

February 16, 2007

Mr. Chairman, Commissioners,

The gig is up. The Commission has run out of time to deflect responsibility and to deny a market short selling problem exists. The evidence is overwhelming against you personally and the staff of the SEC. Further actions to cover up this issue should and could be grounds for criminal prosecution.

The Securities and Exchange Commission can no longer put on this façade that the agency is out to protect the investors and public companies that exist in these capital markets when the outside world is beginning to see what you are denying. The short sale process is rigged to harm the public.

Earlier this month each of you received a memo from me in which attached was an audio recording of a December 13, 2004 conference call held by Bear Stearns. John Heine of the SEC Media Relations Office confirmed receipt of this recording so denial is not an option. In this recording the General Counsel of Bear Stearns is recorded as saying:

"To give you that brief introduction in Reg SHO, the history (of) how we got to where we are today. For the past few years we have been hearing from *many different regulators* regarding their concerns about the *increase in the level of fails* that they are seeing. They believe, and they have stated on numerous occasions, that one of the primary causes of the *high level of fails* was that various participants in the short sale process, prime brokers, executing brokers, clients, were not following already established rules."

Who are these different regulators talking of securities fraud without taking action and who are the clients being protected?

Since receipt of this recording the SEC's San Francisco office has issued what the financial media reports has been a "rare" no-action memo to Gradient Analytics on an investigation into analyst conflicts with a known short seller when, under sworn testimony, former Gradient employees described the actual fraudulent acts. The fact that the SEC issued such a "rare" document to a non-public firm when history has shown such a memo is not generally provided to a public firm and, such an expedited investigation is not afforded public companies, raises serious questions about the ultimate desires of the agency to address this issue.

Does this not sound like the SEC standard denial of whistleblower accusations as the SEC undertook in Boston in what became a major financial scandal [Ref: Putnam Whistleblower on Late Trading/Market timing]?

Most concerning in this premature termination of an investigation was the fact that the Commissioners stepped into an agency enforcement investigation and stopped the subpoena's from being followed through with on members of the financial press despite the authorization of such subpoenas by the SEC's own director of Enforcement. Subpoena's initially authorized in concept by this same staff during a period in which the investigation moved from informal to formal as part of the SEC's own policies and procedures.

Now today, the Chamber of Commerce has asked Congress to step in and investigate what the SEC has failed to take action on, that of illegal and abusive short selling practices.

This is a vote of no-confidence in the SEC's transparency and in the agency's commitment to protect the investing public. Instead, the Chamber of Commerce has asked the Congressional committee's

already concerned with SEC conflicts of interest to investigate and report on a matter the SEC has turned a blind eye to.

Presently the SEC has several proposals out for public comment regarding short sale changes. Each proposal is being processed in a manner indicative of protecting the interests of the industry and at the expense of the investing public. The most egregious delays in action come with the elimination of the grandfather clause as the SEC continues to “negotiate” with the prime brokers and SIFMA on an amiable solution while the prime brokers continue to rape the investing public of their financial security.

Mr. Chairman, when you took this oath of office you did so with a requirement to protect all the people and not just those that run your ship (Wall Street). You came with dark cloud that hovered above you as most figured you would play the DC politician and forget your ultimate responsibilities to a global population of people. To date you have rarely disappointed the nay Sayers.

It is not enough that you and your staff make public speeches to a financial services audience and promise safe and secure capital markets to provide opportunities for growth and prosperity. Your diligence should be focused on the public companies and the investors that allow these markets to exist.

Today the SEC, behind closed doors, is negotiating with SIFMA and our Financial Services companies involved in creating this mess. You are – as the Bear Stearns general Counsel admitted – negotiating with the criminals for a plea and goodwill.

A Man of Courage is a man who lives to an oath of honor. Prejudice and corruption bought by power and money has no place in a Federal Agency.

I urge this Commission to take note...the Gig is up. People are now coming alive to grasp the magnitude of your failures.

Stop the train and get off. Clean up the short selling laws and force prime brokers, executing brokers, and clients to follow the laws that are intended to protect us all. Force Wall Street to trade on real shares issued by our public companies and settle our trades as our members of Congress demanded of you. Do it now or step down. As a politician you should be smart enough to figure out you are losing voter confidence.

Ultimately, stop taking the directions from Wall Street biggest lobbyist, SIFMA, and start taking directions from Congress, the investing public, and the general principles of integrity. Respect comes from your actions and not your position and this agency and this Commission staff is falling far short of obtaining respect for their actions.

David E. Patch

www.investigatethesec.com

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

DAVID CHAVERN
CHIEF OPERATING OFFICER
& SENIOR VICE PRESIDENT

February 16, 2007

1615 H STREET, N.W.
WASHINGTON, D.C. 20062-2000
202/463-3101 • 202/463-5327 FAX
dchavern@uschamber.com

The Honorable Christopher J. Dodd
Chairman, Committee on Banking, Housing, and Urban Affairs
United States Senate
Russell Senate Office Building
SR-448
Washington, DC 20510-0702

The Honorable Barney Frank
Chairman, Committee on Financial Services
United States House of Representatives
Rayburn House Office Building, 2252
Washington, DC 20515-2104

Dear Chairman Dodd and Chairman Frank:

The U.S. Chamber of Commerce is the largest business federation in the world, representing the interests of some three million companies of every size and industry. I am writing to urge you to consider holding hearings on the role that manipulative and fraudulent short selling has on the market and on public companies.

This is an important issue that is not sufficiently understood or appreciated by the general public. Solutions to this issue should be carefully crafted to ensure they do not discourage legitimate short selling or other legitimate practices that add liquidity to our capital markets and enable market participants to manage risk.

Legitimate short selling plays an important role in our capital markets. However, under the current system there are still too many illegitimate or naked short sales. We believe that congressional interest on this issue is warranted given the impact of the activity on new and growing companies.

Sincerely,

