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SEC ADOPTS CIRCUIT BREAKER PLUS ALTERNATIVE UPTICK RULE

To: Clients and Friends of Tannenbaum Helpern Syracuse & Hirschtritt LLP¹

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I. Introduction

On February 24, 2010, the Securities and Exchange Commission (the “SEC” or the “Commission”) adopted amendments to Regulation SHO under the Securities Exchange Act of 1934 (the “Exchange Act”) which regulates short sales of securities. As adopted, amended Rule 200(g) (“Rule 200(g)”) and Rule 201 (“Rule 201” and, collectively with Rule 200(g), the “New Rules”) under Regulation SHO are intended to place certain restrictions on short selling when a stock is experiencing significant downward pressure. The compliance date for the New Rules is November 10, 2010. In its adopting Release No. 34-61595² (the “Release”), the SEC cited extreme market conditions and the resulting deterioration in investor confidence as the impetus for its amendments to address abusive short selling practices. While short selling provides the market with important benefits such as market liquidity and pricing efficiency it also may be used to illegally manipulate stock prices. Noting that the market has changed dramatically since the elimination of the original rule which restricted short selling in a declining market—Rule 10a-1 (the “uptick rule” or “former Rule 10a-1”)—the SEC adopted the New Rules in an effort to regulate short sales in the current market. The New Rules apply generally to all equity securities, except options, listed on a national securities exchange whether traded on an exchange or over the counter and reverse the SEC’s elimination of its prior uptick rule and other short sale restrictions in 2007 and 2008.

II. History of Short Sale Price Test Restrictions in the U.S.

The Commission’s authority to regulate short sales of securities springs from Section 10(a) of the Exchange Act. After conducting an inquiry into the effects of concentrated short selling during the market break of 1937, the Commission adopted former Rule 10a-1 in 1938 to

1 This GlobalNote® memorandum provides general information on the subject matter described, and it should not be relied on for legal advice on any matter, which may turn on specific facts. You should seek specific legal advice before acting with regard to the subjects discussed herein. For further information, please see the firm’s website: www.thshlaw.com.

2 See Securities Exchange Act Release No 34-61595 (February 26, 2010), (17 CFR Part 242).

restrict short selling in a declining market.³ Former Rule 10a-1 provided that, subject to certain exceptions, a listed security could be sold short (i) at a price above the price at which the immediately preceding sale was effected (plus tick), or (ii) at the last sale price if it was higher than the last different price (zero plus tick). In 1994, the Commission granted temporary approval to the National Association of Securities Dealers, Inc. (“NASD”)⁴ to apply its own short sale rule, known as the “bid test,” on a pilot basis that was renewed annually for over a decade until the Commission repealed short sale price tests. The NASD’s bid test prohibited short sales in Nasdaq Global Market securities at or below the current (inside) bid when the current best (inside) bid was below the previous best (inside) bid in a security. In the 70 years that followed the adoption of former Rule 10a-1, the landscape of the securities markets changed drastically. Such changes included decimalization, the increased use of matching systems that execute trades at independently derived prices during random times within specific time intervals, the spread of fully automated markets and the application of different price tests to securities trading in different markets. In response to these changes in the securities market, the Commission added exceptions and granted numerous written requests for relief from former Rule 10a-1’s restrictions.

In July 2004, the SEC adopted Rule 202T of Regulation SHO⁵, which established procedures to temporarily suspend short sale price tests for a prescribed set of securities so that the Commission could study the effectiveness of these tests. Pursuant to the process established in Rule 202T, the Commission issued an order creating a one year pilot (the “Pilot”) temporarily suspending the tick test of former Rule 10a-1 and any price test of any exchange or national securities association for short sales of certain securities. The purpose of the Pilot was to evaluate the effect that such short sale price test restrictions on the market for those subject securities. Short sale data was made publicly available during the Pilot to allow the public and Commission staff to study the Pilot. The Commission’s Office of Economic Analysis (“OEA”), in its summary report (“OEA Staff’s Summary Report”), found little empirical justification at that time for maintaining short sale price test restrictions, especially for actively traded securities. Third-party researchers analyzed the publicly available data and presented their results in a public roundtable. In sum, the Pilot results indicated that former Rule 10a-1 did not prevent short sales in extreme declining markets, did limit short selling in rising markets and generally supported the removal of short sale price test restrictions at that time.⁶ As a result, effective July 3, 2007, the Commission eliminated former Rule 10a-1 and added Rule 201 of Regulation SHO prohibiting any self-regulatory organization (“SRO”) from having a short sale price test.

III. Changes in Market Conditions since Elimination of Former Rule 10a-1

In its Release, the Commission stated that although it is not aware of specific empirical evidence that the elimination of short sale price test restrictions contributed to the increased volatility in U.S. markets, following the elimination of former Rule 10a-1, it received a plethora of requests from investors, trade associations and members of the U.S. Congress, among others, urging the reinstatement of such restrictions for various reasons, including to restore investor confidence and to address recent steep declines in securities’ prices.⁷ Specifically, a number of

3 See Securities Exchange Act Release No. 1548 (Jan. 24, 1938), 3 FR 213 (Jan. 26, 1938) (“Former Rule 10a-1 Adopting Release”).

4 The NASD is now known as the Financial Industry Regulatory Authority, Inc. (“FINRA”).

5 17 CFR 242.202T.

6 See Securities Exchange Act Release No. 54891 (Dec. 7, 2006), 71 FR 75068, at 75072-75075 (Dec. 13, 2006).

7 Of note, two SEC Commissioners voted against the adoption of the New Rules, citing the rationale that the New Rules will bolster investor confidence as rooted in conjecture and an insubstantial empirical basis in adopting the New Rules.

commenters called for the restoration of the uptick rule⁸ and some researchers have indicated that there is a possible association between the current market downturn and the elimination of former Rule 10a-1⁹.

In response to the concerns about the link between short selling—and specifically, abusive short selling practices—and the price fluctuations and market disruption since the elimination of former Rule 10a-1, the SEC adopted a number of temporary short selling regulations. On July 15, 2008, the SEC issued an emergency order pursuant to Section 12(k)(2) of the Exchange Act¹⁰ which imposed borrowing and delivery requirements on short sales of the equity securities of certain financial institutions.¹¹ Due to concerns regarding the impact of short selling on financial institutions, on September 18, 2008, the SEC issued another emergency order prohibiting short selling in the publicly traded securities of certain financial institutions¹². Broadening its focus beyond financial institutions, the SEC issued another emergency order imposing enhanced delivery requirements on sales of all equity securities under Rule 204T of Regulation SHO.¹³

When the SEC eliminated all short sale price test restrictions in July 2007, it acknowledged that circumstances may develop in the future that would warrant relief from the prohibition in Rule 201 of Regulation SHO for a short sale price test, including a short sale price test of an SRO, to apply to short sales in any security. Citing the recent turmoil in the financial sector and steep declines, as well as extreme volatility in securities prices, the SEC determined to amend Regulation SHO to add a short sale price test or circuit breaker rule.

IV. Proposed Short Sale Amendments of 2009

In April 2009¹⁴, the SEC proposed two approaches to restrictions on short selling, one that would apply on a permanent, market-wide basis and another that would apply to a particular security upon a significant decline in the price of that security. With respect to the SEC's first approach, the SEC proposed two alternative price tests. The first alternative price test, similar to the NASD's former bid test, would be based on the national best bid (the "proposed modified uptick rule"). The second alternative price test, like former Rule 10a-1, would be based on the last sale price (the "proposed uptick rule"). The SEC's second approach, which applied to a particular security (the "proposed circuit breaker approach"), included two basic alternatives. The first alternative proposed was a circuit breaker rule that, when triggered by a significant price decline in a particular security, temporarily prohibited any person from selling short that security, subject to certain exceptions. The second alternative was a circuit breaker rule that, when triggered by a significant price decline in a particular security, would trigger a temporary short sale price test for that security. In connection with this alternative, the SEC had proposed two short sale price tests – the modified uptick rule and the uptick rule. In other words, upon the

8 See, e.g., letter from Edward L. Yingling, American Bankers Association, dated Dec. 16, 2008; letter to Christopher Cox, Chairman, Commission, from Hillary Rodham Clinton, Senator, dated Sept. 17, 2008 ("Clinton Letter"); letter to Mary Schapiro, Chairman, Commission, from Gary L. Ackerman, Member of Congress, dated Jan. 27, 2009.

9 See Proposal, 74 FR at 18047, n.64; see also See D. Harmon and Y. Bar-Yam, 2008 Technical Report on the SEC Uptick Repeal Pilot, New England Complex Systems Institute; see also Robert C. Pozen and Dr. Yaneer Bar-Yam, There's a Better Way to Prevent Bear Raids, The Wall Street Journal, Opinion, November 18, 2008 (stating that the uptick rule is an effective way to prevent bear raids).

10 15 U.S.C. 781(k).

11 See Securities Exchange Act Release No. 58166 (July 15, 2008), 73 FR 42379 (July 21, 2008).

12 See Securities Exchange Act Release No. 58592 (Sept. 18, 2008), 73 FR 55169 (Sept. 24, 2008).

13 See Securities Exchange Act Release No. 58572 (Sept. 17, 2008), 73 FR 54875 (Sept. 23, 2008).

14 See Exchange Act Release No. 59748 (Apr. 10, 2009), 74 FR 18042, 18043 (Apr. 20, 2009) (the "Proposal").

occurrence of a significant price decline in a particular security, either the modified uptick rule for that security (the “proposed circuit breaker modified uptick rule”) or the proposed uptick rule for that security (the “proposed circuit breaker uptick rule”) would be triggered. In addition, the SEC considered in its proposed rules whether a short sale price test restriction that would permit short selling at a price above the current national best bid (the “alternative uptick rule”) would be preferable to the proposed modified uptick rule and the proposed uptick rule. The SEC received over 4,300 comment letters in response to its proposed rules.

V. Operation of the Circuit Breaker Plus Alternative Uptick Rule

As adopted, amended Rule 201 combines both the “circuit breaker” and “alternative uptick rule” concepts that were proposed by the SEC in 2009. Specifically, Rule 201(b) requires a trading center¹⁵ to establish, maintain and enforce written policies and procedures reasonably designed to prevent it from executing or displaying any short sale order of a covered security¹⁶, absent an exception, at a price that is equal to or below the current national best bid¹⁷ if the price of that security decreases by 10% or more from the security’s closing price as determined by the listing market¹⁸ for the covered security as of the end of regular trading hours on the prior day. A trading center’s policies and procedures must also ensure that the price restriction remains in place for the rest of the day on which it is triggered and the entire following trading day.¹⁹

It is the responsibility of the listing market for a particular covered security to determine whether that security is subject to the requirements of Rule 201 and, if it is, to immediately notify the single plan processor²⁰ responsible for the consolidation of information for a particular

15 Rule 201(a)(9) states that the term “trading center” shall have the same meaning as in Rule 600(b)(78). Rule 600(b)(78) of Regulation NMS defines a “trading center” as “a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.” 17 CFR 242.600(b)(78). The definition encompasses all entities that may execute short sale orders. Thus, Rule 201 will apply to any entity that executes short sale orders.

16 “Covered security” is defined in Rule 201(a)(1) as “any NMS stock” as defined under Rule 600(b)(46) of Regulation NMS. Rule 600(b)(46) defines “NMS stock” as “any NMS security other than an option” and an “NMS security” is defined as “any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.” 17 CFR 242.600(b)(46). Effectively, the New Rules apply to any security or class of securities, except options, listed on a national securities exchange whether traded on an exchange or over the counter.

17 Rule 201(a)(4) provides that the term national best bid shall have the same meaning as in §242.600(b)(42). Rule 600(b)(42) of Regulation NMS provides that national best bid means, with respect to quotations for an NMS security, the best bid for such security that is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan; *provided*, that in the event two or more market centers transmit to the plan processor pursuant to such plan identical bids or offers for an NMS security, the best bid shall be determined by ranking all such identical bids first by size (giving the highest ranking to the bid or offer associated with the largest size), and then by time (giving the highest ranking to the bid or offer received first in time).

18 Rule 201(a)(3) defines the term “listing market” as having the same meaning as the term “listing market” as defined in the effective transaction reporting plan for the covered security. Currently there are two transaction reporting plans in the market, the CTA Plan, which disseminates transaction information for securities primarily listed on an exchange other than Nasdaq, and the Nasdaq UTP Plan, which disseminates consolidated transaction and quotation information for securities primarily listed on Nasdaq. Each of these plans has a definition of listing market. Rule 201(a)(2) provides that “[t]he term effective transaction reporting plan for a covered security shall have the same meaning as in §242.600(b)(22).”

19 Rule 201(b).

20 Rule 201(a)(6) provides that “[t]he term plan processor shall have the same meaning as in §242.600(b)(55).” Rule 600(b)(55) of Regulation NMS states: “Plan processor means any self-regulatory organization or securities information processor acting as an exclusive processor in connection with the development, implementation and/or operation of any facility contemplated by an effective national market system plan.” The single plan

security which will then disseminate such information to the market. The SEC notes that listing markets are in the best position to have this role as they already have rules or policies in place to coordinate trading suspensions or halts in individual NMS stocks and would be able to deal with anomalous or unforeseeable events that may impact a covered security's price, such as an erroneous trade, because the listing markets generally have in place specific procedures designed to address such events.²¹ Thus a trading center's policies and procedures must be reasonably designed so that the trading center is able to obtain such information from the single plan processor if the covered security becomes subject to the New Rules' requirements.²²

Upon receipt of a short sale order for a covered security that is subject to the New Rules' requirements, a trading center must be able to determine whether the short sale order can be executed or displayed in accordance with the provisions of the New Rules. If the order is marketable at a permissible price, the trading center may present the order for immediate execution or, if not immediately marketable, hold it for execution at its specified price. A trading center could also re-price an impermissibly priced order upwards to the lowest permissible price and hold it for later execution at its new price or better.²³ The policies and procedures approach gives trading centers greater flexibility and thus allows for a more efficient functioning of the markets than a rule that would apply a straight prohibition approach.

The alternative uptick rule is similar to the proposed modified uptick rule in that it will use the current national best bid, rather than the last sale price, as a reference point for short sale orders. In its Release, the SEC provided that a short sale price test based on the national best bid is more suitable to today's markets than one based on the last sales price citing improper price sequencing caused by permitted reporting delays and the potential manipulation, among other reasons. The alternative uptick rule will only permit short selling at an increment above the current national best bid, unless an applicable exception applies.

V. "Short Exempt" Provisions of Rule 201

Amended Rule 200(g) of Regulation SHO ("Rule 200(g)") provides that "[a] broker or dealer must mark all sell orders of any equity security as 'long,' 'short,' or 'short exempt.'" As described in further detail below, a broker-dealer may mark certain sale orders as "short exempt" in accordance with the exceptions provided in subsections (c) and (d) of Rule 201 so that a trading center may execute or display such orders without regard to whether they are priced in accordance with the requirements of Rule 201(b). In order to permit market participants to utilize the exceptions contained in 201(c) and (d), a trading center must have policies and procedures reasonably designed to permit the execution or display of a short sale order of a covered security marked "short exempt" without regard to whether the order is at a price that is less than or equal to the current national best bid.²⁴ The exceptions and exemptions provided in subparagraphs (c) and (d) of Rule 201 are largely based on the exceptions to and exemptive relief granted under former Rule 10a-1, as applicable.

processors are "exclusive processors" as defined under Section 3(a)(22) of the Exchange Act. 17 CFR 242.600(b)(55). See 15 U.S.C. 78c(a)(22).

21 See Release at 11258.

22 Id.

23 For example, if a trading center receives a short sale order priced at \$47.00 when the current national best bid in the security is \$47.00, the trading center could re-price the order at the permissible offer price of \$47.01, and display the order for execution at this new limit price.

24 Rule 201(b)(2)(iii)(B).

a. **Broker-Dealer Provision**

Rule 201(c) provides that a broker-dealer may mark a short sale order of a covered security “short exempt” if a broker-dealer that submits a short sale order to a trading center identifies the short sale order as being at a price above the current national best bid at the time of submission.²⁵ Broker-dealers relying on this provision are required to establish, maintain and enforce written policies and procedures that are reasonably designed to prevent incorrect identification of orders as being permissively priced in accordance with the provisions of Rule 201(c)(1). At a minimum, a broker-dealer’s policies and procedures would need to be reasonably designed to enable a broker-dealer to monitor, on a real-time basis, the national best bid, so as to determine the price at which the broker-dealer may submit a short sale order to a trading center in compliance with the provisions of proposed Rule 201(c). Additionally, a broker-dealer would need to engage in regular and periodic surveillance to ascertain the effectiveness of the policies and procedures required under Rule 201(c)(1).²⁶

b. **Seller’s Delay in Delivery**

The alternative uptick rule also provides that a broker-dealer may mark an order “short exempt” if the broker-dealer has a reasonable basis to believe that the seller owns the security being sold and that the seller intends to deliver the security as soon as all restrictions on the delivery have been removed.²⁷ This provisions parallels an exception contained in former Rule 10a-1(e)(1). Rule 200(g)(1) of Regulation SHO provides that a sale can be marked “long” only if the seller is deemed to own the security being sold and either (i) the security is in the broker-dealer’s physical possession or control or (ii) it is reasonably expected that the security will be in the broker-dealer’s physical possession or control by settlement of the transaction. Thus, even where a seller owns a security, in the event of a delay in delivery, such sales must be marked as “short.” As a result, the exception found in Rule 201(d)(1) is necessary to allow for sales of securities that are subject to Regulation SHO due solely to the seller being unable to deliver the security prior to settlement.

c. **Odd Lot Transactions**

Rule 201(d)(2) provides that a broker-dealer may mark a short sale order “short exempt” if the broker-dealer has reasonable basis to believe that the short sale order is made by a market maker to off-set a customer odd-lot²⁸ order or to liquidate an odd-lot position which changes such broker-dealer’s position by no more than a unit of trading²⁹. This exception parallels the exceptions in subsections (e)(3) and (e)(4) of former Rule 10a-1.

d. **Domestic Arbitrage**

The SEC also included a domestic arbitrage exception in its amendments which mirrors subsection (e)(7) of former Rule 10a-1. Rule 201(d)(3) provides that a broker-dealer may mark “short exempt” short sale orders associated with certain bona fide domestic arbitrage transactions. “Bona fide arbitrage” describes an activity undertaken by market professionals in which essentially contemporaneous purchases and sales are effected in order to lock in a gross profit or

²⁵ Rule 201(c).

²⁶ Rule 201(c)(2).

²⁷ Rule 201(d)(1).

²⁸ An “odd lot” is defined as “an order for the purchase or sale of an NMS stock in an amount less than a round lot.” 17 CFR 242.600(b)(49).

²⁹ SRO rules define a “unit of trading” generally means 100 shares, i.e., a round lot.

spread resulting from a current differential in pricing of two related securities.³⁰ The text of Rule 201(d)(3) provides that “[t]he short sale order of a covered security is for a good faith account of a person who then owns another security by virtue of which he is, or presently will be, entitled to acquire an equivalent number of securities of the same class as the securities sold; provided such sale, or the purchase which such sale offsets, is effected for the bona fide purpose of profiting from a current difference between the price of the security sold and the security owned and that such right of acquisition was originally attached to or represented by another security or was issued to all the holders of any such securities of the issuer.” Because bona fide arbitrage is beneficial to the markets as it tends to reduce pricing disparities between related securities, the alternative uptick rule is designed to permit the exception or display on a down-bid price of such orders in connection with bona fide arbitrage transactions involving convertible, exchangeable, and other rights to acquire the securities sold short, where such rights of acquisition were originally attached to, or represented by, another security, or were issued to all the holders of any such class of securities of the issuer.

e. **International Arbitrage**

Similar to the domestic arbitrage exception, Rule 201(d)(4) provides that a broker-dealer may mark “short exempt” short sale orders associated with certain international arbitrage transactions. The provision, which mirrors the exception in former Rule 10a-1(e)(8), is applicable only if at the time of the short sale there is a corresponding offer in a foreign securities market, so that the immediate covering purchase would have the effect of neutralizing the short sale. The text of rule 201(d)(4) provides that: “[t]he short sale order of a covered security is for a good faith account and submitted to profit from a current price difference between a security on a foreign securities market and a security on a securities market subject to the jurisdiction of the United States, provided that the short seller has an offer to buy on a foreign market that allows the seller to immediately cover the short sale at the time it was made. For the purposes of this paragraph (d)(4), a depository receipt of a security shall be deemed to be the same security as the security represented by such receipt.” The SEC notes that this exception is necessary to facilitate arbitrage transactions in which a position is taken in a security in the U.S. market, and which is to be immediately covered in a foreign market.³¹ As with the domestic arbitrage exception, Rule 201(d)(4) only applies to bona fide arbitrage transactions.

f. **Over-Allotments and Lay Off Sales**

Rule 201(d)(5) provides that a broker-dealer may mark “short exempt” short sale orders by underwriters or syndicate members participating in a distribution in connection with an over-allotment, and any short sale orders with respect to lay-off sales by such persons in connection with a distribution of securities through a rights or standby underwriting commitment. The text of the exception provides the exception if the broker has a reasonable belief that: “the short sale order of a covered security is by an underwriter or member of a syndicate or group participating in the distribution of a security in connection with an over-allotment of securities; or (ii) The short sale order of a covered security is for purposes of a lay-off sale by an underwriter or member of a syndicate or group in connection with a distribution of securities through a rights or standby underwriting commitment.”³² This exception parallels the exception contained in former Rule 10a-1(e)(10) which was adopted in 1974.

30 See Securities Exchange Act Release No. 42037 (Oct. 20, 1999), 64 FR 57996 at n.54 (Oct. 28, 1999) (discussing the domestic arbitrage exception under form Rule 10a-1).

31 See Release at 11269.

32 Rule 201(d)(5).

g. **Riskless Principal Transactions**

The exception found in Rule 201(d)(6) provides that a broker-dealer may mark “short exempt” short sale orders where broker-dealers are facilitating customer buy orders or sell orders where the customer is net long, and the broker-dealer is net short but is effecting the sale as riskless principal.³³ The Commission granted exemptive relief under former Rule 10a-1 for any broker-dealer that facilitates a customer buy or long sell order on a riskless principal basis. The SEC noted in its Release that such a provision provides broker-dealer’s with additional flexibility to provide best execution to customer orders.³⁴ In addition, Rule 201(d)(6) requires broker-dealers to have policies and procedures in place to assure that at a minimum, the customer order was received prior to the offsetting transaction, the offsetting transaction is allocated to a riskless principal or customer account within 60 seconds of execution and that it has supervisory systems in place to allow the broker-dealer to reconstruct in a time-sequenced manner, all orders on which the broker relies pursuant to this provision.³⁵

h. **Transactions on a Volume-Weighted Average Price Basis**

Rule 201(d)(7) provides that a broker-dealer may mark “short exempt” certain orders executed on a volume-weighted average price (“VWAP”) if the broker-dealer has a reasonable basis to believe that the short sale order is for the sale of a covered security at the VWAP that meets the following conditions: (1) the VWAP for the covered security is calculated by: calculating the values for every regular way trade reported in the consolidated system for the security during the regular trading session, by multiplying each such price by the total number of shares traded at that price; compiling an aggregate sum of all values; and dividing the aggregate sum by the total number of reported shares for that day in the security; (2) the transactions are reported using a special VWAP trade modifier; (3) the VWAP matched security qualifies as an “actively-traded security” (as defined under Rules 101(c)(1) and 102(d)(1) of Regulation M), or where the subject listed security is not an “actively-traded security,” the proposed short sale transaction will be permitted only if it is conducted as part of a basket transaction of twenty or more securities in which the subject security does not comprise more than 5% of the value of the basket traded; (4) the transaction is not effected for the purpose of creating actual, or apparent, active trading in or otherwise affecting the price of any security; and (5) a broker or dealer will act as principal on the contra-side to fill customer short sale orders only if the broker-dealer’s position in the covered security, as committed by the broker-dealer during the pre-opening period of a trading day and aggregated across all of its customers who propose to sell short the same security on a VWAP basis, does not exceed 10% of the covered security’s relevant average daily trading volume, as defined in Regulation M.³⁶

VI. Conclusion

The New Rules were effective on May 10, 2010, but the SEC is providing a six-month implementation period to enable trading centers and others to prepare for complying with the new requirements, making the New Rules’ compliance date November 10, 2010. The SEC hopes that these amendments will restore investor confidence by helping to curb potentially manipulative or

33 Rule 201(d)(6).

34 See Release at 11269.

35 Rule 201(d)(6).

36 See Rule 201(d)(7); 17 CFR 242.100(b) (defining average daily trading volume), 242.101(c)(1), 242.102(d)(1).

abusive short selling while continuing to allow for the smooth functioning of the markets and the liquidity and price efficiency that short sellers often provide.

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If you have any questions or wish to discuss issues or concerns relating to the proposed Amendments to Regulation SHO, or any other item mentioned herein, please do not hesitate to contact us.