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MAY 11, 2008

NANCY M. MORRIS  
SECRETARY  
SECURITIES AND EXCHANGE COMMISSION  
100 F STREET, NE  
WASHINGTON, DC 20549-1090

RE: FILE NUMBER S7-08-08

DEAR Ms. MORRIS,

WE APPRECIATE THE OPPORTUNITY TO COMMENT ON THE COMMISSIONS' PROPOSAL TO ADDRESS "NAKED" SHORT SELLING.

IT WAS THE SHORT SELLERS, NOT REGULATORS, WHO FOUND QUESTIONABLE ACCOUNTING AT BOTH ENRON AND MCI. AS SUCH THEY FILL A VALUABLE ROLE IN THE SECURITIES MARKETS. HOWEVER WITH THE EMPHASIS ON SHORT TERM VERSUS LONG TERM PROFIT ON THE PART OF ALL MANNER OF INSTITUTIONAL, HEDGE FUND, PARTNERSHIP INVESTORS, THE TEMPTATION TO PUSH THE ENVELOPE WHEN IT COMES TO SHORT SELLING IS TOO TEMPTING.

WITH REGULATION SHO AND THE SUBSEQUENT AMENDMENTS, THE COMMISSION ATTEMPTED TO CODIFY INTO A SINGLE SET OF RULES, DISPARATE REGULATIONS AND INDUSTRY BEST PRACTICE. THESE RULES HAVE BEEN USEFUL IN GIVING THE REGULATED ENTITIES A ROADMAP TO WORK WITH; HOWEVER THE RULES AS WRITTEN DO NOT ADEQUATELY ADDRESS THE REALITIES OF THE COMMERCE AND OPERATIONAL SIDES OF THE BUSINESS. THE PROPOSED RULE 10B-21 WOULD NOT BE NEEDED IF THE COMMISSION ADDRESSED SOME OF THESE REALITIES.

WITH THE EXCEPTION OF WHEN A FIRM FACES A DEFICIT UNDER SEC 15c3-3, NOWHERE IN THE RULES OF THE COMMISSION, SRO'S, EXCHANGES OR CLEARING COMPANIES IS THERE A "MANDATORY" BUY-IN RULE. THE REGULATIONS AS WRITTEN USE THE TERM "MAY" OR SOME VARIATION OF IT. WITHOUT THIS MANDATORY COMPONENT THE OPERATIONS DEPARTMENTS AND THE SALES AND TRADING DEPARTMENTS WILL INEVITABLY CLASH, PARTICULARLY IF THE COUNTER PARTY WITH THE FAIL OR UNSETTLED TRADE IS ALSO A GOOD CLIENT OF THE FIRM.

IN REG SHO THE COMMISSION WISELY ALLOWED THE USE OF "EASY-TO-BORROW" LISTS, WHICH WITHOUT WOULD CAUSE UNNECESSARY INTERRUPTION TO THE MARKETPLACE. THE COMMISSION LEFT OUT A VITAL CAVEAT IN THE USE OF THESE LISTS; THE LISTS MUST BE DECREMENTED BY THE AMOUNT OF SHARES A CLIENT WISHES TO USE. NOW I AM SURE IF YOU WERE TO PROPOSE THIS YOU WOULD HEAR HOWLS OF PROTEST AS THIS CAVEAT WOULD BE "UNWORKABLE". WE DO NOT BELIEVE SO, WE DO NOT BELIEVE THIS WILL AFFECT LATENCY, WE DO NOT BELIEVE THAT WITH THE LEVEL OF TECHNOLOGY BEING DEPLOYED FOR ORDER ENTRY THAT THIS IS NOT POSSIBLE AND CANNOT BE ACHIEVED AT MINIMAL COST.

THE HUGE INCREASE IN THE AMOUNT OF CLIENTS BEING GRANTED "SPONSORED" OR "DIRECT MARKET ACCESS" CREATES ANOTHER LEVEL OF CONTENTION. CLIENTS ARE NOW DRIVEN, COURTESY OF REGULATION NMS, TO ACHIEVE "LOW LATENCY". AS SUCH THE EXCHANGES IN THEIR QUEST FOR REVENUE ARE GRANTING THIS ACCESS AS NEVER BEFORE. THE COMMISSION HAS BEEN GRAPPLING WITH WHETHER OR NOT TO IMPOSE RULES OF THEIR OWN ON THE EXCHANGES, OR ALLOW THEM TO DEVISE THEIR OWN. WHILE WE APPRECIATE THIS TACT, AS WE BELIEVE THE EXCHANGES ARE MORE NIMBLE IN ADDRESSING THE TECHNOLOGICAL ADVANCEMENTS, IT APPEARS THAT THE COMMISSION SHOULD INSIST THAT THE EXCHANGES ADD SOME TEETH TO THEIR RULES. A SUGGESTION BEING THAT IF A CLIENT (REGARDLESS OF WHETHER THEY ARE A BROKER-DEALER OR

CUSTOMER) HAS THREE INSTANCES OF NOT SETTLING THEIR TRADES BY T+3 LOSE THEIR "SPONSORED" OR "DIRECT MARKET ACCESS". THE SPONSORING BROKER-DEALER WOULD BE REQUIRED TO FILE A NOTICE WITH THE MARKET CENTER WHERE THE CLIENT HAD ACCESS AND THAT THE MARKET CENTER THEN IS REQUIRED TO NOTIFY ALL SPONSORING BD'S OF THE OFFENDING CLIENT.

LASTLY, WE URGE THE COMMISSION TO TAKE TWO STEPS THAT MAY NOT CURE THE PROBLEM WILL PUT ALL THE INTERESTED PARTIES ON NOTICE THAT YOU ARE SERIOUS. FIRST, THE COMMISSION SHOULD CONDUCT A REGULAR "SWEEP" OF ALL BROKER-DEALER, REGISTERED CUSTODIANS, AND CLEARING COMPANIES FOR FAILS, UNSETTLED TRADES, BORROWS AND LOANS. THE DATA FROM THIS SWEEP CAN BE MERGED WITH THE DATA ALREADY PROVIDED TO FINRA TO DETERMINE IF THERE ARE "PROBLEM" FIRMS. AN ADDITIONAL BONUS TO THIS SWEEP IS THAT BD'S, GIVEN THEIR NORMAL PARANOIA WILL MOVE TO CLEAN UP AS MANY OUTSTANDING ITEMS AS THEY CAN PRIOR TO SUBMISSION OF THE DATA. OUR SECOND STEP IS A REPEAT OF WHAT WE HAVE SUBMITTED IN PRIOR COMMENTS; THE IMPOSITION OF PUNITIVE CAPITAL SET ASIDES FOR FIRMS WHO ARE CARRYING UNSETTLED TRADES WHERE THE COUNTER-PARTY ACCOUNT IS NOT GOVERNED BY FEDERAL RESERVE BOARD REGULATION T.

WE AGAIN THANK YOU FOR THE CHANCE TO COMMENT.

SINCERELY YOURS,

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