



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

DIVISION OF
MARKET REGULATION

September 15, 2004

The Honorable Paul Sarbanes
United States Senate
309 Hart Building
Washington, D.C. 20510

Dear Senator Sarbanes,

Thank you for your August 23, 2004 correspondence forwarding a letter from your constituent, Ms. [REDACTED]. In her letter, Ms. [REDACTED] expressed concerns about naked short selling of securities, specifically, in Jag Media Holdings, Inc.

Over the past few years, the Commission and self-regulatory organizations have been focusing their efforts on short sale regulation. In the most recent significant action, on June 23, 2004, the Commission adopted Regulation SHO and amended other rules governing short selling to address abusive naked short selling. Regulation SHO requires broker-dealers, who are not engaged in bona-fide market making, to locate securities available for borrowing prior to effecting a short sale in any equity security. Regulation SHO also creates a mandatory delivery requirement for short sales of threshold securities (equity securities that have a significant number of aggregate delivery failures at a registered clearing agency). Furthermore, the Commission continues to work closely with the self-regulatory organizations to achieve a coordinated regulatory framework to address abusive naked shorting as well as other issues related to short selling. The adopting release on Regulation SHO is available on the Commission's website at <http://www.sec.gov/rules/final.shtml>.

We note that the delivery failures cited by Ms. [REDACTED] in attachments to her letter do not appear to be a result of naked short selling abuses but rather from action by the issuer, Jag Media Holdings, Inc. Issuers, like Jag Media Holdings, Inc., that impose transfer restrictions (sometimes referred to as "custody-only trading") have caused numerous clearance and settlement problems. These issuers refuse to recognize positions registered in street name and held by a securities depository (e.g., The Depository Trust Company) and refuse to transfer (or allow their transfer agent to transfer) stock to the name of any entity that the issuer believes is not the ultimate beneficial owner. That limitation on the movement of securities can be aggravated when these companies initiate certain recapitalizations, corporate actions (i.e., stock dividends, exchanges, reverse splits) and name changes. For more information relating to complications of custody-only trading, see *Issuer Restrictions or Prohibitions on Ownership by Securities Intermediaries*, Securities Exchange Act Release No. 49804 (June 4, 2004). The release is available from the Commission website at <http://www.sec.gov/rules/proposed.shtml>.