June 19, 2009

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

RE: File No. S7-08-09

Dear Ms. Murphy:

TD Professional Execution, Inc. ("TD Pro Ex" or the "Firm") appreciates the opportunity to submit this comment letter to the Securities and Exchange Commission ("Commission") on its proposed amendments to Regulation SHO under the Securities Exchange Act of 1934. TD Pro Ex is a registered broker-dealer and wholly-owned subsidiary of TD Securities (USA) LLC. The Firm acts as executing broker and introducing broker for our clients who seek execution of their equity, options and futures orders through our order routing platforms. Many of our clients are professional traders who provide substantial liquidity on U.S. securities exchanges.

We believe that the Commission got it right when it eliminated short sale price restrictions in 2007. As the Commission's Office of Economic Analysis concluded in 2007,[1] the removal of price restrictions under the Regulation SHO Pilot did not contribute to bear market raids in particular stocks or to an increase in the percentage of time that the market is in a downbid state. We are unaware of any empirical evidence to demonstrate that the 2008 market downturn was caused by short selling, rather than long selling. The Commission should resist emotionally or politically charged calls for unnecessary regulation in response to the recent market downturn. Reinstating overly-broad price restrictions in response to such pressure would run contrary to the Commission's mandate to remove impediments to and perfect the mechanism of a free and open market and to promote just and equitable principles of trade.

The direction that the Commission has already taken to address bear raiding and other abuses—cracking down on fails to deliver, stricter rules against naked short selling, greater transparency through disclosure of short positions, and education to restore public confidence—are preferable to the imposition of costly and unnecessary regulations that may negatively impact liquidity, price discovery and spreads.

TD Pro Ex urges the Commission not to adopt either a bid test or uptick rule in any form. The number of trading venues, including exchanges, ECNs and ATSs, has increased significantly from around ten in 2007 to over 40 today. Complying with an uptick rule or bid test in this

[1] *See* Economic Analysis of the Short Sale Price Restrictions under the Regulation SHO Pilot, Office of Economic Analysis, U.S. Securities and Exchange Commission (2007).

environment would require monitoring of transactions in real time on each of these venues. It would also result in great costs to develop the infrastructure necessary to handle millions of messages per second on an ongoing basis. Such an infrastructure would ultimately increase trading costs for investors. A requirement to build new technology to comply with the new requirements would be particularly burdensome on medium and small order routing broker-dealers, like TD Pro Ex, which offer competitive prices and services for investors.

If the Commission were to determine that price restrictions on short sales are necessary, then the Firm would very reluctantly urge the adoption of the "circuit breaker halt" proposal, which would ban short selling in a particular security for the remainder of the day if there is a severe decline in price in that security. Under this rule, the exchanges would be responsible for blocking orders marked "sell short," as was done in the past when the uptick and bid test rules applied. We believe that this approach would be the least harmful of the five proposals because it would be limited in scope and would avoid overly-broad regulation of short sales. It would also obviate the need for substantial technology development by firms at the expense of investors. It would also avoid unnecessary new requirements for brokers to develop and enforce new policies and procedures to prevent technical violations, most of which would be wholly unrelated to real market abuses.

Having said that, we still believe that adopting a circuit breaker halt rule would be unwarranted because it is lacks a sound foundation based on empirical evidence. The Commission's approach to rulemaking should be based on quantitative economic analysis. It should not attempt to use market psychology as a means to restoring investor confidence. Rather, as noted above, the Commission has already taken several important steps to address manipulative short selling and naked short selling. It would be a serious mistake to engage in regulatory overkill in addressing short sales, particularly when the previous findings of the Office of Economic Analysis indicate that pricing restrictions do not reduce short interest, but that they do distort the trading process.

Finally, if the Commission adopts any new price restrictions on short selling, it must provide for appropriate exemptive relief for market makers, especially options market makers, who must hedge their positions with stock purchases and sales in order to maintain fair, competitive, orderly and efficient markets. Without an exemption, options market makers would incur substantial risk in providing liquidity in response to incoming customer orders to sell calls and to buy puts. Consequently, both liquidity and pricing in general would suffer.

As noted in a recent study:

> "[A] short-sale ban without a market-maker exemption could potentially destroy the equity options industry. . . .The designated market-makers of the equity options exchanges must be exempt from any short-sale ban. Without such an exemption . . . the bid offer spread for any option whose underlying equity triggered a ban would significantly widen or have no market at all. This would happen because, without an exemption, . . . while the stock would still trade, market makers could not hedge their risk in the underlying equity option, thus widening the spread between bid and ask, and

> potentially having no market at all. . . . [I]t is vital that trading rules do not hinder the ability of the liquidity providers to provide narrow spreads and deep markets." [2]

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In conclusion, in light of the foregoing, we do not believe the reinstatement of the former uptick rule or any variant is warranted or feasible in today's sub-second fragmented trading environment. Any reinstatement or any variant should exempt bona fide market making activities, including exchange registered option market makers to facilitate continuous and deep two-sided liquidity and avoid market dislocations. TD Pro Ex again thanks the Commission for the opportunity to comment on the proposed rule change.

Sincerely,

Rory O'Kane
President
TD Professional Execution, Inc.

[2] "Report Warns of 'Major Mistake' in Regulating Equity Options," *Securities Industry News* (June 15, 2009) *quoting* "Equity Options: The Future of the Industry is in the Regulators' Hands," Paul Zubulake, Aite Group (June 14, 2009).