August 12, 2008

Greetings,

I received a response to the email below today with instructions (Question 8 of http://www.sec.gov/divisions/marketreg/emordershortsalesfaq.htm) on "How can I comment on the Commission's emergency orders, or any potential rulemaking the Commission may undertake to expand the duration of the naked short sale protections or the number of companies covered?" This note is in response to those instructions.

Please enter the following comments, including the original note forwarded below.

Bottom line need is for a practical disincentive to failure to deliver. I know, there can be non-criminal reasons to fail to deliver, so the consequence for sloppy clerical work should be some sort of fine or financial penalty, like an overdue library book. Failure to deliver should result in an immediate market buy order at the open. That tells people they need to deliver, or the clearing mechanism will buy the stock you should have delivered for you and deliver that three days later. Stock gets delivered within 3 more days (6 total), short gets covered, no continuing failure to deliver, just the rules.

If it sounds harsh, it isn't. There generally are, and should be, known automatic consequences to not meeting obligations: brokers issue margin calls and sell holdings, retail cash account investors like me get put on 90-day account restriction if they sell purchases before settlement date (even if every delivery would occur on time - I know, Federal Reserve Board, not SEC, but same Government to me). You need rules, and consequences to enforce them - no need to prove criminal intent, just penalize the rule breaking, no questions asked, if you want the rule followed.

Consider what effect my suggestion would have had on Bear Stearns if naked short sellers had known that their trades could get covered for them? According to a recent Bloomberg.com article, "From March 10 to March 14, SEC data show that the failed Bear Stearns trades jumped to 2.1 million" (http://www.bloomberg.com/apps/news?pid=20601109&sid=aGmG_eOp5TjE&refer=home), which under my suggestion would have turned into 2.1 million market orders total at the open on those days. Nothing against short sellers, no penalty they couldn't avoid, just an incentive to meet the obligation to deliver on time.

Regards,
Jeff Porter

Begin forwarded message:

From: Jeff Porter
Date: July 15, 2008 11:59:41 PM MST
To: oiea@sec.gov
Subject: Please penalize *all* naked short selling

SEC,

I am pleased to hear that you plan to require short sellers of particular securities to actually borrow them before selling them.

I'm disappointed however that naked short selling has been a known problem for such a long time, and is only now getting partial attention.

Seems you already have the rules to enforce against parties that fail to deliver by the settlement date, so I can't understand why you haven't been enforcing those.

Certainly as an individual long investor I've accidently sold a recently purchased stock before the settlement date, and been penalized with a 90 day account restriction. I can't understand why this gets penalized (even though delivery for all transactions can be done on settlement dates) while short sellers get away with naked selling, without penalty, stock that they do not *ever* own by any definition, not even for an instant.

Regards,
Jeff Porter