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WEDBUSH MORGAN SECURITIES
Investment Bankers for Entrepreneurs

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Ms. Florence E. Harmon
Acting Secretary
U.S. Securities & Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

A. Peter Allman-Ward
Phone (213) 688-8014
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December 15, 2008

Re: Release No. 34-58773: File No.S7-30-08;
Amendments to Regulation SHO – Rule 204T

Dear Ms. Harmon:

Wedbush Morgan Securities Inc. ("WMS") appreciates the opportunity to provide the U.S. Securities & Exchange Commission ("SEC") with comments on the interim final temporary Rule 204T ("Rule 204T") of Regulation SHO under the Securities Exchange Act of 1934 ("Exchange Act").

WMS is a self clearing broker registered with the SEC under Section 15 of the Exchange Act. WMS is a member of the Financial Industry Regulatory Authority ("FINRA"), and many stock exchanges, including BATS, Boston, Chicago, International Securities Exchange, NASDAQ, National, New York and Philadelphia. WMS executes and clears trades for its proprietary accounts, retail and institutional clients, as well as for other registered broker dealers and alternative trading systems ("ATS"). WMS has been the top liquidity provider on NASDAQ for NASDAQ and/or NYSE listed stocks each month since June 2006. WMS also makes markets in over 500 stocks. Accordingly, WMS is a major provider of both liquidity and volume in the U.S. cash equity markets.

Given its leading position in the cash equities markets, WMS is extremely concerned that fair, orderly and efficient markets exist and that investor confidence is maintained. WMS therefore supports the SEC's efforts to curb manipulative conduct, including "abusive short selling" (defined as a short sale made without having securities available for delivery [or locating stock] and then deliberately failing to deliver on settlement date.) It has long been our view that the existence of fails to deliver is a necessary condition allowing abusive short selling to occur and continue. Accordingly, eliminating fails to deliver (which is a settlement issue) is a solution that is more appropriate than constraining short selling activity, especially when short sales are subsequently covered by purchases on the same trading day.

Regulation SHO and Rule 204T impact the securities lending market, the existence of which is necessary to provide liquidity to the equity markets by ensuring that sufficient securities are available to deliver those securities sold short that remain open at the end of each trading day - defined hereafter as "open short positions". There is a close relationship between the existence of open short positions and the need to borrow securities to deliver on settlement date. Securities that cannot be delivered on settlement date result in "fails to deliver." Fails to deliver are undesirable as 1) they cause additional economic risk - to both the party failing to deliver as well as to the party failing to receive, 2) require additional activities to monitor and mitigate the resulting economic risk, but most importantly 3) result in the existence of "phantom stock" (i.e. securities owned may exceed the number issued or, stated another way, both the seller who fails to deliver and the purchaser each have economic ownership and voting rights related to the same shares.)

Fails to deliver can be eliminated by borrowing securities and delivering the borrowed securities. Normally there is an economic incentive for broker/dealers to borrow securities, because a rebate rate may be earned on the cash deposited with the securities lender to collateralize the value of the borrowed securities while the broker/dealer does not pay interest on the money owed for the fail to receive (i.e. to the party causing the fail to deliver.) However, when demand to borrow securities rises beyond a certain level, the rebate rate may go negative. In this situation there is an economic disincentive for the broker/dealer to borrow securities to make delivery, as the borrower must pay a rebate rate on the cash collateral provided to the lender, and the broker/dealer may not be able to recoup the expense from the party causing the fail to deliver.

Accordingly, there is need for an effective "buy-in" process to ensure that fails to deliver are closed out on a timely and expeditious basis. WMS commends the SEC for recognizing that the best way to address "abusive short selling" is by ensuring that deliveries are made and fails to deliver are eliminated.

However, Rule 204T(a)(1) forces a broker dealer to "buy-in" a long sale attributed to the fail to deliver, even if securities are available to borrowing to make delivery. The buy-in requirement is not appropriate or desirable because 1) the buy-in causes unnatural demand and additional unnecessary trading volume to occur, 2) the buy-in must occur by the opening on S+3, thus potentially skewing normal trading volumes and market prices, 3) the buy-in may have a worse economic impact on the party bought in (who in most cases will be a long or short seller, or trading counterparty) and so potentially reduces the desire for such a person to trade in the equity markets and 4) it may be cheaper to borrow rather than to buy-in, and 5) borrowing resolves the open fail to deliver more quickly than the buy-in because the buy-in has a longer settlement cycle.

The securities lending market services the need of lenders to finance their long positions and allows for them to recall loaned securities that have been sold in sufficient time to make delivery. Borrowers benefit from the securities lending market by enabling them to make delivery in order to collect the proceeds of a sale that otherwise would fail. The securities lending market is subject to various operational conventions, one of which is that the receipt of securities borrowed, or recalled securities that have been lent, may occur at any time before the close of Depository Trust Company ("DTC") on the day the transaction (loan or recall) is negotiated and agreed (the settlement date.) The term "dropped" is used to describe the failure of the delivery/receipt of securities lending transactions on settlement date. Securities lenders buy-in securities borrowers when a borrower fails to return recalled securities on the settlement date. A securities lender, however, cannot complete the buy-in process earlier than three full days after the original settlement date, i.e. after DTC closes on that third day. An alternative approach that has been suggested, i.e. recalling a loaned security on or before the related sale occurs, completely defeats the purpose and benefit of the securities lending process.

Rule 204T delivers impediments to the smooth functioning of the equity securities lending market and to liquidity in the cash equity markets. Under Rule 204T as currently written, the deadline for completion of a required buy-in is not coterminous with the deadline for the receipt of securities borrowed and/or the receipt of recalled securities previously lent. Specifically, Rule 204T(a)(1) requires the buy-in of the party causing the fail to deliver resulting from a long sale ("long fail") no later than the opening of trading on the third day after settlement date ("S+3"). Furthermore Rule 204T requires a broker/dealer to close a long fail <u>only</u> by a purchase of securities, which settles 3 days later – not by borrowing, which would cure the fail to deliver immediately.

We have observed a significant decline in the availability of equity securities offered for loan, an increase in price volatility during the day in the cash equity markets (indicating a decrease in their efficiency) and reduced economic benefits to borrowers of equity securities. It is also our view the requirement to buy-in long sellers whenever receipt of securities sold or receipt of recalled securities is not made timely is partially responsible for this situation.

The required timeframes in Rule 204T provide little time to complete a thorough review and proper analysis of fail information in order to identify the cause of the fail and to attribute the required buy-in to the correct entity. We note that Rule 204T provides for no latitude or scope for human error or mechanical delay. We suggest that extending the buy-in deadline for long fails to the end of the trading day on S+3 would allow for a more complete and accurate reconciliation and analysis to be made and reduce the risk that actual fails may be missed and that unintended violations might occur.

In light of the concerns described above, we urge the SEC to consider fully the implications of Rule 204T as currently proposed. We believe that it is essential for the SEC to consider modifications to Rule 204T to cure the unintended consequences that currently exist, and accommodate the operational inter-relationships between the cash equity markets and the equity securities lending business. We respectfully request that the SEC consider the following modifications which we believe will preserve the intent to combat abusive short selling and market and price manipulation, while at the same time allowing for more use of equity securities lending, thus avoiding the need for the unnecessary buy-ins that we have experienced.

1) The SEC should permit the borrowing of a security to close out long fails under Rule 204T (a)(1). This would allow fails to be closed out more quickly, reduce unnecessary operational activities and negative economic consequences of buy-ins while providing more certainty to the seller about the finality of the sale.

2) The SEC should either a) create an exception under Rule 204T(a)(1) for long fails where the securities have been loaned and have been recalled, or b) confirm that issuance of a bona-fide notice of recall creates a valid safe harbor satisfying the close out of a long fail.

3) Extend the deadline for the close out of fails to deliver caused by short sales to the end of the trading day on S+1 and long fails to the end of the trading day on S+3. This would provide additional time to participant staff to evaluate the appropriate action to take, identify the proper entity to close out and provide such entity with adequate notice. It would also spread the level of market activity over the full trading day, rather than concentrating it at the open.

4) Provide a de minimis exemption for Rule 204T(a) that exempts a participant's fail to deliver from the close out provisions when the participant's total quantity of the failed to deliver shares is less than 1,000. Fails to deliver of this small magnitude cannot be the cause of abusive short selling nor market manipulation. This would generate economic benefits, including the reduction of the amount of administrative and analytical work required by the participant's staff and so reduce participant costs.

We continue to urge the SEC to continue to review the volume of short sales and its relationship to the level of fails to deliver. We believe that the implementation of restrictions on short selling on trade date would significantly reduce the amount of liquidity available to the cash equity markets and would not be successful in reducing the level of fails to deliver, that by definition occur after settlement date and give rise to an environment in which abusive short selling may occur.

Yours sincerely,

WEDBUSH MORGAN SECURITIES INC.

A. Peter Allman-Ward
Executive Vice President and CFO

cc: The Hon. Christopher Cox, Chairman
The Hon. Kathleen Casey, Commissioner
The Hon. Elysse Walter, Commissioner
The Hon. Troy Paredes, Commissioner
The Hon. Luis Aguilar, Commissioner
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