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March 29, 2010

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

Re: Amendments to Regulation SHO Release No. 34-59748
(File No. S7-08-09)

Dear Ms. Murphy:

On January 14, 2010, the SEC published its "Concept Release on Equity Market Structure" (Release 34-61358) and the Security Traders Association is working diligently to respond to the many important issues raised and questions asked in that document. We applaud the Commission for seeking comment on a wide range of issues relating to developments in the structure of the equity markets.

We take this opportunity to express our hope that the SEC will address these often complex, subtle and sophisticated issues with its characteristic attention to the details of good regulation and public policy, including basing its decision on the best available objective data.

The STA has enjoyed the opportunity to work with the Commission and its staff for decades, and is familiar with the high levels of professionalism that are ordinarily brought to SEC decision making.

However, we believe that the recent decision by the Commission (3-2) concerning the adoption of amendments to Regulation SHO, the short sale rule, (Release 34-59748) on February 26, 2010 are based on inadequate analysis, a lack of empirical data, and questionable rationale by the SEC. This inadequacy was noted by SEC Commissioner Paredes in his opening statement:

...there is an insubstantial empirical basis to support the Commission in adopting the rule, especially in light of the rigorous economic analysis that led the SEC to repeal the "original" uptick rule in 2007 after years of study. The Commission bears the burden to justify its rules. It has not done so in this instance.

The STA believes the resulting regulation is a less than optimal resolution to the concerns over manipulative short selling. The implementation costs will be significant. The "investor trust" this

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Dictum Meum Pactum

amendment was intended to instill will not change certain preconceptions and market quality may not be enhanced. We are concerned that this could become a rulemaking standard.

As Senator Robert Menendez (D-N.J.) noted in a letter to the Commission:

The SEC needs to review the broad range of market developments which have helped shape our equity markets in recent years. Policymakers must be vigilant. The integrity of the U.S. capital markets must remain above all reproach, as it serves as the cornerstone of investor confidence. Taking actions that are symbolic or hasty would be irresponsible.

Market structure issues are by their very nature arcane, and for the most part understood only by market professionals, scholars and government regulators. In the case of short sale regulation, the SEC staff conducted an extensive review of the subject and made reasonable recommendation. The Commission originally acted in a careful and deliberative manner, using pilot programs to determine whether there was a need to repeal the original uptick rule.

The STA believes the most recent amendments to Regulation SHO were not adequately based on research and data found in the pilot program. This sets a bad precedence. We agree with the statement of United States Senator Mike Crapo in his letter to SEC Chairwoman Mary Schapiro of February 24, 2010 that:

As the SEC Commission considers major changes, I would encourage you to base decisions on empirical evidence and well-accepted theoretical models about how these changes are in the best interest of individual investors.

Furthermore, we request the Commission adopt an additional amendment to create an exemption from the regulation for short sales affected by options market makers. The nature of the derivatives market is such that market makers must be able to hedge their positions easily and cheaply to reduce trading costs. Failure to do so would cause a decoupling of prices in the options markets from the prices of the underlying instruments. This would result in reduced liquidity and wider spreads to the detriment of individual investors. We recommend the SEC implement the option market maker exemption prior to the effective date of the rule.

The Commission also decided not to include an exception for market makers in equities. We recommend the SEC study whether a separate exemption is needed for equity market makers concerning the alternative uptick rule, and recommend a study using empirical data.

As again noted by Commissioner Paredes on the adoption of the amendments to Reg SHO:

I welcome the exceptions that are part of the rule, but I am troubled that other exceptions are not granted. Most notably, the Commission has decided not to adopt an exception for bona fide market making in either equities or options. And the exception afforded domestic and international arbitrage, as defined by the rule, is limited; the Commission has chosen not to except from the price test a broader set of bona fide hedging activities.

I disagree with the Commission's decision to limit the exceptions in this way. Short sales that facilitate legitimate market making and hedging activities are not intended to drive down the price of a security. Thus, restricting such transactions is at odds with the goals of this rulemaking. In fact, a market maker exception and a more expansive hedging exception would, on balance, more likely advance the rulemaking's objectives, not

undercut them. The risk is that a short sale restriction that impedes market making will result in less liquidity, greater volatility, and wider bid-ask spreads, none of which is conducive to boosting investor confidence. Furthermore, a short sale restriction that makes it more costly for investors to manage their risk by hedging can hinder the ability of companies to raise capital. When it becomes more costly to hedge, investors can be discouraged from buying securities in the first place.

The STA looks forward to working with the Commission on the important market structure issues now under consideration. We hope that this less than optimal consideration of amendments to the short sale rule will represent an aberration in SEC regulation.

Sincerely,



Brett F. Mock
Chairman



John C. Giese
President and CEO

cc: SEC Chairman Mary L. Shapiro
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