National Investor Relations Institute

8020 Towers Crescent Drive, Suite 250, Vienna, VA 22182
(703) 506-3570 FAX (703) 506-3571
Web site: www.niri.org

May 29, 2009

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F St, NE
Washington, DC 20549-0609

Re: Amendments to Regulation SHO
File Number S7-08-09

Dear Ms. Murphy;

This letter is submitted on behalf of the National Investor Relations Institute (NIRI). NIRI is the professional association of corporate officers and investor relations consultants responsible for communications among corporate management, shareholders, securities analysts and other financial community constituents. Founded in 1969, NIRI is the largest professional investor relations association in the world with more than 4,000 members representing 2,000 publicly held companies and approximately $5.4 trillion in stock market capitalization.

NIRI is pleased to have the opportunity to comment on the proposed amendments to ensure short selling is used as a proper tool for market liquidity and pricing efficiency and not for manipulative and abusive purposes. As an organization representing investor relations professionals and issuers, we believe the SEC must do everything possible to protect against the market manipulation of equity prices. Today, equity trading is technologically advanced and includes global quantitative and qualitative participants. We support an inclusive environment that includes these participants and recognizes that risk management is an element of healthy liquidity. However, over the last many months, issuers have witnessed substantial volatility and stock price fluctuations unrelated to fair valuation. To the extent that equity price manipulation enabled by abusive short selling has been involved in these otherwise unexplained extreme price swings, it must be eliminated completely. In addition, Congress and the SEC must do everything within their power to ensure there is no ability to take advantage of any future SEC granted short sale exceptions or use synthetic/derivative markets to manipulate the price of equities in the cash markets. We commend the SEC for proposing a short sale uptick rule or circuit breakers. NIRI's response below will address these actions, as well as additional actions critical to ensuring abusive short selling is eliminated.

<u>Reg. SHO Rule 204T and Rule 10a-3T</u>
NIRI believes these temporary changes should become permanent. The SEC has reported these actions have significantly reduced short sale fails-to-deliver situations. While the implementation of a pre-borrow agreement would completely ensure there are

no fails-to-deliver instances, we understand the SEC must balance cost versus effectiveness and believe that at a minimum the temporary changes must become permanent rules. NIRI surveyed members on this matter in April 2009 and there was overwhelming support (90%) of this action. However, we believe that the SEC should also consider public disclosure of short sale information.

Short-selling Disclosure

NIRI believes, as a recent International Organization of Security Commissions (IOSCO) consultation on short selling suggests, disclosure of short sales is an effective part of any regulatory regime. We are attaching NIRI's submission of comments to the IOSCO Consultation for your information. As we mentioned above, NIRI supports Reg. SHO Rule 204T and Rule 10a-3T becoming permanent, however we believe significant short sale position and associated stock lending information should be provided to issuers (at a minimum) and ideally disclosed publicly just as long positions are now disclosed.

In NIRI's April 2009 member survey, 96% favored public short position reporting similar to long position reporting. Schedule 13D filings that currently only require reporting of ownership when it exceeds 5% should also be required for short positions. NIRI believes the current public reporting using Schedule 13G for significant long positions (5% of company shares) should be reviewed and revised to a shorter time frame, as well as consideration of a lower threshold for company-only disclosure. Schedule 13G filings of 5% of more of any long positions held are currently required to be reported 45 days after the end of the quarter, although it seems there is no penalty or action by the SEC for late filing. Technology advances surely allow for reporting ten days after the end of the month and should include all (long, short, stock lending and derivative) positions meeting certain thresholds. The SEC should also to take disciplinary action or impose fines on any institution that does not file a 13G, 13F or 13D on time.

A change to this reporting regime would greatly assist issuers in knowing who has accumulated significant positions in their stock. As markets have evolved and the SEC has allowed for the creation of alternative trading systems (ECN's, dark pools, etc.), it has become increasingly difficult, and often impossible, for issuers to know who owns their stock due to these market mechanisms. As noted in NIRI's IOSCO submission, other global marketplaces, including the United Kingdom, have structures in place that provide detailed public ownership disclosure. NIRI believes it is imperative for the SEC to evaluate the present system in the United States and make changes to our systems for ownership transparency so issuers know who own their stock.

Uptick Rule Proposal

While NIRI cannot provide any empirical data on the actual effects of the uptick rule, our recent survey revealed overwhelming member support for the re-institution of an uptick rule with 91% in favor of such an action. NIRI commends the SEC for providing options for public comment. As a whole, NIRI members do not support one method over another; however, we believe that an uptick rule provides minimal friction to markets, ensuring equity stock prices have some protection, while not reducing market efficiency.

Circuit Breakers

As is the case with a reinstitution of the uptick rule, NIRI cannot provide empirical evidence to support the implementation of circuit breakers; however, our recent survey indicated 71% of NIRI members support some type of circuit breakers. NIRI believes that an uptick rule should always be in operation in the market, and not as a circuit breaker. NIRI agrees with those that have suggested some type of a circuit breaker at a certain intraday percentage price drop (possibly 5% or 10%) that would require pre-borrowing for short selling for the remainder of the trading session. We believe a second level of circuit breakers that would halt short selling (at a significant level - possibly a 20% drop) for the remainder of the day should also be considered. NIRI believes these types of circuit breakers are effective and will help to ensure equity prices cannot be manipulated in times of significant volatility.

Derivative Markets

NIRI and corporate issuers are extremely concerned about the effect of derivative products on the pricing of cash equities. NIRI believes additional change in this area is a key issue that must be resolved to ensure manipulative market practices are eliminated. While we commend the SEC for addressing this issue, Congress must create the ability to ensure regulation is consistent across all regulatory agencies. We cannot allow regulatory arbitrage to create situations of abusive manipulation in equity prices as may now be the case with cash market equities and derivative regulation.

Conclusion

NIRI hopes these comments are helpful to the SEC as it deliberates potential changes to short selling. As stated earlier, NIRI believes short selling is a tool for effective markets, but abusive short selling may be used for manipulating equity prices and is a practice that must be eliminated. NIRI urges the SEC to take all actions within its power, soliciting additional powers from Congress as necessary, to ensure abusive short selling at all levels is eliminated. Thank you for your consideration on this important matter.

Sincerely,

Jeffrey D. Morgan, CAE
President & CEO

Cc: The Honorable Mary Schapiro
The Honorable Kathleen Casey
The Honorable Elisse Walter
The Honorable Luis Aguilar
The Honorable Troy Paredes

National Investor Relations Institute

8020 Towers Crescent Drive, Suite 250, Vienna, VA 22182
(703) 506-3570 FAX (703) 506-3571
Web site: www.niri.org

May 4, 2009

Mr. Greg Tanzer via e-mail: ShortSellingReport@iosco.org.
Secretary General
IOSCO
C / Oquendo 12
28006 Madrid
Spain

Re: Regulation of Short Selling
Public Comment on Regulation of Short Selling

Dear Mr. Tanzer;

This letter is submitted on behalf of the National Investor Relations Institute (NIRI). NIRI is the United States of America's professional association of corporate officers and investor relations consultants responsible for communications among corporate management, shareholders, securities analysts and other financial community constituents. Founded in 1969, NIRI is the largest professional investor relations association in the world with more than 4,000 members representing 2,000 publicly held companies and approximately $5.4 trillion in stock market capitalization.

NIRI, a member of GIRN – the Global Investor Relations Network – is pleased to have the opportunity to comment on the current IOSCO consultation on short selling. We appreciate your leadership in trying to establish appropriate and common short selling regimes around the world.

Introduction

We agree with the theme of your consultation that short selling is a legitimate activity which, among other benefits, provides liquidity in companies' issued shares and aids accurate price formation.

We also share your view that short selling is open to potential market abuse, which should be eliminated. An effective deterrent to this is disclosure. We will not comment on the legal aspects of how to regulate enforcement actions, however, representing public companies in the United States, we have strong views on disclosure and its administration.

We believe that public companies and the wider market should have full and unrestricted access to information on who owns and can influence a company's shares – whether the positions are long or short. Unfortunately this is currently not a uniform process around the world, creating many anomalies. For example, UK companies know, through very

detailed public disclosures, those U.S. investors who own their shares, while U.S. companies have much more out of date and restricted information on their U.S. investors. Thus, your consultation looks to address an important area which has not been widely acted upon thus far.

Following the format of your 'principles' we would like to comment as follows:

1. First Principle. *"Short selling should be subject to appropriate controls to reduce or minimise the potential risks that could affect the orderly and efficient functioning and stability of financial markets."*

   As noted above, NIRI believes that short selling plays a useful role in relation to companies' shares. Consequently we support the creation of an appropriate regulatory regime, supported by appropriate short position disclosure requirements.

2. Second Principle
   "Short selling should be subject to a reporting regime that provides timely information to the market or to the authorities."

   We agree with this principle, and with the underlying purpose of achieving orderly markets, free of market abuse. However, we believe that companies should be able to know who owns or can influence their shares. We note that there are significant differences in the current disclosure regimes applicable to *long* positions, which should also be addressed. The break out box describes briefly the system of proactive identification available in some countries but not others, which creates an unlevel playing field for companies.

   Further, we note that this system of proactive disclosure does not currently extend to synthetic ownership, in the form of Contracts for Difference, equity swaps, and other derivatives.

Proactive disclosure

In some countries, including UK, Australia, South Africa, France and most recently Germany, public companies have access to the provisions of company law, which allow them to require disclosure of the beneficial ownership of their shares.

In practice, a company would examine its shareholders' register, and note that a holding was identified in a street name or nominee. The company can then write to that nominee, requiring that the underlying, beneficial holder be identified.

Refusal allows the company to apply to the courts for sanctions, including withholding of dividends, removal of the vote, and ultimately the disenfranchisement of the share entirely. Because this is now a well established procedure, in practice these sanctions are rarely needed.

For their part, companies are obliged to create an index of responses, and to allow inspection of that index.

The result is that companies registered in those countries have much greater visibility of their shareholders than in others, creating an imbalance in how companies can proceed.

We would encourage IOSCO to take the disclosure of long positions into account, when considering those of short positions.

Your consultation also seeks feedback on specific issues:

a) Equity shares and derivatives.
   NIRI believes that derivatives play such an important function in the markets that to exclude them from short position reporting would remove much of the benefit of a disclosure regime on short positions. We also note that Hong Kong has successfully introduced a short selling disclosure regime, including disclosure of derivative positions.
b) Net or gross position reporting.
   IOSCO should encourage regulators to establish disclosure on the basis of net positions. This avoids the risk of potential double counting of positions.
c) Frequency of reporting.
   We believe that daily, end of day, reporting provides the maximum benefit without incurring substantial systems costs for reporters. The issue of an appropriate threshold is difficult, and needs to consider a number of issues, almost all at a national level. These include the existing transparency arrangements for long positions, whether a proactive right to establish ownership exists in the country, and the scale of short selling in each regime.
d) The responsibility for reporting.
   We agree with your view that only the investor has a sufficient overview of all positions that allow for accurate reporting.
e) Flagging of short sales.
   Flagging of short sales is useful additional information, and as such should be required by national regulators. However it is not a substitute for positional reporting.

3. Third Principle. "*Short selling is subject to an effective compliance and enforcement system.*"

   NIRI agrees with this statement and has no additional comment on enforcement by multiple regulatory agencies.

4. Fourth Principle. "*Short selling regulation should allow appropriate exceptions for certain types of transactions for efficient market functioning and development.*"

Given the fast pace of market structure development, we believe there is considerable risk in trying to identify and define activities which should be excluded from reporting. We would prefer to see each exclusion considered on a case by case basis with the ability to reasonably ensure there is not abuse of the exception.

Conclusion

NIRI hopes these comments are helpful to IOSCO as it deliberates short selling regulation. Thank you for accepting our comments on this important matter.

Sincerely,

Jeffrey D. Morgan, CAE
President & CEO