UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

January 15, 2010

The Honorable Orrin G. Hatch
United States Senator
104 Hart Senate Office Building
Washington, DC 20510

Dear Senator Hatch:

I am writing to further respond to the questions you asked during the December 9th Senate Judiciary Committee hearing "Mortgage Fraud, Securities Fraud, and the Financial Meltdown: Prosecuting Those Responsible." In particular, you requested figures relating to changes in the number of fails to deliver since the Commission adopted various amendments to Regulation SHO.

As you know, the Commission has taken several recent actions to help further reduce fails to deliver. In the fall of 2008, due to the Commission's continuing concern regarding fails to deliver and potentially abusive "naked" short selling, as well as in response to the threat of sudden and excessive fluctuations of securities prices and disruption in the functioning of the securities markets, the Commission adopted temporary Rule 204T of Regulation SHO. The rule strengthened the close-out requirements of Regulation SHO for fails to deliver by requiring that fails to deliver in any equity security resulting from both long and short sales be closed out immediately after the fails occur. The Commission adopted these requirements, with limited modifications, on a permanent basis in July of 2009, as Rule 204 of Regulation SHO. Additionally, in September of 2008, the Commission eliminated the "options market maker" exception to Regulation SHO's close-out requirement which provided that fails to deliver used to hedge certain options positions never had to be closed out.

The Commission's Office of Economic Analysis ("OEA") within the Division of Risk, Strategy and Financial Innovation, has conducted analyses to measure the impact of the recent amendments to Regulation SHO on fails to deliver. Results from these analyses show that fails to deliver have declined significantly since the adoption of Rule 204, including its predecessor Rule 204T, among other actions.

For example, data indicates that since the fall of 2008, fails to deliver in all equity securities have declined by 63.4%, and fails to deliver in threshold securities (those securities with persistent and large levels of fails to deliver) have declined by 80.5%. The OEA data also indicates a significant reduction in the number of threshold securities. For example, the average daily number of threshold list securities has declined from a high of approximately 632 securities in July of 2008 to approximately 61 in September of 2009, a reduction of 90.3%. It should also be noted that of the approximately 61 threshold list securities that remained as of September of

2009, almost 50% were exchange traded products, such as ETFs. OEA's most recent analysis regarding fails to deliver is available at http://www.sec.gov/spotlight/shortsales/oeamemo110409.pdf.

I hope this letter is helpful in addressing your question. I would of course be happy to answer any additional questions that you may have. Please feel free to contact me at (202) 551-4500, or Eric J. Spitler, the Commission's Director of Legislative and Intergovernmental Affairs, at (202) 551-2010.

Sincerely,

Robert Khuzami

Robert Khuzami
Director
Division of Enforcement