Re: S7-08-08 and proposed Rule 10b-21

Dear Chairman Cox and Commissioners,

(The following text is something in between a "Comment letter" on steroids and my 5th book on naked short selling abuses; I haven't decided which yet. The "SEC version" in front of you centers on the opportunity at hand in the form of the proposed Rule 10b-21. I apologize for some of the repetition as the May 20, 2008 deadline for submission snuck up before my final edit was completed. There is a "Bullet point" section at the end for those without enough time to read the text. I hope that you at the SEC share in my passion to allow Rule 10b-21 to provide the heretofore missing <u>meaningful</u> deterrence to the perpetration of these frauds while addressing some of the loopholes left in Reg SHO that were aggressively lobbied for by those benefiting from the "status quo" on Wall Street. We have one heck of a lot of work to do in order to restore a level playing field on Wall Street in the abusive naked short selling and delivery failure related abuse arena and Rule 10b-21 could provide some much needed traction in that direction if you only allow it to.

The version of this text in front of you is the "SEC" version. There is a similar version designed specifically for each of the DOJ, The Department of the Treasury, The Department of Homeland Security and The Federal Reserve that adds quite a bit of information above and beyond this version in front of you regarding ANSS and DFRAs that apply <u>specifically</u> to their particular department's specialty without the emphasis on the proposed Rule 10b-21. I can't help but think that a joint effort is going to be necessary in order to adequately address these issues that the SEC has been dealing with but only with a limited amount of success. Unfortunately this abusive naked short selling pandemic has untoward side effects being felt well beyond the obvious monetary thefts from U.S. citizens and their retirement plans. This is a very, very important topic with repercussions involving national defense issues, health issues, financial systemic risk issues, job creation and sustenance issues, organized criminal behavior issues, etc.-Dr. Jim DeCosta Tualatin, Oregon)

I thank you for the opportunity to comment on this proposed legislation dealing with **A**busive **N**aked **S**hort **S**elling ("ANSS") and **D**elivery **F**ailure **R**elated **A**buses ("DFRAs") this time via the proposed Rule 10b-21. I've noticed after studying abusive naked short selling ("ANSS") and delivery failure related abuses ("DFRAs") over the last 28 years that what has greatly impeded progress in eradicating this crime wave is firstly a culture of unbridled greed on Wall Street insanely allowed to operate on a landscape strewn with massive conflicts of interest. Secondly is the lack of well-defined and standardized terminology in the ANSS and DFRA arena that can serve as a foundation for educational efforts. Thirdly I've noticed the lack of a thorough understanding of this particular variety of securities fraud by apparently everybody <u>except</u> the masters of deceit that design and perpetrate these frauds and fourthly is the absolute refusal of any SRO, regulator, DOJ affiliate or Congressional Oversight Committee to provide any truly meaningful deterrence to the perpetration of these frauds. A fifth phenomenon that has impeded progress in eradicating these crimes is the fact that Wall Street is highly specialized and complex enough to obfuscate fraudulent activity especially when things move so fast in the trading arena that the resultant cloud of dust inhibits transparency. Oftentimes it's the Wall Street intermediaries that are the only people with the working knowledge of the intricacies of the clearance and settlement system sufficient enough to detect fraudulent activity and they're often financially incentivised to avoid creating any waves.

BUILDING YOUR EDUCATIONAL FOUNDATION OF ANSS AND DFRAs BY APPRECIATING HUMAN NATURE, "REGULATORY CAPTURE" AND THE NEED FOR "IMMOBILIZATION" AND "DEMATERIALIZATION"

*"One cannot mention regulatory agencies without adding the observation that, of course, such agencies are likely to be **'captured' by the interests they are supposed to regulate**. To suggest that matters are any different from this is to mark oneself as hopelessly naïve, or even disingenuous."*

–James Q. Wilson

(James Q. Wilson is the current Ronald Reagan professor of public policy at Pepperdine University and the former Chairman of the White House Task Force on Crime.)

If one can incorporate Wilson's truism with two others I'll describe shortly and allow them to serve as your foundation for understanding abusive naked short selling (ANSS) and delivery failure related abuses (DFRAs) I firmly believe that climbing the steep learning curve of understanding this mode of securities fraud will be infinitely easier. In other words, let's be neither "naïve" nor "disingenuous" in recognizing the role of "Regulatory capture" in this family of frauds.

Once this foundation is established the puzzle pieces just seem to magically fall together and the actions of the regulators, the self-regulators ("SROs" like the DTCC-Depository Trust and Clearing Corporation and FINRA-the Financial Industry Regulatory Authority), the securities industry lobbyists, the "Registered Clearing Agencies", the trade groups like SIFMA-the Securities Industry and Financial Markets Association as well as the securities fraudsters themselves become very predictable.

All a student of naked short selling has to do is concentrate on three things. Firstly, one must concentrate on human nature especially when certain humans "Entrusted" with either administering or acting as "Participants" in both a "Self-Regulatory Organization"

(SRO like the DTCC) and a "Registered Clearing Agency" (RCA like the DTCC) are surrounded by trillions of dollars of other people's money while being "Empowered" with distinct advantages bestowed upon them as part of this "arrangement of trust" knowingly choose to breach that trust in order to illegally gain access to the money of others.

I like to refer to this concept involving trust relationships giving rise to advantages (leverage) with the mnemonic "DRAMA" i.e. when one is "entrusted" with a **D**uty as a (self-) **Regulator** and granted **A**ccess to the **M**oney of those owed the duty being able to leverage a distinct **A**dvantage associated with the very duty he was "Entrusted" with. Secondly, the concept of "Regulatory capture" and its predictable fostering of criminal behavior implied above by Wilson needs to be appreciated in regards to both the SEC and the DTCC and thirdly the immense opportunities for fraudulent behavior resulting from being (yet once again) "Entrusted" to administer the processes involving the "Immobilization" and "Dematerialization" of difficult to counterfeit paper-certificated shares into incredibly easy to counterfeit electronic book entries correctly deemed necessary to address the 1969 "Paperwork crisis" on Wall Street.

If you lay your conceptual foundation on these three realities then you can easily get your arms around these frauds and even more importantly, as it pertains to this topic of the proposed Rule 10b-21, a feeling for what measures will and will not be effective in addressing these crimes. You can also get an appreciation for why the former Chairman of the White House Task Force on Crime cited above, James Q. Wilson, is commenting on a topic like "Regulatory capture". It has to do with the Crime waves that are inevitable when a regulator like the SEC or a "Self-Regulatory Organization" (SRO) and "Registered Clearing Agency" (RCA) like the DTCC and its DTC and NSCC subdivisions become "Captured" by the interests of those whose "business conduct" they as an SRO are mandated to police rather than their focusing on providing the congressionally mandated "Investor protection" and "Market integrity" (the SEC's mandate) and the mandated "prompt and accurate clearance and settlement of securities transactions" as per Section 17 A of the '34 Exchange Act (the DTCC's mandate).

Abusive naked short selling (ANSS) and delivery failure related abuse (DFRAs) frauds and the lack of the SEC's and DTCC's willingness to deal with them in a meaningful manner isn't really that complex. As Wilson aptly phrased it: It is human nature for regulators to be *"Captured by the interests they are supposed to regulate"*. We saw recently how the Federal Aviation Association regulators allegedly got a little bit too "chummy" with a certain airline's ground crew resulting in massive numbers of emergency examinations for structural damage on jets.

Although the damages associated with a jet airliner going down as a result of this form of "Regulatory capture" would make the front page the day to day damages associated with abusive naked short selling frauds not only don't make any headlines but absolutely no "ink" whatsoever is dedicated to this topic. It's as if the financial media has their own "capture" issues. I'll defer this topic to Mark Mitchell's expose on the role of financial journalists in ANSS and DFRAs-"The Story of Deep Capture" at www.deepcapture.com/.

Bad things are going to happen when the "Securities cops" and those with massive opportunities combined with strategic advantages to commit theft become too close. "Regulatory capture" is the rule and not the exception to the rule in a variety of "Regulated" industries and the DTCC-administered clearance and settlement industry and our SEC-regulated capital markets are certainly no exception.

At the end of the day the pertinent question to ask might just be where is the DOJ and the Congressional Oversight Committees-the Senate Banking Committee and the House Financial Services Committee (and their legislative and statutory powers) with the ultimate responsibility for overseeing that the SEC does provide the congressionally mandated investor protection and market integrity? They as the "overseers" should be intimately familiar with this phenomenon often referred to as the "capture" of regulatory authorities. Do they have some "capture" issues of their own in the political arena that prohibit them from performing their oversight role associated with the provision of investor protection and market integrity or is it just the lack of a thorough understanding of this particularly heinous form of a "Fraud on the market"?

Assuming the latter I'll try to make this "Comment letter" as educational as I can. In return I'd like you regulators and others with authority in this arena to concentrate on providing a specific answer within the text of Rule 10b-21 to this question: Where does the beneficial "injection of liquidity" into the markets of usually but not always thinly-traded securities end and where does the intentional smothering of a U.S. corporation's share price in order to protect previously established short and naked short positions begin?

I hope you'll agree with me and come to the conclusion that the answer is that it starts **on the very first downtick in share price seen after the naked short position was established by a theoretically "bona fide" market maker (MM) wherein the abusive naked short selling MM consciously refuses to "reinject liquidity" this time from the buy side when the pendulum swung and the "order imbalance" became sell orders dominating over buy orders.** This is the moment of truth.

This critical point in time when a theoretically "bona fide" market maker refuses to do what a truly "bona fide" MM would do i.e. address "order imbalances" from both the buy and sell side needs to be clearly identified in the text of Rule 10b-21 to rid the atmosphere of the cloud of dust currently obfuscating these crimes by these wonderful injectors of sell side liquidity that are nowhere to be found when a market needs the injection of buy side liquidity. Why are they nowhere to be found? Because in our current clearance and settlement system buying shares costs money and decreases the capital reserves of a broker/dealer (b/d) whereas selling shares that do not even exist somehow makes money and increases the capital reserves of a b/d.

In our current clearance and settlement system despite the constant refusal of securities fraudsters to deliver that which they sold they are still insanely allowed access to the purchaser's funds since all they are asked to do by the DTCC management is to "collateralize" the resultant "open position" associated with a FTD on a daily marked-to-market basis. As the collateralization requirements diminish as the share price predictably plummets from the resultant securities entitlements' dilutory effect on the share structure of the corporation under attack then the investor's funds are unconscionably allowed to flow to the sellers of bogus shares despite their constant refusal to deliver that which they sold. **Is it any surprise that the abusive DTCC participants on Wall Street aggressively lobby against any changes in this "status quo"?**

This "Ultimate paradox" is sadly the status quo of our current clearance and settlement system administered by the DTCC and overseen by the SEC and indirectly overseen by the aforementioned Congressional Oversight Committees. The problem is that the mere collateralization of a constantly diminishing debt does not constitute the "good form delivery" of securities that are sold that allows a transaction to "promptly and accurately clear and <u>**settle**</u>" as mandated by Section 17A of the '34 Exchange Act. It's not even close.

These trades involving unaddressed delivery failures don't **"settle". "Settlement"** is defined as the conclusion of a stock transaction in which that which was purchased is delivered in "good form" in exchange for payment i.e. "Delivery versus payment" or "DVP". All of the world's leading authorities including the "Group of 9", the "Group of 10" and "BIS" (Bank for International Settlements) consistently agree that <u>all</u> clearance and settlement systems should be based upon the foundation of "Delivery Versus Payment" wherein the seller of securities is <u>not</u> granted access to the funds of the purchaser <u>until</u> "good form delivery" of that thought to be being purchased i.e. legitimate "shares" has been made.

The DTCC management and its participants have not only consciously chosen to ignore this "gold standard" but they have also consciously chosen not to monitor the "business conduct" of their <u>abusive</u> participants that perpetrate frauds made possible by the DTCC management's refusal to incorporate this "gold standard". They do this even though they operate as an SRO defined as: "*A non-governmental organization that has the power to create and enforce industry regulations and standards.* <u>***The priority is to protect investors***</u> *through the establishment of rules that promote ethics and equality."*

You just don't "Entrust" the 11,000 participants of the DTCC with a huge advantage over unknowing investors and then place them on the "honor system" to <u>**"eventually"**</u> deliver that which they sell (unless of course the targeted corporation <u>unfortunately</u> goes bankrupt during the time period in which delivery is being stalled). FTDs and the "securities entitlements" they procreate are just too damaging to corporations and the investments made therein to allow this. This is the antithesis of "<u>**The priority is to protect investors**</u>**"** cited above in the definition of an SRO.

Merely "collateralizing" a debt doesn't even approach "Good form delivery" of that which was thought to be being purchased. One could easily predict that for the most part Reg SHO and its "threshold lists" were doomed to failure when the very foundation of the DTCC administered clearance and settlement system was built upon the quicksand involving the "Ultimate paradox" being allowed to coexist with the aforementioned "DRAMA" involving creating leverage out of trust relationships. We need to fix the foundation of this clearance and settlement system before Reg SHO can have any chance of being effective in addressing the holes in the roof.

I would suggest the following exercise for the regulators, SROs and Congressional Oversight Committee members to try. Write down the "Ultimate paradox" and the breakdown of the "DRAMA" mnemonic on a 3X5 card and then do a line-by-line review of Reg SHO while glimpsing back and forth to and from the 3X5 card. When the "Ultimate paradox" and "DRAMA" are a reality how incredibly naïve is it to have a policy that "reasonable grounds" to believe that a "locate" would result in delivery by T+3" is good enough to allow a short sale to be made. A question: knowing that the "Ultimate paradox" and "DRAMA" are allowed to coexist in our current clearance and settlement system what would be considered "Reasonable grounds"? Knowing that our clearance and settlement system has a foundation made of quicksand the only "Reasonable" solution would be to not clear and settle the transaction until that which was purchased shows up for delivery i.e. "DVP". Anything short of that would be both unreasonable and irrational when you factor in human nature, the amount of investor money up for grabs, the advantages/leverage present and the conflicts of interest present.

Of course a certain percentage of those 11,000 broker/dealers and banks making up the DTCC are going to cheat via this gaping loophole in order to access the "Ultimate paradox" and therefore the funds of the investors to whom they refuse to deliver that which they sell. Does anybody really think that a DTCC participant clearing firm receiving order flow from a hedge fund client is apt to buy in their delivery failures of "threshold list" securities on T+13 and risk losing their business? Aren't hedge funds naturally going to seek out and provide order flow to clearing firms willing to break these laws? How else can corporations stay on the "threshold list" for over 800 days?

Until the "Ultimate paradox" is done away with any legislation in this arena must be airtight and without these glaring loopholes. Terms like "having reasonable grounds" and placing DTCC participants on the "honor system" to regulate themselves and each other is ludicrous. The presence of the "Ultimate paradox" dangles a gigantic carrot for opportunistic but abusive DTCC participants and co-conspiring usually unregulated hedge funds to comb the regulatory landscape for loopholes of any kind to gain access to the "Ultimate paradox" and thus the ability to shunt the investment funds of unknowing investors into the wallets of those selling share facsimiles that they refuse to deliver. If the removal of the "Ultimate paradox" is a logistical nightmare from a regulatory point of view then at least Rule 10b-21 can provide some stop gap measures to address these frauds. Due to the incredibly slow nature of legislating in this arena Rule 10b-21 could also see to the fine-tuning of the weaknesses of Reg SHO until it can be formally amended.

THIS IS NOT GOING TO BE EASY

One of the most heinous aspects of these frauds is allowing these fraudsters to access the funds of an investor without ever delivering that which they sold. The proposed Reg SHO addressed this unconscionable policy via the proposed Rule 203 (b)(ii) (B) stating "The registered clearing agency shall withhold the benefit of any marked to market amounts or "mark" that otherwise would be made to the participant failing to deliver and assess appropriate charges". (What this states is that you can't get your hands on the investor's money until you deliver that which you sold.)

The NSCC division of the DTCC addressed this suggestion to remove the "Ultimate paradox" on their "Comment letter" with, ***"The Commission [SEC] has previously noted that, unlike with other self regulatory organizations, the commission does not have the authority under section 19 (c) of the Exchange act to abrogate [repeal or abolish]), add to or delete from, the rules of a particular clearing agency. NSCC wants to assure the Commission, that its efforts to comply with Reg SHO as finally adopted will be made with the same <u>cooperative spirit</u> that has existed between the Commission and the NSCC dating back to NSCC'S registration as a clearing agency."*** [Translation: We are a "sacred cow" because we operate not only as an SRO (the DTC) but also as a "Registered Clearing Agency" (the NSCC) whose rulebook you can't touch. We rather enjoy the "Ultimate paradox" and we want our "Participants/bosses" to be able to access the funds of an investor despite the fact that they continue to refuse to deliver that which they sold.] How did the SEC respond to this smoothly-worded "Buzz off"? The providers of investor protection and market integrity backed down and left the markets "rigged".

Again, this is not going to be easy because this is the mindset that we're up against! Fraud is just fine, thank you very much; long live the status quo. After all, all of this fraud is at least "injecting liquidity"! This brings to mind the words of Ex-SEC Commissioner William Donaldson while commenting on naked short selling related crimes: "How much fraud are you willing to tolerate for liquidity? I think the answer is zero." All of this kind of makes one wonder what ever happened to that **<u>"cooperative spirit</u>**" promised by the DTCC.

Although Section 19 (c) of the '34 Exchange Act does indeed forbid the SEC from adding to or deleting from the rules of an RCA thankfully they do have the mandate to enforce the tenets of the 7 main Securities Acts. This is why the proposed Rule 10b-21 if designed properly could have a watershed effect on neutralizing this "attitude" of the DTCC management.

The solution to the majority of abusive naked short selling crimes which are committed by market makers illegally and fraudulently accessing the exemption from borrowing or making "locates" before making admittedly naked short sales is so simple that the refusal of the regulators, the SROs and the Congressional Oversight Committees to implement it for this long defies logic unless "regulatory capture" is in full bloom.

You regulators need to keep in mind how incredibly easy it is for these billionaire behemoths committing these crimes to merely "collateralize" even gigantic illegal naked short positions. The need to collateralize these open positions presents no deterrent to these crimes when the perpetrators of these frauds are sometimes leveraged at ratios of 30-to-1 with borrowed money. Collateralization money is no object especially when the share price of the targeted corporation can easily be put into a death spiral via the dilutory effects of FTDs and the share entitlements they give rise to. You regulators should be more concerned about "Systemic risk" issues that occur when borrowed money is used to create a "House of cards" built on a foundation of quicksand out of our clearance and settlement system. Recall the need for Reg SHO to "grandfather in" these previous acts of securities frauds in order to circumvent "upward volatility" in share prices and "short squeezes" in corporations with "large amounts of preexisting delivery failures". Borrowed money collateralizing prior acts of securities fraud is not exactly a recipe for capital market stability because circumstances sometimes result in loans being called in. The memories of the Bear Stearns debacle should have taught us that.

THE "L" WORD

The concept of **"Leverage"** is important in these crimes. It starts with acknowledging that the financial resources of these criminals is far superior to that of the investors being robbed. Thus "collateralization" offers absolutely zero deterrence value. Add to this **"Leverage"** the effect of their (in the case of hedge funds) being able to borrow from a "prime broker" in as high as a 30-to-1 **"Leveraged"** manner. On top of this then factor in the "self-generated **leverage**" created by the combination of merely needing to collateralize a debt and the ability to predictably force down the share price of the company under attack and therefore the collateralization requirements mandated. This "free cash flow" as it were then allows larger and larger naked short positions to be assumed and "collateralized". This then leads to the self-fulfilling prophecy aspect of these frauds in that once targeted any corporation's share price can easily be forced downwards by cashing in on all of this preexistent and self-propagating **"Leverage".**

Since the fraudsters know that yet to be cash flow positive development stage issuers need to constantly sell shares merely to pay their monthly burn rate they can predictably force by necessity a corporation to raise money by selling shares at usually steep discounts (due to the implied risk of financing a corporation whose share price is already in free fall) to constantly lowering share prices. Soon the company has so many both real (from financings) and fake shares (securities entitlements resulting from FTDs) in its share structure that even if it could survive these attacks and turn the corner to prosperity the earnings would be de minimis on a per share basis which is what share prices are based upon.

The question becomes how does a regulator counter this **"Leverage"** associated with the commission of these crimes. It's simple; you make people promptly deliver that which they sell and never allow them access to a purchaser's funds until they have delivered in "good form" that which the purchaser thought he was buying. If you refuse to operate on the "delivery versus payment" "gold standard" foundation then the markets in targeted corporations are essentially "rigged" from the get-go and the corporations unfortunate enough to have been targeted as well as the investments made therein have been in essence preordained to die an early death.

THE OBVIOUS SOLUTION

If a MM accesses this exemption from "locating" or "pre-borrowing" shares before making naked short sales which is accorded only to MMs acting in a bona fide market making capacity at the time and labels a naked short sale as "Short Sales Exempt" or "SSE" then he must be forced by an "uncaptured" regulatory authority to prove that he is truly acting in a bona fide market making capacity by being forced to place and leave an open order bid for the same amount of shares he just naked short sold perhaps at 2% below the price level of the sale. If a MM is unwilling to do this then he most assuredly wasn't acting in the capacity of a truly bona fide MM at the time of the naked short sale and had no right to access that exemption. What could be simpler? Please incorporate this policy into the text of the new Rule 10b-21. Hinting that you'll **"Eventually"** deliver that which you sell just doesn't cut it when the law mandates the "prompt settlement" of trades on T+3.

There is just too much money out there, too much of an advantage entrusted to these "market intermediaries" and too many conflicts of interest between investors and those that participate in and administer our clearance and settlement system to place market makers and other DTCC participants on the "honor system" any longer. We tried this multi-trillion dollar "experiment" and it failed miserably. The proof is on the Wall Street landscape strewn with the corporate carcasses of issuers unfortunate enough to have been targeted as an easy kill.

A LESSON IN HUMAN NATURE:

The following <u>human behaviors</u> are natural and should have been anticipated by those with the <u>ultimate</u> responsibility for providing investor protection and market integrity in our financial markets:

1) As mentioned, regulators like the SEC and the SROs like the DTCC are indeed susceptible to being "Captured" by the interests they are supposed to regulate. It happens all of the time; it's **natural**.
2) Regulators at the SEC that deal with misbehaving corporations all day long and that notice that a lot of these companies are indeed development stage corporations might **naturally** start treating ALL development stage corporations as "bad boys" until proven otherwise i.e. a little "collateral damage" is inevitable in these wars.
3) It should not be too surprising that politicians receiving a significant percentage of their political donations from secrecy-obsessed hedge funds and billion dollar Wall Street behemoths are bound to **naturally** assert that hedge funds need not be regulated ostensibly "because their investors are financially sophisticated already" and that the status quo on Wall Street is just fine, thank you very much. I find it a particularly curious concept that the activities of collectively multi-trillion dollar behemoth hedge funds accounting for over half of the trading volumes in our markets need not be "regulated" because their investors are wealthy and "financially sophisticated". Let's just put the hedge fund managers and the prime brokers on the "Honor system" in regards to tiny little issues like valuing "hard to value" assets <u>that recently nearly imploded our entire capital market system</u>, contra-party risks, systemic risk issues, disclosure issues, the securitization of toxic waste like-"Securities

entitlements", etc. The 3 questions that beg to be asked are is this "Obsession with secrecy" on the part of hedge fund managers and their partnering prime brokers due to the desire to defraud less "financially sophisticated" investors while operating under the cover of darkness, is it really associated with keeping their so called "Proprietary trading strategies" secret or is it a combination of the two and associated with the fact that perhaps <u>some</u> hedge funds' "Proprietary trading strategies" carried out in the dark oftentimes do indeed involve the intent to defraud less "financially sophisticated" investors i.e. sell them nonexistent "shares" of corporations all day long <u>that they have no intent whatsoever in delivering</u>. Recall from earlier how a crime this obvious needs "darkness" as a prerequisite. It is a "sine qua non"; without the darkness crimes this blatantly obvious couldn't be committed.

4) A certain percentage of the equity market makers exempted from performing "Locates" or "Pre-borrows" before making admittedly naked short sales <u>accorded to "Bona fide" MMs only</u> are going to cheat and <u>illegally</u> access this incredibly powerful and constantly abused exemption in an effort to re-route perhaps an investor's retirement funds into either their own or into a co-conspirator's wallet. These abusive MMs will do this through their own "in house" proprietary accounts, through hedge funds they control as well as on behalf of others that provide them with "order flow" in exchange for access to the space under this wide and widely-abused "Umbrella of immunity" from making often times expensive or sometimes unavailable "Locates" and "Pre-borrows". Recall the research of both Dr. Leslie Boni in 2004 and the former SEC Commissioner Irving Pollack in 1985 <u>both</u> indicating that failures to deliver are <u>**concentrated**</u> in "hard to borrow" securities. Why? Because they're either expensive to borrow or unavailable for a borrow and because the corporations involved are typically relatively defenseless development stage companies that are yet to be cash flow positive. In other words they are excellent "targets" to bring down.

5) A certain percentage of options MMs allowed to hedge their selling of Put options by naked short selling without needing to effect a "Locate" or "Pre-borrow" will also abuse this exemption in an effort to re-route unknowing investor's funds into their own and into the wallets of their co-conspirators willing to steer business towards them. All they need to do is to simply "roll" these positions forward from month to month to avoid <u>**ever**</u> delivering that which they sell. The fraudulent use of "Flex options", reverse conversions,

married puts, LEAPS, etc. make the creation of "Synthetic long positions" with fraudulent intent a piece of cake yet the options MM exception legislation sits on the back burner at the SEC.

6) When 11,000 b/ds and banks are allowed to coalesce themselves into the "DTCC" with critical mass beyond description and which has been **entrusted** to "Self-regulate" (as an "SRO") the "business conduct" of their owners/"participants" there will indeed be a certain percentage of these "participants" and DTCC management members that will choose to leverage this form of "Public trust" into a mechanism to defraud less "financially sophisticated" investors. This is due to massive levels of what are referred to as inherent "Conflicts of interest" between investors and those that administer SROs and "Registered Clearing Agencies" (RCAs) like the DTCC and its NSCC (National Securities Clearing Corporation) subdivision.

7) A certain percentage of those DTCC "Participants" being asked to "Self-regulate" when trillions of dollars of investor funds are there for the taking by themselves that are in possession of a vastly superior **"KAV"** factor (**K**nowledge of, **A**ccess to and **V**isibility of our clearance and settlement system and markets) will not ACT IN GOOD FAITH with this form of "Public trust" they have in their fiduciary capacity.

8) Lightly- to totally unregulated hedge fund managers with trillions of dollars to invest and that collectively spend $10 billion per year on fees and commissions will while earning their "2 and 20" (2% of funds under management and 20% of profits realized) naturally will seek out Wall Street intermediaries willing to break the greatest amount of laws in exchange for the "order flow" and associated fees these hedge fund managers can provide in their quest to maximize their own annual earnings. Many dozens of hedge fund managers hit the $100 million in annual income mark last year undoubtedly due partly to the "accommodative" treatment they receive from Wall Street participants in search of their share of a portion of the $10 billion annually up for grabs to the market participants that can prove to be the most "accommodative" to the needs of the hedge fund managers i.e. bend or break the greatest amount of laws. This is why the new Rule 10b-21 needs to <u>specifically</u> list out all behaviors associated with abusive naked short selling (ANSS) and delivery failure related abuses (DFRAs) that are to be deemed unlawful.

9) Certain Wall Street intermediaries known as “Prime brokers” entrusted to ACT IN GOOD FAITH with their superior Knowledge of, Access to and Visibility of the playing field on Wall Street will be more than happy to breach this trust and share these advantages with hedge funds steering extremely lucrative “Prime brokerage” business in their direction. On Wall Street today with the mergers and acquisition business (M and A) slowing down the prime brokerage business and the lending department business are the cash cows and these two businesses are at the epicenter for many of these delivery failure related abuses (DFRAs).

10) “Prime brokers” that loan billions of dollars to hedge fund managers in their endless search for yet more systemic risk-laden “leverage” are **naturally** going to do whatever they can in their power to make sure that especially the negative bets placed by their hedge fund clients with this loaned money of theirs work out well for <u>both</u> the lender with its money at stake and the loan recipient. This is only **natural** and to be expected.

11) Wealthy hedge fund investors that pay these seemingly usurious “2 and 20” fees <u>expect</u> their hedge fund manager to establish and take advantage of a tilted playing field and to seek out these Wall Street intermediaries willing to breach their public trust in order to justify their paying of these exorbitant fees while hopefully earning themselves superior returns in excess of <u>and often at the expense of</u> less sophisticated investors without this critical mass and financial as well as political “Juice”. Wealthy hedge fund investors naturally expect certain “Economies of scale” and better returns than the average Joe because of the larger amounts of money being invested. Hedge fund managers with this $10 billion in annual “Juice” to spread around on Wall Street are **naturally** highly incentivised by their “2 and 20” pay structure to spend this “Juice” where it will do their own pocketbooks the most good. This $10 billion in annual fees and commissions provided by hedge funds is a primary driver in this “cycle of corruption”.

12) DTCC <u>management</u> entrusted to ACT IN GOOD FAITH while fulfilling their mandate to “Immobilize” and “Dematerialize” difficult to counterfeit paper-certificated shares into easy to counterfeit electronic book entry shares and to administer the largest of the Registered Clearing Agencies are **naturally** going to see to the needs of their 11,000 “Participants”/owners/bosses that sign their checks.

13) When trading the shares of the typical thinly-traded development stage corporations abusive market makers illegally accessing the exemption from borrowing before making admittedly naked short sales constantly sell nonexistent shares into buy orders and then when the purchasers of these “pseudo-shares” become frustrated by their investment losses and try to minimize their losses by selling these “investments in air” those same abusive MMs can drop the size of their bids and force any investor attempting to minimize their loss to sell into tiny bids that are constantly decreasing in value and thus take any investor determined to minimize his losses out on his hands and knees. The incredibly heinous nature of this behavior involving “Market Maker Manipulations” (“MMMs”) comes to light when you realize that the “shares” needing to be sold to minimize losses never even existed in the first place yet somehow served to siphon off the retirement funds of an unknowing investor. It was all a charade from the get-go; there never were any shares being sold. The thinly-traded nature of these securities with low volumes and only a few MMs making markets allows the MMs to collude with other MMs and operate in “packs” to shake down investors.

14) Any large MMs that corner the market making business will have a superior visibility of the buy and sell orders queing up right in front of their eyes. They know exactly how to place their bets from in-house proprietary accounts. They have the ability to “front run” large buy or sell orders in order to “lock in” profits with zero risk. This 20-20 visibility of the immediate future not shared with public investors makes them the ultimate “insider traders”.

All of these behaviors are to be expected by human beings “entrusted”, by necessity, with an advantage over investors forced to rely on their acting in good faith with these advantages and forced to rely on the existence of uncompromised and uncaptured regulators and SROs looking out for the provision of investor protection and market integrity.

THE NEED FOR DARKNESS

One must keep in mind that in this day and age if fraudsters are going to perpetrate a fraud as brazen and as obvious as refusing to deliver that which they sell then they are going to need to operate almost 100% in the dark due to the obviousness and heinous nature of the fraud. After all, the eyes and ears of the investors being deceived and defrauded outnumber the fraudsters by perhaps 1,000-to-1 and investors for the most part are highly educated and successful business people. This “darkness” can be provided by running the clearance and settlement system out of what amounts to be a “black box” known as the DTCC. This would render the NSCC subdivision of the DTCC’s “Automated Stock Borrow Program” (their “SBP”) as being a “black box within a black box”. This “darkness” can be maintained by the perpetrators of these frauds working out of secrecy-obsessed offshore hedge funds being allowed to “interface” with this “black box” often through Canadian intermediaries one step removed from our regulatory system. Recall that to this day Canada still does not have a national securities regulatory system. They instead have about a dozen “provincial” regulators which fosters a phenomenon known as “regulatory arbitrage” which involves the crooks working out of the province with the most lenient rules regarding the type of securities fraud the fraudsters care to undertake. The Canadian naked short selling shenanigans are allowed to interface with the DTCC through their infamous “5099 participant account” at the DTCC.

The alleged need for confidentiality associated with “Proprietary trading strategies” adds further insulation from the light of day being able to provide its disinfectant effect. Yet another layer of darkness is provided by the “Black box” utilizing the “anonymous pooling” format for holding “street name” shares leaving individual “parcels” of shares held in “street name” unlinkable to its purchaser that might take offense at his shares being essentially “counterfeited” at will. The DTCC chooses not to know the identity of the individual investors owning the shares they act as custodian for. They only choose to see that “ABC” b/d has 10 million shares of “X” corporation in its participant account. If the DTCC chose to see the identity of the individual “beneficial owner” of shares then they’d have a tough time in essentially counterfeiting his shares. The b/d of course knows the identity of the individual client/investor. Note that if individual investors had visibility of the location of their shares in their own little electronic mail box at the DTCC then these crimes would be very difficult to pull off. This technology is obviously very available but if you asked the DTCC management about it the response would be that it would be “unworkable”. Again we see the need for darkness in a crime this obvious. Could you imagine the panic experienced by the abusive DTCC participants if a press release was released stating that all investors will be henceforth given full visibility of their particular parcel of shares within the DTCC system via their new electronic mail box? Imagine that, investors that just noticed that their share purchase check just got cashed given full visibility of their FTDs or perhaps visibility of their particular parcel of shares being rented out in a dozen different directions simultaneously. Perhaps investors would be willing to pay a slight commission surcharge or aid in designing how to make this concept “workable” in order to institute such a system if the DTCC proffers that they couldn’t afford this system or that it was somehow not “workable”.

The CNS (Continuous Net Settlement policy of the NSCC) “netting” which indeed is an “efficiency enhancer” similar to “anonymous pooling” unfortunately has the untoward (depending upon whether you’re the fraudster or the defrauded) side effect of hiding the delivery status of 96% of trades. The designation of those owning and administering the “black box” (DTCC) as the “legal/nominal owner” of that which an investor has purchased and is essentially being counterfeited ostensibly for the sake of streamlining our clearance and settlement system provides yet further insulation from the light of day. The complexity of the clearance and settlement system and the sheer number of transactions needing to be “cleared and settled” also creates a “cloud of dust” inhibiting transparency. All of these factors when combined provide a sufficient level of opacity needed to allow crimes this obvious and this heinous to be committed.

The recurrent theme seen throughout the history of the DTCC, DTC and NSCC is this never ending quest for “enhanced efficiencies” <u>each</u> of which creates new conflicts of interest, further darkness and inherent advantages for the <u>abusive</u> participants of this “black box” to enhance their leverage over the investors owed a duty of care by these “participants”. The result is one of the most “efficient” ways on earth to funnel the investment funds of hundreds of millions of U.S. citizens into the pockets of the relative few that choose to refuse to deliver that which they sell.

Any meaningful deterrent effect to these crimes will necessitate the increasing of the **transparency** of the clearance and settlement system. In the instance of the darkness provided by the fraudsters’ claim that their trading data is of a “proprietary” nature and needs to be protected the regulators, SROs and Congressional Oversight Committees need to rigorously review trading data and clearance and settlement data to determine which types of information truly deserve secrecy and which do not. For instance, when a MM accesses the exemption from performing a locate or pre-borrow before making an admittedly naked short sale by labeling a sale as “Short sale exempt” or “SSE” how in the world can he claim that this transaction should be hidden from public view because it involves a “Proprietary trading methodology”? You can’t have it both ways and claim the exemption and the “proprietary” nature of these trades because there is no “Proprietary trading methodology” involved in injecting liquidity when buy orders dwarf sell orders. There is no proprietary algorithm in danger of being made public.

Recall that it was in 2004 that the “darkness” of the DTCC was successfully breached by Dr. Leslie Boni acting as a visiting economic scholar on behalf of the SEC that was designing Reg SHO at the time. What she found were disturbingly high levels of “strategic” or intentional unaddressed FTDs well in excess of what she anticipated.

A now popular way to breach this “darkness” is to order a “Freedom of Information Act” or “FOIA” analysis of FTDs held at the DTCC. This mechanism has substantiated the existence of massive levels of unaddressed and archaic FTDs in the share structures of targeted corporations.

A third way to breach this “darkness” is to hire a massive network of private investigators to delve into the behind the scenes activities at the DTCC and in the naked short selling world in general. The expose covering this approach to illumination was written by Mark Mitchell and is available at deepcapture.com.

THESE FRAUDS SHOULDN’T BE THAT SURPRISING

This is not rocket science. In our society there is this form of currency we refer to as “Money” and there are those that will break any amount of laws and breach any amount of fiduciary duties of care to funnel the “Money” of others into their own wallets when presented with an “opportunity” resulting from some form of an advantage or leverage that they have been “Entrusted” not to abuse. It is very predictable human behavior that those with the ultimate responsibility to oversee the SEC and our markets as well as the DOJ must be made aware of so that truly meaningful deterrence to this fraudulent behavior may finally find a presence on Wall Street. “Captured” regulators (the norm) are **by definition** not very good at providing truly meaningful deterrence to the criminal conduct of those whose business conduct they are supposed to be regulating.

Wall Street is complex and often those being regulated have a superior knowledge of the inner workings on Wall Street over and above that of even their regulators. Picture a young lawyer just getting out of law school signing on at the SEC to gain some experience before moving on to a job on Wall Street that pays 10 times as much. How is he going to provide meaningful deterrence when he doesn't even speak the lingo of Wall Street yet let alone have a working knowledge of Wall Street's "dirty little secrets"? Where is his incentive to get a reputation for being a hard-nosed regulator when the jobs being sought are the high paying jobs offered by the people he is mandated to regulate? This is just one of many "Conflicts of interest" which Wall Street is riddled with. The foot traffic pattern from the Enforcement Division of the SEC to hedge funds that specialize in naked short selling is well worn.

There is no place in the legislative arena of an industry like this for placing any of its participants on anything resembling an "honor system". "Self-regulation" by human beings in an environment with this much money, with this many inherent advantages and this many conflicts of interest never had a chance of being effective in providing truly meaningful deterrence to criminal behavior.

Oftentimes those "professionals" being regulated are counted on to ACT IN GOOD FAITH with the superior "KAV" factor they have been entrusted with and cautioned never to use in order to gain leverage over the investing public. Some of the times it is this superior knowledge or experience of those being regulated that allows for the "Capturing" of a regulator to occur because the regulators and those being regulated need to work together in an industry as complex and as critical to our country as our capital market system is. It is only natural that an industry trade group and lobbying group like SIFMA (formerly the SIA) is going to gain the attention of the regulators more than Joe Investor writing a comment letter can.

Please allow the words of Wilson cited earlier concerning "regulatory capture" to be incorporated into your foundation for understanding these delivery failure related abuses (DFRAs) so that the efforts to provide meaningful deterrence against them can be that much more fruitful. All of these frauds have in common Wall Street intermediaries being given a distinct advantage by necessity in exchange for a pledge to ACT IN GOOD FAITH while operating on this playing field that can be tipped steeply in the favor of those willing to breach the associated fiduciary duties of care owed.

WHAT MIGHT A TRULY "CAPTURED REGULATOR" LOOK AND ACT LIKE?

Since the advantage given to the DTCC management and its “Participants” (almost everybody on Wall Street except the hedge funds and public investors) involves “Entrusting” them with the task of converting difficult to counterfeit paper certificates into theoretically the same number of easy to counterfeit electronic book entry securities (“Dematerialization”) the advantages and leverage available to those choosing to abuse this form of public trust arise from being able to run up large naked short positions involving failures to deliver (FTDs) and then either continue to sell or allow to be sold yet more “pseudo-shares” while they exist in the form of “darkness” provided by an electronic book entry format **OR** to sell nonexistent shares, intentionally fail to deliver them and then merely rely on the ability of the DTCC participants to credit the brokerage accounts of the unknowing purchasers/victims with a supposedly ultra-short lifespan electronic book entry known as a “Securities entitlement” to act as a “Place-holder security” until the already contracted for delivery occurs albeit in a slightly tardy manner.

Since what is being sold doesn’t even exist then a failure to deliver “FTD” by the selling party and a failure to receive “FTR” by the buying party is the result of these bogus sales. Being that those Wall Streeters refusing to ACT IN GOOD FAITH while administering the clearance and settlement system commit their frauds mainly from making “Short sales” of basically fake shares then any “Captured regulator” would naturally be more interested in preventing market manipulations of share prices to the upside then it would be in preventing market manipulations of share prices to the downside. Why? Because that would be more in alignment with the “financial interests” of those they are regulating and to whom they are beholden to or have been “captured” by.

This would explain the SEC’s (and obviously the DTCC management’s and participants’) absolute obsession with preventing “Short squeezes” as well as their obsession with preventing “Pump and dump” types of frauds which, make no mistake, are also a heinous form of a securities fraud. In one of the “Comment letters” in regards to Reg SHO a study was cited that put the ratio of SEC and NASD (now part of FINRA) enforcement actions against “Pump and dump” types of frauds at a ratio of about 100-to-1 over enforcement actions against abusive naked short selling (ANSS) frauds despite the fact that abusive naked short selling frauds are far more prevalent.

A truly “Captured regulator” might also be persuaded by the powerful lobbyists for those it regulates to “Grandfather in” any prior acts of securities fraud committed by those they were supposed to be regulating at the time they were committed. We saw this in Reg

SHO as an admitted (by the SEC) attempt to avoid “Market volatility” and “Short squeezes”. Here again we see the obsession with preventing short squeezes. The decision making process here dealt with whether it was more appropriate to <u>force</u> those that intentionally sold nonexistent shares and have constantly refused to deliver that which they sold to <u>finally</u> deliver that which they sold to its buyers **<u>OR</u>** to prevent upward volatility <u>in already artificially manipulated downwards share prices</u> (from the price dampening effect of FTDs/”securities entitlements”) associated with the covering process. Somehow the decision made <u>by those with the congressional mandate to provide investor protection and market integrity</u> was to protect the “financial interests” of those now proven to be securities fraudsters being “regulated” after they had clearly been found guilty of selling shares and absolutely refusing to deliver on these obligations after inordinate amounts of time past the T+3 <u>previously agreed upon</u> and <u>contracted for</u> “Settlement date”.

The recent rescinding of the “Uptick rule” would also fall clearly into alignment with the actions of a “Captured regulator” concentrating on the “financial interests” of those they regulate. Who else but a truly “Captured regulator” could be persuaded to rescind a 70-year old rule forbidding the malicious banging away of bids in a serial fashion right in the midst of an unprecedented worldwide firestorm over naked short selling abuses? Who else but those desiring to abuse this rule would lobby for its removal? Score another victory for the securities industry lobbyists, the abusive DTCC participants and an assist for the SEC.

Who knows? It may even get to the point that a truly “Captured regulator” might be so “Deeply captured” as to actually facilitate these frauds by going well out of its way to remove the **natural deterrents** inherent in our markets to the perpetration of these frauds; more about these later.

The obvious problem is that the less “financially sophisticated” investors in usually but not always defenseless development stage corporations and the most in need of the “Investor protection” and “Market integrity” supposedly being provided by this “Captured regulator” cannot organize themselves, fund themselves and present refined arguments on a level with professional securities industry lobbyists. They just don’t have the same level of access to the sympathetic “ear” of the regulators. Their access via “Comment letters” like this only seem to get through to the deaf ear of the regulators.

The overwhelming majority of investors deal from the “Long” side by shopping for bargains and placing bets that share prices will go up. A “Captured regulator” then finds itself in a quandary as it can’t be both kowtowing to the financial interests of the Wall Street behemoths placing negative bets in an abusive fashion and refusing to deliver that which they have been selling at the same time it is providing “Investor protection” and “Market integrity” to the 99% of the much less sophisticated, much less well-organized and much less refined investing public betting on share prices going up. A conscious decision must be made by “Captured regulators” to ignore their congressional mandates to provide investor protection and market integrity when a decision is needed to be made that pits the financial interests of those that have them “Captured” against those of the 99% of U.S. investors in need of the “Investor protection” and “Market integrity” they are congressionally mandated to provide.

A “Captured regulator” might not have that much of a problem with watching the same MMs day in and day out selling 20% of an issuer’s “float” of readily sellable shares on a daily basis even though its bids are only good for the minimum legal amount. Although the obviousness of this activity jumps out at investors whose money is at risk for some reason the SEC just does not see much of an issue. Their take seems to be that it’s just some “bona fide” MM injecting liquidity as is his job.

The single best escape route for a truly “Captured regulator” when the above mentioned quandary presents itself is to at least look concerned to the taxpayers that feed their families while intentionally stalling meaningful reforms as per the financial interests of those refusing to deliver that which they have sold and will sell in the future. A good way to do this is to keep writing layer upon layer of laws stating the same things over and over again while continuing to refuse to **enforce** that which they have previously legislated. That brings us around to the here and now as I type away on yet another “Comment letter” regarding yet another proposed rule that only reiterates that which has already been codified in a general manner in Rule 10b-5 as being unlawful for dozens of years. Enough already!

The question that often arises in legal circles is what is the more heinous behavior being performed by these “Captured regulators” i.e. the DTCC and the SEC. Is it the “Enabling” of criminal behavior on the parts of those they are supposed to be “Regulating” or “Self-regulating” or is it the refusal to provide “Investor protection and market integrity” to those that it has been congressionally mandated to do so and the refusal “to promptly and accurately clear and settle securities transactions”. I don’t know if that question is answerable but the combination of the two is extremely painful to the tens of millions of victims of this current crime wave.

It is one thing to refuse to follow through on the SEC’s congressional mandate to provide investor protection and market integrity or follow through on the DTCC’s mandate to “Promptly and accurately clear and settle securities transactions including the transfer of ownership” (Section 17 A of the ’34 Exchange Act). **It is, however, quite another thing to simultaneously “Enable” those DTCC participants and their co-conspirators refusing to ACT IN GOOD FAITH by refusing to deliver that which they sell to perpetrate these frauds in the absence of any other congressionally mandated provider of investor protection and market integrity or any other party mandated to “promptly and accurately clear and settle securities transactions”.** If you regulators and SROs won’t perform on these mandates then who the heck is going to in your absence?

A QUESTION/PLEA TO THE YET TO BE COMPROMISED/CAPTURED EMPLOYEES AND STAFF MEMBERS AT THE SEC AND THE DTCC: HOW WOULD THE CURRENTLY “UNCAPTURED” EMPLOYEES OF A KNOWINGLY “CAPTURED REGULATOR” OR SRO LEGISLATE AFTER IT FINALLY DAWNS ON THEM THAT THEIR COMMISSION/SRO REALLY IS “CAPTURED”?

If a knowingly “Captured regulator” is naturally a bit reticent to come down hard on those it is mandated to regulate when they commit crimes then the legislation process needs to be so **specific** that those that chronically misbehave become a bit reticent to misbehave for fear that even a “Captured” regulator/SRO might have trouble in allowing a certain behavior **specifically** deemed as being **unlawful** to go unchallenged.

The goal would be to rid the system of any “Gray zones” in which a “Captured regulator” might have a tendency to err on the side of complacency. Instead of philosophizing over how regulators get “Captured” so commonly perhaps it is more important to realize that it is common and to legislate accordingly i.e. with **specificity**.

In regards to abusive naked short selling (ANSS) the reality is that these horses are well out of the barn and adding yet more layers of rules to the preexisting rules does nothing but waste resources and forestall any meaningful reform. The SEC rulemaking process from “Concept release” to “Rule proposal” to “Rule adoption” to the publication of the “Final rule” in the Federal Register is so incredibly slow that these bite-sized incremental approaches can actually do more harm than good. They provide a false sense of robust regulatory oversight and a false sense of a level playing field on Wall Street which only leads to yet more misplaced trust leading to further investor losses.

A once and for all no nonsense approach **specifically** listing out abusive behavior associated with ANSS and DFRAs deemed to be “Unlawful” needs to be taken. Studying the modus operandi of the last 30 abusive short selling cases might be a good starting point as there were some very clever modalities utilized. Recall the Badian/Rhino case and the demand to “mercilessly” knock out bid after bid. Remember also the Arenstein case and the abuse of the options MM exception, reverse conversions, flex options, synthetic long positions, etc. That was a wonderful piece of detective work done by the AMEX authorities in the course of the Arenstein case. Combining this list of popular MOs with the list of the obvious loopholes preimpregnated into Reg SHO and then **specifically** forbidding these behaviors and the accessing of these loopholes will help to close the loopholes once and for all and leave no question in anybody’s mind as to what is and what is not **specifically** deemed to be unlawful behavior. In any litigation activities associated with the perpetration of these frauds a judge not familiar with this sometimes complex family of frauds and the concept of “Captured regulators” as being the norm can look at the behavior and the specific part of Rule 10b-21 of the ’34 Act that deems this behavior to be unlawful and promptly effect justice. Keep in mind that you at the SEC are supposed to carry out an “educational” role also.

Here’s where we’re really at today in these markets characterized by pandemic abusive naked short selling frauds commingled with the absence of an “Uptick rule”. Many Americans from the “Baby boom” era now may find themselves one unfounded rumor, one Internet “Bashing” or one act of terrorism away from needing to postpone any plans for retirement indefinitely. The loopholes within Reg SHO allow securities fraudsters to easily establish massive naked short positions while the lack of an “Uptick rule” can provide leverage beyond comprehension to enable these naked short positions to do the most damage to the corporation targeted. Although most investors don’t have a clue it’s actually gotten to the point that a case could be made that only an insane person would take “Long” (ownership) positions in any of the especially defenseless development stage corporations trading in the U.S. markets and subjected to our current clearance and settlement system that has been corrupted beyond imagination. It might be equally insane to bring a development stage corporation public until our clearance and settlement system is sanitized. The problem is that development stage corporations can only develop so far on the monies that friends and family provide before the needs for “capital formation” drive the corporation into the public arena. There is that stage of development in a corporation that is yet to be cash flow positive wherein the corporation is defenseless against these attacks and boy don’t the fraudsters with all of their superior leverage know this.

The short selling process in general, both legal and illegal versions, has been corrupted from top to bottom. As hinted at earlier in the past there were "Natural deterrents" built into the markets that functioned as a governor for short selling abuses. Thanks to DTCC policies and the timidity of both the SEC and their congressional overseers they are all gone. These "Natural deterrents" used to include the fear of "Short squeezes", the expense of performing a "Pre-borrow" to make delivery by T+3, the unavailability of certain "Borrows" once the supply of legally borrowable shares was depleted, meaningful regulatory actions providing a deterrent effect, etc. They're now gone; all of them.

The "Natural deterrents" to these crimes have been replaced with lobbied for loopholes you could drive a truck through. Not to be a conspiracy theorist but plainly this can't occur in our current society without at least some degree of central planning. The stock lending business has turned into a total cesspool that functions as a $16 billion per year "Cash cow" for abusive broker/dealers and banks. The prime brokerage arena is an equal mess with the same parcel of shares were they to be readily identifiable which they aren't being simultaneously loaned out in multiple directions while earning immense amounts of money for their "counterfeiters".

The days wherein the scarcity and high expense of a borrow in an issuer with a gigantic preexisting short position providing a protective effect from fraud are gone. Where in the world do you think brokerage firms that charge $7 per trade make their money? It's from the lending department and the often illegal shenanigans being carried out there in the vacuum provided by the absence of any regulators, SROs or regulatory system overseers showing any interest in cracking down on this behavior in a meaningful manner. Where do you think that the dozens and dozens of hedge fund managers that each made over $100 million last year received their money from? Wall Street is a "Zero sum" game and if you weren't one of the "Takers" then the chances are that you were unknowingly one of the "Givers".

To some degree it's our own fault for being too trusting. We trusted that the SEC was above being subjected to a concept like "Regulatory capture". Then Commissioner Irving Pollack in 1985 warned us in the "Pollack study" that: *"there is no* ***automatic mechanism*** (in place at the DTCC) *preventing the substantial buildup of short positions at the clearing corporation and of fails to receive in brokerage firms which carries the potential for serious problems, particularly in the event of crisis market conditions"*. Here we are 23 years later and there still is no "Automatic mechanism" in place. The "Automatic mechanism" being referred to is the obvious "Buying-in" under a "Guaranteed delivery" basis all FTDs of a certain age that takes into account the existence of and lifespans for a minute amount of truly "Legitimate" delivery failures usually associated with paper certificates. This time period would coincide with the time period in which it becomes obvious that the seller of the shares had no intention whatsoever in delivering that which he was selling i.e. the shares never existed in the first place.

Part of the problem is that the DTCC's clearance and settlement system is designed such that when the purchaser of bogus shares involving an FTD turns around and sells them to somebody else (often at a substantial loss) the fact that his purchase never was delivered becomes a moot point and the FTD is hidden under a different “shell”.

What Pollack was pounding the table for was a way to **“Guarantee”** that the DTCC would execute the “prompt and accurate clearance and settlement of transactions”. Even to this day despite the massive levels of conflicts of interest present between investors placing bets that a stock will go up in price and many of the abusive DTCC participants utilizing intentional FTDs betting that share prices will go down there still is no “Guarantee” in place.

This time around in the legislative process involving Rule 10b-21 we need to learn from past history. When the single most meaningful deterrent to this behavior, the mandated T+13 day “Guaranteed delivery” buy-in “of shares of like kind and quantity” for delivery failures was instituted only 0.12% of the times it was mandated did they occur (Evans, Geczy, Musto and Reed 2001). Why? Because there was no <u>meaningful deterrence</u> provided to those choosing to break this law. When “busted” the securities fraudsters merely paid their traffic ticket amounting to perhaps 2% of the amount of money they stole and were asked to sign an “AWC” (Acceptance, Waiver and Consent) form stating that “they didn’t do it and they won’t do it again”. The DTCC participants choosing to break this law <u>consciously</u> decided that the risk/reward analysis told them to keep breaking the law. That’s the mindset that you at the SEC are facing so you have to legislate with that kept in mind. Is it starting to dawn on you at the SEC that with the corrupt foundation currently in place at the DTCC how insane it is to allow mere “locates” or “reasonable grounds to think that a locate is available” or “the presence on an easy to borrow list being sufficient to provide reasonable grounds” really is? **These aren’t laws these are engraved invitations to commit fraud when the sellers of bogus shares only need to collateralize their “open position” in order to gain access to an unknowing investor’s funds.** An “easy to borrow” list that doesn’t decrement when a loan is made is sheer insanity. An “easy to borrow” list that isn’t rigorously scrutinized by regulators is equally insane.

History has clearly taught us that you cannot put DTCC participants on the “Honor system” in the case of mandated buy-ins. Corrupt DTCC participants will retaliate against any party buying them in. You just don’t buy-in a DTCC fraternity brother’s FTDs without risking retaliation involving the buying-in of your own FTDs. Buy-ins need to be executed by an uncompromised regulator, SRO or other authority not subject to retaliation and that’s not a DRCC fraternity member. Later I’ll review how guaranteed delivery buy-ins are very tricky in that they reveal that there are actually 2 markets for securities out there. One is invisible and is for “legitimate” shares backed by a paper-certificated share which is only made visible by guaranteed delivery buy orders and the other which is the one we see on our computers involves a mixture of legitimate shares with a paper-certificated share somewhere to justify its existence and an ever increasing number of mere “securities entitlements”/IOUs resulting from FTDs. This second market which is the only one we have visibility of trades at price levels that have been artificially manipulated downwards by the presence of excessive numbers of these securities entitlements contributing to the supply of "readily sellable shares and/or share entitlements".

The existence of this first invisible market needs to be kept a secret in order to allow these frauds to continue to be perpetrated. Imagine a market in which the least expensive real shares for sale by a real investor is at the $5 level. Then imagine a trade being printed at $5 per share when the bid is $4 and the offer is $4.05. This would give away the existence of this second market and the overall level of frauds being perpetrated in the market that the investors do have visibility of. Therefore nobody on Wall Street will even accept a "guaranteed delivery" buy order lest they incur the wrath of the abusive participants of the DTCC perpetrating these frauds. Why? Because a guaranteed delivery buy order in a heavily manipulated market often results in a buy-in. How sad is it when the clearance and settlement system in the most powerful country in the world is so corrupt that you can't even buy the "Real McCoy" (a legitimate share with its "package of rights" attached") <u>even if you're willing to pay more for it</u>. I would highly recommend that the regulators, the SROs and the Congressional Oversight Committee members put this to the test and try to place a guaranteed delivery buy order tomorrow morning in a development stage U.S. corporation.

Congress warned us back in 1991 that massive reforms were needed in the short selling arena and the last 17 years have been spent writing layer upon layer of rules that no regulatory agency or SRO would enforce. The time has come to say enough already, no more reiterating existing rules that nobody is willing to enforce. The clock is ticking and corporations with a plethora of unaddressed archaic "Failures to deliver", the jobs they provide and the investments made therein are dropping like flies while we move from "Concept release" to "Concept release" and from "Comment period" to "Comment period" and from "Rule proposal" to "Rule proposal" all with the false hope of <u>meaningful</u> reform right around the corner. Enough already; it's not going to happen until the concept of "Regulatory capture" is appreciated by the SEC Oversight Committees and the DOJ and the nature of the incredibly damaging archaic delivery failures are recognized and purged from the share structures of corporations <u>currently</u> under attack. If you at the SEC can't even address these then how dare you give false hopes to prospective investors in development stage corporations about the presence of a robust regulator all over these acts of fraud?

After 28 years of researching and writing on abusive naked short selling and delivery failure related abuses I'm ashamed of myself for actually drinking the Kool-aid for this long without <u>fully</u> appreciating the massive acceleration of these abuses and the deceleration of any <u>meaningful</u> efforts to address them. As mentioned earlier and as implied by Irving Pollack back in 1985 we have now <u>devolved</u> to the point where some of us really are literally one unfounded rumor or one terrorist act away from massive damages to our investments and our futures because we continue to drink the Kool-aid you supply. This just isn't right for the mandated providers of investor protection and market integrity to put us through this hell. The rescinding of the 70 year old "Uptick rule" in the midst of an investor uproar over naked short selling abuses of no historic equal really clarified matters for me personally. How in the world was SIFMA, the securities industry trade group, allowed to usher in the "Grandfathering in" of blatant acts of securities fraud without the investing public having an opportunity to "comment" on it? We were "sandbagged" by our own provider of investor protection! How were the option clearing firms allowed to de-rail the effort to finally put an end to the constantly abused option market maker exception? Is it really that tough to demand that any hedge positions taken on while accessing the exemption from making a locate or a pre-borrow needs to be cleared up when the option expires? When the need for the hedge is gone so too is the excuse for accessing the exemption.

Could it be any more obvious to professional securities regulators when the options MMs continuously "roll" these theoretical "liquidity injecting" and "hedged" positions inexpensively from month to month in an effort to never have to deliver that which they sell? What lessons did we learn from the Arenstein case? Enough already! How does the congressionally mandated "Prompt settlement of securities transactions" fit in with the ability to easily avoid delivering that which you sell ad infinitum? Don't tell me; I know it has to do with this wonderful "Liquidity" that the options MMs are "injecting". How about re-injecting some of this wonderful "Liquidity" on the buy side when share prices of the involved corporations are dropping? OOPS, I forgot the "Ultimate paradox" involving the fact that buying shares costs money but in our DTCC-administered clearance and settlement system selling shares even when they don't exist and you obviously fail to deliver that which you sold makes you money. Why in the world would any DTCC participant in these markets ever cover their naked short positions when all you have to do is to take out your checkbook and collateralize these "open positions" in a marked-to-market fashion after forcing the share price into an easy to achieve "death spiral"? Come to think of it who says that they ever do cover!

WE HAD A DEAL!

When the DTCC management and participants were given the mandate to convert difficult to counterfeit paper-certificated shares of corporations into easy to counterfeit electronic book entry shares of those same corporations ("dematerialization") part of the deal was to set up a robust regulatory environment to make sure that none of the DTCC participants converted this ease of counterfeiting shares into leverage over investors in an effort to defraud them of their investment funds.

Paper-certificated shares were designed with anti-counterfeiting measures in mind. Corporations would design a difficult to counterfeit medallion and emboss it onto the paper certificate. The secretary/treasurer of the issuer would emboss his or her signature on the paper certificate. Distinctive art patterns of a specific color would typically border the certificate. Knowing that all of these measures would be lost during "dematerialization" it became incumbent on the facilitators of "dematerialization" to substitute rigorous measures to make up for this loss lest the more unsavory DTCC participants convert this loss into a means to deceive and defraud investors.

The reasoning behind both "dematerialization" and the "immobilization" of paper-certificated shares into DTCC vaults was to "enhance efficiencies" via streamlining the processes involved in clearing and settling trades. There was no discussion about any "trade off" between investor protection and market integrity in exchange for these "enhanced efficiencies". There was however the presumption of ACTING IN GOOD FAITH with a new fiduciary duty that was created. The fact that those DTCC management members and participants chosen to effect these changes also acted in the capacity of a "Self-Regulatory Organization" empowered to create and enforce rules and regulations and to monitor the "business conduct" of its participants made it a no-brainer. Any deceptive practices would <u>obviously</u> be dealt with effectively by this SRO or for sure by the SEC overseeing this SRO or if necessary by the Congressional Oversight Committees mandated to oversee the SEC. Well, so much for presumptions as we hit the Trifecta and no regulators, SROs or Congressional Overseers stood up to the plate to provide investor protection and market integrity in this regard. I thought we had a deal! So what is the DTCC management trying to push through now? Their current project is to rid the system of all of these nasty paper-certificated shares that provide the proof of this fraudulent behavior. Why? Because these easy to counterfeit electronic book entries are so darn "efficient".

Many of the DTCC participating market makers in our markets have morphed into nothing more than a band of co-conspiring corporate marauders unwilling to ACT IN GOOD FAITH with the <u>incredibly powerful</u> form of public trust that legislators have entrusted them with in their role as "Gatekeepers" into our markets that, by necessity for the provision of liquidity especially in thinly-traded markets, have been "Entrusted" with the exemption from making "Locates" and firm "Pre-borrows" before effecting admittedly naked short sales. Why were they entrusted with this? It was a quid pro quo associated with them being willing to take on the <u>risk</u> associated with the injection of liquidity INTO BOTH RISING AND FALLING MARKETS in exchange for this exemption. But why was it necessary? Because markets move fast and sometimes there isn't enough time to execute a locate or a borrow.

But then that reality set in with some of these MMs that buying shares <u>costs</u> money and selling "share facsimiles" <u>makes</u> money even if that which you sell doesn't exist and therefore will never get delivered to the purchaser. Where is the <u>risk</u> in this proposition that deserved the quid pro quo? Instead of any measurable risk there is the self-fulfilling prophecy set up wherein abusive DTCC participants can target certain corporations, illegally access the exemption from making locates or borrows before making naked short sales, refuse to deliver that which they sold and fill the share structures with incredibly damaging but readily sellable mere "securities entitlements/IOUs" that will predictably place the share price of the targeted issuer into a death spiral downwards.

That exemption is a trillion dollar license to steal in the hands of those refusing to ACT IN GOOD FAITH within this regulatory vacuum. The obvious solution would be to <u>**force**</u> MMs to <u>**prove**</u> that they are acting in a truly bona fide market making capacity while accessing the exemption from performing a locate or borrow before making a naked short sale. How do you do this? As mentioned, if a theoretically bona fide MM accesses this exemption and naked short sells 1,000 shares at the $5 level then he must <u>**simultaneously**</u> place and leave a bid for 1,000 shares at perhaps 2 or 3% below the $5 level. Putting DTCC participants on the "honor system" not to abuse this exemption has been tried. It failed miserably. MMs need to be forced to earn that exemption. Again, this is not rocket science! What argument could a MM proffer in regards to this necessity being too onerous? If you want to access an exemption accorded to bona fide MMs only then you have to be behaving as a truly bona fide MM at the time you access the exemption. Many of the truly bona fide MMs level up their positions on an hourly or daily basis while abusive MMs often refuse to ever cover these naked short positions. A simple rule like this when combined with some transparency in the trading data could have the effect of a thousand cost free regulators on the job.

As it stands now this whole crisis boils down to one question. How tough is it for either the Congressional Oversight Committees, the DOJ, the Department of the Treasury, The Federal Reserve, the DTCC management or the SEC or any uncompromised authority for that matter to say once and for all that those of you that have intentionally sold American citizens what they thought were legitimate "Shares" in a corporation that you constantly refuse to deliver have until "X" date to deliver that which you have sold or we (a retaliation immune authority) will buy you in and present you with the bill? Is this an onerous burden to place upon those irrefutably being caught guilty of defrauding investors? You at the SEC got an ear full from investors after that grandfathering-in sandbagging don't you think it's high time to take the other approach?

Once this initial purging of the excessive FTDs/securities entitlements from targeted corporations is effected and regulatory measures instituted to make sure that it never happens again then there would be no need for abusive b/ds to cancel votes and mislead the public about the presence of a level playing field on Wall Street. Informing the public about the number of FTDs in the share structure of a given issuer could then be done without deception or regulatory embarrassment just as the '33 Securities Act mandates the disclosure of this extremely "Material" information to prospective investors be done just like in the prospectuses you at the SEC demand of corporations. The SEC owes prospective investors their own form of a prospectus.

Let's cut to the chase. When will the fraudsters currently sitting on large naked short positions that are breaking the backs of target issuers finally cover these "open positions" voluntarily? Will they finally find religion and say to themselves gee I never realized that this was a form of criminal activity involving victims and damages? No. Have we seen any evidence that these fraudsters are executing the mandated buy-ins associated with issuers on the Reg SHO "Threshold list"? No. Didn't the Evans, Geczy, Musto and Reed (2001) study showing that DTCC participants only execute even "mandated" buy-ins on 0.12% of the time they are "mandated" to? Then how in the world did anybody think the "threshold list" T+13 day mandated buy-ins would ever work? I noted that the one corporation that has taken the lead in fighting these abuses just "celebrated" their 800th day on the Reg SHO "threshold list". Need we say more about retaliatory behavior on Wall Street or the need to amend the option MM exception?

The reality is that these fraudsters will only cover these illegal naked short positions under two scenarios. Firstly, they need to be forced to cover and deliver what they owe by an uncompromised authority that doesn't have to worry about retaliatory measures. Secondly, once forced to they'll cover when it becomes financially advantageous to cover i.e. before their fellow crooks do. Asking DTCC participants to buy-in fellow DTCC participants does not work. Those DTCC participants following the law will be retaliated against. This is a fraternity system and public investors cannot become members. That statistic of 0.12% of the time equates to 1-in-833 "mandated" buy-ins ever occurs. A statistical reality that far off the charts needs to be appreciated and thoroughly understood when legislating in this arena. Despite some hard work by some noncaptured regulators a thorough review of the history of these crimes could have taught us that a fair portion of Reg SHO was dead on arrival. History is a great teacher.

LET'S COME TO OUR "SINCES"

Since FTDs can be so easily hidden at the DTCC and in ex-clearing "arrangements" and since the DTCC management will with 100% certainty continue to pretend that they are somehow "powerless" to buy-in the FTDs of their abusive bosses/participants and since DTCC participants refuse to buy-in each other and since the "Ultimate paradox" exists **THEN** does it not make sense to ABSOLUTELY FORBID THE CREATION OF FTDs BY ANY PARTY EXCEPT THOSE WILLING TO PROVE THEY ARE ACTING IN A BONA FIDE MARKET MAKING CAPACITY BY SIMULTANEOUSLY PLACING BIDS 2% UNDER THE LEVEL AT WHICH THEY ARE NAKED SHORT SELLING WHENEVER THEY ACCESS THE EXEMPTION FROM MAKING LOCATES AND BORROWS ACCORDED TO BONA FIDE MMs ONLY?

The DTCC has become so critical to the clearance and settlement process and therefore to our financial industry and capital markets in general that it has become "too critical to fail and too critical to be held accountable for its participant's actions" or at least their management and abusive participants act that way. Each participant of the DTCC also can gain access to this "immunity" from being held accountable for its actions; or at least they have been able to in the past. All they have to do is to don their "participant of the all-important DTCC" hat when committing these crimes.

Why has the concept of being forced to deliver that which you previously sold and that which you have constantly refused to deliver over inordinate amounts of time seem so tough to grasp especially when you realize how incredibly damaging unaddressed FTDs are to a corporation, the jobs it provides and the investments made therein? If the refusing to deliver that which is sold were occurring in any other industry but Wall Street would there even be an ongoing discussion like this. What's so special about Wall Street? Wall Street is the confluence of massive amounts of money, massive amounts of darkness, massive amounts of advantages bestowed upon a select few, massive amounts of conflicts of interest and massive amounts of political influences.

From a "time value of money" perspective the reality is that an investor's money has been laid down and is now working hard for those that stole it. Is it being overly harsh to ask a party to fulfill their half of a contract after an overly trusting investor fulfilled his half by plunking his funds down? A buy-in just addresses the emergency dilutional damage being incurred and doesn't even start to address any civil, criminal or sharing in the earnings attributed to the proceeds of <u>stolen</u> money or rental income from the loaning out of one's shares without the beneficial owner's permission type of issues.

Is being <u>forced</u> to prove the bona fide nature of your market making <u>simultaneous</u> with being granted access to that exemption too harsh? When the "Ultimate paradox" is a reality then any regulator or SRO must <u>force</u> compliance just like Pollack pounded the table in 1985 for a "guarantee" that the DTCC would promptly and accurately clear and settle transactions. What has happened to a once great nation's financial system that has put us in this current <u>stalemate</u> in which the regulators refuse to force fraudsters to deliver that which they sold and keep up their half of the contract while the abusive DTCC participants stand locked arm in arm with each other while stubbornly refusing to deliver that which they sold?

The answer is a little bit complex in certain ways but in other ways it's as simple as a culture of unbridled greed that while sensing a clear <u>advantage</u> is willing to design any clever "Artifice to defraud" it can come up with in an effort to reroute the investment dollars of "overly trusting" American investors into their own wallets. What do these U.S. citizens trust in? They trust in a clearance and settlement system composed of uncompromised and robust regulators and SROs. They trust that those DTCC participants with a far superior "KAV" factor will not leverage this <u>advantage</u> that they were "Entrusted" with over the investors to whom they owe a duty of care. They trust that the DTCC management is indeed regulating the "business conduct" of their participants as mandated of an SRO and they trust that DTCC management is following through on their mandate to "promptly and accurately clear and **<u>settle</u>** (involving "good form delivery") securities transactions".

At times I wonder if the SEC that is so obsessed with preventing "short squeezes" and so concerned about preventing "Upward volatility" in the recently pummeled share prices of targeted corporations is even the right party to be addressing these forms of theft/fraud/racketeering? Where are the referrals to the DOJ for this racketeering? Would the SEC be embarrassed by the need for the DOJ's intervention onto their regulatory turf in order to finally provide some <u>meaningful</u> deterrence? An uncaptured regulator truly intent on fulfilling its congressional mandate to provide investor protection wouldn't hesitate for a moment to invite the DOJ's assistance much more often than they do now since the SEC is not empowered to prosecute criminally which is obviously the only kind of <u>meaningful</u> deterrence these fraudsters will react to. Why is there no joint task force set up to address these crimes that seem to overlap jurisdictions? Why isn't the IRS up in arms about the capital gains being skirted by bankrupting these corporations such that the fraudsters never have to close the "sell then buy" circuit leading to the stolen money needing to be reflected as taxable capital gains. You can bet the victims of these frauds are going to write off these thefts as capital losses; where are the commensurate taxable capital gains in this zero sum game?

In reality "Abusive naked short selling" (ANSS) has very little to do with "Short selling". It bears a much closer resemblance to any of a variety of racketeering-related frauds especially those utilizing the "Anonymous pooling" of the assets of those being defrauded leading to the non-traceability of these assets. Typically some form of a "netting" process serving to obfuscate the details of individual transactions is involved as is the need for "cover up" frauds to be used when the existence of the primary fraud is in danger of being revealed. Also prevalent are Ponzi-type schemes and the alleged need for secrecy and lack of transparency usually associated with "Confidentiality" issues perhaps associated with "Proprietary trading methodologies", banking secrecy laws or as a means to prevent further fraudulent behavior like inducing "Upward market volatility" via "Short squeezes".

Even well meaning regulators can't rid the system of a certain type of fraud if they don't fully comprehend the incredibly brilliant design of the fraud and just how pandemic it has become. Education is the key to eliminating these frauds especially if you choose to attach "Scienter" ("a mental state embracing the intent to deceive, manipulate or defraud") as being a necessity for being held "Liable" for this form of blatant criminal misconduct. Who knows, maybe even some of the "bad guys" don't fully appreciate the criminal nature of their own misconduct but then again I kind of doubt it for the most part; constantly refusing to deliver that which you have sold after accessing the proceeds of the sale is not a tough concept for most of us to get our arms around.

If I could ask a favor of you at the SEC please whatever you do don't say that the writer of this "Comment letter" has some good ideas such that maybe we should float yet another "concept release" to make yet more modifications to Reg SHO or address the options market maker exception. We can address these issues indirectly and in an emergency fashion through Rule 10b-21 **now**. The corporations under attack don't have time for yet another trip through the legislation cycle without some kind of a life preserver being thrown stat.

IN REGARDS TO THE PROPOSED RULE 10B-21

I for one truly appreciate the efforts of the sincere employees at the SEC on this proposed rule but trust me as written it is far too narrowly-tailored to have much of an overall effect on deterring this particular form of criminal behavior. Abusive naked short selling (ANSS) which is the variety of naked short selling that you at the SEC are hopefully trying to curtail is much more broad-based than this approach can expect to be successful against. Abusive naked short selling (ANSS) as opposed to legitimate naked short selling (LNSS) performed by truly "Bona fide" market makers and only while they are acting in a truly "Bona fide market making capacity" (injecting liquidity on both buy and sell sides when order imbalances occur) relies upon a well-integrated and well-greased support system composed of **"Enablers"** in addition to the parties directly pulling the trigger on the abusive naked short sales themselves. There is plenty of overly trusting investor money available to siphon off in order to make this form of securities fraud lucrative to both the "Enablers" and the participants most proximate to the entering in of the sell orders.

I agree that this proposal does nicely direct a laser at both some of the enablers and some of the direct participants but as currently written fails to address abusive naked short selling (ANSS) in the more comprehensive fashion that is needed to make a <u>meaningful</u> difference <u>now</u> before further damages are incurred. If we don't use this more broad-based approach then this "Rule proposal" and "Comment period" will just be another one of many that make the SEC appear to be interested in addressing abusive naked short selling but in the long run only serves to stall meaningful reform a few more years and allow the failures to deliver ("FTDs") currently on the books of corporations to further damage the share prices of corporate issuers <u>currently</u> under attack. We need to be in more of an emergency mode now as the damages being incurred by these corporations and the investments made therein are a factor of <u>both</u> the amount of unaddressed FTDs in the share structure multiplied by the amount of time they are allowed to weigh down on the issuer's share price.

The clock is ticking on these U.S. corporations, the jobs that they provide and the investments made therein and some day perhaps you at the SEC can appreciate the <u>sense of urgency</u> involved when sometimes astronomical levels of unaddressed "Failures to deliver" literally break the backs of these U.S. corporations and the financial backs of many of the investors therein and employees thereof. As more and more of the money on Wall Street sits in qualified retirement plans those "Baby boomers" forced to extend their working lives while watching their retirement funds dissipate are getting especially impatient with the "status quo" on Wall Street. Please, enough already this is truly an emergency!

As mentioned I would favor a commonsensical approach that meticulously lists out the current loopholes being abused in this post-effective date of Reg SHO (1/3/05) and <u>simultaneously</u> address all of them in more of an all-encompassing manner. This could be done nicely while keeping with the theme of the proposed Rule 10b-21's "Highlighting the liability" of behavior deemed to be "Unlawful" in nature. In fact it would be an excellent idea to have more of a <u>summary list</u> of dozens and dozens of behaviors associated with ANSS that we see every day that is specifically deemed to be unlawful. If you want to incorporate "Scienter" into the mix as a prerequisite for liability then you must <u>**SPECIFICALLY**</u> outline <u>**ALL**</u> behaviors "deemed to be unlawful" otherwise scienter is meaningless and there will exist securities fraudsters claiming that they didn't recognize that their actions were fraudulent and that victims and damages were involved. Before you add "Scienter" as a necessity for liability you must concentrate on educational efforts to provide a foundation for the "Scienter". People need to be **educated via the text of the new Rule 10b-21** law that "X" behavior is indeed unlawful.

The enemy of meaningful reform is ambiguity. In order to accomplish meaningful reform you at the SEC and you at the DOJ need to have a thorough understanding of the subject matter and all of its various permutations. Trust me; this is the most cleverly-designed, most cleverly-orchestrated and most pandemic "Fraud on the market" imaginable. In the 1920's we saw what relatively unregulated "blind pools" of money could do to devastate a financial system. The "Pecora" hearings gave us a good glimpse of these activities. The similarities between then and now are uncanny.

Hopefully we just dodged a bullet on the subprime credit crisis and learned a lesson in regards to what can happen with the lack of transparency on Wall Street especially when the securitization of "hard to value" assets is taking place. Frauds involving ANSS are indeed also associated with securitization. FTDs are "securitized" into incredibly damaging "securities entitlements". "Open positions" in thinly-traded securities have never been "valued" correctly as they're being marked-to-market. Since the shares in many of the victim U.S. corporations are "thinly traded" covering these open positions will undoubtedly drive share prices up yet our current valuation methodologies assume that marking to market at current share price levels recently manipulated downwards presents a fair valuation and contra-party risk assessment.

Note also how Wall Street firms in deep financial trouble can attack defenseless development stage corporations and quickly drive their share prices down which helps prop up the net capital reserves of those holding the naked short positions. On a level playing field the market capitalizations of targeted corporations could quickly return to their pre-manipulation levels and this needs to be factored in while valuing these "open positions". The investors in desperate Wall Street firms "padding" their reserves in this way have a right to visualize these "contingent liabilities" on the books of the company they may invest in. "Investor protection" necessitates transparency <u>both</u> for the prospective investors in victimized corporations and in the publicly-traded DTCC participants perpetrating the frauds.

Recall from earlier how the obviousness and heinous nature of these frauds involving refusing to deliver that which you sell needs nearly total "Darkness" to mask these thefts. Transparency can provide meaningful deterrence to these crimes. It is one of the many "natural deterrents" that have been removed from our markets. Even with Level 2 visibility our trade reporting system no longer indicates which MM is selling shares and which is buying in a given transaction. If a certain MM sells millions of shares per month of an issuer and never buys any then this information should be available to a management team or a transfer agent so that they can look into any share "counterfeiting" issues that they have a duty of care to follow up on. Instead now we have total darkness. Note that there are absolutely no "Proprietary trading methodologies" that could be made public via this information being provided <u>UNLESS</u> your "Proprietary trading methodology" involves the non-stop selling of shares that you absolutely refuse to ever deliver.

Individual abusive naked short sellers cannot pull off these heists in a vacuum. They need and rely on an elaborate <u>support system</u> composed of the aforementioned "Enablers". I define **"Enablers"** in abusive naked short selling crimes as: "market or industry participants in a position to acquire financial gains in exchange for their willingness to assist those attempting to <u>intentionally</u> reroute overly trusting investors' funds into their own wallets via any of a variety of "Delivery Failure Related Abuses" or "DFRAs"."

These "Enablers" typically have in common that they have been "Entrusted" to perform an intermediary role in our clearance and settlement system and given access via this form of "public trust" to an advantage sometimes in the form of an exemption from following certain securities laws in exchange for some form of service being rendered for the overall public good i.e. injecting liquidity **from both the buy side and sell side** when "order imbalances" occur in an effort to buffer wild swings in share prices.

The "Enablers" are linked together via a daisy-chain composed of financial but usually nontraceable "Backscratches", "Kickbacks" or "Favors" being rendered. The actual naked short sellers pulling the trigger on these trades whether they are unregulated hedge funds, naked short selling cartels, individuals, prime brokers, organized crime figures, market makers, clearing firms or other Wall Street participants need to access this support system provided by these "Enablers". The single most important and "Ultimate Enabler" consists of the rules, regulations and management actions of the DTCC "Entrusted" to bring about the "Immobilization" and "Dematerialization" of securities and to "promptly and accurately clear and settle securities transactions including the transfer of ownership" as per Section 17 A of the '34 Exchange Act.

The prototypical "Enablers" in these crimes include but are not limited to not so "Bona fide" equity market makers, prime brokerage firms, clearing firms, lending departments, paid "Internet bashers", financial "Journalists/analysts", law firms and options market makers, etc. The "forms of public trust" involve exemptions from making a "Locate" or "Pre-borrow" before making short sales, the right to hedge one's position after selling "Put" options, 1st Amendment rights to free speech, the rights to privacy accorded to Internet participants, the right to loan or "Hypothecate" certain but not all securities, the right to access legal venues to recoup theoretical damages, etc.

THE SEC'S ROLE AS AN "INADVERTENT ENABLER"

Regrettably an integral part of the support system is inadvertently provided by the SEC itself and its reticence to provide truly meaningful deterrence to these abusive naked short selling crimes. The SEC's actions or lack of actions are very predictable and fraudsters place heavy bets that they won't change. Likewise DTCC participants can with 100% certainty rely on DTCC management to claim to be "powerless" to buy-in the FTDs of their participants despite its functioning as an SRO mandated to regulate the "business conduct" of its participants and its mandate "to promptly and accurately clear and settle securities transactions." How does an SRO like the DTCC "promptly settle" transactions in which a DTCC participant absolutely refuses to deliver that which they sold? They buy-in this open position out of the open market and hand the bill to the party refusing to deliver that which they sold. That's in the job description of an institution with the mandate to "promptly settle" all securities transactions. When do they execute these buy-ins? They do them "promptly" after it becomes obvious that the party doing the selling isn't going to deliver that which it sold after taking into account the existence of and timeframes involved in (ultra-short) truly "legitimate" reasons to not quite make delivery by T+3.

Both academics as well as the victims of these crimes have detected a mindset at the SEC as well as on Wall Street in general wherein certain presumed to be "scammy" development stage corporations trying to develop in the incubators provided by the usually lesser trading venues as well as the investments made therein really do deserve to be targeted and wiped out by a certain form of what might be most appropriately labeled as "Vigilantism". One of my favorite quotes from DTCC management that typifies this "Vigilantism" had this to say about the corporations being targeted: "***According to their own 10K and 10Q reports financial auditor's disclosure statements, many of these firms have admitted that "factors raise substantial doubt about the company's ability to continue as a going concern. They have had little or no revenue….and substantial losses"***.

Imagine that, a development stage biomedical company with a promising cancer cure having "little or no revenue…and substantial losses." The type of auditor's statement cited above by the DTCC is referred to as a "going concern" statement which, by the way, is fairly common in young companies and is used by auditing firms as a CYA measure seeking indemnification. It hardly justifies blatant stock fraud, racketeering, theft, etc. This is the DTCC management mentality that you at the SEC are up against in the legislative arena. Being handcuffed from removing some of the corresponding policies that the DTCC and NSCC have in their rules and regulations due to Section 19 C's prohibition of this doesn't make it any easier.

Thankfully, once Rule 10b-21 codifies a long list of these behaviors as being deemed unlawful the DTCC is mandated to make sure that their rules and regulations have no inconsistencies with the tenets of the '34 Exchange Act into which Rule 10b-21 will be incorporated. Again we see the tremendous need to specifically list out each and every form of fraudulent behavior associated with ANSS and DFRAs now that we know that the mindset of this institution "too critical to our financial system to hold accountable" approves the declaration of an "open season" on these yet to be cash flow development stage issuers.

These corporations targeted need not actually be “scammy” but one thing most do have in common is that due to their development stage once targeted they are totally “defenseless” against a juggernaut like the DTCC and its participants especially when allied with lightly- or unregulated hedge funds allowed to operate in this current regulatory vacuum provided by the lack of meaningful deterrence. It’s as if the SEC tacitly condones this mindset that these companies and their pathetically naive investors really deserve whatever punishment these “Vigilantes” deputized by the SEC and DTCC provide. For some mysterious reason these particular U.S. investors and these particular U.S. domiciled corporations targeted by these criminals are not worthy of the SEC’s congressionally mandated provision of “Investor protection and market integrity” or of the DTCC’s mandate to have their securities transactions “promptly and accurately clear and **settle**”.

As far as the investors in these corporations their “Unworthiness” seems to be related to their audacity to invest a certain percentage of their portfolio’s assets in yet to be successful development stage corporations trying their best to develop in the incubators provided by usually but not necessarily the lesser trading venues in the U.S. These investors dedicate a certain percentage of their portfolio into searching for their “Nike” back when it was trading at a dollar when Phil Knight and Bill Bowerman were selling sneakers out of Phil’s trunk. Any development stage corporation trying to advance on the slippery slopes created by abusive naked short sellers on Wall Street can easily be made to look like they’re run by inept management teams only in it for themselves without any concern for their shareholders. The abusive naked short selling community on Wall Street just has that knack.

Oddly enough oftentimes the shareholders of an issuer under attack become convinced that it is management behind all of these sell orders since they are the only ones owning that many shares. Don’t get me wrong there are corporations designed to do nothing but enrich their management teams at the expense of their investors. The sad part is that historically this reality has helped to obfuscate the pernicious nature of abusive naked short selling evolving on Wall Street with its main deleterious effects felt on Main Street. In the end it typically doesn’t particularly matter if the company turns out to be “scammy” or not; once targeted the chances are that it’s going down and the evidence of the crime will be tucked away into the corporate coffin!

An investor advocate active in fighting these crimes, Dr. Patrick Byrne the CEO of Overstock.com, summarized it best by likening it to the Wall Street and the SEC’s prevailing mentality that the robbing of a liquor store can be somehow justified if its owners are perceived by Wall Street and the SEC (in their infinite wisdom regarding proper corporate management) to be guilty of mismanagement. It’s really that bad!

Of tremendous concern is that both victimized corporate issuers and the investors therein can’t help but notice that the SEC is always there to come to the aid of any Wall Street party intent on stalling naked short selling abuse reforms or stalling the inevitable unwinding of these crimes. When the SIA/SIFMA (a Wall Street trade group/lobbying group) wants previous acts of securities fraud "Grandfathered in" via Reg SHO boom they've got it despite the fact that public comments were mysteriously never specifically solicited on this insane policy. What was the explanation offered by the SEC? They claim that they wanted Reg SHO to represent a "Measured response" and they didn't want to induce enhanced "Market volatility" and "Short squeezes" all over the place in corporations "with large unaddressed numbers of delivery failures". Isn't that another way of saying that the level of preexisting FTDs has grown so far out of control in certain issuer's share structures (as per Dr. Boni's research in 2004) during our regulatory watch that we can't deal with it via the obvious buy-ins needing to be made which would finally force the delivery of that which was sold without some of those with a tremendous amount of influence over us experiencing financial discomfort?

In other words, we at the SEC are going to go well out of our way and our regulatory jurisdiction to remove a market's natural deterrent to these crimes i.e. the fear of a buy-in perhaps leading to a "Short squeeze" in order to circumvent making those now proven fraudsters that have constantly refused to deliver that which they have sold to overly trusting U.S. investors to finally deliver that which they sold via taking the proceeds from those thefts and spending them in the market to finally purchase and deliver that which they previously sold. That's a pretty scary attitude for an unbiased observer to have. That's a totally unconscionable attitude when it is the attitude shared by both the SEC commissioned by Congress to provide "Investor protection and market integrity" and the DTCC management mandated to "promptly and accurately clear and settle securities transactions".

What's very obvious is that due to the prolonged nature of the "Comment period" and the forewarning that Reg SHO was about to become effective any group amenable to covering these naked short positions without being forced to have covered by now. That leaves us with the recidivist elements amongst the DTCC participants and the unregulated hedge funds with their arms firmly crossed and locked arm in arm with their fellow fraudsters absolutely refusing to deliver that which they sold inordinate amounts of time ago. The inability for victimized corporations to get off of the Reg SHO "Threshold lists" after years of being on it attests to this posture being taken by the dirtiest players on Wall Street. Yet the SEC and the DTCC still refuse to "inconvenience" the most abusive participants of the DTCC refusing to deliver that which they sold. Why would the dirtiest players on Wall Street have all of this pull with the SEC? Are the dirtiest players also the most successful players? Is there a natural selection process on Wall Street wherein the corruptest of the corrupt survive? Do the relatively clean corporations get evolved out of existence?

Would it not make sense to deal with this fraudulent "Bubble" of unaddressed delivery failures so massive that the SEC admittedly couldn't deal with it via Reg SHO by at least slowly letting some of the air out over time to "unwind" these open positions in an orderly fashion? That was tried and some shoulders were tapped suggesting closing out on these "Open positions" but the blatantly abusive DTCC participants would have no part of that solution. Why? Because when you're dealing with preexisting levels of FTDs ("Failures to deliver") admittedly so large in quantity that even legislation can't properly address them and if these fraudsters were to simply stop the day to day manipulative short selling necessary to keep the share price pinned down and their collateralization requirements (recall that these "Open positions" need to be collateralized in a daily marked to market manner) under control the share price will gap upwards.

Then if you try to cover in a market where the share price is already gapping upwards you can't cover an admittedly astronomic naked short position without incurring the risk of severe financial "discomfort". So where does that leave us? It leaves us in our current stalemate with the worst offenders with their arms crossed refusing to deliver that which they sold while the corporations under attack, the jobs they provide and the investments made therein slowly die off. As it stands now the abusive DTCC participants are members of a fraternity "too important to our financial system" to take a financial loss and be forced to do anything even as mundane as delivering that which they sold. After all this is their turf and in their minds they're the only party that really understands the business conducted on their turf i.e. the SEC is not only toothless but totally inept.

As far as other avenues leading to justice a tiny victimized corporation can't effectively sue the individual DTCC participants perpetrating these frauds or the DTCC itself for that matter. That avenue for recouping losses associated with theft is as rigged as the markets themselves due to the ability of these financial behemoths to bankrupt any finger pointers via stringing out the legal processes involved wherein those with the deepest pockets are going to prevail regardless of the merits of the case. Actually in some cases it appears that these fraudsters want to be sued in order to hasten the death of the targeted corporation. How's that for having all of your bases covered and avenues leading to justice blocked? So what's the next best thing to do? For some at the SEC it is to try to look concerned and once again go back to the drawing boards to float yet another rule stating that we weren't kidding about our previous rules that we either can't or refuse to enforce. This process does nothing but stall meaningful reform yet once again via "Highlighting the liability" of breaking our previously established rules. Enough already! Asking politely to cover these "open positions" does not work. This (hopefully) minority of DTCC participants needs to be forced to cover these FTDs before one more corporate fatality occurs.

In regards to the SEC acting as an "Inadvertent enabler" when abusive Wall Streeters wanted the "Uptick rule" rescinded boom it's gone. Sure there was a "Pilot study" wherein all DTCC participants were put under a microscope and sure enough they behaved themselves pretty well while under the scope. Imagine that! Is that a good reason to rescind a 70 year old pillar working quite well in at least applying somewhat of a deterrent effect to egregious naked short selling abuses involving the serial knocking out of bid after bid? Where were the investor advocates congressionally mandated to provide investor protection and market integrity during these "negotiations"? Where was the investing public? Do we need to make a FOIA request to get the notes from those closed door meetings?

When the DTCC finds itself in a crisis like the one recently faced when a dozen or so corporations fed up with the abusive naked short selling of their shares tried to bail out of the DTCC due to the DTCC's provision of support and cover for their abusive naked short selling DTCC participants boom the SEC is "Johnny on the spot" claiming that it wouldn't be consistent with Section 17 A's ('34 Act) mandate for "Immobilization" and "Dematerialization" to allow these issuers to escape. When the management teams replied by stating the fact that we tried "Immobilization" and "Dematerialization" but abusive DTCC participants that weren't quite up to that ACTING IN GOOD FAITH part of the deal refused to "promptly and accurately clear and settle" our transactions. The SEC response was in essence "Quit your whining". Later when investors complained about the final draft of Reg SHO containing a "grandfather clause" the response of an SEC Commissioner was in effect "you're just whining because your share prices didn't go up once Reg SHO went into effect".

WHAT MIGHT HAVE BEEN

Imagine for a moment if those 12 or so U.S. corporations were able to escape the abuses at the DTCC and implement their plan to base the trading of their shares on paper-certificated shares only ("Custody only") wherein this time around the easy to counterfeit DTCC electronic book entries were not allowed. In essence this amounts to reversing the "Immobilization" and "Dematerialization" instituted to address the 1969 "Paperwork crisis" that nearly paralyzed Wall Street.

Recall how the legislators at the time went way out on a limb and assumed that the DTCC management and participants would ACT IN GOOD FAITH with this new found ability to easily counterfeit securities when they exist in an electronic book entry format. The immediate response of being granted a release from the DTCC would have involved the shareholders of these 12 or so issuers demanding the delivery of their paper-certificated shares from the DTCC vaults in order for them to regain liquidity and the ability to sell their shares. But what would have happened if the allegations were true and that there was a vast disparity between the legitimate paper-certificated shares in the DTCC vault system and the electronic book entries that were floating around in cyberspace at the DTCC and on the books (and off the books) of their "Participants". There would have been the need for massive buy-ins perhaps leading to "Short squeezes" from this modern day version of a "Run on the bank". Whoa, this escape plot needed to be foiled at all costs even if it made the DTCC and the SEC look a little bit heavy-handed. After all, wouldn't you think the DTCC would have loved to have gotten rid of these "Scammy" companies and their shareholders that did nothing but complain about these abuses?

When you move on to a "Custody only" basis for the transferring of ownership of securities the shareholders and the corporations involved absorb all of the costs. I recall a "Comment letter" dealing with the then "proposed" Reg SHO wherein a DTCC participant was urging his colleagues on Wall Street to just make the delivering of shares to investors cost prohibitive so that they <u>couldn't</u> escape the clutches of the DTCC. He commented that his brokerage firm recently did it and it worked like a charm!

One has to ask oneself, after 23 years of nonstop complaints about the evils of abusive naked short selling subsequent to the "Pollack study" which DTCC participants are still committing these frauds right and left while taking advantage of the SEC's lack of providing investor protection? Is it the ethical b/ds with strong Compliance Departments that believe in "Delivery versus payment" and ACTING IN GOOD FAITH with this new found ability to "Dematerialize" paper-certificated shares? Of course not. It's the recidivist b/ds and hedge funds intentionally stealing from overly trusting U.S. investors that are still playing these games and that have the most to lose when some authority finally puts their foot down and buys in these grossly overdue debts in order to finally allow delivery to occur and for these trades to once and for all legally "Settle" even if it is on day T+600 or so. One thing about mandated buy-ins is that they act like a heat-seeking missile and the bill predictably lands in the lap of those directly placing the bogus sell orders i.e. the trigger pullers. All of the intermediaries/enablers to these trades merely step off to the side and wash their hands of any associated guilt.

If this "run on the bank" scenario highlighted above in regards to the attempted DTCC exodus was allowed to occur then every development stage U.S. corporation even suspicious of being heavily naked short sold would have followed suit. Note the "Systemic risk" implications incurred by all U.S. citizens because of the voracious greed shown by a vast minority and yet the SEC and the DTCC management continue to "Enable" these crimes while postponing the inevitable buy-ins until perhaps their tenure is over at the SEC and they've moved of to more verdant pastures usually elsewhere on Wall Street or in the hedge fund community.

Perhaps the SEC is 100% aware of the pandemic nature of these frauds and they had to come to the rescue of the DTCC despite the "Moral hazard" issues involved in "Enabling" or refusing to deal with blatantly fraudulent behavior. But the question begs to be asked once again as to why don't you at the SEC dissipate this "Bubble" now before "Systemic risk" implications arise again should some authority other than yourself finally put their foot down and end your oversight of investors being led to the slaughter.

As far as the SEC's role as an "Inadvertent enabler" historically we've noticed that the SEC can be 100% counted on to come to the rescue of the DTCC when the DTCC is being sued by allegedly victimized corporations and the investors therein for allowing flagrant abuses of their self-replenishing "Automated Stock Borrow Program" (SBP), their Continuous Net Settlement System ("CNS") program and their magical "RECAPS" program with the ability to make "Failures to deliver" go poof!

One need only study the "Amicus" brief provided by the SEC in the "Nanopierce Technology" case detailing how the SEC did indeed approve of the DTCC's "SBP" a gazillion years ago despite it being subsequently converted into a stock counterfeiter's paradise that the SEC to this day not only refuses to deal with but proudly asserts in a court of law that yes sir judge we approved of it and we stand by our approval. When the DTCC is asked why they don't redesign the "Automated Stock Borrow Program" (SBP) their response is three-fold. First they say that they can't repair this obvious flaw because it's "automated". Secondly, they claim that they "have no discretion" in the matter. Thirdly, they say that the SEC approved of it so go tell them to do it because we're "powerless" to do anything about and if there were anything seriously wrong with it then they'd have fixed it by now. In an effort to "go tell them (the SEC) to do it" I offer you the following:

Dear SEC, when an FTD occurs at the NSCC and it is "cured" by a "borrow" from the SBP you just can't allow the buyer's b/d in this transaction that just received these "borrowed" shares in their DTCC "participant" account to replace them back into this "lending pool" two seconds later <u>as if they never left in the first place</u>. The lending pool needs to "decrement" (decrease in size) by the size of the parcel of shares borrowed otherwise you're promoting "counterfeiting". Recall that the supply and demand of <u>legally borrowable shares</u> is a key parameter that provides a <u>natural deterrent</u> to short selling abuses. As the supply goes down or "decrements" with each loan then a borrow will be more expensive which provides a natural governor to short selling abuses. A self-replenishing lending pool like the SBP provides a never ending supply of loanable shares which aren't legally loanable however.

The currently used SBP allows the expressly forbidden "counterfeiting of securities" and results in a given parcel of shares <u>if they were readily identifiable</u> which they aren't, being "co-owned" by a variety of different investors. The fact that you can't <u>specifically</u> identify the exact parcel of shares being co-owned doesn't matter. Management at the DTCC chose to keep street name shares in an anonymously pooled format in an effort to "enhance efficiencies". That's fine. They also chose to have their nominee "Cede and Co." act as the legal/nominal owner of all shares held in street name. That's fine too but these formats have easy to predict and easy to resolve unintended consequences **if** the DTCC management or any abusive participants choose not to act in good faith.

You at the SEC can no longer allow the DTCC management to proffer that their system is admittedly imperfect and that this type of "counterfeiting" is just an unintended consequence of garnering all of these efficiencies and besides technically we at the DTCC own these securities so its none of the investor's business anyways. It's quite obvious that those "borrowed" shares even though ownership has been theoretically transferred to the new buyer's b/d can't be allowed back into the lending pool **<u>UNTIL</u>** the original loan was repaid. They need to be segregated off to the side otherwise you have a "nondecrementing lending pool" like a fountain of youth which contravenes all of the anti-counterfeiting of securities laws which is actually why the Department of the Treasury needs to play a role in the legislative process as the counterfeiting of securities is in their purview.

You cannot achieve "Good form delivery" and therefore "settlement" of a transaction when a self-replenishing and non-decrementing lending pool is available. These transactions don't legally <u>settle</u> "promptly" or in any other manner. You at the SEC need to oversee the repair of the SBP; it's a joke. Of course DTCC participants are cheating and placing cash account shares and qualified retirement shares into the SBP as forbidden by law. Why? Because they're also held in an anonymously pooled electronic book entry format leaving them untraceable and because the b/ds "donating" these shares of their clients get the cash equivalent of the value of the shares <u>for their own use and to bolster their own capital reserves</u>. How's that for a conflict of interest forbidden by the '34 Exchange Act? Is it really that much of a stretch that abusive DTCC participants with the opportunity to convert their clients' shares into cold hard cash for their own use are going to cheat and donate shares forbidden to be in the lending pool into the lending pool especially when they're untraceable due to being held in an anonymously pooled format? The DTCC management has publicly stated that its participants have been put on the "honor system" as to the shares they donate to the lending pool of the SBP. That's insane.

Ownership of securities on Wall Street is tricky. While in the SBP the shares are legally "owned" by Cede and Co. for the benefit of the shareholder's b/d which "owns" it FBO the purchaser or "beneficial owner". After being loaned out to cure an FTD the new ownership structure becomes Cede and Co. as the legal/nominal owner owning FBO the new purchaser's b/d that owns it FBO the new purchaser whose buy order involved an FTD. Thus the "transfer of ownership" mandated by Section 17 A of the '34 Act is a little misleading.

At the NSCC the new purchaser's b/d's "participant" account gets credited for this amount of shares. Likewise the b/d of the original purchaser of the shares has his "participant" account debited the same amount. The deceptive part is that the DTCC sets up a special "C" sub account for the loaning b/d and "credits" it for the amount of shares loaned. The DTCC management explains that they do this because the loaning b/d has "the right" but not the mandate to call in that loan. The problem is that the last thing in the world the loaning b/d wants to do is to call in that loan because it was given the cash equivalent of the value of the shares loaned for its own interest earning purposes even though it was purchased by their client. <u>**All of Wall Street is heavily financially incentivised to create FTDs in astronomic numbers and to never buy-in the failures to receive or FTRs on their books**</u>. I refer to this as the "Ultimate conflict of interest" or "UCOI".

Flooding the shares of a targeted issuer with FTDs and their resultant "securities entitlements" pays handsomely for <u>all</u> of the "Enablers" and those most proximate to pulling the trigger on these trades. Recall the study by Evans, Geczy, Musto and Reed showing that only 0.12% of even "Mandated" buy-ins ever occurs on Wall Street. To legislate effectively the SEC must realize that DTCC participants need to be either <u>forced</u> to do buy-ins or have some neutral third party execute them to prevent retaliatory behavior. The buying b/d is usually blinded to the fact that the purchase it made for a client resulted in an FTD. Although as an "Agent" taking a "commission" it would have a fiduciary duty of care to make sure that its client got what he paid for. DTCC policies have a way of "blindfolding" the victims of these crimes <u>as well as their agents</u>. This blindfolding is explained away as being necessary in order to achieve these highly sought after "enhanced efficiencies" and to protect "proprietary trading methodologies". Just as the DTCC doesn't want to know the name and account number of a participant's client purchasing shares the DTCC participant putting in buy orders doesn't want to know if an

FTD resulted or not. It's as if everybody in the clearance and settlement system is on a "need to know" basis so that there arises plausible deniability that anybody ever knew that the system was "rigged" in favor of the DTCC participants and against U.S. investors. This way the DTCC management can proffer that "Gee, I had no idea that some of our participants were playing such games and the participants can proffer that they had no idea that DTCC management wasn't monitoring for these abuses since they are the SRO not us. All we lowly participants are doing is following the rules and regulations of the DTCC and NSCC and if there were any improprieties going on I would think that the DTCC management or the SEC or the Congressional Oversight Committees would change the rulebook".

In regards to the SEC's role as the "Inadvertent enabler" we've also noticed that when the relatively uncompromised and uncaptured state securities regulators stick their nose in to aid corporations domiciled in their state from abusive naked short selling the SEC stands side by side with the DTCC and is the first in line to chime in that this is their turf and butt the heck out; after all federal law preempts state law and a fractionated state administered regulatory system would be "inefficient". A review of what just happened in Utah will reveal how Wall Street frantically circled the wagons, made a ton of promises they didn't keep and would have nothing to do with a state securities regulator coming to the aid of corporations domiciled in their state as was the appropriate thing to do. Just imagine if the State of Utah was successful in getting these "Failures to deliver" out of the share structures of the companies domiciled there. Every state regulatory commission in the union would be pressed into service to do likewise. Whew, yet another bullet dodged and yet another "assist" credited to the SEC!

A question: in the case of the SEC's "Delisting" process has it ever occurred to you at the SEC that when an abusive naked short seller's amount of "Failures To Deliver" gets totally out of control without having successfully bankrupted the targeted corporation (perhaps because it wasn't the "scam" it was diagnosed to be) and financial pain for the abusive naked short sellers might be imminent should they be forced to finally deliver that which they previously sold (perish the thought) that the easiest way to "Bury the bodies (unaddressed FTDs) in the desert" would be to get the SEC to acquiesce to the demands of those would be "Shareholder advocates" pushing for the targeted company's delisting purportedly "In order to prevent new investors from being defrauded by this "Scammy" management team"? Does it not make sense that those DTCC participants pushing for delistings might have an ulterior motive for their actions that might be worthy of looking into?

It truly is a sad state of affairs when the regulatory body commissioned to provide "Investor protection and market integrity" not only fails in providing these congressional mandates to these "Unworthy" investors and "Unworthy" development stage corporations but actually actively assists in the blocking of the legal remedies sought by the victims of this very same refusal to follow the SEC's regulatory mandate of providing investor protection and market integrity to all investors. It's one thing to not follow your congressional mandate to provide investor protection and market integrity but it is quite another to actively fight the victims of this neglect when they search elsewhere for justice and an uncompromised authority to rid their share structures of this "Toxic waste" in the form of unaddressed FTDs.

I know that the SEC response to this argument is that they're just trying to protect "Future" investors from being defrauded by the assumed crooks running these nasty but obviously defenseless development stage corporations. But what if the discovery process that you effectively short-circuited in many cases did prove that the allegations involving astronomical levels of delivery failures poisoning their share structure were indeed true and a judge mandated that these fraudsters finally deliver that which they sold (again, perish the thought)? The result would have been a plethora of lawsuits from other victimized U.S. corporations seeking the unwinding of these "Open positions"/FTDs associated with the crimes having been committed. We couldn't have that either now could we? Whew, yet another bullet dodged and another "assist" credited to the SEC.

In the matter of SEC "Delistings" of corporations with inordinate amounts of unaddressed FTDs my concern usually falls with the previous investors and the fact that their money was often taken by "Vigilantes" posing as "Shareholder advocates" that intentionally sold them "Shares" that they had no intent on ever delivering and that never even did exist. What kind of theoretical "Shareholder advocates" prey upon shareholders and operate by addressing a perceived fraud with blatantly fraudulent behavior? What type of a regulator would "Deputize" these criminals and "Enable" these activities? Why are these "Vigilantes" not forced to cover their naked short positions on T+13 before the delisting process is finished in order to level up the books so that this evidence of fraud couldn't be buried inside the corporate coffin? Why aid in the covering up of these frauds?

Would this policy of covering before delisting not provide at least some "Meaningful deterrence" to intentionally forcing development stage corporations and the investments made therein off of the cliff? By the way this solution wouldn't be very expensive to the fraudsters in that shareholders would gladly take a penny on the dollar as opposed to nothing. Yet even this token form of investor protection is dismissed. As you well know when a "Well's notice" goes out or a delisting procedure commences the result is a predictable drop in the share price. When the Wall Street community gets a whiff of an imminent Well's notice or imminent delisting procedure commencing how much of this selling before these actions are made public might be abusive naked short selling with no attempt whatsoever to effect a locate or a pre-borrow due to the imminent demise of the corporation?

What further complicates any search for justice by a management team of an issuer under attack is the very clear and predictable phenomenon involving the SEC starting an investigation on any "whistle blowing" corporations reaching out for "Investor protection". How many dozens of times have we seen SEC complaints about ANSS result in the cross hairs being aimed at the corporation filing the complaint. This effective binding and gagging of those corporations filing complaints to the SEC about abusive naked short selling crimes i.e. "whistle blowers" is unconscionable behavior for any party with the congressional mandate to provide "Investor protection".

Just imagine the levels of complaints you did not receive due to this incredibly predictable phenomenon. Are "Comment letters" citing these abuses against specific companies actually working against these issuers under attack? I just read an analyst's report on Reg SHO issues and he commented on the mysterious phenomenon wherein very few victimized corporations sent in "Comment letters" to the SEC. Gee I wonder what that is all about! Notice the lack of options for truly victimized issuers. They can't call the cops for help without risking it working against them. You can't sue the bad guys without risking financial ruin or retaliatory behavior. You can't pull out of the DTCC because it wouldn't be consistent with Section 17 A. You can't demand delivery of your certificated shares via "entitlement orders" without usurious costs or being illiquid for extended amounts of time. You can't reach out to the State Securities Regulators because they have been handcuffed. You can't reach out to many of the politicians and expect any help because many have been compromised by the Wall Streeters and hedge funds donating to their political coffers. You can't expect any help in getting delivery from your own b/d who you just paid a commission because they have been effectively blindfolded to FTDs and they are heavily financially incentivised to deposit their own client's shares into the SBP which helps to fuel these transgressions. I'd say Wall Street has the escape routes and roads to justice pretty well blockaded. Can all of this be written off to coincidence or the need to protect "Proprietary trading methodologies" and continue to be swept under the rug? These issues have been swept under the carpet at the DTCC and the SEC for so long that the ceiling fans can no longer turn at either of these fine institutions.

In the recent Bear Stearns debacle how many of the short sales done when the stock dropped to $2 involved legitimate "Locates", legitimate "Pre-borrows" and "Good form delivery"? How many of those trades still haven't legally "settled" due to the lack of "Good form delivery" of that which the investor thought he was buying? How in the world could the market makers "Piling on" with sell orders claim that they were accessing the exemption accorded to "bona fide" MMs for not having to perform a "Locate" or "Pre-borrow" while "injecting liquidity" into markets with more buy orders than sell orders? There was obviously no "order imbalance" involving an oversupply of buy orders needing to be naked short sold into. The stock was tanking for crying out loud.

In reality there wasn't time to obey the law and execute a "Locate" or "Pre-borrow" because some other opportunist probably also not obeying the law might beat them to the punch in knocking out any remaining bids thanks to the lack of an "Uptick rule". "Investor protection" and "Market integrity" have taken a back seat to "the need for speed" in executing transactions. The DTCC is so obsessed with getting a securities transaction into the "Cleared and settled" box that they wouldn't recognize "Good form delivery" or the legal "settlement" of a trade if it bit them in the backside.

The rescinding of the 70-year old "Uptick rule" in July of 2007 which was designed to protect investors from the absolutely worst of the abusive naked short selling attacks involving the serial knocking out of bid after bid right in the midst of a worldwide uproar against these abuses took some real cajones. I've read the studies that indicate that the "Uptick rule" was not that protective in that fraudsters could readily bypass it with the use of "Married puts" and other derivative transactions. But why in the world would you incur the risk of further abuses right in the midst of this tremendous uproar over short selling abuses? Were the thousands and thousands of angry "Comment letters" you received condemning abusive naked short selling not enough? Was this some kind of a compromise move hatched in a smoke-filled room? What was the quid pro quo? It certainly wouldn't have been a Reg SHO filled with loopholes and a "Grandfather clause" in exchange for this engraved invitation to commit fraud. Who was representing the U.S. investors in these "negotiations"? Where were the providers of "Investor protection and market integrity"?

To my knowledge in the history of the legislative process at the SEC there has never been a topic that has elicited the size of an uproar that abusive naked short selling has. Allowing fraudsters to knock out any and all bids in a rapid fire fashion in order to trip stop loss orders, induce margin calls, render securities unmarginable, trigger delistings, decrease collateralization requirements associated with "marking to market" these open positions or to just scare the average investor into panic sales is totally beyond me. Legitimate long sellers or legitimate short sellers of shares don't intentionally knock out bid after bid. They want to get the maximum amount of money for their sales of shares. What's the difference between this attempt to induce panic and yelling "fire" in a crowded theater?

As you should know investors react to fear and greed but especially to fear. I can only imagine the pressures you succumbed to in the backroom discussions. This pressure perhaps was only equaled by that exerted to unconscionably "Grandfather" in blatant acts of securities fraud in Reg SHO. As I mentioned in the introduction this unconscionable policy has placed many investors and perhaps our financial system one unsubstantiated rumor or terrorist action away from a financial meltdown. Do you not realize that those wishing us harm as well as those participants in organized criminal activities are ecstatic about the rescinding of the "Uptick rule"?

Imagine that, taking advantage of the greed of a handful of Americans to wreak havoc on the majority of Americans. What poetic justice that must represent for those on this planet with intentions to destroy us. Do we need the Department of Homeland Security to address abusive naked short selling frauds conducted by those that mean us harm since you at the SEC seem content with exposing American citizens to cataclysmic events? Does the fact that the reputed world leader in the ANSS arena that is now imprisoned sold all of his children's securities on the day before 9/11 while predicting a 3,000 point drop in the Dow on the date of 9/11 bother anybody? Coincidence? Where does the concept of treasonous activity fit in here when immense systemic risk is incurred as the welfare of the public takes a back seat to the financial interests of a distinct minority of abusive DTCC participants?

An engraved invitation to "Pile on" in these attacks subsequent to the rescinding of the "Uptick rule" when you don't have the resources or interest in monitoring the legitimacy of "Locates" and "Pre-borrows" is unfathomable. You give us a Reg SHO full of loopholes, you "Grandfather in" previous acts of blatant fraud admittedly to circumvent the one natural market deterrent to this activity i.e. the fear of a short squeeze, you maintain the options market maker exemption and then you rescind the one anti-abusive short selling measure that is a total no-brainer in any country's market system and that had functioned just fine for 70 years. What are we to think? How can the rapid fire knocking out of bid after bid by opportunistic fraudsters bring about "Pricing efficiency"? What the lack of an "Uptick rule" <u>when combined with</u> the "Inadvertent enabling" of abusive naked short selling crimes being performed by the SEC and the DTCC does bring about are opportunities beyond description to run up gigantic naked short positions utilizing the loopholes in Reg SHO, ex-clearing "arrangements" and the policies of the DTCC and then spread false rumors utilizing 1st Amendment protection leading to millions of investor dollars being predictably shunted to the orchestrators of these frauds. How many SEC attorneys now need to be sent out on "rumor patrol"?

You at the SEC, DOJ, Federal Reserve, Congressional Oversight Committees, Homeland Security and anybody else willing to listen must realize that the concept of a "Corporation" came first. Corporations have a certain structure to them. There are "Articles of Incorporation" and by-laws that help provide this structure. There is a certain amount of "Authorized shares" above which management cannot release further amounts of shares without corporate resolutions and sometimes the vote of shareholders. These policies help prevent existing shareholders from damage associated with dilution.

After corporations became available to utilize as a means to operate a business came the necessity to create a mechanism to trade the units of equity ownership in these "Corporations". These are the things we refer to as "Shares". Now our clearance and settlement system has turned upside down the concept of doing business as a state-domiciled "Corporation" with a finite number of "Shares" and "Votes" all so that the DTCC participants that own the clearance and settlement system can systematically siphon off the funds of less financially sophisticated and overly trusting U.S. investors that invest in these usually but not always development stage "Corporations" defenseless to fend off these attacks. Recall from earlier that in the genesis of a corporation there are development stages wherein the corporation is especially susceptible to attacks. This is typically before they become cash flow positive. This is where the provision of investor protection and market integrity are acutely needed. But instead just the opposite has occurred wherein the actions and lack of action on the part of the SEC and the DTCC has declared an "Open season" on these corporations and their investors.

The DTCC has no legal right to redefine a "Corporation" to suit the financial needs of their abusive "Participants". They have no right to create out of thin air the "Package of rights" that make up a "Share" in a corporation nor do they have the right to cover up the fact that "Securities entitlements" have no rights attached. DTCC participants' back offices have no right to cancel votes of those that purchased <u>what they thought</u> were legitimate "Shares" in a corporation with voting rights attached. This is especially heinous when done to cover up the existence of these frauds. What ever happened to the concept of "One share, one vote"? "One share, one vote" necessitates a clearance and settlement system based on "Delivery Versus Payment". That "myth" didn't quite align with the ability of abusive DTCC participants to steal from investors so it had to be quietly done away with.

If legitimate shares with an attached "package of rights" costs "X" amount in a market how much less should mere IOUs without any voting rights go for? How does this differ from a government-sponsored "Bait and switch" fraud when the DTCC and the SEC refuse to divulge the absolute number of FTDs and FTRs existing in the share structure of a given issuer? Since the purchaser doesn't know about these frauds then discounting the prices of these mere IOUs would give away the existence of the overall fraud and thus it can't be done. A clearance and settlement system based upon a "Bait and switch" foundation is a little scary.

These frauds need to be continuously covered up each and every time a shareholder tries to exercise one of the rights attached to this "Package of rights" that is missing in the case of mere "Securities entitlements" acting as ultra short term "placeholder securities" mainly for accounting purposes. These "Securities entitlements" due to their incredibly damaging nature were approved for use for the ultra-short time periods associated with the timeframe in which delivery couldn't quite be achieved by T+3 for a legitimate reason.

The legislators that allowed for the creation of ultra-short term securities entitlements went way out on a limb and assumed that a robust regulator and SRO system would aggressively monitor for the age and quantity of delivery failures due to the damaging nature of mere "placeholder securities" like securities entitlements. They were well aware of the incredibly damaging dilutional nature of mere securities entitlements resulting from unaddressed FTDs. Why? Because they were allowed to be readily sellable because of their theoretically ultra-short term lifespan. When Dr. Leslie Boni was granted access to the previously hidden activities behind the walls of the DTCC she found a plethora of what she referred to as "Strategic/intentional" delivery failures many of which were archaic. She noticed that these FTDs had a tendency to be "concentrated" in the share structures of certain (targeted) issuers. The phrases "ultra-short term lifespan" and "800 days on a "threshold list" of securities" do not belong in the same sentence.

The direct result of the failure of the SEC to provide "Meaningful deterrence" to these crimes is the embarrassingly large number of archaic delivery failures that are so far out of hand that Reg SHO admittedly couldn't deal with them without inducing "upward market volatility" and the risk of "short squeezes". Perhaps of even greater concern is an equally heinous form of behavior involving the absolute refusal of both the DTCC and the SEC to warn prospective investors of the number of unaddressed FTDs and FTRs in the share structure of a given issuer as mandated by the '33 "Disclosure Act". In fact, the SEC refuses to even keep track of those held outside of the DTCC via these "contractual delivery arrangements" which is now the hiding place of choice due to Reg SHO's dealing with FTDs held at a "Registered Clearing Agency" like the DTCC. This refusal to disclose these very "Material" facts to prospective investors that both the SEC and

DTCC are aware of and the refusal to track and quantify those FTDs held outside of the DTCC has relegated investors in the U.S. markets to buying a “Pig in a poke”.

The refusal of the SEC to still not deal with this issue in an all-encompassing manner has guaranteed that our children and grandchildren can look forward to severe financial losses from this same form of blatant thievery in the future UNLESS ACTION IS TAKEN NOW TO REMOVE THESE INCREDIBLY DAMAGING “CORPORATE ASSASSINS” FROM THE SHARE STRUCTURES OF TARGETED ISSUERS AND TO NEVER ALLOW THEM TO ACCUMULATE AGAIN. You regulators and SROs need to appreciate the irrefutable reality that unaddressed FTDs in the share structure of an issuer with 100% certainty will decrease share prices. The laws of supply and demand still operate it’s just that the supply and demand variables themselves are easily manipulated upwards and downwards.

The buzzword in use now is that the SEC acts as a “Captured regulator” that is only there at the behest of powerful Wall Street forces to present the façade that these markets have a level playing field and that there is an uncompromised regulator on duty to aggressively address these crimes involving abusive naked short selling (ANSS) and delivery failure related abuses (DFRAs). The enforcement actions to date in this abusive naked short selling arena do not provide support for the existence of a robust and uncompromised regulator active in this arena.

The criminals in this arena need the presence of a “Sheriff-like” figure to be at least perceived to be on duty otherwise the supply of investor funds to siphon off would dry up and U.S. investors would migrate to other countries with less corrupt clearance and settlement systems in place. As it stands now our clearance and settlement system stands head and shoulders above those in other countries as the location of choice to carry out these abuses. The world’s leading authorities on clearance and settlement systems including the “Group of 10” and their “Committee on Payment and Settlement Systems” or “CPSS”, the World Bank, the Federal Reserve and almost every other governing body suggest that any country’s clearance and settlement system must be based on “Delivery Versus Payment” or “DVP” wherein a seller of securities is strictly forbidden from accessing the funds of a purchaser of securities UNTIL those securities sold have been delivered in “Good form”. The U.S.’s “DTCC” is the one notable hold out in this regard and boy don’t the opportunistic abusive DTCC participants, the unregulated hedge funds and the entire Canadian brokerage industry know about it.

As mentioned, the current DTCC policy only mandates that a seller of securities collateralize this “open position” in a daily marked-to-market fashion. This policy has resulted in the financial incentive for all DTCC participants to create, hide and deny the existence of astronomic levels of delivery failures especially within the share structures of defenseless development stage corporations. The “Ultimate paradox” involving the ability of securities fraudsters to easily flood an issuer’s share structure with mere securities entitlements/IOUs that predictably place their share price into a death spiral and thus the ability of fraudsters to access the funds of an investor without ever delivering that which they sell is the unconscionable result. **The natural sequelae of this is the**

<u>selective targeting of U.S. development stage securities by securities fraudsters worldwide</u>. Thank you DTCC management!

These fraudsters rely on the existence of an "Inadvertent enabler" like the SEC especially when it is the very securities cops mandated to go after these criminals. This is not to take away from the many regulators that really do make a sincere effort to provide investor protection and market integrity but unfortunately they don't have a history of sticking around the SEC too long once they figure out how the game is really being played by their less than sincere usually much senior counterparts.

THE NEED TO INCORPORATE THE CONGRESS, THE DEPARTMENT OF HOMELAND SECURITY. THE DOJ, THE DEPARTMENT OF THE TREASURY AND THE FEDERAL RESERVE INTO ANY SOLUTION

It has become obvious by now that the SEC standing alone does not have either the power or the resolve to provide any meaningful deterrence in these matters. Whatever it is it has become painfully obvious that there is something that needs to be changed. Due to the irrefutable criminal aspects of this thievery/racketeering it would make sense that the one party that needs to become more involved is the DOJ. In regards to meaningful deterrence which should be provided by the fear of short squeezes and regulatory sanctions the fear of going to jail really hits home especially for billionaire behemoths. Since the counterfeiting of securities is involved the Department of the Treasury might also be a welcome participant in these efforts. Being that the DTCC operates as a branch of the Federal Reserve then the Fed would be an obvious choice to be part of the solution or to provide part of the meaningful deterrence. The Congressional Oversight committees should also obviously start playing more of a hands on role especially in the legislative arena. The key is to get as many authorities involved as is necessary especially authorities of the "uncompromised" and "uncaptured" variety.

OTHER "ENABLERS"

Other "Pillars/enablers" providing the support system for this "House of cards" built upon a quicksand foundation include corrupt market makers (MMs) willing to rent out space under their "Umbrella of immunity" from making "Locates" and "Pre-borrows" while <u>theoretically</u> acting in the capacity of a "Bona fide" MM. The nontraceable "Kickback" provided as a rental payment for the "Rental space" under this umbrella of immunity is usually paid for in the form of enhanced "Order flow" the result being the previously mentioned "Survival of the corruptest" in the market making community. The larger the market maker is the more visibility they have of buy orders coming in from investors unaware that this corporation whose shares they are buying is under attack. The better the visibility of buy orders is the more are the opportunities to naked short sell into the buy orders while pretending to be acting in a "Bona fide" market making capacity. Remember there is a check connected to each buy order. The overall target in these frauds is <u>both</u> this attached check and the purchased "shares" and/or "share entitlements" which will be placed into the DTCC participant's account of the buying b/d that can currently be loaned out in a dozen different directions simultaneously; each of which takes in rental income especially in “hard to borrow” securities like those of the typical targets. The “rentability” in a dozen different directions simultaneously allows b/ds to charge $7 per trade and still make a fortune.

Whether this activity is done for the market maker’s own proprietary account or for a co-conspiring hedge fund’s account the exemption from the locate or the borrow can save a fortune in borrowing fees especially the expensive ones associated with the hard to borrow securities of development stage issuers which are often the targets of choice in these attacks. Why? Because as mentioned they’re defenseless due to not being cash flow positive yet and are susceptible to being constantly forced to pay their monthly burn rate by selling shares at share price levels that can easily be placed into free fall. Without having this expense associated with a borrow then the risk/reward analysis that even crooks must make is going to always lead to the decision to keep on naked short selling until the share structure of the targeted issuer is drowning in illegitimate FTDs and the share price goes into its predictable “Death spiral”. What does the post-mortem for these bankrupted corporations list as the cause of death? “Drowning from the over-injection of liquidity”.

A willing and able clearing firm or “Registered Clearing Agency” (“RCA”) with a “Participant account” at the DTCC (also an “RCA”) is also needed. This provides access to the “Good ole boys on Wall Street” headquarters in the form of the DTCC, “The ultimate enabler”, which appears to be much too integral to our financial system to be held accountable for “Enabling” these behaviors. How does access to this “Headquarters” benefit the perpetrators of this fraud? It allows access to DTCC’s management’s claim to be “Powerless” to buy-in any delivery failures of their bosses, the “Participants”, housed at the DTCC. It also allows access to the DTCC management’s policy that these FTDs need to be kept secret for reasons associated with “Confidentiality” issues, “Proprietary trading methodologies” and the need to prevent “Short squeezes” of their participants that accidentally went a little overboard in amassing archaic FTDs. And don’t forget the access it allows to the 2,000 pages of rules and regulations/conflicts of interest of the DTCC and NSCC that the SEC cannot add to or delete from because of Section 19C’s mandated treatment of these “sacred cows” knows as “Registered Clearing Agencies” or “RCAs”. This reality is yet another reason that the proposed Rule 10b-21 specifically deem as being unlawful these behaviors related to ANSS and DFRAs.

Is it that the SEC thinks that the systemic risk levels associated with forcing those that sell things but constantly refuse to deliver them to finally deliver them might be intolerable? I would posit that the systemic risk levels would be much higher if you don’t once and for all address these delivery failures in a timely fashion now. Is the refusal of the SEC and DTCC to do their jobs associated with the already anemic levels of investor confidence in the ethics of Wall Street possibly falling even lower? Newsflash: It can’t get much lower and effecting mandated buy-ins would enhance investor confidence not decrease it.

The loopholes provided by the DTCC's "Continuous Net Settlement" system as well as their "Automated Stock Borrow Program" and "RECAPS" program are integral to the subset of these frauds occurring directly in the DTCC. The critical mass attained by the 11,000 "Participating" broker/dealers (b/ds), banks and thrifts of the DTCC that "Legally" own every share held in "Street name" is beyond comprehension. The DTCC really has literally become "Too big and too important to our financial system to fail or to hold accountable" and don't the perpetrators of these thefts know it. The ability of DTCC participants to access the incredibly corrupt rules and regulations of the DTCC and NSCC is a significant "Enabler". The number of self-serving rules in that text that are in direct contravention of the 7 securities acts is barely countable. The presumption that all 11,000 b/ds and banks entrusted to "promptly and accurately clear and **settle** (involving "good form delivery") securities transactions" while ACTING IN GOOD FAITH was a leap of faith beyond description for the legislators of that time to make. The DTCC management's placing their participants essentially on the "honor system" in this regard was not anticipated by the legislators that wrote Section 17 A as well as UCC Article 8 (allowing the creation of securities entitlements).

The various market participants and prime brokers willing to provide "Deceitful locates" (DLs) and "Deceitful borrows" (DBs) in order to keep their hedge fund clients happy are prominent examples of "Enablers". Oftentimes two co-conspiring brokerage firms will "Pair off" and provide "Deceitful locates" to each other when asked to. Recall that a "Deceitful locate" only lasts for 3 days and once the resultant FTD makes it into either the dark protective sanctuary provided by the DTCC "C" sub accounts or into an Ex-clearing format then it's good for life in our current system.

This is similar to the "Pairing off" done in "Ex-clearing" wherein 2 corrupt b/ds mutually agree not to buy-in each other's FTDs which creates a black hole for unsettled trades and a repository for FTDs to secretly accumulate. How prominent is this? Recall the Evans, et. al. research indicating that 0.12% of the time a buy-in is mandated is it executed. How do they get away with this? Rule 15c6-1 of the '34 Exchange Act prohibits broker/dealers from effecting or entering into a contract to purchase or sell a security that provides for payment of funds or delivery of securities later than the 3rd business day after the date of the contract **UNLESS OTHERWISE EXPRESSLY AGREED TO BY THE PARTIES AT THE TIME OF THE TRANSACTION.**

Now is where things get interesting. Let's say that b/d "TS" a "Theoretically selling" b/d and b/d "TB" a "Theoretically buying" b/d enter into one of these "Expressly agreed to contracts" and set the "Settlement date" for this "Theoretical" transaction at T+100 days. Who is the legal "Owner" of these shares on T+20? Perhaps more importantly, who else knows about the existence of these secret "contractual arrangements"? The DTCC and the SEC certainly don't monitor for these "contractual arrangements" forbidden by the '34 Act although it is critical that they start. Since no money has changed hands and nothing has been delivered then the "participant account" at the DTCC still states that b/d "TS" is the "owner of record" (right below Cede and Co.) of that parcel of shares then b/d "TS" would be allowed to sell these shares whenever it wanted to through the DTCC's CNS (Continuous Net Settlement) program during this 99-day period.

But if we look at the definition of "Ownership" in Reg SHO's 200(b)(2) it states that: The seller of a security is deemed to "Own" the security if: "The person has purchased, or has entered into an unconditional contract, (*Like the one "Expressly agreed to"*) binding on both parties thereto, to purchase it, but has not yet received it". Now all of a sudden it looks like the party theoretically buying the shares on T+100 technically "owns" it and can therefore **also** "Sell" it during this 99-day period.

Since these "Expressly agreed to" contracts are kept secret and away from the DTCC (hence the term "Ex-clearing" since they are executed outside of the "Registered clearing agency" known as the DTCC and outside of any other RCA) the case could be made (as long as the contract remained secret) that both parties "Own" and could "Sell" these shares for the 99-day period before the agreed to settlement date. Notice the similarity to keeping two sets of books. Thus a parcel of readily sellable shares just got "contractually" (wink, wink) created out of thin air and once sold by both parties the obviously resultant FTDs can bring about their intended dilutional damage over the 99-day or 699-day period for that matter. This is intentional fraud and "manipulation" since the "supply" of readily sellable **and readily loanable** "pseudo-shares" has been artificially moved upwards. Thus both the fraudsters' rental income goes up as does the value of his naked short position as a result of the stock price predictably tanking.

A lot of the academics studying these frauds forget about the "supply" of **readily loanable** or **readily rentable shares** being fraudulent as these usually "hard to borrow" shares bring in a hefty rental fee especially when the same "parcel" of shares can be loaned out in a dozen different directions simultaneously. That's why I make the distinction between "Abusive Naked Short Selling" (ANSS) and "Delivery Failure Related Abuses" (DFRAs). The illegal renting part is more of a DFRA. As I've said many times this is one very sophisticated and lucrative form of a "fraud on the market".

In the study of abusive naked short selling frauds sometimes single loopholes like the "Bona fide" MM loophole is enough and at other times loopholes need to be hooked up in series to perpetrate the intended fraud. Another point that needs to be made is that these are not mere "Compliance issues" that should be subject to "Parking tickets" and hand slaps. This is major league racketeering/fraud/theft qualifying as a "Fraud on the market". It is also known as a "Systemic" type of fraud. In economics since there are so many more victims than fraudsters it is referred to as a phenomenon involving "dispersed costs and concentrated gains". The "costs" are "dispersed" amongst hundreds of millions of investors and the "gains" are shunted to a "concentrated" group of abusive DTCC participants and their co-conspirators. An analogous form of fraud might involve a Las Vegas casino "stacking the deck" at a blackjack table. In this instance both of these "games" being played are essentially "rigged".

Rule 10b-21 would be a great opportunity to specifically deem as unlawful this type of behavior involving the linking of loopholes, keeping 2 sets of books, operating 2 distinctly separate markets and entering into off balance sheet transactions to effect "Delivery Failure Related Abuses" or "DFRAs" associated with assuming naked short positions and then intentionally flooding the share structures of targeted issuers with FTDs in an effort to drive share prices down while siphoning off the funds of unknowing investors.

In essence, for DTCC participants T+3 is "Settlement date" except for when both parties to a transaction "Expressly" and "Secretly" agree otherwise unbeknownst to the purchaser of the shares whose money had to be paid by T+3 and whose money is earning interest by those that stole it. Thus what's to keep 2 co-conspiring b/ds both attacking the same company from "Expressly agreeing" in a secretive manner to **"Eventually"** deliver to each other the shares of company "X" owed to one b/d by the other and the company "Y" shares owed by the other b/d to his co-conspiring b/d? This "pooling" of debts is easily accomplished by simply marking to market the various debts on a daily basis both within and away from the DTCC. The victims became all of the corporations involved, all of their employees and all of the shareholders involved.

Since the DTCC and their participants are the "Legal" or "Nominal" owner of all shares held in "Street name" they could easily enter into these "Pseudo-contracts" while dealing with the "Beneficial owner's" (the purchaser's) shares. The result is incredibly damaging FTDs piling up off to the side in an "Ex-clearing" format. When queried by angry investors as to why the SEC doesn't shut down the fraudulent and secretive piling up of FTDs away from a "Registered clearing agency" the answer proffered by the SEC has always been that those "Arrangements" are of a "Contractual nature" i.e. of an "expressly agreed to nature" subject to "Contractual law" provisions but we at the SEC only deal with "Securities law". That's an interesting position for the congressionally mandated provider of "Investor protection" and "Market integrity" to adopt. The DTCC management's response is slightly different. They say that even though we operate as an SRO mandated to be: *"responsible for regulating its members through the adoption and enforcement of rules and regulations governing the **business conduct of its members"*** we are "Powerless" to govern this **"business conduct"** of our participants/owners/bosses. If that's confusing then maybe I can add some clarity. In other words even though they have the mandate to "promptly clear and **settle** securities transactions" they claim to be "powerless" to "promptly clear and settle securities transactions" i.e. "powerless" to buy-in these acts of fraud so that the transaction finally "settles" when their participants absolutely refuse to deliver that which they sold (so much for my ability to provide clarity).

This line of reasoning attempting to justify the direct "Enabling" of these frauds cannot be tolerated by the party mandated to provide "Investor protection and market integrity" as the intent to defraud is clearly evident regardless of any fraudulent "Contractual" arrangements entered into in order to perpetrate or cover up the fraud. The gist of this issue is that there needs to be one centralized clearance and settlement system with full visibility of all transactions and all "Expressly agreed to contracts". Allowing these "Satellite" clearing systems to be set up in an obvious effort to circumvent "Good form delivery" and therefore "settlement" of a transaction is insane.

The “good form delivery” of that which you sold within a reasonable timeframe isn’t really that difficult of a concept for most to grasp. The obvious solution for a clearance and settlement system with even a modicum of integrity would be to NOT ALLOW FTDs IN THE FIRST PLACE i.e. YOU CAN’T GAIN ACCESS TO AN INVESTOR’S FUNDS OR SELL SECURITIES UNTIL THAT WHICH YOU ARE SELLING SHOWS UP FOR DELIVERY. The funds and the securities could then be exchanged simultaneously JUST LIKE EVERYWHERE ELSE IN THE BUSINESS WORLD! Why should Wall Street especially with all of its conflicts of interest present be any different?

The single most damaging of all of these “Satellite” clearing systems is in the form of Canada’s “Central Depository for Securities” or “CDS”. When combined with Canada’s “Investment Dealers Association” (the “IDA”-their NASD analogue) that publicly finds no issue whatsoever with the abusive naked short selling of U.S. corporations this duet is a main factor in “Enabling” these crimes. Why? Because the CDS is allowed to “Interface” with the DTCC directly via its own “5099 Participant account” and channel in all of the FTDs generated in Canada and allow them to be nurtured, covered up and protected from being bought in by the DTCC management’s pleading to be “Powerless” to do what it takes to legally “settle” trades and “Powerless” to monitor the “business conduct” of its participants despite the fact that it acts as an SRO mandated to perform that function.

A fraud similar to these “Expressly agreed to contracts” occurs in the use of certain types of “Repurchase agreements”. In an effort to bypass expensive “Borrows” or the unavailability of a “Borrow” some abusive naked short sellers enter into bogus “Repurchase agreements” similar to the “Expressly agreed to contracts” described above. They feel they can bypass labeling a “Short sale” as a “Short sale” and effectively bypass borrowing fees or the unavailability of a borrow if they agree to “repurchase” the shares they are selling at some time in the future. This allows the “pairing off” of abusive DTCC participants intent on committing these thefts. I can easily picture abusive DTCC participants coming up with these clever MOs and somehow justifying in their own mind that they’re so clever that they deserve to get away with this behavior that most can recognize as being criminal in nature. Perhaps part of the problem is that they don’t have to look their victims in the eye. Does a clever “safe cracker” feel that he deserves the contents of somebody’s safe if he’s clever enough to outsmart the locking mechanism?

Recall the definition of a “Short sale”: - the sale of a security that the seller does not own and that is **consummated by the delivery of a security** borrowed by or on behalf of the seller. Perhaps their theory is that since there was no “consummation by the delivery of a security” which was circumvented by the promise to buy the securities back later then it technically wasn’t a “Short sale” that needed to be labeled as a “Short sale”. Perhaps so but it’s still fraudulent to intentionally drive share prices downwards by creating and refusing to cover FTDs. All of these clever behaviors need to be **specifically** codified as being not only clever but also unlawful in Rule 10b-21.

In these "repurchase related frauds" (RRFs) during this interim time period before the shares get "repurchased" incredibly damaging FTDs are generated which poison the share structure of the targeted corporation which is under attack. You can expect these types of games being played (frauds being committed) in development stage corporations with very few shares that are "Legally borrowable". Why? Because the lack of "Supply" of "Legally borrowable" shares (a natural deterrent to these crimes) makes a legitimate "Borrow" very expensive due to supply and demand interactions. This makes it more important to fraudulently bypass this expensive "Borrow". Most legitimate "Borrows" come from one of 2 sources. The first is margin accounts wherein the investor signed a margin agreement allowing the "hypothecation" of these shares. The second is from institutional investors wanting to make a little rental income on the side. The problem is that the companies typically attacked usually have little or no shares held in margin accounts since they are nonmarginable securities and they typically have little or no institutional ownership. Thus there are very few "legally" loanable shares available and those that are would fetch a hefty rental fee.

Why attack corporations with very few "legally borrowable" shares; does this not seem counterintuitive since the borrows would be very expensive? At first glimpse it does but keep in mind that these corporations with hard to borrow shares usually happen to be the development stage corporations that are the most defenseless against these "Bear raids". Why would you pay for an expensive "Pre-borrow" if you can bypass this expense or possibly unavailable borrow by partnering up with a MM willing to pretend to be acting in a bona fide market making capacity in exchange for this extra "Order flow" you are willing to provide.

In a clearance and settlement system with integrity the added expense of borrowing hard to borrow shares would naturally protect these relatively defenseless stocks from attack. The going well out of one's way to intentionally remove the <u>natural</u> market deterrents to these crimes by both the DTCC and the SEC is totally unconscionable given their respective mandates.

The lack of <u>legally</u> borrowable shares is seen as a minor inconvenience necessitating the perpetration of a few accessory frauds during the perpetration of the main fraud involving selling that which you refuse to deliver and thereby the intentional creation of <u>illegitimate</u> FTDs and portraying them as being <u>legitimate</u> i.e. of an ultra-short term lifespan. If you attack a Microsoft-sized company and force their share price down 50% they'll just take the cash in their coffers and buy back and cancel shares which will turn the tables on the fraudsters. Yet to be cash flow positive development stage corporations don't have this luxury.

Legitimate "Repurchase agreements" are typically overnight vehicles used in the banking business. Again, Rule 10b-21 would be an excellent vehicle to <u>specifically</u> identify this type of activity as being deemed unlawful so that there is no confusion or plausible deniability created and the scienter prerequisite can be met.

Recall that it is the finite number of shares "legally borrowable" that provides a "Natural governor" or "Natural deterrent" to short selling abuses since a "Borrow" might be either unavailable or so expensive that the risk/reward analysis for these activities might not pencil out. How can these companies under attack remain on the Reg SHO "Threshold lists" for hundreds of days at a time and regularly trade 30% of their "Float" on a <u>daily</u> basis. Gee, do you think that something is amiss on the "Locate" and "Pre-borrow" front or on the bona fide MM front? Note that some of the increased volumes seen in these attacks might be accounted for by ongoing abusive naked short selling plus illegal "Wash sales" used to "Park" the FTDs somewhere where their detection is less likely. Borrowing shares of these types of issuers is and should be incredibly expensive due to supply and demand interactions. This is a natural phenomenon in markets. Of course fraudsters are going to cheat on these laws to circumvent usurious rental fees. If you're willing to refuse to deliver that which you sold why would illegally bypassing an expensive borrow cause you to lose any sleep?

Recall that "Stock Manipulation" involves "the intentional interference with the natural "Supply" and "Demand" variables that dictate share prices. "Manipulating" the "Supply" of <u>"Borrowable"</u> shares/IOUs is just another form of "Stock Manipulation", one step removed in this case, from manipulating the "Supply" of readily sellable "Book entries" that leads directly to lower share prices. With the use of "Deceitful locates" and "Deceitful borrows" there is a never ending supply of borrowable (but not legally borrowable) "Shares" or "Securities entitlements/IOUs".

"Deceitful locates" and "Deceitful borrows" therefore directly result in the generation of very damaging "Failures to deliver" which serve to drive share prices downwards. The use of "Deceitful locates" and "Deceitful borrows" therefore needs to be clearly specified by 10b-21 as being deemed unlawful behavior. The victims that suffer damage from "Deceitful locates" and "Deceitful borrows" include not only the purchaser getting hoodwinked in a specific transaction but also all shareholders in the issuer under attack.

The party granting the "Deceitful locate" is as guilty as the party seeking one. Note the similarity to the recent case involving prime brokers that allegedly charged their client "Borrowing fees" when they never even made a "Borrow". When you can fake out sophisticated hedge fund managers that hints at how far out of control "Lending desk" activities are and the need for some transparency. Just think what a comparatively easy "mark" the average U.S. investor represents when even market professionals can be easily duped with "Borrowing related frauds" or "BRFs".

<u>At a minimum</u> any market participants whose "Locates" result in "Failures to deliver" above perhaps 3% or so should obviously be barred from performing <u>or</u> soliciting future "Locates". They've <u>proven</u> that they couldn't ACT IN GOOD FAITH as anticipated by the legislators that empowered them with this form of public trust. Their penalty would include a decrease in "Order flow" from those hoping they would misbehave. This provides the heretofore missing "deterrence" to these crimes. Once detected, "Deceitful locates" leading to "Failures to deliver" should be bought-in promptly as 2 separate crimes have been committed. The one being the "Abusive naked short sale" and the

other being the fraud perpetrated to either cover up this fraud (the "Deceitful locate") and/or the fraud involved in bypassing the cost of a borrow and manipulating upwards the number of "borrowable shares".

Even in a market system with an "Uptick rule" in effect the concept of a mere "Locate" is insane. Why? Because of the temptation provided by the "Ultimate paradox" when coupled with "DRAMA". With the current lack of an "Uptick rule", the presence of the "Ultimate paradox" and "DRAMA" the concept of a mere "Locate" becomes totally unconscionable. Any short sale based on a flimsy locate obviously shouldn't proceed UNTIL the borrowed shares show up and are ready for delivery. We've tried "Extending credit" to market participants. The experiment failed miserably due to the myriad numbers of conflicts of interest present and the refusal of certain parties to ACT IN GOOD FAITH. After all what's the big hurry in getting a trade to "Settle" before delivery is accomplished? Markets should move as fast and efficiently as they can without sacrificing one iota of investor protection or market integrity. **It is the job of the SEC to go to bat for investors in order to make this a reality.**

Why sacrifice investor protection and market integrity for speed and/or "liquidity" that is only available when a market needs sell orders but never there when a market needs buy orders? Again, in our current system buying shares costs money whereas selling shares even when they don't exist makes money. This provision of only one-sided liquidity is known as "fraud" when you're accessing that exemption accorded to bona fide MMs only. Bona fide MMs inject 2-sided liquidity. If the "Locate" executed is legitimate then those shares "Located" will indeed show up by T+3. Where's the harm in waiting?

"INTEGRITY VERSUS LIQUIDITY" SHOULD NOT BE THE ISSUE

As mentioned, the "Enablers" and direct participants in these crimes will often play the "but we're injecting liquidity in thinly traded securities" card when asked to defend their indefensible actions involving selling securities then refusing to deliver them. This argument does not hold water EVEN WHEN 2-SIDED LIQUIDITY IS BEING INJECTED AND IT BECOMES BLATANT FRAUD WHEN ONLY 1-SIDED LIQUIDITY IS BEING INJECTED. Just as presenting the façade that "delivery" might be "kinda sorta" occurring has nothing whatsoever to do with the "Good form delivery" of that which was intended to be purchased so too does the injection of 1-sided delivery have nothing to do with truly bona fide market making activity. It's not even close. Of course the issue here revolves around the unconscionable policy associated with the "Ultimate paradox". When your clearance and settlement system has a foundational flaw involving the ability to access a purchaser's funds even without delivering that which you sold then the entire structure of your market system will be flawed and subject to the same fate as a "house of cards" when even a mild breeze approaches. Can Rule 10b-21 single-handedly repair the corrupt foundation being shielded from view by the DTCC? No, but if properly designed it can send a strong message to the securities fraudsters taking advantage of this corrupt foundation UNTIL further legislation can be passed to make critical changes in how the DTCC operates and to plug the loopholes left in Reg SHO.

The concept of not allowing a transaction to be portrayed as having cleared and **settled** UNTIL delivery occurs and not allowing a seller to touch the funds of an investor UNTIL delivery occurs is so simple and straight forward that it boggles the mind as to why it is not the law of the land as suggested by all of the world's leading authorities on clearance and settlement issues. The reason it's not the law of the land is because the ever-dominating financial industry members would not get paid their commissions and mark-ups UNTIL delivery occurred and obviously their income would drop because so many of these transactions do indeed fail to "Legally settle" (irrespective of what the DTCC says) due to the lack of "Good form delivery".

The DTCC management can throw all of these transactions into a box labeled "kinda-sorta settled" all they want but these trades still aren't legally "settling". Compare the concept of "Good form delivery" to the aforementioned "Expressly agreed to contracts" and fraudulent "Repurchase agreements". There is nothing associated with those "Arrangements" that even remotely resembles "Good form delivery" or any kind of delivery for that matter. Since when did the definition of "settlement" become so malleable? "Settlement" refers to the conclusion of a transaction in which that which was purchased is paid for and that which was paid for is delivered i.e. "delivery versus payment". Why should a broker acting in an "agency" capacity get access to his commission check before his client gets delivery of that which he or she purchased? A real estate broker doesn't why should a Wall Street broker. Again, what's so special about Wall Street?

The fraudsters don't even have to fake "Good form delivery" in our current system. Could you imagine the purchasers of the fake shares involved in these transactions trying to sell that which they purchased and being told the truth and that they couldn't sell them because unfortunately there never were any shares purchased because an "Expressly agreed to contract" or "Repurchase agreement" was involved; better luck next time and by the way thanks for the commission? If you're truly proud of all of these loopholes then tell the world about them and let informed investors decide whether or not to hop onto this grossly tilted playing field. If you're not proud of them then get rid of them. The one thing you can't do is to refuse to get rid of them and refuse to bring them to the attention of the investing public as clearly mandated by the '33 Act.

Many "Prime brokers" that service the needs of hedge funds must be willing to break whatever laws need to be broken in order to attract the business of these financial behemoths theoretically not needing to be regulated. These are often the providers of the "Deceitful locates" and "Deceitful borrows". Remember that hedge fund managers are under unbelievable pressure to perform but are exposed to the opportunity to create unfathomable wealth if they can consistently provide extraordinary returns above and often at the expense of those of America's investing public. Consider the following scenario:

HYPOTHETICAL CASE STUDY: NO BORROW AVAILABLE FOR A "HARD TO BORROW" SECURITY

Hedge fund #1 (HF1) sees an opportunity to short sale a hard to borrow security. The hedge fund manager's places an order to short sell corporation "A" thru his regular prime b/d "P" that operates as an "executing broker". "P" can't find a locate or a borrow and is afraid of losing the order or the order flow from HF 1 and says "No problem". HF 1 frantically calls co-conspiring b/d "CC" whom he knows has no shares of Corporation "A" available for a "Locate" either but knows that they're sleazy enough to always be good for a "deceitful locate". "P" says I really, really need a "Locate" for corporation "A" ASAP. "CC" says "No problem; I think I saw some shares of corporation "A" the other day up in our attic while searching for Christmas lights (wink, wink) and now you owe me big time".

This "Deceitful locate" obviously results in an FTD. HF 1 is ecstatic to circumvent the unavailability of this hard to borrow security. If "P" told the truth about its inability to find a legitimate "Borrow" then the confidence level in P's abilities to service that hedge fund's needs would drop as might the order flow coming from HF1. As it stands now HF1 is totally off the hook since it has the right to "assume" that "P" was telling the truth. Both HF1 and "P" are ecstatic for pulling off their frauds and all of corporation A's shareholders are financially damaged by the illegitimate FTDs entering the share structure and depressing the share price. This is all based upon risk versus reward and what the chances are that an SRO or regulator are going to firstly recognize the deceitful locate for what it is or secondly to do anything about it that other than perhaps issue a traffic citation looked upon as a cost of doing business. That's why the concept of <u>meaningful</u> deterrence is so critical to appreciate. Billionaires don't mind paying traffic citations; they're not <u>meaningful</u> to them. Not being able to act as a prime broker for two months might, however, get their attention.

The purchaser of these nonexistent shares "Buyer Bob" has no clue he got hoodwinked but he assumes that after paying a commission to his b/d "B" the buying b/d that he would obviously make sure that what he paid for got delivered. B/d "B" doesn't care because he was paid a commission. In fact, unbeknownst to "Buyer Bob" his b/d <u>wants</u> his orders to get quickly naked short sold into in order to run the ticket and get paid quicker.

<u>Everybody</u> on Wall Street has a huge financial incentive to allow naked short selling abuses to run rampant. The more FTDs you can pigeon hole into the various hiding places around Wall Street and offshore the better. It's free money. How do they sleep at night? It probably has something to do with all of this wonderful "liquidity" they are theoretically providing in exchange for all of these advantages they enjoy.

I liken corrupt MMs while theoretically acting as a "Gatekeeper" to the markets as being like the old-fashioned elevator operators. They'll roll out the red carpet and welcome you into the elevator i.e. into the markets where they'll take their tip but once the door closes this particular elevator only goes down and never up. You can yell and scream and complain to the SEC all you want (if you dare) but that elevator has been <u>pre-</u>

programmed ("rigged") to go down only and the elevator operator is paid by the number of floors the elevator descends.

How can the SEC combat this? The ultimate cure would be to outlaw FTDs and prohibit their formation in the first place. You wouldn't be allowed to sell shares UNTIL they arrived at the selling b/d and are ready for delivery to their new owner by T+3. FTDs are too damaging to treat in any other way. There would be no more trusting of b/ds with trillions of dollars up for grabs in a system riddled with conflicts of interest. We tried that it didn't work because of that pesky presumption of the legislators at the time that the DTCC management and participants would ACT IN GOOD FAITH with the tremendous advantages that they were entrusted with.

The solution might be to let an uncompromisable computer match up the buyers with the sellers. If there aren't many sellers at a given time then the buyer would have to slowly increase his bid until he found a seller willing and able to deliver that which he sold by T+3. The variables of unmanipulated supply and unmanipulated demand could then interact to provide true "pricing efficiency". The two separate markets we have now would become one. Do you know what the biggest problem with this would be? Getting rid of the preexisting FTDs on the books before the fully computerized system could take effect. These markets have been trying to evolve into more efficient mechanisms wherein corruptible humans are not allowed to apply this tremendous "tax" on the system but they can't UNTIL these preexisting FTDs are removed. The authors of these FTDs would not want to have to cover these "open positions" on a level playing field free of human interference and devoid of share prices artificially manipulated lower below the intersection of true supply and true demand. Market makers that refuse to provide 2-sided liquidity while accessing their powerful exemption aren't owed a living by anyone.

In the absence of this ideal approach firm and decrementing pre-borrows of a contractual nature that are well-documented would be a start. The decrementing process will create a paper trail as will the documentation process. The ultimate preventive measure is to make share parcels traceable via an ID system to make sure that decrementing is recorded, documentation is done and "Locates" aren't bogus and that they do lead to T+3 good form delivery. We don't have to undo "Dematerialization". If the shares land in time there is no delivery failure but that parcel of shares can't serve as somebody else's locate UNTIL the original "Borrow" is paid back. Note the similarity to the SBP's self-replenishing aspect when bogus locates or bogus pre-borrows occur. Both result in an FTD. All borrows from a self-replenishing pool are by definition bogus except for the very first one done on a certain parcel of securities which unfortunately can't be identified in our current system based upon the "anonymous pooling" of shares.

Note the network of "kickbacks" being deployed by the prime broker and the co-conspiring b/d willing to provide the "Deceitful locate" in exchange for some yet to be determined future "kickback". The $10 billion in annual "Juice" that the hedge funds have to spread around to any party willing to act as an "Enabler" is a lot of money. The ultimate target is the wallet or perhaps retirement plan of the unknowing investors under the misconception that there is an aggressive regulator protecting them from this type of activity.

"PIPE" (Private Investment in Public Equities) financiers operating as wolves dressed in sheep's clothing and their "Death Spiral Financings" can always be called upon to aid in the polishing off of a corporation that just refuses to go bankrupt on cue. I recall the research piece done on around 300 "PIPE" financings and how a huge percentage of them were bankrupt within a matter of a year or two. This reality deals with the concept of "Capital formation". No financier in their right mind is going to finance a company in the midst of a "Bear raid" and whose share price is in free fall <u>unless</u> the terms of the financing include a floorless convertible debenture format i.e. a "Death spiral financing". Abusive naked short selling frauds have huge detrimental effects on "Capital formation". These financings allow convertible instruments to be converted into a fixed dollars worth of shares. When it's time to convert the financier naturally wants the share price to be as low as possible so that it can convert into that many more common shares. With the lack of an "Uptick rule" abusive financiers can now merely knock out bid after bid to get a low print and then put in his order to convert his shares at this new artificially reduced share price level.

Allegedly corrupt legal firms can easily be accessed to file a frivolous lawsuit against a targeted corporation or its management team that won't go bankrupt on cue after being a victim of one of these "Bear raids". If the legal fee expenditures don't kill the targeted corporation at least the press release of the lawsuit should chop the share price in half. Does anybody in the SEC question how Milberg Weiss allegedly knew that certain corporations were about to have their share prices mysteriously fall out of bed? How did they know which corporation's shares should be bought by their soon to be lead plaintiff that was about to incur huge damages from a drop in share price? The mere <u>filing</u> of a 100% baseless suit against a targeted corporation creates the self-fulfilling prophecy of a victory irregardless of any merit to the suit. It's analogous to the starting of an unfounded rumor in a market without an "Uptick rule". In our current system it's an automatic home run.

Corrupt financial "Journalists" hiding behind their first amendment rights can even join in on the festivities by doing a made to order "Hatchet job" on a corporation targeted by the naked short sellers. There are cases on the books wherein the financial "Journalists" and the allegedly corrupt legal firms would "Tag team" their efforts wherein the lawsuits being filed and the "Hatchet jobs" being published would be choreographed at certain times to enhance the effect of their efforts to bankrupt a targeted corporation. Rival corporations can even join in on these attacks to wipe out any smaller corporations that might be perceived as a future competitor that might take market share. Once the infrastructure is in place at the DTCC all kinds of folks worldwide can partake in the festivities. For a non-DTCC participant to access the corrupt infrastructure of the DTCC-administered clearance and settlement system and partake is this crime wave they typically have to bring some type of "juice" to the party usually in the ability to aim a fair amount of order flow to the "host" of the party.

Thus hopefully you at the SEC commissioned to provide "Investor protection and market integrity" can appreciate that abusive naked short selling is not only pandemic in our markets but not amenable to sharply focused enforcement modalities as seen in the proposed Rule 10b-21. The point being that this monster has a lot of tentacles and utilizing the laser approach on just one aspect of it just results in an end run to the next handiest loophole of which many remain even after Reg SHO. How else can you explain the same corporations remaining on the Reg SHO "Threshold lists" for hundreds of days at a time even though T+13 day buy-ins are theoretically mandated? Remember the Evans study showing that even "mandated" buy-ins are universally ignored on Wall Street. Under which "Shell" in this "Shell game" are those "Failures to deliver" hiding today? How about tomorrow?

THIS IS CRIMINAL BEHAVIOR

The other point that needs to be conveyed to you at the SEC as well as those at the DOJ is that this is indeed criminal activity. In securities law the crime referred to as "Stock manipulation" involves the intentional interference with the natural levels of supply and demand of the shares of a publicly-traded corporate entity. In Abusive Naked Short Selling ("ANSS") and Delivery Failure Related Abuses ("DFRAs") both the "Supply" of readily sellable legitimate shares and the supply of readily sellable but mere "Securities entitlements/IOUs" becomes grossly exaggerated. How does the supply of legitimate shares go up? It's due to the fact that these usually yet to be cash flow positive smaller corporations are forced during these attacks to raise funds to pay their monthly "Burn rate" by selling legitimate shares into the open market at artificially depressed prices. It's the artificially depressing of the share prices where the crime is committed not the forcing of a company to raise money to pay its bills.

This artificially induced "Oversupply" of readily sellable "Book entries" (Some legitimized by paper-certificated shares and some not) found on an investor's monthly brokerage statement then interacts with the ambient "Demand" levels to accomplish "Price discovery" at an artificially manipulated lower level. As mentioned these usually small corporations that are yet to be cash flow positive are then forced by necessity to constantly go to the markets to raise funds at usually steep discounts (associated with the implied risk associated with "Penny stocks" whose share prices are in free fall) to these already artificially depressed levels in order to just service these monthly burn rates. This results in a predictable "Death spiral" in the share price of the targeted corporations as these "Failures to deliver" pile up in their various hiding places around Wall Street out of sight of the investing public but well within the sight of the SEC, the DTCC "Participants" and the SROs except for those held in ex-clearing formats. To exacerbate this "Death spiral" phenomenon one has to keep in mind that as the share price tanks those that are selling the nonexistent shares gain yet more "Leverage" as their collateralization requirements lessen which allows this extra "Cash flow" (the investor's cash) to support further rounds of naked short selling. Notice the self-fulfilling prophecy aspect of these frauds and their self-propelling nature. Why? It's all because a development stage corporation has to pay its monthly bills or file for bankruptcy.

This form of securities fraud is all about "Delivery failures". When an unknowing investor pays full retail price for what he or she thought were legitimate "Shares" that never get delivered then their broker has to allow them to sell that which they purchased and can visualize on their monthly brokerage statements even though it never got delivered and perhaps never existed in the first place. Why is this? Because the "Uniform Commercial Code" Article 8 allows broker/dealers to credit a purchaser of "Shares" whether bogus or legitimate with a supposedly ultra-short term "Securities entitlement" just in cases wherein delivery was postponed for a short period of time. The right to credit brokerage accounts with these "Securities entitlements" creates the opportunity for abuses beyond imagination because the unknowing investor is duped into believing that good form delivery was achieved. His brain says that it must have been achieved because he can see it right there on his monthly brokerage statement.

But again the reality is that there are indeed "Legitimate" reasons for "Failures to deliver" which in the past had to be accommodated into the system. But I would argue that we tried that little experiment and it didn't work out too well for U.S. citizens not in the brokerage industry. The reality involving the existence of a very small amount of truly legitimate delivery failures (usually associated with paper-certificated shares) in the past created abusive naked short selling opportunities all around the system. One obvious solution is to minimize the occurrence of legitimate delivery failures so that illegitimate delivery failures stick out like a sore thumb. I would start with the longest term legitimate delivery failures and work backwards. The first move I would suggest is to not allow sellers of legended/restricted shares to sell **UNTIL** the legend was removed. The seller of legended securities has no right to damage the investments of others. An analogous move was made in Reg SHO in Rule 200(b) wherein the seller of securities does not technically "Own" them after 1/3/05 until warrants were exercised or convertible securities were converted. The seller of legended shares should not be deemed to "Own" them until the legend is removed either. Make him go out and make a firm and decrementing pre-borrow so as not to damage other shareholders. The fact that all FTDs are incredibly damaging needs to be incorporated into this legislation process.

Interestingly enough the assumption made by DTCC management is that all delivery failures are of a "Legitimate" nature until proven otherwise and the proof to prove otherwise is deemed "Confidential" and made inaccessible. Why? It's theoretically kept inaccessible for "Confidentiality" reasons theoretically associated with protecting "Proprietary trading strategies" (strategies like refusing to deliver that which you sell?) and also because this information might lead to "Trading abuses" like "Short squeezes". But wait a minute haven't the "Trading abuses" already occurred so how can you render the proof of the initial "Trading abuses" as being inaccessible in order to prevent a second round of "Trading abuses" from taking place. Isn't this a circular argument?

In these crimes the fact that the "Shares" purchased never did show up for delivery needs to be covered up even if the "33 Act specifically mandates that "Material" information (like the number of FTDs poisoning an issuer's share structure) must be made public. There is nothing more "Material" to the prognosis for an investment than the existence of an inordinate amount of preexisting unaddressed delivery failures poisoning the shares structure of an issuer. I find it ironic that the DTCC participants cite UCC Article 8's granting permission to create mere "Securities entitlements" as "Place holder" securities then out of the other side of their mouth say that state securities laws are preempted when it comes to ANSS and DFRAs issues. OOPS! UCC Article 8 is state securities law. This is often referred to as "Cherry picking" your legal arguments or "Regulatory arbitrage".

It truly is amazing as to how this initial fraud involving the creation of "Illegitimate" delivery failures necessitates a vast array of secondary or cover up frauds that violate dozens of different securities and criminal laws. These cover up frauds seem limitless and include behind the scenes vote canceling, Ex-clearing "arrangements/pseudo-contracts" to mask delivery failures, illegal "Wash sales" to move FTDs from underneath one shell to underneath a different one, illegal derivative transactions, bogus repurchase agreements ("Repos") entered into to bypass these sales as having to be labeled "Short sales", intentionally mislabeling "Short sales" as "Long sales", etc. These cover up or secondary frauds will be deployed at anytime when the existence of the primary fraud i.e. the existence of astronomic levels of unaddressed delivery failures in the share structure of a targeted corporation is in danger of being exposed. All of these secondary frauds are necessitated by the fact that mere "Securities entitlements" do not have attached any of the rights contained in the "package of rights" that are associated with legitimate shares backed by a paper certificate. The DTCC management only has the right to create "Securities entitlements" as ultra-short term "Place holder securities". They have no permission to create out of thin air this "Package" of voting, dividend and other rights. Only the Board of directors of a corporation can do this and only by means of a directors resolution.

A clearance and settlement system with integrity would treat a "Delivery failure" as an emergency that needed to be dealt with promptly. If shares aren't delivered after perhaps 13 days from the trade date then common sense would dictate that they're probably not going to be delivered and that the sale was bogus and associated with an attempt to access the "Ultimate paradox". The reason that there should be a grace period beyond the T+3 "Settlement date" is as noted earlier because there truly are a very small number of "Legitimate" reasons for delivery delays but fraudsters use this reality to allow them to get their delivery failures one foot in the door at the DTCC or into the "black hole" of FTDs in Ex-clearing. They need to portray their "Illegitimate" delivery failure as a "Legitimate" one so that it can seek safe refuge behind the opacity provided by the secrecy-obsessed DTCC and gain access to the DTCC management's claim that they are "powerless" to buy-in the FTDs of their abusive participants.

Recall that the policy of the DTCC is to not disclose the extremely "Material" information regarding the number of "Failures to deliver" in a corporation's share structure because it might lead to "Trading abuses". Good idea, let's just keep this extremely "Material" information that the '33 Act mandates be made public a big secret so that U.S. investors become relegated to buying a "Pig in a poke" every time they purchase a security because we sure wouldn't want to expose some "Proprietary trading methodologies" of an unregulated hedge fund operating in the dark from the Cayman Islands.

The argument that hedge funds need not be regulated because their investors are "Financially sophisticated" and don't need the protection of the SEC is insane. It's the investors getting their life savings siphoned off by hedge fund managers allowed to operate in the dark that need the protection! Hedge fund investors with trillions of dollars at stake also have the right to know if the fund they are investing in have any "contingent liabilities" they're unaware of like perhaps astronomic levels of FTDs in corporations that might not be as scammy as some think i.e. maybe their cancer cure really is a breakthrough.

A question: Why would a hedge fund with a short position of over 5% of an issuer's shares be accorded confidentiality associated with the protection of "Proprietary trading methodologies" while an investor with a long position of over 5% needs to make Section 13 filings to that effect? Why the double standard? The rationale behind informing a management team of large block holders amounting to over 5% has to do with allowing a management team access to this information so that it can fulfill its fiduciary duties of care to its shareholders in matters relating to the control of a corporation and whether any defensive posturing might be in order. Wouldn't providing the same information regarding massive short and naked short positions and levels of FTDs be many, many times more "material" so that a management team could fulfill its duties to its shareholders once "counterfeiting" issues have been detected? Why blindfold management teams and transfer agents with fiduciary duties of care owing?

The SEC needs to look at this issue of secrecy and "Proprietary trading methodologies" and legislate accordingly. Listing out the number of FTDs in a given issuer does not reveal any "Proprietary trading strategies" of "XYZ" hedge fund. Prospective investors couldn't care less who is the creator of the FTDs; they need to know the absolute number of them and this information is not "proprietary" by any means but it sure is "material" information that a prospective investor has a right to have in his possession before making an investment decision.

How can corporations be asked by the SEC in a prospectus to list out every single "Grain of sand" of risk to potential investors when the SEC and DTCC both refuse to disclose this "Boulder of risk" associated with perhaps massive levels of preexisting failures to deliver that they are aware of at the DTCC or are negligent in not knowing about in ex-clearing formats that may have already preordained a corporation to an early death? The systemic risk issues, the investor confidence issues and the corrupt nature of our clearance and settlement system that allows DTCC participants to systematically siphon off investor money cannot be made public. It had to be continuously swept under the carpet in the past before the investors figured out what was really happening to their investments in development stage issuers.

In the eyes of the DTCC and the SEC the DTCC had become too critical to our financial system to be linked to a massive fraud on the market like this. But now that investors and many politicians have figured this out the pendulum has swung to the point that any further sweeping of these crimes under the carpet is only going to further imperil our entire financial system and that ridding the system of these archaic FTDs immediately is our only option. Once that is accomplished then hopefully the lesson will be learned not to rely on people with a distinct advantage in the midst of trillions of dollars of investor funds to ACT IN GOOD FAITH. “Self-regulation” and putting people on the “Honor system” just doesn’t work under these circumstances. Why? Because of those nasty things referred to as inherent “Conflicts of interests” being present in an environment with trillions of dollars up for grabs while some players have been “entrusted” with distinct advantages.

But as it turns out the DTCC shouldering this gigantic form of “Public trust” is nothing more than the “Too important to the financial system to be held accountable” alter ego of the “Enablers” and direct participants of these crimes excepting the hedge funds which are not direct participants of the DTCC. A clearance and settlement system with a modicum of integrity would mandate the “Buy-in” of any delivery failure at a point in time that takes into account the reality of and timeframe for “Legitimate” delivery failures due to any delivery failure’s incredibly damaging nature whether it be of a “Legitimate” nature or not. “Legitimacy” is a subjective term but all FTDs do damage.

Historically this timeframe has been set at 13 days from the “Trade date” or “T+13”. Being subjected to a forced buy-in within this time period would then provide the “Meaningful deterrence” that could wipe this form of criminal behavior off the map. Making markets” is supposed to involve some form of risk and not just be a free shot at siphoning off investor funds. Bona fide MMs may money off of the “Spread” between the “Bid” and the “Ask” and they can do quite well especially when volumes are high. “Predatory” MMs on the other hand won’t settle for making a living off of the “Spread”. They typically manipulate prices downwards after establishing naked short positions because they know how our current clearance and settlement system is “Rigged” in their favor and that it is 100 times easier to kill a development stage corporation than it is to build one.

One of the weaknesses in Reg SHO is that it doesn’t clearly specify what does and does not constitute truly “Bona fide” market making activity. This lack of specificity results in gray zones that the criminals will exploit. This current lack of specificity makes space under that “Umbrella of immunity” from making a “Locate” or a “Pre-borrow” theoretically accorded only to “Bona fide” MMs worth a fortune as it represents the “Loophole of choice” for today’s abusive naked short sellers. I highly recommend that 10b-21 specifically (in nauseating detail if need be) list out “not so bona fide” market making activity “Deemed to be unlawful”.

There should be no question left in anybody’s mind as to what is and isn’t “Unlawful”. It’s our fault for not doing this in the first place in prior legislation. Rule 10b-5 which is the catch all anti-fraud legislation in the ’34 Exchange Act is one (albeit long) sentence long. If a crook looks at 10b-21 and sees that the loophole he’s been exploiting for years is officially deemed “Unlawful” then he might think twice about his future behavior.

Remember the judges know absolutely zero about naked short selling abuses but they can read the '34 Exchange Act's Rule 10b-21 part "XYZ" and confirm that the activity described was indeed "Unlawful". The key concept needs to be "Specificity".

The problem is that our current clearance and settlement system does not mandate this common sensical approach. Instead Wall Street participants and co-conspiring unregulated hedge funds have built this "Industry within an industry" supported by the aforementioned "Pillars/enablers" and it serves one purpose and one purpose only. That is to siphon off the investment dollars of unknowing investors unaware of these massive "Conflicts of interest" who are under the misconception that there is a robust system of enforcement being provided on Wall Street by the regulators and the SROs (Self-Regulatory Organizations) to make sure that what is being sold is what the investor thought he was buying and that these "Shares" with their package of rights attached were indeed being delivered in "Good form" on the date that the buyer's money was due i.e. T+3.

RECOGNIZING THE "LINK"

What the SEC and the DOJ need to focus on is the **link** between intentionally creating delivery failures utilizing deception, refusing to deliver on these "Legal obligations" within an appropriate timeframe post-deception and allowing the resultant incredibly damaging FTDs to pile up in the share structures of targeted corporations **AND** the crime known as "Stock manipulation" which centers around the premeditated manipulation of the variables of "Supply" and "Demand" done in an effort to deceive others. The deception of selling nonexistent shares that you have no intention of delivering is **linked** directly to the "Stock manipulation" involving creating an artificially enhanced "Oversupply" of readily sellable "Book entries". **Intentionally creating and hiding illegitimate FTDs is "Manipulation" and "Manipulation" done to siphon away the funds of unknowing investors is criminal in nature.** The **link** is the "Failure to deliver" (FTD). In abusive naked short selling the intentional creation of these "FTDs" is fraudulent and involves deception, their being stored out of the view of the investing public is fraudulent and involves deception and their being transferred between co-conspiring parties to hide or "Rejuvenate" their age is also fraudulent and involves deception.

The DTCC's "RECAPS" program allowing the rolling back and purging of FTDs involves deception. The DTCC's self-replenishing SBP involves deception. All of these deliberate misrepresentations/deceptions made during the buying and selling of securities leads to monetary damages on the parts of those being deceived into believing that they were buying legitimate "Shares" with a full "Package of rights" attached and that they were going to be delivered in a timely manner coincident with when their money was due i.e. T+3. The time value of the money paid by investors for bogus goods also needs to be taken into account. All of these myriad numbers of "deceptions" are directly **linked** to damages.

This brings us to the concept of **"STOCK FRAUD"** which is legally defined as: **A deliberate misrepresentation (deception) made during the buying and selling of securities which causes another to suffer damages usually of a monetary nature.** The "Damages" have to do with the predictable/inevitable drop in share price associated with the artificial increase in the "Supply" ("Manipulation") of readily sellable "Book entries" (the arithmetic sum of legitimate "Shares" plus "FTDs"). Note also that the "Effective demand" variable is also manipulated downwards as the price buoying effect of buy orders is muted by the constant selling of fake shares into what should be share price enhancing buy orders. The simultaneous increase in the "Supply" variable and decrease in the "Effective demand" variable is what produces the drops in share prices which can be very dramatic. The net effect is that illegitimate delivery failures not associated with "Bona fide" market making are the proximate cause of predictable damages.

Due to the reality of the "Ultimate paradox" when a buy order appears for development stage issuers the antennae of the abusive DTCC participants go up. Why? Because of the existence of the "Ultimate paradox", "DRAMA" and the fact that there is a check attached to each buy order. This results in the aggressive "undercutting" of preexisting offers and the banging of bids when a buyer's order appears. There is a race to that check because there's no need to deliver anything after grasping that check. This phenomenon results in a "blanket" of sell orders at the lowest offer that seems to never lift no matter how many buy orders enter the market. If a MM had its druthers it would like to sell fake shares at higher levels but if there are competitors out there also going after the same checks then the feeding frenzy will be at lower levels.

A lot of times these buy orders don't even make it to the market because the buying b/d can naked short sell into that buy order via "desking" at its own trading desk. A buying b/d has "first dibs" on that check. It still has to report this trade in a timely manner and this is part of the reason you see trades being executed between the highest bid and the lowest offer.

In "Abusive naked short selling" (ANSS) the "Misrepresentation/deception" is two-fold. Firstly, there is the "Misrepresentation" involving what you are selling as being a legitimate "Share" or unit of equity ownership in a corporation with its full "Package of rights" attached. The phraseology used by the investor to his broker was to buy me 100 "Shares" of "ABC" company. Secondly is the "Misrepresentation" that you are going to deliver on T+3 that which you are selling. Fraudulent behavior usually involves a "Deception" that leads to monetary gains of the "Deceiver" and monetary losses to those being "Deceived".

On Wall Street this "Deception" gets partially obfuscated by the fact that the "Legal" or "Nominal" owner of all shares held in "Street name" is the DTCC's nominee "CEDE and Co." Some at the DTCC contend that with "legal ownership" comes the right to pretty much do anything they want with their "Shares" that you paid for.

<u>The intentional creation of "Illegitimate" delivery failures ("FTDs") with no intent to make good on these obligations in a timely manner is a form of the very serious criminal act known as "Stock manipulation".</u> This is a very serious form of theft/"Conversion"/fraud not to be dismissed by the SEC, the SROs, the DOJ and the DTCC "Participants" as being some sort of good-natured "game" played between the "Shorts" and the "Longs" and that anybody buying the shares of these usually (but not always) yet to be cash flow positive development stage corporations deserve whatever they get because they're somehow unworthy of "Investor protection and market integrity".

THE NEED TO MINIMIZE THE NUMBER OF DELIVERY FAILURES CURRENTLY CONSIDERED "LEGITIMATE"

Since a key component of this fraud involves portraying "Illegitimate" delivery failures wherein delivery was never intended as being of a "Legitimate" (ultra-short term) nature then it would make sense to make an effort to decrease the number of "Legitimate" delivery failures so that the "Illegitimate" ones stand out more. One must keep in mind that even what are currently considered "Legitimate" delivery failures are still incredibly damaging to the corporations affected and the investments made therein. As mentioned, the starting point in this effort is to not allow the sale of restricted or "Legended" certificates **<u>until</u>** the legend is removed by a legal opinion. Allowing the sale of paper-certificated shares wherein the seller promises to drop them in the mail makes no sense whatsoever. Why extend this form of "Credit" when the "Ultimate paradox" and "DRAMA" are a reality and when this practice can serve as the foundation for these delivery failure related abuses (DFRAs)? If the certificate is theoretically "In the mail" then don't allow it to be sold UNTIL it arrives in a form allowing for "Good form delivery" i.e. no restrictive legends or liens. If the seller was lying about mailing the certificate in or even owning it in the first place then this policy would provide the much needed "Investor protection" and "Market integrity" that you at the SEC are congressionally mandated to provide. If the certificate truly was in the mail then the delay would be minimal.

You must keep in mind that most "Legitimate" delivery delays are associated with paper-certificated shares which only make up about 2% of the shares being traded. There are very, very few "Legitimate" reasons for delivery delays despite how the DTCC says to the contrary. When the DTCC says out of one side of their mouth how important they are since they house 98% of all shares in an electronic format and then out of the other side of their mouth talk about all of these reasons for legitimate delivery failures involving paper certificates then you know you have some issues present. Either way the SEC must set a firm date after which a delivery failure whether it be artificially deemed "Legitimate" or not must be bought in. FTDs whether legitimate or illegitimate are too damaging to treat any other way and even ethical sellers of shares have no right to damage the investments of others.

When legislating in this arena you at the SEC must realize the fate of FTDs once they are created. The DTCC policies allow DTCC management to hide and nurture these FTDs once created. They also allow the DTCC management to pretend to be "Powerless" to buy them in. Keeping this in mind the goal must be to minimize the creation of **BOTH** "Legitimate" and "Illegitimate" FTDs. This goes hand in hand with not allowing the sale of paper certificated securities until they are at a b/d's firm in "Good form" i.e. no more "The certs are in the mail, wink, wink". All of this is in keeping with the theme of providing "Investor protection" and the foundational concept of "Delivery Versus Payment".

While writing this comment letter I received the following E-mail transcript taken from the U.S. Chamber of Commerce's "Capital Markets Summit": (Note: emphasis added to the portion pertaining to my argument about the mindset at the SEC and on Wall Street of certain corporations and investors being **unworthy** of "Investor protection and market integrity". Note also the need for specific definitions in regards to the subject matter involving abusive naked short selling (ANSS).

2nd Annual Capital Markets Summit: Strengthening U.S. Capital Markets for All Americans

Date: 26-Mar-2008 8:30 AM EST - 26-Mar-2008 4:30 PM EST -

Location: U.S. Chamber of Commerce, 1615 H Street, NW, Washington, DC 20062

Regulatory Keynote Address: A View from the Division of Enforcement: Perspectives and Priorities

Linda C. Thomsen, Director of the Division of Enforcement, U.S. Securities and Exchange Commission

Introduced and moderated by: Michael J. Ryan, Senior Vice President and Executive Director, Center for Capital Markets Competitiveness

AUDIENCE MEMBER: "You spent a lot of time talking about insider trading and penny stock fraud, but you failed to mention an issue that's of great concern to the Chamber, and that is naked short selling and the unsettled trades that can result from that. How can the Commission claim that it is serious about enforcement when millions of trades fail to settle every day and companies remain on Reg SHO Threshold Lists for years and years? And, second part of the question, why is the new rule 10b-21 necessary when, as Commissioner Casey pointed out, it makes illegal activity that is already illegal?"

LINDA THOMSEN: "Um… I didn't hear all of it, unfortunately, but as to the issue of short selling, we recognize that short selling is…

AUDIENCE MEMBER: "My question was not about short selling. We all know that short selling is legal, and a necessary and efficient part of the market process. I'm talking about naked short selling—the selling of shares one does not have in inventory and probably has no intention of locating or borrowing."

LINDA THOMSEN: "As to naked short selling, and more generally market manipulation generally (sic), it is an area we are focused on. We have seen fewer cases in that arena because, often times, this is not necessarily with respect to naked shorts, but shorting or market manipulation more generally, because often the components of something that might look to be manipulative are all legal trades as you point out. So it's a hard case to bring, which is not to say that it isn't something that we don't investigate, because we do. So I .. hear and understand the frustration of many on the subject of short selling generally. When we hear complaints about short selling—and, frankly, it is both short and naked short, it is a combination of both—we routinely hear from companies who've come in, who worry that they're being shorted in an illegal way. We routinely take all that information in and look into it. ***And often times, as I think many defense counsel would be happy to tell you, when we dig in, what we find is that some of the information <u>that has caused people to be shorting </u>is actually true as to the company, and we may very well be confronted with two issues, one on the company and its disclosure side as well as on the trading side.*** *But they're very difficult cases, which is not to say that we aren't focused on them and interested in them and indeed this new focus that we have on some smaller companies and smaller issuers will wrap some of those concerns into their focus as well."*

Comment: This is but one more example of the mindset at the SEC and on Wall Street and why victimized issuers and the investors therein are totally in an uproar as witnessed by about 98% of the many thousands of "Comment letters" on abusive naked short selling reforms including this proposed Rule 10b-21. Oddly enough this example is literally only a couple of hours old. When presented with straight forward questions directed at the <u>abusive </u>naked short selling ("ANSS") issue even the brightest of the brightest regulators only wants to talk about how some companies really had it coming. The issue involving abusive naked short selling and "DFRAs" does not have anything to do with legal short selling and whether or not "***some of the information that has caused people to be shorting is actually true as to the company"***. No company or group of investors should be subjected to fraudulent behavior while the provider of "Investor protection" not only "Enables" this behavior but actually seems to take pleasure in it.

The issue has to do with **how** they are doing their short selling. In abusive naked short selling (ANSS) the modality used to place these negative bets **directly affects the outcome of the bet.** In the study of fraudulent behavior that's one of the characteristics of a "Rigged" system like the "stacked" blackjack deck cited to earlier. The accumulation of unaddressed delivery failures ("FTDs") in the share structures of targeted companies and the refusal of those with authority to do anything about them creates a self-fulfilling prophecy of killing corporations by fraudsters refusing to deliver that which they sold regardless of whether they did a "Locate" or not. Without buy-ins being mandated by the authorities the investments made in certain targeted issuers never had a chance right from the get go.

When the DTCC management is queried about why they don't buy-in the archaic "Illegitimate" delivery failures of their participants they claim that they are "Powerless" to do so and that's the job of the SEC anyways. Do you at the SEC agree with that statement or do you just point an accusing finger back at the DTCC and say no you do it that's your job?

Legal short selling which involves a firm "Pre-borrow" and "Good form delivery" by T+3 is a "Trading strategy" while abusive naked short selling or "ANSS" is a form of racketeering and a "Securities related fraud". This issue is all about "Failures to deliver" occurring after the sale. Bogus "Locates" which a kindergartner could easily execute in our markets do not result in "Good form delivery". When the NSCC's CNS ("Continuous Net Settlement") system is used as a clearance and settlement mechanism the perpetrators of these frauds succeed in getting that "Delivery failure" into the safe confines of the DTCC where it can be hidden from public view. You at the SEC must quit focusing on "Locates", "Having reasonable grounds to believe that delivery can be effected by T+3", "Affirmative determination in writing" of the borrowability of shares, "Unconditional contracts", relying on "Customer assurances" that they own and will deliver the shares by T+3, etc. All of these are incredibly easy to cheat on especially when DTCC participants are basically put on the "Honor system". There is no role for an "Honor system" when trillions of dollars are up for grabs and a certain percentage of the players have a distinct advantage over others. Granting "Locates" is just another form of the mutual "Backscratches" or "Kickbacks" being provided to any market participant willing to "Enable" these activities. "I'll give you bogus "Locates" when you need them in exchange for you doing the same for me when I need them". It's become a form of currency on Wall Street. It's actually a form of an illegal "securitization".

It's the "Failure to deliver" within a reasonable timeframe while allowing time for "Legitimate" delivery failures that proves that these mechanisms attempting to portray "Legitimacy" of the delivery failure were bogus. In our current system once the waiting period to prove or disprove the "Legitimacy" of a delivery failure (which the SEC desperately needs to etch in stone) has run its course that "Illegitimate" delivery failure has had enough time to nestle itself into the safe confines of the "C" sub accounts at the DTCC out of public view. How does the DTCC justify this behavior? They claim that it is enough to just credit the buyer of these nonexistent shares a "Securities entitlement/IOU" on his monthly brokerage statement. This then allows the unknowing purchaser of this incredibly damaging IOU the right to sell these nonexistent shares (Often at a steep loss) any time he likes but again just to another unsuspecting investor who by definition can't possibly get delivery of that which he purchased because it never existed in the first place. One single FTD becomes a "daisy chain" of FTDs that's why one single FTD is a market emergency needing to be addressed. Prudent investors like to limit their losses and they can come quickly in these markets for small corporations.

There never are any legitimate shares in these "Daisy chains" of transactions involving delivery failures. Once the DTCC transfers electronic book entries to the b/d of this new purchaser of the nonexistent shares after the intervention of their "Automated Stock Borrow Program" or "SBP" the fact that the original shares never were delivered or ever did exist becomes a moot point. It's as if the prior fraud simply disappears. If the purchasing brokerage firm were to earn its commission and follow through on making sure that the "Shares" purchased by their client did indeed get delivered it still wouldn't make much difference since there are so many more electronic credits floating around at the DTCC and elsewhere than there are paper-certificated shares to justify their existence. Is the DTCC aware of this? Of course they are they administer BOTH the vault system for paper certificates as well as the "Participant" and "C" sub accounts within the DTCC that hold the electronic book entries. They know how often their self-replenishing SBP is called upon to cure an FTD.

How many more "electronic book entry credits" are in existence at the DTCC then there are paper-certificated shares in their vault system? This amount equals the number of unaddressed delivery failures being housed at the DTCC at the time. How large would the total naked short position of a given issuer be? It would be equal to the arithmetic sum of the unaddressed delivery failures being nurtured and hidden at the DTCC plus those held in an "Ex-clearing" (Outside of the DTCC) format plus those held at Trading Desks via "Desking" or "B/d internalization" procedures plus those held in a variety of other hiding places on Wall Street and offshore often in the "Canadian Depository for Securities" which is insanely allowed to "Interface" with our DTCC via its "5099 participant account" despite their regulators having no problems whatsoever with the naked short selling of U.S. micro cap corporations.

In fact a fair percentage of the Canadian securities industry has historically been built upon this "Tunnel under the border" actually encouraging the naked short selling of U.S. domiciled securities. It should be no surprise that the individual Canadian b/ds most often associated with these crimes have been linked to organized crime families many,

many times. It is the corruption within the U.S.'s clearance and settlement system that invites abusive naked short sellers <u>worldwide</u> to tee off on U.S. corporations, the jobs they provide and the investments made therein and thus it is the U.S. investors that take the brunt of these worldwide attacks. Thank you DTCC management for your sense of patriotism!

Why doesn't the DTCC or SEC address all of these crimes associated with the creation and hiding of FTDs in these Ex-clearing "Arrangements"? The DTCC contends that they are "Powerless" to monitor the activities of their "Participants" even despite the fact that they operate as a "Self-Regulatory Organization" or SRO which is defined as: A non-governmental entity responsible for regulating its members through the **<u>adoption and enforcement of rules and regulations governing the business conduct of its members</u>**.

A question: Why don't you in the DTCC management "*adopt and enforce rules and regulations governing the business conduct of your members*" when it comes to abusive naked short selling and delivery failure related abuses? Is it because your participating members are your bosses that sign your checks?

As far as addressing these "Ex-clearing" crimes the SEC on the other hand claims that these often off-balance sheet "Arrangements" entered into in the "Ex-clearing" arena are of a "Contractual" nature and that they monitor securities law and not "Contract" law. That's a bit hard to swallow when these very clever "Arrangements" that are entered into are done so to circumvent "Good form delivery" and the "Settlement" of these trades. They also are in direct contravention of Rule 15c6-1's forbidding the <u>intentional postponement</u> of the T+3 "Settlement date". These trades don't legally **"Settle"** and the effect is to convert a securities transaction into some form of an undated futures contract that should have been priced much cheaper since the "Package of rights" creating value for these supposed "Shares" never were attached and as mentioned it's the "Package of rights" that give a "Share" its value. The value ascribed to a "Share" in the mind of an investor whether he or she realizes it or not is the arithmetic sum of the values ascribed to its individual rights.

In essence both the DTCC and the SEC pull a "Freddie Prinze" and claim that it's "No my yob" to address the crimes being committed in the "Ex-clearing" black hole for FTDs.

Recall how the DTCC states that they can't tell the public the number of delivery failures in a given stock because it might result in opportunistic trading advantages. That's Latin for "Short squeezes". The DTCC management obviously doesn't want their bosses which are the "Participants" that own the DTCC and are responsible for either "Enabling" or directly committing these crimes to lose a bundle of money. I wouldn't want those that sign my check to lose money nor would I want to reveal the existence of the most heinous examples of thievery ever witnessed either. How incredibly weak is the excuse that they're trying to protect the "Proprietary trading methodologies" of their participants?

In regards to the transcript from the U.S. Chamber of Commerce symposium quoting the SEC's Director of Enforcement the fact that "***many defense counsel would be <u>happy</u> to tell you, when we dig in, what we find is that some of the information that has caused people to be shorting is actually true as to the company***" is very problematic. Why would the SEC lawyers take so much pleasure in "Vigilante" justice being dealt via the commission of a very serious crime? Where did the mindset come from that aiding and abetting criminal behavior is such a good idea that they're "Happy to tell us about"? Is this a budgetary issue wherein the SEC can't afford to provide investor protection and market integrity such that they find it necessary to delegate these tasks to those "Hosting" this worldwide shooting gallery wherein the U.S.-domiciled corporations, the jobs they provide and the investments made therein serve as the "Sitting ducks"?

Being of the opinion that all human beings are basically good people I think that part of the problem is that many people that commit, enable or have a duty of care to prevent or address these crimes or provide investor protection and market integrity just haven't made the **"Link'** mentioned above to these activities as being blatantly criminal in nature and involving tens of millions of victims who just might also be "Good people".

Admittedly, that's being pretty soft on people that sell things and later refuse to deliver that which they sold to the purchaser or his representative. Another question might be where is the purchaser's brokerage firm that took a commission on that trade and is therefore supposed to be acting as the purchaser's "Agent" with certain fiduciary duties of care? Why is he not monitoring for the age of that FTD and pulling the trigger on a buy-in after T+13? The answer is because he doesn't know that a FTD was involved. Only the DTCC knows that and they refuse to notify this "Agent" with the duty of care. They provide him with a blindfold that effectively extinguishes the duty of care. Does the portion of the commission associated with this duty get refunded to the investor? Yeah right!

In exchange for this intentional blindfolding of the purchasing b/d the participants of the DTCC offer a blindfold to the DTCC management when it comes to telling them how many mere "Securities entitlements" they have on their books as reflected on monthly statements they send out above and beyond the number of shares they hold in their DTCC "Participant's account". Everybody in this "House of cards" is on a "Need to know" basis otherwise culpability issues arise. When the management team of a victimized issuer orders an "SPL" ("Securities Position Listing") report to investigate these abuses sure enough the number of shares in total held in the DTCC participant's accounts exactly matches the number of shares held in DTCC vaults which in turn exactly matches the number of shares held in the name of "Cede and Co. as reported on the issuer's Transfer Agent's shareholders of record report.

Thus management of the concerned corporation is intentionally misled into thinking that everything is hunky-doorie at the DTCC and there must be some other explanation for the massive volumes and plummeting share prices than a naked short selling attack. What management typically doesn't realize is that the number of "Shares and/or share entitlements" that the b/d sends out on a monthly statements "Implying" that they're holding and got successfully delivery of might be twice as much as that held in the b/d's DTCC "Participant account". The disparity is the number of FTDs being hidden all around Wall Street both inside and outside of the DTCC. The individual DTCC participants don't communicate to the DTCC the number of "Shares plus mere securities entitlements" reflected on all of the monthly brokerage statements they issue. The DTCC does not want to know this number. They consciously choose not to know this number. The SRO in charge of monitoring the "business conduct" of its members consciously chooses not to know this tell-tale information. This is the information that the concerned management team was looking for instead they paid a lot of money for the "whitewashed" version.

Is there an issue here about releasing "Proprietary trading methodologies"? Of course not, this information is anonymous. Might the release of this extremely "Material" information to prospective investors as mandated by the "33 Act lead to that dreaded "Upward volatility" in the share price of the issuer? A question: What information could possibly be more "Material" to making an investment in a development stage issuer than the presence of astronomical levels of FTDs that have basically preordained this corporation to crash and burn? Both the DTCC and SEC hold that this information is not "Material" at all and need not be released. The congressionally mandated provider of "Investor protection" holds that this information with no equal whatsoever in its level of "Materiality" to the prognosis for an investment and which is mandated to be released by the '33 Act which the SEC is entrusted to enforce is not "Material" enough to offset the potential financial losses of those now proven to be securities fraudsters. Are there any questions about how real and how damaging "Regulatory capture" really is?

After reading through the proposed Rule 10b-21 a few times I went from being excited about its potential to rein in naked short selling abuses to utter disdain for the SEC and then back to being at least semi-excited about its prognosis for making a difference. The lull in between the two periods of excitement had to do with recalling the history of the SEC and the wonderful job they often do in the legislation process but the lousy job they do in enforcing that which they legislate. My thought process was why in the world are you attempting to "Highlight the liability" of abusive naked short sellers when the anti-fraud aspects of Rule 10b-5 (shown below) already forbids (but not specifically forbids unfortunately) this behavior.

Rule 10b-5 -- Employment of Manipulative and Deceptive Devices

It shall be unlawful for any person, directly or indirectly, by the use of any means or *instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,*

a. To employ any device, scheme, or artifice to defraud,

b. To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

c. To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,

in connection with the purchase or sale of any security. (End of 10b-5)

Note that 10b-5 starts with "It shall be deemed unlawful". This is exactly how the proposed 10b-21 is structured which is an excellent idea. Rule 10b-5 has been grossly too broad and the courts have had problems with that in interpreting whether or not "X" action fit the description.

The intentional creation, concealing from the public, and the transferring of enormous amounts of these incredibly damaging "Failures to deliver" done in order to siphon off the investment funds of U.S. citizens is indeed an example of employing a ***device, scheme, or artifice to defraud in connection with the purchase or sale of any security.*** It does indeed represent an example of ***engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person in connection with the purchase or sale of any security.***

It really shouldn't come as too much of a surprise that refusing to deliver that which you sold in a timely manner is an example of criminal misconduct no matter what the complexities are on Wall Street and even if you carry a lot of weight on Wall Street or in political circles.

As noted earlier whether investors realize it or not a "Share" is a "Package of rights" attached to a specific corporation which is domiciled in a specific state in the U.S. The paper certificate is essentially worthless. Most investors are interested in the right to resell these "Packages" to a different investor or market intermediary hopefully at a higher level than what they paid in the first place. Others are interested in the dividend rights while still others with an intent to "Control" or effect changes in the corporation are more interested in the voting rights.

Most of these investors don't understand the concept of mere "Securities entitlements/IOUs" with no associated "Package of rights" attached and the fact that currently in our greatly flawed clearance and settlement system there might be many, many more "readily sellable" but mere "Securities entitlements/IOUs" in circulation over and above the number of legitimate paper-certificated shares in existence in the DTCC vault system and in safe deposit boxes. The number of shares legally issued and outstanding (I/O) of a corporation has to do with the "Articles of Incorporation" of an issuer, its by-laws and prior corporate actions. Investors count on the fact that the maximum amount of shares that can be issued without extraordinary actions equals the "Authorized share" count. What happens when the sum of the paper-certificated shares plus the number of "Securities entitlements" hiding around Wall Street exceeds the "Authorized" share count? Why does the SEC allow a company's 10 K to be so misleading to prospective investors?

Investors just don't understand that they may be blindly buying mere IOUs in a company with so many readily sellable IOUs in circulation <u>already</u> that it has been essentially preordained to an early death. How can this be tolerated? Is it too embarrassing to tell the truth to prospective investors? Is it too embarrassing to fulfill your edict to educate investors as to this crime wave? When did the SEC formally pass a proposal to be part of the problem instead of part of the solution?

"Securities entitlements"/IOUs have no rights attached. They are more akin to "Placeholder securities" used as an accounting aid in the ultra-short interim period before "Good form delivery" does occur. The DTCC is indeed allowed to create "Securities entitlements" <u>for short periods of time</u> because there really are "Legitimate" reasons <u>for extremely short term delivery delays.</u> Where is the DTCC "Stopwatch" that monitors for the age of FTDs? There isn't one. They do however have a "RECAPS" program that can turn the age of a FTD back to zero like a crook turns the odometer of a car back in an effort to DECEIVE a future purchaser.

When the fact that these ultra short term "Securities entitlements" or "Accounting aids" are not so ultra short termed then the "Enablers" must go into high gear to obfuscate their existence. Recall the examples of when the DTCC and the SEC were <u>forced</u> to "Dodge some bullets" and how the SEC earned some "Assists" i.e. during lawsuits heading towards discovery, when corporations attempted to bail out of the DTCC and move on to a "Custody only" basis for transferring ownership in their shares, when state securities regulators poke their nose under the tent, etc. The fact that the DTCC cannot create any of these "Rights" out of thin air becomes problematic later on when an overly trusting shareholder tries to "Exercise" one of the rights that are missing.

Some of these U.S. investors getting stolen from are so naïve that they actually still believe that one share in a U.S. corporation represents one vote in corporate affairs. Newsflash: unaddressed FTDs and their associated "securities entitlements" are not accorded voting rights. Theoretically sophisticated corporations that buy these companies saddled with this "Toxic waste" comprised of yet to be addressed "Delivery failures" don't even understand that they will inherit all of these readily sellable but undetectable and incredibly damaging "Securities entitlements/IOUs" in the acquired company and they will be converted by the DTCC into readily sellable but still undetectable and incredibly damaging (due to the artificial increase in the "Supply" of readily sellable legitimate and/or bogus shares) "Securities entitlements/IOUs" in the shares of the acquirer. Does the SEC or DTCC give the Boards of Directors of the acquiring firm a "Heads up" as to the amount of "Toxic waste" they're about to take on?

After the acquisition should prospective investors in the acquiring company get a heads up as to the amount of toxic waste that just got absorbed? How about the amount of toxic waste in the share structure of the acquiring firm before the acquisition? Prospective investors can't be told: that would give away the existence of the corrupt nature of our current clearance and settlement system which might decrease investor confidence. The sad reality is that every share-based corporate acquisition done in the last forty years since the DTCC was formed has involved this blind transferal of toxic waste and every future one will also UNTIL these fraudulent FTDs are rid from the share structures of targeted corporations and never allowed to reoccupy them.

Just as in the mortgage and credit crises that recently nearly took down our financial system unscrupulous Wall Street participants could package what amounts to garbage, "securitize" it and then sell it off to unsuspecting investors so too can many of these very same Wall Street participants sell nonexistent shares to naïve investors, "securitize" these incredibly damaging IOUs as "Securities entitlements/IOUs" and inject this "Toxic waste" into the share structures of U.S. corporations that they have previously taken a short position in. The design of this fraud is magnificent but its success hinges on unknowing investors and regulators unwilling to provide the "Investor protection and market integrity" mandated of them by Congress.

My initial thought process on the proposed 10b-21 was why the need to take out the yellow highlighter for use on the '34 Securities Exchange Act? Why not just adopt a new <u>attitude</u> and a new sense of commitment to the provision of investor protection and market integrity and in conjunction with the DOJ go after these criminals once and for all so that your enforcement efforts provide the all important and heretofore missing "Meaningful deterrence" to these securities related frauds? I would think that working jointly with the DOJ and putting some of these billionaire thieves behind bars would "Highlight the liability" associated with this type of behavior much better than a magic marker could. This concept involving the provision of "Meaningful deterrence" to this form of theft/"Conversion"/fraud/racketeering needs to be the foundation of your efforts in this regard. As it stands now any risk/reward analysis done by the perpetrators of these frauds is a no-brainer i.e. unlimited rewards with no palpable risk incurred.

I now have come around to the mindset that "Highlighting the liability" of persons that deceive specified market intermediaries about their "<u>intention"</u> or "<u>ability"</u> to deliver securities in time for settlement or that deceive them about their <u>"locate"</u> or <u>"ownership"</u> of shares that subsequently leads to a delivery failure can <u>under certain specific conditions</u> really make a difference.

Firstly, some positive reinforcement in the form of kudos are due to those at the SEC responsible for refining the definition of securities "Ownership" incorporated into the text of Reg SHO via Rule 200(b). Before those changes were made abusive "PIPE" (Private Investments in Public Equities) financiers would promise in their financing contracts not to "Short sell" shares in the issuer they are financing. Since the definition of a "short sale" is and was "the sale of a security that the seller does not <u>"Own"</u> and that is consummated by the delivery of a security borrowed by or on behalf of the seller" before

Reg SHO was enacted merely possessing a security convertible into the shares being sold qualified for "Ownership" even if that convertible security wasn't converted yet. Thus these would be "Friendly" financiers weren't "Technically" executing a short sale and violating their contract as they intentionally pummeled the share price of the company they financed. This inducing the share price of your theoretical partner into a "Death spiral" would then allow them to convert their convertible instruments into that many more shares i.e. a "floorless convertible" which is convertible into a fixed dollar's worth of shares no matter what the price. That was very well done on your part and U.S. investors are or should be thankful.

As one can see by the definition of a "Short sale" abusive naked short sales (ANSSs) as opposed to legal naked short sales performed by a truly "Bona fide" MM while acting in that capacity (LNSSs) aren't technically a "Short sale" at all because there is no "Delivery of a security borrowed by or on behalf of the seller". Right? Wait a minute though. In the definition of a "Security" the term "Evidence of indebtedness" qualifies as a "Security". Does the DTCC maintain that the "Delivery" of an IOU or "Evidence of indebtedness" constitutes "Good form delivery" of that which the purchaser thought he was buying? They do. I don't. I think its gross fraud. What is fraud? F**raud** is a deliberate misrepresentation which causes another person to suffer damages, usually of a monetary nature. **An "Evidence of indebtedness" may pass the sniff test as being technically a "Security" but it surely doesn't qualify as being "Good form delivery" of that which the investor thought he was buying.**

Abusive naked short selling (ANSS) is more appropriately viewed as just one type of a "Securities related fraud" of which there are many forms but none perhaps as pandemic, as poorly understood or as heinous in character as abusive naked short selling. This is especially true when the fraud couldn't possibly be pulled off without the existence of a corrupt clearance and settlement system present to "Enable" the fraud even though the clearance and settlement system is administered by a "Self-Regulatory Organization" (Securities cop) defined as a:

Non-government organization which has statutory responsibility to regulate its own members through the adoption and enforcement of rules of conduct for fair, ethical and efficient practices.

Another definition of SRO is: A non-governmental organization that has the power to create and enforce industry regulations and standards. The priority is to protect investors through the establishment of rules that promote ethics and equality.

Yet another on the FINRA website is: An entity, such as FINRA, responsible for regulating its members through the adoption and enforcement of rules and regulations governing the business conduct of its members.

ONE OF THE FEW SILVER LININGS

With all of the bad news associated with ANSS and DFRAs the one bit of good news is that an uncompromised authority can attain a certain level of visibility of the quantity of FTDs currently poisoning the share structure of a given issuer. Why? Because all purchasers of shares and/or mere entitlements are receiving a monthly brokerage statement identifying their purchases. If a regulator performs a census of b/ds and banks and quantifies the amount of "Long positions" held by investors as reflected on their monthly brokerage statements and compares this to the Transfer Agent's records of the shares issued and outstanding then one can appreciate the levels of the disparities that are involved. To this number would have to be added the number of shares or entitlements held offshore by b/ds that don't interface directly with the DTCC.

One of the casualties of these wars is the protective role of a company's Transfer agent or Registrar as it pertains to unaddressed FTDs. DTCC policies have essentially "blindfolded" the TAs of the world and handcuffed them from providing this much-needed protective service. DTCC policies are now railroading the smaller independent TAs of the world out of business as they create policies that only the TAs associated with DTCC participants can afford to implement. Thus this limited visibility is getting even cloudier.

HOW DO "PUMP AND DUMPS" FIGURE IN ON THESE FRAUDS?

The antithesis of an abusive naked short selling attack artificially manipulating share prices downwards is a "Pump and dump" fraud artificially manipulating share prices upwards. These are typically orchestrated by corrupt management teams and associated promoters not afraid to embellish press releases with a bunch of nonfactual hyperbole. These practitioners will sell usually super cheap shares into the buying induced by the false statements. So how do the two types of frauds interrelate?

Recall that "Immobilization" and "Dematerialization" resulted in the ability of corrupt DTCC participants to create and sell easy to counterfeit electronic book entries masquerading as legitimate "Shares". This is therefore a "Sell-side" fraud wherein the sellers intentionally drive share prices down and either cover their short positions at much lower levels or perhaps more commonly refuse to cover their naked short positions and go for the Jugular to bankrupt the targeted corporation.

A "Pump and dump" is just the opposite wherein the share prices are artificially driven upwards. The interests of the two sets of practitioners of these two varieties of frauds are diametrically opposed. The last thing an abusive naked short seller wants to see is the share price being driven upwards. The existence of "Pump and dump" fraudsters represents a threat to <u>abusive</u> naked short sellers but not necessarily to bona fide MMs that might be net long or net short at any given time. Truly bona fide MMs actually welcome the "Pump and dump" fraudsters because they're easy to detect and they can sell shares into the "Pump phase" and cover their short positions later at lower levels during the "Dump" phase. Truly bona fide MMs are supposed to be injecting liquidity by naked short selling during run ups in share prices and covering them later on. Abusive MMs don't have this luxury when they're already sporting large naked short positions that they must collateralize in a marked to market basis on a daily basis.

So what's the difference between a "Pump and dump" fraud and the typical small corporation hiring promoters to spread the word about its new "Turbo widget" technology so that its shareholders can make a buck on their investment and so that the company can raise money in a less dilutive manner at higher price levels? Unfortunately there isn't a lot of difference sometimes and when there is it would have to do with the accuracy of the company's press releases. But in the end it doesn't really matter if the abusive naked short sellers misdiagnose a good company as a "Scam" or as a "Pump and dump". Either way that company is probably going down because it was unfortunate enough to have been targeted in the first place.

Besides the obvious monetary and job losses associated with ANSS and DFRAs one cannot forget the products that these young corporations might have brought to the consuming public if there were a level playing field on Wall Street. The criminals involved in the targeting phase of these frauds usually go after young defenseless companies run by non-business professionals whose business has a high monthly burn rate and has no chance of becoming cash flow positive for many years. Unfortunately young biomedical companies with prospective cancer cures fall right between the cross hairs. The fraudsters know how long the FDA approval process is and they know that these companies can easily be forced to constantly go to the markets to raise money at share price levels put artificially into a "Death spiral" that becomes self-perpetuating. To illustrate the patriotism of these fraudsters one of the more abusive attacks is now being felt by a company that retrofits the Humvees in Iraq with armor plating to counter the deadly effects of IED explosive devices or "Roadside bombs".

It's ironic but the mere existence of "Pump and dumpers" is what might mentally justify abusive naked short selling thefts in the minds of many that haven't made that **"Link"** yet and figured out that they're partaking in criminal activity in these thefts and that there really are victims and damages involved. I'm not quite sure how the refusing to deliver that which they sold doesn't quite dawn on them as being improper. The sentiment seems to be that it's a war against these "Pump and dumpers" and wars have collateral damages. Try explaining this to an investor in a development stage issuer trying to make an honest buck in the market. This illustrates the critical need for the SROs and regulators to **disclose** the absolute number of FTDs in the share structure of any corporation that is publicly-traded. This includes those held in an Ex-clearing format that no regulator or SRO seems to want to be responsible for. Providing "Investor protection" when it's handy to do so doesn't quite do it for these "Unworthy" investors in start up companies.

WE'RE JUST TRYING TO DO OUR BEST TO CLEAR AND SETTLE TRADES IN AN "IMPERFECT SYSTEM"

This has become the war cry of the DTCC when accused of being the "Ultimate enabler" in these crimes involving abusive naked short selling and delivery failure related abuses. Make no mistake there are crooked management teams in publicly-traded companies and there is a need for a regulatory body like the SEC to enforce the tenets of the 7 securities acts. I have a very large problem with that war cry of the DTCC, however. The DTCC's job is to "Immobilize" and "Dematerialize" paper-certificated shares into an equivalent amount of electronic book entry shares. As an SRO they are also mandated to be:
"*responsible for regulating its members through the adoption and enforcement of rules and regulations governing the **business conduct** of its members."*

Their job is to regulate the "business conduct" of their own member/participants. That's not to say that any of the DTCC's "Regulatory" efforts truly made for the overall good weren't appreciated but where the giant "Disconnect" between sincere regulatory efforts and common thievery comes in is when the financial beneficiaries of the thefts of the investor funds of unknowing investors buying shares of previously targeted corporations are the vigilantes providing this "justice" outside of their own congressional mandate at the same time their congressional mandate of "Governing the business conduct of its members" falls by the wayside. As far as "Immobilizing" and "Dematerializing" difficult to counterfeit paper-certificated shares into **an equal amount** of easy to counterfeit electronic book entry shares nothing could be further from the truth.

What gives away the fraudulent intent of the abusive DTCC participants is this: While theoretically acting as "Shareholder advocates" by intentionally wiping out corporations deemed to be run by "Pump and dumpers" done in a theoretical effort to save any future investors from buying shares at relatively high levels only to see the share price crash during the "Dump" phase where does this "Shareholder concern" disappear to in regards to the investors you are selling fake shares to and refusing to deliver them to as you intentionally kill their investments?

The answer goes right back to the "Ultimate paradox" and has to do with the fact that selling shares in our currently corrupt clearance and settlement system and refusing to ever deliver them is very lucrative as the predictability of putting a targeted corporations share price into free fall is quite high. Thus "Shareholder concern" is high when it is lucrative for it to be high and nonexistent when it's the money of the shareholders involved that is sought after. In other words it's blatant thievery with a handy cover story that is easily dismissed until those with the authority to offer meaningful deterrence do so.

REALITIES THAT NEED TO BE KEPT IN MIND IN ORDER TO DESIGN AN ALL-ENCOMPASSING SOLUTION

1) The SEC for some unforeseen reason does not have the power to add to or delete from the rules and regulations of any Registered Clearing Agency like the DTCC as per Section 19C of the '34 Exchange Act. These "RCAs" have somehow attained a "Sacred cow" status in this regards. As a result through the years the goal of abusive DTCC participants is to get as many self-serving rules into this rulebook as possible. Historically these have always been added theoretically in this never ending "quest" for "enhanced efficiencies". Imagine the audacity to have a policy wherein the funds of an investor are allowed to flow into the wallet of a seller of securities that refuses to deliver that which he sold. This fraudulent seller need only collateralize this "open position" and as the share price predictably plummets from this intentionally dilutive activity the investor's funds are unconscionably allowed to go to the fraudster.

   The SEC does however have the power and the mandate to enforce the 7 securities acts. This Rule 10b-21 is part of the '34 Act. The goal of legislation therefore must be to address the parts of the rules and regulations of the DTCC and NSCC that are in direct contravention of the tenets of the 7 securities acts and there are many. For instance the theme of the entire ’33 Act (“The Disclosure Act”) is to make sure that all prospective investors be made aware of all of the “Material” risks involved in making an investment in a given issuer. As mentioned before there is no more “Material” risk greater than the pre-existence of astronomical levels of FTDs both inside and outside of the DTCC that perhaps has already preordained a U.S. corporation to die an early death. In the next section I’ll try to encapsulate some of the “bad news” into a package so that you can keep this package in mind while discerning which form of legislation would be the most effective.

2) There are indeed bad guys running some corporations that do “Pump and dump” frauds. Their prospective investors need protection from reading false press releases and buying in at high levels only to have the floor of the market drop out during the “Dump phase”.
3) There are probably thousands of corporations currently under ANSS attacks as we speak to some degree or another. Their investors need protection.
4) A minority of the vigilantes theoretically fighting pump and dumps might not even realize they’re engaging in criminal conduct although refusing to deliver that which you sell would be considered by most as being inappropriate.
5) All of the DTCC participants and hedge funds acting as “Enablers” and direct participants make a ton of money when FTDs pile up in the system and when targeted companies crash and burn. It’s the same money that the investors in these usually development stage companies are losing because it’s a zero sum game.
6) Wall Streeters are selectively allowed access to this “gravy train” involving killing corporations and getting paid handsomely. The average investors, not that they would do it if they could, have no access because they don’t have the “juice” to provide to corrupt MMs or prime b/ds. This is a crime for those with “juice”.

“PACKAGING” THE BAD NEWS

1) The SEC cannot add to or delete from the rules and regulations of the DTCC and NSCC. This 2,000 page rulebook is full of self-serving rules and regulation in direct contravention of the 7 securities acts.
2) Fraudsters can unconscionably gain access to an investor’s funds by selling “goods” that they refuse to deliver.
3) Purchasers of securities involving an FTD have no clue that what they purchased never got delivered.
4) All of Wall Street makes tons of money when the level of FTDs goes through the roof. That money came from overly trusting investors on a dollar for dollar basis (a zero sum game).
5) Shares in “street name” are held in an “anonymously pooled” format for “enhanced efficiencies” reasons. They are nontraceable and thus one parcel of shares can serve as a “locate” or “pre-borrow” for dozens of transactions.

6) Once an FTD makes it into the safe confines of the DTCC the DTCC management will as if on cue claim that they are "Powerless" to buy it in no matter how old it gets.
7) Both the SEC and the DTCC refuse to address the criminal behavior going on in Ex-clearing. Since Reg SHO only addresses FTDs held in a "Registered Clearing Agency" then Ex-clearing has obviously become the method of choice to create and later hide FTDs. It serves as a "black hole".
8) The SEC and DTCC are "Captured regulators" often looking after the financial interests of those they are supposed to be regulating.
9) "Immobilization" and "Dematerialization" converted difficult to counterfeit paper-certificated shares into easy to counterfeit electronic book entries. This was done to "enhance efficiencies" because of the cumbersome nature of paper-certificated shares.
10) "Cede and Co.", the nominee of the DTCC, has been designated the "legal owner" of all shares held in street name again for reasons involving the quest for enhanced efficiencies. The transfer of ownership mandated by Section 17 A then becomes very tricky as the Cede and Co. is both the buyer and seller in nearly all transactions.
11) CNS "netting" which occurs in 96% of all transactions hides the existence of FTDs. It too was instituted in an effort to "enhance efficiencies".
12) The DTCC's "Automated Stock Borrow Program" allows the shares borrowed to "cure" delivery failures and that are delivered to the purchasing b/d to be placed right back into the same lending pool from whence they just came **AS IF THEY NEVER LEFT IN THE FIRST PLACE.** The SBP is insanely allowed to be non-decrementing. There they stand ready to "cure" yet another FTD. After a while perhaps a dozen different purchasers "Co-own" this very same parcel of shares which unfortunately due to "anonymous pooling" (another efficiency enhancing measure) can't be readily identified nor can the 12 co-owners.
13) The DTCC management admittedly places their "Participants" on the honor system as to what type of shares they donate to the SBP even though shares held in Type 1 cash accounts and shares held in qualified retirement plans are strictly forbidden to be loaned out. The immense temptation to cheat on this "honor system" comes from the fact that any b/ds donating the shares of their clients to this lending pool receive the cash value of the shares they donate for their own uses and which count to their own net capital reserves. The b/d need not share any interest income made from this "arrangement" with the client that purchased the shares in the first place. As a result everybody on Wall Street is highly financially incentivised to keep the level of FTDs through the roof.
14) Market participants on Wall Street will refuse to take a "Guaranteed delivery" buy order from a client. This would give away the fact that we have 2 distinct markets on Wall Street; those for legitimate shares which is invisible to investors and those for a mixture of legitimate shares and mere securities entitlements which trades at a lesser price level.

(NOTE: There are hundreds of other examples of "bad news" in this package which we'll not address at this time)

BEING AWARE OF THIS "PACKAGE" OF BAD NEWS AND THE SUBSEQUENT ESSENTIALLY "RIGGED" NATURE OF OUR MARKETS IN FAVOR OF WALL STREETERS PLACING NEGATIVE BETS AGAINST CORPORATIONS HOW WOULD A TRULY UNCOMPROMISED/ UNCAPTURED REGULATOR LEGISLATE?

Would you create yet more opportunities for fraud via the allowance of mere "locates" instead of a firm "pre-borrow"? Of course not. As we've just learned there isn't even such a thing as a firm "pre-borrow" in our current clearance and settlement system filled with nondecrementing loan sources like the SBP and "Easy to borrow" lists. There's nothing firm in a system whose foundation has been intentionally converted into quicksand in this theoretical quest for "enhanced efficiencies". "Anonymous pooling" took care of that. There is no such thing as a Rule 144 "Restricted security" in this clearance and settlement system with all of these well-designed loopholes. You can sell anything you want at any time you want as long as you have enough "juice" to get an abusive DTCC participant to create and then sit on the FTD.

Would you have flimsy language like "reasonable grounds" in a system like this? Of course not. Clearly what you would have is an exhaustive list of behavior deemed to be unlawful in regards to the creation, transference and hiding of FTDs from the public.

In reality, when you keep in mind the significance of this "package of bad news" there really is only one solution. FTDs need to be prevented; they need to be outlawed UNTIL the DTCC policies enabling these frauds are changed. Investor protection and market integrity need to no longer take a back seat to this preoccupation in presenting the façade that these transactions really are "settling". These trades do not legally "settle". The "Settlement" of a transaction is defined as" the conclusion of a transaction in which that which was purchased was delivered IN GOOD FORM in exchange for the funds of the purchaser i.e. "Delivery versus payment" or "DVP". The "delivery" of electronic book entry credits which number far in excess of the paper-certificated shares that were "dematerialized" and allowed their procreation does in no way, shape or form constitute "Good form delivery".

As mentioned many times the DTCC's Section 17 A initial mandate was to "Immobilize" and "Dematerialize" paper-certificated shares of an issuer into an equal amount of electronic book entry "Shares" of that issuer. They were then mandated to "promptly and accurate clear and **SETTLE** transactions including the transference of ownership". The emphasis needs to be on the **SETTLEMENT** of trades and not in the provision of a façade that **SETTLEMENT** is truly occurring because it isn't.

CONCEPTS TO KEEP IN MIND

As currently written I am a firm believer that the proposed 10b-21 is too narrowly tailored. The effectiveness of the proposed 10b-21 can be greatly enhanced if several concepts are kept in mind:

1) Since the creation, concealment and illegal transferring of these "Failures to deliver" (FTDs) over perhaps 13 days in age needs to be the focus of this "Liability" getting "Highlighted" then you at the SEC need to make sure that all "Fails" are indeed being accurately reported, tallied and monitored as to their age and location. For instance, in the case of the Automated Stock Borrow Program ("SBP") at the DTCC when a delivery failure occurs or is anticipated to be about to occur shares can be "Borrowed" from this <u>self-replenishing</u> lending pool to "Cure" or perhaps circumvent the delivery failure. The question becomes was there a "Delivery failure" involved here or not. Was the delivery failure "Cured" or prevented? When a b/d on Wall Street "Internalizes" a buy order via "Desking" the buy order (naked short selling into the buy order at a b/d's own Trading Desk) does a "Fail" occur? Does the shifting of "Settlement" and "Good form delivery" into the netherworld known as "Ex-clearing" (Outside of the DTCC's CNS program) constitute a "Fail" that is being tallied somewhere in the system by the SEC or an SRO (Self-Regulatory Organization)? All of these hiding places need to be closely monitored and the delivery failures occurring here need to be accounted for in order for 10b-21 in its current form to be effective.
2) In securities law and Transfer Agent parlance proper "delivery" needs to be made in "Good form" and trades don't legally "Settle" until "Good form" delivery has been accomplished. For instance, the securities being "Delivered" need to be registered, not bearing a restrictive legend, not the product of any criminal activity or procedure legally construable as involving the "Counterfeiting of securities", etc. In the case of the self-replenishing lending pool of securities in use at the DTCC's "SBP" by definition "Good form delivery" cannot be achieved when the lending pool is self-replenishing. Picture for a moment Joe Smith's shares in the DTCC's lending pool of securities. Let's die them red for identification purposes. The DTCC doesn't know that those shares belong to Joe Smith. They choose not to know the identity of the beneficial owner of those shares. They just know that they were purchased by a client of "ABC" brokerage firm which is a DTCC "Participant". Let's assume that a delivery failure occurs and the DTCC chooses the red parcel of shares (Joe's) to "Cure" or prevent the failure to deliver. The brokerage firm of the purchaser of Joe's shares is then sent the "Red parcel" of shares electronically. It goes into their "Participant account" at the DTCC. The DTCC then insanely allows this buying firm to replace this very same "Red parcel" of shares still in an electronic credit format right back into that very same lending pool AS IF THESE SHARES NEVER LEFT IT IN THE FIRST PLACE. This artificially dyed red parcel of shares can then be chosen to "Cure" yet another delivery failure and may eventually be unknowingly "Co-owned" by a dozen different investors all that plan on voting these "Shares"..

   When asked how in the world an investor's funds can be allowed to flow to those that sell nonexistent shares and constantly refuse to deliver that which they sold inordinate amounts of time ago there is no response. The DTCC will later chime in that those "Debts" or IOUs haven't gone anywhere and they're still on the books and still need to be "Eventually" paid but what they don't tell you is that when the victimized corporation finally succumbs to these frauds and goes bankrupt or if the fraudsters successfully convince the SEC to get the corporation "Delisted" then those debts go poof and all of the proceeds of those illicit sales i.e. the collateralization money flows into the wallets of those that intentionally sold nonexistent shares and refused to deliver them. The need to "Eventually" deliver shares does not belong in the same sentence as "the mandate to promptly settle transactions". An interesting study for the SEC or Congress to take on would be to quantify the delivery failures of the last 30 corporations that the SEC delisted and compare it to statistical norms. This would reveal whether or not those corporations drove off the cliff via perhaps mismanagement or were forced off the cliff by the levels of "Toxic waste" in their share structures.

An interesting phenomenon takes place at the peak of these battles wherein buy orders for a company's shares actually become a net negative for the share price as the fraudsters become forced to naked short sell into any buy orders that appear which accelerates the piling up of the incredibly damaging IOUs that can be sold by their purchasers at any time. How do you get forced into naked short selling into pretty much all buy orders? Once your naked short position gets to an astronomic level then a tiny percentage in share price gain could result in a massive influx of collateralization cash being demanded. Now that's a self-fulfilling prophecy when you can win the battle whether people buy **or** sell the shares of the targeted issuer! What kind of a clearance and settlement system would be designed such that the owners of the system, the DTCC's 11,000 "Participants", could easily establish massive naked short positions and actually convert buy orders in the stock under attack into a net negative for the share price? What kind of a regulatory commission would allow this and refuse to provide "Meaningful deterrence" to stop it. What other conclusion can academics and investors come to other than our clearance and settlement system is grossly "rigged" in favor of those that administer it and own it?

This self-fulfilling prophecy aspect is partially why biomedical firms are often targeted in that the fraudsters attacking them know that these yet to be cash flow positive companies are constantly forced to do financings as they do nothing but spend money as they go through the prolonged FDA approval process for their cancer cure or breakthrough medical device. The fraudsters involved in these "Bear raids" love to target corporations with high monthly burn rates and no chance of having positive cash flow for prolonged periods of time. Unfortunately for society these are the same companies that make the life saving medical breakthroughs. This provides us a peak into the nature of the culture of greed driving these activities as well as the "Moral hazard" aspects when the regulators refuse to deal with these crimes and actually enable them.

"Delivery" of electronic book entries backed by nothing but "Securities entitlements" (IOUs) well above the number of paper-certificated shares held in the DTCC vault system cannot be made in “Good form”. The first time that the “Red parcel” of securities purchased by Joe Smith were used in the SBP was indeed legitimate if he held them in a margin account but every subsequent time they were used to cure an FTD resulted in the creation of illegitimate and incredibly damaging mere “Securities entitlements/IOUs” that illegitimately depress the share price of the company under attack by artificial dilution. The concept is fraudulent by definition and the resulting “Securities entitlements/IOUs” have come to be known by some as “Phantom shares”, “Counterfeit electronic book entries”, “Place holder securities”, etc. The presence of astronomic levels of these readily sellable but “Phantom shares” will obviously artificially depress the involved corporate issuer’s share price by increasing the “Supply” of the arithmetic sum of the readily sellable “Legitimate” shares plus the readily sellable “Phantom shares”. The laws of supply and demand are still in effect it’s just that the “Supply” variable has been fraudulently increased. In securities law parlance this is referred to as creating “An artifice to defraud”. An “Artifice” is defined as “A trick or clever device”. Those being defrauded are <u>all of the investors</u> in that corporation whose “Oversupply” of readily sellable “Legitimate and/or illegitimate shares” was artificially induced because of the sometimes precipitous associated drop in the share price. There is no need to identify the particular “Joe Smiths” that have been defrauded because all of the shareholders and employees of that corporation have been defrauded. The obvious solution would be to be able to trace out a specific parcel of shares so that it cannot serve as a “Locate” or a “Borrow” for more than one party at a given time. The right to vote this parcel of shares then needs to be specifically determined and communicated to all participants in the financial system. A recent study in our current “Overvoting crisis” showed that 100% of the 431 corporations studied had “Overvoting” issues. This problem is pandemic in the U.S. and abroad and it’s the United State’s clearance and settlement system perceived to be the most corrupt and the investments made by U.S. citizens that are looked upon as the easiest to siphon off.

3) Besides a seller of securities lying about the authenticity of his “Locate” of borrowable shares, his “Ownership” of the shares, his “Intent” to deliver (In “Good form”) by T+3 or his “Ability” to deliver by T+3 in the proposed 10b-21 you at the SEC need to “Highlight the liability” of other forms of fraudulent behavior associated with abusive naked short selling. The four that you are targeting are very important and were an excellent choice. It also must be kept in mind that 10b-5 and other “Anti-fraud” rules are extremely broad and highlighting” <u>specific</u> examples of “Unlawful” behavior in 10b-21 could provide a strong “Meaningful deterrence” measure as <u>specificity decreases plausible deniability</u>. If the legislation specifically forbids certain behavior then the concept of “Meaningful deterrence” comes into play. When regulators are not using “Principle-based” regulatory mechanisms like those preferred in Europe then the <u>specificity</u> of just exactly what types of behavior are unlawful must be articulated so that the fraudsters can’t say “Judge, I had no idea that robbing from the clients that I owe a fiduciary duty of care to was improper”. After all, who would have ever thought that killing U.S. corporations and the investments made

therein so that the investors' proceeds could be re-routed to sellers of nonexistent shares could be considered unlawful or criminal?

Note that The DTCC has the option of donning an SRO with a rulebook that can't be modified "hat" when it is handy, an RCA "hat" when it is handy, a "limited purpose trust company" under the banking laws of the State of New York when it is handy, a member of the Federal Reserve when it is handy, etc.

One must keep in mind that it is the mandate of the SEC to regulate the DTCC and enforce the rules and regulations of the 7 securities acts. Now the task becomes to make the rules and regulations through 10b-21 of the '34 Act specific enough to deem all of this fraudulent activity as being unlawful. It's time to tell the DTCC management that "Buzz off" was not an acceptable answer to their move to get rid of the "Ultimate paradox". The rescinding of 19 C shouldn't be far behind although it is already illegal for the DTCC rules and regulations to contain anything in direct contravention of the 7 securities acts. With each new law that is passed and rule adopted the SROs and RCAs are supposed to modify their rules that might contravene the new rules.

In addition to "Highlighting the liability" for the unlawful actions described in the proposed 10b-21 involving the intent to deliver, the ability to deliver, the legitimacy of and documentation of the "Locate" and "Ownership" issues perhaps you'll agree it wise to also specifically:

"Highlight the liability" of:

A) Market maker's that exchange their immunity from making and documenting a "Locate" and immunity from effecting a "Pre-borrow" before making admittedly naked short sales and delivering by T+3 with hedge funds or others in exchange for them being directed "Order flow" i.e. renting out space under their "Umbrella of immunity" accorded only to "Bona fide" market makers and only while they're acting in a "Bona fide" market making capacity at the time. Illegally accessing this exemption while not truly "acting in a "Bona fide" market making capacity" is a form of fraud/theft and the "Liability" for this type of behavior needs to be "Highlighted". This form of fraud provides an excellent modality for corrupt hedge funds or Wall Street participants to circumvent the high cost of some "Borrows" or the unavailability of a "Borrow". Although "Highlighting" this liability might make good sense I think that most of the abusive naked short sellers are already well aware of this "Liability" but instead rely on the timidity of the SEC to enforce the laws that are already in effect. Illegally accessing that exemption is fraud pure and simple wherein "Deceit" is used, victims are involved, damages are incurred and the public trust is breached.

B) Back office workers and Compliance Officers on Wall Street that randomly cancel the votes cast by investors artificially deemed to have purchased bogus securities in an effort to cover up these crimes and these "Open positions". The concept of operating a business as a "Publicly traded corporation" has been trampled on the greed of abusive DTCC participants. As mentioned earlier the concept of doing business as a "Corporation" came first. Trading in the "Shares" of equity ownership of a "Corporation" came much later. There was no implied consent involved to totally turn the concept of a "Corporation" upside down just to facilitate the trading of its shares. Even the very foundational concept of "One share, one vote" has had to be discarded in order to accommodate and cover up this form of theft.

C) Wall Street "Analysts" that provide "Hatchet job" forms of journalism as a means of aiding and abetting this criminal behavior. How are these "Journalists" compensated? Probably not with cash or checks that might be traceable but more likely via nontraceable methodologies like access to hot IPOs or "Scoops" on a story. Where do 1st Amendment rights end and enabling fraudulent behavior begin? Let's have 10b-21 add some <u>specificity</u> to be able to better define this point.

D) Market makers that illegally access the exemption from making "Locates" and "Borrows" while trading <u>for their own accounts</u> and when they're not acting in a "Bona fide" market making capacity entitled to that exemption.

E) Market makers that refuse to cover archaic naked short positions even though the share price of the corporation illegally naked short sold has collapsed. This is much more heinous than refusing to cover naked short positions in flat markets and it is much more diagnostic as to intent.

F) Market makers and co-conspirators that launch illegal "Bear raids" on corporations in danger of being delisted from their exchange if their share price stays below a set level for a given amount of days. These attacks are very easy to diagnose and ubiquitous in nature.

G) B/ds whose actions are so contrary to the investing public's welfare that SYSTEMIC RISK issues are deemed to be the result of their behavior. Does it not make sense that the same culture of greed shown by certain b/ds responsible for the subprime mess has resulted in these very same players being prosecuted most often for naked short selling crimes? A culture of unbridled greed can display itself in many forms.

H) Any Wall Street trade intermediaries that fraudulently manipulate any "Easy to borrow" list. If you're going to allow the presence of a corporation's shares on an "Easy to borrow" list to bypass the need for a "firm locate" and qualify as having "Reasonable grounds" to believe that shares will be delivered by T+3 then "Easy to borrow" lists must be closely monitored for manipulative activity and there must be "Specific" criteria for placing a corporation on one of these lists. "Easy to borrow" lists should obviously not circumvent the need to make delivery by T+3.

Wall Street firms need to be monitored as to the percentage of "Easy to borrow" claims result in delivery failures in order to detect for abuses.

I) Any market participants that refuse to "Decrement" the "Locates" or "Borrows" they effect for other market participants. Without this the same "Parcel of shares" albeit in an electronic book entry format can and will be essentially "Counterfeited" and could serve as a "Locate" or "Pre-borrow" or create rental income for many market participants and their clients simultaneously.

J) Any b/ds that intentionally abuse the DTCC's SBP glaring weaknesses. In reality the SEC needs to force the DTCC to get rid of the self-replenishing nature of the SBP which is in contravention of the anti-counterfeiting of securities laws as well as literally dozens of other securities laws i.e. 15c6-1, etc. The DTCC's "RECAPS" program should also be deemed in violation of the securities laws forbidding the artificial extension of "Settlement dates". Since a "Delivery failure" is needed to trip the proposed 10b-21 rule than any artifice or contrivance used to illegally create or to conceal "Delivery failures" must be held unlawful.

K) Abusing the current lack of an "Uptick rule" to mercilessly drive share prices down in order to trip "Stop losses" visible only to the Wall Street participants or to "Shake the tree" to induce the panic selling of shares. Intentionally triggering margin calls via abusive naked short selling should also be deemed "Unlawful". Although the "Uptick rule" is temporarily (hopefully) missing obvious market manipulations associated with creating illegitimate FTDs need to be "Specifically" held as being unlawful.

L) Abusing the "Ex-clearing" modality to intentionally bypass "Good form delivery" and therefore the legal "Settlement" of trades. Simply "Pairing off" with other Wall Street participants and agreeing to not force a buy-in of a b/d's $1 billion of delivery failures of stock "ABC" in exchange for that b/d not forcing his co-conspiring b/d to deliver the $1 billion worth of delivery failures of stock "XYZ" is a form of manipulation due to its creation of and later concealing of incredibly damaging "Failures to deliver". This is obviously against the laws forbidding the artificial delaying of "Settlement date" (15c6-1).

M) Using off balance sheet transactions to create or conceal "FTDs".

N) Any auditor that enables and/or covers up the existence of FTDs on the books of those with fails to deliver. These are "Material facts" as well as "Contingent liabilities" that a perspective investor in a market participant's publicly-traded shares has a right to know about. These "Open positions" need to be valued keeping in mind that covering these naked short positions is bound to drive the share price of the victimized issuers significantly in the case of "Thinly traded securities".

O) Intentionally interfering with a corporation's voting share structure or a shareholder's right to vote that which he fully paid for especially when done in an effort to cover up high levels of delivery failures.

P) Any market participants intentionally hitting bids at times that overlap with the "Marking to market" of "Open positions" involving legitimate or abusive naked short sales.
Q) Failure to mail out proxy materials in a timely manner in an effort to artificially reduce the ability to vote in an effort to cover up the existence of high levels of delivery failures.
R) Tampering with or affecting the timing of or contents of any release of negative analytical reports done in conjunction with illegally attained naked short positions.
S) Initiating litigation procedures solely to create "bad press" and induce a falling share price in conjunction with a naked short selling attack or "Bear raid". Irrespective of the guilt or innocence of the corporation or management being sued the mere press release of the event and knowledge that lawsuits are expensive to defend will predictably cause the share price of the issuer involved to plummet.
T) Aiding in the cover-up of a fellow b/d's naked short selling fraudulent activity i.e. by acting as a "parking spot" for naked short positions to avoid a co-conspirator's risk of being bought-in or the target company's listing on the Reg SHO "Threshold list".
U) Using after market trades to effect abusive naked short sales or to conceal or transfer current naked short positions attained fraudulently.
V) Utilizing "Derivative" transaction for the purpose of creating or hiding FTDs associated with "ANSS".
W) Any regulator or SRO refusing to refer matters involving criminal abuses associated with naked short selling frauds to the DOJ.
X) Any regulator or SRO in possession of knowledge of the amount of "Failures to deliver" in a given U.S. corporation to make that extremely "Material" information available to the investing public as mandated by the 1933 Securities Act ("The Disclosure Act").
Y) Any securities intermediary entering into "Derivative" instrument transactions to circumvent "Good form delivery" and the T+3 "Settlement" of trades. This might include the structuring of "Share repurchase agreements" or" Repos" or one day "Swaps" specifically designed to circumvent "Good form delivery" and the legal "Settlement" of trades as well as circumventing the expenses related to borrowing shares and/or the unavailability of shares to borrow.
Z) Any short seller to access a b/d's "DMA" or "Direct Market Access" system for purposes of carrying out abusive naked short selling frauds involving "Deceitful locates" or "Deceitful borrows" leading to the accumulation of FTDs in the share structure of the issuing corporation.
AA) For any b/d to allow a client access to its "Direct market access" system or sponsored access system in an effort to "Enable" abusive naked short selling frauds. Any FTDs associated with this access will be promptly bought in by the b/d providing the access by T+13.
BB) For any market participant to access the services of an "ECN" to carry out abusive naked short selling or delivery failure related abuses.

CC) For the administrators of any ECN to facilitate abusive naked short selling frauds or delivery failure related abuses. Any delivery failures that reach the age of T+13 will be bought in by the administrators of the ECN in coordination with the b/d purchasing the shares involving an FTD.

OTHER SUGGESTIONS:

1) Since “Bona fide” MMs need not perform “Locates” or firm “Pre-borrows” we need strict definitions of “Specifically” what constitutes “Bona fide MM activity” and what does not qualify as “Bona fide” market making activity. In a flat market when would a truly bona fide MM close his “Open position” by? One must keep in mind that the damages accrued by the corporation and its shareholders are proportional to the product of the size of the naked short position multiplied by its age. Since Reg SHO did indeed shut down many of the loopholes utilized in abusive naked short selling campaigns the majority of these crimes being committed now involve market makers either acting on their own or in conjunction with co-conspiring usually unregulated hedge funds while illegally accessing the exemption from performing a “Locate” or “Pre-borrow” accorded theoretically only to “Bona fide MMs then this is where the emphasis needs to be placed. For a regulator with a distinct history of timidity in enforcing that which they legislate clear cut no-nonsense descriptions of unlawful behavior <u>described with specificity</u> is the key. For instance, the hiring of “Internet bashers” and “Journalists” willing to do “Hatchet jobs” on targeted issuers would not seem to fit into the job description of a truly “Bona fide” MM theoretically in the business of injecting liquidity into markets dominated with EITHER an excess of buy or sell orders.
2) Due to our current crisis involving “Overvoting” specific procedures for the allocation of voting rights need to be “Specifically” spelled out for “Locates”, “Pre-borrows”, etc. As it stands today the back offices need to indiscriminately cancel certain voting rights to cover up the disparities between electronic credits at the DTCC and paper-certificated shares present in the DTCC vault system. We need to return to the “One share, one vote” foundation of any corporation.
3) The SEC must realize that abusive naked short sellers will naturally seek out corrupt MMs willing to break the greatest amount of laws in order to attract their order flow. In your proposal you describe “Highlighting the liability” of those that intentionally deceive their broker as to his ability or intent to deliver on T+3. Please keep in mind that many of these order entry brokers want to be deceived and they’re well aware that they’re being deceived. It creates much needed order flow. And besides who’s going to squeal on those doing the deceiving? Certainly not the co-beneficiaries of the deceit receiving the order flow. Abusive naked short selling is often a team effort wherein the enablers and the trigger pullers live in a symbiotic environment. The crime actually fits quite well under the “Racketeering” heading.

   Hedge funds currently direct $10 billion annually in fees to those willing to act in the most "Accommodative" manner in performing the tasks needed to allow the hedge fund manager making "2 and 20" (2% of funds invested and 20% of the profits) the maximum amount of money. Corrupt MMs will then direct their clearing activity to clearing firms willing to break the most amount of laws on behalf of the MMs directing them business. The result on Wall Street becomes the "Survival of the corruptest" and the natural selection process <u>against</u> clean trade intermediaries unwilling to break the law.

4) In all of your legislating in the naked short selling arena you at the SEC must keep foremost in your mind that the "Uptick rule" is now gone. This has allowed corrupt MMs to perform many, many unlawful manipulations such as intentional "Stop loss order tripping", "Shaking the tree" with wild swings downward in share prices to trigger panic selling by "Weak-kneed" investors concerned about volatility issues and losing all of their money. Any legislation drafted to curb naked short selling abuses needs to be extra tough and extra specific with this being the unfortunate reality. When bad news hits Wall Street many DTCC participants figure that there isn't time to effect a proper "Locate" or "Borrow" lest other market participants short get their short orders in quicker and at higher levels. A good study for you to perform is looking at how many of the short sale orders associated with the recent Bear Stearns collapse involved a proper "Locate" or firm "Pre-borrow". Market makers trading for their own account that got off naked short sale orders were obviously not acting in a bona fide market making capacity as the share price was in free fall. Theoretically they should have been covering their previously established naked short positions. One question that comes to mind is what happens to all of the archaic delivery failures on and off the books at Bear Stearns? Does J.P. Morgan get to re-sweep those under the rug for yet another year or two and prolong the agony for the associated victimized issuers and investors or must they act on them promptly as the securities laws would dictate? Is it a coincidence that the two alleged king pins in creating and hiding illegitimate FTDs i.e. Thomson Kernaghan and Bear Stearns both went either bankrupt or needed a bail out? Might this remind the SEC and The Federal Reserve of the "Systemic risk" implications of this "House of cards" that has been constructed?
5) The ability to rely on "Customer assurances" to become compliant with the locate requirement is insane because of the obvious "Conflict of interest" it represents. Abusive naked short sellers will seek out the most corrupt order entry broker/dealers knowing that they will accept "Customer assurances" of the lowest quality. Statistics need to be kept as to which DTCC participants chronically effect or receive "Locates" or "Pre-borrows" that result in FTDs. This is not rocket science for an uncompromised regulator <u>genuinely</u> trying to provide investor protection and market integrity for the investors in development stage corporations.
6) Accepting "Customer assurances" from parties with a distinct history of failing to deliver post-"Locate" should qualify as being unlawful behavior needing to be "Highlighted".
7) The use of "Reasonable grounds" to believe that your client will deliver on time is insane also because of the obvious "Conflict of interest". If you insist on keeping

this in then what “Specifically” constitutes “Reasonable grounds”. Ambiguity opens the door to these frauds.

8) The specific spelling out of the penalties for being caught committing unlawful behavior needs to be made clear. Being forced to sign an “Acceptance” agreement stating that, “I didn’t do it and I won’t do it again” hardly provides “Meaningful deterrence”. Perhaps the DOJ could weigh in on this legislation and specifically address which level of felony or misdemeanor is involved with these various levels of criminal misconduct. Since the SEC is not allowed to prosecute criminal issues then a joint effort with the DOJ is essential to provide “Meaningful deterrence”.
9) Certain policies need to be set up specifically delineating when DOJ referrals must be made in regards to ANSS crimes.
10) In this legislation the SEC needs to address both the preexisting FTDs on and off of the books and balance sheets as well as future FTDs. It’s the corporations with the preexisting FTDs that should be the most urgent matter. The goal should be to make sure that the most recent corporation to go bankrupt due to these crimes becomes the last one to go bankrupt due to these crimes. You are the keepers of the life preservers-start throwing them now!
11) The SEC might want to keep in mind that the prime brokers that lend billions to hedge funds are probably going to do all in their power to do whatever they can to “Enable” the positions being taken by their clients to result in a happy ending. This might be via the granting of “Deceitful locates” or “Deceitful pre-borrows”. A hedge fund manager earning “2 and 20” is going to naturally gravitate towards the prime broker willing to be the most “Accommodative” to the needs of the hedge fund manager whatever it takes.

When the investment community read in earlier drafts of Reg SHO about “Having reasonable grounds” to believe that shares would be delivered by T+3 and being allowed to rely on “Easy to borrow lists” and “Customer assurances” that the shares would be delivered on time and the “Grandfathering in” of prior acts of fraud, etc. we knew that Reg SHO was dead on arrival. There are too many trusting investors and too many trillions of dollars at stake to ever believe that fraudsters wouldn’t walk right through those loopholes. Now several years later while presented with a landscape on wall street strewn with the carcasses of probably hundreds of more mostly micro cap corporations we find ourselves attempting to “highlight the liability” of this criminal conduct.

What else should be “Highlighted” while we have the magic markets out? The levels of FTDs on a daily basis-including those at the DTCC, those “internalized” at b/ds and those held in ex-clearing formats. You have to it’s at the core of both investor protection and market integrity. If a company has a gazillion FTDs poisoning its share structure then this must be released to the investing public. It’s clearly articulated in the ’33 Securities Act also known as “The Disclosure Act”. Any “Material” facts must be disclosed to the investing public. Here we are with “Reg FD” (full disclosure) on the books and everybody is complying but the DTCC and the SEC.

If it's embarrassing to the SEC to release to the investing public the evidence of just how corrupt our clearance and settlement system is and has been then fix it and never let it happen again. How dare you ask corporations to make public every little grain of sand of risk associated with an investment in a corporation via its prospectus and you yourselves at the DTCC and the SEC keep a boulder of risk like the existence of astronomic levels of FTDs preordaining a U.S. Corporation to an early death away from the public?

As mentioned earlier, is it any surprise that it is the same mentality on Wall Street that allows the packaging, securitization and sales of nearly worthless mortgage obligations as well as the perpetration of naked short selling frauds. The leveraging of a superior "KAV" factor involving the superior Knowledge of, Access to and Visibility of the clearance and settlement system hosted by the DTCC in naked short selling crimes is no different than the recent crimes witnessed in the subprime mortgage arena. In the naked short selling arena totally worthless electronic book entries with no paper certificate in existence to justify their existence are created out of thin air, "Securitized" and sold to unsuspecting investors just like nearly worthless mortgage obligations. The systemic risk issues associated with the subprime fraud necessitating dramatic action by the Federal Reserve unequalled in the past 70 years is not necessarily any less in the naked short selling arena. These types of frauds when left unaddressed or undiagnosed can take down entire financial systems as we recently nearly witnessed. What might be interesting to delve into in regards to this recent "Bailout" of a once mighty investment banking giant is how the elements of "Toxic waste" in the form of subprime exposure and yet to be covered naked short positions actually breaks down. Something must have been severely amiss behind the scenes to allow a pennies on the dollar bid to pass muster with both the SEC and the Federal Reserve. The bankruptcy option narrowly circumvented might have been a little too revealing for investor confidence.

We've also seen recently how complex derivatives that are only understood by their creators can escalate systemic risk. Selling shares that don't exist is essentially a derivative transaction. What is being sold is an undated futures contract that investors don't understand and they certainly wouldn't have paid full retail prices for had they understood. Most investors are naïve enough to believe the old "One share, one vote" myth. They don't realize that in order to cover up the level of delivery failures in the system their votes need to be secretly cancelled in the back offices on Wall Street lest the American investor realize that he is spending his retirement savings on nothing but air. American investors don't realize that the sellers of nonexistent securities actually are granted access to the unknowing investor's funds without ever delivering that which he sold. How can this be allowed to occur in the U.S.'s clearance and settlement system? Why would anybody aware of this "Ultimate paradox" ever deliver that which they sell? The DTCC merely mandates that these sellers collateralize these illegal "Open positions" by collateralizing this debt in a marked-to-market manner on a daily basis. As the share price predictably tumbles from this artificially created oversupply of readily sellable "Shares and/or securities entitlements (IOUs)" then the proceeds of the sale of nonexistent entities actually trickles into the wallet of the criminals doing the selling. When the targeted company finally goes bankrupt or gets "Delisted" then the dam breaks and those investor funds flow like a tidal wave into the wallets of the fraudsters that perpetually refuse to deliver that which they sold inordinate amounts of time ago. How can this be?

THE SUPPRESSION OF MEDICAL ADVANCES

Due to the fact that young biomedical companies do nothing but spend money in their first 10 or so years while waiting for FDA approval of perhaps their new cancer cure they are often targeted in these naked short selling attacks. They can easily be forced to constantly go to the market and raise R and D money at steep discounts to share price levels that can easily be put into a "Death spiral".

There comes a point in these battles wherein buy orders coming in from perhaps the medical community enamored by their new cancer cure actually represent a net negative for the advancement of the share price. Why? Because as the new buy orders enter the market only to be naked short sold into the level of mere but readily sellable securities entitlements go through the roof. This enhances the total "Supply" of readily sellable legitimate shares and/or mere securities entitlements which depresses the share price.

The question arises is just how corrupt of a clearance and settlement system would there have to be wherein buy orders overwhelming sell orders drives the share price and prognosis for success of a company downwards. In this example the medical community is pitted against the Wall Street community in determining the fate of medical improvements and the Wall Street community has the distinct advantage to wipe out the company regardless of the merits of the medical advancements it has to offer to the public. In abusive naked short selling there is a natural selection process set up wherein the corruptest of the corrupt Wall Street firms survive as some of the best of the best development stage medical corporations get wiped out all because of the nature of R and D in the medical field, the FDA approval process and the fact that without a doubt the share price of the victimized issuer can easily be put into an artificial "Death spiral". The biomedical development stage corporations are the perfect patsy. They have high monthly expenses, no chance to become cash flow positive for an extended amount of time and management teams that are great at medicine but know nothing about ANSS and DFRAs. Perhaps the medical community should be weighing in on these ANSS and DFRA issues.

WHAT'S THE HURRY?

The obvious answer to a lot of these issues is the need for a firm, contractual and decrementing "Pre-borrow". This is much preferred over a loosie-goosie, noncontractual and nondecrementing "Locate" involving the same "parcel" (if they were readily identifiable which they aren't) of shares serving as the "Locate" for perhaps a dozen different naked short sales. Granted this will involve some time and paperwork which might just provide a deterrent effect to this criminal behavior. I think former SEC Commissioner Pollack back in the mid-80s hit the nail on the head when his research concluded that anything but a firm "Pre-borrow" is insane since there was "no automatic check on borrowing" in the system. Imagine the abusive naked short sellers currently lying in the weeds waiting to take advantage of the lack of an "Uptick rule" as well as the "Ultimate paradox" when the next piece of negative information on a corporation, whether it be totally fabricated or not, hits the newswires.

Thus the question arises just **what's the hurry** when market integrity and investor protection are at risk. Any measure short of a firm, contractual and decrementing "Pre-borrow" provides an open invitation to commit these frauds. The goal should be to have as streamlined of a system as possible <u>without giving an inch on investor protection and market integrity.</u> We've all seen the instantaneous "Piling on" that occurs when bad news is released. As noted, many of those doing the "Piling on" don't have time to execute a proper "Locate" or "Pre-borrow" because their window of opportunity might close as their less ethical colleagues move to the front of the buffet line. In this current environment of no "Uptick rule" in effect to protect against this "Piling on" phenomenon (which is sheer lunacy) the firm "Pre-borrow" is a must. It's also a must in a clearance and settlement system with an "Uptick rule". Is it not a bit scary that one unsubstantiated rumor can now elicit panic selling by U.S. citizens resulting in large percentage losses of their retirement funds to those with a superior knowledge of just how corrupt Wall Street and our current clearance and settlement system really are?

WHERE IS THE SENSE OF URGENCY IN REMOVING THE ARCHAIC "DELIVERY FAILURES" CURRENTLY POISONING SHARE STRUCTURES AS WELL AS RETIREMENT PLANS?

Corporations are currently on the Reg SHO "Threshold lists" for hundreds of days. How can this be tolerated? As noted, the damage done to these corporations and the investments made therein is proportional to the number of unaddressed delivery failures hidden around Wall Street multiplied by their average lifespan. The clock is ticking while this fraudulently created "Oversupply" of readily sellable "Book entries" breaks the backs of these corporations. This is an emergency and the thousands of comment letters sent in on naked short selling issues are trying to dial 9-1-1 but they keep getting put on hold!

OUR CURRENT "TWO MARKET SYSTEM" AND THE REFUSAL TO TAKE GUARANTEED DELIVERY BUY ORDERS

Whether many regulators, members of the Congress or those comprising the investing public realize it or not there is a two market system present on Wall Street especially in the markets of the smaller development stage corporations responsible for most of the job creation in the U.S. Firstly, there is the "Tainted" market we see on our computers every day. This one is characterized by pandemic naked short selling abuses and regulators unwilling or unable to enforce preexisting laws barring manipulative behavior. In these markets we see the regulators layer rule upon rule in a band aid fashion that never seems to provide meaningful deterrence to stock price manipulations.

These markets are characterized by rules containing loopholes with phraseology like "Customer assurances", "Reasonable grounds", "Locates", "Highlighting the liability", “Arranging to borrow”, “Ex-clearing arrangements”, “Reasonably expected to deliver”, “Undated futures contracts”, “Extended delivery failures”, “Unmonitored easy to borrow lists”, etc. In this market the highest bid might be $1 and the lowest offer might be $1.02. The market makers lined up with offers at $1.02 are not representing any client sell orders but instead they’re there to access five perhaps trillion dollar loopholes or realities. The first loophole is the exemption from making a “Locate” or “Pre-borrow” while naked short selling which was intended to be accorded to “Bona fide” MMs only and only while acting in a “Bona fide” market making capacity which by the way is not monitored for in our current regulatory environment. The second loophole being sought is that provided by the “Ultimate paradox”. This involves the DTCC allowing the sellers of nonexistent shares that continuously refuse to deliver that which they sell access to the investor’s funds despite the fact that “Good form delivery” does not occur. All they’re asked to do is to collateralize these FTDs or “Open positions” in a daily “Marked to market” fashion. The third loophole/reality being sought is the self-fulfilling prophecy that due to the forces of supply and demand unaddressed FTDs will with 100% certainty drive the share price of the corporation under attack downwards which in turn allows the funds of investors to flow to the orchestrators of these frauds again despite the fact that they continuously refuse to deliver that which they sold.

The fourth loophole/reality is that as these investor funds flow to the sellers of nonexistent shares they acquire more financial “Leverage” to collateralize yet larger naked short positions until the sought after bankruptcy of the targeted corporation is accomplished. This is due to loophole/reality number five being that yet to be cash flow positive development stage issuers become forced to constantly go to the market to raise cash at steep discounts to existing share prices (due to the implied risk in financing a company whose share price is in the midst of a “Death spiral”) that have been artificially placed into a “Death spiral” by the manipulative activities described above. They need to do this just to pay their monthly “Burn rate”. Now we can see why MMs will line up their offers at $1.02. They want to access this “Gravy train” just like their fellow market makers do.

The second market which exists but is invisible to the investing public is the “Untainted” market. This market is composed of shareholders and prospective investors wishing to buy and sell shares in the targeted issuer. It might be characterized at $1 per share as the highest bid and perhaps $1.20 as the lowest offer at which a real shareholder is willing to sell his shares. Why would even corrupt MMs undercut the $1.20 offer? Wouldn’t they rather sell fake shares at the $1.20 level than at the $1.02 level? This would be true if not for the fact that corrupt MMs compete with each other to access the funds of unknowing investors being led to the slaughter. After all there’s plenty of money to be made on the trip from $1.02 to zero.

On Wall Street there is or perhaps I should say there was a concept of placing a buy order under a “Guaranteed delivery” basis. What this means is that the buyer insists on buying only legitimate shares with a paper certificate in existence that justifies its existence and that will with 100% certainty be there for delivery on T+3.

If a DTCC participating broker/dealer were to "Fill" this buy order at the cheapest level at which legitimate shares are being offered for sale then the "Print" is going to be at the $1.20 level. Now we have a problem. If legitimate shares start trading at $1.20 this would give away the tainted nature of the tainted market. Just what are those MMs selling at $1.02 if the least expensive legitimate shares are going for $1.20? Even more important than that is that the sellers of the nonexistent shares at $1.02 are going to be asked to collateralize their preexisting FTDs or "Open positions" at the $1.20 level. This would reverse the "Free leverage" they enjoy as described above. Corrupt DTCC participants will have nothing to do with that. Over the last 15 years as the level of FTDs stacking up in their various hiding places has gotten completely out of hand (as witnessed by the need to "Grandfather in" these prior acts of fraud via Reg SHO) the "Guaranteed delivery" buy order which acts as a "Market integrity test" has gone the way of the dinosaurs and if an ethical DTCC participant accepts one of these then he might expect to face some serious repercussions from the "Good ole boys club" at the DTCC. The willingness to process a "Guaranteed delivery" buy order is the litmus test to determine the integrity of any clearance and settlement system. One of the addendums I am proposing to the current text of 10b-21 is to make it unlawful for a market participant to refuse to take a "Guaranteed delivery" buy order.

There are several worldwide groups that come together and write suggestions for how an untainted clearance and settlement system should operate. One of these is the "Group of nine" led by Bill Volcker. Almost all of these groups hold that the foundation of any clearance and settlement system should be the concept of "Delivery versus payment" and the strict forbidding of allowing access to an investor's funds to any party refusing to make delivery in a timely manner of that which he sold. Our current clearance and settlement system absolutely refuses to follow that foundational mandate and instead allows their DTCC participants to access the 5 loopholes/realities described above. Being that our clearance and settlement system is seen worldwide as one of or the most corrupt then it is the U.S. domiciled development stage corporations and hence the pockets of the U.S. investors that are the easiest to pick.

CLASSIFICATIONS OF FRAUDULENT BEHAVIOR ASSOCIATED WITH ABUSIVE NAKED SHORT SELLING (ANSS) AND DELIVERY FAILURE RELATED ABUSES (DFRAs)

I've found it helpful to classify the various types of fraudulent behavior associated with ANSS and DFRAs into several subtypes based on their relationship to the FTDs generated. These classifications include crimes associated with:

CLASS:

1) The creation of illegitimate FTDs
2) The transportation of FTDs
3) The concealment of FTDs from the regulators and SROs both within and outside of the DTCC

4) The refusal to buy-in archaic and illegitimate FTDs
5) The concealment of FTDs from investors and the corporations being damaged

TYPES OF FTDs:

Those associated with or resulting from:

1) "Not so bona fide" MM activity performed for a MM's in house a/c
2) "Not so bona fide" MM activity performed for others
3) Blatantly intentional refuse to delivery
4) Deceitful locates that the seller is aware of
5) Deceitful locates that the seller is unaware of
6) Deceitful locates wherein the seller is not sure of but suspicious of it being deceitful
7) Deceitful pre-borrows that the seller is unaware of
8) Deceitful pre-borrows that the seller is aware of
9) Deceitful pre-borrows that the seller is not sure of but suspicious of it being deceitful
10) The DTCC's SBP's self-replenishing nature
11) Ex-clearing related
12) "Desking" related (naked short sell occurs at the trading desk i.e. "Internalization")
13) Offshore related
14) Canadian Depository for Securities related
15) "Paper and ink" counterfeiting related
16) Bogus repurchase agreements
17) Synthetic long positions
18) Flex options
19) Reverse conversions
20) "Leaps"
21) Options market maker related
22) "Buy/write" related

SOME OF THE COMPONENTS OF A VIABLE SOLUTION

A two phase approach is needed involving firstly addressing all preexisting FTDs and secondly not allowing this crisis to ever occur again. Any solution is going to have to be all-encompassing by nature. Why? Because the status quo has devolved to the point that the commission congressionally mandated to provide investor protection and market integrity is both inadvertently enabling those committing these frauds and hiding the evidence of these frauds (the FTDs) from the eyes of investors. Also the "Limited Purpose Trust Company" mandated to set up and administer our clearance and settlement system, the "DTCC", has converted this system into a self-serving band of marauders intent on siphoning off the investment funds of those they were entrusted to serve. The band-aid approach is not going to work when this is our starting point.

1) All preexisting unaddressed FTDs over 13 days in age must be bought in by "X" date. The fraudulent siphoning of an investor's funds must end now such that the most recent bankruptcy of a targeted company is the last one attributed to this cause of death. Don't forget the development stage corporations currently hanging by a thread. The sense of urgency needs to be appreciated as the damages accrue minute by minute. This is phase 1.

Phase 1 needs to precede Phase 2. Any meaningful reform needs a foundation provided by starting with a clean slate. Once the illegitimate FTDs are purged from the system then there is no need to transport them, conceal them from the regulators, conceal them from investors, etc. The need to have the SEC mandated to enforce the '33 "Disclosure" Act to keep breaking the laws contained in the '33 "Disclosure" Act will be gone. It's pretty tough to act as the enforcer of the Act while simultaneously breaking the laws contained in the Act. It's also tough to be the provider of "Investor protection" while keeping the damaged nature of an issuer away from those you are protecting. The SEC consciously chooses not to know the amount of illegitimate FTDs held in an "Ex-clearing" format. They have not only all of the right in the world to know this they have the congressional mandate to know this and to relay this information on to the investing public.

Providing **meaningful** reform to stem this current crime wave is a black or white proposition. You're either going to do it from the ground up starting with Phase 1 or you're going to have to continue to "Enable" these crimes and continue to artificially remove investor protection instead of provide it. It is very troubling to watch the SEC remove all of the natural market deterrents to these crimes like the fear of short squeezes and decrementing "Borrows" while at the same time refusing to execute on the congressionally mandated role as the provider of investor protection. The current layering on of rule after rule that you refuse to enforce tells us that you've made the conscious decision to **not** provide the meaningful reforms needed to end this thievery. Your lack of actions in this regard tells us that you're searching for some shade of gray so that you look semi-interested in providing investor protection but you don't want to tick off the powers that be on Wall Street. There is no shade of gray available for you to seek; it's black or white. This cat is out of the bag now and there is no safe "Middle ground" to access. You're either going to prevent or consciously "Enable" trillions of dollars worth of theft and "Systemic risk" beyond your imagination. Whether or not you have historically realized it your lack of choosing to prevent this thievery has resulted in your choice to inadvertently "Enable" this thievery. That "Gray zone" or "Middle ground" you're looking for is not available to the party congressionally mandated to provide investor protection and market integrity. If not you then who else is going to do this? It's certainly not the state securities regulators you already told them to butt out.

The congressional mandate to provide investor protection and market integrity did not have any clauses like "When it's convenient" or "When it doesn't ruffle the feathers of the super elite on Wall Street".

2) Once preexisting FTDs are dealt with in Phase 1 then any solution must allow a prospective investor to see the levels of all FTDs both in and outside of the DTCC in a stock <u>before</u> he makes a purchase decision i.e. transparency and "Disclosure" of "Material facts" as per the '33 Act. Do you recall the spirit of Reg FD (full disclosure) and how an issuer's prospectus is supposed to disclose every tiny little grain of sand of risk associated with an investment in an issuer's shares. How then can you at the SEC and the DTCC hide this relative "Boulder of risk" away from the prospective investors that you provide "Investor protection" to. Instead of the SEC and DTCC breaking the tenets of the '33 Act by concealing this "Toxic waste" now they can enforce the tenets by providing "Disclosure". If you're embarrassed by the number of FTDs that were so numerous that they needed to be "Grandfathered in" in order to avoid "Market volatility" and "Short squeezes" then get rid of them and start anew from a clean slate.
3) Major changes are going to be needed at the DTCC. It is a critical component of our clearance and settlement system but the conflicts of interest between its owners/participants and the investing public need to be addressed. This fraudulent behavior being shielded by being too critical to our settlement system to sue needs to stop.
4) The options market maker exemption needs to be addressed. When those options expire so does the need for the exemption from borrowing.
5) Those mandated to oversee the SEC need to become educated as to the nature of these frauds so that we never slip back into this morass once the playing field on Wall Street is leveled.
6) In order to get educated we need to define the basic terminology used in this discipline. "Legitimate naked short selling" (LNSS) is not the issue here it's "Abusive naked short selling" (ANSS) and "Delivery failure related abuses" (DFRAs). This intentional obfuscation of this criminal behavior by talking about the merits of LNSS is a smoke screen.
7) The laws listing out behavior deemed to be unlawful must <u>**WITH SPECIFICITY**</u> outlaw <u>all</u> fraudulent behaviors associated with abusive naked short selling and delivery failure related abuses. Even real bad guys get a little nervous when they see their particular modus operandi being deemed unlawful in the 1934 Securities Exchange Act. If you're going to tell the state securities regulators to butt out of your business then you have to tend to business.
8) The clearance and settlement system must comply with the very foundational recommendations of the "Group of 9" such that the system is predicated on "Delivery versus payment" and the seller of shares may in no way, shape or form gain access to the investor's funds until "Good form delivery" is achieved. Note that our current system is not based on "Good form delivery versus payment" and the seller of nonexistent shares that refuses to deliver that which he sold can indeed access the investor's funds as the share price predictably tumbles from this activity. Why? Because the DTCC management only mandates that even an abusive naked short seller "Collateralize" this "Open position" in a marked to market manner on a daily basis and their access to an investor's funds is independent of "Good form delivery" ever being made. A better case of directly aiding and abetting criminal behavior cannot be found.

9) At the end of the day any system with a modicum of integrity that operates in an environment without an "Uptick rule" needs to mandate for a firm, well-documented and decrementing "Pre-borrow" and nothing less. Manipulating the level of legally borrowable shares which acts as a natural deterrent to these crimes is criminal in nature. So is manipulating the "Supply" of readily sellable shares done in an effort to drive share prices down after taking a naked short position.
10) The specific time period deemed to delineate a "Legitimate" delivery failure from an "Illegitimate" delivery failure needs to be carved into stone and act as the foundation for reform. T+13 seems to be the consensus here. The fact that some delivery failures are indeed "Legitimate" is one of the foundations for this fraud. We need to define WITH SPECIFICITY what exactly a "Legitimate delivery failure" is as well as list examples of "Illegitimate delivery failures". Any time period longer than T+13 causes too much damage <u>regardless of its supposed legitimacy.</u> Remember the DTCC regards all delivery failures as being "Legitimate" in nature until proven otherwise and no proof otherwise is submissible. The legislators need to keep foremost in their mind that we are operating in the "Post-dematerialization" period where electronic counterfeiting is incredibly easy. Those legislators assumed that the SEC and the DTCC participants would ACT IN GOOD FAITH with this trillion dollar form of public trust.
11) Investors must always have the right to demand the timely delivery of paper-certificated shares. This time period needs to be addressed WITH SPECIFICITY. This is the last self defense measure investors have left. The DTCC management is pushing hard for a totally "Paperless" clearance and settlement system theoretically for "Efficiency" reasons. If you can't see through this then all hope is lost. This push should not surprise Congress, the Federal Reserve, the SEC, etc. This would circumvent the need to EVER deliver that which had been sold in the past as well as erase the history of these abuses. If this is allowed to happen then all bets are off for the future of our financial system and the concept of doing business as a "Publicly-traded corporation".
12) The discrepancies between the rules and regulations of the NSCC and DTCC need to be reviewed and all rules that are in circumvention of the 7 securities acts need to be eliminated.

As you can see the proposed Rule 10b-21 needs to be significantly beefed up in order to make a meaningful difference.

SO IF 10b-21 ISN'T THE SOLUTION THEN JUST WHAT IS?

First of all those effecting the solution whether it be the SEC Oversight Committees, the SEC, the DOJ, the Federal Reserve or whomever needs to keep their own thought processes simple. Wall Street might be a bit complex but a minority of clever market participants have concocted a clever scheme to kill corporations and steal the funds invested by the owners of the corporation; its shareholders. These funds have been rerouted into the wallets of the clever ones. In keeping with the theme of keeping it simple it is wrong to sell anything to anybody and refuse to deliver that which you sold no matter how clever you are. This even applies to billionaire behemoths on Wall Street with dozens of politicians in their back pockets.

The overall goal is to rid the system of FTDs above a certain age deemed fair to account for the existence of truly “Legitimate” FTDs and to never let this fiasco ever happen again. I can only assume that the regulators and SROs have been tapping the abusive naked short sellers on the shoulder and recommending that they cover these “Open positions” now before we’re forced to do it for you. This approach, if it indeed was ever taken, obviously didn’t work. The abusive DTCC participants think they can hide behind the fact that the DTCC is “Too big to fail” or “Too critical a part of our financial system” to challenge.

The DTCC need not fail although it obviously needs some major repairs and perhaps an “Attitude adjustment”. The interesting thing about mandated buy-ins of these acts of fraud is that they zero in “Specifically” on the “Enablers” as well as the actual trigger pullers involved in the fraud like a heat seeking missile. All of the innocent are spared. This would reverse the current “Survival of the corruptest” we are experiencing on Wall Street. The “Enablers” have forced the trigger pullers to post collateral for these bogus trades. The question is have they posted enough collateral to account for an upward moving share price as the covering process goes on? This is the risk the “Enablers” took on when they agreed to break laws for the clients willing to aim their order flow at them.

As far as listing out the specific behaviors deemed to be unlawful the best sources of this information would be past SEC actions, past lawsuits, interviewing of market professionals, comment letters describing specific modalities of fraudulent behavior, etc.

SUMMARY

As you can see from the first 200 or so “Comment letters” on the proposed Rule 10b-21 the anger of the U.S. investors is readily palpable. I sincerely hope that you’ll avail yourselves via Rule 10b-21 of the opportunity to once and for all clearly define the various terms associated with these crimes and the various other <u>specific</u> examples of unlawful behavior regarding abusive naked short selling frauds in addition to the ones you are currently targeting. It is critical to get specific examples of “Unlawful behavior” codified into the’34 Exchange Act via Rule 10b-21. A regulator with a history of timidity at least has to have a body of law backing it up that clearly defines with specificity all of the examples of unlawful behavior it can get its arms around to provide “Meaningful deterrence” that makes a fraudster think twice before perpetrating a fraud. You need to keep in mind that the 2 most potent natural “Governors” to curb abusive naked short sales is the supply of legally borrowable shares which is finite and the fear of a “Short squeeze”. Both of these natural deterrents have been artificially removed mainly by DTCC policies and partially through lax SEC enforcement. The SEC has learned that this “Finite” supply of legally borrowable shares becomes infinite via cheating on “Locates” and “Pre-borrows” and hopefully they’ve learned that it is partially due to the utilization of the self-replenishing nature of the DTCC’s SBP program and “RECAPS” program. I would like to redirect your attention to an exceptional comment letter filed earlier by an ex-SEC attorney Peter Chepucavage on approximately March the 18th of 2008.

THE STATUS QUO

In order to prescribe remedies for this crime wave it might be prudent to compare what we have now and visualize what you want the future to look like. The present status quo on Wall Street as it pertains to abusive naked short selling looks something like this:

1) Market makers in equity securities are stealing from investors via illegally accessing the exemption from performing a locate or pre-borrow before making naked short sales accorded only to bona fide MMs. They are doing this both while trading in their own accounts for themselves and while trading for others in exchange for enhanced order flow.
2) Options market makers are enabling these crimes by accessing this same exemption and the right to hedge one's position while selling put contracts.
3) Yet to be cash flow positive development stage corporations are being forced to service their monthly burn rates by selling shares at often steep discounts to share prices that have been intentionally placed into a "Death spiral".
4) In contravention of the 1933 Securities Act ("The Disclosure Act") both the SEC and the DTCC refuse to warn prospective investors of the numbers of incredibly damaging FTDs that are currently poisoning their share structures and in some cases have preordained these corporations to an early death.
5) Securities fraudsters are creating illegitimate FTDs via a variety of mechanisms and readily transport and hide them in a variety of places should their detection be imminent.
6) Corporations are remaining on the SHO "Threshold lists" for hundreds of days at a time.
7) When caught for misbehaving these fraudsters are merely fined a nominal amount of money which provides absolutely zero meaningful deterrence. They then sign an "AWC" (acceptance, waiver and consent) agreement which basically states that "I didn't do it and I won't do it again".
8) Investors by the hundreds of thousands are crying out for reform to no avail.
9) Each bit of legislation passed by the SEC is riddled with loopholes one could drive a truck through.
10) The SEC readily admits that the problem has gotten so far out of control that these FTDs needed to be "Grandfathered in" to circumvent "Market volatility" and "Short squeezes".
11) Investors by the millions are being led like a lamb to the slaughter as the DTCC and SEC oversees while refusing to provide meaningful deterrence.

Now that we can see what the status quo looks like let's try to envision a clearance and settlement system with integrity being overseen by regulators and SROs without conflicts of interest that are not "Captured" or compromised.

THE POST-REFORM LANDSCAPE

1) Preexisting illegitimate FTDs having been removed from the system via buy-ins no longer weigh down on share prices.
2) Investors have full visibility of any FTDs that do enter into a corporation's share structure. They make their investment decisions based upon this transparency.
3) Any FTDs that hit a certain age are promptly bought in by either the buying or selling party. None are allowed to be transferred back and forth on Wall Street to prevent detection or circumvent buy-ins.
4) A well-educated SEC robustly monitors for the age and number of FTDs accumulating in the share structure of an issuer.
5) "Pricing efficiency" is achieved by unmanipulated "Supply" levels interacting with unmanipulated "Demand" levels.
6) The seller of shares not delivered yet is not allowed to gain access to the purchaser's money UNTIL "Good form delivery" occurs.
7) The policy of "One share, one vote" is replaced.
8) Corporations live or die based upon their own merits.
9) Any borrows associated with legitimate short selling are documented and decremented from a lender's supply of legally loanable shares.
10) Operating as an SRO the DTCC management no long claims to be "Powerless" to buy-in the illegitimate delivery failures of their participants whose "Business conduct" they are mandated to monitor.
11) The DTCC's "Automated Stock Borrow Program" is no longer allowed to counterfeit securities by operating in a self-replenishing manner. Their "RECAPS" program is suspended.
12) All of the DTCC's and NSCC's rules and regulations are consistent with the laws contained in the 7 securities acts.

<u>SPECIFIC</u> SUGGESTIONS FOR RULE 10B-21

1) Standardized definitions: (Note: keeping in mind that ambiguity is the enemy of meaningful reform if you don't really want meaningful reform then just add scienter as a prerequisite and keep the concepts "Fuzzy" and you'll get your way and the crime wave will continue unabated.)

"SHORT SALE" (SS) - the sale of a security that the seller does not own and that is consummated by the delivery of a security borrowed by or on behalf of the seller.

"NAKED SHORT SALE" ("NSS")-the sale of a security that the seller does not own and that results in a "Failure to deliver". The varieties of naked short sales include but are not limited to:

A) Legitimate naked short sale (defined below).

B) Abusive naked short sale (defined below).
C) Unintentional naked short sale (defined below)

"LEGITIMATE NAKED SHORT SALE" (LNSS)-the sale of a security that the seller does not own and that is made by a truly "Bona fide" market maker while addressing a trade imbalance of buy orders dominating over sell orders. In these transactions there is no mandate for the "Bona fide" market maker to perform a "Locate" or a "Pre-borrow" before performing the short sale. A truly "Bona fide" market maker will at least attempt to cover the resultant "Open position" the next time that sell orders predominate over buy orders and buy side liquidity needs to be injected.

"ABUSIVE NAKED SHORT SALE" (ANSS)-the sale of a security that the seller does not own wherein the mandated "Locate" or "Pre-borrow" is <u>intentionally</u> not properly performed. This includes short sales by market makers not participating in "Bona fide market making activities" at the time of the sale as well as by those intentionally making illegitimate "Locates" or "Pre-borrows". The product of an "Abusive naked short sale" is a very damaging "Failure to deliver" on "Settlement date". Examples of "Abusive naked short selling" includes but are not limited to: Naked short sales executed when there is no imbalance needing to be addressed, serial hitting of the bids by naked short sales to manipulate the share price downwards in the absence of an "Uptick rule", naked short sales made to downtick the share price when open naked short positions are being "Marked to market", naked short sales made at the end of a trading session while "Painting the tape", naked short sales made to a co-conspirator to bail out his naked short position (illegal "parking" of stock utilizing "Wash sales") and to rejuvenate the "Open position", naked short sales made to intentionally force an issuer's share price downwards in an effort to trigger a "Delisting" to a lesser trading venue, naked short sales made to intentionally trigger a "Stop loss order" or "Margin calls", etc.

"UNINTENTIONAL NAKED SHORT SALE" (UNSS)-the sale of a security that resulted in a "Failure to deliver" that was unintended by the seller. The seller may or may not have been the legal "Owner" as described in Rule 200(b) of Reg SHO. The seller may have rightfully assumed that a "Locate" or "Pre-borrow" source would deliver the shares by T+3. The source of the "Locate" or "Pre-borrow" may or may not have been acting with scienter (knowledge that what he was doing was unlawful).

"BONA FIDE MARKET MAKER"-a market participant that posts a bid and an offer of a minimum amount of shares that stands ready to inject liquidity by selling shares that he need not own when buy orders dominate a market and with the same zeal buy shares when sell orders dominate a market. His job is to buffer sharp swings in share prices and to inject liquidity when it is needed. His lack of necessity to effect a "Locate" or "Pre-borrow" while naked short selling is due to his necessity to be able to address trade imbalances quickly. The truly "Bona fide" market maker will not abuse this incredibly powerful form of public trust to create a trading advantage over the public for whom he acts as the "Gatekeeper" to the markets. A truly "Bona fide"

MM does not post a bid 3 standard deviations below the highest bid and 3 standard deviations above the lowest offer just to qualify as being a market maker entitled to an exemption should a naked short sale show up on his doorstep. (Note: becoming a "Market maker" offers absolutely no "Barrier to entry" whatsoever and when you combine that with the immense power associated with the ability to make naked short sales without a locate or pre-borrow then you can see the order flow that can be attracted by any MM willing to "Enable" these frauds for others in exchange for order flow or for himself in exchange for an unknowing investor's money.)

"DELIVERY FAILURE RELATED ABUSES" ("DFRAs")-any of a group of securities frauds centered on the intentional refusal to deliver in a timely manner that which a seller is selling. Most often this family of crimes involves taking naked short positions followed by the intentional flooding of the share structure of the targeted issuer with illegitimate FTDs done in an effort to manipulate the share price downwards in an effort to siphon off the investments of unknowing investors.

"ENABLERS" (in abusive naked short selling crimes): market participants in a position to acquire usually financial gains in exchange for their willingness to assist those attempting to <u>intentionally</u> reroute unknowing investor' funds into their own wallets via any of a variety of "Delivery Failure Related Abuses" or "DFRAs".

"BONA FIDE MARKET MAKING ACTIVITY"-addressing imbalances in buy and sell orders by buying shares when sell orders dominate and selling shares that he need not necessarily "Own" as per Reg SHO's Rule 200(b) when buy orders predominate.

"STOCK MANIPULATION"-intentionally interfering with the natural "Supply" and "Demand" variables that dictate share prices. Share prices can be manipulated upwards in the typical "Pump and dump" campaigns or downwards in the typical "Short and distort" campaigns.

"GOOD FORM DELIVERY"-the delivery of shares to a purchaser when the shares are free of any encumbrances, fully-registered and not the product of any type of crime that could be construed as "Securities counterfeiting".

"SETTLEMENT"-the culmination of a stock transaction wherein the shares purchased are delivered in "Good form" as the funds of the purchaser are made available to the seller on a pre-arranged date ("Settlement date"). This is often referred to as "DVP" or "Delivery versus payment".

"STOCK FRAUD"-A deliberate misrepresentation made during the buying and selling of securities which causes another to suffer damages usually of a monetary nature.

SUGGESTED ADDITIONS TO THE PROPOSED RULE 10b-21

(Being that scienter is now necessary to be held liable for these crimes then it is necessary to specifically address each and every action deemed to be unlawful so that no fraudster can later claim that he did not know that this specific action was unlawful. In past history the SEC legislated with a very broad brush and then listed specifics in “Interpretive releases”. Now it is critical to specifically codify all of these behaviors deemed to be unlawful within the text of the ’34 Exchange Act so that there can be no misunderstandings whatsoever.)

It shall be deemed unlawful:

1) For a market participant selling shares to deceive another market participant about his **intent** to deliver shares by T+3.
2) For a market participant selling shares to deceive another market participant about his **ability** to deliver shares by T+3.
3) For a market participant selling shares to deceive another market participant about his “**ownership”** of the shares being sold as described in Reg SHO Rule 200(b) [17CFR 242.200(b)].
4) For a market participant selling shares to deceive another market participant about a **“Locate”** source as mandated by Reg SHO.
5) For a market participant to provide a “Locate” to another market participant performing a short sale unless that “Locate” is properly documented and decremented from the number of shares that the loaning b/d has available to either loan out or to serve as a “Locate” for. (Otherwise a given parcel of shares could serve as a locate or borrow in more than one direction at a given time)
6) For a market maker to allow other market participants access either directly or indirectly to his exemption from performing a “Locate” or a firm “Pre-borrow” accorded only to a “Bona fide” market maker and only while acting in a “Bona fide market making capacity”.
7) For a market participant to provide a “Pre-borrow” to another market participant performing a short sale unless that “Pre-borrow” is properly documented and decremented from the number of shares that the loaning b/d has available to loan out or to serve as a “Locate”.
8) To fail to deliver by “Settlement date” (or perhaps T+5) any shares that a loaning b/d made available to serve as a “Locate” or as a “Pre-borrow” to a fellow market participant executing a short sale.
9) For a market maker to access the exemption from having to make a “Locate” or a “Pre-borrow” during the execution of a short sale unless he is truly acting in a “Bona fide market making capacity” as describe in this Rule 10b-21.
10) For a market maker that accessed the exemption from executing a locate or pre-borrow before making a naked short sale accorded to a bona fide MM only to refuse to cover a pre-existing naked short position (“Open position”) if the share price has fallen “X”% below the level at which the naked short sale was executed. (By definition the sell orders must be dwarfing the buy orders otherwise the PPS wouldn’t be dropping. This “injection of liquidity” now needs to be provided on the buy side.)

11) Irrespective of the current share price any outstanding naked short position assumed while acting as a bona fide MM must be “Bought-in”/covered within “Y” business days.
12) To transfer a naked short position or “delivery failures” (“parking”) to a fellow market participant in an effort to “Rejuvenate” this “Buy-in” time clock of “Y” days without covering.
13) To intentionally transfer a naked short position to circumvent Reg SHO “Threshold list” mandated buy-ins on T+3. (Note: this activity would do no more than transfer the existing delivery failure elsewhere and rejuvenate its age.)
14) For a market maker to partake in any activity to intentionally create an artificially derived increase in the supply of readily sellable securities or securities entitlements in an effort to drive the share price down while the market maker is net short the securities.
15) For a market participant to be influential in causing the shares of an issuer to appear on an “Easy to borrow” list when it otherwise doesn’t qualify.
16) For a market participant to try to circumvent the cost or possible unavailability of a firm “Pre-borrow” or “Locate” by partaking in any form of activity that might result in an enhanced supply of the arithmetic sum of legitimate shares of an issuer plus “Securities entitlements” of an issuer.
17) For a market participant to partake in any activity that might diminish the voting power of any investor’s fully paid for shares.

18) For any market participant to partake in any activity that might conceal the existence or number of “Failures to deliver” in an issuer’s share structure.

19) For a regulator or an SRO to refuse to disclose the absolute number of unaddressed delivery failures in the share structure of an issuer to the investing public or to another corporation in the midst of a “Share swap” type of corporate takeover.

20) For any market participant to access the DTCC’s “Automated Stock Borrow Program” in an effort to bypass making a “Locate” or firm “Pre-borrow” during the execution of a short sale. This is due to its self-replenishing nature and its ability to artificially increase the arithmetic sum (“Supply” variable) of readily sellable legitimate shares plus readily sellable mere “Securities entitlements/IOUs”.

21) For any person to work in concert with any other person attempting to manipulate share prices downward by intentionally inducing settlement failures and increasing the levels of delivery failures within an issuer’s share structure and therefore the “Supply” or arithmetic sum of legitimate shares of a corporation plus the number of readily sellable mere “Securities entitlements” as the intentional “Manipulation” of the variables of supply and demand is expressly forbidden.

22) For any market participant or SRO to fail to report the number of "Failures to deliver" being housed in their firm, in their depository (DTCC) or that they have "Parked" in an ex-clearing format.

23) For any market participant to hide "FTDs" in any off balance sheet vehicle.

24) For any market participant to accept or to pass on any naked short positions via "Wash Sales" done in an effort to intentionally hide from the regulators or the investing public or to "Rejuvenate" these "Open positions" since this amounts to artificially extending the T+3 "Settlement date" which is already forbidden by 15c6-1 of the '34 Exchange Act relating to the "Settlement cycle".

25) To take or process a sell order for "Legended" certificates <u>until</u> the restrictive legend has been removed. (Comment: The mindset of all regulators and market participants needs to be changed to the fact that FTDs are very destructive and to be avoided at all costs. If legitimate ones do occur they need to be monitored like a hawk for their age and once a certain age is attained then the mandated buy-in occurs by either the buying or selling broker. Again, this age would equal the time period in which a legitimate FTD arbitrarily is deemed an illegitimate. Since the current rules allowing the sale of Legended certificates as being "Owned" probably represents the longest term form of a "Legitimate" delivery failure that crooks can piggy-back onto then the simple mandate that the legend be removed <u>before</u> the shares are sold makes sense. If the fraudsters need to portray their illegitimate delivery failures as being legitimate then the lesser the amount of delivery failures qualifying as being truly legitimate will help in the detection of those that are truly illegitimate. This policy may kill two "Manipulative birds" with one stone as "Pump and dump" fraudsters often sell "Legended" shares in the "Dump" phase of their fraudulent acts. Keep in mind that some abusive naked short selling fraudsters mentally justify their actions by claiming that they're actually the good guys acting as "Shareholder advocates" by killing corporations that new investors might buy shares in and thus they're trying to prevent them from being a future victim.)

26) For any market makers or other market participant to refuse to cover any naked short position over "X" days in age in the shares of any corporation being delisted by the SEC. Since the share price will obviously be at its all time low then the least the naked short sellers sitting on archaic naked short positions could do is to cover their naked short position. This would take away some of the incentive to bankrupt or get delisted legitimate corporations that have fallen prey to one of these attacks. Allowing the criminal that constantly refuses to deliver that which he sold to keep 100% of the investor's money making up the proceeds of that criminal sale is insane and an engraved invitation for fraud. This is especially true if a capital gains tax is not triggered because the sell then buy cycle never was completed. The IRS should have its fair share of any capital gains. Keep in mind that these trades haven't legally "Settled" yet because of the lack of "Good form delivery". Those legal short sellers that effected a well-documented and

decrementing “Pre-borrow” should be allowed to keep all of their proceeds, however.

27) For an options market maker to intentionally play a role in abusive naked short selling campaigns designed to manipulate a targeted corporations share price downwards in exchange for order flow and commissions. The issue would revolve around whether or not the options MM was aware that the sources of the “Put” buying were taking part in fraudulent activity. A theoretically bona fide options market maker would then close out his position the minute that the options position was closed out or expired. If he doesn’t then he was obviously acting as a “Tool” for others. The failure to close out these positions upon the expiration of closing out of these positions would be deemed unlawful. (This is a clever but common mechanism used to defraud corporations and the investors therein in exchange for order flow and commission generation. The only difference is that it is done via the abuse of derivative transactions one step removed from equity transactions. Oftentimes the naked short position will be transferred back to the original party trying to bankrupt the corporation if the share price doesn’t sufficiently “Tank” which it usually does. As it stands now options market makers can access the exemption from “Locates” and “Pre-borrows” before making naked short sales while theoretically hedging their position assumed by selling “Puts” in a given security. When knowingly doing this in conjunction with a naked short selling attack against a targeted corporation it must be made clear that this conduct is unlawful because truly “Bona fide” MMs do not knowingly take part in these actions meant to intentionally decrease share prices. Truly bona fide MMs don’t prostitute themselves in this way when they know that a manipulative scheme is in progress. “Get away” car drivers would have trouble in claiming that they’re innocent because they never stepped foot in the bank nor ever touched a gun during an armed robbery and their driver’s license was valid and they therefore had the “Right” to drive the car. Options market makers with the “Right” to hedge their position should be treated similarly.)

28) To refuse to process a “Guaranteed delivery” buy order. (Comment: An investor should have the right to insist that the shares he is buying are real with a full “Package of rights attached” and that they will be delivered by T+3.)

29) For any market participant to intentionally mislead the management of a U.S. domiciled corporation in facts related to the corporation’s share structure. A management team with a fiduciary duty of care owed to its shareholders must not be blind-folded by manipulative acts performed by market participants. (It’s one thing to injure a corporation and hide the damages from prospective investors but it is an entirely different matter to refuse to inform those “Steering the ship” of the existence of the damages such that “Repairs” (like altering the business plan) can’t be made which leads to yet further damages.)

30) For a clearance and settlement system to refuse to inform management after a dividend distribution of the number of “Payments in lieu” (PILs) of dividends were made by those short its shares. (Payments in lieu of dividends need to be paid by those short a stock on the dividend record date but this information is closely guarded because it would often reveal astronomically large naked short

positions in a given issuer. This information is kept secret on Wall Street although it is mandated by the '33 Act since it is of a "Material" nature to prospective investors.

31) For a market maker to rely on the exemption from a locate and/or pre-borrow accorded to bona fide MMs only while naked short selling into a falling market wherein the injection of sell orders to "Inject liquidity" would obviously not be needed. In the absence of an "Uptick rule" this policy is mandatory as the professionals making markets will obviously be able to act quicker should bad news, whether true or not, is released to the public.
32) For a U.S. b/d to accept a short sale order from a "Non-member" (NASD) if that non-member has a history of failing to deliver on prior short sales. Now that the protective effect of Rule 3370 is gone the liability of the U.S. order entry b/d to monitor for bogus "Locates" is absent and thus the "Tunnel under the Canadian border" is back in business.
33) For a market participant or short seller committing abusive naked short selling related crimes involving "DFRAs" to take advantage of the fact that in Electric Communication Networks ("ECNs") there is currently a disconnect involving what Robert Greifeld, the President and CEO of The NASDAQ Stock Market, Inc., recently termed a "lack of a physical inventory system for shares available for borrow". (As one might expect this is currently being heavily abused.)
34) For any SRO defined as "An entity responsible for regulating its members through the adoption and enforcement of rules and regulations governing the business conduct of its members" to claim to be "Powerless" to buy-in archaic FTDs of their participants whose "Business conduct" they are "Governing" via "The enforcement of rules and regulations".
35) For any market participant to commit any acts deemed to be an act of "tortous interference" against a corporation domiciled in a state within the United States.
36) For any market participant to attempt to portray an "Illegitimate" delivery failure and its resultant FTD as being a "Legitimate" delivery failure of short term duration during the commission of a "Fraud on the market".
37) For any DTCC participant or market participant to leverage their superior knowledge of, access to and visibility of the clearance and settlement system within the U.S. in an effort to shunt the investment funds of others to themselves.
38) For any regulator or SRO to selectively address the enforcement of manipulative actions to fraudulently increase share prices upwards while ignoring manipulative actions that drive share prices downwards while artificially removing the natural market phenomena that act as a deterrent to downward price manipulations like "Short squeezes" and artificially increasing the amount of legally borrowable shares.
39) For any SRO like the DTCC to have policies that selectively create a financial advantage of their participants/owners over the investing public especially those in contravention of the 7 securities acts.
40) For any SRO like the DTCC to base the clearance and settlement system of the U.S. on any foundation not generally conforming to "Delivery of that which an investor believes he is buying versus payment" in a timeframe mutually agreed upon.

41) For any regulator or SRO to take part in any "Bait and switch" type fraud involving unbeknownst to the purchaser converting an equity security into an undated futures contract which would have been priced differently had the purchaser known about the switch.
42) For any SRO like the DTCC to institute a "Straight through processing" (STP) system based on settlement date being T+0 that might have the untoward side effect of obfuscating "Illegitimate" FTDs since nearly all trades might expect to result in an FTD.
43) For any SRO like the DTCC to move towards a totally paperless system (Dematerialization) that might serve to obfuscate prior acts of securities fraud or DFRAs while encouraging future securities frauds. (Note: the last trace of integrity our current system has is that a regulator investigating these frauds can compare the number of paper-certificated shares the DTCC has in its vault system with the number of electronic book entries in its system. If all paper-certificated securities are wiped out then this "Benchmark" to judge fraudulent behavior will be gone and the evidence of abusive FTDs will be essentially "Buried in the desert". The obvious selling point for the DTCC in this argument is and will be the fact that electronic book entries are much more "Efficient" to deal with.)
44) For any market participant to utilize artificially generated "Leverage" attained through regulatory loopholes while committing an act of fraud against corporations and the investors therein.
45) For any market participant to accept a "Locate" from a source that refuses to decrement that locate to avoid the same parcel of shares from serving as a locate simultaneously in multiple directions.
46) For any market participant or associate of a market participant to knowingly spread false rumors about an issuer done in an effort to increase the level of naked short selling and thus the number of incredibly damaging FTDs or to take advantage of the current lack of an "Uptick rule".
47) For any market participant to engage in any activity leading to the impression that a legitimate locate or pre-borrow was accomplished in a falling market. (These bogus locates in rapidly falling markets must be looked upon as an especially heinous form of abusive naked short selling since the intent to deceive is much more lucid since waiting for a legitimate locate might have resulted in the lack of ability of this participant to "Pile on".)
48) For any person to attempt to bypass the expense of a borrow or unavailability of a borrow by the utilization of bogus repurchase agreements or entering into "Expressly agreed to contracts" as allowed by Rule 15c6-1 with the intent to carry out a "Fraud on the market" by creating FTDs damaging to the share price of a corporation.
49) For any market participant, regulator or SRO to refuse to provide the management of a corporation details on the number of "Payments in lieu" (PILS) involved with any recent dividend distribution. "PILS" are matching dividend payments that need to be made by those legally or illegally short a corporation's shares on a dividend record date. Since there are no "Confidentiality" issues whatsoever this information would be helpful for management and prospective investors to assess just how damaged the current share structure of the corporation is.

50) For any market participant to create “Synthetic long positions” associated with “Short to buy” transactions in an effort to generate damaging FTDs that result in the manipulation downwards in the share price of an issuer’s shares.
51) For any market participant or co-conspiring individuals or hedge funds to target or engage in any planning of a scheme to target any U.S. domiciled corporation with a plan to engage in abusive naked short selling done in an effort to allow FTDs to accumulate in the share structure of an issuer in an effort to artificially decrease the share price of the issuer.
52) For any market participant to communicate with other market participants in an effort to enable an attack on any U.S. corporation utilizing abusive naked short selling done in an effort to manipulate the share price of the targeted issuer downwards artificially via the accumulation of and refusal to cover “Open positions” associated with FTDs even if the rules of any SRO do not expressly forbid it.
53) To enter into any secret “Expressly agreed to contracts” as described in 15c6-1 for the purpose of creating and hiding FTDs outside of the DTCC in an effort to manipulate the share price of an issuer downwards.
54) To enter into any derivative transaction with the intent to circumvent any securities rules and regulations forbidding abusive naked short sales and the accumulation of FTDs either inside or outside of the DTCC done in an effort to drive down the share price of a targeted issuer.
55) For any participant of an SRO (like the DTCC) to leverage the fact that they are deemed to be the “Legal owners” of all shares held in “Street name” in an effort to perpetrate abusive naked short selling frauds against the “Beneficial owners” (purchasers) of shares of an issuer.
56) For any market participant to take advantage of the SEC’s need to “Immobilize and dematerialize” paper-certificated securities in any fraud involving abusive naked short selling and delivery failure related abuses.
57) For any market participant to attempt to cover up the evidence of abusive naked short selling and delivery failure related abuses by proffering that this information is unavailable due to confidentiality issues associated with “Proprietary trading strategies”.
58) For any market participant knowingly involved in extracting full retail prices from those thinking that they were buying legitimate “Shares” with a full package of rights attached when mere IOUs or undated futures contracts were in effect being sold and which would have been priced much lower had the purchaser been knowledgeable about the nature of what was being sold (a “Bait and switch” fraud).
59) For any market participant to portray illegitimate delivery failures of a long term nature as being of a legitimate nature involving normal market related delays in delivery.
60) For any SRO or regulator to hide the existence of FTDs from the investing public under the premise that it is necessary to do so in order to protect “Proprietary trading strategies”.
61) For any bona fide MM to refuse to cover a naked short position established while accessing the exemption from making a “Locate” or “Pre-borrow” when the share

price hits 5% below the share price at which the naked short sale was executed. (This is part of what a bona fide MM does-injects buy side liquidity as share prices drop from an excess of sell orders. If you're going to access the exemption which is available to bona fide MMs only then you must prove your bona fide nature by acting like a truly bona fide MM and covering when markets drop.)

62) For any market participant to enter into any clearing agreement that might serve to enhance the ability to create or hide illegitimate FTDs.
63) For any market participant to partake in any lending activities that might allow the same parcel of securities were they to be readily identifiable to be loaned out or serve as a "Locate" in more than one direction at the same time.
64) For any SRO or "Registered Clearing Agency" to allow the same parcel of securities were they to be readily identifiable to be loaned out or serve as a "Locate" in more than one direction at the same time. (In other words don't allow the SBP to be self-replenishing any longer. Once a parcel of shares is loaned in one direction the party receiving the borrowed shares (the new buying party) may not replace them into the SBP UNTIL the original loan was paid off.
65) For any SRO mandated to "*regulate its members through the adoption and enforcement of rules and regulations governing the business conduct of its members"* to refuse to buy-in or plead "Powerless" to buy-in the archaic delivery failures of any of its participants housed at that institution or elsewhere.
66) For any market participant to house FTDs out of the sight of the investing public, the regulators and the management and transfer agents of the issuer.
67) For any SRO or RCA to design clearing processes that result in the transfer agents owned by the participants of that SRO being shown favoritism over transfer agents not owned by the participants of that SRO i.e. mandating the use of computer processes so expensive that the smaller TAs can't afford to implement. (Note both the anti-trust issues as well as the anti-fraud issues if all functions are artificially relegated to agencies owned by the participants of that particular SRO.)
68) For any market participants and especially hedge funds to intentionally knock down share prices in the absence of an "Uptick rule" in order to artificially enhance their "Asset valuations" for short positions. This would constitute a fraud both upon the corporation and shareholders of the company whose share price is getting decimated as well as the investors in the hedge fund that are getting hoodwinked into thinking their investment is doing better than it really is. (Deceitful locates and pre-borrows in the absence of an Uptick rule is going to increase the volatility of stock prices immensely and investors are going to get "Whipsawed" into panic selling right and left.) The above deceitful activities are especially heinous if done right at the time that the "Marking to market" process is being done.
69) For any market participant to refuse to take a buy order from a client in a stock wherein that market participant has outstanding FTDs. (This has gotten extremely common and the explanation given is that "This particular issuer has some delivery "Issues" at the DTCC and therefore we can't guarantee you our client that you would get delivery. Translation: We're naked short this stock big time and we're trying to dissuade any buying of their shares. Sometimes the b/d will

forbid entering buy orders in these issuers via computer but allow it if you put it through one of their brokers which may cost more. Typically the client then gets a sales pitch not to buy these shares.)

70) For any market participant to loan out the shares of a client residing in any account but a margin account without the expressed written consent of the client. Any shares held in a qualified retirement plan are banned from being loaned out.
71) For any market participant to engage in any scheme to create out of thin air the rights or "Package of rights" of which a share is composed of in order to facilitate or hide the existence of any abusive naked short selling activity or delivery failure related abuses.
72) For any market participant to engage in any deceitful activities associated with making a "Bona fide arrangement to borrow" securities for delivery by T+3.
73) For any market participant to engage in any deceitful activities in an effort to bypass the expense of a borrow or the possible unavailability of a borrow before making a short sale.
74) For any market participant to engage in any deceitful activity involved in attaining "Reasonable grounds to believe that a security can be borrowed so that it can be delivered on the date delivery is due.
75) For any market participant to engage in any deceitful activity in "Documenting compliance with the "Locate requirements" of Rule 203(b)(1).
76) For any market participant to rely on any "Customer assurances" that shares being sold can be delivered by T+3 of any client that has failed in delivering shares involving previous "Customer assurances" that these shares would be delivered by T+3. (One strike any you're out)
77) For any market participant to find it "Reasonable" that a client's "Customer assurance" of being able to deliver shares by T+3 or "Customer assurance" regarding ownership of securities matters as being valid if that client has failed to deliver in previous "Customer assurances" involving the sale of securities.
78) For any market participant to fail to alert the SEC and SROs of "Customer assurances" or "Ownership" claims associated with the sale of securities that proved to be faulty.
79) For any market participant to partake in any deceitful activities with an intent to circumvent the "Locate" or "Pre-borrow" requirements of Reg SHO.
80) For any market participant to partake in any deceitful activities associated with marking sell orders as "Long" in conjunction with the shares being in the "Physical possession or control" of the b/d.
81) For any market participant or SRO to engage in any deceitful activities associated with operating as a "Qualified control location" that allows its participants to mark sales as being "Long". This would include administering any stock borrow program that is self-replenishing in nature or any type of "RECAPS" program with the power to roll back the age of a delivery failure.
82) For any market participant to engage in any deceitful activity associated with attempting to qualify as the "Owner" of a security for the purposes of selling that security.

83) For any market participant to artificially convert a securities contract into an undated futures contract that may have been priced differently or that the buyer may not have agreed to.
84) For any market participant refusing to deliver the securities that he has sold to gain leverage over this as the share price drops to add to his prior naked short position.
85) For any market participant to engage in any deceitful activities that restricts the capital formation activities of an issuer or make these capital formation activities more dilutive to the shares of the issuer.
86) For any market participant to engage in deceitful activity that might result in reputational damage to an issuer that might in turn artificially depress the share price or restrict capital formation opportunities due to the artificially induced decrease in investor confidence. (People are not going to invest in stocks whose share price has been placed into an artificial free fall or whose shares might not be deliverable if the investor chose to have them delivered.)
87) For any SRO to engage in any activities that might induce issuers to defensively exit the clearance and settlement system and move back to a "Custody only" system which would undermine the goals of Congress to "Immobilize" and "Dematerialize" securities via the establishment of a national clearance and settlement system.
88) For any market participant to intentionally deceive the purchaser of securities or his agent in an effort to create FTDs and drive the share price down of an issuer that the market participant already has a short position in.
89) For any market participant to employ deceitful methodologies in conjunction with establishing whether or not there are "Reasonable grounds" to believe that a security can be borrowed and delivered by T+3. If a client that previously failed in delivering shares sold then "Reasonable grounds" cannot be made.
90) For any market participant to offer DMA or "Direct Market Access" to any clients with FTDs currently on the books. Any FTDs created via DMA access are to be bought in by T+13 by the b/d offering the DMA.
91) For any SRO like the DTCC to refuse to make their participants comply with the buy-in mandates for "Threshold securities" on T+13.
92) For any theoretically "Bona fide" market maker to access the exemption from making a "Locate" or "Pre-borrow" associated with naked short sales if they are engaging in any of the following activities not associated with "Bona fide" market making activities: hiring bashers, crosses under market, painting the tape downwards, co-conspiring with other MMs, communicating with other MMs other than in executing buy and sell orders, if you have outstanding FTDs older than "X" days in a steady or rising market or "Y" days in a dropping market, while knocking out bid after bid in the absence of an "Uptick rule", while engaging in the "Parking" of FTD positions or crossing of FTDs to avoid triggering the T+13 mandated buy-ins.
93) To administer a stock borrow program and not robustly scrutinize the shares being placed therein as to their appropriateness for being loaned out i.e. no fully paid for shares existing in cash accounts, no qualified retirement plan shares, etc.

94) To administer a self-replenishing stock borrow program and then claim that it can't be changed due to the lack of discretion or due to the fact that it is "Automated".
95) For market makers to sign up to make a market in a security for the intention of acting as a conduit for some other market participants fraudulent activities in regards to ANSS and DFRAs. (Note that there are absolutely no "Barriers to entry" for making markets and MMs needing more order flow will naturally have a tendency to be approachable and asked to act in a prostitution role for the malfeasance of others. These MMs typically keep their bids well below the highest bid and well above the highest offer until their client wants to commit his fraud. These 1 on 1 relationships are not a form of "Bona fide" market making activity.)
96) For any MM accessing the exemption from making a locate or pre-borrow before making a naked short sale while marking his sell order "Short sale exempt" to not immediately place a bid for the same amount of shares of the same stock at a level 3% below the level at which the naked short sale was executed. (This would force a MM claiming to be a bona fide MM to act as a truly bona fide MM would by injecting liquidity on both the buy and sell sides.)
97) Knowing that shares held in street name cannot be specifically assigned to any one "beneficial owner" for reasons involving the need for efficiencies ("anonymous pooling of shares" or holding shares in a "fungible bulk" method) for any market participant to take advantage of this fact to intentionally facilitate the creation of shares above and beyond the amount of shares issued and outstanding at the time in an effort to flood the market with "Securities entitlements" in an effort to drive down share prices or to allow any market participant to loan out the same parcel of shares were they readily identifiable in more than one direction at any time.
98) For any SRO or participant of an SRO mandated "to promptly and accurately clear and settle securities transactions" to engage in any activities that might serve to artificially delay the "prompt settlement" of transactions via a variety of mechanisms including the use of ex-clearing modalities, the "Desking" of trades at one's trading desk, etc.
99) For any SRO or participant of an SRO mandated "to promptly and accurately clear and settle securities transactions" to deem that a transaction has "settled" until good form delivery of that which the purchaser thought he was buying was made.
100) For any b/d acting as the purchasing agent for a client and receiving a commission for his actions in this "agency" role to refuse to follow up on this fiduciary duty of care assumed when any "failure to receive" that which the purchaser thought he was buying occurs by buying in that FTR on or before T+13.
101) For any SRO mandated "to promptly and accurately clear and settle securities transactions" to not have safeguards or automatic mechanisms in place to guarantee this prompt and accurate clearance and settlement of securities transactions" as cited by the 1985 "Pollack study".
102) For any SRO like the DTCC defined as "An entity responsible for regulating its members through the adoption and enforcement of rules and regulations governing

the business conduct of its members" and mandated "to promptly and accurately clear and settle securities transactions" to claim to be "Powerless" to buy-in the delivery failures of its "Participants" i.e. their "business conduct" in order to effect the prompt settlement of these transactions.

103) For any SRO like the DTCC with this definition and these mandates to cover up the existence of FTDs in the share structures of issuers.

104) As a result of the need to "Immobilize" and "Dematerialize" difficult to counterfeit paper-certificated securities into easy to counterfeit electronic book entry securities it shall be deemed unlawful for any market participant or SRO or participant of an SRO to take advantage of this fact to partake in any effort that could be deemed as intentionally increasing the number of readily sellable either legitimate shares and/or readily sellable "Securities entitlements" in an effort to artificially increase this "Supply" factor in an effort to artificially manipulate share prices downwards especially after assuming short positions. Creating artificial leverage out of this need for enhanced efficiencies will be strictly defined as being unlawful.

105) When a beneficial owner of securities (the purchaser or entitlement holder) demands delivery of his shares (an entitlement order) it will be deemed unlawful for any market participant to take part in any activity that would make this process either more costly or more time consuming in an effort to dissuade the exercising of this entitlement order especially when done in an effort to cover up the existence of large numbers of FTDs.

106) For any market participant to try to create leverage over investors out of the fact that due to the need for efficiencies Cede and Co., the nominee of the DTCC, has been deemed to be the nominal/legal owner of all shares held in street name. This is important because investors don't for the most part realize that an electronic security entitlement does not qualify as an electronic claim of ownership. The supposition was made by legislators that the DTCC management and its participants would act in good faith with this tremendous responsibility of acting as the legal owner of all shares held in street name on behalf of their clients to whom they owe a fiduciary duty of care.

107) For any "Central counterparty" to trades or participants thereof to leverage this role in an effort to flood the share structures of targeted issuers with FTDs in an effort to manipulate downwards the share price especially after assuming a short position in that issuer.

108) For any "Central counterparty" like the NSCC to provide final settlement instructions to customers and participant firms that might aid in any fraudulent conduct to artificially depress the share prices of a given issuer.

109) For any "Central counterparty" like the NSCC to refuse to base the clearance and settlement system it administers on a "Delivery versus payment" foundation as recommended by nearly all worldwide clearance and settlement systems and as is the universal standard. Any system based on an "IOU versus payment" when the ultimate holder of the IOU, the NSCC as the contra-party, can plead to be "Powerless" to buy in the IOUs of its bosses is obviously not satisfactory.

110) For any participants of the DTCC to engage in any "Clearing agreements" that might serve to allow FTDs in an issuer to accumulate to damaging levels.

111) For any regulator to intentionally stall a FOIA (Freedom Of Information Act) request for information on FTDs due to their incredibly damaging nature associated with their size and age.

112) For the SEC to refuse to robustly oversee the DTCC and let the DTCC management know in no uncertain terms that the DTCC management has all of the power in the world to buy-in the FTDs of their participants as per their mandate as an SRO.

113) For the DTCC to constantly put out information diminishing the size of the FTD problems especially when they know that the "Netting" process they employ in their CNS or "Continuous Net Settlement" system cloaks delivery failures in anonymity and 96% of all trades are "Netted" regardless of any FTDs that arise. This "Netting" process without any "Automatic mechanism" to guarantee the "prompt settlement" of transactions i.e.

T+13 buy-ins as recommended in the "Pollack study" serves to obfuscate the magnitude of the damage incurred by the targeted issuers and the investors therein.

114) For any market participant to sell short without having stock available for delivery and intentionally failing to deliver the stock by T+3.

115) For any market participants to rely on "easy to borrow" lists for providing "reasonable grounds" to believe that T+3 delivery will be achieved when FTDs repeatedly result from this modality for a "Locate".

116) For any market participant to take part in any activity involving the abuse of or doctoring of an "Easy to borrow" list or "Hard to borrow" list done in an effort to avoid T+3 delivery and the expenses or possible unavailability of a "Locate" or "Pre-borrow".

117) For any market participant to take part in any activity that might undermine the corporate voting mechanism.

118) For any market participant to take part in any activities that might increase the systemic risk levels present in our markets.

119) For any market participant to partake in any market activities that drive the share price down to result in the shares no longer being marginable and thereby denying shareholders the right to borrow against them.

120) For any market participant to take part in any activities serving to "Target" certain securities for abusive naked short selling attacks.

121) For MMs to conspire together in an effort to drive the share prices down of targeted issuers through abusive naked short selling.

122) For market participants like prime brokers to lend out a given parcel of shares in more than one direction at a time. (Securities lending is now a $16 billion annual business.)

123) For the DTCC or registered clearing agency involved to not let the purchasing b/d in a transaction involving an FTD be made aware of the FTD. The buying b/d owes a duty of care as an agent after taking a commission to make sure that his client's purchase did get delivered.

124) For any purchasing b/d after learning of the existence of an FTD in a client's purchase order to not buy in that delivery failure under a "Guaranteed delivery" basis. (Otherwise a co-conspiring firm could just sell more bogus shares into that buy-in order which just rejuvenates the FTD and puts it under a different "Shell". If that issuer is under attack then that's probably exactly what would happen. Recall how both Boni and Pollack noted that these FTDs are "Concentrated". The purchasing b/d owing the duty is the obvious party responsible for the buy-in. The selling b/d enjoys the order flow of the party failing to deliver and would be hesitant to harm this relationship. The Evans, Geczy, Musto and Reed study showed us that even mandated buy-ins in the past only occurred 0.12% of the time they were mandated. Facing the possibility of a "Guaranteed delivery" buy-in would finally provide the much needed **meaningful deterrence** to these crimes. The SEC's captured nature would be partially offset by delegating the buy-ins to the actual market participants. Recall that the DTCC will continue to plead to be "Powerless" to do these buy-ins but the buying b/d can't.)

125) For any "Custodian" of securities to take part in any activities that might serve to create or obfuscate the presence of excessive numbers of FTDs while serving in that capacity. ("Excessive" numbers being 10,000 shares and over 0.5% of the number of shares issued and outstanding)

126) For any compliance officers of any market participants to oversee, take part in, or fail to report any activities associated with creating or obfuscating the

presence of excessive levels of FTDs that might serve to defraud prospective investors or existing shareholders in an issuer.

127) For any "Depository" to take part in any activities that might support the creation of or later obfuscation of excessive levels of FTDs that might serve to defraud prospective investors or current shareholders in an issuer.

128) For any party serving as the "Legal" or "Nominal" owner of shares in an effort to enhance the efficiencies of our clearance and settlement system to take part in any activities leading to the creation of excessive amounts of FTDs or the obfuscation of excessive levels of FTDs while acting in the capacity of the "Legal" or "Nominal" owner of shares on behalf of their "Beneficial" owners.

129) For any party administering the "Automated Stock Borrow Program" at the DTCC, DTC or NSCC or any of their subdivisions to allow a "parcel" of shares were it to be readily identifiable which they aren't currently to be loaned out in more than one direction at any given time i.e. the SBP can no longer be "self-replenishing" and the market participant receiving borrowed shares associated with a transaction involving an FTD may not be allowed to replace them into the SBP UNTIL the prior loan was paid off.

130) For any administrator of the SBP to fail to robustly monitor the securities being placed into the SBP by its participants to make sure they are legally allowed to be there i.e. no shares held in qualified retirement plans or any fully paid for cash account shares. (No more placing the DTCC participants on the "Honor system" in this regards. Why? Because the donor of shares into the SBP receives the full cash value of those shares and the temptation to cheat by inserting shares forbidden to be there is enormous especially when shares are held in an "Anonymously pooled" format.

131) For any SRO, RCA or other participant of our clearance and settlement system to partake in any fraudulent activities associated with shares at the DTCC being held in an "Anonymously pooled" format subject to fraudulent abuses i.e. voting related, lending related, etc.

132) For any SRO, RCA or other participant of our clearance and settlement system to take part in any fraudulent activity re: FTDs and their obfuscation associated with the fact that the NSCC's CNS (Continuous Net Settlement) system nets out approximately 96% of all trades regardless of their delivery status and also the fact that investors and their own b/ds are never notified that their particular buy order resulted in an FTD. This serves to blindfold the purchasing b/d that owes a duty of care to its client that paid him a commission to the fact that the client's agent never did get delivery of that which he paid for.

133) For any SRO or RCA to fraudulently report to the public about the levels of existing FTDs done to obfuscate criminal behavior and the fact that our clearance and settlement system creates a level playing field for investors.

134) For any market participant to engage in any activity that might serve to artificially increase the number of shares or securities entitlements that it can loan or "rent out" in more than one direction at any given time via any mechanism that might serve to counterfeit these securities.

135) For any market participants to not have safeguards in place to prevent the inadvertent counterfeiting of securities which exist in either a paper-certificated format or an electronic book entry format.

136) For any market participant to take advantage of his superior visibility of or access to the securities markets and clearance and settlement system in an effort to gain leverage over the investing public. (intentionally tripping stop loss orders, forcing margin calls, inducing panic selling via violent swings in share prices, abusing the lack of an Uptick rule, forcing a seller out of a market on his hands and knees via placing small bids at ever decreasing levels after acquiring a naked short position, etc.)

137) For any market participant to engage in any manipulative activity involving the willingness to sell relatively large amounts of shares on the offer but only buy small amounts on the bid once a naked short position has been established.

138) For any market participant to collude with other market participants with the intent to create or hide FTDs or share information that might be used to allow the manipulation of share prices downwards.

139) For any market participant gaining access to the exemption from making a locate or borrow before a naked short sale to engage the services of associates active in spreading negative information about an issuer after the market participant has established a naked short position associated with that exemption.

140) For any market participant to utilize any leverage over investors associated with DTCC policies instituted to make the clearance and settlement system act in a more efficient manner. This would include the DTCC's nominee Cede and Co.

141) For any market participant to take part in any activities that might decrease the ability of an issuer's transfer agent to detect manipulative uses of FTDs in the share structure of a given issuer.

142) For any SRO, registered clearing agency or market participant to take part in any activities that might serve to decrease the ability of transfer agents not associated with DTCC participants to continue to serve corporate issuers. (no changing of the rules or technologies that would favor the larger TAs associated with DTCC participants to force the smaller more independent TAs out of existence especially when done to gain leverage over investors for their parent companies or hide the fraudulent activities of the parent companies.

143) For any market participant to not clearly articulate to its clients any policies that might serve to create an advantage of the market participants over its clients associated with the generation or hiding of FTDs or the loaning out of shares.

144) For any market participant to engage in any activities that might create an advantage for the market participant over the investing public associated with the need to keep street name shares held in an anonymously pooled format or the movement to "immobilize" and "dematerialize" paper certificated shares into electronic book entry shares.

145) For any market participant to target an issuer for an ANSS attack or to recruit the naked short selling efforts of other market participants in an effort to

flood the shares structure of a given issuer with FTDs in an effort to manipulate their share price artificially downwards.

146) For any accounting or auditing firm to mislead the investing public by partaking in any activity that might serve to obfuscate the amount of FTDs in the share structure of any market participant i.e. to hide "contingent liabilities" like FTDs in an off balance sheet manner.

147) For any market participant to take part in any activities that might serve to render a "qualified dividend" entitled to preferential tax treatment as per the IRS tax code as being unqualified for tax preferential treatment if the shares involved exist in any account except a margin account.

148) For any market participant to engage in any activities that serve to deceive the purchasers of securities in regards to that being purchased being previously stripped of any of the rights attached to legitimate shares including but not limited to dividend rights, voting rights, insolvency rights, loaning rights, etc.

149) For any market participant to engage in any activity to intentionally decrease the transparency of our capital markets in an effort to deceive public investors in delivery failure related abuses or ANSS related frauds or to cover up the existence of DFRAs.

150) For any market participant, SRO or regulator to partake in any activity that in association with ANSS and DFRA frauds that might serve to remove or lessen any natural deterrents to fraudulent behavior inherent to the markets themselves.

151) For any "PIPE" or related financier to knock out bid after bid in the absence of the "Uptick rule" prior to converting any convertible instrument into common shares. (Forcing the PPS down shortly before converting would allow the conversion of "Floorless convertibles" to result in that many more common shares upon conversion. Oftentimes the companies signing up for "Floorless convertibles" are so desperate in the midst of a naked short selling attack that they're forced to rely on the word of the financiers promising not to short sell the shares they can later convert into.)

POINTS TO KEEP IN MIND

1) The execution of a "Locate" or "Pre-borrow" does not preclude the necessity to make delivery by the T+3 "Settlement date". "Legitimate locates" and "Legitimate borrows" should result in "Good form delivery" perhaps 98% of the time. "Deceitful locates" ("DLs") and "Deceitful borrows" ("DBs") should be fairly obvious especially if the SEC or an SRO is keeping statistics. Assuming that most of these crimes are being committed by a minority of unethical players then it might be wise to force a mandated buy-in of any "Locates" or "Pre-borrows" leading to FTDs of any b/d that chronically gives or accepts "Locates" or "Pre-borrows" that lead to FTDs above "X" percent of the time. Unsuccessful locates or pre-borrows on threshold list issuers might be mandated to be bought in immediately.
2) If the SROs and regulators are having a difficult time in enforcing these laws for reasons associated with the lack of visibility of these Ex-clearing "Arrangements"

then you might delegate this missing "Enforcement" activity onto the shoulders of the direct market participants with better visibility than the regulators i.e. delegate enforcement responsibilities to the buying and selling b/ds. There is, however, no valid reason why the SEC and the SROs don't aggressively crack down on the current "Ex-clearing" chicanery. This inability to intercede due to the "Contractual" nature of these frauds just doesn't cut it. The ability to link the loopholes contained in 15c6-1 and the 200(b)(3) definition of "Ownership" in Reg SHO is extremely obvious.

3) Due to the time value of money perhaps the purchaser of failed to be delivered securities should be earning the interest until delivery is effected.
4) A substantial amount of FTDs and FTRs remain invisible to the SROs and regulators but not to the clearing firms and buying and selling b/ds. These need to be addressed by mandated buy-ins instituted by the direct participants to the trade with the superior visibility.
5) Fraudulent "Locates" and fraudulent "Pre-borrows" result in "Failures to deliver". Since some delivery failures are indeed of a "Legitimate" and very short-termed nature then a certain time period must be allowed to pass before the legitimacy of a delivery failure can be assessed. Abusive naked short selling (ANSS) results in "Illegitimate" delivery failures which fraudsters portray as being legitimate at the time of their creation. The age of the unaddressed delivery failure provides the diagnosis of legitimacy or illegitimacy. Archaic delivery failures can be "Rejuvenated" by the use of illegal "Wash sales" to hide their age. Archaic delivery failures in stocks that have had their share price recently tumble and the sellers of these nonexistent shares still refuse to take their ill-gotten gains and move on are the most heinous of them all. Why? Because there is now irrefutable proof available that these abusive naked short sellers had no intent whatsoever in ever covering these "Open positions" in a timely manner as per the securities laws. Regulatory efforts should focus on the corporate issuers with archaic delivery failures at first as their shareholders have incurred the most damage and they may just be on their corporate death bed.
6) Keeping an emphasis on the "FTDs" provides a back stop mechanism should the fraudsters get away with bogus "Locates" or bogus "Pre-borrows". Since the emphasis should be on delivery failures and not necessarily whether or not a "Locate" or a "Pre-borrow" is legitimate or not all "Failures to deliver" need to be tallied and made visible to the regulators, the investing public and the corporate management team. The intentional obfuscation of this "Toxic waste" from the regulators, the investing public and management needs to be deemed "Unlawful". The DTCC has full visibility of the "FTDs" housed there. They know exactly what the disparity is between the number of paper-certificated shares housed in their vault system and the total number of electronic book entries housed in their "Participants accounts". Their proffering that they don't release this information to anybody but the regulators because they don't want to create trading abuses (Short squeezes) needs to be seen for what it is namely a blatant cover up of fraudulent activity to keep their owners from sustaining financial losses associated with "Short squeezes". This is the same reason given by the SEC for "Grandfathering in" previous acts of blatant securities fraud. Note the obsession

of both the DTCC and the SEC with preventing the occurrence of the natural deterrent from committing these crimes in the first place. A "Short squeeze" involving causing those guilty of abusive naked short selling to once and for all deliver that which they previously sold but constantly refuse to deliver does not seem like a bad way to force the removal of the "Toxic waste" actively forcing these corporations closer and closer to bankruptcy and provide "Meaningful deterrence" towards future crimes. Since investors have been actively bringing the existence of these crimes to the attention of the SEC and Wall Street for many, many years does it not make sense that those currently sitting on these "Open positions" have no intent whatsoever to voluntarily pay off these debts owed to U.S. investors.

7) Trades involving "FTDs" or borrows from a self-replenishing source like the "SBP" do not legally "Settle" because there was no "Good form delivery" of that which the buyer thought he was purchasing i.e. legitimate "Shares" with a full "Package of rights" (voting and others) attached.
8) "Securities entitlements" in and of themselves are not illegal but there are no rights attached to them. Creating fake "Packages of rights" to obfuscate the existence of astronomic levels of incredibly damaging "Securities entitlements" is illegal.
9) The life expectancy of a "Securities entitlement" or a legitimate "FTD" is no more than the time period which distinguished a legitimate delivery failure from an illegitimate delivery failure i.e. perhaps 13 or so business days.
10) The fact that many victimized issuers stay on the Reg SHO "Threshold lists" for hundreds of days provides prima facie evidence of these crimes and cover up crimes. For instance, fraudsters can enter into illegal "Wash sales" every 12 days to avoid triggering the T+13 day mandated buy-in rule. They can also execute their mandated "Buy-in" from a co-conspirator also selling nonexistent shares which also result in yet more but "Younger" delivery failures.
11) Failures to deliver are a form of "Toxic waste" and it is difficult to determine their legitimacy. With that in mind it becomes important to decrease the number of "Legitimate" (short term) delivery failures so that illegitimate ones will stick out more like a sore thumb. For instance, in dealing with "Legended" certificates needing a legal opinion to remove. These shouldn't be sellable UNTIL the legend is removed to circumvent the dilutionary damage felt by the other shareholders.
12) The SEC needs to make it perfectly clear that as per the definition of an SRO the DTCC has all of the power in the world to buy-in the delivery failures of any of its participants. Historically they have claimed that they are powerless to do buy-ins but the definition of an SRO clearly indicates that they do.
13) The SEC needs to step up regulatory scrutiny of the stock lending business and their use of bogus locates and their refusal to decrement a "Locate" from their supply of "Locates".
14) The SEC needs to follow up on bogus "Locates" or "Pre-borrows" which result in FTDs. Keep in mind that the goal of many of these fraudsters is to bypass the expense of or possible unavailability of a firm "Pre-borrow". Prime brokerage firms in search of a larger chunk of the $10 billion spent annually by hedge funds on commissions and borrowing fees are in a position to prostitute themselves and

rack up huge fees by executing bogus "Locates" or multi-directional "Locates" of the same parcel of shares were they to be readily identifiable which they are not due to the "Anonymous pooling" format used at the DTCC "for efficiency reasons". To wit the recent case involving a hedge fund filing suit against a prime broker for passing on borrowing fees that it never ran up due to bogus "Locates" and "Pre-borrows". Notice the never ending culture of greed prevalent in the prime brokerage business. There needs to be a form of punishment associated with bogus "Locates" that lead to FTDs that nobody is interested in following up on. If the SEC refuses to follow up on these then there must be mandated buy-ins by any party to the trade that has become aware of the FTD. This type of activity can be expected to be especially prevalent in the nonmarginable shares of development stage issuers with very few shares held in margin accounts and very little institutional ownership. The fact that these issuers are often targeted for "Bear raids" must raise the suspicion that bogus "Locates" and bogus "Pre-borrows" are ubiquitous.

15) The "Moral hazard" issues need to be kept in mind. The prevailing mindset on Wall Street is that no matter how badly our firm misbehaves somewhere along the line there will be a taxpayer led bailout of our fraudulent behavior. DTCC participants perpetrating frauds can always commit these frauds with their "DTCC participant" hat on since the DTCC is and has always been too large and critical to our financial system to hold responsible for its actions. Let's go way out on a limb and assume that the allegations are true that the now defunct Thomson Kernaghan and Bear Stearns represent(ed) the epicenter for naked short selling abuses. This is a common allegation but yet to be proven. Of the $29 billion guarantees available to J.P. Morgan for their willingness to assume the debts of Bear Stearns how much of that needed to be there to protect J.P. Morgan from Bear Stearn's current FTDs? Should the amount of this "Toxic waste" in the form of unaddressed and archaic FTDs on and off the books of Bear Stearns be made public to any prospective investor or current shareholder of J.P. Morgan since it is most assuredly a "Material fact"? How can the SEC that administers the 1933 Securities Act or "The Disclosure Act" not make this critical information available to the investing public? They can't without taking responsibility for these crimes becoming pandemic due to their refusal to provide any form of "Meaningful deterrence" to them being committed. **The evidence of these crimes has to be swept under the rug into perpetuity and poison the investments of our grandchildren UNTIL somebody steps up and mandates the buy-ins of these incredibly damaging FTDs and the "Securities entitlements" they procreated and with SPECIFICITY deems this behavior as being "Unlawful". Are you at the SEC going to allow Rule 10b-21 to be the first effort in this regard or are you going to keep it in the proposed form?** This is why we're in this "Stalemate mode" described earlier. Is perhaps an "Amnesty" approach necessary wherein the SEC whispers to the fraudsters you have until "X" date to cover these "Open positions" by yourselves or we will do it for you (no illegal "Wash sales" or DTCC "Intermediation" allowed)?

16) Why should taxpayers be on the hook for this alleged misbehavior? What would have happened if Bear Stearns were allowed to go bankrupt and these alleged

"Open positions" would have been made public? What will be the fate of those archaic FTDs now on the books of J.P. Morgan? Will they finally be subject to 13-day buy-ins or swept under the carpet yet once again? Will the DTCC's "RECAPS" program roll back their age to zero or make them vanish entirely? If you listen real closely can you hear the sigh of relief or popping of champagne corks on Wall Street every time a U.S. domiciled corporation goes bankrupt or gets delisted by the SEC? When you see the displaced employees of these firms pack up their desk contents in boxes and haul them to their cars is there a sense of relief in the air?

17) In your provision of investor protection you might consider the plight of the investors in publicly-traded market making and clearing firms unaware of the activities of management in these abuses and the levels of unaddressed deliveries that may have to be covered soon.
18) In regards to marking to market naked short positions in thinly traded securities you must remember that these share prices are easy to push downwards violently but when covering occurs they retrace this steep path. Marking to market for "Asset valuation" purposes needs a fudge factor to account for this otherwise issues like systemic risk and counterparty risks are not being truly evaluated. Hedge fund investors are going to be led astray as these reports do not factor in how much the price will rise is the hedge fund is forced to cover. This also explains why these naked short positions never seem to get covered; they just keep getting crossed to and from co-conspirators until they're "Parked" for good in "Ex-clearing" repositories. The net effect is to under report contingent liabilities and over report net capital reserves. A realistic marking to market process would help protect investors in the companies committing these abuses and serve as a deterrent to commit them in the first place. Soon enough these naked short positions can get to a size which is cost prohibitive to cover. The proper valuation of these "Open positions" is a critical aspect of investor protection as well as systemic risk mitigation. "Investor protection" applies to hedge fund investors also. Contra-parties need an accurate "Asset valuation" to judge whether or not to do business with an entity with difficult to value assets. In the absence of an "Uptick rule" you can expect those with naked short positions to knock out a series of bids at times when marking to market of asset values is being done. Since these "Open positions" need to be collateralized then one can expect that attacks will happen during the time of day when the marking to market process occurs.
19) As far as theoretical "Confidentiality" issues associated with "Proprietary trading strategies" this should not apply to the SEC being given some transparency into what's going on with secrecy-obsessed hedge funds. Granted public investors should not have the right to see these positions unless mandated by the disclosure laws.
20) The obvious solution to the crime wave involving deceitful locates and deceitful pre-borrows would be to not allow the sale of securities UNTIL they have been delivered to the selling entity so that T+3 delivery can be predictably effected.
21) Prospective hedge fund investors need visibility of naked short positions (FTDs) carried on the books of a prospective hedge fund investment.

22) A “Locate” only lasts 3 days and then poof it’s gone. The system needs a regulatory agency to monitor the identity of the firms that grant or receive locates that have a statistically abnormal rate of resulting in FTDs.
23) Mandating that long positions of 5 and 10% need to be disclosed as per Section 13 why wouldn’t short positions of 5 and 10% also be mandated to disclose.

RECORD KEEPING SUGGESTIONS

1) Keep track of the “Locates” and “Pre-borrows” that still result in FTDs and compare these to statistical norms.
2) Monitor the closing out of the naked short positions taken by options MMs during theoretical hedging maneuvers and compare it to the time that the option expired or was closed out.
3) Monitor for the transference of the above described FTDs back to those buying the “Puts”.
4) Don’t allow chronic abusers to act as options MMs any longer.

BULLET POINTS

- <u>Unaddressed</u> FTDs (not bought in on a timely basis) allowed to accumulate in the share structures of targeted issuers can mortally wound corporations, the jobs they provide, the investments made therein and those in society that would benefit from these corporations’ cancer cures or technological breakthroughs
- The relatively defenseless development stage corporations typically targeted in ANSS attacks provide the job growth engine in today’s economy
- FTDs that <u>are addressed</u> by T+13 day buy-ins are still damaging but to a lesser degree due to their relatively short lifespan
- Securities fraudsters both create their naked short positions through refusing to deliver that which they sell and enhance the prognosis for their bet placed against a corporation’s success via selling and refusing to deliver yet more nonexistent shares which serves to generate yet more incredibly damaging FTDs
- The mere method of placing the bet in ANSS attacks enhances the prognosis for the outcome of the bet i.e. a “rigged” market
- All DTCC participants are heavily financially incentivised to either “Enable” the creation of massive numbers of FTDs or to directly create them
- Investors that purchase shares of an issuer do not want incredibly damaging FTDs artificially manipulating their investment’s value downwards nor would they probably buy shares in an issuer that they knew had inordinate amounts of FTDs in their share structure
- This reality involving DTCC participants wanting copious numbers of FTD at the DTCC and elsewhere and investors not wanting them results in what is referred to as a “Conflict of interest”

- Conflicts of interest between "Clients and agents" as well as between "Fiduciaries and those owed a duty by the fiduciary" are strictly forbidden by the 1934 Securities Exchange Act
- Once created FTDs are extremely easy to hide either inside or outside of any "Registered Clearing Agency" like the DTCC
- FTDs are portable and easy to transfer once their age becomes a problem or their existence is in danger of being detected
- Abusive naked short selling frauds are indeed a form of "counterfeiting". It's interesting in that in 1969 "Dematerialization" converted tough to counterfeit paper-certificated shares into easy to counterfeit electronic book entry shares which would serve as a "Surrogate" because electronic book entry shares are much less cumbersome to work with. The counterfeiters at work here are merely counterfeiting the "Surrogate". These "Surrogates" (securities entitlements) are however considered a "Security" (because they are an evidence of indebtedness) and the federal law strictly deems it unlawful to counterfeit a "Security"
- "Securities entitlements" over and above the number of legitimate paper-certificated shares and legitimate "Surrogates" for these shares (from truly bona fide market making) can also be counterfeited. They are also technically a "Security". They can easily be counterfeited via "Deceitful locates" ("DLs") and "Deceitful borrows" ("DBs")
- Most investors know nothing about FTDs and truly believe that they are purchasing legitimate "Shares" of a corporation that are <u>finite</u> in number and equal in number to that cited on a corporation's 10-Q and 10-K reports; they are badly mistaken
- Most investors believe that the theoretically "Legitimate shares" (backed by a paper-certificated share) that they are purchasing are being delivered in the same timeframe in which their funds are being mandated to be delivered i.e. within 3 days; they are again badly mistaken
- Most people that have purchased 1% of the number of "Legitimate shares" in a corporation as reflected on their 10-K are under the impression that they "Own" 1% of the company and can exercise voting power over 1% of the votes; they are badly mistaken as back offices on Wall Street regularly and indiscriminately <u>cancel</u> votes that have been cast in order to cover up the existence of massive numbers of unaddressed and archaic FTDs that all market participants, the SROs and the regulators absolutely refuse to address
- Some failures to deliver by T+3 are indeed of a "Legitimate" nature
- Due to this fact the law (UCC Article 8) allows for the creation of "Securities entitlements" to act as "Place-holder" securities <u>for accounting reasons</u> only until this very short time period lapses before the <u>previously contracted for</u> delivery occurs
- Truly "Legitimate" delivery failures almost always have a very short lifespan. Due to their damaging nature that's how they are defined otherwise legislators would not have allowed for the creation of "Securities entitlements"

- Due to this very short (anticipated) lifespan the nature of "Securities entitlements" resulting from "Legitimate" FTDs were seen by legislators as being damaging (via dilution) but not being too damaging because of their (anticipated) very short lifespan. The assumption these legislators made was that these FTDs would be aggressively monitored by both the SEC and the DTCC as to their numbers and their age; these legislators were badly mistaken

- These legislators presumed that the DTCC participants entrusted with this easy to abuse privilege would ACT IN GOOD FAITH with this empowerment; the legislators were once again wrong

- Any effort to intentionally prolong the lifespan of a "Securities entitlement" and its associated "FTD" would obviously be in contravention of the intent of these legislators and might be deemed an act of "Fraud" due to the deceit of investors thinking that what they were purchasing were legitimate shares and that they were being delivered on T+3

- The timeframe envisioned by the legislators to determine the "Legitimacy" of delivery failures is critical to focus on. I like to use the concept of the "Contemplated Acceptable Delivery Delay" ("CADD") period as envisioned by the legislators at the time the legislation was written. ("Contemplated" by the legislators at the time)

- There are 2 different "CADD" periods involved in delivery failures. One deals with the delayed delivery of paper-certificated shares and the other with the delayed delivery of shares held in "Street name" in an electronic book entry format

- Almost all legitimate delivery delays are associated with paper-certificated shares which are indeed more cumbersome to deal with than their electronic book entry counterparts. Electronic book entry shares on the contrary are either in the account of the seller or not

- Since nearly 98% of shares are held in an electronic book entry format "Legitimate" delivery delays are now few and far between but their existence is dangerous because of the opportunity of fraudsters to portray "Illegitimate" or "strategic"/intentional (as per Dr. Leslie Boni) delivery failures associated with fraudulent conduct as involving "Legitimate" delivery delays

- Historically the cumbersome nature of paper-certificated shares resulted in the 1969 "Paperwork crisis" wherein the back offices of b/ds were overwhelmed during the processing of transactions involving paper-certificated shares as the trading volumes picked up

- Legislators dealt with this crisis by a movement towards utilizing the "Immobilization" of paper-certificated shares in DTCC vaults and the

"Dematerialization" of difficult to counterfeit paper certificates into (unfortunately) easy to counterfeit electronic book entries in order to unblock these log jams

- The legislators once again took a gigantic leap of faith in entrusting the DTCC management and its participants to ACT IN GOOD FAITH with this form of public trust involving not abusing these new found abilities to easily counterfeit these securities in an effort to drive share prices downwards after establishing naked short positions by intentionally refusing to deliver that which they sold; the legislators were once again badly mistaken
- The decision was made to allow "Securities entitlements" to act as "Place-holder" securities <u>for accounting purposes only</u> in this very short (anticipated) interim period (the "CADD") and to be recorded onto the monthly brokerage statement of investors to reflect the purchases they had made
- Due to the (anticipated) very short term lifespan of "Securities entitlements" and the fact that the (anticipated) delivery was right around the corner the legislators allowed these "Securities entitlements" to be readily sellable
- Since they are admittedly not legitimate "Shares" of an issuer the column on an investor's monthly statement reflecting purchases is termed "Securities held long" or "Quantity held Long" instead of "Shares held long"
- Unaddressed failed deliveries of any age cause damage to corporations and the investments made therein by increasing the "Supply" of these "Book entries" (the arithmetic sum of legitimate "Shares" plus mere "Share entitlements") held "Long" because the "Securities entitlements" are allowed to be readily sellable due to the decision of legislators at the time that the benefits of these "Placeholder" securities outweighed the obvious damages sustained by the corporations and the investments made therein again <u>due to their very short (anticipated) lifespan</u>
- The legislators made two very bold assumptions. Firstly they <u>assumed</u> that the DTCC and the SEC would closely monitor the numbers and ages of any FTDs and aggressively buy-in any FTD that was perceived to not be associated with a "Legitimate" delivery failure of a very short lifespan; they were grossly mistaken
- Secondly, they trusted that the DTCC participants facilitating the creation of these "Securities entitlements" would ACT IN GOOD FAITH with this incredibly tempting opportunity to funnel the funds of investors into their own wallets via assuming naked short positions and then flooding the markets of any targeted corporation with illegitimate FTDs/"Securities entitlements"; again the legislators were grossly mistaken
- The specific time period after which a theoretically "Legitimate" FTD became a fraudulent FTD wherein it became obvious that the seller had no intent whatsoever to deliver that which he sold was not set although later rulemaking set this time period or "CADD" at T+13 days before mandated buy-ins were required
- Reg SHO later softened this stance to make mandated buy-ins on T+13 to <u>only</u> apply to "Threshold securities" with at least 10,000 FTDs on the books plus at least 0.5% of the number of issued and outstanding shares in a FTD status

- The fact that many FTDs held outside of “Registered Clearing Agencies” are invisible to the regulators and SROs was not taken into account. Again, the DTCC participants were entrusted to ACT IN GOOD FAITH and not allow FTDs to be generated <u>outside</u> of Registered Clearing Agencies like the DTCC (and therefore outside of Reg SHO’s purview) and to not intentionally cover up their existence; the legislators again were badly mistaken
- This being the case there was a very predictable migration of easily transferred FTDs held in a “Registered Clearing Agency” (“RCA”) like the DTCC to those sites where FTDs are not only invisible to the SROs and regulators but also outside of the purview of Reg SHO i.e. those associated with “Expressly agreed to contracts”, “Repurchase agreements”, “Synthetic long positions”, “Short to buy” agreements, etc.
- <u>Unfortunately</u> the Reg SHO “Threshold list” mandated buy-ins on T+13 only applied to FTDs housed in an “RCA” like the DTCC
- Long ago opportunistic fraudsters noticed that there was no robust regulatory activity monitoring the number <u>or</u> age of the FTDs within sight of the regulators and the DTCC management as anticipated by the legislators nor was there much evidence of those entrusted to create these “Securities entitlements” ACTING IN GOOD FAITH and not allowing their creation or concealment outside of the DTCC in “Ex-clearing” modalities invisible to the regulators and outside of the purview of Reg SHO
- Due to the existence of truly “Legitimate” delivery failures the task facing those choosing to easily siphon off the funds of unknowing investors then became to portray the <u>fraudulent</u> delivery failures of securities fraudsters as being of a “Legitimate” nature just to get them hidden outside of the DTCC and visual range of the regulators or inside the DTCC wherein the DTCC management could be relied upon to plead to be “Powerless” to buy them in and more than willing to keep them out of sight from the investing public due to theoretical “Confidentiality” issues and the need to circumvent trading abuses like “Short squeezes” wherein fraudsters might be <u>forced</u> to finally deliver that which they previously sold (perish the thought)
- The goal of these “Abusive naked short sellers” then became to establish naked short positions in and outside of the DTCC via failing to deliver that which they were selling and follow this with massive levels of yet more FTDs in an effort to either bankrupt the targeted company or to force them into financing corporate activities by selling shares at steep discounts (due to their share prices being in free fall) to plummeting share price levels. The result was the lack of availability of what are referred to as legitimate “Capital formation” opportunities
- These fraudsters also noticed that once an FTD was created utilizing the Continuous Net Settlement (“CNS”) of the DTCC the number and age of the FTDs were kept as a well-guarded secret by DTCC management as mentioned earlier due theoretically to “Confidentiality” issues and the desire to circumvent potential trading abuses associated with potential “Short squeezes” should the existence of an astronomic level of FTDs in a corporation’s share structure be discovered by opportunistic investors that recognized this Wall Street culture of greed

- Thus it became acceptable for DTCC participants to manipulate share prices downwards but a huge priority of the DTCC to stop share prices from moving back upwards to their pre-manipulation levels
- This same goal of circumventing “Short squeezes” involving forcing abusive naked short sellers to once and for all deliver that which they sold but have since absolutely received to deliver was proffered by the SEC as to why they chose without soliciting comments from the investing public as mandated by law to “Grandfather in” what were now proven irrefutably to be intentional acts of fraud/deceit upon the investors they were congressionally mandated to provide “Investor protection” to
- The net effect was to remove one of the main <u>natural market deterrents</u> to these abuses i.e. the “Short squeeze” from becoming a reality. The DTCC’s desire to eradicate any chance of a “Short squeeze” was obvious as it would be financially painful to their DTCC “Participants”/owners/bosses guilty of perpetrating these “Frauds on the market”. The SEC’s obsession with preventing “Short squeezes” is a little more problematic and perhaps enigmatic as one might assume that any <u>uncompromised</u> regulator would gladly welcome the help of any <u>natural market phenomena</u> that would act as a truly meaningful deterrent to naked short selling abuses
- In 2004 Dr. Leslie Boni an economist from the University of New Mexico was engaged by the SEC to peer into the heretofore dark confines of the DTCC to study the levels and ages of FTDs housed there
- Her published research identified a massive problem at the DTCC in regards to the ages and quantities of unaddressed FTDs
- The damages cause by these frauds that are incurred by any targeted corporation and the investments made therein by unknowing investors are directly proportional to the product of the number of unaddressed FTDs in the share structure of the corporation multiplied by the average age of each FTD
- FTDs can accumulate at the DTCC, in Ex-clearing formats, at the “Trading desks” of b/ds via “Internalization” procedures, at Canada’s CDS, offshore, etc.
- U.S. domiciled corporations have a finite amount of legitimate “Shares” issued and outstanding at any given time. This information is held and monitored by an issuer’s “Transfer Agent” and/or “Registrar” entrusted to monitor for any abusive trading in the shares of their client corporation’s share structure
- Neither a corporation’s transfer agent nor its registrar are allowed any view of the FTDs held in or outside of the DTCC. Their protective role has been greatly diminished by this intentional blindfolding
- Each one of a corporation’s “Legitimate” shares has a paper-certificated share somewhere in existence to justify its existence. Most of these are held in “Street name” and reside in the DTCC’s vault system
- The DTCC management therefore has clear visibility of the number of paper-certificated shares it acts as the “Legal custodian” of and the electronic book entries held by its DTCC participants. The disparity between these two amounts would represent the number of FTDs being housed at the DTCC

- A legitimate "Share" of a U.S. domiciled corporation consists of a "Package of rights" associated with that specific corporation. These include the right to vote, the right to dividends, the right to resell these shares, etc.
- These theoretically very short termed "Securities entitlements" have no "Package of rights" or individual rights associated with them
- Only a corporation's Board of directors can create and issue these "Packages of rights" that form the unity of equity ownership or "Share" in a corporation. The DTCC has no power entrusted in them to create these "Packages of rights" out of thin air
- In the case of fraudulent FTDs which are associated with "Illegitimate" delivery failures and the refusal to deliver that which was sold since there are no rights or "Packages of rights" associated with these mere "Entitlements" every time a purchaser of shares and/or entitlements tries to exercise a right that is missing then a specific "Cover up" fraud needs to be perpetrated to cover up the existence of the missing right and the existence of the underlying fraud involving refusing to deliver that which has been sold. These cover up frauds need to be perpetrated both inside and outside of the DTCC i.e. anywhere where the illegitimate FTDs are housed and intentionally concealed
- If the number and ages of "Securities entitlements" within the share structure of a corporation is not monitored closely and "weeded out" promptly via "Buy-ins" then severe damages will accrue to the corporation, its employees and the investments made therein
- This damage is usually in the form of job losses and a plunging share price due to the artificially created "Oversupply" of readily sellable "Book entries", whether they be legitimate shares or mere securities entitlements/IOUs seen on a monthly statement
- **Since DTCC policies merely mandate that abusive naked short sellers only need to collateralize these "Open positions" on a daily "Marked to market" basis then as the share price predictably plummets from this fraudulent activity the party still refusing to deliver that which they sold is allowed to gain access to the defrauded investor's money despite the fact that he continues to refuse to deliver that which he sold. I refer to this as "The Ultimate Paradox" of abusive naked short selling**
- The result is a self-fulfilling prophecy of rerouting the investment funds of unknowing investors into the wallets of DTCC participants with a superior knowledge of how the DTCC sponsored clearance and settlement system really operates
- The worldwide experts in setting up and designing clearance and settlement systems like the "Group of 9" (Paul Volker's group) recommend nearly unanimously that all clearance and settlement systems be based on "Delivery versus payment" where in no way, shape or form the seller of securities should get his hands on the purchaser's funds **UNTIL** "Good form delivery" has been effected. The DTCC management absolutely refuses to follow this foundational concept
- The net result of all of this is an "Us versus them" format on Wall Street wherein DTCC participants happy with the status quo stall any meaningful reform while

investors finally learning how the DTCC's clearance and settlement system is designed cry out for reform

- The DTCC policy is to treat all FTDs as being associated with "Legitimate" delivery failures no matter what their age has become. Despite acting as an "SRO" or "Self-Regulatory Organization" defined as: "A non-governmental entity responsible for regulating its members through the adoption and enforcement of rules and regulations governing the business conduct of its members" the DTCC management to this day claims to be "Powerless" to buy-in archaic delivery failures associated with the "Business conduct" of their "Participants"/owners/bosses

- The recent rescinding of the "Uptick rule" which forbade the merciless banging out of bid after bid in an attempt to intentionally drive a corporation's share price downwards has greatly exacerbated these crimes as fraudsters can now knock out bid after bid in an effort to decrease the share price at which their naked short "Open positions" are marked to market. This enhanced flow of investor funds into their wallets creates enhanced "Leverage" for these fraudsters to collateralize even larger naked short positions which increases the rate at which the targeted corporation's share price plummets. This sets up a self-feeding cycle driving U.S. corporations, the investments made therein and the U.S. citizens employed there out of work or bankrupt

- One of the unfortunate aspects of this discipline is that there is a certain percentage of truly mismanaged companies that are going to be fraudulently playing the "Victim of naked short selling abuse" card to hide their ineptness and possible fraudulent activities. Unfortunately these examples will be held out to the public by those enabling and perpetrating abusive naked short selling frauds as well as the co-opted financial media as another example of why abusive naked short selling is a myth and why reforms are not needed. Their argument will be that a little "Vigilantism" is in order sometimes and that the money stolen from the investors that these "Shareholder advocates" sell nonexistent shares to should be looked upon as merely "Collateral damage" to be expected in their "Shareholder advocacy" role

- Some cases will undoubtedly represent a combination of fraudulent behavior by the management team of an issuer that is correctly diagnosed as being fraudulent early on by abusive naked short selling fraudsters. Abusive naked short selling fraudsters know that they have a good chance of getting a misbehaving corporation like this "Delisted" at their prodding and perhaps rightfully so and that the investment dollars of any "Sucker" buying the nonexistent shares that they are selling will soon be in their wallet and the evidence of their own frauds will be "Buried in the desert" during the delisting process. Fraudsters would naturally be expected to be good at diagnosing frauds before the investing public could figure it out. These victimized investors unfortunately get it from both sides and the regulators seldom have much empathy for the investors silly enough to be defrauded by the management team's fraud as well as the abusive naked short selling fraudsters' fraud. In these cases each of the two frauds need to be addressed independently so that the victims might be able to recoup at least part of the damages incurred by the fraudulent activity of the abusive naked short selling fraudsters. Some of these cases may even end up with both groups of fraudsters working in tandem towards the end of the fleecing unknowing investors.

THE NSCC SUBDIVISION OF THE DTCC AS THE “CONTRA-PARTY” TO SECURITIES TRANSACTIONS

Most clearance and settlement systems utilize a “Contra-party” to step in between a buyer and a seller in a securities transaction. In the U.S. this contra-party is the NSCC (National Securities Clearing Corporation). It is the job of this middleman to take the money from the buyer and get it to the seller as well as to take the securities being delivered by the seller and get it to the buyer.

In the case of an FTD at the DTC the missing securities are actually owed to the NSCC. The question arises as to how in the world can the NSCC plead to be “powerless” to buy-in a debt owed directly to itself? This shoots down the claims of the DTCC in being “Powerless” to execute buy-ins of their bosses’ FTDs. As Dr. Rob Shapiro the former Undersecretary of Commerce under the Clinton administration and a well-recognized expert on naked short selling matters comments “The DTCC has all of the power in the world to buy-in these delivery failures; they consciously choose not to”!

I once again apologize for the inability to edit out the parts of this “Comment letter/book” that repeat information previously presented before the May 20th of 2008 deadline for “Comment letters”.

Sincerely,

Dr. Jim DeCosta
Tualatin, Oregon