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United States Senate

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

Dear Chairman Cox,

On July 15, the Securities Exchange Commission announced an emergency order protection for 19 major Wall Street corporations including Freddie Mac, Freddie Mae, and primary dealers at commercial and investment banks from "naked" short selling. The recognition of the danger of naked short selling to our current financial environment, and these efforts to enhance investor protections against naked short selling in these companies are laudable. That said, I would also point out that these 19 corporations are not the only ones who are being negatively impacted by this practice.

I write to strongly urge you to consider extending the requirement of pre-borrow of shares before a short sale to at least all securities that appear on the Regulation SHO Threshold List. Fairness requires that other companies, especially those that have long been victims of naked short selling, are afforded the same level of protection as those covered by the Commission's July 15 order.

The SEC adopted Regulation SHO in 2005 in part to address problems associated with persistent "Failure-to-Delivers" or "FTDs" and the potential abuses inherent in naked short selling. Regulation SHO also required the national securities exchanges to publish daily lists, the Regulation SHO Threshold Securities List, of the companies whose stock is subject to "FTDs" above a certain threshold.

Nearly 7,000 companies have appeared on the Regulation SHO Threshold Securities List, with nearly 700 companies appearing for over 100 trading days. There are currently more than 400 companies on the Threshold Securities List, and more than 30 companies have been on that list for more than 100 trading days. A well-functioning capital market should not have any settlement failures large enough and protracted enough to merit inclusion on the Regulation SHO Threshold Securities List. If Regulation SHO were operating as intended, no security should remain on the Threshold List for more than 13 days. I question the adequate enforcement of existing regulations.

In addition, a high level of FTDs, and therefore appearance on the Threshold Securities List, can undermine the confidence of investors in a company, fearing that it is subject to market manipulation, and therefore cause reputational damage to issuers and economic harm to shareholders. Naked short selling is negatively impacting a wide variety of

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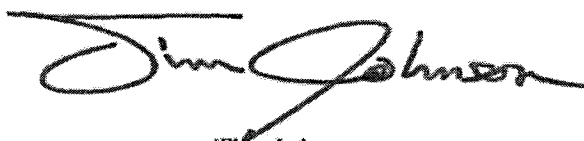
corporations including Main Street corporations, as recognized by the United States Chamber of Commerce.

To restore public confidence and to be fair, I request that the Commission consider the benefit of extending the emergency order to all securities traded on the nation's securities exchanges. I would also ask that the Commission further explore the merits of imposing a firm locate/pre-borrow requirement for all short sales regardless of the issuer, and finalize its repeal of the Regulation SHO option market maker exception.

I also believe that the current situation warrants close consideration by the SEC of the need for more aggressive enforcement and additional reforms. The quantity of companies on the Threshold Securities List indicates naked short sellers are acting with impunity. In any deliberations on this matter, I hope you will consider whether more stringent locate requirements should also be enacted so that all shortsellers either have possession of the stock in question or have entered into a bona fide contract to borrow the stock in advance of the sale (pre-borrow). I also hope you will explore methods to increase transparency with regard to short selling and settlement failures, such as enhancing disclosures of FTDs to include aggregate volume, as well as the number of new FTDs, listed by broker-dealer and by company, to find out if there is abuse occurring.

It is vital to the integrity in our financial markets that all publicly traded securities be treated equally under the rules of the Securities and Exchange Commission, and that these rules are enforced. Thank you for considering my request, and I look forward to working with you on this issue.

Sincerely,

A handwritten signature in black ink that reads "Tim Johnson". The signature is written in a cursive, flowing style with a long horizontal line extending from the end of the name.

Tim Johnson
U.S. Senator