

April 20, 2008

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

RE: Release Nos. 34-57511; File No. S7-08-08 – “Naked” Short Selling Anti-Fraud Rule

Dear Ms. Morris,

I commend the SEC’s recent action to strengthen Regulation SHO through the elimination of the grandfather provision, the proposed elimination of the options market maker exemption<sup>1[1]</sup>, and the consideration of increased enforcement<sup>2[2]</sup>. I am pleased that Chairman Cox continues to speak about the abuses of naked short selling and the need to end these fraudulent practices.

However, despite these recent efforts and public comments, the abuses continue largely unabated. I believe that the current proposal does not address the critical aspects of this issue. A well functioning capital market should not have any settlement failures large enough and protracted enough to merit inclusion on the Regulation SHO Threshold List<sup>3</sup>.

The proposed “Naked” Short Selling Anti-Fraud Rule states that deceiving brokers or dealers regarding the ability or intent to deliver stock on the scheduled settlement date is an offense; however, that is already a clear violation of the anti-fraud provision of Rule 10b-5. Simply restating that such fraud is an offense will do little to change the current situation.

Serious settlement failures will persist unless the SEC implements additional reforms. Specifically, the SEC should (a) require 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

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<sup>1</sup> It has been over seven months since the end of the comment period for the SEC’s previous proposal to amend Regulation SHO to eliminate the option market maker exemption; however, the Commission still has yet to take any action on this proposal. The options market maker exemption is a well known tool of manipulation and should be eliminated *immediately* to ensure a level playing field for public companies and shareholders.

<sup>2</sup> Despite the SEC claims, there is no evidence of any real enforcement activity.

<sup>3</sup> Nearly 7,000 companies have appeared on the Regulation SHO Threshold List, with nearly 700 companies appearing for over 100 trading days. There are currently more than 400 companies on the Regulation SHO Threshold List, with more than 30 companies that have been on the list for more than 100 trading days.

to borrow the stock in advance of the sale; and (b) increase transparency with regard to short selling and settlement failures to reduce the clouds of suspicion that arise<sup>4</sup>.

Members of Congress, the U.S. Chamber of Commerce, and other notable commentators, have called repeatedly for these changes. The SEC should promptly implement these two critical components of effective Regulation SHO reform.

Sincerely,

[Name]

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Regards,  
Daniel Palermo

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<sup>4</sup> While the SEC has recently begun to publish the daily volume of fails in each stock, that publication should be disseminated in a timelier manner – at least as frequently as the semi-monthly reports of legal short sales.