CENTER FOR CAPITAL MARKETS COMPETITIVENESS
OF THE
UNITED STATES CHAMBER OF COMMERCE

DAVID T. HIRSCHMANN
PRESIDENT AND CHIEF EXECUTIVE OFFICER

1615 H STREET, NW
WASHINGTON, DC 20062-2000
202/463-5609 • 202/955-1152 FAX
david.hirschmann@uschamber.com

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Ms. Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: Release No. 34-57511; File No. S7-08-08
"Naked" Short Selling Anti-Fraud Rule

Dear Ms. Morris:

The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region. We are pleased that the Securities and Exchange Commission ("SEC" or "Commission") recognizes the serious problems with naked short selling and is taking additional steps to curb this abusive practice. We agree with Chairman Cox that naked short selling is a serious fraud that needs to be eliminated. However, we remain concerned that the current proposal does not address critical aspects of this disruptive practice.

This proposal makes it clear that deceiving brokers or dealers about the ability or intent to deliver stock on the scheduled settlement date is a fraudulent act. Such activity is already a violation of anti-fraud provisions of the federal securities laws, in particular, Section 10(b) of the Securities and Exchange Act of 1934 and Rule 10b-5. Emphasizing that such deceit violates these laws may deter some of this activity in the future. However, this proposal does not solve the underlying problem of settlement failures in our capital markets caused by naked short selling. We are concerned that merely restating current law, i.e., that such fraud is an offense, will not go far enough to change the current situation or deter future fraudulent short selling activities.

Since the creation of the Threshold List in 2005, nearly 7,000 stocks have experienced settlement failures serious enough to require their placement on this list. These companies represent a broad range of the capitalization spectrum. Despite the intent of Regulation SHO to reduce settlement failures, many of these companies have remained on the Threshold List for too long. At various points since 2005, more than 600 stocks have remained on the list for 100 consecutive days or more. Unfortunately, this illustrates that Regulation SHO has failed to adequately address the problem of protracted settlement failures in our securities markets.

We strongly urge the Commission to accelerate its efforts to address this problem. In particular, we note that it has been more than eight months since the end of the comment period for the Commission's previous proposal to amend Regulation SHO to remove the option market maker exception. Unfortunately, to date, the SEC has not taken any action on this.

As mentioned in our previous letters dated September 13, 2007, April 26, 2007, January 23, 2007, and September 13, 2006, we remain convinced that serious settlement failures will persist if the SEC does not implement additional reforms:

- First, we support a requirement that all short sellers of threshold securities 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.

- Second, the Commission should increase transparency with regard to settlement failures to allow all market participants access to this important information. While we applaud the Commission's recent publication of the daily volume of fails in each stock, that publication should be disseminated in a regular and timely manner.

- Third, we believe that the SEC should ensure that 13F filings contain information on short positions as well as long positions. This will provide issuers and investors with a greater understanding of trading activity without compromising the proprietary trading strategies of institutional investors.

We appreciate your consideration on this matter and would be happy to discuss this issue with the relevant SEC staff.

Sincerely,

David Hirschmann

David T. Hirschmann

cc: Christopher Cox, Chairman, U.S. Securities and Exchange Commission
Paul S. Atkins, Commissioner, U.S. Securities and Exchange Commission
Kathleen L. Casey, Commissioner, U.S. Securities and Exchange Commission
Erik Sirri, Director, Division of Trading and Markets, U.S. Securities and Exchange Commision
John W. White, Director, Division of Corporate Finance, U.S. Securities and Exchange Commission