FINANCIAL INFORMATION FORUM

5 Hanover Square
New York, New York 10004

212-422-8568

September 23, 2009

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

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

Dear Ms. Murphy:

The Financial Information Forum (FIF)[1] would like to offer feedback on the implementation time required for complying with the proposed "alternative uptick rule" as discussed in File Number S7-08-09. While we anticipate a significant reduction in implementation time required, it is important to note that final specifications are required to begin the development process and that a phased approach to compliance would reduce systemic risk.

Update SIP Specifications for Circuit Breaker Data Dissemination

As stated in our original comment letter, if the Commission decides to include a circuit breaker rule, the rule should specify that SIPS must electronically publish some indicator, similar to trade halt messages, which broker-dealers rely upon signaling that the circuit breaker has been invoked. In order to eliminate redundant effort across broker-dealers and maintain uniformity across exchanges, we recommend that the primary exchange to issue circuit breaker status using a SIP message. It is important to note that the centralization of these calculations based on exchange input to the SIP is not functionality currently supported by the SIPs.

Provide Guidance on New Short Sale FAQs

Please note that our estimates of implementation timing do not take into account the need for additional development work on short sale systems that may be required as part of the new Short Sale FAQs. As noted in the SIFMA comment letter dated September 21[2], there are a number of concerns with recently enacted Regulation SHO FAQs 2.4 and 2.5. Depending on the outcome of discussions related to the implementation of the new FAQs, firms may need additional time to modify systems to comply with both the FAQs and a new uptick rule. Further guidance from the SEC is required before an aggregate implementation time can be determined.

Establish Implementation Time Based on Final Specification Release

In our initial comment letter (included below), we focused on the implementation issues with all of the proposed regulations. As a group focused on the operational and technology issues associated with industry initiatives, the FIF Front Office Committee recommended a phased implementation time-frame of 11 months

[1] FIF (www.fif.com) was formed in 1996 to provide a centralized source of information on the implementation issues that impact the financial technology industry across the order lifecycle. Our participants include trading and back office service bureaus, broker-dealers, market data vendors and exchanges. Through topic-oriented working groups, FIF participants focus on critical issues and productive solutions to technology developments, regulatory initiatives, and other industry changes. This comment letter is based on feedback from FIF broker-dealers and vendors.

[2] See http://www.sec.gov/comments/s7-08-09/s70809-4654.pdf.

from the publication of final specifications.[3] Having reviewed the proposed Alternative Uptick Rule, we believe this approach could be implemented in less time than the proposed modified uptick rule or the proposed uptick rule because it would not require monitoring the sequence of bids or last sale prices. In addition, the proposed Alternative Uptick Rule would not incorporate a "Broker Dealer Provision" and would therefore not require broker dealers, when relying on the exemption, to "snapshot" the market. However, a two month implementation period following the effective date of the alternative uptick rule would not be appropriate.

In order to successfully develop, test and deploy the Alternative Uptick Rule, we believe an implementation period of no less than 4 months **(upon release of final specifications)** would be sufficient. This would be a very aggressive timeframe and we recommend it understanding that the Commission is under considerable pressure to implement a new rule quickly. It is important to note that even though the proposed Alternative Uptick Rule could be implemented more quickly than the proposed modified uptick rule or the proposed uptick rule, it still contemplates exceptions. As noted in FIF's previous comment letter, incorporating short sale exempt functionality would require changes to multiple systems and the short exempt flag logic would need to be developed and incorporated into regulatory reports, e.g., OATS, OTS and trade reporting in addition to order entry and routing applications.

The recommended four month timeframe pegged to the release of specifications is consistent with other industry initiatives that require system modifications to OMS, EMS, audit, trading and reporting systems. Following the release of specifications, direct feed recipients have historically been given 3 months to implement these changes. Because downstream applications are affected by these system changes, additional work beyond accommodating the new SIP feed modifications will be required. It seems certain that the proposed Alternative Uptick rule would result in updated specifications to Order Audit Trail Reporting (FINRA OATS and NYSE Reg OTS) and FINRA Trade Reporting (requiring new specifications outlining trade reporting requirements). We respectfully request that the four month timeframe for implementation commence once FINRA specifications are published.

In summary, implementing any short sale rule requires rigorous analysis, development and testing. Assuming no significant development work will be required upon receiving additional SEC guidance on the Short Sale FAQs, a period of four months following the release of final specifications is sufficient to implement the proposed Alternative Tick Rule.

We look forward to working with the SEC and other industry participants on implementation issues once a short sale rule is adopted.

Sincerely,

Manisha Kimmel

Manisha Kimmel
Executive Director
Financial Information Forum

[3] There can be a significant delay between rule approval and specification release. There was a 16 month period after Reg NMS was approved before the publication of final specifications (SIP, exchange and FINRA).

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5 Hanover Square
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FIF Original Comment Letter dated June 19, 2009

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

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

Dear Ms. Murphy:

The Financial Information Forum (FIF)[4] would like to take this opportunity to provide feedback on the Short Sale Amendments discussed in File Number S7-08-09. As a neutral forum focused on implementation, we will not tackle the policy implications and impact that these proposals may have on liquidity and market efficiency. Our focus is on outlining the practical implications associated with implementing the proposed short sale rules.

It is important to note that all of the short sale proposals will require modifications to systems and sufficient implementation time should be given considering the complexity and integrated nature of market data, trading and compliance systems. The following implementation issues were raised by the broker dealer and service bureau members of the FIF Front Office Committee.

Use of Last Sale vs. National Best Bid (NBB)

In considering whether to use the last sale or the national best bid "NBB" to determine the invocation of short sale restrictions, it is important to understand how trades are reported today. According to FINRA Rule 6181, trades may be reported within 90 seconds of the execution, for executions in NMS securities done off-exchange. With over 30% of shares traded off-exchange[5], this represents a significant portion of trades that may be reported out of execution time sequence. The NBB is a better sequenced indicator of price changes because it is disseminated by the designated "plan processor" and, if the Commission determines to institute a short sale price test rule, it should be used to determine when such a rule is invoked.

[4] FIF (www.fif.com) was formed in 1996 to provide a centralized source of information on the implementation issues that impact the financial technology industry across the order lifecycle. Our participants include trading and back office service bureaus, broker-dealers, market data vendors and exchanges. Through topic-oriented working groups, FIF participants focus on critical issues and productive solutions to technology developments, regulatory initiatives, and other industry changes. This comment letter is based on feedback from FIF broker-dealers and vendors.

[5] FIF Automated Equity Trading Report based on monthly share volume aggregated from BATS Market Volume Summary.

Calculation of Uptick/Down Tick/Circuit Breaker Data

FIF believes it critical, if the Commission determines to institute a short sale price test rule, that SIPs be required to publish a NBB with appropriate flag(s) that broker-dealers rely on to determine the bid direction. Similarly, if the Commission decides to promulgate revisions to Reg SHO that include a circuit breaker rule, the rule should specify that SIPS must electronically publish some indicator, similar to trade halt messages, which broker-dealers rely upon signaling that the circuit breaker has been invoked. It should be noted that in today's environment calculation of the NBB at individual broker dealers could be done in multiple ways: through the use of proprietary feeds, a combination of proprietary and SIP (Securities Information Processor) feeds, or using SIP feeds only. Market data sourcing is further complicated by the fact that many exchanges offer multiple proprietary feeds with overlapping datasets. As a result, if each firm is required to calculate the up or down tick of the NBB, differences will arise at any given time as to what a firm believes is an up or down tick. Additionally, in the event of a circuit breaker, threshold calculations would not be consistent from firm to firm. In order to eliminate redundant effort across broker-dealers and maintain uniformity across exchanges, we recommend that the determination of any short sale restrictions be disseminated by the SIPs based on exchange inputs:

- SIP to provide uptick/downtick indications on the NBB
- Primary exchange to issue circuit breaker status using a SIP message

It is important to note that the centralization of these calculations based on exchange input to the SIP is not functionality currently supported by the SIPs. Implementation time would be required for the exchanges, CTA and UTP Committees to define the functional requirements and for exchange and SIP development to support short sale changes. As a point of comparison to Regulation NMS, it is worth noting that from the time the regulation was approved to the time final specifications were released was over 16 months.[6] Following the release of specifications, direct feed recipients have historically been given 3 months to implement these changes. Because downstream applications are affected by these system changes, additional work beyond accommodating the new feed modifications will be required.

Snapped Quote Data Storage

The Commission suggests that if a short sale price test rule is promulgated based on the direction of the NBB, that broker-dealers, when relying on the "Broker-Dealer Provision" exemption, may need to "snapshot" the market. Currently only trading centers snap quotes in conjunction with routing Intermarket Sweep Orders (ISOs) and internalized executions as required by Reg NMS. For those firms additional functionality will be required to snap quotes throughout the day in order to capture both the current and last modified NBB before shorting. Adding to snapped quote requirements represents an expansion of storage requirements. In 2009, the maximum daily peak number of equity top of book quote messages was over 700 million.[7] These quote messages would have to be snapped with relevant quotes selected for longer term storage.

[6] The final release of Regulation NMS was dated June 9, 2005. Specifications Date defined as the final date for publication of final technical specifications for the Regulation NMS-compliant systems by automated trading centers and SIPs was October 16, 2006

[7] Source: FIF Consolidated Capacity Statistics based on data from SIAC and NASDAQ UTP.

While snapshot requirements for Reg NMS apply to a limited number of broker-dealers, it is likely that every broker-dealer that effects transactions in NMS stocks would be affected by this requirement. In considering the inclusion of the broker dealer exemption, it is important to note that snapped quote functionality and associated market data infrastructure would need to be developed in order to take advantage of the exemption. While it will not be mandated that firms avail themselves of the exemption, competitive pressure is likely to mean that broker dealers will need to invest resources and time in building this functionality. One agency broker in the FIF short sale survey indicated that allowing for the broker dealer exemption would increase their implementation costs by a factor of 10.

Implementation Perspective: Circuit Breaker Halt

In reviewing the circuit breaker proposals, we believe the circuit breaker halt that would be in effect until market close will be more straight forward from an implementation perspective than the other proposals. Assuming halt information is determined by the primary exchange and disseminated via the SIP, a halt in effect for the remainder of the day would eliminate the need to further calculate threshold values or to make determinations based on up or down ticks. Under this approach the following tasks would be required:

- Exchange development of threshold calculations
- Exchange & SIP development of appropriate status messages
- Broker dealer and vendor developing capabilities to support circuit breaker including modifications to feed handlers, trading systems, downstream trading models, order audit trail reporting (OATS and OTS), and trade reporting. These modifications would not only trigger halts on short selling activity but also implement required functionality to mark orders as short exempt as appropriate, assuming exemptions to the short sale restrictions are adopted.

While this method is more practical than the others it still represents significant work for broker-dealers and the vendors/ service bureaus that support them. One benefit of the circuit breaker halt is that it should not affect EMS and OMS systems as significantly as the other proposals. The average implementation time from a sampling of FIF member firms that would support trading center and short sale exempt functionality was 9 months.

Another approach associated with the circuit breaker halt that was discussed was the establishment of price limits that when triggered would turn the halt off. Members addressed concerns over a flickering halt and the introduction of added complexity. But it was also noted that such an approach would reduce the effort to re-write downstream trading models.

Marking Orders Short Sale Exempt

In response to Commission implementation questions regarding marking orders short exempt, please note the following:

- Incorporating short sale exempt functionality would require changes to multiple systems and the short exempt flag logic would need to be developed and incorporated into regulatory reports, e.g., OATS, OTS and trade reporting in addition to order entry and routing applications.
- Expressing the explicit provision that a short exempt order is relying on will make the implementation more complex and order entry more cumbersome

Specification-Driven Implementation Time

Similar to the approach the Commission took with Reg NMS, we recommend a phased approach to compliance with any new short sale rule. For our members, the business analysis and development process begins with the publication of final specifications and an evaluation of short sale indicators disseminated by the SIPs. We respectfully request an analysis period during which the SIPs disseminate short sale indicators prior to the effective date of the short sale rules. An "analysis period" of 30 – 60 days would give firms (and the industry as a whole) an opportunity to test their systems and analyze the impact of short sale rules on their trading activity.

In evaluating implementation time, it is important that the SEC consider not only the time to modify market data feed handlers and trading system interfaces. Changes will be required to:

- Trading Systems
- Order Management Systems
- Execution Management Systems
- Order Audit Trail Reporting (OATS and OTS) (requiring new FINRA/NYSE Regulation specifications outlining new requirements)
- FINRA Trade Reporting (requiring new specifications outlining trade reporting requirements)

Assessment of Implementation Costs/Timeframe

In considering the effective date for any short sale restrictions, please note that several market-wide initiatives are in progress including the transition to the executing broker model, the inclusion of market center ID on non-tape reporting, options symbology, new exchanges (e.g., C2) among other internal projects competing for development resources.

Assessing implementation costs associated with each of these proposals is difficult given the number of proposals and various permutations discussed in the filing. However, FIF members would like to comment on the following considerations in assessing cost:

- All proposals require system changes that will include analysis, development, testing, deployment and on-going maintenance. Based on a sampling of data from FIF members, timeframes for implementing any of the proposals ranged from 6 – 15 months. Please note none of these estimates consider preparation for and execution of industry testing.
- Rather than reducing costs, many firms believe that systems re-written and architected for Reg NMS that did not include any short sale restrictions will increase the extent of changes required. Even for a firm that saw benefits in leveraging their Reg NMS infrastructure changes, the time required to add short sale functionality was no less than 11 months.

- In addition to costs for SROs and trading centers, the costs for buy-side firms and systems have not been included in SEC estimates. FIF believes it likely that any short sale price test rule will incur additional costs by institutional buy-side firms who will need to modify their trading strategies to take into account the new rules.

In summary, implementing any short sale rule represents a new and significant effort requiring rigorous analysis, development and testing; dusting off code that was in place in 2007 when the old uptick rule was repealed is simply not an option. In order to more fully address implementation issues with the short sale rule, we respectfully request the SEC to offer a single proposal for subsequent comment specifically addressing implementation issues.

We look forward to working with the SEC and other industry participants as this issue evolves.

Sincerely,

Manisha Kimmel

Manisha Kimmel
Executive Director
Financial Information Forum