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August 21, 2008

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

Ms. Kathleen L. Casey  
Commissioner  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Ms. Elisse B. Walter  
Commissioner  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Mr. Luis A. Aguilar  
Commissioner  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Mr. Troy A. Paredes  
Commissioner  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**Re: Strengthening Regulation SHO To Protect All Investors From Naked Short Selling**

Dear Chairman Cox and Commissioners Casey, Walter, Aguilar and Paredes:

We are writing on behalf of public companies that strongly support proposals to strengthen rules that protect them from the abusive practice of naked short selling. In recent weeks, we have watched with approval as the Commission has taken important steps to protect some of our nation's largest financial institutions from the devastating impact of market manipulation and naked short selling. The emergency order issued on July 15, 2008, and extended on July 29, 2008, was clearly appropriate in light of recent market turmoil. The consequences of another failure among Wall Street's major banks—due not to lack of capital or liquidity, but to a loss of confidence stemming from illegal trading and rumor mongering—would have been dire. So we commend Chairman Cox and the entire Commission for moving quickly and taking a strong stand on this issue.

Moreover, we applaud the Commission's announced rulemaking intended to provide additional protections against abusive naked short selling in the broader market. As the Commission undertakes this initiative, we wanted to make sure that you have the perspective of public companies—other than the select financial institutions covered by the order—on this issue. In considering the rulemaking, we urge the Commission to incorporate the key elements of the emergency order into Regulation SHO and extend these protections to the securities of all



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public companies. We believe that doing so could effectively eliminate naked short selling and provide companies and investors alike with much needed relief from this significant threat to the integrity of our capital markets.

To be clear, we are not opposed to legal short selling. Legal short selling adds liquidity to the markets and provides an efficient mechanism for price discovery. However, naked short selling, as you know, is a crime. Naked short selling and failures to deliver (FTDs) adversely affect all public companies. At one time, it could be said that naked short selling presented a problem only for the smallest of public companies. As recent events have shown, any company can have its share price harmed by naked short selling, which generates what are in essence counterfeit shares and drives share price down unfairly, against market factors.

Since January 2005, Regulation SHO has required that the stock exchanges publish daily a list of companies with FTDs over a specified threshold. Since that time, more than 7,000 unique tickers have appeared on the Threshold List. On March 31, 2008, the mark-to-market value of FTDs was \$8.5 billion. Of that amount, \$6.1 billion was in Threshold securities. Based on this data, one must conclude that Regulation SHO, as currently in effect, is not working. Indeed, there are many companies that have been on the Threshold List for months and some for years. The thirteen-day limit for delivering shares sold short has obviously failed to secure settlement and seems incapable of being enforced.

In connection with the rulemaking initiative, we believe that the protections of the emergency order should be extended to all public companies. The first element of the order, the pre-borrow requirement, would go far towards limiting naked short selling and the FTDs that can result. The emergency order also requires delivery of all shares sold short by T+3, the normal settlement period, without exceptions. If extended to the securities of all public companies, this "hard delivery" rule would virtually eliminate the ability to engage in naked short selling. Finally, the efficacy of a revised Regulation SHO, as with any rule, will depend on meaningful enforcement muscle. For this reason, we would also recommend that the Commission enhance the mechanisms to enforce Regulation SHO, including rules aimed at holding broker/dealers and prime brokers directly accountable for buy-ins and deliveries.

The U.S. Chamber of Commerce, the American Bankers Association, leading lawyers and academics and "Main Street" corporations, with millions of investors nationwide, have long sought from the Commission the very same protection that was provided the nineteen select institutions covered by the order. The Commission is expected to act evenhandedly to protect *all* investors from market manipulation and illegal trading and to maintain fair, orderly, and efficient markets for *all* participants. Therefore, we see no justification for not extending effective protection from naked short selling to all public companies, especially in these turbulent and uncertain times.

As we have seen from recent events, dominos that are smaller than investment banks can set off a chain reaction as destructive as the failure of a large bank, causing fear and great harm to



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the markets and resulting in damaging losses to innocent investors. Accordingly, we applaud your intended rulemaking in this area to provide additional protections to the broader market. Amending Regulation SHO to incorporate the elements of the emergency order would be a permanent solution to naked short selling and would be an outstanding legacy for this Commission to bestow on the markets.

Thank you for your consideration.

Eric C. Jensen, Esq.

cc: Erik R. Sirri, Director, Division of Trading and Markets  
Florence Harmon, Acting Secretary, Office of the Secretary



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The following companies sign this letter to show their support, recognizing that given the breadth of issues and diversity of interests they represent, they may not agree with every point as stated, but wish the Commission to understand how strongly they share the general concerns expressed.

Adobe Systems Incorporated  
Karen Cottle  
Senior Vice President, General Counsel and Corporate Secretary

AMAG Pharmaceuticals, Inc.  
Joseph L Farmer  
General Counsel and Senior Vice President of Legal Affairs

American Capital, Ltd.  
Samuel A. Flax  
Executive Vice President and General Counsel

Calgon Carbon Corporation  
Dennis M. Sheedy  
Vice President, General Counsel and Secretary

Dendreon Corporation  
Rick Hamm  
Senior Vice President, Corporate Affairs and General Counsel

Dionex Corporation  
Gina Christopher  
Senior Corporate Counsel

Ditech Networks, Inc.  
William Tamblyn  
Chief Financial Officer, Executive Vice President

Endwave Corporation  
Brett W. Wallace  
Chief Financial Officer and Executive Vice President

EnerNOC, Inc.  
David Samuels,  
Executive Vice President and Corporate Secretary



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Medis Technologies Ltd.  
Robert K. Lifton  
Chairman and Chief Executive Officer

NetScout Systems, Inc.  
David Sommers  
Chief Financial Officer and Senior Vice President, General Operations

NVIDIA Corporation  
Christine Lillquist  
Director Corporate Affairs

Overstock.com, Inc.  
Jonathan E. Johnson, III  
President

Quest Software, Inc.  
J. Michael Vaughn  
Vice President, General Counsel and Secretary

Sangamo BioSciences, Inc.  
H. Ward Wolff  
Executive Vice President and Chief Financial Officer