September 18, 2006

Via Electronic Submission

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

Re: Comment - Amendments to Regulation SHO
File No. S 7 - 12 -06

Dear Ms. Morris:

As the chief law enforcement official of Utah, it is appropriate in my role as state attorney general to express my grave and ongoing concern over the impact that "naked short selling" has on our capital markets, public companies, and innocent shareholders. Given that the States retain concurrent jurisdiction over the securities industry, and our primary responsibility is to protect our respective states' citizens from fraud, deceit, and unlawful conduct by broker dealers, I write to urge you to make comprehensive modifications to Regulation SHO specifically designed to better protect innocent investors and public companies by minimizing the manipulation of our capital markets through the practice of "naked short selling".

I have read with great interest many of the comments previously submitted on this rule-making, as they have come available on your website. There persists from a national cross-section of both investors and marketers alike a strong tone of cynicism and frustration over the absence of effective regulation of short selling practices, which ought to attract your keen attention. The current "naked short selling" practices are as much an affront to the SEC as they are to the small public company or the "mom and pop" investor. How you effectively address this problem, or not, will have a significant ripple effect upon state regulators and prosecutors, and the decisions we may be forced to make in order to protect our citizens.

I recognize that under federal law, the SEC has primary jurisdiction to regulate securities registration and reporting under Section 15(h)(1) of the National Securities Markets Improvement Act of 1996 ("NSMIA"); to establish a national system for the prompt clearance and settlement of securities transactions applying to short sales and fails through Section 17A of the Securities Exchange Act of 1934; and to establish rules which require participants of a registered clearing agency to take action on all failures to deliver of certain "threshold securities" (Rule 203(b) of Regulation SHO.)

Nevertheless, the industry and the SEC should remain mindful that Section 18 (c)(1) of the Securities Act of 1933 (as amended by NSMIA at Sec.102) provides that states "shall retain jurisdiction . . . to investigate and bring enforcement actions with respect to fraud or deceit, or unlawful conduct by a broker dealer, in connection with securities or securities transactions." 15 U.S.C. § 77r©)(1). As noted by Congress, "the Committee intends to preserve the authority of the States to investigate and bring enforcement actions under the laws of their own State with respect to fraud and deceit (including broker-dealer sales practices) in connection with any securities or any securities transactions." 1996 U.S.C.C.A.N. 3877, 3878, 3896.

As you have derived from earlier-received Comments upon these proposed rule changes, many American investors and reputable market professionals assess the practice of "naked short selling" as nothing more than fraud. As a state law enforcement official, I am inclined to agree with that characterization. While we believe more desirable solutions and outcomes are best-achieved in a collaborative fashion, the acute and horribly adverse effects upon investors and small public companies of the current market practices involving abusive (and to some degree arrogant) "naked" short selling have precipitated a more hostile and litigious relationship between the investment industry and state regulators. This needn't be the case. However, those who we would investigate for these activities may arguably defend against some or all state enforcement efforts in this area as preempted by federal law. These would be costly and arduous battles, with the outcome unsure. Yet, they must be battles that state regulators and prosecutors are willing to fight to seek adequate protections and security for their individual and corporate citizenry. Much, then, depends upon the effectiveness of the SEC to modify in both depth and breadth the rules which will facilitate greater integrity in and return investor confidence to the market place. Therefore, it is most desirable that the SEC strengthen and supplement the rules with regard to manipulative, abusive and fraudulent short selling practices.

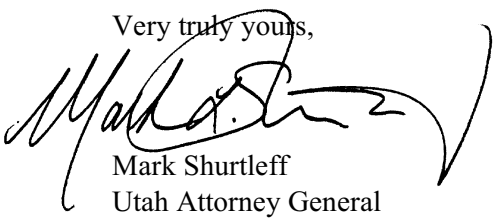
While I commend and support the SEC's proposals to amend Regulation SHO by repealing the "grandfather" provision and narrowing the options market maker exception as initial steps, I do not believe that these proposals go far enough to stop the persistent "fails to deliver"(FTD) and other associated abuses which characterize "naked short selling". Thus, I welcome this opportunity to provide further recommendations for modifications to Regulation SHO. Foremost, the SEC should amend Regulation SHO so that the aggregate volume of FTD is

reported daily for each threshold security. Without this full disclosure, it is difficult to know the level of "naked shorting" and its risk to the capital markets. This emphasis on "transparency" will lead to disincentives for abuses and promotion of investor confidence and security.

Furthermore, the SEC should require that before any seller can short sell a stock, that seller must either have the stock in his possession (and have the right to sell it) or have entered into a bona fide contract to borrow the stock in advance of the sale. This step alone can prevent the majority of purposeful and strategic FTD. The current rules that permit the stock to be located (but not borrowed) allow for multiple short sales of the same security without it actually ever being borrowed. The absence of effective rules and enforcement against this deceptive activity condones and even encourages abusive short-sellers to frequently fail to deliver stocks they sell, and postpone trade closures indefinitely.

As you may be aware, the State of Utah has stepped to the forefront on this issue by enacting in a recent special session of the Utah Legislature, Senate Bill 3004 which picks up where current federal regulation ends regarding disclosure of information pertaining to daily FTD. The Securities Industry Association has sued the state to enjoin enforcement of this law. The State has stipulated to a preliminary injunction tolling the implementation of that law, pending the completion of this rule-making. While the stakes for all investors are high, on behalf of the people of the State of Utah, I implore you to give your most thoughtful and thorough consideration to all of the issues and recommendations you have received and to spare no effort in creating a level and accessible playing field for all American investors.

Very truly yours,



Mark Shurtleff
Utah Attorney General

MLS/hfp