Subject: S7-08-08

Dear Chairman Cox,

Frankly, I find it appalling that after more than 4 years the SEC is still dancing around this easily-detectable and easily-preventable issue of Delivery Failures as if was made of glass; this approach instead of treating it as the deliberate, illegal, and despicable practice of naked short selling that it truly is.

In fact, even the SEC's lengthy write-up on this proposed S7-08-08 Rule (10-pages, triple column, with 72 footnotes) reflects just how "fragile" the SEC seems to always treat this slippery and unlawful trading practice.

Why, for instance, in all its related writings does the SEC seem to constantly use the adjective "abusive" before the phrase "naked short selling" Are there instances of "naked short selling" that are *not* abusive? In the phrase "abusive naked short selling," is the adjective "abusive" really necessary at all? To whom is the SEC paying such undue respect?!

In the opinion of this seasoned observer, it's actually quite basic: *One simply does not sell what one does not own.*

And when one does sell something one does not own, especially when the something is a stock, and particularly when the sale is a deliberate attempt to drive a share price down; then the offending entity needs to be dealt with in a manner that makes the practice unprofitable.

Just think of the millions of automobiles and residences that change hands across America every year. Each one has a title; and at the point of sale, steps are taken to verify that the seller owns the asset being sold. Why is it, particularly in this modern computerized day and age; that stocks can not seem to be sold with the same ownership precision that vehicles and dwellings are sold.

At present, even though the SEC has access to all the data needed to prosecute naked short sellers; the actual likelihood of detection seems very, very remote. And, in the unlikely event of detection, the resulting fines are no where near enough to deter this corrupt and obviously lucrative practice; in fact, the fines always seem to be relatively paltry, and rarely do we ever see any admissions of guilt.

In a nutshell, talk is cheap! Talk may stimulate debate, it might keep writers and their readers busy, and in the process it may even buy needed time. But talk alone accomplishes absolutely nothing Mr Chairman; and as evidenced by the fact that 488 companies still appear as Reg SHO Threshold Stocks on

Friday May 16th, 2008, the SEC has done very little except talk about this cancerous issue; an issue that this writer thinks poses a systemic risk that seriously threatens the actual security of our planet's investment markets.

In the opinion of this seasoned observer, it is time for the Commission to literally go back to basics, Investments 101, and acknowledge that in an "efficient market," stock prices are determined solely by the forces of supply and demand.

Only if the Commission truly understands and appreciates this most-basic market principle can it ever expect to fulfill its congressional order to protect investors.

And to protect investors from this crucial supply-demand equation being corrupted, the Commission needs to constantly bear in mind that any and all strategies, procedures, or deliberate data omissions that distort these supply and demand forces must be diligently prevented. For then, and only then, will our nation's equity markets be truly efficient.

In order to promptly restore much-needed credibility to US equity markets, in this writer's opinion, the SEC should flex the muscle with which Congress empowered it and with much publicity it should actively seek the indictment, conviction, and imprisonment of the next well-connected John J. Mack type who knowingly ignores the rules and bases trades on insider information. And the SEC should do his regardless of the perpetrator's rank on Wall Street, regardless of what law firm he hires, and regardless of internal consequences.

Similarly, the Commission should aggressive pursue those like Jim Cramer who brag publicly and proudly about how they manipulate stocks and markets, about how they outsmart the SEC, and about how inept they think the SEC is. And in widely-publicized moves, the SEC should strive to strip Cramer types of all their ill-gotten gains, and then some.

Such actions would not only restore much-needed integrity and teeth to the regulatory process, but they would also force members of the burgeoning hedge fund industry to conduct a far more balanced cost-benefit analysis each time they execute a sale trade they know will yield a Delivery Failure.

At present, the benefits associated with naked short selling are huge, and the costs are tiny.

Specifically, naked shorters drive stock prices down by falsifying supply; and they do this by selling a slew of shares they don't own, shares they haven't borrowed, and shares they don't intend to borrow. Talk about a self-fulfilling prophecy!

And what are the related costs? Costs are only incurred if the short seller is detected, and if he has to literally return more marbles than were stolen. And how often has that happened?

To conclude, naked short selling must be stopped before related market distortions cause systemic failure; and for this reason I support the SEC's proposed Anti-Fraud Rule.

Mark Santos

PS **– Additional thoughts about NSS are contained in my prior comment in 2007** @ **http://www.sec.gov/comments/s7-12-06/msantos5468.htm.**

Letter to Senator Bennett Re NSS – Late July 2007:

Dear Senator Bennett, **Friday – July 27th, 2007**

Back in the summer of 1929, a then little-known statistician from Wellesley, MA by the name of Roger W. Babson was warning the nation that a combination of "watering" (naked short selling) and inside-information sharing among "pools" and "syndicates" (the Hedge Funds of that era) was about to cause a systemic crash of US equity markets.

However, because the DJIA was hitting new highs in August of 1929, and since all the Talking Heads of the time were just as optimistic then as they are today; frankly, the masses initially viewed Babson as somewhat of a quack.

But when the markets crashed in October, and as soon thereafter it became quite apparent that the markets crashed for the very reasons Babson had predicted, he soon became quite famous. And in the decades that followed he started the Babson Institute, which is now Babson College and still stands as one of the country's finest business schools, and he expanded Babson's Reports, which for decades remained one of America's most reputable investment advisory firms.

Well Senator Bennett, I personally attended Babson College and I gradated with honors in 1975 with double majors in Finance & Investments. Moreover, for the three years immediately after I graduated, I was employed within the Babson Organization by Babson Reports, in the capacity of an Equities Analyst.

Given my background, and considering that I've read and re-read every book Babson ever wrote, I assure you that I am far more familiar than most not only with the details of the horrific 1929 Crash and the subsequent Depression, but also with the specific statistical tools that Babson employed when he made his systemic-failure predictions 78 years ago.

That all being said, currently I am thoroughly convinced that at present our equity markets face precisely the same systemic-failure risks that they did in 1929; and for the exact same greed-driven reasons. Furthermore, I am confident that if the practice of naked shorting (or strategic delivery failures, or whatever nicer term the SEC prefers to use) isn't immediately curtained, what little confidence the globe still has in US markets and regulators will soon vanish. And with the leverage inherent in recent trading volume, with or without a Plunge Protection Team, and with or without trading curbs, the markets will crash drastically.

So for all the above reasons, I want to personally and sincerely thank you for having the brains and the guts to confront this crooked industry about this important issue; and I truly wish you the very best of luck in your efforts.

And when you consider all the houses and vehicles that are sold in this country every day without any "ownership" or "title" issues whatsoever, it is truly absurd to think that stocks, as an asset class, must be treated any differently. In a proverbial nutshell, if one sells houses or vehicles one does not own, one goes to jail. So why should stocks be any different?

And as a closing note Senator Bennett, don't think for a minute that there isn't a very direct and evil connection between all the ongoing naked shorting (as evidenced by the fact that there even is a Reg SHO Threshold Securities List) and the SEC's (and DTCC) stated desire to completely rid the system of paper certificates; for this would permanently void the system of any formal checks & balances.

Respectfully,

Mark Santos

(Address & Phone Info Deleted)