short sellers. These market participants interfere with the flow of capital to small, growing businesses by continuously attacking BDCs through the dissemination of false or misleading information and other abusive and manipulative practices in an effort to overwhelm the market with negative information thereby creating a panic and driving the stock price of BDCs down solely for their pecuniary benefit.

BDCs and their shareholders have long suffered from abusive short sale practices over the years and an increasing number of BDCs have seen their short interest rise in the last year, particularly after the elimination of the "Uptick Rule."[1] Short selling activity has significantly driven down the share prices of BDCs, and the shares of nearly all large BDCs currently trade below their respective net asset values ("NAV"). Historically, BDCs have traded at substantial premiums to NAV; however, abusive short sellers recognize that if they can keep the stock prices of BDCs below NAV, they can cut off access to capital and essentially drive BDCs out of business – a short sale profit scheme that has been enabled by a regulatory regime that has not recognized the magnitude of short selling abuses.[2]

Our BDC clients believe that it is the mission of the Commission to act to protect BDCs and their shareholders from such abusive short sale practices. Unlike other federal securities laws which merely impose disclosure requirements on operating companies in an effort to protect shareholders, the 1940 Act also imposes substantive requirements on the operations of investment companies. Thus, unlike the other federal securities laws, the 1940 Act empowers the Commission to regulate the activities of investment companies <u>in the public interest</u> and <u>for the protection of shareholders</u>.

Our BDC clients commend the Commission for its recent adoption of the emergency order (the "Emergency Order") in an effort to address the issue of market volatility and curb the naked short selling of the stock of 19 financial institutions.[3] However, we believe the Commission should consider taking additional measures in order to address the current capital markets crisis for the benefit of all public companies, including BDCs, and their shareholders rather than a select few. Accordingly, our BDC clients urge the Commission to consider the following actions:

- Expand the Emergency Order to all public companies, including BDCs;

---

[1] The Uptick Rule was a rule that was designed to prevent short selling from being used to hammer down "bear raids" and prevent short sellers from accelerating declines by exhausting bid supplies and forcing prices lower. The SEC rescinded the Uptick Rule in July 2007. <u>See</u> SEC Exchange Act Release No. 34-55970, 72 FR 36348 (July 3, 2007).

[2] <u>See</u> Exhibits A-D attached hereto regarding data on the short interest in the following ten BDCs: (1) American Capital, Ltd.; (2) Allied Capital Corporation; (3) Apollo Investment Corporation; (4) Ares Capital Corporation; (5) Capital Southwest Corporation; (6) BlackRock Kelso Capital Corporation; (7) MVC Capital, Inc.; (8) Prospect Capital Corporation; (9) Gladstone Capital Corporation; and (10) MCG Capital Corporation.

[3] <u>See</u> SEC Exchange Act Release Nos. 58166 (July 15, 2008) (adopting the Emergency Order) and 58190 (July 18, 2008) (amending the original Emergency Order to clarify that the borrow and arrangement-to-borrow requirement of the Emergency Order does not apply to certain bona fide market makers). The Emergency Order requires an individual or firm to borrow shares or arrange to borrow shares of the 19 institutions covered by the Emergency Order before effecting a short sale.

- Reinstate the "Uptick Rule" to inhibit the ability of short sellers to drive down stock prices in a vulnerable market;
- Implement a disclosure regime for short positions; and
- Crack down on firms or individuals that engage in abusive and manipulative stock trading practices by disseminating false or misleading information about BDCs in an effort to drive down stock prices.

I. Extend the Application of the Emergency Order to *All Companies*

Consistent with various public statements by Chairman Cox on behalf of the Commission, the Emergency Order should apply to the stocks of all public companies, including BDCs.[4] A mass implementation of the Emergency Order is critical in order to preserve the integrity of the U.S. capital markets given that short sales, especially naked short sales, are at record levels[5] and the dissemination of false and misleading information has become a common technique for short sellers. Such a mass implementation would particularly benefit smaller public companies, such as BDCs, that are particularly susceptible to abusive and manipulative short sale practices as a result of their size, liquidity concerns and certain regulatory constraints. Both the U.S. Chamber of Commerce and The Financial Services Roundtable support the extension of the Emergency Order.[6]

---

[4] During testimony delivered before the U.S. Senate Committee on Banking, Housing, and Urban Affairs on July 15, 2008, Chairman Cox stated:

> Today the Commission will issue an order designed to enhance protections against naked short selling in the securities of primary dealers, Fannie Mae and Freddie Mac. The emergency order will provide that all short sales in the securities of primary dealers, Fannie and Freddie be subject to a pre-borrow requirement. *In addition to this emergency order, we will undertake a rulemaking to address these same issues across the entire market.* (emphasis added)

Recent Developments in U.S. Financial Markets and Regulatory Responses to Them: Hearing Before the U.S. Senate Committee on Banking, Housing, and Urban Affairs (July 15, 2008) (statement of Christopher Cox, Chairman, U.S. Securities and Exchange Commission), *available at* http://banking.senate.gov/public/_files/CoxSECtestimony71508FINAL.pdf [hereinafter Chairman Cox Senate Testimony]; See also Christopher Cox, *What the SEC Really Did on Short Selling*, WALL ST. J., July 24, 2008, at A15 (noting that "[w]hen the SEC announced the order, I also made clear my intention to ask the full commission to apply operational protections against abusive naked shorting to the broader market").

[5] See Exhibits E-H attached hereto which set forth the following information since the elimination of the Uptick Rule in July 2007: (i) Exhibit E: NYSE Short Interest as of June 13, 2008; (ii) Exhibit F: NYSE Short Interest as a Percent of Total Shares Outstanding; (iii) Exhibit G: NYSE Short Sales of a Percent of Total Volume; and (iv) Exhibit H: CBOE Volatility Index.

[6] In a letter to Chairman Cox dated July 18, 2008, The Financial Services Roundtable urged the Commission to "consider broadening the scope of the Order to cover the stocks of all financial services companies." See Letter from the Financial Services Roundtable to Christopher Cox, Chairman, U.S. Securities Exchange Commission (July 18, 2008), *available at* http://www.fsround.org/policy/regulatory/sec.htm. Similarly, in a letter to Chairman Cox dated July 18, 2008, the U.S. Chamber of Commerce urged the Commission to "extend the emergency order as necessary as well as to appropriately expand its scope beyond the 19 firms to cover additional financial institutions with similar issues." See Letter from U.S. Chamber of Commerce to Christopher Cox, Chairman, U.S. Securities Exchange Commission (July 18, 2008), *available at* http://www.sec.gov/comments/s7-20-08/s72008.shtml.

The extension of the Emergency Order to cover all public companies is especially important given the fact that smaller public companies with thinner trading volumes, such as BDCs, are even more vulnerable to the effects of naked short selling and other abusive techniques. For example, our clients have experienced short sellers conspiring to sell shares of a company contemporaneously, overwhelming the market, driving down the stock price and setting off a chain reaction of retail stop loss orders, causing unsuspecting retail shareholders to sell off their shares. In such circumstances, it is not uncommon to see such a BDC trade two to three times its average trading volume and decline five to ten percent in price on such a day, many times with no discernible trigger. These abusive short sellers attack a stock at the market opening and at the market closing to effectively "paint the tape" and cause maximum damage to the share price. Given the trillion dollar unregulated hedge fund industry and its lack of transparency, these abusive techniques have now become commonplace even with respect to large public companies whose stocks are heavily traded. Of course, it is quite easy for short sellers to successfully use these techniques against companies with smaller market capitalizations, such as BDCs, because less activity is needed to move the stock price. Similar to concerns recently raised by the American Bankers Association that short sellers will now turn their attention to smaller banks and bank holding companies not covered by the Emergency Order, BDCs also fear that the inability of short sellers to short the stock of certain companies will lead to a heightened interest in the BDC industry and an even larger increase in short activity.[7]

Short sellers have discovered how to take advantage of the regulations governing BDC equity offerings in an effort to "choke off" a BDC's access to capital by driving its share price below NAV. Ironically, BDCs are even more susceptible to abusive and manipulative short sale practices than operating companies due to the stringent rules and regulations they must comply with under the 1940 Act. For example, BDCs may only, except in certain limited circumstances, sell shares of their common stock when that stock is trading at or above NAV. Short sellers can prey upon BDCs by privately and publicly disseminating false statements, half-truths and other misinformation throughout the market with the intention to push stock prices below NAV. They know that if BDCs can no longer raise capital in the public markets, they are unable to grow and are likely to run into liquidity problems, which, in turn, further exacerbate their financial situation by creating a crisis of confidence in their investor base which is generally comprised of retail shareholders.

Abusive short sellers have become so adept at their craft that BDCs trading below NAV are not able to complete rights offerings to their existing shareholders without fear of significant share price deterioration and significant shareholder dilution. Faced with an inability to raise new equity in the market due to share prices below NAV, several BDCs chose to embark on rights offerings in 2008 to raise new capital. The share prices of the BDCs were immediately attacked by short sellers in an effort to drive the share prices down so that, if the BDC were able

---

[7] See Letter from the American Bankers Association to Christopher Cox, Chairman, U.S. Securities Exchange Commission (July 17, 2008), *available at* http://www.sec.gov/comments/s7-20-08/s72008.shtml. See also Christopher Twarowski, *SEC Order on Naked Short Selling Takes Effect*, WASH. POST, July 22, 2008, at D-1.

to complete the rights offering, it would be completed at a low price resulting in further shareholder dilution.[8]

While the 1940 Act and Commission efforts properly protect BDC shareholders from self-interested misdeeds by management, equal protection is not being provided from abusive short sale practices. Thus, it is arguable that the 1940 Act, which was created to protect shareholders, is instead being used as a tool of the short sellers to harm them. Our BDC clients believe that the current chasm between the current regulatory structure and the actions of the short sellers is contrary to the best interests of their shareholders. The solution is a relatively simple one: action should be taken against these short sellers such as adding BDCs to the Emergency Order or, perhaps, the Commission should prohibit short sales of BDC stocks entirely. Absent such measures, the Commission may need to release BDCs from the yoke of Section 23(b)'s general requirement that BDCs not issue shares below NAV.[9]

II. Reinstate the "Uptick Rule"

Our BDC clients believe that the reinstatement of the "Uptick Rule," which the Commission rescinded in July 2007, would also serve to address the current market volatility and related abusive and manipulative short sale practices. The Uptick Rule was in effect for over 70 years and, during that time, it curtailed abusive short selling and manipulative conduct. The Uptick Rule was designed to prevent short selling from being used to hammer down "bear raids" and to prevent short sellers from accelerating declines by exhausting bid supplies and forcing prices lower.

As evidenced by the charts set forth in Exhibits E-H attached hereto, there has been a substantial increase in the number of shares marked short on the New York Stock Exchange following the elimination of the Uptick Rule in July 2007. Many believe that the elimination of the Uptick Rule has contributed to the current market volatility.[10] In response to this spike in

---

[8] See Exhibit I attached hereto which sets forth an analysis of transferable rights offerings completed by BDCs during 2008.

[9] Section 23(b) of the 1940 Act, which Section 63 of the 1940 Act makes applicable to BDCs, provides that,

> No registered closed-end company shall sell any common stock of which it is the issuer at a price below the current net asset value of such stock, exclusive of any distributing commission or discount (which net asset value shall be determined as of a time within forty-eight hours, excluding Sundays and holidays, next preceding the time of such determination), except (1) in connection with an offering to the holders of one or more classes of its capital stock; (2) with the consent of a majority of its common stockholders; (3) upon conversion of a convertible security in accordance with its terms; (4) upon the exercise of any warrant outstanding on the date of enactment of this Act [enacted Aug. 22, 1940] or issued in accordance with the provisions of section 18(d) [15 USCS § 80a-18(d)]; or (5) under such other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.

See 15 USCS § 80a-23(b).

[10] See, e.g. Aaron Lucchetti and Peter A. McKay, *Rule Change Ticks Off Some Traders*, WALL ST. J., August 14, 2007; *How to Handle the 'Uptick Rule' Removal*, thestreet.com, Aug. 2, 2007, *available at*

short interests and the recent market volatility, market experts and legislators alike have criticized the repeal of the Uptick Rule and are calling for its reinstatement.[11]

Without the protection of the Uptick Rule, short sellers are free to destroy the value of companies by creating a crisis of confidence in their investor base through the use of abusive and manipulative practices in an effort to overwhelm the market, create a panic and drive down stock prices. BDCs have been at the bleeding edge of short activity because short sellers prey on the fears of investors regarding valuation and portfolio quality and drive down stock prices of BDCs which, in turn, pushes the stock price below the BDC's NAV and cuts off its access to capital.

Our BDC clients urge the Commission to examine the effects of the repeal of the Uptick Rule on the market since July 2007. The decision to rescind the Uptick Rule was prompted by the Commission's view that market changes had rendered the rule less effective and less essential. It is apparent that today's market is significantly different than the market the Commission examined when determining whether to maintain the Uptick Rule during its pilot program conducted between May 2005 and August 2007. In fact, when examining whether or not to rescind the Uptick Rule, the Commission cited the need for "regulatory simplicity and uniformity" and lack of specific evidence of manipulative or abusive short sale practices.[12] However, today's market is much more volatile as a result of a variety of factors, including abusive and manipulative short sale practices, and, in fact, is similar to the type of declining market that existed in 1938 when the rule was first adopted.[13]

Our BDC clients urge the Commission to reinstate the Uptick Rule or a similar requirement for an upward movement of a stock price as a prerequisite to a short sale. We believe that the reinstatement of the Uptick Rule coincides with other market protections that the Commission is currently considering for the broader market, including the elimination of the "reasonable grounds" alternative under Regulation SHO.[14] To the extent the Commission

---

http://www.thestreet.com/story/10371933/1/how-to-handle-the-uptick-rule-removal.html?puc=relatedarticle; Edward D. Herlihy and Theodore A. Levine, Wachtell, Lipton, Rosen & Katz, *It's Time for the SEC to Constrain Abusive Short Selling*, July 1, 2008, *available at* http://abajournal.com/files/July_1_client_memo.pdf [hereinafter Wachtell Memo].

[11] Id. On July 16, 2008, U.S. Representative Gary Ackerman (D-NY), a senior member of the House Financial Services Committee, introduced legislation that would reinstate the Uptick Rule. See H.R. 6517, 110th Cong. (2008).

[12] SEC Exchange Act Release No. 34-55970, 72 FR 36348 (July 3, 2007).

[13] Wachtell Memo, *supra* note 10.

[14] See Christopher Cox, *What the SEC Really Did on Short Selling*, The Wall Street Journal, July 24, 2008, at A15. In an op-ed piece in The Wall Street Journal, Chairman Cox noted that,

> Although the Commission's order was issued under emergency authority in unusual market conditions, it is based on several years of experience and analysis. In 2004, the SEC adopted Regulation SHO to attack the problem of naked shorting. It requires broker-dealers, before they accept short sale orders or effectuate short sales in their own accounts, to first borrow the security to be shorted, or enter into a contract to borrow it. But Regulation SHO also offers an alternative

determines to modify Regulation SHO to eliminate the "reasonable grounds" alternative as suggested by Chairman Cox, the BDC industry would be fully supportive of such regulatory actions to curb or prohibit naked short selling.[15]

III. Implement a Requirement to Disclose Short Positions

The non-disclosure of significant short positions gives the market a false and misleading impression of supply and demand in the stock of short sellers' target companies. In order to improve the transparency of significant short selling and prevent the potential for abuse, our BDC clients believe that the Commission should consider adopting a disclosure regime similar to that recently implemented by the U.K. Financial Services Authority (the "FSA"). The new FSA rules require a firm or individual to disclose all significant short positions in stocks admitted to trading on prescribed markets which are undertaking rights issues.

Chairman Cox recently discussed implementing a disclosure regime for short positions as one of the "other remedies" the Commission is exploring in addressing naked short selling abuses.[16] We urge the Commission to implement a disclosure regime similar to that implemented by the FSA whereby a short seller is required to disclose all significant short positions in stocks of all public companies, regardless of whether or not such companies are involved in a rights offering. Such a disclosure regime would put the market on notice regarding the intent of certain firms or individuals with respect to their interests in such companies as well as alert the market to the magnitude of such short interests and the efforts of short sellers to conspire in their attacks on companies.

IV. Investigate Manipulative Short Selling Activity

Our BDC clients support the Commission's recent announcement that it, along with other regulators, will begin examining actions taken by certain firms and individuals to disseminate false and misleading information intended to manipulate stock prices.[17] This is an important initiative in curbing the recent onslaught of lies, half-truths and rumors proliferated by short

---

> to these requirements if the broker has "reasonable grounds" to believe that the security can be borrowed. This could create opportunities for evasion. That has led the Commission to consider simply eliminating the "reasonable grounds" alternative altogether.

Id.

[15] Id.

[16] See Christopher Cox, *What the SEC Really Did on Short Selling*, WALL ST. J., July 24, 2008, at A15.

[17] Chairman Cox Senate Testimony, *supra* note 4 (noting that, "the Commission has joined forces with other securities regulators in undertaking industry-wide sweep examinations that will include hedge fund advisers, aimed at preventing the spread of intentionally false rumors to manipulate securities prices."); See also Press Release, U.S. Securities and Exchange Commission, Securities Regulators to Examine Industry Controls Against Manipulation of Securities Prices Through Intentionally Spreading False Information (July 13, 2008), *available at* http://www.sec.gov/news/press/2008/2008-140.htm.

sellers in an effort to manipulate the stock prices of their target companies. As Chairman Cox stated,

> False rumors can lead to a loss of confidence in our markets. Such loss of confidence can also lead to panic selling which may be further exacerbated by "naked" short selling. As a result, the prices of securities may artificially and unnecessarily decline well below the price level that would have resulted from the normal price discovery process. If significant institutions are involved, this chain of events can threaten disruption of our markets.[18]

Although short sellers vehemently deny that they traffic in false information, there are numerous examples of such behavior, most notably the recent examples of misinformation and rumors regarding Bear Stearns and Lehman Brothers.[19] Our BDC clients have first hand experience with the media campaigns short sellers undertake to spread misinformation and half-truths in an effort to damage the credibility of a company and its management team, so that the short seller may profit by driving down the stock price. These short sellers masquerade as "shareholder activists"; however, we do not believe their activities are aimed at protecting shareholders. To the contrary, we believe their goal is to destroy shareholder value. We urge the Commission to utilize all available enforcement powers to vigorously enforce rules to eliminate abusive and manipulative short sale practices.[20]

V. Conclusion

Given the current market conditions and the susceptibility of smaller public companies, such as BDCs, to the abusive and manipulative practices of short sellers, it appears to be the duty of the Commission to: (1) extend the Emergency Order to the stocks of all public companies, including BDCs; (2) reinstate the Uptick Rule; (3) implement a disclosure regime for short positions; and (4) crack down on firms or individuals that engage in abusive and manipulative stock trading practices. As stated in the Emergency Order, the Commission's mission is to "protect investors, maintain an orderly market and promote capital formation."[21] In order to

---

[18] SEC Exchange Act Release No. 58166 (July 15, 2008).

[19] In early March 2008, rumors spread about liquidity problems at Bear Stearns which eroded investor confidence in the firm. Recently, Lehman Brothers faced rumors that two major clients had stopped doing business with the firm. As a result, Lehman's stock declined almost 20% and only recovered somewhat when both clients denied the rumors.

[20] Although the Commission has recently proposed a naked short selling anti-manipulation rule, these new enforcement powers will prove ineffective in eliminating abusive naked short selling absent a robust and sustained enforcement program. See SEC Exchange Act Release No. 34-575119Mar. 17, 2008) (proposing an anti-fraud rule under the Securities Exchange Act of 1934 to address fails to deliver securities that have been associated with naked short selling). The proposed rule is intended to highlight the liability of persons that deceive specified persons about their intention or ability to deliver securities in time for settlement, including persons that deceive their broker-dealer about their locate source or ownership of shares and that fail to deliver securities by settlement date. Id.

[21] See SEC Exchange Act Release No. 58166 (July 15, 2008).

accomplish this mission, we urge the Commission to take immediate action to protect all participants in the market from abusive and manipulative short sale practices.

* * *

We very much appreciate your attention to this matter. If you have any questions or require additional information, please do not hesitate to call Steve Boehm at (202) 383-0176 or Cynthia M. Krus at (202) 383-0218.

Sincerely,

Steven B. Boehm

Cynthia M. Krus

EXHIBIT A

Top 10 BDCs By Market Capitalization - Short Interest Analysis

Ticker	Company Name	Market Capitalization*	Short Interest**	Total Shares Outstanding**	Short Interest as a Percent of Total Shares Outstanding	Stock Price/NAV***
ACAS	American Capital Strategies	$4,370	32,409,240	203,100,000	16.0%	0.77
ALD	Allied Capital	$2,345	18,999,498	166,472,000	11.4%	0.81
AINV	Apollo Investment Corp.	$2,183	15,358,404	119,894,000	12.8%	1.00
ARCC	Ares Capital Corp.	$1,066	8,169,036	72,924,800	11.2%	0.70
CSWC	Capital Southwest Corp.	$459	203,040	3,889,000	5.2%	0.84
BKCC	BlackRock Kelso Capital Corp.	$432	879,937	53,275,000	1.7%	0.65
MVC	MVC Capital Inc.	$336	1,953,272	24,297,100	8.0%	0.87
PSEC	Prospect Capital Corp.	$332	1,791,935	26,270,400	6.8%	0.92
GLAD	Gladstone Capital	$325	2,200,430	21,087,600	10.4%	1.13
MCGC	MCG Capital Corp.	$307	7,667,391	65,570,000	11.7%	0.35

Source: BB&T BDC Industry Research Reports.
**As of July 18, 2008.*
*** As of June 30, 2008 -- Sourced from Bloomberg.*
**** Stock Price as of July 24, 2008 and NAV as of March 31, 2008 - Sourced from Company Financials (NAV) and Bloomberg (Stock Prices)*

EXHIBIT B

BDC Short Interest as a Percentage of Total Shares Outstanding (as of June 30, 2008)

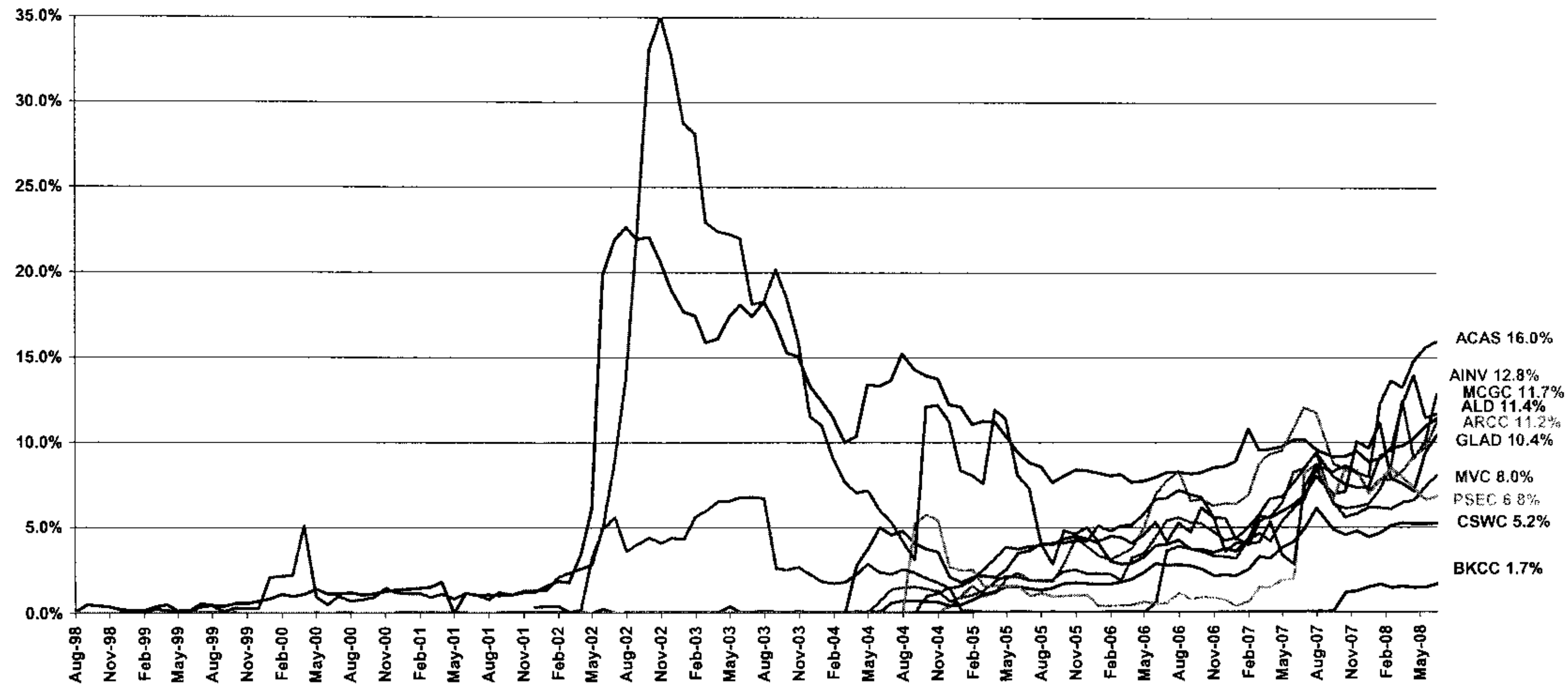


EXHIBIT C

Aggregate BDC Short Interest, by Shares and Percentage of TSOs (as of June 30, 2008)

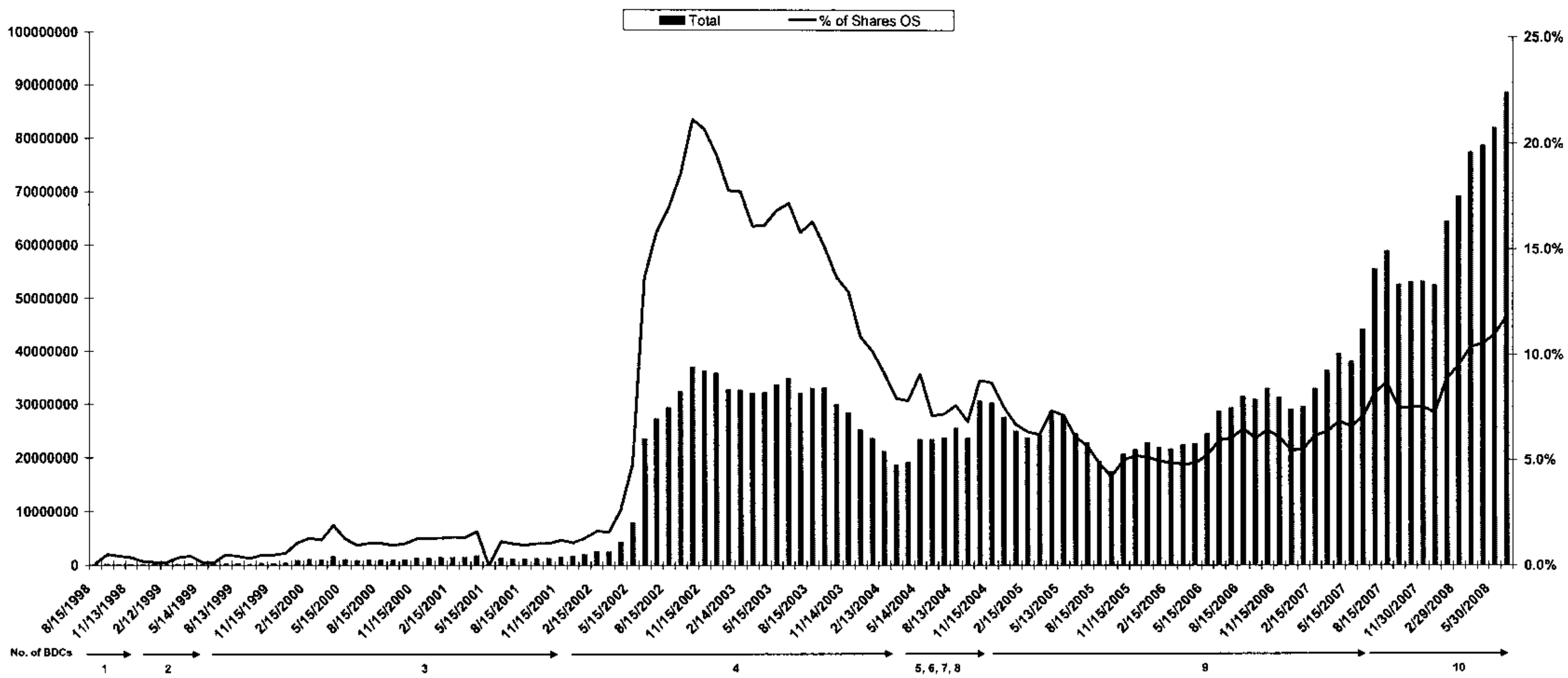


EXHIBIT D

Total BDC Short Interest (as of June 30, 2008)

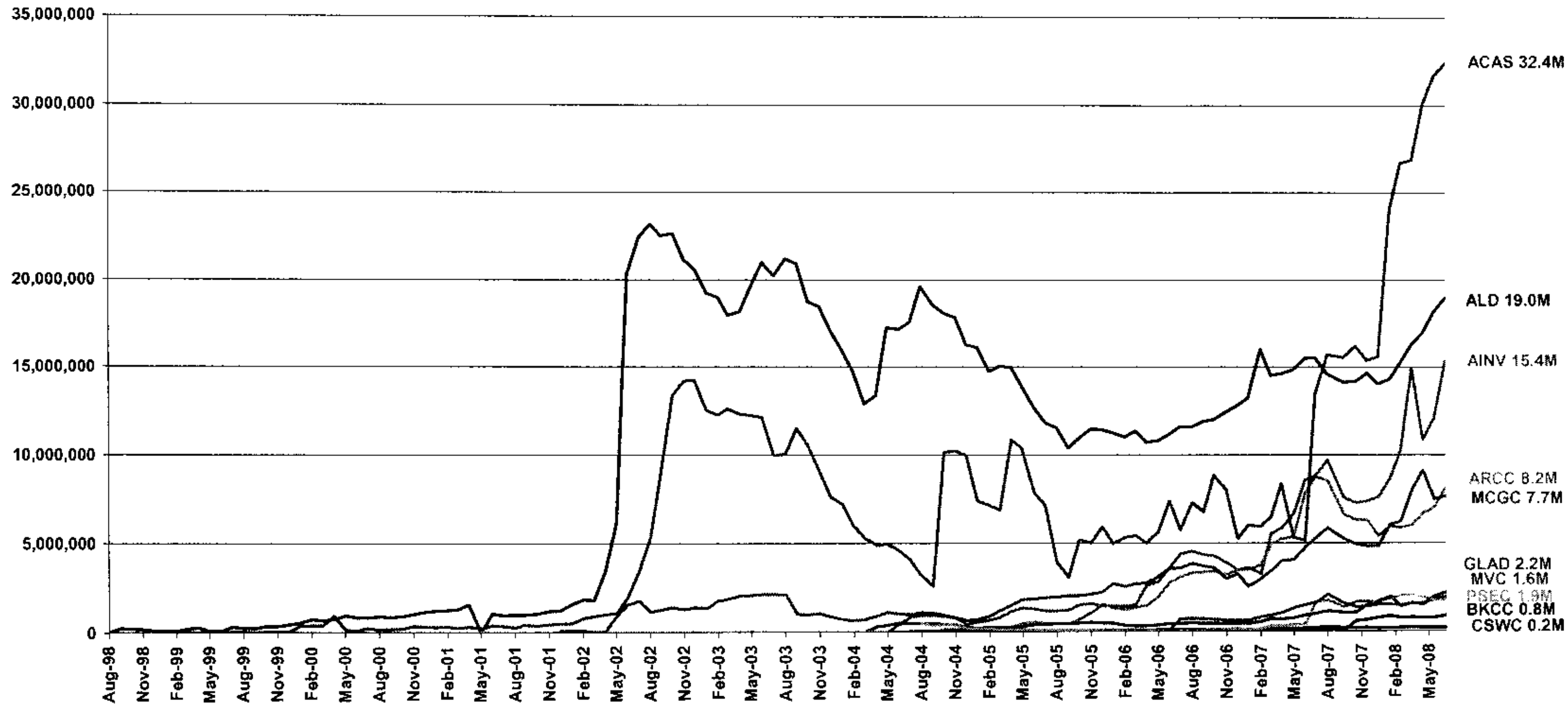


EXHIBIT E

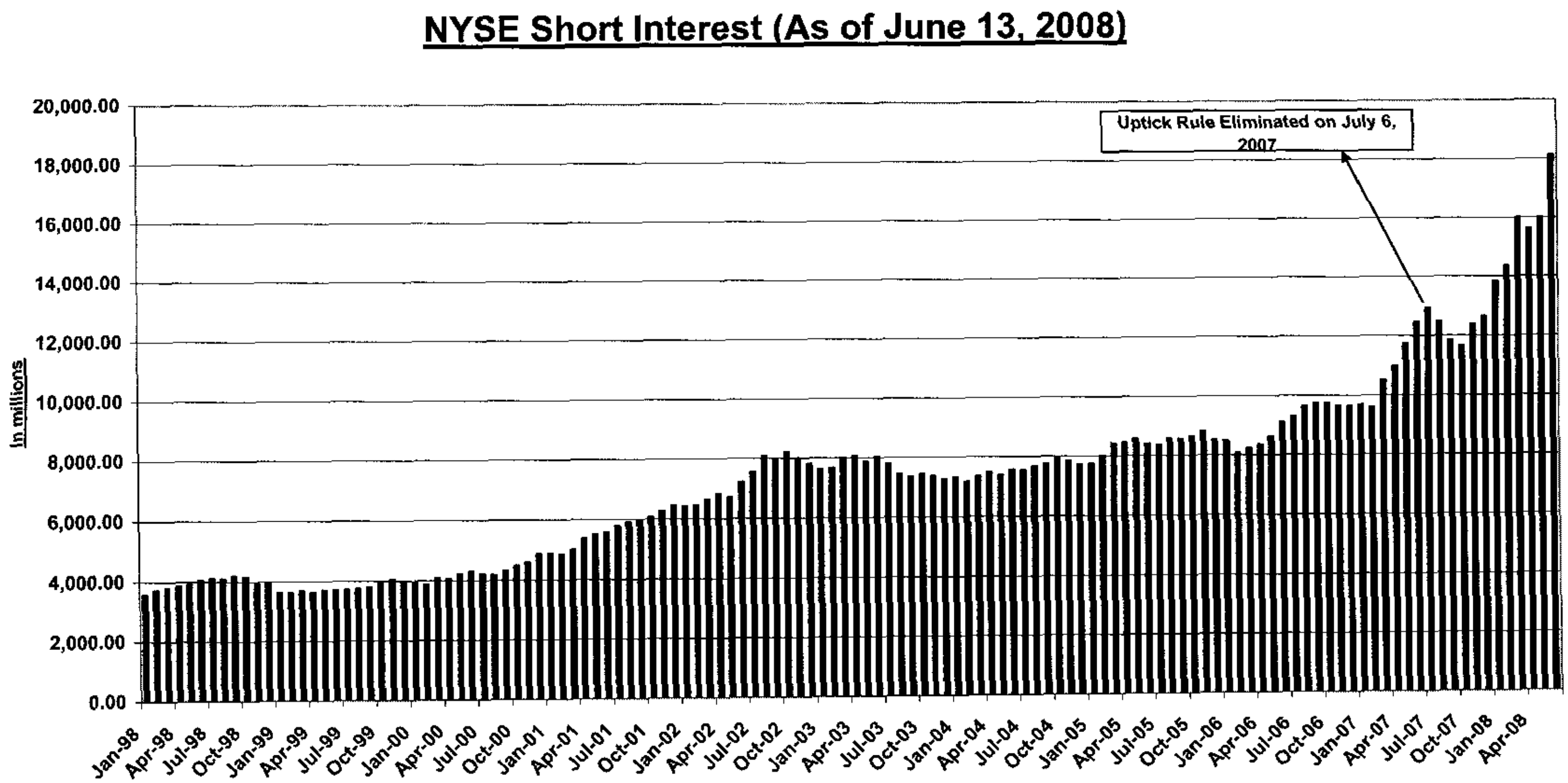
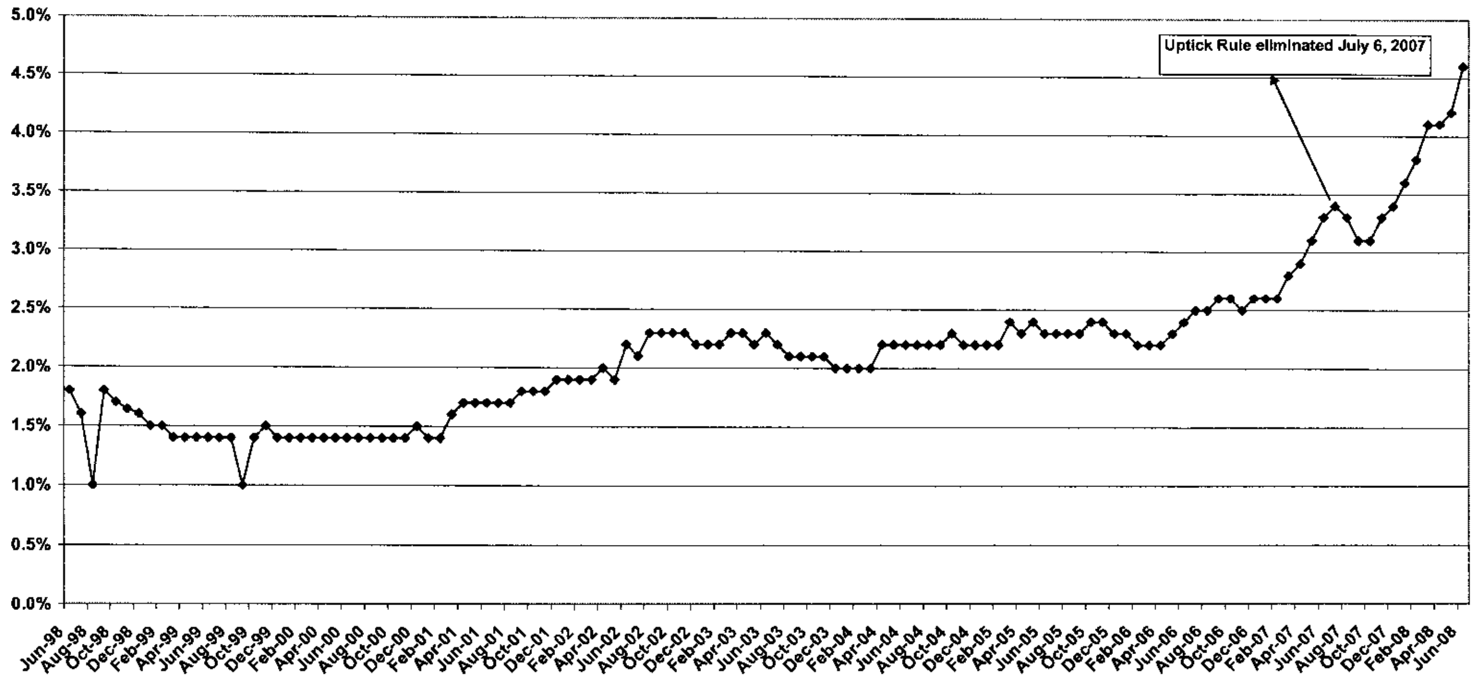

NYSE Short Interest (As of June 13, 2008)
Uptick Rule Eliminated on July 6, 2007
In millions
20,000.00
18,000.00
16,000.00
14,000.00
12,000.00
10,000.00
8,000.00
6,000.00
4,000.00
2,000.00
0.00
Jan-98 Apr-98 Jul-98 Oct-98 Jan-99 Apr-99 Jul-99 Oct-99 Jan-00 Apr-00 Jul-00 Oct-00 Jan-01 Apr-01 Jul-01 Oct-01 Jan-02 Apr-02 Jul-02 Oct-02 Jan-03 Apr-03 Jul-03 Oct-03 Jan-04 Apr-04 Jul-04 Oct-04 Jan-05 Apr-05 Jul-05 Oct-05 Jan-06 Apr-06 Jul-06 Oct-06 Jan-07 Apr-07 Jul-07 Oct-07 Jan-08 Apr-08

EXHIBIT F

NYSE Short Interest as a Percent of Total Shares Outstanding



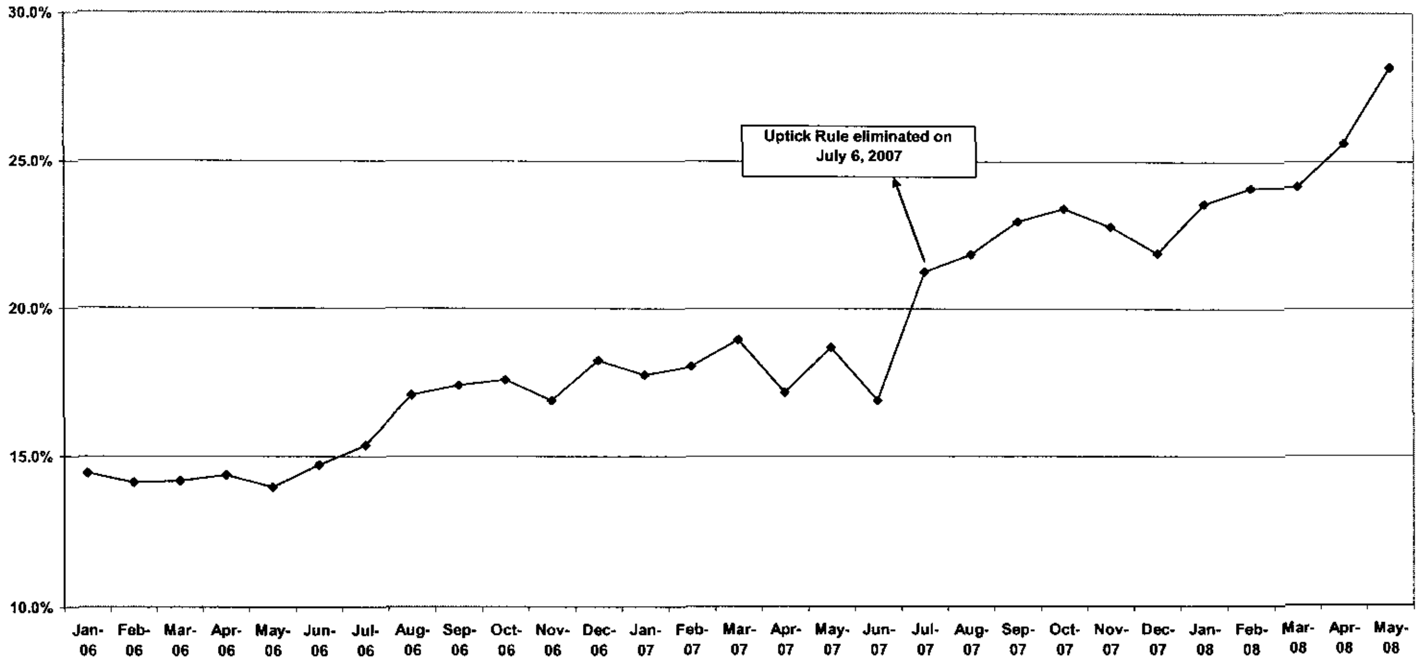
Source: Bloomberg

Graph represents total short interest on all NYSE-listed stocks as a percentage of their shares outstanding.

Average Short Interest as a percent of Total Shares Outstanding for 10 Years Prior to Elimination of the Uptick Rule (June 1998 - June 2007)	2.0%
Average Short Interest as a percent of Total Shares Outstanding for Year After Elimination of the Uptick Rule (July 2007 - June 2008)	3.7%
Increase in Short Interest as a Percent of Total Shares in the Period After the Elimination of the Uptick Rule	**84.8%**

EXHIBIT G

NYSE Short Sales as a Percent of Total Volume



Source: New York Stock Exchange

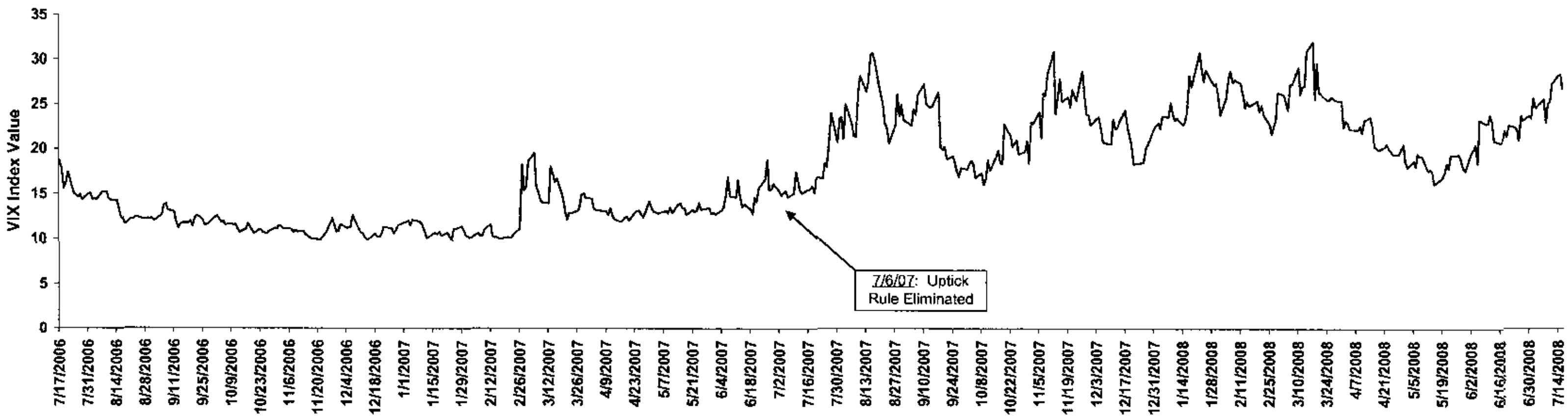
Graph represents total shares marked short on the NYSE for NYSE-listed companies as a percentage of total shares of NYSE-listed stocks traded on the NYSE.

Average NYSE Short Sales as a percent of Total Volume for 18 Months Prior to Elimination of the Uptick Rule (January 2006 - June 2007)	16.4%
Average NYSE Short Sales as a percent of Total Volume for 11 Months After Elimination of the Uptick Rule (July 2007 - May 2008)	23.6%
Increase in the Total Shares Marked Short on the NYSE in the Period After the Elimination of the Uptick Rule	**43.7%**

The Honorable Christopher Cox
July 31, 2008
Page 17

EXHIBIT H

VIX Value (2 Year Time Horizon)



Source: Bloomberg

VIX Definition: from the Chicago Board of Options Exchange:
The CBOE Volatility Index® (VIX®) is a key measure of market expectations of near-term volatility conveyed by S&P 500 stock index option prices. Since its introduction in 1993, VIX has been considered by many to be the world's premier barometer of investor sentiment and market volatility.

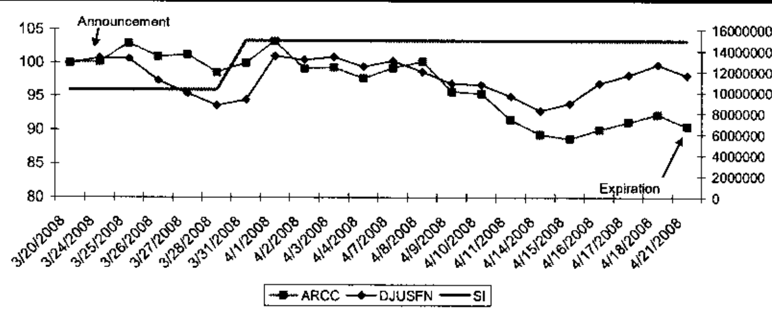
Average VIX value for Year Prior to Elimination of the Uptick Rule (7/17/06 - 7/5/07)	12.69
Average VIX value for Year After Elimination of the Uptick Rule (7/6/07 - 7/16/08)	22.79
Increase in the Implied Volatility of Options on the S&P 500 (VIX Index) In the Period After the Elimination of the Uptick Rule	**79.5%**

EXHIBIT I

Transferable Rights Offering Analysis

Company	Terms of Offering	Results of Offering			Trading Data
ARCC	Transferable rights offering	Offering Price	$	11.0016	
	Up to 24,228,030 shares	Shares requested*		31,175,000	
	1 right for every 3 shares	Shares sold		24,228,030	
	Priced at 95% of 10-day VWAP	Proceeds ($M)	$	266.5	

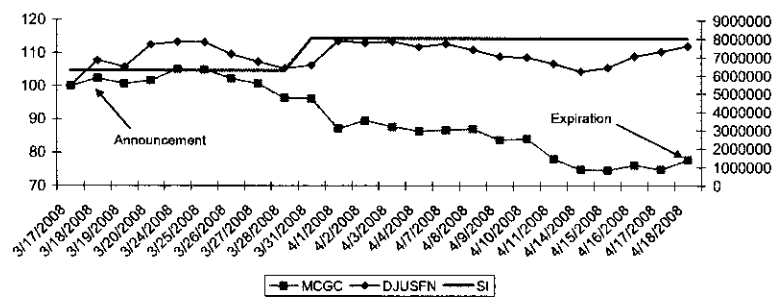
	Date	Price	Price/NAV
Prior to Announcement	3/20/2008	$12.57	0.81
Announcement Date	3/24/2008	$12.59	0.81
Subscription Period	3/25/08-4/21/08		
Expiration Date	4/21/2008	$11.38	0.75
ARCC Decline during offering		-$1.21	(0.06)
ARCC % Decline during offering		-9.6%	-7.4%
DJ US Financials Decline during offering		-2.6%	



* *Oversubscribed by 29%.*

Company	Terms of Offering	Results of Offering		
MCGC	Transferable rights offering	Offering Price	$	6.3600
	Up to 9,500,000 shares	Shares requested*		13,970,588
	1 right for every 7 shares	Shares sold		9,500,000
	Priced at 88% of 5-day VWAP	Proceeds ($M)	$	58.0

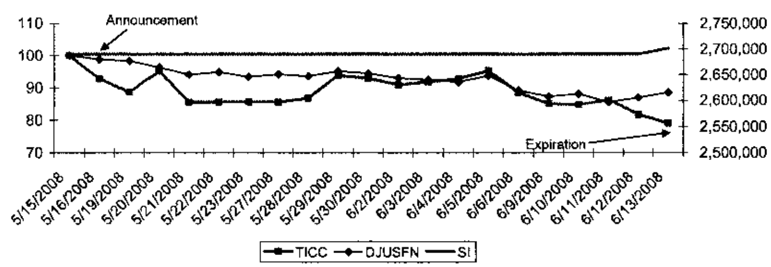
	Date	Price	Price/NAV
Prior to Announcement	3/17/2008	$9.45	0.74
Announcement Date	3/18/2008	$9.67	0.76
Subscription Period			
Expiration Date	4/18/2008	$7.35	0.59
MCGC Decline during offering		-$2.32	(0.17)
MCGC % Decline during offering		-24.0%	-22.4%
DJ US Financials increase during offering		4.2%	



* *Oversubscribed by 68%.*

Company	Terms of Offering	Results of Offering	
TICC	Transferable rights offering	Offering Price	N/A
	Up to 4,339,226 shares	Shares requested	N/A
	1 right for every 1 share	Shares sold	N/A
	Priced at 88% of 5-day VWAP	Proceeds	N/A

	Date	Price	Price/NAV
Prior to Announcement	5/16/2008	$6.59	0.61
Announcement Date (post close	5/16/2008	$6.59	0.61
Subscription Period	5/23/08-6/13/08		
Expiration Date	6/13/2008	N/A	N/A
TICC Decline during offering (to date)		-$0.51	
TICC % Decline during offering (to date)		-7.7%	
DJ US Financials Decline during offering (to date		-5.2%	



SUTHERLAND ASBILL & BRENNAN LLP