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

June 16, 2009

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

Dear Ms. Murphy:

Credit Suisse welcomes the opportunity to comment on the proposed amendments to Regulation SHO (the "Release") of the Securities and Exchange Commission (the "Commission" or "SEC"), which would impose "price test" restrictions on short selling in the U.S. equities markets.

Credit Suisse Securities (USA) LLC ("Credit Suisse") is the United States broker-dealer subsidiary of Credit Suisse Group which has been operating continuously in the United States since 1932, when the First Boston Corporation was founded. As one of the world's leading banks, Credit Suisse Group provides its clients with private banking, investment banking and asset management services worldwide. The most recent Greenwich Survey named Credit Suisse the top broker in algorithmic trading, as well as a top broker in the overall US Equities market.[1]

Executive Summary

Credit Suisse shares the Commission's concerns about the negative effects of "naked short selling" and supports actions to prevent such abusive activities. We firmly believe, however, that recent SEC initiatives —interim final temporary Rule 204T and Rule 10b-21— have already effectively addressed this issue.

In addition to these recent initiatives, the SEC now proposes five alternative approaches to restrict short sales. These alternatives fall into two broad categories: circuit breakers and market-wide price restrictions. We do not believe that any of these additional measures are necessary to address short sale issues, and indeed further restrictions may negatively impact market quality.

Short sales provide important benefits to the market, including greater liquidity for both buyers and sellers, tighter bid/ask spreads, and lower volatility. The Commission acknowledged in its Release that short selling is an important part of the market ecosystem, stating "*short* selling provides the

[1] Greenwich Survey, May 2009: Credit Suisse was #1 in Algorithmic Trading and #1 in Overall Equity Trading Quality, #1 in Direct Market Access, and #2 in Overall US Equity Volume. Tabb Report, November 2008: Credit Suisse was #1 in Algorithmic Trading.

market with important benefits, including market liquidity and pricing efficiency,"[2] and that "short sellers also play an important role in correcting upward stock price manipulation."[3]

The SEC's Office of Economic Analysis issued an internal memorandum in December of 2008 that examined trading during the volatile market period of September 2008. The study determined that short sales were not responsible for plummeting financial stocks, and that in general, "short sales put less pressure on prices than other [long] sales during periods of extreme negative returns." The results of this analysis were inconsistent with the notion that short selling activity contributes to market volatility and negative market moves, since short sale volume as a fraction of total volume was higher during periods of positive returns than for periods of negative returns. In other words, short sellers were generally contrarian and helped maintain orderly markets.[4]

Many commentators seem to believe that removing short sellers will result in upward price pressure on stocks. However, there are very few institutional investors that are net short sellers, and a significant number of institutional investors manage what are known as "long/short" portfolios.[5] In a typical "long/short" portfolio, for every dollar of stocks an investor owns, he or she is also short a dollar of stocks. The result is that restricting short selling removes or reduces the volume of buy orders as well as sell orders, which significantly reduces overall volumes. (See Appendix A, which shows the tremendous growth of US equities volume since the repeal of the uptick rule in July of 2007.)

While we believe that imposition of further short sale restrictions is unnecessary and inadvisable, of the five alternatives set forth in the Release, Credit Suisse believes the Circuit Breaker Halt proposal with appropriate exemptions is the preferable approach. The Circuit Breaker Halt proposal appropriately imposes restrictions on the particular stocks that may be targets of "bear raids," while avoiding negative effects on liquidity, price discovery and spreads. We believe the relative simplicity of this approach ensures that this proposal could be implemented more quickly than the others, would result in fewer technology problems, and is compatible with Regulation NMS. Therefore, should the Commission determine to impose additional restrictions on short selling, we urge the Commission to choose this alternative and implement a pilot program beginning later in 2009.

Credit Suisse does not support the other price test proposals (the Uptick, Modified Uptick, Circuit Breaker Uptick or Circuit Breaker Modified Uptick proposals) due to their doubtful value in mitigating "bear raids", their negative impact on liquidity, price discovery and spreads, and the extreme difficulty and expense of implementation, particularly in a Regulation NMS environment.

[2] SEC proposal, April 10, 2009, page 9

[3] SEC proposal, April 10, 2009, page 26

[4] SEC Office of Economic Analysis Memorandum, December 16, 2008

[5] The Credit Suisse Tremont Index reported only 0.6% of hedge funds were net short in the period immediately before the financial crisis (August of 2008).

"Naked" Short Selling Has Been Curbed; Further Restrictions Are Unnecessary

Many of the calls to "reinstate the uptick rule" in fact describe the abuses of "naked short sales," where a short seller sells stock without locating securities to borrow, and fails to deliver the shares sold. Interim final temporary Rule 204T, which imposes a "hard delivery" obligation on all sales of equity securities, has been highly effective at reducing naked short sales, and has resulted in a clear reduction in failures to deliver. According to a recent report in the Wall Street Journal, the number of US securities with prolonged fails to deliver has fallen from 529 per day in the first nine months of 2008, to just 79 per day in 2009.[6] Credit Suisse strongly supports the permanent adoption of Rule 204T, subject to the modifications described in the SIFMA Letter to the SEC dated December 16, 2008.

Credit Suisse likewise commends the Commission for its recent adoption on October 17, 2008 of Rule 10b-21, which imposes liability on any seller of an equity security that: (1) deceives a broker-dealer, clearing agency or purchaser about its intention or ability to deliver the security on or before the settlement date; and (2) actually fails to deliver the security on or before the settlement date. Given the documented successes of interim final temporary Rule 204T and Rule 10b-21 in curbing naked short selling, we urge the Commission to avoid further rulemaking that may have unintended negative consequences and no meaningful positive results.

There is no evidence linking short-selling to the demise of several large financial companies in 2008 or to the market chaos during the fall of 2008. Our analysis of a large sample of hedge fund and institutional activity found short selling was actually lower than normal in 30 prominent financial stocks during the two week period prior to the short sale ban of September 18, 2008.[7] Also note that financial stocks as a group dropped 24% during the short sale ban of September 19 – October 8, 2008, further evidence that the declines were the result of long selling and a lack of motivated buyers. [8]

In the absence of evidence that short selling was responsible for the recent declines in stock prices[9], proponents of short sale price restrictions instead have argued that short sale rules are necessary to "boost investor confidence."[10] The question of whether restrictions on short selling would restore confidence ventures from the realm of economics to the realm of psychology, and as such, is outside of the scope of our expertise. However, we question the wisdom of creating permanent new

[6] WSJ, "Short Sellers Squeezed All Around --- SEC Closes Loopholes as Some Firms Limit Stock Lending to Traders", Tom McGinty and Jenny Strasburg, April 7, 2009

[7] The ratio of short selling to long selling among the 30 most volatile financial stocks in the period of Sept. 8, 2008 – Sept. 18, 2008 was compared to the ratio in several "normal" periods from earlier in 2008 that were randomly selected. The study looked at 30 financial names including LEH, MS, MER, AIG, FNM, FRE, C, and GS. Surprisingly, there was significantly less short selling activity in these names in Sept. 2008 than in the control periods.

[8] Credit Suisse AES Analysis, "The Blame Game: What Caused Spreads to Widen", Nov. 12, 2008.

[9] SEC Office of Economic Analysis Memorandum, December 16, 2008.

[10] WSJ, "Restore the Uptick Rule, Restore Confidence", Charles Schwab, Dec. 9, 2008

rules in an attempt to address the temporary psychology of a fickle trading market. We further believe that the Commission should not adopt rules that studies shows to be ineffective. We believe that if the problem is in fact "investor confidence" and not abusive, manipulative short selling, an investor education effort to restore confidence that the markets are fair would be superior to new regulations that impose artificial price constraints.

Targeted Circuit Breakers vs. Market-Wide Price Restrictions

The SEC has proposed two broad categories of short sale restrictions: circuit breakers and market-wide price restrictions that affect all trading in stocks, all of the time. Of these two broad categories, we believe that circuit breakers that are security specific and triggered only if the price of a particular security falls, for example, by 10% from the previous day's close, are significantly better than restrictions that apply to all stocks all of the time. Short sales provide important benefits to the market, including greater liquidity for both buyers and sellers, tighter bid/ask spreads, and lower volatility. Appendix B illustrates the negative effects on bid/ask spreads of the Commission's September and October 2008 short sale ban. Given the potential consequences of further short sale restrictions, a targeted approach that only affects stocks experiencing significant downward price pressure is far superior to a market-wide approach that affects all stocks, all of the time.

The Circuit Breaker Halt Approach

If the Commission finds that further regulatory measures are necessary to address "bear raids", Credit Suisse supports restrictions on short selling that target the specific securities subject to serious price pressure, which may be evidence of a bear raid. We define "bear raid" to be a strategy of aggressively shorting stocks, with the intent of driving down the price to create a self-fulfilling prophecy where investors and others lose confidence in the company, leading to the fundamentals of the company worsening and further stock price reductions. We believe that the Commission's Circuit Breaker Halt proposal which bans short sales in a particular stock after a specified market decline, with appropriate exemptions, would address bear raids, without adding significant complexity to the market structure, harming overall volume or liquidity, or imposing excessive cost.

We acknowledge that in theory bear raids can be especially damaging to financial firms, whose ability to operate depends on perceived stability and solvency. However, as previously noted, our internal analysis and the study conducted by the SEC's Office of Economic Analysis do not support the notion that "bear raids" took place in September of 2008. That said, we have assumed for the purpose of the remaining analysis that "bear raids" do occur and need to be addressed by regulation. We believe that an Uptick, Modified Uptick, Circuit Breaker Uptick or Circuit Breaker Modified Uptick rule, with their enormous complexity and implementation costs, would not be an effective or efficient means of addressing the issue, whereas a Circuit Breaker Halt, which is much cheaper and faster to implement, could be effective.

The Benefits of the Commission's Proposed Circuit Breaker Halt Proposal:

1. *The Circuit Breaker Halt Proposal is a targeted solution to address a narrow problem.* An Uptick or Modified Uptick requirement would be overly broad, constraining trading activity and thereby harming liquidity in thousands of stocks in which there is no evidence of short selling issues.

2. *The Circuit Breaker Halt Proposal would be more effective at addressing "bear raids" than the other approaches.* If short-selling is responsible for rapidly depressing a company's stock price, breaking the momentum with a "time-out" from short-selling would be far more effective than simply slowing the downward price momentum pursuant to an Uptick or Modified Uptick rule. A "bear raid" can still occur with an Uptick or Modified Uptick rule in place, as short sellers can still publicly display large offers at the uptick price, which may then discourage buyers while motivating long sellers to sell into the bid, causing the stock to continue to decline.

3. *The Circuit Breaker Halt Proposal is transparent and easy to implement.* The Circuit Breaker Halt proposal does not require the centralization or sequencing of incoming market data, and is straight-forward to implement, therefore requiring far less time for implementation than would the Uptick, Modified Uptick, Circuit Breaker Uptick or Circuit Breaker Modified Uptick proposals.

4. *The Circuit Breaker Halt Proposal is compatible with Regulation NMS.* When the circuit breaker is activated, trading centers will simply stop executing short sales and broker-dealers will reject new short sale orders from clients. This is far less complex to implement than continuously monitoring the order of ticks or bids.

Misconception Concerning Circuit Breakers — The So-Called "Magnet Effect"

A misconception frequently cited regarding circuit breakers is the risk of the so-called "magnet effect," which refers to stock prices being drawn down to the circuit breaker trigger level as sellers rush to sell short above the trigger price. Although it may sound logical, numerous academic studies that have analyzed circuit breakers in other contexts found no evidence of such trading patterns.[11]

It is possible that the reason the "magnet effect" does not exist is that it is generally not rational to aggressively sell a stock just before it hits a circuit breaker that will remove short selling pressure from the market.[12] If the Commission is concerned about a possible magnet effect of a Circuit

[11] *Abad and Pascual (2005)* found that prices reverse or decelerate as they approach price limits on the Spanish stock exchange, rejecting the magnet effect.

Chan, et al (2005) found that daily price limits on the Kuala Lumpur Stock Exchange did not exacerbate order imbalance prior to limit hits.

Hall and Korfman (2001) examined activity around price limits in five agricultural futures contracts and found no support for a magnet effect.

Berkman and Steenbeek (1998) investigated Nikkei 225 futures contracts traded on the Osaka Securities Exchange and the Singapore international Monetary Exchange (SIMEX) and found a lack of a magnet effect.

Kuserk et al (1989) examined treasury bond futures daily price limits and found no evidence of a magnet effect.

Arak and Cook (1997) also examined treasury bond futures 8 years after *Kuserk*, and also found no evidence of prices accelerating towards limit down or limit up.

[12] Furthermore, Subrahmanyam (1997) extends the work of Easley and O'Hara (1987) and develops a
(…continued)

Breaker Halt, we suggest it test the rule for a small number of stocks during a pilot period to assess its impact.

Circuit Breaker Trigger Threshold

We have provided data in Appendix C on the number of times a circuit breaker would have been triggered based on a 10, 15 and 20% decline as measured from the previous day's closing price. We have also included data on the number of times a circuit breaker would have been triggered based on a 10, 15 and 20% decline as measured from that day's opening price. There will be many instances in which an issuer announces negative news after the close or before the open and its stock price will open down significantly to reflect that news. If the Commission is concerned about preventing "bear raids", we believe the more relevant test would be intra-day price declines as measured from the open.

Need for Appropriate Exemptions

Credit Suisse believes strongly that appropriate exemptions are required to minimize distortions and inefficiencies that are created when short sale restrictions are applied. At a minimum, exemptions from a short sale halt requirement should apply to market makers in equity, convertible and derivative markets; to persons engaged in hedging transactions; to arbitrage trades involving indices, baskets or ETFs; and to market on close orders. Providing appropriate exemptions to liquidity providers will keep spreads narrow and quote sizes large, which will bolster investor confidence that markets are liquid and stable. In the event that any of the proposed short sale price tests are adopted, and particularly in the case of the Circuit Breaker Halt proposal, it is critical that the Commission grant appropriate exemptions to categories of sellers that are not selling short for the purposes of creating or increasing short exposure, but rather are shorting for bona fide market making or hedging purposes. Many of these bona fide market making or hedging trades are actually delta neutral, further advancing the argument for an exemption. The Commission and self-regulatory organizations could audit the use of such exemptions to ensure they are not misused.

Market-Makers

Credit Suisse believes that an exemption should apply for market-makers and block positioners in equities, convertibles, options and derivatives (including futures, listed and OTC derivatives) so that they may continue to make two-sided markets to facilitate customer orders. This exemption would be similar to the exemption found in the Regulation SHO locate requirement and in the short sale ban implemented on an emergency basis last fall. However, this exemption needs to be expanded to include convertible, futures, listed and OTC derivative market-makers that regularly make two-sided markets. The exemption should only apply to short sales by market-makers and block

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theoretical model for the strategic behavior of informed traders. He concludes that "an informed trader knows that trading large quantities will cause the limit to be crossed, which will cause him or her to lose profit potential. Therefore, the strategic action would be to scale back his or her trading in response to the closure, contrary to the magnet effect."

positioners when they have a reasonable basis to believe that the counterparty has not created or increased its economic short exposure through a derivative position.

Riskless Principal

Credit Suisse believes that an exemption for riskless principal trades should be available to broker-dealers after the circuit breaker is triggered so that broker-dealers can facilitate customer buy or sell orders when the customer is net long, and the broker-dealer is net short.

Arbitrage

Credit Suisse believes that an exemption should apply when the broker-dealer has a reasonable basis to believe that the short sale order is for a person who owns another security and 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 purchase which such sale offsets, is effected for the bona fide purpose of profiting from the difference between the price of the security sold and security owned. A similar exemption appears as proposed Rule 201(d)(3) and was also an exemption under former Rule 10a-1. As described immediately below, the exemption should be extended to convertible arbitrage trading.

Delta-Hedging for Convertible Securities

Convertible bonds are an important source of liquidity to corporations across a broad range of industries, providing low-cost funding to investment grade issuers as well as being an important source of funding for companies that may lack access to traditional debt markets. Access to this market is a critical component of restoring the financing markets which is paramount to an economic recovery. Many convertible investors will only purchase convertible securities if they can short the company's equity stock, essentially making the position less sensitive to the stock price's fluctuations. By purchasing the convertible security and shorting the underlying common, hedged convertible investors foster efficiently priced markets in the securities. The number of shares necessary to hedge the convertible security changes as the price of the shares move (a process known as "delta-hedging"). Convertible bond investors and market-makers will only hold positions if they know that they will always be able to hedge their delta risk. If they are concerned about an inability to hedge their positions due to halts on shorting, investors may exit the market. Additionally long-only convertible holders rely on these hedged convertible investors to buy the convertible and short the underlying common in order to create an efficiently priced market in the securities. If the market does not accurately price the convertible and underlying common, long-only investors will also retreat from the primary and secondary markets.

We also note that upon launch of a new issue convertible security, the underlying common shares will often decline due to the potential future dilution. This decline will often be significant and could trigger a circuit-breaker, which could prevent or delay the capital raising transaction. We believe the right solution is an exemption for all hedged convertible investors involved in either market-making or arbitrage, as was the case in the old uptick rule.

Delta-Hedging for Derivatives

Derivatives foster the mitigation of risk, as well as the transfer of unwanted risk from one market participant to another. Liquidity in the derivative securities market is dependent on the ability to hedge equity risk. As with convertible securities, which are essentially bonds with an embedded call option, derivative traders also need to dynamically "delta-hedge" by buying or selling shares as the price of the underlying equity fluctuates. Options and derivative market traders will only hold positions and make markets if they are assured of being able to hedge their delta risk. If market participants are unable to hedge positions due to halts on shorting, they will deem it too risky to make markets, leaving the derivatives market illiquid, and hindering the beneficial transfer of risk that takes place in this market. Thus we believe the right solution is an exemption for derivatives traders involved in either market-making or domestic arbitrage.

Equities Index Futures and Index Arbitrage

Equity index futures derive their value from equities that are regulated by the SEC. Market makers in index futures are required to maintain an orderly two-sided market. In order to fulfill this commitment, market makers must be able to trade, unencumbered, the underlying constituents of the indices from which the futures derive their value.

Some of the largest trades of the year occur on the monthly expiration of index options and the quarterly "triple witch" expiration, when futures expire. On these days, arbitrage traders need to buy or sell stocks on the opening print to eliminate their risk. These rebalance trades shift the trader's risk but are largely market neutral. An uptick or modified uptick requirement for the opening print on expiration days would prevent market participants from shorting stock to offset their long index, options and futures exposure. These expiration trades are very liquid and not susceptible to manipulation. We believe the right solution is an exemption for equities index traders involved in either market-making or arbitrage.

Exchange Traded Funds ("ETFs")

Exchange Traded Funds represent collective holdings of multiple securities. Since their prices are based on the prices of multiple underlying securities, we do not believe it is possible for there to be a "bear raid" in an ETF. Thus, we believe all ETFs should be exempt from any short selling restrictions. Liquidity providers in ETFs, including block positioners, automated market makers, and market makers in ETFs need to maintain a two-sided orderly market. In order to accomplish this, they must be able to trade, unencumbered, the underlying constituents of the indexes or funds from which the ETFs derive their value. An ETF by definition is fully fungible with its underlying constituents. Without this exemption, it is likely that a dislocation will occur and cause a reduction in market efficiency and, by extension, confidence in the market's goal of providing transparency. Some estimates have high frequency liquidity providers at 60 percent or more of the average daily volume in ETFs. These participants provide liquidity, which results in tighter spreads, greater depth of book and lower costs to investors. It is worth noting that ETFs were exempt from the old uptick rule.

Although each of the above exemptions are critical for the health of the market, even if they were all adopted they would not remove some of the very serious problems inherent in any type of tick or bid test.

Problems with the Uptick Rule and Modified Uptick Rule

Since the implementation of Regulation NMS, equities volume has migrated to 11 exchanges and more than 30 Alternative Trading Systems. Today, 75% of the trading takes place on "non-primary" market centers, and any Uptick or Modified Uptick rule would need to apply across all market centers using consolidated market data, which historically was not how short sale restrictions operated.

Problem 1: True tick / bid sequence does not exist in Regulation NMS world.
An Uptick or Modified Uptick rule applicable to all market centers would raise very difficult technology and Regulation NMS issues that would need to be considered. First, a consolidated sequenced tick or bid simply does not exist. Broker-dealers receive market data directly from market centers, rather than waiting for aggregated data from SIAC. With multiple data sources, there is no way of knowing the true tick or bid sequence, given that executions now occur microseconds apart. Each firm receives quotes and last sale data in a different order, based on its location relative to each trading center, line bandwidth, network and data processing speed.

Problem 2: An aggregator of tick/bid sequence creates a single point of failure.
If broker-dealers were required to receive market data from a single mandated source, the entire market could be disrupted significantly by a single point of failure at the aggregator. The only safe and practical method for distributing real-time data is to continue to permit the use of multiple data sources directly from various market centers. Consequently, any uptick or upbid that had to rely on SIAC would introduce new and unacceptable risk to the market.

Problem 3: Under Regulation NMS, an Uptick or Modified Uptick test would put an enormous and costly burden on broker-dealers.
The responsibility of handling any short sale restriction would no longer be on the exchanges, as it was when the uptick and bid tests were last in effect. An essential feature of Regulation NMS is the Intermarket Sweep Order (an "ISO"). When a trading center receives an ISO, its systems execute the order "no questions asked." The broker is responsible for sending a compliant order.

To preserve the ISO order type, market centers would have to print ISOs regardless of the tick or bid, transferring compliance responsibility to the broker-dealer. Consequently, broker-dealers would need to track upticks or upbids in their smart order routers in accordance with the new rules, and then preserve this tick history so that regulators could audit it. Building such systems would likely be as expensive and challenging as Regulation NMS implementation was from 2005-2007, and would likely take more than a year to implement in a careful, planned way that would not overly expose the market to the risk of technology crashes. It is also likely that the compliance costs would disproportionately burden smaller broker-dealers, who would likely be forced to route their flow through a handful of larger brokers, impeding competition and adding to systemic risk as flow is consolidated among fewer players.

Problem 4: A tick or bid restriction will reduce volume, and therefore widen bid/ask spreads and increase transaction costs and volatility.

The 14 day short sale ban in September and October of 2008 illustrated the market impacts if short sellers were to disappear. According to our analysis, the bid/ask spreads in the banned names more than doubled compared to their counterparts that were not banned, even when controlling for volatility in the underlying stocks. (See Appendix B) Volume also dropped in the banned names as a percentage of the overall equities volume. We believe that the wider bid/ask spreads and lower volumes were due to the fact that "long/short" traders play a large role in the current marketplace, making today's market much more sensitive than in prior times to any changes in short selling.

Practical Implementation Concerns

Credit Suisse has analyzed the implementation effort and estimated development time required for the various alternative proposals. The proposals fall into two categories:

1. Alternatives requiring the centralization and sequencing of incoming data. Four of the proposals fall into this category: the Uptick, Modified Uptick, Circuit Breaker Uptick and the Circuit Breaker Modified Uptick proposals. Each of these proposals essentially require a single "tape" of properly sequenced bids or ticks in order to be effectively implemented.

2. Alternatives that would not require data sequencing. Only the Circuit Breaker Halt proposal falls into this category. Among the Commission's proposed alternatives, only the Circuit Breaker followed by a halt does not require data sequencing. It should also be noted that the exchanges' proposed rule of a circuit breaker followed by a passive shorting requirement (sometimes referred to as "bid+1") would also fall into this category.

For the alternatives requiring data sequencing, Credit Suisse and other broker-dealers would need to develop new software programs, buy new servers to centralize the incoming data, create software that arranges the data in the proper sequence, calculate whether each new bid or tick was up or down, and then publish that information as a new "field" to all of the computer applications downstream. Then all of the downstream applications would need to be re-programmed to read this new field and respond appropriately. Finally, sophisticated data storage and compliance systems would need to be developed to monitor all of the above, and enable us to demonstrate our full compliance.

Our systems engineers have estimated that the implementation for the proposals requiring data sequencing require seven teams working concurrently, resulting in a total of seventeen programmers working under a senior project manager for a period of approximately twelve months.

By contrast, the proposals that would not require data centralization and sequencing would be significantly less complex and faster to implement. We estimate that the Exchange's proposal of passive shorts would take approximately five months, and a Circuit Breaker Halt would take approximately three months.

A Note on the Exchanges' Proposed Circuit Breaker

On March 24, 2009, four exchanges wrote the Commission advocating a modified tick test in conjunction with a circuit breaker.[13] We would support the exchanges' proposal as the next best alternative to a Circuit Breaker Halt rule. If an unspecified circuit breaker were hit, this proposal would ban short selling into a bid, unless the bid rose to the level of a preexisting limit order that was entered at a price above the bid at the time. However, the proposal released by the Commission, known as the Circuit Breaker Modified Uptick Rule, differs in one very important way from the exchanges' proposal. While the exchanges proposed a passive bid test, sometimes referred to as "bid+1," the Commission proposed an active test requiring sequencing of the bids. This is a significant difference, as the requirement to sequence the bids drives much of the implementation cost and complexity. The exchanges' proposal is much less complex and would require less time for implementation. We also note appropriate exemptions are necessary for the exchanges' proposal.

A Note on Pre-Borrow Requirements

Some have suggested that the SEC consider a pre-borrow requirement similar to the July 2008 Emergency Order that restricted short sales in certain stocks unless the seller had first borrowed, or arranged to borrow the security. This pre-borrow requirement would replace the current "locate" requirement of Regulation SHO. While the SEC does not specifically ask for comment on a pre-borrow requirement in the Release, we offer some perspectives on what a wide-ranging pre-borrow requirement would mean for the marketplace.

Assuming broker-dealers have to pre-borrow only 25% of the market value of stocks that they currently "locate," the amount of collateral that the broker-dealer would have to post over the three day pre-borrow period would create serious funding and balance sheet implications, particularly for small firms. There would be a dramatic increase in securities movements, with a corresponding increase in delivery errors, breaks, and dividend or corporate action processing issues, many of which might ultimately relate to pre-borrows that do not result in a trade. In addition, potential credit exposures would increase due to the necessity to take delivery prior to settlement of the trade. We believe this would require broker-dealers to build new stock loan systems, the cost and feasibility of which would have to be determined. For example, systems would have to be built to track stocks that are pre-borrowed but for which a short sale does not take place and therefore must be returned for lack of a "permitted purpose" under Regulation T. This could occur in sufficiently larger size to have serious negative consequences to market liquidity. We believe these concerns far outweigh any potential benefits to the market place.

Given the problems and unintended consequences that developed after the July Emergency Order, we urge the Commission not to impose a pre-borrow requirement or, in the alternative, to carefully study the issue before proposing such a requirement for full notice and comment rulemaking.

[13] Letter to the Honorable Mary Shapiro, Chairman, SEC, from the United States National Stock Exchanges (March 24, 2009)

Summary

The Commission has a difficult task: balancing the desire for an efficient and liquid market with effective price discovery, while addressing a perception that abusive short selling is impairing investor confidence. If the Commission determines that Rule 10b-21 and adoption of Rule 204T on a permanent basis are insufficient to address "bear raids," we recommend that the Commission adopt the Circuit Breaker Halt proposal, with appropriate exemptions. It is our belief that the Circuit Breaker Halt proposal would be more effective than any of the other proposed alternatives at preventing bear raids, would avoid many of the negative effects associated with tick or bid tests, and would avoid extraordinary implementation, compliance and enforcement burdens. If the SEC does not grant appropriate exemptions, we believe the least harmful of the remaining proposals would be the circuit breaker followed by a modified upbid as was proposed by the exchanges.

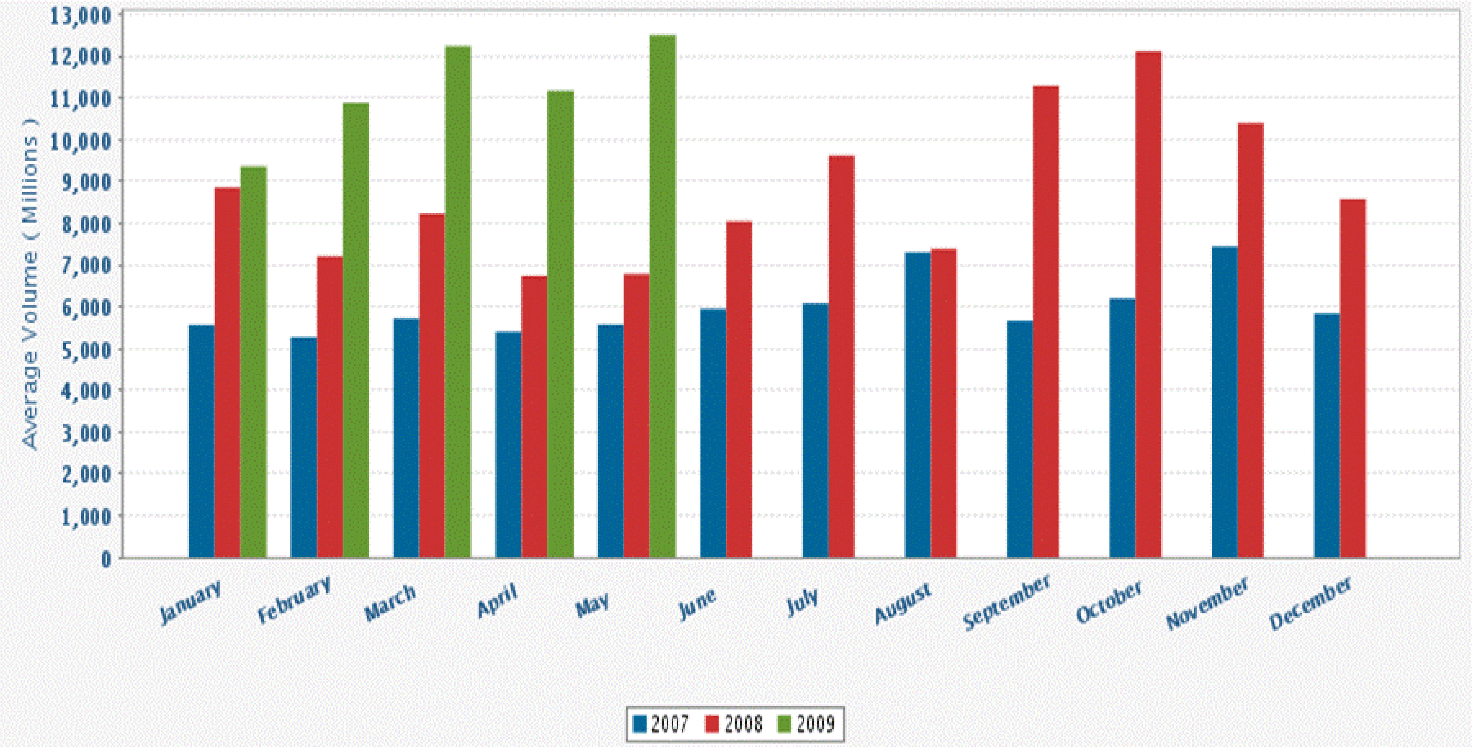
Finally, regardless of the alternative adopted, we strongly urge the Commission to implement any new rule on a pilot basis. Rule changes can have unintended consequences, and the best way to reduce the chance of introducing unforeseen problems is to test new rules on a small subset of stocks, as was done with decimalization, Regulation NMS, and for the repeal of the uptick rule.

Respectfully submitted,

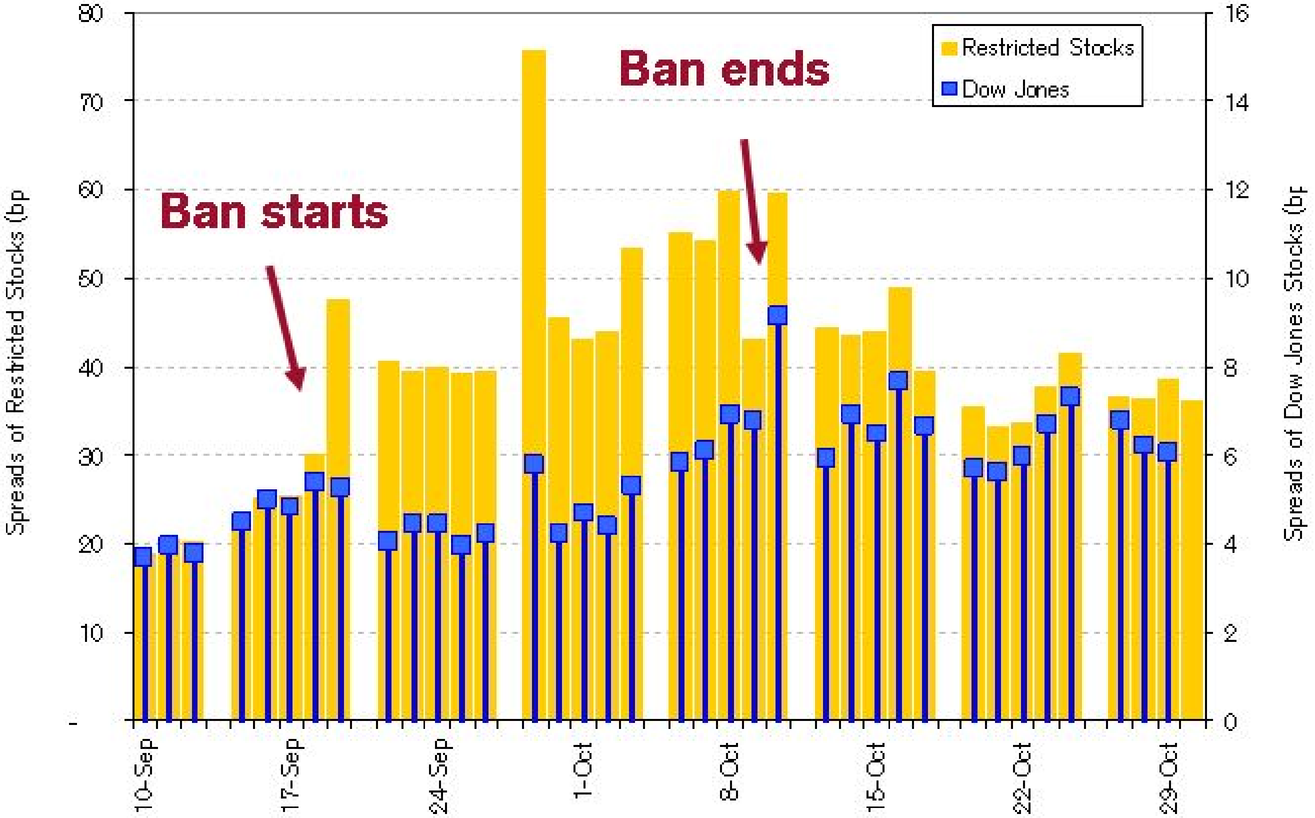
Dan Mathisson
Managing Director
On behalf of Credit Suisse Securities (USA), LLC

cc: Hon. Mary Schapiro, Chairman
Hon. Kathleen L. Casey, Commissioner
Hon. Elisse B. Walter, Commissioner
Hon. Luis A. Aguilar, Commissioner
Hon. Troy A. Paredes, Commissioner
Mr. David M. Becker, General Counsel and Senior Policy Director
Mr. James Brigagliano, Co-Acting Director, Division of Trading and Markets
Mr. Daniel M. Gallagher, Co-Acting Director, Division of Trading and Markets

Appendix A: US Equities Consolidated Volume, January 2007 – May 2009



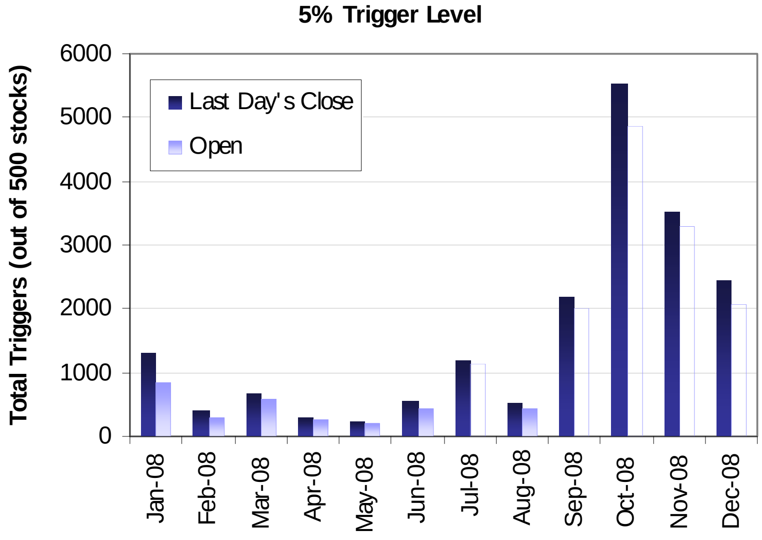
Appendix B: Effect of the Short Sale Ban on Bid/Ask Spreads

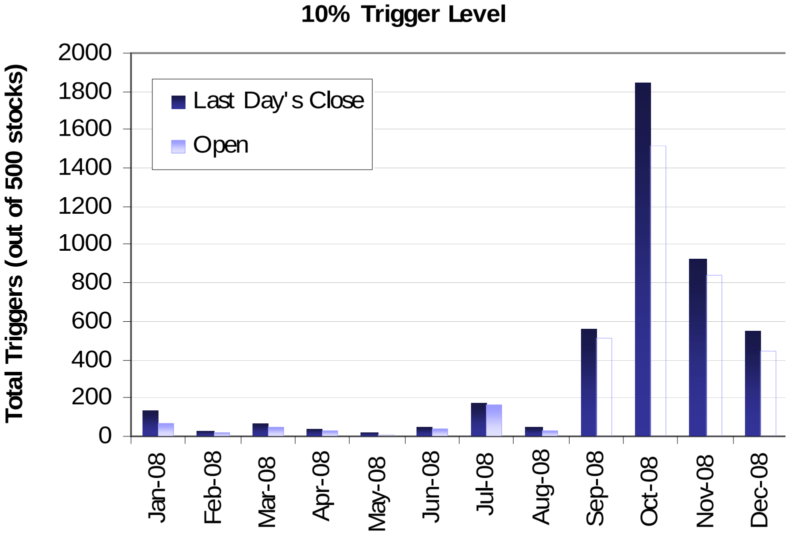


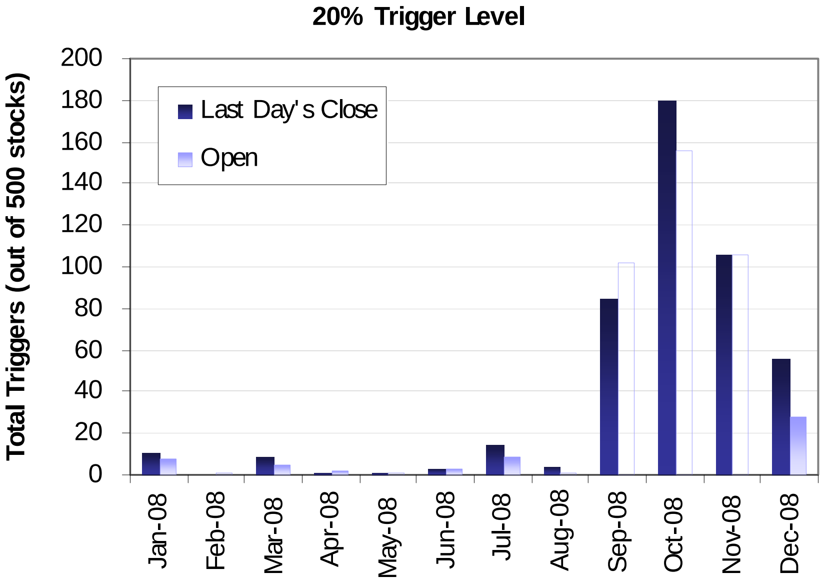
Appendix C: Circuit Breaker Historical Triggers at Various Thresholds

	Total Triggers using Last Day's CLOSE (out of 500 stocks)		
	5%	10%	20%
Jan-08	1309	132	11
Feb-08	417	30	0
Mar-08	661	67	9
Apr-08	302	34	1
May-08	232	16	1
Jun-08	548	48	3
Jul-08	1188	170	14
Aug-08	512	49	4
Sep-08	2193	558	85
Oct-08	5530	1850	180
Nov-08	3529	928	106
Dec-08	2455	550	56
Jan-09	2285	421	46
Feb-09	2115	444	58

	Total Triggers using OPEN Price (out of 500 stocks)			
	5%	10%	15%	20%
Jan-08	850	69	20	8
Feb-08	302	19	2	1
Mar-08	585	47	9	5
Apr-08	270	27	5	2
May-08	217	11	3	1
Jun-08	441	43	10	3
Jul-08	1150	168	46	9
Aug-08	432	28	5	1
Sep-08	2006	516	207	102
Oct-08	4872	1518	440	156
Nov-08	3305	842	277	106
Dec-08	2082	440	117	28

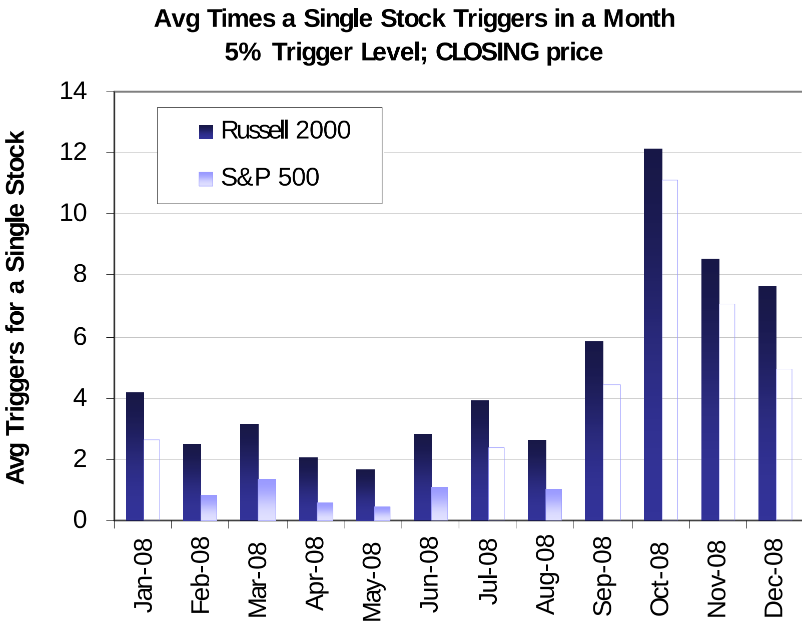


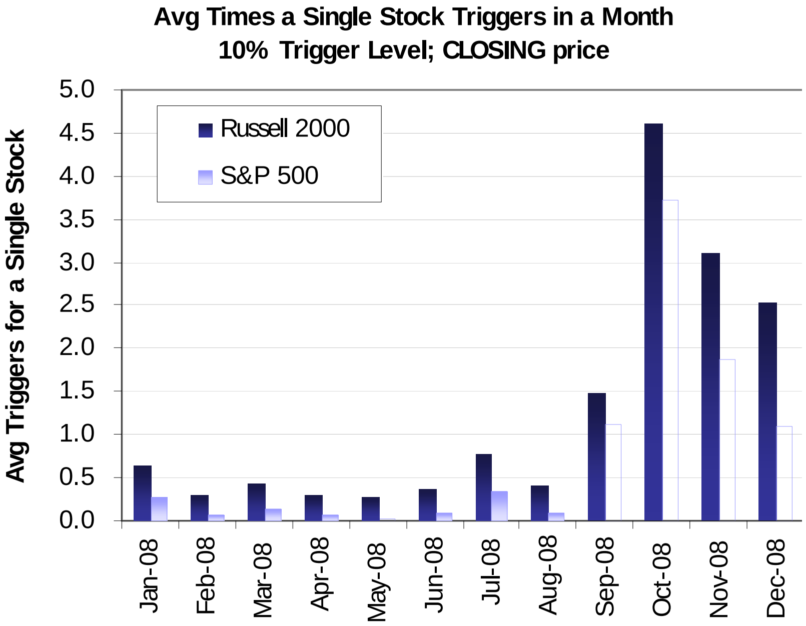

10% Trigger Level
Total Triggers (out of 500 stocks)
2000
1800
1600
1400
1200
1000
800
600
400
200
0
Last Day's Close
Open
Jan-08
Feb-08
Mar-08
Apr-08
May-08
Jun-08
Jul-08
Aug-08
Sep-08
Oct-08
Nov-08
Dec-08

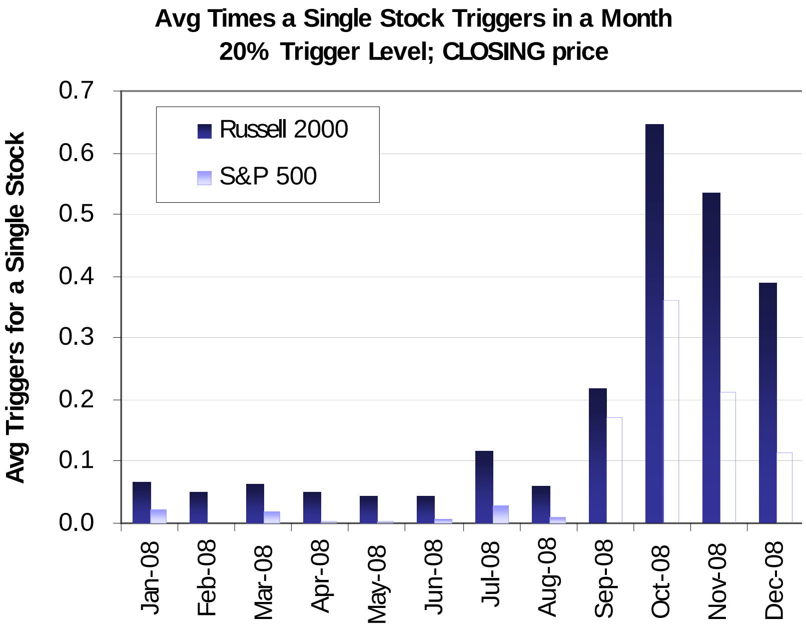

20% Trigger Level
Total Triggers (out of 500 stocks)
200
180
160
140
120
100
80
60
40
20
0
Last Day's Close
Open
Jan-08
Feb-08
Mar-08
Apr-08
May-08
Jun-08
Jul-08
Aug-08
Sep-08
Oct-08
Nov-08
Dec-08

	Russell 2000			
	Close Price			
	total Triggers / Month			
	5%	10%	15%	20%
Jan-08	7991	1228	343	129
Feb-08	4732	569	184	98
Mar-08	6039	836	254	121
Apr-08	3906	567	210	97
May-08	3201	505	193	85
Jun-08	5346	680	181	82
Jul-08	7408	1461	523	220
Aug-08	4967	795	266	114
Sep-08	11047	2,811	947	417
Oct-08	23119	8,755	3098	1226
Nov-08	16268	5,888	2343	1019
Dec-08	14462	4,822	1851	742

	S&P 500			
	Close Price			
	total Triggers / Month			
	5%	10%	15%	20%
Jan-08	1,309	132		11
Feb-08	417	30		0
Mar-08	661	67		9
Apr-08	302	34		1
May-08	232	16		1
Jun-08	548	48		3
Jul-08	1,188	170		14
Aug-08	512	49		4
Sep-08	2,193	558		85
Oct-08	5,530	1850		180
Nov-08	3,529	928		106
Dec-08	2,455	550		56


Avg Times a Single Stock Triggers in a Month
5% Trigger Level; CLOSING price
Avg Triggers for a Single Stock
14
12
10
8
6
4
2
0
Russell 2000
S&P 500
Jan-08
Feb-08
Mar-08
Apr-08
May-08
Jun-08
Jul-08
Aug-08
Sep-08
Oct-08
Nov-08
Dec-08


Avg Times a Single Stock Triggers in a Month
10% Trigger Level; CLOSING price
Avg Triggers for a Single Stock
5.0
4.5
4.0
3.5
3.0
2.5
2.0
1.5
1.0
0.5
0.0
Russell 2000
S&P 500
Jan-08
Feb-08
Mar-08
Apr-08
May-08
Jun-08
Jul-08
Aug-08
Sep-08
Oct-08
Nov-08
Dec-08


Avg Times a Single Stock Triggers in a Month
20% Trigger Level; CLOSING price
Avg Triggers for a Single Stock
0.7
0.6
0.5
0.4
0.3
0.2
0.1
0.0
Russell 2000
S&P 500
Jan-08
Feb-08
Mar-08
Apr-08
May-08
Jun-08
Jul-08
Aug-08
Sep-08
Oct-08
Nov-08
Dec-08