



October 15, 2008

**Via Electronic Mail:**    [coxc@sec.gov](mailto:coxc@sec.gov)

The Honorable Christopher Cox  
Chairman  
U.S. Securities and Exchange Commission  
101 F Street, NE  
Washington, DC 20549-1090

**Re:    Circuit Breaker to Temporarily Curtail Short Selling**

Dear Chairman Cox:

Managed Funds Association<sup>1</sup> (“MFA”) submits this letter to assist the Commission in addressing concerns described in its recent emergency orders. Specifically, we offer recommendations in response to the Commission’s concern that short selling of the stock of certain financial companies may be causing sudden and excessive fluctuations of the prices of such securities in such a manner so as to threaten fair and orderly markets.

Like you, MFA, and its members, remain deeply concerned about the ongoing crisis within the financial markets and support timely and targeted initiatives aimed at preventing this crisis from worsening into a global economic event. We believe short selling plays an integral role in the proper functioning of markets, as it contributes to efficient price discovery, increases market liquidity, and promotes capital formation, among other benefits. To address the Commission’s concern that sudden and precipitous declines in securities prices contribute to overall market instability, however, we understand that the Commission is considering various proposals to reduce adverse market impact, including implementing market-wide circuit breakers for individual securities when certain predefined price thresholds are reached. Such circuit breakers would curtail short selling in such securities for a predefined period of time sufficient to allow issuers and regulators to address investor concerns and avoid the risk of panic selling (“piling on”). We understand the SEC may also be considering imposing wider trading bans (both long and short selling on such securities) as well.

Should you propose adopting a circuit breaker approach implemented on a single stock basis, we ask that you incorporate the following recommendations to reduce the risk of adverse market impact in adopting any form of trading restrictions:

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<sup>1</sup> MFA is the voice of the global alternative investment industry. Its members are professionals in hedge funds, funds of funds and managed futures funds, as well as industry service providers. Established in 1991, MFA is the primary source of information for policy makers and the media and the leading advocate for sound business practices and industry growth. MFA members include the vast majority of the largest hedge fund groups in the world who manage a substantial portion of the approximately \$2 trillion invested in absolute return strategies. MFA is headquartered in Washington, D.C., with an office in New York.

- Impose a restriction on short selling for any security whose market price, during a trading session, has reached a predetermined percentage (e.g., 30%)<sup>2</sup> less than the prior business day's closing market price, (a "Covered Security").
- Once a security becomes a Covered Security, no more short sales would be allowed in a Covered Security, for a period beginning immediately during the trading session concerned and ending (1-3) business days later, with the following exceptions:
  - All market makers, including over-the-counter market makers, as part of bona fide market making and hedging activity related directly to bona fide market making in derivatives based on a Covered Security and in exchange traded funds and exchange traded notes of which a Covered Security is a component.
  - Short sales that occur as a result of automatic exercise or assignment of an equity option or expiration of futures contracts.
  - The writer of a call option that effects a short sale in any Covered Security as a result of assignment following exercise by the holder of the call.
  - Short sales by an institutional money manager that occur as part of bona fide hedging activities related directly to hedging long exposure to a Covered Security, such as sales arising from (i) options, warrants, convertible securities, index products or other derivatives held by such institutional money manager; or (ii) equity interests held by such institutional money manager in the target of an announced acquisition by such Included Financial Firm.
  - Persons that effect sales of Covered Securities pursuant to Rule 144 of the Securities Act of 1933.

We believe our recommendations, if adopted, would address the concerns raised by the Commission while at the same time protecting the integrity of our financial markets and reduce some of the adverse market impact on various forms of bona fide hedging activities arising from the recently imposed trading restrictions. Again, we appreciate the opportunity to provide comments to the Commission on these important issues and to offer our recommendations. If we can provide further information or be of assistance to the Commission as it considers these comments or other matters related to the Orders, please do not hesitate to contact us at (202) 367-1140.

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<sup>2</sup> After adjustment for splits, dividends, and recapitalizations.

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October 15, 2008  
Page 3 of 3

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard H. Baker". The signature is fluid and cursive, with the first name being the most prominent.

Richard H. Baker  
President and CEO

cc:

The Honorable Luis A. Aguilar  
SEC Commissioner  
The Honorable Kathleen L. Casey  
SEC Commissioner  
The Honorable Troy A. Paredes  
SEC Commissioner  
The Honorable Elisse B. Walter  
SEC Commissioner