Ms. Florence E. Harmon Acting Secretary Securities and Exchange Commission 100 F Street, N.E. Washington, D.C. 20549- 1090
Re: Release No. 34-58773, File No. S7-30-08, Amendments to Regulation SHO (Interim Final Temporary Rule)

Dear Ms. Harmon:

SUGGESTED SOLUTIONS TO ABUSIVE NAKED SHORT SELLING (ANSS) AND DELIVERY FAILURE RELATED ABUSES (DFRAs)

Dr. Jim DeCosta
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INTRODUCTION

The very term "naked short selling" (NSS) has unfortunately been a great aid to the perpetrators of abusive naked short selling (ANSS) frauds. It has allowed the perpetrators of these frauds to proffer arguments intentionally clouded with distractive issues that are not germane to the reforms needed to address this particular form of a "fraud on the market". There are two vastly different types of "naked short selling". "Abusive naked short selling" (ANSS) is a form of pre-meditated share price manipulation downwards (a fraud) that involves intentionally refusing to deliver that which is sold while often utilizing the DTCC management's default assumption that all delivery delays or failures are associated with "legitimate naked short selling" (LNSS) by bona fide market makers until proven otherwise. The trouble is that by the time you can "prove otherwise" the damage is already done and nobody within the entire clearance and settlement system is willing to reverse the damage sustained by the corporation targeted for attack and the shareholders therein via "buying-in" the delivery failures. All of the market intermediaries financially benefiting from these thefts as well as the DTCC management will chime in with perfect harmony that we are "powerless" to reverse these damages by executing buy-ins; it's just not our job.

What's interesting about this particular crime is that the prognosis for the success of the bet being placed by the unknowing buyer of the nonexistent shares being "sold" is instantaneously diminished the second the seller refuses to deliver that which was sold. This has to do with the readily sellable "securities entitlements" that the purchaser of nonexistent shares is "pacified/hoodwinked" with on his monthly brokerage statement. The seller of the nonexistent shares completes the "bait and switch" essentially by secretly changing what the purchaser thought was an equity-based purchase of "shares" of a corporation into what can only be described as some type of undated futures contract (a "derivative" transaction) that in our current clearance and settlement system amounts to no more than a pledge to "eventually" deliver that which was sold unless of course the corporation involved should die an untimely but greatly intended death in the meantime. Now that they

have bought some time the sellers of the nonexistent shares then typically do everything in their power to hasten the demise of the corporation involved so that "eventually" doesn't occur. The typical modus operandi is to literally "drown" the company under attack with "liquidity" that is theoretically beneficial to the purchasers of shares. All of this occurring in the dark despite the securities laws clearly stating that the DTCC is responsible to make sure that all securities transactions must "promptly settle" i.e. that being sold must promptly be delivered "in good form" in exchange for the buyers funds makes one a little curious as to why and when did the train fall off the tracks in our current clearance and settlement system.

From the point of view of the corporation being targeted for destruction a clearance and settlement system with integrity wouldn't allow the purchasers of its "shares" or "units of equity ownership" to sell them UNTIL that which they purchased was delivered "in good form". But that would make this "bait and switch" so obvious that nobody would participate in our markets because nobody would put up with the resultant period of illiquidity. Investors purchasing restricted securities in private placements are reimbursed for their well-advertised period of illiquidity by receiving sometimes deep discount to market levels.

Those favoring the much needed massive reforms in this arena are their own worst enemy when they blurt out that all "short selling" should be banned. This only allows these securities fraudsters to intentionally distract from the proper focus of this discussion of "abusive naked short selling" and proffer the argument that short selling provides liquidity and pricing efficiency which is 100% true but intentionally off topic. Other market reformers will posit that all "naked short selling is illegal". This is not true in that "legitimate naked short selling" (LNSS) performed by truly bona fide market makers injecting liquidity into markets characterized by order imbalances involving excessive buy orders or excessive sell orders is 100% legal and a very good thing albeit a rarity on Wall Street. The problem here is that in a clearance and settlement system wherein the seller of even nonexistent shares can unconscionably be allowed to access the funds of the unknowing purchaser without delivering anything at all why in the world would a market maker ever buy shares when liquidity is needed from the buy side. After all buying shares costs money while selling even nonexistent shares makes money.

It is important to be able to see through the cloud of dust intentionally created to provide both a distraction to the intellectual argument and a cover up to these crimes. ANSS involves the 100% illegal manipulation of share prices downwards while LNSS is not only legal but it provides liquidity and "pricing efficiency". The problem is that you can't tell which one is occurring until after the failures to deliver of the perpetrators of ANSS frauds have tucked themselves into their hiding places in a DTCC "C" sub account, in ex-clearing "arrangements" between clearing firms and at the trading desks of those practicing abusive broker/dealer "internalization" or "desking" frauds and by then it's too late.

Thankfully, the intellectual argument over the existence of "abusive naked short selling" (ANSS) and its pandemic nature in our markets is now over. It ended when the abusive naked short sellers recently attacked the banks and broker/dealers underpinning our entire financial system with massive levels of failures to deliver. I highly recommend a review of the charts posted at deepcapture.com clearly illustrating how the share prices of corporations under attack "tank" at the precise moment when the levels of FTDs skyrocket. There can be no argument as to the proximate cause of these share price manipulations or of the intent of those refusing to deliver that which they sold.

In the banking sector recently the systemic risk repercussions got so intolerable that the SEC had to ban naked short selling in both forms (ANSS and LNSS) against the 19 largest players in the banking sector. Forgive my lack of compassion but I couldn't help but notice the irony of the designers and main practitioners of this form of fraud (ANSS) as they reached out for help to the SEC as their injured condition made them the perfect target for these attack modalities that they pioneered and perfected. It's no wonder why the various banks didn't trust each other as being trustworthy "counterparties" to a trade. They are all very well aware of how poorly the DTCC actually "settles" trades and how there's no limit to the number of FTDs that might be on or off of the books of a potential counterparty that might find itself against the ropes or forced to finally deliver that which it has been selling over the years.

The Wall Street community knows that the readily sellable "securities entitlements" resulting from failures to deliver are no more than yet another form of a "derivative". The insatiable greed of DTCC "participants" and their hedge fund "guests" has converted Wall Street and our DTCC-administered clearance and settlement system into a self-serving "house of cards" made out of derivatives layered upon other derivatives designed to financially benefit those acting as their designers and their market intermediaries with no concern whatsoever for the systemic risk implications being incurred by all U.S. citizens whether investors or not. Warren Buffet was right in his characterization of "derivatives" as being "weapons of financial mass destruction". This holds especially true for the derivatives ("securities entitlements") associated with ANSS which can selectively take down any corporation deemed important to take down by those that are not big fans of the U.S. It is critical for those at the Department of Homeland Security to attain a working knowledge of ANSS frauds and how easily it would be for those not enamored with our way of life to capitalize on the insatiable greed of Wall Streeters and their hedge fund "guests".

To complicate matters in the case of the "securities entitlements" resulting from FTDs these positions are well hidden from the investing public especially those held in "ex-clearing arrangements". The inability to quantify or place a value on these "derivatives" is the crux of our current financial meltdown. After all, in the ANSS arena if a stock trades at $10 per share what should be the marked to market "value" of a pledge to "eventually" deliver that which was sold unless the untimely

but intended death of the targeted corporation occurs first. Further to that what is the "value" of an IOU that is legally owed to the DTCC's NSCC subdivision as the "counterparty" to all trades when the DTCC and all other market intermediaries to the trade plead to be "powerless" to buy it in and "powerless" to force it to be paid if the party owing the IOU (one of the "participant/owners" of the DTCC) refuses to deliver that which it sold? That would be a "hard to value" derivative and a fitting component of a "house of cards" kept in the dark by necessity.

Of course the DTCC management and board of directors are still in a state of denial as to the pandemic nature of <u>abusive</u> naked short selling as their changing course at this late date might reveal the intensity of their efforts made to cover up these frauds for so many years. From their perch inside of their "black box" they still hold to the party line that 99% of all trades "settle" on time and the majority of the remaining 1% "settle" within 5 days after that; just don't ask them what the legal definition of "settlement" is.

I much prefer the terminology "abusive naked short selling" (ANSS) to delineate the 100% illegal ("abusive") type of naked short selling which is at the heart of this controversy. "Short selling" involving the pre-borrowing of shares is a very good thing as all votes concerning the appropriateness of the current price level of a corporation's shares need to be tallied to allow "pricing efficiency". Once this intentional cloud of dust regarding the two forms of "naked short selling" is removed and the discussion is centered upon "<u>abusive</u> naked short selling" only then this extremely heinous form of fraud can be seen exactly for what it is.

The terms "delivery failure related abuses" ("DFRAs") or "delivery refusal related abuses" ("DRRAs") are actually more diagnostic but the term "naked short selling" has become so engrained in our financial culture that we're stuck with it and the <u>necessity to be able to see through the cloud of dust</u> created to cover up these frauds as well as the toxic waste in the form of mere "securities entitlements" invisibly poisoning the share structures of corporations targeted for destruction.

The single biggest hurdle to truly meaningful reform in the <u>abusive</u> naked short selling (ANSS) arena is the steepness of the learning curve that must be traversed in order to get one's arms around the sheer brilliance of this particular form of a "fraud on the market". Oftentimes those with the authority to do something about the current crime wave like the congressional oversight committee members overseeing the SEC just don't have the time to dedicate to dissecting one's way through the complexities of our clearance and settlement system in order to attain a working knowledge of the fraud as this is but one of many dozens of issues that they are mandated to oversee.

Dealing with a crime as obvious and as heinous as gaining access to the funds of less financially sophisticated investors while refusing to deliver to them that which you sold them needs to start with <u>education</u> because the entire concept is a bit much to comprehend in a society with a mature legal system. The combination of insatiable

greed plus a superior working knowledge of the foundational defects in our current DTCC-administered clearance and settlement system result in the economic phenomenon referred to as "dispersed costs and concentrated benefits" featuring a handful of financially sophisticated criminals stealing from the less financially sophisticated masses. I can't do much about the insatiable greed of the politically powerful financial behemoths on and around Wall Street but evening out the superior working knowledge advantage of those sporting this greed is a goal worth pursuing. In an effort to address this reality I offer the following as a means to expedite the journey along that steep learning curve for investors in general and for the unconflicted members of those with the authority as well as the will to address these crimes- dr. d.

EXECUTIVE SUMMARY

Until some **unconflicted** regulator, **unconflicted** members of the congressional oversight committees of the SEC or the DOJ perhaps in combination with The Department of Homeland Security sit the DTCC management and board of directors down and forbid their overlaying of three universally-abused DTCC policies then any of the indiscriminate "loophole pluggings" we've witnessed over the years by the SEC in their efforts to address **abusive** naked short selling (ANSS) crimes will be for naught. Let's face it; despite some sincere efforts having been made the prior efforts of the SEC have had mediocre results at best and at times seem to have only emboldened these securities fraudsters to push the envelope that much further. The recent activity in the banking sector stands out as a sad testimonial to this sentiment.

The three DTCC policies that currently preclude any definitive regulatory measures from being brought against this ANSS crime wave are firstly the illegal conversion of our country's DTCC-administered clearance and settlement system from the 1934 Securities Exchange Act **mandated** "delivery versus payment" (DVP) foundation to one based upon mere "collateralization versus payment" (CVP), secondly the allowance of access to a "self-leveraging cycle of corruption and facilitation" via the extension of unlimited amounts of "credit" to those absolutely refusing to promptly deliver the securities that they sell and thirdly the "continuous netting" of the resultant failed delivery obligations out of existence before they can be tallied now that the mandated buy-ins of delivery failures of "threshold list" securities as well as infractions of the new SEC Rule 10b-21 "anti-fraud" law are predicated upon delivery failures **tallied**. The very foundation of our current clearance and settlement system is a meticulously designed abomination.

The mere plugging the holes in leaky roof tiles is not the correct approach to address **foundational** defects in our clearance and settlement system which in turn forms the foundation for our entire market and financial system. This "house of cards" built upon these foundational defects by a relative handful of greed-obsessed players has resulted in intolerable levels of systemic risk for all Americans.

All three of these DTCC policies are 100% antithetical to the congressionally mandated "prompt settlement" of all securities transactions with "settlement" being defined as: *The conclusion of a securities transaction; a broker/dealer buying securities pays for them; a selling* *broker* ***delivers the securities to the buyer's broker "in good form"***. The "settlement" of a securities transaction in the absence of fraudulent behavior necessitates the "good form delivery" of that which the purchaser **was led to believe** he was buying i.e. legitimate voting "shares" of a U.S. domiciled corporation with the "package of rights" that gives a "share" its value tightly attached. Whether investors realize it or not it is the sum of the perceived values of the individual rights comprising a "share" of a U.S. corporation that results in the perceived value of a "share" or unit of equity ownership of that corporation. Most purchasers of "shares" want to exercise the right to resell this "package of rights" hopefully at a higher level than that at which they purchased it. The "securities entitlements" resulting from FTDs are a mere "accounting measure" which have absolutely no rights attached to them **except** for the right to resell them which was bestowed upon them by the authors of UCC Article 8 due to their **theoretical** ultra-short term lifespan. The right to resell even mere "securities entitlements" lacking the "package of rights" which is attached to legitimate shares was a "freebie" thrown in to streamline the clearance and settlement processes. The authors of UCC Article 8 assumed that the lifespan of any "securities entitlement" resulting from a legitimate delivery delay would be so short that the obvious dilutional damage being wrought upon corporations and the shareholders thereof would be negligible. What we've since learned is that if the age and numbers of these mere "accounting measures" are not rigorously monitored and if they're not "bought-in" when their age or numbers indicate that they are not the result of a truly **legitimate** ultra-short termed delivery delay deserving of being treated as "readily sellable" then all bets are off and the integrity of the entire market system becomes grossly undermined.

Securities fraudsters have capitalized on the existence of that one "freebie" and they try to portray to their victims that the nonexistent shares they sell have a full "package of rights" attached or a full complement of "freebies" attached. The reality is that only the board of directors of a U.S. corporation can "issue" these packages of rights we know as "shares". This has nothing to do with the authors of UCC 8 allowing the "accounting measures" resulting from delivery failures to be treated as being readily sellable for streamlining purposes.

The mere "collateralization" of the monetary value of a failed delivery obligation with cash followed by converting the resultant failure to deliver (FTD) into a **readily sellable** (dilution causing) "securities entitlement" that can be "continuously netted" out of existence by the NSCC's "continuous net settlement" (CNS) system or counterfeited many times over by the NSCC's "Automated Stock Borrow Program" ("SBP") and its magical "self-replenishing lending pool" of securities has nothing whatsoever to do with the "prompt settlement" of securities transactions mandated by Congress in Section 17 A of the '34 Act which necessitates the prompt "good form delivery" of that purchased. "Good form delivery" is transfer agent and registrar parlance meaning that what is being "delivered" has been registered pursuant to the securities laws, is not the product of counterfeiting or any other crime, has no restrictive "legends" forbidding resale, etc.

Part of our current financial system's woes has to do with the fact that there is no clearance and settlement system for the "derivatives" we refer to as "credit default swaps". What people don't realize is that we don't have an adequate clearance and settlement system for the "derivatives" known as "securities entitlements" either.

The DTCC was mandated to administer the U.S.'s "clearance and **settlement**" system not to convert it into a "clearance and **collateralization**" system in order to look after the **financial interests** of its abusive "participants" and their unregulated hedge fund "guests" eager to shower the DTCC "participants" willing to be the most "accommodative" to the financial desires of the hedge fund managers with $11.2 billion annually in fees, commissions and order flow.

PERTINENT BACKGROUND: Without casting aspersions on the hard work of the **unconflicted** SEC employees even after the 10/17/08 effective date for the much-welcomed Rule 10b-21 abusive naked short selling "anti-fraud law" and the new "2008 Reg SHO Final Amendments" as well as the rescission of the options MM exception and the implementation of the new "Interim final temporary rule" there are still foundational defects beyond description available for abusive naked short selling criminals to access. By way of review, unaddressed (yet to be bought-in) "failures to deliver" (FTDs) lead to the procreation of non-voting but **readily sellable** "securities entitlements" that are indistinguishable from legitimate "shares" of a corporation when portrayed on monthly brokerage statements as "securities held long". Keep in mind that a mere "evidence of indebtedness" like an IOU or a "bond" is **technically** a "security". Note that the column on a monthly brokerage statement citing investments made cleverly does not say "shares owned". There's a reason for this as many of these purchases do not involve legitimate "shares" of a corporation and that which is purchased is often unknowingly "co-beneficially owned" by perhaps as many as a dozen different investors.

These mere "placeholder securities" or "accounting measures" resulting from failures to deliver (FTDs) were (unfortunately for the 99% of nonprofessional investors betting that share prices will go up) allowed to be "readily sellable" as if they were legitimate "shares" of a corporation which they are not. Why? Because the authors of UCC Article 8 (the National Conference of Commissioners on Uniform State Laws (NCCUSL) and the American Law Institute (ALI)) **assumed** that the numbers and ages of these share price depressing "securities entitlements" would be **rigorously** monitored and that any delivery failures lasting longer than the **needing to be formally codified** maximum age ascribed to a "legitimate" delivery delay (perhaps of 2-4 days after "settlement date") would be quickly "bought in" by either the DTCC mandated to "promptly settle" all trades or by the SEC mandated to provide "investor protection and market integrity".

A "buy-in" basically involves either the authorities in charge or the parties to the trade going into the open market and buying the amount of shares that the naked short seller is **refusing** to deliver and then finally delivering the missing shares to the original buyer's brokerage firm and then debiting the selling clearing firm's DTCC "participant's cash account" by the amount spent while effecting the buy-in. Due to the share price depressant effect of readily sellable "securities entitlements" the timing of any mandated buy-in would obviously be coincident with the earliest point in time at which it becomes obvious that the seller of “shares” has no intent whatsoever in delivering that which he sold.

The authors of UCC Article 8 were wrong in their assumption of rigorous monitoring as neither the SEC nor the DTCC nor the exchanges, clearing firms, buying broker/dealer and selling broker/dealer involved claim responsibility for executing the “buy-ins” necessary to achieve the “settlement” of the involved trades in which the seller of shares absolutely **refuses** to deliver on or within perhaps 3 or 4 days from T+3 (the previously contracted “settlement date”) that which he sold. This predictable refusal by the regulators, SROs and all of the Wall Street intermediaries to the trade to “buy-in” delivery failures and the incredibly damaging “securities entitlements” they procreate at a time in which it becomes perfectly clear that the seller of shares has no intent whatsoever to deliver that which he or she previously sold has resulted in the pandemic nature of abusive naked short selling (ANSS) frauds and delivery failure related abuses (DFRAs).

These frauds typically involve the premeditated targeting and attacking of corporations in a relatively defenseless developmental stage or during a time of perceived crisis as we recently saw in the banking sector during the “pig piling” of massive numbers of delivery failures onto the weakened backs of WAMU, Bear Stearns, Lehman Brothers, Morgan Stanley, etc. The single best learning opportunity that I’ve seen in the last 28 years of studying abusive naked short selling frauds has now presented itself in the form of studying the pandemic nature of the delivery failures, the bogus “pre-borrows” and the bogus “locates” associated with the recent decline in the share prices of the various banks and broker dealers perceived by many “opportunists” to be unable to defend themselves from attack.

Congress, the regulators, the SROs, the exchanges and the investment community need to avail themselves of this once in a lifetime learning opportunity. The first two things that you’ll notice is the utter disdain these criminals have for the authority and power of the SEC and the securities laws they are mandated to enforce and the enormous amount of arrogance displayed while not even trying to hide these heinous assaults from the regulators, the SROs, the exchanges and the U.S. citizens whose financial system was being brought down as “collateral damage”.

Just how pandemic are these naked short selling frauds? The SEC has readily admitted that the number of yet to be bought-in delivery failures in our markets currently are so large that they can’t be bought-in en masse without causing “severe disruptions” involving increased “market volatility” of share prices upwards. Thus at the behest of powerful securities industry lobbyists the SEC **unconscionably** chose to shirk their congressional mandate to provide “investor protection and market integrity” by “grandfathering in” these share price depressing “smoking guns” evidentiary of massive levels of securities fraud in the first version of Reg SHO.

When these readily sellable “securities entitlements” or “placeholder securities”/IOUs are allowed to **invisibly** accumulate in the share structures of corporations under attack they will with 100% certainty lead to the artificial **manipulation** of share prices lower.

"Supply" and "demand" still interact to determine share price through a process referred to as "price discovery" but the **sum** of the "supply" of readily sellable legitimate "shares outstanding" **plus** the "supply" of readily sellable but mere nonvoting "securities entitlements" becomes artificially manipulated upwards as the "effective demand" (the "demand" allowed to interact with "supply" to determine share prices) for legitimate shares variable becomes artificially manipulated downwards via the neutralization of the natural share price buoying effect of buy orders achieved by naked short selling into buy orders **before** they're allowed to interact with the "supply" variable to determine share prices.

This simultaneous manipulation of the "supply" variable upwards and the "effective demand" variable downwards naturally results in the gross **manipulation** of share prices downwards from the levels that an **un**manipulated "supply" variable and an **un**manipulated "demand" variable would have interacted to "discover". These grossly depressed share prices then have deleterious effects on yet further dilution, this time involving the sale of an enhanced amount of legitimate "shares" necessary to raise a given amount of money associated with the financings necessary to pay a corporation's monthly "burn rate" as well as the diminution of investor confidence and the lessened availability of willing financiers. The result is the predictable placement of the share price of usually yet to be cash flow positive development stage companies needing to constantly sell shares to pay their bills or companies perceived to be temporarily vulnerable to an attack into a self-propagating "death spiral".

Abusive naked short sellers don't "forget" to make delivery of that which they sold; they do so by design as noted in Dr. Leslie Boni's 2004 research conducted behind the usually tightly locked doors of the DTCC. There is a clear "intent to defraud" the unknowing purchasers of what they thought were legitimate "shares" assuming that what they were paying for would be delivered "in good form" on or near the T+3 "settlement date". The fact that there are indeed "legitimate" reasons for ultra-short term delays in delivery has provided the opportunity for securities fraudsters to portray their intentional/"illegitimate" delivery failures as being of a "legitimate" nature. **The problem is that by the time the "legitimacy" of a delivery failure can be determined (approximately T+6) "illegitimate" delivery failures have found safe refuge typically in either an ex-clearing "arrangement" amongst co-conspiring clearing firms, at the DTCC in a "C" sub account where the DTCC management will predictably plead to be "powerless" to buy them in or at the "trading desk" of an abusive broker/dealer practicing "broker/dealer internalization" or "desking" and by then it's too late unless mandated buy-ins regularly purge them from the share structures of U.S. corporations under attack.**

The accumulation of "securities entitlements" in the share structures of targeted corporations is very damaging to these corporations and the investments made therein but extremely lucrative to the Wall Street trade intermediaries (the "facilitators" of these crimes including market makers, prime brokers, clearing firms and buying and selling b/ds) and their invited "guests" (typically loosely or unregulated hedge funds) that are the only market participants with the opportunity and the financial critical mass to establish and "collateralize" massive naked short positions in issuers simply by refusing to deliver that which they sell. Individual investors wishing to partake in these frauds do not have the ability to provide the "order flow" that these financial behemoths can provide in exchange for the "facilitation" of their fraudulent activity by the various DTCC "participants" acting as the market intermediaries. As noted, loosely or totally unregulated hedge funds currently pay approximately $11.2 billion annually in fees and commissions to the Wall Street intermediaries willing to be the most "accommodative" (bend or break the greatest amount of rules and regulations) to the desires of the hedge fund managers usually charging 2% of assets under management and 20% of all profits or "2 and 20".

In a nutshell, the "securities entitlements" procreated by delivery failures that remain unaddressed (not regularly bought-in) for over 2-4 days past "settlement date" intentionally damage corporations and the investments made therein which results in the totally unconscionable shunting of the unknowing investor's funds into the wallets of securities fraudsters despite their continued refusal to deliver that which they sold. This I refer to as the "ultimate paradox" of the DTCC. The obvious beneficiaries of these frauds involving share prices being intentionally manipulated downwards are those with the financial wherewithal to collateralize their massive naked short positions as well as to provide the complicit Wall Street intermediaries/"facilitators" with cash generating "order flow", fees and commissions i.e. the "grease" needed to lubricate the gears of this investment siphoning machine.

How can such obvious frauds as refusing to deliver that which you sell be tolerated in our securities markets that are theoretically so "highly regulated"? The DTCC-administered clearance and settlement system in the U.S. is now unconscionably based on mere "collateralization versus payment" (CVP) instead of "good form delivery versus payment" (DVP) and the DTCC actually allows their abusive DTCC "participants" and their "guests" to access the funds of the unknowing U.S. citizens misled into believing that they were purchasing and receiving the delivery of legitimate "shares" of a corporation **despite the continued refusal of the abusive DTCC participants and their "guests" to deliver that which they have sold.**

Instead all they're asked to do by DTCC management is to "collateralize" the monetary value of these delivery obligations/"refusals to deliver" on a daily "marked-to-market" basis. As the share price predictably "tanks" from these activities that **intentionally** manipulate share prices lower then the collateralization requirements also lessen which insanely allows the funds of the investor to flow to the perpetrators of these frauds despite their continued refusal to deliver that which they sold.

A crime as obvious and heinous as this needs to be committed in relative darkness which is adequately provided by the secrecy-obsessed DTCC/"black box", the secrecy-obsessed hedge fund community often operating out of the secrecy-obsessed offshore tax havens with their secrecy-obsessed banking systems and the shroud of darkness theoretically needed to protect the "proprietary trading methodologies" of hedge funds and b/ds as well as various other "privacy" related issues. Perhaps the term "refusals to deliver"

(RTDs) better portrays the **intent** of most “failures to deliver” (FTDs) older than a few days. These “refusals to deliver” are a component of a very **active** form of fraud not just a **passive** forgetting to deliver that which was sold. A question that arises is since when does the refusal to deliver that which you sell qualify as a “proprietary trading methodology” deserving of secrecy.

Two other obvious questions arise. Firstly, why would any market intermediary with access to the DTCC while selling securities deliver that which it sold if it didn’t have to in order to gain access to the investor’s funds? Even if the seller really did “own” the securities that he sold then why wouldn’t he just “refuse to deliver” them and earn rental income from them instead of delivering them to their new purchaser. Secondly, if you don’t have to deliver that which you sell in order to access a purchaser’s funds why would you ever spend your money and bother to buy it in the first place or pay money to borrow it or to “locate” it before selling it? If there were a third question I guess it would be how can a mere member of the investing public join this privileged fraternity of DTCC “participants” and their honored “guests” with this access to “free money” i.e. the investment and retirement funds of less financially sophisticated U.S. citizens naïve enough to believe that which their monthly brokerage statement seems to **imply** and naïve enough to believe that there really are **unconflicted** regulators and **unconflicted** SROs (Self-Regulatory Organizations like the DTCC and the exchanges) in place to provide “investor protection and market integrity”?

SUGGESTED METHODOLOGY: ADDRESS THESE CRIMES IN 2 PHASES

PHASE 1: THE EMERGENT PHASE: The first part of the emergent phase would involve taking a census of shareholdings at all b/ds of the various shareholdings that they **purport** to be “holding long” for their clients as referenced on the clients’ monthly brokerage statements. This number could then be added to the number of shares of a given issuer held in a “registered” format by the shareholders themselves as reflected in the issuer’s transfer agent’s records or by the transfer agent itself on behalf of investors holding shares in a “DRS” format (Direct Registration System). The sum of these two numbers could then be compared with the number of shares the issuer has **legally** “outstanding”. The difference between the two would represent the number of yet to be addressed (yet to be bought-in) “securities entitlements” within the share structure of that corporation that are presently and actively **manipulating** the share price of the issuer lower.

The mere knowledge that such censuses are now being done might provide the heretofore missing “nudge” needed to convince securities fraudsters to close these “open positions” voluntarily; similar to the concept of an “amnesty period”. A commitment from the DOJ to not pursue the fraud aspects of any naked short selling activity up until a certain date might add yet a higher level of inducement to voluntarily comply. This methodology would successfully uncover delivery failures whether they are held in an “ex-clearing arrangement”, held at the DTCC or held at a trading desk as all purchases of shares, whether real or fake, are expressed as "securities held long" on a monthly brokerage statement somewhere.

These censuses would have to include offshore b/ds and thus the worldwide securities regulatory authorities would need to be involved especially those in Canada whose authorities unconscionably have no problem whatsoever with the naked short selling of U.S. securities as long as the resulting debt is collateralized. Kudos to SEC Chairman Cox for convening an emergency meeting of the "Technical committee" of the international securities regulators (IOSCO or the International Organization of Securities Commissions) on November 24, 2008 to address international efforts needed to thwart abusive naked short selling. The stated goal of the committee was "to avoid regulatory gaps and their unintended consequences" in regards to abusive naked short selling which acknowledges these criminals' ability to link together the loopholes of the various regulatory structures in order to gain access to the wallets of unknowing investors.

These records of shareholdings are all readily accessible to unconflicted securities regulators from any b/d and the company's transfer agent. The goal here is to identify the truly victimized corporations (as opposed to those crying "ANSS" to cover up poor business plans) and investors therein and to quantify and then address the delivery failures/"securities entitlements" older than perhaps 2-4 days in age that are **currently** damaging the share structure and share prices of targeted corporations. This would be followed up with the long overdue mandated "buy-ins" of the yet to be delivered shares under a "guaranteed delivery" basis. This in turn would be followed by **finally** delivering the missing shares to the purchaser that was expecting these shares way back on T+3. This "emergent phase" must occur **before** any other U.S. corporations are allowed to go under or any other funds of investors are allowed to be stolen by those absolutely refusing to deliver that which they sell; hence the "emergent" nature of this issue.

This solution is so simple and so obvious in a clearance and settlement system that unconscionably allows the sellers of securities access to the investor's funds **without** ever delivering that which was sold that the previous refusal to implement it by those with authority at the DTCC, the SEC, the SEC's Congressional Oversight Committees, the clearing firms, and the exchanges casts a shadow over the integrity of our entire market system. Wall Street can appear complex at times but the concept of delivering that which you sell before gaining access to the buyer's funds shouldn't be that tough to grasp even for politically powerful financial behemoths. This is especially true when it is so easy to place the share price of a targeted corporation's shares into a "death spiral" by simply refusing to deliver that which you sell and thereby gaining access to "self-generated leverage".

If there is a silver lining to this particular form of a "fraud on the market" it is that these naked short positions are still on the books of the clearing firm that facilitated the naked short sales. In the recent wave of mortgage frauds, however, those fees paid to corrupt mortgage firms processing "liar's loans" are long gone. The fees paid to appraisers willing to inflate home values is long gone. The fees paid to corrupt ratings firms unwilling to classify "garbage" as "garbage" are also long gone. The securitized subprime loans have been sliced and diced so many times that we may never know which institution or which hedge fund owns which mortgage obligation. The corrupt Wall Street intermediaries in mortgage related frauds have taken their piece of the action in the form of an annual bonus and it's now part of a house in the Hamptons with a yacht parked outside.

In the abusive naked short selling frauds, however, the evidence of the fraud is sitting right there in the clearing firms in the form of failures to deliver, failures to receive and delivery obligations that are being marked-to-market on a daily basis. Those unmet delivery obligations still exist even if they are being "collateralized" daily which as mentioned has nothing to do with the related trades "settling". This is the one form of securities fraud wherein the victims still have a fighting chance to receive that which they paid for albeit the purchasers of nonexistent shares of corporations already forced off of the cliff into bankruptcy will obviously not fare well. That stolen money will never be recovered from these thieves. This is an emergency and the SEC's and the DTCC's concerns over the financial welfare of those that refuse to deliver that which they sell **is very problematic especially when they are the parties commissioned to provide and entrusted to provide "investor protection and market integrity" (the SEC) and to "promptly settle" all securities transactions (the DTCC). If not them, the parties with the mandate, then who will act in these capacities?**

The question arises as to how dare the SEC the party with the Congressional mandate to provide "investor protection and market integrity" refuse to execute the buy-ins needed to once and for all **force** the delivery of missing shares to their purchasers and to rid the share structures of corporations under attack from price-depressing "securities entitlements" purportedly to circumvent "market volatility" involving share prices moving back upwards to less artificially depressed levels. Why would the **financial interests** of the vast minority of market players behaving in a criminal fashion that absolutely refuse to deliver that which they sell be of such concern to the SEC, the DTCC and the congressional oversight committees of the SEC when a simple buy-in can serve to locate the money stolen from investors, identify the thieves and force them to deliver to the purchaser that which they have been refusing to deliver?

Might it have something to do with the fact that the largest donors to the politicians comprising the congressional oversight committees are the hedge funds and the lobbyists of the Wall Street intermediaries on the receiving end of the stolen funds of the much less financially-sophisticated investors? Does it not make sense that the dirtiest players on Wall Street are more apt to be the larger donors in need of periodic "favors" from the politicians overseeing the SEC i.e. those in favor of highly leveraged and secrecy-obsessed hedge fund managers operating in darkness with in a regulatory vacuum that magnifies their financial **rewards** (often annual "earnings" of over $1 billion each) while burdening all U.S. citizens with the associated intolerable levels of systemic **risk?**

Please keep in mind that the SEC is coming very late to this party. The damage done by forcing companies to raise money by selling shares at artificially manipulated lower levels over the years is not even being addressed by buy-ins. Those extra "legitimate" shares created due to this criminal act are still "outstanding" and doing damage to these issuers. Even after buy-ins earnings per share will forever be damaged as will the share price which is often a function of EPS. Companies already bankrupted will not rise from the dead. There is no reason to pity the naked short sellers being forced to **finally** deliver that which they sold inordinate amounts of time ago. That concept being espoused by the SEC afraid of inducing upward "market volatility" can only be espoused by employees of a regulator that are totally "captured" by the financial interests of those they are supposed to be regulating.

PHASE 2: THE NONEMERGENT PHASE: Now that the excessive amounts of "securities entitlements" have been purged from the share structures of corporations under attack the goal becomes to provide the truly **meaningful** deterrence necessary to prevent this crime wave from ever happening again. Currently there is next to zero truly **meaningful** deterrence for the financial behemoths perpetrating these frauds to stop leveraging their superior knowledge of, access to and visibility of our clearance and settlement system and their superior financial resources in an effort to systematically siphon away the funds of less-sophisticated U.S. investors.

ISSUES CURRENTLY INHIBITING ANY DEFINITIVE SOLUTION TO THIS CRIME WAVE

In addition to facilitating these thefts via administering a clearance and "**pseudo-**settlement" system based on mere "collateralization versus payment" instead of "delivery versus payment" like almost all other countries in the world the DTCC and its subsidiaries have 15 separate mandates or responsibilities/duties **any one of which** clearly empowers it and its "participants" acting as the counterparties to these trades to buy-in the delivery failures of its abusive "participants" when they absolutely refuse to deliver in a timely manner that which they have sold. From the DTCC's now famous 1/27/06 press release:

"DTCC subsidiaries clear and settle trades. Short selling and naked short selling are trading strategies regulated by the marketplaces and the SEC. DTCC is involved after a trade is completed at the marketplace. DTCC does not have regulatory powers or regulatory responsibility over trading or to forcing the completion of trades that fail. As the SEC has stated, fails can be the result of a wide range of factors."

First of all "abusive naked short selling" (ANSS) is not a "trading strategy" or a "proprietary trading methodology" which unregulated hedge funds assert are deserving of secrecy. It is a form of "fraud" and a form of theft or "conversion". It is also a "refusal to deliver" strategy. Since the "good form delivery" of that sold leads to the "settlement" of a trade and since the DTCC was given the mandate to "promptly settle" all securities transactions then the DTCC is clearly the party that needs to spearhead the attack on these crimes and not to facilitate them or cover them up.

When naked short selling is done legally by a truly bona fide MM willing to inject liquidity into order imbalances involving **BOTH** the need for the injection of sell **AND** buy orders when order imbalances occur it provides liquidity and a buffering effect from wild swings in share prices. Legitimate naked short selling done by truly bona fide MMs is a good thing but only if the naked short positions established are quickly covered **on the first downticks after being established.** "Abusive Naked Short Selling" (ANSS) is a blatant act of **intentional** securities fraud known as a "fraud on the market". In ANSS there is present the irrefutable intent to **deceive** the purchasers of shares that are naïve enough to believe that what they are paying for first of all exists and second of all will be delivered "in good form" (registered shares with voting and other rights attached) and third of all will be delivered "in good form" promptly i.e. on or about T+3 but allowing 2 or 3 extra days leeway to accommodate "legitimate" delivery delays.

The DTCC **incorrectly** claims that they only get involved **after** a trade is "completed". As the legal definition of "settlement" clearly states the "settlement" of the trade represents the "completion/conclusion" of the trade. These trades being referenced haven't "settled" yet as the DTCC gets involved. The DTCC also states that it is the job of the SEC and the exchanges to execute the buy-ins that would provide not only the obvious solutions to this crime wave but also provide the truly meaningful deterrence to these crimes. Both the SEC and the exchanges don't see it that way and they claim that it's not their job to play "the heavy" that orders buy-ins when dealing with the powerful financial and political forces on Wall Street when they misbehave in the naked short selling arena. Nobody seems to want to tweak off these billionaire behemoths with all of the "juice" they have to hand out to their "accommodators" and that employ many ex-SEC officials at many multiples of their previous SEC salaries. The DTCC's assertion that it "***does not have regulatory powers or regulatory responsibility over trading or to forcing the completion of trades that fail***" is indeed 100% false but even if it were true then where is the SEC, the exchanges, the clearing firms, the purchasing b/d and the selling b/d in their absence?

Some hold that it's the job of the purchasing broker/dealer (b/d) that was paid a commission and acted in an "agency" capacity to make sure that its client received what she or he paid for. The problem here is that the "pre-netting" process in use at the NSCC subdivision of the DTCC obfuscates the occurrence of many failures to deliver (FTDs) as they routinely get "pre-netted" out of existence. Recall that a crime as obvious as refusing to deliver that which you sell needs to be committed in relative darkness. This is an example of keeping trade intermediaries in the dark.

In NSCC "pre-netting" a full 97% of **BOTH** the delivery obligations and cash transferences needed to be done at the end of the day are literally "netted" out of existence **independent** of the delivery status of that which was sold. Further to this those b/ds that don't "self-clear" (the "introducing" b/ds) rely on a "clearing firm" with many other client firms whose individual clients are buying and selling the same securities and there is an "anonymous pooling" effect at the clearing firm level wherein the buying b/d in a trade involving a delivery failure is not readily identifiable and not able to advise his client from whom a commission was received that he never got delivery of that which he purchased. Investors don't realize this fact but the market intermediaries responsible for "facilitating" these crimes are very well aware of it. This point was made by clearing firms in the "comment period" prior to the passage of the original version of Reg SHO which became "effective" on 1/7/05. Again we see the preeminent theme that a crime as obvious and heinous as refusing to deliver that which you sell relies greatly upon the lack of transparency within the clearance and settlement system. How in the world in any business other than that associated with our DTCC can one refuse to deliver that which he sells and still gain access to the purchaser's funds?

The buying b/d's fiduciary duty of care as an "agent" to make sure that his commission-paying client got delivery on or about T+3 of that which he paid for is "accidentally" extinguished due to this "darkness". This leaves nobody left to reassume this duty of care and make sure that an investor got delivery of that which she or he paid for **except for** the NSCC subdivision of the DTCC which as the "central counterparty" (CCP) to that trade now becomes the "surrogate creditor" of that "delivery obligation" on behalf of the purchaser of the shares. The NSCC, however, refuses to reassume this duty of care that their policies extinguished.

As noted, the DTCC does not get involved **AFTER** a trade is "completed" or "concluded" as the "settlement" of a trade is defined as "the **conclusion** of a trade in which that which was purchased was delivered "in good form" in exchange for the funds of the purchaser". How many trillions of investors' dollars need to be systematically siphoned off by abusive billion dollar DTCC "participants" and their co-conspiring hedge fund "guests" before the DTCC management and board of directors realizes that these trades involving "failures to deliver"/ "refusals to deliver" are not legally **"settling"** due to the lack of "good form delivery" of that which the purchaser **thinks** that he is buying. The "collateralization" of the monetary value of a delivery obligation has nothing whatsoever to do with the "good form delivery" to the purchaser of that which she or he purchased. It is the mandate of the DTCC to "promptly **settle"** all securities transactions. Their mandate is "to conclude/complete" these trades not to enter onto the scene after "the conclusion" of the trade. DTCC policies are the reason why these trades involving delivery failures don't "conclude" or legally "settle promptly" or in any other manner for that matter.

As noted, one of the 15 mandates or responsibilities/duties that the DTCC has is to "promptly **settle**" all securities transactions. Clearly, if the seller of securities, a DTCC "participant", absolutely refuses to deliver that which he sold in a timely manner then in order to accomplish the "prompt settlement" or "conclusion" of the transaction the party mandated to "promptly settle" all transactions (the DTCC) must "buy-in" the shares that the seller **refuses** to deliver. Why wouldn't the DTCC management execute these buy-ins that are essentially mandated of them by Section 17 A of the '34 Exchange Act? It's because they are clearly not in the **financial interests** of management's employers, the DTCC "participants", which along with their co-conspiring hedge funds are the main perpetrators of these thefts and the recipients of the stolen money. Oh to have employees empowered to forgive or "discharge" the delivery obligations of its bosses and then later refuse to "assume" them and "execute on" them as promised! Now that's one cleverly-designed "fraud on the market".

"MAKING THE CONNECTIONS"

There are three "connections" that need to be made in regards to these crimes. The first involves reconnecting the "delivery" of securities with the "payment" for the securities to recreate "Delivery Versus Payment" or "DVP". If you don't deliver that which you sell then you obviously shouldn't be able to gain access to the funds of the purchaser **UNTIL** you deliver that which you sold. The extension of "credit" in a system in which the employees of the NSCC, its management, are able to "discharge" the delivery obligations of their bosses is insane. The second "connection" to make mentally is that abusive naked short selling is **intentional** behavior by definition and it results in the 100% predictable "manipulation" of share prices downwards. The intentional "manipulation" of share prices downwards while or after establishing short positions is clearly an act of "fraud". "Fraud" involves the use of "deceit" for monetary gains. As mentioned earlier, people don't "forget" to deliver the shares that they sell. Technically this is known as an "artifice to defraud" which is banned by Rule 10b-5.

The purchaser of abusively naked short sold shares is **deceived** into thinking that what he ordered and paid for i.e. legitimate "shares" of a U.S. domiciled corporation with its "package of rights" (including voting rights) attached is not only being delivered but also being delivered in a timely manner on or about T+3 which is when his payment is mandated. With trades involving ANSS he is not receiving the delivery of legitimate "shares" of a corporation and he is not getting them on or near T+3. Note that if the purchaser of shares is late with the payment then he can be "sold out" on T+5 as per Regulation T. Why then isn't there a matching T+5 mandated "buy in" policy for those refusing to deliver that which they sell? The first reason is that "buy-ins" are not in the financial interests of those "participants" that own and administer the clearance and settlement system. The second reason is due to the fact that there really are "legitimate" reasons for ultra-short term delivery delays. This brings about the obvious need for the **formal codification** of when exactly a supposedly "legitimate" delivery delay becomes "illegitimate" and intentional. The lack of this **formal codification** forms one of the pillars supporting these frauds because as it stands now all delivery failures are by default **assumed** by the NSCC to be of a "legitimate" nature (ultra-short termed) until proven otherwise and by the time any "illegitimacy" is proven the FTD has been tucked away and all of the intermediaries to the trade including the NSCC as the "central counterparty" to the trade will predictably plead to be "powerless" to buy-in the resultant delivery failure. By the morning of T+4 it's too late; the FTD has entered into the "regulatory vacuum" wherein nobody is responsible for monitoring its age or buying it in when it becomes deemed an "illegitimate" delivery failure. When the purchaser of these nonexistent shares turns around and sells them then the fact that what he purchased never did exist or get delivered becomes a moot point as the nonexistent shares get handed from victim to victim in a daisy chain fashion all under the cover of DTCC-imposed darkness.

The third "connection" that I don't think is being made is in the minds of abusive naked short sellers that they are indeed guilty of "fraudulent" behavior associated with premeditated theft. This is real money being stolen and real lives being damaged. Just because it's being done in self-imposed darkness doesn't change that fact. I think psychologically these criminals think that their superior knowledge of how our clearance and settlement works or more accurately doesn't work should be rewarded and should provide them with certain "opportunities" as a reward for attaining this superior knowledge base.

Part of the issue might be that they don't have to look their victims in the eye as a common thief might have to i.e. out of sight out of mind. But no matter what the psychological underpinnings might be absolutely refusing to deliver that which you sell no matter how superior your knowledge base is still can't be tolerated in any advanced form of society no matter how wealthy or politically-connected you are. I think that as a result of the pandemic nature of this thievery part of the psychology is also that if I don't naked short sell into this buy order for shares of a development stage issuer or corporation against the ropes then somebody else certainly will and since the regulators aren't "busting" anybody for this behavior then one can only assume that the behavior can't be too reprehensible since the tacit approval of the SEC permeates the air.

THE DEFINITIVE SOLUTION VERSUS INTERMEDIATE TERM FIXES

The definitive solution in addressing these crimes involves an easy to implement restructuring of the very foundation of our clearance and settlement system. If the foundation is based on mere "collateralization versus payment" (CVP) which creates markets "rigged" in favor of the financial behemoths essentially "greasing the skids" via providing "order flow", fees and commissions in order to be allowed to establish and then merely collateralize massive naked short positions then an infinite number of individual "loophole pluggings" would be needed. Reg SHO provided some of these but the research of Dr. Rob Shapiro the former Undersecretary of Commerce in the Clinton administration reveals that the problem is getting even worse. The recent activity in the banking sector supports this premise and now failures to deliver in the bond market have become front page news via the research of Dr. Susanne Trimbath formerly of the DTCC.

The question becomes how to return our clearance and settlement system back to one based on "delivery versus payment" from one currently being based on "collateralization versus payment". The answer is that our clearance and settlement system is **already** mandated to be based on "DVP" but nobody is enforcing it. The congressional mandate of Section 17 A already states that all securities transactions must "promptly **<u>settle</u>**" which has nothing to do with the monetary value of delivery obligations being "promptly collateralized". What meaningful deterrence to this current crime wave is provided by asking highly leveraged billionaire behemoths to "collateralize" their debts when these debts can be predictably lessened by easily putting the share price of the corporation under attack into a "death spiral"? Our laws are just fine all we're missing are unconflicted regulators and unconflicted SROs to enforce them.

The reality of there being "legitimate" reasons for delivery delays that will stall the "prompt settlement" of trades by settlement date has provided the opening for these fraudsters to operate. Somewhere along the line all delivery delays were ASSUMED to be of a "legitimate" nature until proven otherwise and the proof of them being otherwise was of a "proprietary" nature and couldn't be revealed to the investing public. But all along these abusive trading patterns were within the full view of the SEC and the DTCC with their mandates to provide "investor protection and market integrity" and to "promptly settle" all transactions.

The supposed "proprietary" nature of trade data does not apply to the various "securities cops" theoretically monitoring for these abuses. The mindset at the DTCC has unconscionably become that all transactions should **"eventually"** settle but must be instantly "collateralized". **"Eventually"** however, doesn't occur if the purchaser of undelivered shares turns around and sells them before delivery ever occurred or if the intended bankruptcy of the corporation whose shares remain undelivered should occur in the interim; so much for the congressionally mandated "prompt settlement" of all securities transactions.

In the case of parcels of shares sold before delivery occurred the actual "age" of the delivery failure becomes the sum of the individual ages of the delivery failures associated with that particular parcel of shares which are unfortunately not readily discernible due to the darkness inducing "anonymous pooling" of shares at clearing firms and "registered clearing agencies" like the NSCC subdivision of the DTCC.

The obvious solution would be to rid the system of "legitimate" delivery delays and not allow people to make "short" or "long" sales **UNTIL** the borrowed or "located" shares had arrived and were ready for delivery. What's the hurry and why extend "credit" in a system insanely based upon CVP? The unwise extension of "credit" gives rise to a "float" period during which crimes related to "kiting" are obviously going to occur. The beneficiaries of these thefts will cleverly proffer that their services are needed to inject "liquidity" and the markets move so fast that there is no time to effect these borrows in a fast moving market. Investor advocates would reply that injecting "liquidity" only by addressing order imbalances in which buy orders dwarf sell orders by naked short selling nonexistent shares and **never** injecting liquidity when buy orders are needed as share prices drop is FRAUD pure and simple. But then again you'd have to be pretty stupid to ever buy shares when you can sell fake shares and still gain access to the investor's funds in a CVP environment. Anybody **voluntarily** covering a preexisting naked short position in this current "regulatory vacuum" would have to be insane as the concomitant driving up in the share price is only going to force the fraudster to post more collateralization money on his yet to be covered naked short position. There comes a time in these crimes wherein the securities fraudsters that have built up astronomic levels of FTDs in corporations that refuse to go bankrupt that the criminals can't afford to cover. The mere halting of the day to day naked short selling needed to keep the PPS low to keep collateralization necessities in check would cause the PPS to gap upwards. The covering of these "open positions" in a market already gapping upwards might prove to be cost prohibitive to those that ran up the naked short positions. The only option left at this point becomes approaching the SEC and doing **whatever is necessary** to get the corporation under attack delisted. An excellent study I'd highly recommend for the Office of the Inspector General (OIG) at the SEC to do is to see the levels of FTDs in the share structures of the last 30 companies the SEC had delisted and where the SEC employees pushing for the delisting are currently employed and what kind of salaries they're currently pulling down.

Access to the exemption of not having to make "pre-borrows" or "locates" before making admittedly naked short sales legally accorded **only** to "bona fide" MMs willing to inject liquidity **both** from the buy **and** the sell side when needed is fraudulently being accessed by "not so bona fide" MMs ONLY willing to inject liquidity by selling fake shares but never willing to buy them back when share prices drop. Why would they do that? **Because in a clearance and settlement system corruptly based on CVP even the sale of fake shares allows access to the funds of the investors because delivery is not mandated only collateralization of the debt.** In other words, selling even fake shares makes money while buying shares **costs** money. Why pay money if no regulator is willing to offer any meaningful deterrence from your refusing to pay money and deliver that which you sell?

Just how tough is it for billionaire behemoths leveraged at 10-to-1 by their prime brokers to merely "collateralize" a delivery obligation? The use of borrowed funds in this crime wave creates yet more **leverage** for the perpetrators of these frauds and only magnifies the **systemic risk** incurred by **all** U.S. citizens due to the misbehavior of a handful. This makes the refusal of the NSCC, the SEC, the congressional overseers of the SEC and all other "facilitators" of these frauds to buy-in these archaic delivery failures bordering on treasonous behavior.

There is already plenty of "self-generated leverage" in these crimes as the money flowing into the fraudsters' wallets while the share price predictably tumbles can be redeployed back into the market to create and collateralize **that much higher** of a naked short position which in turn accelerates the entire "leveraging" process as well as the rapidity of the share price tanking culminating in the intended bankruptcy of the corporation unfortunate enough to be targeted. The concept of managing billions of dollars to start with plus access to external leverage conjointly being fed into the creation of "self-generated leverage" has to be appreciated not only in its ability to commit frauds but the intolerable levels of systemic risk associated with it. We are witnessing this now in our markets as highly leveraged hedge funds are being forced to "deleverage" their positions and dump their holdings as their investors seek redemptions after learning how risky it is to invest with massive leverage when the times are not so good. Who incurs the damage from all of this necessary dumping of shares at any price level just to deleverage? All of our retirement accounts feel the pain and all of our lives are affected adversely due to the greed of abusive hedge fund managers swinging for the fences with leverage.

FOUNDATIONS FOR ANY SOLUTION

1) The SEC needs to step up to the plate in a big way otherwise they will be guilty of being a **net negative** for providing "investor protection and market integrity" i.e. their congressional mandate. If the SEC does no more than present the **illusion** that there is an unconflicted, motivated and well-trained "cop on the beat" and

that these markets are "highly regulated" in regards to abusive naked short selling frauds then there will be no perceived need for their overseers in Congress or other regulators or SROs to help out. As a result unknowing investors will attain a false sense of security and perceive a green light to jump into the markets of especially development stage corporations only to get **systematically** i.e. by the clearance and settlement **system** fleeced.

Securities fraudsters need two things to carry out this crime wave. They need the **"appearance"** of there being "cops on the beat" and they need the "cops on the beat" to refuse to provide any **meaningful** deterrence to these crimes that might conflict with the financial interests of the securities fraudsters who have them "captured". It's one thing not to do the job you've been congressionally mandated to perform but it's quite another thing to passively play a key role in indirectly "facilitating" these crimes by providing the misperception that these markets are "highly regulated" when it comes to ANSS frauds.

Historically the SEC has operated on a "reactionary" basis only. Wall Street fraudsters will set up clever methodologies to defraud investors which the SEC does not proactively evaluate for issues like counterparty risk, moral hazard, systemic risk, ability to place values on securities, etc. By the time the SEC gets nudged/shamed into action the "house of cards" has been built and the systemic risk associated with bringing it down then comes into play. Hence pseudo-solutions like "grandfathering-in" blatant acts of securities frauds become substituted for de-facto solutions. Thankfully in the case of buying-in archaic delivery failures there are very little systemic risk issues involved. Criminals are going to be **selectively** forced to use the funds they have previously stolen to buy-in and finally deliver that which they previously sold to overly trusting investors believing in "highly regulated" markets. Only the most corrupt of the corrupt would face serious economic issues and only proportionate to the amount of money they have previously stolen. That's the beauty of mandated buy-ins: there is no collateral damage like there is in the original fraud.

2) What has become crystal clear over the last 20 years is that the SEC needs help in reining in these crimes. It doesn't particularly matter if the SEC is inept, corrupt, underfunded, undermanned, not well motivated, "captured" by politicians or "captured" by the financial interests of those they are supposed to be regulating. Something is grossly wrong and changes are needed. The DOJ, the CFTC and the Department of Homeland Security should definitely become educated and more involved in the provision of the heretofore missing **meaningful** deterrence to these crimes. This crime wave has grown to be much more complex than a good-hearted rivalry between the "shorts" and the "longs". The "injection of liquidity" into the markets of thinly-traded securities has given way to the injection of cyanide.

   Historically any efforts by the SEC to address these crimes are filled with loopholes lobbied for by the benefactors of these crimes and they take light years to go into effect. In the interim period the unaddressed delivery failures wreak havoc on the share price of the issuers under attack which markedly decreases the prognosis for the corporation under attack. The common denominator of all prior efforts has been absolutely no **meaningful** deterrence to the commission of these crimes. With every loophole that gets plugged a different one becomes the "loophole du jour". These periodic regulations implying that, "we really mean it this time Buster" do not provide any truly **meaningful** deterrence because that's what the SEC said the last three times around. The question begging to be asked is where are the buy-ins.

The fear of an "untimely" buy-in provides truly **meaningful** deterrence and buy-ins only **selectively** affect the "bad guys" that absolutely refuse to deliver to the purchaser in a timely manner that which they previously sold. "Buy-ins" work like a heat-seeking missile; they always find the main perpetrators of the fraud no matter where they are operating from, no matter where they are hiding their delivery failures (DTCC, ex-clearing or trading desks), whether or not they are "financial terrorists" trying to bring down our entire financial system or key components thereof (like banks) and no matter which intermediaries are being used to "facilitate" their crimes. Mandated buy-ins are the one solution to provide truly meaningful deterrence to future crimes, that result in the purchaser **finally** receiving that which he or she purchased (better late than never) and that lifts the burden of excess amounts of mere "securities entitlements" actively manipulating share prices downwards as we speak. Buy-ins provide investor protection, market integrity and the "prompt settlement" of trades. These are the very mandates of the SEC and the DTCC that (not so) "mysteriously" refuse to implement them.

SPECIFIC SUGGESTIONS

1) The SEC, the SROs, the exchanges and the congressional oversight committees of the SEC need to get educated as to the "nuts and bolts" of our current clearance and settlement system.
2) Then compare our DTCC-administered clearance and settlement system with what the world authorities on clearance and settlement systems recommend. I'd recommend a thorough review of the November of 2004 report of the Committee on Payment and Settlement Systems Technical Committee of the International Organization of Securities Commissions Recommendations for Central Counterparties. This is the same "IOSCO" committee that SEC Chairman Cox emergently convened on 11/24/08 to address the worldwide implications of abusive naked short selling.

3) The Congressional Oversight Committees of the SEC in conjunction with the SEC need to formally codify **which** regulator, SRO or market intermediary has the mandate to promptly execute "buy-ins" on a "guaranteed delivery" basis at the instant that it becomes obvious that the seller of securities has no intent whatsoever in delivering that which he sold. As it stands now the SROs, the regulators, the exchanges as well as the buying and selling broker/dealers that were a party to the trade point fingers at each other claiming it is the responsibility of the other party to "play the heavy" and

execute the "buy-ins" of these politically connected billionaire behemoths. Somebody needs to stand up and represent the U.S. citizens that purchased the securities that don't get delivered by **on or about T+3**. This party executing the buy-ins needs to be without "conflicts of interest" i.e. perhaps unconflicted SEC employees working out of the DTCC where this information is most readily available. As the research of Evans, Geczy, Musto and Reed (2002) showed us for some (not so) mysterious reason only one-eighth of 1% of even **"mandated"** buy-ins ever get executed on Wall Street. That is a very telling statistic in that for all intents and purposes there has been up until now no such thing as a deterrence providing "buy-in" on Wall Street no matter how old a delivery failure gets. I would suggest that the regulators tuck that Evans et al statistic in the back of their minds as aberrations like that typically reveal some underlying "issues".

As it stands now **all** of the market intermediaries to a trade have either an excuse not to execute "buy-ins" or a conflict of interest in executing them. DTCC participants just don't break rank and buy-in the delivery failures of their "fraternity brothers". As noted the purchaser's b/d is often blinded to the fact that an FTD even occurred because of "pre-netting" by the NSCC and because of the "anonymous pooling" of shares policy at "registered clearing agencies" like the DTCC and its participating clearing firms. The purchaser's b/d is financially incentivised **not** to execute buy-ins because it is unconscionably allowed to earn interest off of the investor's money ("the mark") throughout the life of the delivery failure.

The clearing firm involved does not want to have to buy in a client that provides it with order flow otherwise the client will send this lucrative business in a different direction to a more "accommodating" clearing firm. The b/d failing delivery is obviously not going to volunteer to buy itself in. The NSCC unconscionably pleads to be "powerless" to execute buy-ins while the SEC and the exchanges **assume** that all of these other parties are taking care of the execution of buy-ins. The result is the statistic seen in the Evans study i.e. nobody is executing the main deterrence provider and obvious solution to these crimes namely by executing buy-ins when the seller of securities absolutely refuses to deliver that which it sold on or about T+3.

4) There is a need to concentrate on the "legitimacy" of delivery failures as only truly "legitimate" delivery failures (lasting perhaps 2-4 days) were to be allowed to be treated as being **readily sellable** "securities entitlements" as if they were real "shares" which they are not (UCC Article 8). The problem is that most delivery failures on the morning of T+4 find safe haven at the DTCC where the DTCC management can be 100% counted on to pretend to be "powerless" to buy them in. By then it's too late which thus necessitates the concept of **"hard delivery"** requirements on T+3 i.e. you're not allowed to fail in delivery. Short of that we need the no nonsense codification of the arbitrary point in time when a delivery failure originally presumed to be of a "legitimate" nature by default (perhaps associated with truly bona fide market

making) becomes deemed “illegitimate” and becomes no more than the evidence of fraudulent behavior in need of being bought-in on an emergent basis. The average lifespan and the absolute amounts of FTDs are what kills these targeted corporations and the investments made therein. Thus **time** is of the essence.

5) Mandated “decrementing hard pre-borrows” (“DHPBs”) on trade date for all but truly bona fide MMs is the obvious necessity (no more easy to cheat on “locates”, no more conflict of interest riddled “customer assurances” from hedge funds to their prime brokers, no more “reasonable grounds” or placing market intermediaries on the “honor system”. We tried it and it didn’t work. If there are 100 shares in the system that are legally borrowable and 10 are borrowed then the amount of shares legally borrowable needs to “decrement” to 90 otherwise the same shares can and will be loaned out in a dozen different directions simultaneously. Shares being held in an “anonymously pooled” format like that used at the DTCC and at the clearing firms makes these lending crimes easy to commit, tough to detect by the victims and nearly impossible to trace.
6) Truly “bona fide” market makers (MMs) can be exempted from the “decrementing hard pre-borrows” (“DHPBs”) **if and only if** they simultaneously place a buy order of equal size to the amount of shares being naked short sold at perhaps 98% of the share price at which the naked short sale was done. These buy orders need to be kept in place until the naked short position is covered. The intent here is to **force** MMs to **prove** that they are behaving like a truly “bona fide” MM does if they choose to access the universally abused but incredibly powerful exemption from pre-borrowing or making “locates” before a naked short sale is done. Again, no more placing MMs on the “honor system” in the midst of trillions of dollars of temptation with no transparency. One must keep in mind that there is absolutely no “barrier to entry” to becoming a “market maker”. Any corrupt b/d willing to sell its soul and in search of “order flow” can merely file a 15c2-11 or “piggy back” onto some other MM’s 15c2-11 filing and voila you’re officially a “market maker” in that security bequeathed with a “license to steal” for yourself, a co-conspiring hedge fund or both. It now has access to that universally abused trillion dollar “license to steal” exemption from making “pre-borrows” or “locates” before making short sales theoretically accorded to only bona fide MMs willing to provide **both** buy and sell side liquidity as order imbalances dictate. This is the exemption or “umbrella of immunity” that every abusive and usually unregulated hedge fund needs access to. Upon interviewing ex-MMs for many, many years the same words are constantly spoken. They don’t know exactly why but they admit that MMs for some reason or another absolutely never have to deliver that which they sell. They also freely admit that their firms very, very rarely take losses. Newsflash: the reason is obvious; our clearance and settlement system has been hijacked and is now only based on “collateralization versus payment” instead of “delivery versus payment” like in almost all other countries in the world with the notable exception of Canada. What valid argument could any truly bona fide

MM proffer claiming that this "98% rule" is too onerous when it is **by definition** how a truly bona fide MM deserving of the exemption would operate? In a market environment without an "uptick rule" this rule is crucial. Making 2% per week or so actually annualizes out quite nicely for honest MMs. What this boils down to is that the constraints placed upon MMs should be indirectly proportional to the "barriers to entry" to becoming a MM capable of accessing that exemption. If there are no "barriers to entry" then MMs need to **prove** that they are acting in a truly bona fide market making capacity before they are granted access to these universally abused trillion dollar exemptions **that absolutely no regulator, SRO or exchange is monitoring for abuses of.**

7) Reinstate the "Uptick rule" or at least modify it with the "98% rule" suggested above. I understand that the "quants" and algorithmic traders have some issues with the choppy nature of "upticks" in the post-decimalization environment but a clearance and settlement system based upon "collateralization versus payment" as opposed to "Delivery Versus Payment" when combined with no "uptick rule" is **unconscionable.** The quants and algorithmic traders need to morph their trading mechanisms into alignment with the law. The law shouldn't have to morph itself into alignment with opaque new-fangled trading strategies and mechanisms subject to abuse but too complex for the regulators to understand. I think the $62 trillion worth of totally unregulated "credit default swaps" currently crushing our financial system might serve as a good example of this concept. The "choppy" nature of post-decimalization upticks can be smoothed out via making the amount of a triggering uptick higher than a penny; perhaps 5 to 10-cents for stocks trading over $10. This would result in more of a "circuit breaker" effect. Blaming abusive naked short selling on "black boxes" and algorithms gone crazy can no longer be tolerated. We saw the same modus operandi when the ECNs ("electronic communication networks') appeared back when there was an "Uptick rule". The excuse made was that the very nature of ECNs didn't allow compliance with the "uptick rule" for technical reasons. This resulted in the ECNs being used as the "weapon of choice" to intentionally steal money from unknowing investors. Of course "black box" trading modalities are going to be abused because there is always the plausible deniability present to claim that the "black box" is to blame and not me.
8) The concept of "leverage" needs to be appreciated by the regulators. The lack of an "uptick rule" within a clearance and settlement system based on CVP results in the ability to access a **self-leveraging** cycle involving knocking out the bids in a serial fashion, inducing panic selling, merely collateralizing the debt in the absence of delivering that which you sold, scooping up the buyer's money as the share price predictably tanks which then allows the securities fraudster to assume and collateralize **that much higher of a naked short position** which encourages yet another **self-leveraging** cycle of attacking the bid, inducing more panic selling, merely collateralizing the delivery obligation, scooping up the buyer's money, etc.

Being allowed to attack bids in a serial fashion not only triggers panic selling by especially the elderly unwilling to sustain a huge life-changing loss but it also allows fraudsters to trip "stop loss orders" and "trailing stop loss orders" visible only to them with their superior view of the trading landscape. Legitimate sellers of genuine shares do not serially knock out bids. The increase in market volatility as measured by the "Vix" index has gone ballistic since the rescission of the "Uptick rule". The last hour of trading on a daily basis has been a roller coaster ride with no precedent. In a clearance and settlement system based upon DVP an "uptick rule" is less necessary. Securities fraudsters have quickly become masters of whipsawing share prices to bring about an effect in alignment with their financial interests. The legal analogue of putting people under "duress" to bring about a desired result is quite fitting. The concept of "manipulation" also applies in regards to "supply", "demand" and the emotions of investors. Recall that back when the investors bought the shares of many corporations they own now the "Uptick rule" was in effect. Pulling it out in midstream of their investment after 74 years of functioning just fine and amidst a worldwide uproar against naked short selling abuses is a bit too much to swallow. One can only imagine the magnitude of the pressure exerted by those benefiting from these abuses to get the SEC to rescind this rule at that time in history. One doesn't even want to imagine the quid pro quo involved although Congress should definitely look into it.

As abusive MMs knock out bids in a serial fashion due to the lack of an "uptick rule" one might ask where are the underlying bids that should be there from MMs that have previously established massive naked short positions. They're nowhere to be found which confirms that their accessing of the bona fide MM exemption on those previous naked short sales was **fraudulent** in nature as they were supposed to be injecting "liquidity" in the form of buy orders as share prices plummet. But as mentioned earlier selling shares in our currently corrupt clearance and settlement system even when they don't exist makes the seller money whereas buying shares costs money. If the goal at the end of the day is to have more money because individual MMs are usually paid a percentage of their profits generated then buying back previously naked short sold shares is not very appealing and is stupid to do if you don't have to. Remember that as previously naked short sold shares are repurchased out of the market then the share price will naturally be driven upwards which forces the tendering of more "collateralization" money for the naked short position still outstanding. This is just the reverse of the "self-generated leverage" we see during these attacks. These "leverage" phenomena would have a tendency to cancel each other out but that's only on a level playing field wherein the MMs were "injecting liquidity" like a truly bona fide MM would on **both** the buy and sell sides when dictated by order imbalances. Therefore this offsetting "self-generated leverage" which would serve to move share prices upwards cannot be accessed.

9) The SEC needs to realize that the lack of an "uptick rule" encourages abusive naked short sellers NOT to place underlying bids in these markets without an "uptick rule" because they do not want to get their bid hit (buy shares) from a different abusive MM serially knocking out bids as this costs them money. Abusive MMs operating in a no "uptick rule" environment will either refuse to place a bid or make it for the minimum amount legally allowable i.e. sell a million shares at the offer and then bid for 1,000 after all MMs are mandated to place both buy and sell orders.
10) There is an ultra-obvious need to rein in the hedge funds. It is their $11.2 billion in annual expenditures to the "facilitators" of these crimes that drives this entire "cycle of corruption". Hedge fund managers typically "earn" 2% of assets under management plus 20% of all net profits. Not only do they manage huge amounts of investor money many into the tens of billions of dollars but they are also highly leveraged by their prime brokers which makes them well motivated to do anything they can to make sure the investments of the hedge fund managers work out well. Can the regulators not recognize the massive temptation for unregulated hedge fund managers to selfishly swing for home runs associated with reckless use of available leverage without any thought whatsoever about the systemic risk issues they are placing onto the shoulders of **all** American citizens investors and non-investors alike, should a severe bear market be encountered similar to the one we are now in the midst of. The forced "deleveraging" of highly leveraged positions affects all investors whose invested in corporations' share prices get **needlessly** pummeled as greedy and irresponsible hedge fund managers are forced to deleverage due to margin calls and redemptions; now multiply that by 10,000 hedge funds. What we're left with is massive rewards being showered onto hedge fund managers in the good times and intolerable levels of systemic risk and losses being shouldered by **all** U.S. citizens including the non-investors in the bad times. We constantly see hedge fund managers marching before Congress and stating that they and their wealthy investors don't need to be regulated because they are sophisticated "accredited" investors that are not in need of protection by the SEC. Politicians in need of their donations predictably nod their heads in approval. But what about the investors in the corporations that they target for ANSS attacks; do they not need the hedge funds to be regulated? Wall Street is a "closed system". Those annual billion dollar "earnings" of the largest hedge fund managers have an offsetting group of less sophisticated investors taking the losses. Abusive hedge fund managers need not be smarter than any other investors. Abusive hedge fund managers can access their superior critical mass to easily collateralize massive naked short positions and gain access to "self-leveraging" opportunities presented by the "facilitators" of these crimes being showered with their share of the $11.2 billion in annual fees available to the most "accommodative" DTCC participating market makers, prime brokers, clearing firms, etc.
11) Permanent rescission of the options MM (OMM) exception is necessary. If the mainly Wall Street professionals trading in the options markets have a little less "liquidity" in these derivatives markets with system risk

repercussions beyond imagination then so be it. This exception has always been universally abused and has led to the systematic siphoning off of the funds of the investors in the **underlying securities** theoretically in order to provide "liquidity" to those with a vastly superior knowledge of, access to and visibility of our clearance and settlement system. The concept of a "corporation" is barely recognizable after overlaying all of the layers of the resultant mere "securities entitlements" piling up from different directions while abusing these loopholes. What ever happened to the concept of doing business as a "corporation" involving "one share, one vote"? It needed to be "tweaked" a bit in order to accommodate the financial interests of those involved in the trading of the "shares", the "securities entitlements", the options and the futures in these "corporations". Somewhere under this haystack is a state-domiciled "corporation" with Articles of Incorporation, by-laws, a prescribed number of shares "authorized" and a finite number of shares "outstanding", a Board of Directors solely empowered to issue new shares, a transfer agent and a registrar entrusted to make sure that there are no "counterfeit shares" in existence. The veil of darkness at the DTCC needed to facilitate and later cover up these crimes has left the transfer agents and registrars of a corporation unable to provide the protection from counterfeiting issues which is their job.

12) Mandated "hard deliveries" on T+3 with "guaranteed delivery" buy-ins on perhaps T+6. "Guaranteed delivery" buy-ins prevent fraudsters from periodically "crossing" or "parking" delivery failures in a daisy-chain fashion across the street with a co-conspirator. Singapore has mandated buy-ins and a $100,000 fine for naked short selling into a buy-in! Their regulators seem to get it. In fact some Asian markets punish abusive naked short sellers with "caning" just like a common thief would receive. The question arises as to why our regulators and SROs don't appreciate the theft/conversion aspects of this thievery as this is real money being siphoned off. The delivery failures of bona fide MMs that prove their bona fides by placing the corresponding bids mentioned above might be bought in on perhaps T+13. Readily sellable "securities entitlements" are much too damaging to be allowed to invisibly accumulate in the share structures of targeted corporations.

13) Public disclosure of all FTDs no matter where they are hidden i.e. in DTCC "C" sub accounts, via ex-clearing "arrangements" between abusive clearing firms, at trading desks, via repurchase agreements, via "synthetic long positions", etc. The '33 Securities Act ("the Disclosure Act") already mandates the disclosure of any facts "material" to an investment in a corporation. There could be nothing more "material" to an investment than the presence of preexisting massive levels of archaic delivery failures often essentially preordaining a corporation to an early death. The SEC with the mandate to administer and enforce the '33 and '34 Acts knowledgeable of the levels of FTDs in the system actively breaking these laws is a troublesome concept for investors in need of this mandated "investor protection and market integrity". How can you have "threshold list" protection based on the number of FTDs in the system when only a fraction of FTDs are tabulated? How can

the SEC mandate that a corporation reveal to the public every single grain of sand of risk associated with an investment in the corporation via a prospectus and then refuse to reveal to prospective investors the boulder of risk associated with massive levels of yet to be bought-in but readily sellable "securities entitlements" resulting from FTDs?

14) There is a need to clearly delineate the definition of a "failure to deliver". Poorly defined terms are tough to legislate with. The DTCC's "pre-netting" process masks the existence of many "failures to deliver" that should be tabulated. Trust me when I say that the DTCC's definition of a "delivery failure" will be much different than that of an investor worried about investor protection and market integrity. At the NSCC if a 90-day late delivery of shares finally arrives on a given day then it will unconscionably be "allocated" to that day's delivery failures to nullify them even though there was a delivery failure that should have been tallied. The NSCC proffers that "99% of deliveries occur on time and the vast majority of the remaining ones are cleared up within 5 days"-baloney! The SEC has already admitted that the current level of delivery failures in the DTCC administered clearance and settlement system is **<u>so large</u>** that if system-wide mandated buy-ins were to occur then there would be severe "market volatility" upwards. Which party is lying? The SEC also stated that FTDs were so numerous that they needed to be "grandfathered in" as per the original version of Reg SHO. The SEC is right about upward "market volatility", it will match the downward "market volatility" **<u>already</u>** caused by the enormous number of delivery failures they cite currently existing in the system. I don't get it. You've identified the bank robbers and found the stolen money and then-nothing happens. The delivery failures cited statistically and upon which the "Threshold list" is based need to be delivery failures before "pre-netting" and include those FTDs hidden elsewhere on Wall Street. A quick census of the amount of shares implied as being "held long" on the monthly brokerage statements of investors would provide the numbers quickly and easily. Note that the new Rule 10b-21 necessitates the occurrence of an FTD before it is triggered. FTDs being "pre-netted" out of existence minimizes the effectiveness of this law also. As it stands now when the purchaser of failed to be delivered shares turns around and sells his investment (usually at a steep loss) then the existence of the FTD becomes a moot point and there is no way in the world the new purchaser could ever get delivery of the shares he purchased because they never did exist in the first place. The current Ponzi scheme of archaic delivery failures being able to cancel out fresh delivery failures is intolerable. That's why Congress mandated the "prompt settlement" of all securities transactions.

15) Due to the incredibly damaging nature of securities entitlements older than 2 or 3 days any efforts to create them, facilitate the creation of them, obfuscate the existence of them from investors or regulators, purposely extend their lifespan (via "crosses", "wash sales" and "parking") etc. needs to be clearly deemed a form of <u>fraudulent</u> behavior due to the predictable artificial **<u>manipulation</u>** of share prices lower as share price manipulation is indeed a form of fraud. This would be consistent with but additive to Rule 10b-21

which already labels deceiving a market intermediary about the ability or intent to deliver securities on settlement date as well as any deception involving the "ownership" (as redefined by Reg SHO) and "locate" source as a form of fraud. The "targeting" of a corporation for an abusive naked short selling attack followed by sharing the identity of the corporation targeted with others needs to be recognized as a form of "collusion" and "conspiracy". This is not akin to sharing due diligence information with others before taking a long or legal short positions involving a legitimate "pre-borrow". The targeting of corporations to commit fraud against a corporation and the investors therein is a fraud in and of itself. The SEC needs to realize that abusive MMs and hedge funds work in groups with discrete communication channels established between the providers of the $11.2 billion in annual "grease" and the receivers thereof.

16) An exercise I hope the regulators, SROs and exchanges do is this: review the "perfect storm" recently orchestrated in the banking sector that ravaged several banks and caused the loss of hundreds of thousands of jobs. It included the establishing of massive levels of legal and illegal naked short positions in bank "A" by those that operated enormous credit lines that those banks could draw down upon. Next came some rumor mongering perhaps just involving questions. Did you hear anything about certain parties pulling their credit lines from "A" because they're against the ropes? As the rumors progressed certain patrons of the bank naturally pulled their funds. After a while the rating agencies noticed this and they had to decrease their ratings on bank "A". This caused more people to start what ended up being a classic "run on the bank". Soon those with the massive credit lines that bank "A" utilized which were also those with the pre-established massive naked short positions pulled their credit lines. The share price obviously tanked and more patrons pulled their money out which led to further downgrades and more parties pulling their credit lines. The built in excuse for pulling their credit lines of the orchestrators of this entire fraud was that perhaps some loan covenants had been broken or they had to do it because of the rating downgrades. During all of this certain players were bidding up the prices of credit default swaps to confirm the perception of the dire nature of the targeted bank's prognosis. It's the perfect crime! Granted the banks targeted had problem with troubled assets that may or may not have been bailed out by the authorities. We'll never know. The orchestrators of this fraud probably made some legitimate short sales involving a "pre-borrow" or "locate" but the supply of legally borrowable shares probably dwindled quickly. Many of the scavenging naked short sellers sensing an opportunity late in the attack obviously had no time to make a legitimate borrow. They just "piled on". The banking sector would be an excellent choice to perpetrate this fraud on as their relationships are built upon confidence and they were already "wounded" with their hard to value toxic assets.

After studying this beautifully-designed fraud it's time to go back and review the tenets of the amended Reg SHO and the arguments of hedge funds and

MMs as to their needs to operate in darkness and how they are needed to inject this wonderful "liquidity" of theirs. In fact they injected a tsunami of liquidity in these cases that nearly wiped out our entire financial system. How could abusive MMs that continued to sell without pre-borrowing as the share price was falling off of a cliff make the case that their "injection of liquidity" was needed or justified? Imagine the plight of opportunistic buyers buying into all of this provision of "liquidity". Now go to Reg SHO and evaluate the concept of making mere "locates" from a co-conspirator as to the availability of shares to borrow. It's sheer insanity when these frauds can be orchestrated on any company at any time. Consider the relying of "customer assurances" as being enough to justify a "locate". A corrupt hedge fund tells his corrupt prime broker that he already took care of the "locate" just process the short sale. This is insanity. Now consider T+13 day buy-ins. Those banks and b/ds under attack didn't have 13 days left to live so there never was any worrying about being bought in. Now overlay the concept of mere CVP and realize the gigantic invitation it provides for both the designers of these frauds and the late comers just there for the "pig piling". How many of the MMs that had pre-established naked short positions closed out these "open positions" by "injecting liquidity" from the buy side. Probably not very many which proves that their accessing of the exemption accorded only to bona fide MMs was fraudulent from the get go. Next consider the hundreds of thousands of jobs lost by people under the assumption that unconflicted regulators are actively providing "investor protection and market integrity". One can't help but notice the poetic justice involved when the main perpetrators of these frauds became victimized by their own tricks of the trade. On Wall Street the greed and avarice levels are so far out of control that they're now "eating their own". Meanwhile the SEC is listening to the powerful lobbyists of the hedge funds and the industry itself recommending "grandfathering in" of delivery failures and super soft "locate" requirements that are needed because they can't provide this wonderful "liquidity" in fast moving markets if they had to play by the rules that everybody else has to play by. I humbly ask of the regulators to review the amended Reg SHO in light of the recent events in the banking sector while those memories are fresh. Recall all of the arguments made by powerful industry and hedge fund lobbyists in behind closed door meetings and via "comment letters" and how you got conned into believing that blather. Notice which **natural** market deterrent to these crimes was missing during these attacks. It was the fact that there are only a finite amount of legally borrowable shares in the share structure of any corporation and once they're loaned out then that's it. What policies removed this natural deterrent? MM exemptions, fluffy locate loopholes, "customer assurances" qualifying as valid "locates", unregulated "easy to borrow" lists, CVP, the DTCC's SBP, "pre-netting" of delivery failures, "anonymous pooling" of shares at the DTCC and at clearing firms, unregulated secrecy-obsessed hedge funds, regulators "captured" by the financial interests of those they are supposed to be regulating, the rights to privacy accorded to theoretically "proprietary trading methodologies", etc. The "post mortem" being conducted on these “bear raids” in the banking sector should provide plenty of information on the relative roles of these factors.

17) Any effort to intentionally postpone the settlement of a trade and thereby extend the lifespan of the incredibly damaging “securities entitlements” resulting from delivery failures would also have to be deemed fraudulent behavior due to the predictable **manipulation** of share prices lower as share price manipulation is a form of fraud. We need to rescind the “unless” clause of 15c6-1 (’34 Act) which forbids any artificial extension of settlement date **“UNLESS” the parties to the trade agree to the extension before hand.** The one exception might be for overnight reverse repurchase agreements. Securities fraudsters as well as financial terrorists cannot be allowed to cleverly “pre-agree” on forgiving delivery failures while intentionally taking down a U.S. corporation. This flaw opens up the loophole of Ex-clearing. Parties to a trade cannot be allowed to “pair off” and intentionally create and sustain astronomical amounts of FTDs leading to “securities entitlements” that damage corporations and the investments made therein. This “pairing off” of delivery obligations and promising not to effect buy-ins amounts to nothing less than one b/d saying to another you can steal from my clients by refusing to deliver that which you sell them if you allow me to steal from yours by my refusing to deliver that which I sell to them.

18) Due to the damaging nature of securities entitlements those selling 144 restricted shares need to be forced to remove the legend with a legal opinion **BEFORE** selling or at least make a “decrementing hard pre-borrow” and label the sale as a “short sale”. The sellers of 144 shares should not be allowed to poison the share structure of an issuer for months at a time while a legal opinion is being processed. The fewer “legitimate” reasons for delays in delivery the more the “illegitimate” ones will stand out. Recall that it is the reality that there are indeed a small amount of “legitimate” reasons for delivery delays that opens the door for these crimes in the first place. The ideal would be that no delivery failures allowed i.e. you can’t make a “long sale” or a “short sale” UNTIL the shares are ready for “good form delivery” on T+3 **unless** you are a truly bona fide MM willing to adhere to the “98% rule”. Anything short of that in a clearance and settlement system based on “collateralization versus payment” would be clearly facilitating fraudulent behavior. Kudos to the SEC for changing the “ownership” definitions in Reg SHO wherein “ownership” of a security is not established UNTIL options are exercised, convertible securities are converted, etc. The same concept needs to be applied to 144 securities that are so often the subject of abuse.

19) Our clearance and settlement system needs to withhold “the mark” (the buyer’s money) **UNTIL** good form delivery is made as suggested in the original draft of Reg SHO. This would combat the unconscionable concept of mere “Collateralization Versus Payment” and move to a “Delivery Versus Payment” based clearance and settlement system like most of the rest of the free world. The SEC staff caved-in to the desires of industry lobbyists on this issue. In what other business besides Wall Street can you gain access to a buyer’s money without delivering that which you sold him? Further, the

buying client's b/d has no right to make interest off of the buyer's money ("the mark") throughout the life of a delivery failure. That's unconscionable behavior for an "agent" that recently received a commission. Try to imagine that policy in the real estate industry! This policy only encourages purchasing b/ds to "sacrifice" their clients to the wolves and to aim buy orders at parties likely to naked short sell into the buy order which is an obvious "conflict of interest" for an "agent". The buying b/d is the "agent" that just took a commission from his client for crying out loud. This incentivises the delay of the "prompt good form delivery" of shares sold and therefore the "prompt settlement" of trades. Allowing access to the investor's money in the absence of delivery i.e. mere "Collateralization Versus Payment" is unconscionable as the collateralization of a delivery obligation to billionaire behemoths provides zero deterrence and plenty of incentive to commit these crimes. **<u>If investors were aware of this policy there would be no markets as the "rigged" nature of our markets would be obvious</u>**. Recall that DTCC "pre-netting" often provides the buying b/d with the excuse that it had no idea that there was a FTD involved in its client's purchase. Well, they should have a clue because they're making a lot of interest income from the FTD when they cash the checks.

20) The brokers on both the buy and sell side of a transaction should not be able to access their commissions **<u>UNTIL</u>** good form delivery is achieved. This might incentivise them to act like true "agents" looking out for their client's welfare after being paid a commission. As it stands now the buying b/d makes a fortune **<u>if delivery doesn't occur</u>** as well as commission income that would not have been otherwise earned in the absence of the sellers of "legitimate" shares. Our current clearance and settlement system are riddled with these "conflicts of interest".

21) Canada's "CDS" analogue of our DTCC cannot be allowed to interface with our DTCC as their regulators continue to espouse that they have absolutely no problem whatsoever with the naked short selling of U.S. securities. The existence of this "tunnel under the border" has made U.S. development-stage corporations the prey of choice for abusive naked short sellers WORLDWIDE with Canada typically acting as the willing conduit. When Canadian b/ds are sued for facilitating abusive naked short selling activity their "statement of defence" (the "answer" to a complaint in the U.S.) is always the same: *"The naked short selling of U.S. securities is 100% legal in our country. The plaintiffs should go after those nasty old offshore hedge funds that duped us into facilitating their crimes"*. Approximately 7 or 8 years ago a survey was taken in Canada that found I believe it was 128,000 offshore relatively anonymous accounts within the Canadian brokerage industry. To this day there is no national regulatory scheme in Canada. Each province has its own provincial securities laws. This allows a game referred to as "regulatory arbitrage" to be played wherein securities fraudsters will operate out of the province with the weakest laws against the type of securities fraud they are perpetrating. Allowing their version of a DTCC to interface with our DTCC is pure nonsense until regulatory reforms are made. One should not expect

meaningful regulatory reform out of Canada as abusive naked short selling accounts for too large of a percentage of their securities business to trim back on now. That "house of cards" has been completed and too well-furnished to bring down now.

22) Software is available to trace delivery failures and the patterns of periodic illegal "crossing" of these positions to avoid delivery and prolong the life of the securities entitlement. The mere knowledge that the SEC is using it should provide meaningful deterrence to these crimes. The trading data holds all of this information and is readily accessible to any **unconflicted** SROs or regulators willing to do their job. The irrefutable truth is held in the trading data which is not deserving of "privacy" treatment when being reviewed by the "securities cops" doing their jobs. As mentioned, the recurrent theme in ANSS crimes as obvious as refusing to deliver that which you sell is the need for the lack of transparency as its foundation. If an abusive MM sells 10 million shares of an issuer each month and buys 100,000 month after month then I would proffer that there is indeed an "issue" to be resolved here. If the same two market intermediaries keep passing the same parcel of shares back and forth throughout time then I'd think there was an "issue" here also. This is not tough to detect with the proper software whose use or knowledge of its being utilized would provide some level of the heretofore missing meaningful deterrence to these crimes.

23) The Department of Homeland Security needs to get deeply involved for obvious reasons. With a clearance and settlement system based on "collateralization versus payment" Wall Street fraudsters have no exclusivity in regards to the ability to target and takedown corporations key to our financial system or to homeland security. Any parties with deep pockets will have no problem collateralizing their delivery obligations or finding Wall Street intermediaries more than willing to facilitate their desired goals no matter how diabolical they are. The concept of "financial terrorism" in regards to abusive naked short selling frauds does not appear to be very well appreciated despite the obvious connotations. You might start by studying the blatant recent attack on the firm that modifies Humvees to make them less susceptible to IED attacks in Iraq. Again the concept of activity bordering on treason raises its ugly head.

24) The "RECAPS" program of the DTCC which serves to intentionally prolong the life of "securities entitlements" thereby facilitating these crimes as well as obfuscating their existence needs to be banned. The periodic rolling back of the age of FTDs like a crook rolls back the mileage on a car's odometer is purely fraudulent behavior especially when promulgated by the party with the mandate to "promptly settle' all securities transactions. The DTCC has always been in a huge hurry to place trades into some kind of "kinda-sorta settled box" that has absolutely nothing to do with the legal "settlement" of a securities transaction. They will then proffer that last year we **settled** "X" amount of quadrillions of dollars of trades. Many of these trades didn't **"settle"** the monetary value of the delivery obligation was simply collateralized and the **illusion** that "settlement" was achieved was provided.

How can the trade involving an investor merely selling the shares that he never got delivered to some other party result in the "settlement" of his purchase transaction? Part of the problem is the difference between reality and the always faulty mere "accounting measures" utilized to project reality.

25) Investigate the number of bogus "locates" and faulty pre-borrows associated with the downfall of the various banks recently to get an appreciation for the pandemic nature of these attacks and the nature of the attackers not afraid to sacrifice our entire financial system for their financial interests. We got an interesting view of the mindset and sheer arrogance of these criminals and their lack of respect for the regulators or their abilities while not even attempting to cover their tracks. The graphs showing FTDs as a function of share price for VeraSun and WAMU can be found at deepcapture.com. These graphs clearly show the FTD levels going astronomic right as the share prices fell off of a cliff. What a wonderful learning opportunity this represents to the unconflicted regulators, SROs and congressional oversight committee members.
26) The SROs and regulators need to realize that truly bona fide MMs do not hire Internet bashers to dissuade buying and encourage selling of certain securities. They do not collude with hedge funds to bring down certain corporations even if they in their almighty wisdom feel that the corporation is trading at too high of a share price. They do not hide behind the anonymity provided by the Internet and the rights to free speech to further their own financial interests. MMs that access the powerful exemption from pre-borrowing shares and making "locates" before admittedly naked short sales have already pledged to the investment community that they are acting in a truly bona fide market making capacity. As it stands now abusive MMs rarely take losses; somehow they're above that. They just continue to "inject liquidity" **on the sell side only** until the laws of supply and demand finally come to their rescue. Mandated periodic buy-ins as well as the knowledge that mandated buy-ins are a fact of life is what will dissuade this behavior as their risk/reward analyses will change. Nonabusive MMs can make a lot of money in our markets. The fact that there are so many fraudulent tricks available to an abusive MM to deploy when his naked short positions "accidentally" gets a little bit out of hand that many MMs act as a tax on the system. They'll tax you when you buy shares and tax you when you sell shares and make an investor's life a living hell in between the two. A certain element of "risk" is what is needed to modify these behaviors. The heretofore missing potential of actually incurring detectable risk and perhaps every once in a while actually being forced to take a loss might provide the deterrence to a lot of these crimes. The regulators and SROs also need to provide "investor protection" to the shareholders of publicly-traded but abusive MMs that don't have a clue as to the unreported "contingent liabilities" present while their invested in corporation carries enormous levels of FTDs. These investors have a right to that transparency and a right to have access to that very "material" information but once a gain the need for darkness trumps the "33 Act's mandate to disclose "material" information. Now that hedge funds are

opening up to smaller investors they too deserve investor protection. Recall how that immense amount of "self-generated leverage" can be reversed if the sellers of securities that refuse to deliver that which they sold are finally forced to do so (perish the thought). Accounting laws mandate that these be clearly listed as "contingent liabilities".

27) The creators of failures to deliver (FTDs) in companies that went bankrupt older than perhaps 4 business days (approximately the oldest age of a truly "legitimate" delivery failure) must be forced to return the funds to the purchaser and the trade be broken. The benefits of intentionally bankrupting a U.S. corporation like never having to cover your naked short position and never having to worry about that "reverse leverage" involving chasing shares upwards or circumventing capital gains needs to be erased. If delivery failures are older than perhaps 15 days or so then not only should the corresponding trades be broken but fines large enough to dissuade this behavior should be levied i.e. multiples of the amount of money almost stolen. Again, truly meaningful deterrence to billionaire behemoths is different than it is to "Joe Sixpack". Any attempts to "cross" or "park" delivery failures made to extend the damaging effects of securities entitlements and to "refresh" these delivery failures need to be dealt with severely for both the buyers and the sellers in these fraudulent transactions. Recall that those shares were due way back on or about T+3. The "pig piling" of FTDs phenomenon we just saw in the banking sector cannot be allowed. We all witnessed how those corporate vultures attacked those soon to be corporate carcasses of banks with reckless abandon.

28) When a corporation distributes dividends involving shares those naked short the stock on the dividend record date must be **forced** to follow the securities laws and deliver "in good form" legitimate shares. Currently the DTCC and its participants merely post on monthly brokerage statements yet more "accounting measures" in the form of yet more "securities entitlements" right next to the other delivery obligation that was reneged upon. That's blatant fraud when you allow the posting of mere "accounting measures" to mask the existence of earlier fraudulent acts. If nothing else the dividend distribution process should have **highlighted** the previous acts of fraud needing to be addressed by buy-ins. The dividend being distributed by the corporation was for "legitimate shares" with a full "package of rights" attached. It was not for incredibly damaging nonvoting "securities entitlements". The law says that it is necessary to match any dividend distribution in "**like kind** and quantity". A "share" in a corporation is a unit of equity ownership with rights attached. It is not an "accounting measure" representing a failed delivery obligation whose monetary value must be collateralized on a daily marked to market basis. This totally unconscionable policy of not having to match dividends "in kind" further incentivises these crimes and actually provides reverse deterrence. This doesn't even address covering the original long overdue delivery failure. The reality is that a share dividend distribution **has to be** treated like it is by the DTCC currently in order to cover up the existence of the original fraud because otherwise it would be incredibly easy for victimized

corporations to merely distribute share dividends in order to force abusive MMs and abusive hedge funds to cover their preexisting delivery failures and that wouldn't be in the financial interests of abusive DTCC participants receiving all of those fees and commissions from all of those abusive hedge funds that donate all of that money to certain political powers that can be counted on to keep the hedge fund industry **unregulated.** It often takes the commission of a "cover up" fraud to mask the existence of the original fraud. Another example would involve the behind the scenes cancellation of votes necessary to hide the existence of inordinate levels of nonvoting "securities entitlements" whose purchasers thought had a certain amount of voting rights.

29) Formal codification is needed to address how long the DTCC has to service "entitlement orders" in which investors demand the delivery of the evidence that what they purchased was indeed delivered i.e. paper-certificated shares. As it stands now when the DTCC experiences a wave of these orders there comes a point wherein the DTCC claims that there is a "chill" currently on the delivery of paper-certificated shares due to certain behind the scenes "issues". In other words the cupboards are bare at the DTCC. Filing "entitlement orders" demanding delivery of shares purchased is one of the few ways investors can **force** the "settlement" of their trades within the current "regulatory vacuum".

30) **The DTCC's claim of being "powerless" to do buy-ins "to force the completion of a trade" is vastly different than them being theoretically "powerless" to service "entitlement orders" or "powerless" to make sure that investors got their dividends of legitimate shares since they and their participants were the ones conjointly doling out the "securities entitlements".** A firm timeframe is needed within which the NSCC must have the proper documentation delivered to the corporation's transfer agent. Granted, this reverses the efficiencies attained via the "immobilization and dematerialization" of securities instituted to address the "paperwork crisis" in 1969. Note that in the servicing of "entitlement orders" and the distribution of share dividends there are no issues relating to the "injection of liquidity" by theoretically bona fide MMs or "privacy" issues associated with certain "proprietary trading methodologies". Since when is refusing to deliver that which you sell a "proprietary trading methodology" of a hedge fund deserving secrecy? There are also no exemptions available related to the conduct of truly bona fide MMs in regards to dividend distributions. That excuse was present during the original share purchase transaction but not available during dividend distributions but yet once again we see the need to perpetrate cover up frauds to hide the existence of the original fraud. These "cover up" frauds are needed to be committed every single time an investor tries to exercise one of the rights that shares have and mere "securities entitlements" don't have. Is it a big surprise that a mere "accounting measure" or "accounting notation" has no rights associated with it?

The problem is that these policies of converting difficult to counterfeit paper-certificated shares into easy to counterfeit electronic book entries ("share dematerialization”) were taken advantage of by certain abusive DTCC participants and the hedge funds they chose to be their “guests”. UCC Article 8 clearly mandates the servicing of “entitlement orders” but the DTCC has chosen to only service them as paper-certificated shares become available **<u>“in the due course of business”.</u>** This unfair policy renders investors forced by CVP to take it upon themselves to make sure that their trades are truly “settling” illiquid during this “in the course of business” phase when the DTCC cupboards are bare. This in turn dissuades investors from exercising these “entitlement order” rights (to demand delivery of paper-certificated shares) which they paid full retail price for. If a legitimate share with a full package of voting and dividend and various other rights attached trades at $10 then what should a mere nonvoting “securities entitlement” for which “entitlement orders” can be stalled or ignored rendering its purchaser illiquid trade at? Is this not a classic “bait and switch” fraud? The MM quotes that he has “shares” for sale at “X” amount and he is willing to pay “Y” amount to buy shares. It’s a shame for an investor that paid a commission to have to go to the hassle and expense of ordering delivery of paper-certificated shares but one must do what he or she has to do within this current regulatory vacuum and a clearance and settlement system unconscionably based on “collateralization versus payment”. The speedy processing of “entitlement orders” as mandated by law should serve as a natural deterrent to these crimes but once again the DTCC is not willing to follow the law when it is not consistent with the financial interests of its abusive “participants” and their “guests” that shower them with fees, commissions and order flow and that shower the politicians willing to keep them unregulated and operating in the dark with political donations.

In regards to ANSS crimes our markets are “rigged” from every conceivable angle and until the foundational flaw of the DTCC basing our clearance and settlement system on mere CVP is corrected plugging various loopholes is like playing “whack a mole” wherein a new loophole pops up out of nowhere and becomes the loophole du jour which the SEC may or may not address after 3 or 4 years of comment periods and behind closed door chats with industry lobbyists. Is not the SEC supposed to function somewhat as a “lobbyist” on behalf of the investors it is mandated to protect?

31) Lost in the shuffle in between the proposed version of Reg SHO and the final amended version is the need for theoretically bona fide MMs to label as “SSE” or “Short Sale Exempt” any short sale order in which they are **<u>“officially”</u>** accessing the exemption from needing to pre-borrow or “locate” shares before making an admittedly “naked short sale” accorded only to truly bona fide MMs. This needs to be reincorporated as it clearly tells the world that this particular transaction was being done by a MM that formally pledged that he was acting in a truly bona fide market making capacity willing to inject **<u>both</u>** buy and sell-side liquidity as needed. This labeling a short sale as “SSE” then needs to tie in with the aforementioned placing of a bid for a like amount of shares at perhaps 98% of the level at which the short sale was done. Notice how easy it is to review the trading data and watch theoretically bona fide

MMs selling bucket loads of nonexistent shares at the offer and not buying a single share as the PPS drops 30%.

32) The definition of "abusive naked short selling" (ANSS) needs to be formally incorporated into the securities laws. It is very difficult to create legislation for an ill-defined concept. A suggestion: Abusive Naked Short Selling: a fraudulent version of a short sale involving deceit in which the selling party refuses to either make a mandated pre-borrow or make a legitimate "locate" of shares before making a short sale or he inappropriately accesses an exemption from making a mandated pre-borrow or "locate" usually but not always in conjunction with failing to deliver the shares sold on or about T+3. (Although the transaction usually results in a "failure to deliver" on settlement day it need not necessarily as "intraday" and "intra settlement cycle" abusive naked short selling usually attempting to induce panic selling or to trigger a visible stop loss does occur without resulting in an FTD. ANSS cannot be directly tied to an FTD because many of these are not tallied.)

The self-replenishing aspect of the NSCC's "Automated Stock Borrow Program" needs to be corrected. This policy allows the same parcel of shares if they were readily identifiable which they are not due to the "anonymous pooling" ("blind pooling") of shares used at the DTCC and with clearing firms to be simultaneously loaned out in a variety of directions. This represents an "artifice to defraud" clearly forbidden by Rule 10b-5. Shares recently taken from the SBP "lending pool" of securities to "cure" a delivery failure cannot be allowed to be replaced right back into the same "lending pool" by the new recipient (the new purchaser's b/d) <u>as if they never left in the first place.</u>

When the DTCC was asked to fix this fraud-facilitating flaw they had three responses. The first was that if the SBP were indeed flawed then the SEC would make us fix it and they haven't and secondly the SEC signed off on it many years ago and have never asked us to modify it. The third response did provide some comedic relief as the DTCC stated that that they can't fix it because the program is <u>**"automated".**</u> The SEC as the overseer of DTCC activity simply needs to <u>**force**</u> the DTCC to fix it or do away with it. The net effect of the SBP now is to facilitate the creation of massive amounts of "securities entitlements" and to prolong their lifespan indefinitely. Both of these directly lead to the 100% predictable <u>**manipulation**</u> of share prices downwards.

In regards to the self-replenishing nature of the NSCC's SBP picture all "parcels" of shares in the SBP's "lending pool" at a given time as white marbles of various sizes (amounts of shares in the "parcel"). An FTD occurs on T+3 and the NSCC as per Addendum "C" to their rules and regulations reaches in and "borrows" a white marble of shares to "cure" the delivery failure. Let's now dye this white marble red so that we can trace it to undo the fraud masking "anonymous pooling" of shares within the SBP. This "borrowed" red marble of shares is then sent to the purchaser's b/d to "cure" the delivery failure. This b/d is now unconscionably allowed to donate this red marble of shares right back into the SBP lending pool as if it never left in the first place. Two days later another FTD occurs and the NSCC reaches into the SBP lending pool and lo and behold chooses the same red marble to cure yet another delivery failure. The purchasing b/d on the receiving end of this red marble of shares is then allowed to place it back into the same lending pool again as if it never left in the first place. We now have 3 “co-beneficial owners” of that one particular parcel of shares. Who gets to vote the shares? All 3 “co-beneficial owners” will vote them but their voting power will get cancelled in a pro rata fashion behind the scenes. I’m reminded of the amicus brief filed by the SEC in the “Nanopierce” case wherein the plaintiffs claimed that the DTCC’s SBP facilitated the naked short selling attack that they had endured. The SEC lawyers had this to say to the judge in regards to the SBP: ***“The Stock Borrow Program is designed to improve the efficiency of the continuous net settlement system by increasing the likelihood that purchasers will receive their securities on settlement date”.*** Referring back to the white and red marbles analogy the question arises is it all of a sudden “***efficient***” to blatantly counterfeit legitimate shares by overseeing a self-replenishing lending pool of shares in order to ***“increase the likelihood that purchasers will receive their securities on settlement date”.*** The mere **illusion** that “good form delivery” is occurring is being presented. You can’t allow a dozen different unknowing investors “co-beneficially own” the **same** parcel of securities represented by the red marble. The SEC lawyers went on to tell the judge ***“The Commission has approved the Stock Borrow Program as being in compliance with the Requirements of the Exchange Act.”*** Baloney, the ’34 Exchange Act mandated “the prompt settlement” of all securities transactions. This necessitates the prompt “good form delivery” of that which the purchaser thought he was buying not a counterfeited copy of it which is “co-owned” by dozens of investors. The design of the SBP is 180-degrees antipodal to the provision of “prompt good form deliver” of that purchased. It merely masks the fact that good form delivery **is not occurring** and that these trades are not “settling” promptly or in any other fashion. It is no more than a multi-trillion dollar “Ponzi scheme” designed to predictably shunt the investment funds of unknowing investors into the wallets of those owning and administering the clearance and settlement system and their unregulated hedge fund “guests” generous enough to direct $11.2 billion annually to the DTCC “participants” willing to look after the financial interests of the hedge fund managers in exchange for their cut of the proceeds stolen from investors. Later the SEC lawyers told the judge in this brief that besides there are these things called “buy-ins” that serve to protect the plaintiffs from naked short selling abuses. The 2002 Evans, Geczy, Musto and Reed research paper clearly cited that less than one-eighth of 1% of even “mandated” buy-ins occur on Wall Street. To add insult to injury this amicus brief was filed by the SEC mandated to provide “investor protection and market integrity” to the purchasers of Nanopierce’s and any other corporation’s shares. As incensed as I get every time I reread that amicus brief it always reverts back to the need to become educated. A judge that was 100% up to speed on this crime wave could have eviscerated that amicus brief but as it stands he probably had to take its contents at face value. As to why the SEC to this day doesn’t mandate the dismantling of the SBP which it previously approved I’ll let the conspiracy theorists address that. Note also that it is typically the securities of thinly-traded development stage corporations that have very few shares that can legally occupy the lending pool of the SBP. These development stage corporations typically have very few shares held in margin accounts (often because they’re “non-marginable”) or with institutional investors which are the two main sources of “borrows”. These typically “hard to borrow” securities have very expensive rental fees which securities fraudsters can bypass via the SEC-approved counterfeiting printing press known as the SBP. You don't have to be able to identify which particular "parcel" of shares has been counterfeited a dozen times over and simultaneously loaned out in a dozen different locations simultaneously. Again, we see the need for the lack of transparency this time in the form of "blind lending pools" needed to keep as obvious as refusing to deliver that which you sell from being detected by the victims. Since a victimized investor cannot prove that it was his particular parcel of shares that got counterfeited a dozen times over he obviously has no cause of action to legally redress this theft. What is particularly frightening is when the congressionally mandated provider of "investor protection" (The SEC) shows up in court to provide the defense for criminals being sued by victims that were victimized because of the "regulatory vacuum" created by the lack of "investor protection" being provided by those with the mandate. The message to the SEC is that if you refuse to provide "investor protection" then that's one thing but if you voluntarily act to prohibit victims from seeking redress by other means available in an effort to cover up the crime then that's another thing altogether. The congressionally mandated providers of "investor protection" just don't act like that unless they are totally "captured" by the financial interests of those that they are supposed to be regulating. How do they become "captured"? Probably by noticing how their predecessors that also refused to provide "investor protection" were treated with staggering employment opportunities by the very people benefiting from the theft of the victimized investors' funds. There was some real irony in the amicus brief cited. The SEC lawyers had to convince the judge that the SEC's prior approval of the SBP before it morphed into the fraud facilitating machine it is now had some legal standing. They stated that: "Section 17A of the Exchange Act charges the Commission with overseeing the national clearance and settlement system in accordance with the public interest and the protection of investors". What I fail to recognize is how a blatant share counterfeiting lending pool like that of the SBP serves the "public interest and the protection of investors". There should be absolutely no disgrace with the SEC stating that the SBP they approved many years ago has morphed into a device to facilitate abusive naked short selling frauds and therefore we are mandating "X" controls to be put into place.

There is a different way to think of the self-replenishing nature of the NSCC subdivision of the DTCC's SBP. Recall that the DTC subdivision of the DTCC is the "legal custodian" of all shares held in "street name". What kind of a "legal custodian" of the shares held in its "legal custody" would allow the blatant counterfeiting (via the SBP) of that held in its "custody"? Why wouldn't you just leave the back door of the vaults wide open and provide a copy machine to those wishing to counterfeit the certificates held therein? Another question, how in the world could the "qualified control location" responsible for "obtaining the physical possession or control of securities" on behalf of its participants wishing to comply with Rule 15c3-3 ("The Customer Protection Rule") be allowed to wantonly counterfeit that which it is holding in its "physical possession" and "controlling". If it is the party "controlling" the shares held in its "legal custody" then wouldn't it be responsible to have certain safeguards or controls in place to make sure that what they are holding in their "physical possession" and that which they are "in control" of and serving as the "legal custodian" of on behalf of its "beneficial owners" is safe from being counterfeited of from having its value diluted?

33) Any profits from holding short positions in corporations filing for bankruptcy that are being sent offshore (especially through Canada to offshore tax havens) must be screened for legitimacy by checking on the delivery status of the involved short sale and whether a legitimate pre-borrow or "locate" was attained. The IRS may want to intercede here also. "Money laundering" crimes go part and parcel with abusive naked short selling crimes as all of this lack of transparency comes in handy for these fraudsters also. Laundering the proceeds of crime via the collateralization of these positions is a wonderful way to "cleanse" these proceeds.

34) The SEC would do well to realize that what drives this entire "cycle of corruption" is the $11.2 billion of "grease" that hedge funds spend annually to lubricate the system. If you think about it why would wealthy hedge fund investors pay onerous commissions and fees to hedge fund managers making their "2 and 20". Wealthy people with large funds to invest usually pay less in commissions and fees than others of more modest means. The answer has to do with the fact that this is the price of admission to this "cycle of corruption" with access to all of that "self-generated leverage". The power of that "self-generated leverage" can be appreciated as many hedge fund managers earn over $1 billion per year. Can the manager of a highly-regulated mutual fund make that kind of money? Of course not. Does that make them less smart than unregulated hedge fund managers? Of course not. What is the message being sent when the lack of regulation pays so handsomely?

35) The SEC must remember that due to several factors just one of which is the NSCC's "pre-netting" of daily trades the number of "securities entitlements" poisoning an issuer's share structure at any given time will be much greater than the number of FTDs reported by the NSCC. The powerful lobbying group for the securities industry (SIFMA) is well aware of this as they recently aggressively lobbied for only counting "post-netted" delivery failures as delivery failures for the purposes of triggering infractions of Rule 10b-21- the "anti-fraud" rule associated with naked short selling. I'll leave it up to you as to why the securities industry would "officially" attempt to portray delivery failures as being much lower than they actually are. These are the same lobbyists that lobbied aggressively for the "grandfathering in" of prior delivery failures in the original version of Reg SHO that was quickly rescinded after the investing public showed their anger. Note that if the number of actual FTDs is grossly minimized by using "post-netted" figures less companies would appear on the Reg SHO "threshold list" and therefore be subject to mandated buy-ins on T+13. The intended actions of Rule 10b-21 predicated on the tabulations of FTDs would also be severely compromised. A delivery failure on T+3 is a delivery failure whether or not the NSCC tries to artificially minimize the amount of them by "pre-netting", or by allowing archaic delivery failures landing at opportune times to mask them or by curing them with a self-replenishing lending pool via their "SBP" or by sweeping them under the rug with their "RECAPS" program. Either the

seller of securities made a "good form delivery" on or about T+3 or he didn't. The SEC's and the SRO's covering up of clearly fraudulent behavior and keeping "material" facts away from the investing public is no more than layering cover up frauds onto the original fraud to prevent its discovery. All FTDs need to be counted and should only be allowed to be "cured" from a tabulation point of view when the original naked short seller responsible for the FTD delivers legitimate shares "in good form" to the NSCC or makes a "decrementing hard pre borrow" in order to deliver the missing shares. Curing today's FTD by **"undoing"** yesterday's good form delivery is insane and constitutes a Ponzi scheme.

36) The DTCC running a clearance and settlement system based upon mere "collateralization versus payment" in no way, shape or form can serve as a **"qualified control location"** capable of granting compliance with 15c3-3 i.e. acting as the party that "takes physical possession or control of fully paid for securities". "Control" comes from "good form delivery" not "collateralization" of the monetary value of a delivery obligation. This critically important "Customer Protection Rule" of the '34 Act has been eviscerated by "Collateralization Versus Payment" policies as nobody is taking "physical possession or control of fully paid for securities" as mandated in 15c3-3. This law gives b/ds the option of "obtaining and maintaining physical possession of fully paid for securities" themselves or of utilizing a "qualified control location" like the DTCC to do it for them. The mere "collateralization" of the delivery obligation in dollars and cents is a far cry from "obtaining and maintaining **physical possession** of fully paid for securities". "Physical possession" implies a paper-certificated share landing in a DTCC vault where the DTCC acts as the "legal custodian" of this personal property. There is a good reason why Rule 15c3-3 is referred to as "The Customer Protection Rule". Over 98% of b/ds use the DTCC as their "qualified control location" of choice. Now you know why. This rule basically mandates that the clearance and settlement system administered by a "qualified control location" capable of granting compliance with 15c3-3 be based upon DVP and certainly not CVP.

37) Due to the fact that "pre-netting" and "anonymous pooling" and other DTCC policies hide FTDs you cannot have "locate" requirements based merely on "bona fide arrangements to borrow", "reasonable grounds", unregulated "easy to borrow" lists and "customer assurances" because the FTDs that prove fraudulent uses of these loopholes are often wiped out by these FTD-masking policies of the DTCC. The only solution fair to investors is a "decrementing hard pre-borrow".

38) Some ancillary crimes associated with manipulating share prices downwards via FTDs and "securities entitlements" would include: manipulating "easy to borrow lists", intentionally hiding the existence of FTDs and "securities entitlements" from prospective investors, naked short selling into mandated buy-ins to intentionally postpone the "settlement" of trades, searching for co-conspirators to receive these illegal "crosses", fraudulently granting compliance with 15c3-3 ("the customer protection rule") without ever gaining

physical possession of fully paid for shares i.e. helping fraudsters circumvent the spirit of 15c3-3, etc.

39) It cannot be lost upon the SEC and its overseers that the generation of all of these "securities entitlements" above and beyond the number of shares a corporation has legally "outstanding" brings massive amounts of income to the Wall Street intermediaries buying and selling them as they are treated as being readily sellable despite the fact that they are not legitimate "shares". Hence one of the many "conflicts of interest" as well as incentives for Wall Street trade intermediaries to intentionally flood the share structures of issuers with them is to "earn" more buy and sell commissions, more rental income, etc. It's analogous to a realtor having somebody create fake houses out of thin air or having the ability to sell the same house many times over without the occupants realizing it.

40) The disclosure of short positions over 5% of the number of outstanding shares needs to be made as it is with long positions over 5%. The 5% ownership declaration law is actually made farcical by the existence of massive numbers of FTDs in the share structure of issuers under attack. Shouldn't these "control" laws be based upon 5% of the **sum** of the total amount of legitimate shares outstanding **plus** the number of mere "securities entitlements" outstanding? Since voting power is randomly being cancelled behind the scenes in back offices how can there even be a 5% ownership rule? An investor that has purchased 5% of the total number of shares "outstanding" may only have the voting power for 2% of the shares depending on how "dirty" his clearing firm is. Again we see that when the very foundation for our clearance and settlement system is deeply flawed then the entire structure will remain flawed and every time one of the other structural flaws is revealed a "cover up" fraud needs to be perpetrated to keep the existence of the foundational flaw away from the investors whose wallets are being systematically drained.

41) Wall Street intermediaries need to be **forced** to accept and process "guaranteed delivery buy orders" or "truth seekers". A guaranteed delivery buy order can only be filled by a selling party "guaranteeing" to effect delivery by T+3. As it stands now they won't because if they were to it would reveal the embarrassing fact that there are actually two different markets in any stock trading in the U.S. The one seen on our computer screens trades legitimate shares **plus** sometimes astronomical levels of "securities entitlements". The other invisible market which trades at levels much higher than the previously mentioned market contains **only** legitimate shares of a corporation with a paper certificate somewhere in existence to justify its existence. It can only be accessed via "guaranteed delivery buy orders" wherein a purchaser insists on good form delivery by T+3. If DTCC participants were to process these orders then it would reveal the fact that our main markets involve share prices that have been artificially **manipulated** lower. This would then give away the existence of this entire fraudulent clearance and settlement system based only on "collateralization versus payment". Could you imagine a trade going through at $26 while all other

trades are being processed at $21? The refusal to accept these orders is diagnostic of manipulated markets and the subsequent need to provide a cover up to the original fraud but it is necessary as a "darkness providing" maneuver. In the U.S. you are not allowed to demand delivery of that which you are about to purchase on settlement date which is the date contracted for in the first place. This is true even if you're willing to pay more than "retail". A contract that is unable to be enforced isn't much of a contract and instead serves to facilitate a classic "bait and switch" type of fraud wherein you pay full retail prices for inferior goods. To an investor the "value" of a share of stock is the sum of the individual values of the various rights attached to the share. Most people buy "shares" in order to exercise the "right" to resell it at hopefully a higher price. Other investors are interested in "control" and buy shares for the voting rights.

42) The Office of the Inspector General (OIG) of the SEC as well as the congressional oversight committees of the SEC need to investigate this attitude of the SEC in regards to the archaic "securities entitlements" in the share structures of targeted corporations. The SEC openly admits that the number of securities entitlements in the share structures of certain issuers is so large that they needed to be "grandfathered in" in regards to Reg SHO and that buying them in might result in upwards "market volatility". Knowing the incredibly damaging nature of archaic securities entitlements one finds it a bit odd that the congressionally mandated provider of "investor protection and market integrity" would succumb to the financial interests of the powerful securities industry lobbyists and let them continue to damage targeted corporations instead of addressing the problem with emergent buy-ins. The "authors" of these excessive amounts of securities entitlements resulting from delivery failures or "refusals to deliver" are obviously not interested in delivering that which they sold and the previously agreed upon T+3 settlement date for those transactions is well in the past. Why wouldn't this theoretically unconflicted and congressionally mandated provider of "investor protection and market integrity" literally jump at the opportunity to right these wrongs and get the missing shares immediately to their proper owners via mandated buy-ins?

43) The SEC must be forewarned that the DTCC has announced their intent to rid the system of all paper-certificated shares. Allowing them to do this with those delivery failures still alive in the system would be tantamount to letting them bury the bodies (the evidence of their fraud) in the desert. This cannot be allowed to happen as the number of paper-certificated shares in the system provides the critical "yardstick" to measure the pandemic nature of these frauds and to identify which issuers have become damaged. Once the preexisting archaic securities entitlements are purged from the system and safeguards are in place to make sure they never show up again in these types of numbers then it might make sense to go to total "dematerialization" with the option to hold shares in a "DRS" (Direct Registration System) format.

44) In regards to "systemic risk" issues the SEC and the DOJ need to be reminded of the critical role of a country's clearance and settlement system in providing

the foundation for the overall financial system. In any trading venue there is a phenomenon referred to as "counterparty risk" wherein the 2 parties to a trade must assess the credit worthiness of its counterparty. In clearance and settlement systems utilizing "central counterparties" or "CCPs" like ours does with the NSCC acting as the "CCP" the risks across the entire system are **intentionally** "concentrated" onto the shoulders of this "CCP". This allows the CCP to provide what is referred to as a "trade guarantee" or a "trade settlement guarantee" implying to all investors that the CCP will stand behind all trades and cover all delivery obligations and cash transfers should one of their "participants" fail to do so. This gives confidence to investors to participate in the associated markets.

An investor can never "test" the validity of a "trade settlement guarantee" unless he demands the delivery of that which he purchased. If the CCP refuses to honor this "entitlement order" in a timely manner then the "trade settlement guarantee" was bogus. A clearance and settlement system based upon "collateralization versus payment" cannot in good conscience advertise that they stand behind a "trade settlement guarantee". Our DTCC's "trade settlement guarantee" is by definition bogus if they choose to deny servicing an "entitlement order" demanding the delivery of paper-certificated shares in a timely manner. Professing the existence of a "trade settlement guarantee" out of one side of your mouth and then asking an investor to wait on the servicing of his "entitlement order" until shares arrive at the NSCC "in the due course of business" out of the other side of your mouth contravenes the veracity of the "trade settlement guarantee" especially if the investor remains illiquid during the waiting period.

The "systemic risk" issues associated with not properly shouldering this "concentration of risk" that a CCP voluntarily assumes redirects the risk back to all U.S. citizens should a "run on the bank" type of event by nervous investors occur. When the fraudsters perpetrating these frauds are highly leveraged with borrowed funds or through accessing "self-generated leverage" then the systemic risk issues skyrocket out of control. Our current NSCC provides a mere "collateralization guarantee" and not the "trade settlement guarantee" that it advertises to the world. **This "re-transfer" of risk onto the shoulders of U.S. citizens to accommodate the financial interests of abusive DTCC participants and their hedge fund "guests" is unconscionable.**

40) Abusive naked short sellers will often bring up the red herring that at least they're injecting "LIQUIDITY" into the markets of especially thinly-traded securities which are often the prey of choice. First of all there's a difference between "injecting liquidity" and intentionally targeting and later drowning a U.S. corporation in liquidity in order to steal its shareholders investment money. A concept the SEC and the DOJ might try to get their arms around is **"liquidity that doesn't change the underlying structure of a U.S. corporation".** If somebody borrows shares to cure a delivery failure then a shareholder somewhere needs to be notified that he just lost his voting rights.

First came the concept of a "corporation" with one share representing one vote. Next came the desire to create markets for the trading of these "shares". Somewhere along the line the concept of a "corporation" got thrown under the bus in order to accommodate the financial interests of the market intermediaries trading in these "shares". These markets have been essentially hijacked by the greed of their market intermediaries with a superior knowledge of, access to and visibility of the clearance and settlement system that underlies the market. Due to the accumulation of massive amounts of non-voting "securities entitlements" resulting from unaddressed delivery failures all purchasers of shares have their voting power decreased in a pro-rata fashion by back office employees just to cover up the existence of these often archaic failures to deliver. Shareholders utilizing clearing firms with massive amounts of unaddressed FTDs will have their voting power diminished at a higher rate than the shareholders utilizing relatively clean clearing firms. One can only imagine the number of corporate voting processes that have been manipulated over the years. Perhaps the Secretaries of State of especially Nevada and Delaware where many U.S. corporations are domiciled should be more active in protecting the shareholders of corporations domiciled in their state.

41) The fiduciary duty of care owed by the purchasing b/d accepting a commission and acting in an "agency" capacity to his client the purchaser of shares to make sure that what he purchased did indeed get delivered on time needs to be **reassumed** by one of the intermediaries to the trade. The logical intermediary would be the CCP that becomes the new "surrogate creditor" of the delivery obligation created. This would be the NSCC subdivision of the DTCC.

42) The "package of rights" associated with a corporation that we refer to as a "share" or unit of equity ownership in the corporation needs to be traceable throughout the system. If investors knew that shares in margin accounts were being essentially "counterfeited" and then rented out in perhaps a dozen different directions **simultaneously** to the mortal enemy of the invested in company then informed investors would not be using margin accounts nearly as often and all of that banking-related revenue would be lost to the brokerage firms. A margin agreement allows the "hypothecation" of shares held therein but it says nothing about the counterfeiting of the shares before being hypothecated elsewhere. Part of the job of the SEC is to educate and if the SBP of the NSCC allows the shares used to "cure" a delivery failure to be placed right back into the lending pool of securities by the new recipient then yes the same parcel of shares are indeed being "counterfeited/replicated" and rented in many different directions simultaneously. Just because you can't identify WHICH particular parcel of shares got counterfeited due to the "anonymous pooling" of shares in the SBP has nothing to do with it as all investors get damaged. The concept of "decrementing" borrows is not that complex.

43) A failure to deliver needs to be traceable throughout the entire system also. An FTD occurring on T+3 cannot be allowed to be "cured" by the arrival of

shares of a 90-day old delivery failure that happened to land at the DTCC on that date. That policy results in the presence of a "float" period subject to crimes associated with "kiting". The regulators need to familiarize themselves with the DTCC policies of "balance order" accounting and their "allocation" of shares. These policies are in direct contravention of the '33 and '34 Acts. Instead an FTD needs to stand out for what it is, an FTD, that needs to be tallied and addressed with a buy-in if it lasts longer T+6 or so. Without this all you have is a Ponzi scheme wherein delivery failures just keep getting masked through time by evidence of prior frauds while the **illusion** that "settlement" involving "good form delivery" of that purchased is occurring is being manufactured. The arrival of a 90-day old electronic book entry representing a mere "securities entitlement" does not constitute "good form delivery" for today's settlement failure as Rule 15c6-1 makes it illegal to artificially extend "settlement date" through any contrivance. "Anonymous pooling" and the "dematerialization" of shares are wonderful for streamlining purposes but they encourage fraudulent behavior via decreasing transparency.

44) The role of "collusion" in these frauds needs to be addressed also. If it is fraudulent behavior to intentionally manipulate downwards the share price of targeted corporations by refusing to deliver that which you sell as per 10b-21 then 10 hedge funds communicating with each other and working in unison to manipulate the share price of a common target via refusing to deliver that which they sell must be held accountable for this conspiratorial and collusive activity. The critical mass of many hedge funds co-conspiring to bring down a targeted issuer must be appreciated. They or their prime brokers can easily serve as the source for each other's bogus "pre-borrows" and "locates" just for a starter. The legal short selling of an issuer by 10 different hedge funds borrowing shares before the short sale may or may not be legitimate but 10 hedge funds all refusing to deliver the shares they sell seems a bit too coincidental and hints of central planning and "RICO" type activity. The "targeting" of a corporation followed by the dissemination to others of the identity of the target represents collusion similar to the "rumor mongering" that is being investigated now in the banking sector blow up.

45) The lack of "decrementing" shares loaned out from the available resource of borrowable shares is sheer insanity. These things we call "corporations" have natural deterrents to abusive naked short selling crimes built into them. They have a **finite** amount of legally borrowable shares and once they've been loaned out then that's it. Non-decrementing "borrows", non-decrementing "locates", ex-clearing "arrangements" as well as the self-replenishing nature of the NSCC's SBP have wiped out one of the few "natural" deterrents to these crimes. Not enforcing the securities acts is one thing but going out of your way to remove the "natural" deterrents to criminal activity built into corporate structures and markets is quite another.

46) When you study the fate of FTDs in our clearance and settlement system **once created** it becomes rather obvious that with the exception of those willing to prove that they are truly acting in a bona fide market making

capacity (via the 98% suggested rule) it is critical to **<u>not allow FTDs to occur in the first place because once created it's too late that horse is out of the barn.</u>** Whether it's the NSCC pretending to be "powerless" to buy-in the delivery failures they house, nurture and hide from the investing public or those being hidden in ex-clearing "arrangements" where their monetary value is just being collateralized on a daily basis it doesn't really matter. The concept of not allowing a "long sale" or "short sale" order to be executed **<u>until</u>** the shares are in place for a T+3 delivery "in good form" should not be that tough to grasp. The "credit" extended in the past did not work out; been there done that. If the shares being sold "should arrive any moment" then let's just wait out that "moment" to see what happens. If that "moment" turns into 90 days then damages have been successfully circumvented because nobody has the right to poison the share structure of a corporation with readily sellable securities entitlements for that long.

47) When the clearance and settlement system extends "credit" then crimes associated with "kiting" will obviously result. "Kiting" is defined as illegally benefiting from a "float" period or the act of misrepresenting the value of a financial instrument for the purpose of extending credit obligations or increasing financial leverage. The DTCC's "balance order" system, their policies of "allocating" the incoming delivery of shares to fresh FTDs and their "Automated Stock Borrow Program" clearly promote "kiting" frauds. A clearance and settlement system with integrity would follow an FTD from its inception to its being "cured" by the delivery of shares <u>from the party causing the FTD</u> and not from some unrelated party perhaps delivering 90-day late shares on the date of another party's FTD. This 90-day "float" period in this example can serve as the foundation for a daisy chain of "kiting" related crimes. Our current clearance and settlement system allows the "anonymous pooling" of FTDs which masks the identity of individual FTDs which in turn promotes "kiting" crimes.

48) The contra-argument to not allowing FTDs that would be made by the hedge funds, abusive DTCC participants and abusive clearing firms in search of "order flow" and fees would be that #1 the markets move too fast and there **<u>just isn't time</u>** for a theoretically bona fide MM to effect a borrow or locate prior to making short sales. That seems reasonable so in lieu of making a "hard decrementing pre-borrow" or "locate" just place the bid for a like amount of that being naked short sold at 98% of the value. It's almost analogous to "earnest money". The damage caused to the share price by the readily sellable "securities entitlements" being injected into the system will at least be **<u>partially</u>** but certainly not totally offset by a supporting bid being placed. The next argument that would be proffered by the beneficiaries of these thefts is that the markets of especially thinly-traded securities need the "injection" of liquidity. OK, I'll buy that as long as the liquidity is being "injected" **<u>both</u>** on the buy and sell side as needed when order imbalances occur. This then brings us right back to the concurrent placing of a like-sized bid at 98% of the amount at which this liquidity injection was needed. In essence, it is agreed that truly bona fide MMs do need to be able to move fast

which perhaps should allow them an exemption from the "hard decrementing pre-borrow" or "documented and decremented locate" before making admittedly naked short sales. But this exemption is so powerful that MMs need to prove by their actions that they are indeed acting in a truly bona fide market making capacity at the time they access the exemption. Illegally accessing the exemption without being willing to provide 2-sided liquidity like truly bona fide MMs do is obviously criminal behavior and an act of fraud due to the "deceit" involved and the predictable shunting of the investor funds into the wallets of those that absolutely refuse to deliver that which they sell. The accessing of that "self-generated leverage" by securities fraudsters is of paramount importance.

49) Any **truly** bona fide MM would have no problem whatsoever with this 98% mandate. How could he? Thus these markets could have the injection of 2-sided liquidity done rapidly without forcing bona fide MMs to effect a "hard decrementing pre-borrow" or "locate". It wouldn't quite be consistent with a blanket policy of not allowing FTDs to occur but it seems like a fair compromise that keep central to the discussion the provision of "investor protection and market integrity". The "prompt settlement" of trades could be provided by mandated buy-ins for theoretically bona fide MMs at perhaps T+10 or T+13. Again, when you have a clearance and settlement system based on CVP and when the central counterparty to a trade that becomes the new "surrogate creditor" (post-novation) of the delivery obligation is insanely allowed to plead to be "powerless" to demand the delivery of that which is now owed directly to him then FTDs cannot be allowed unless they are generated by a MM willing to **prove** that he is acting in a truly bona fide market making capacity.

50) Hedge fund managers paid their "2 and 20" (2% of assets under management and 20% of all net profits) as well as publicly-traded market makers shouldn't be allowed to mark to market their paper profits involving large uncovered naked short positions because the mere act of covering will by definition force the share price upwards especially in the markets of "thinly-traded" securities that MMs are theoretically needed to "inject liquidity" into. You can't have it both ways. It is just too easy to access that "self-generated leverage" associated with CVP and systematically drive down share prices to 1% of previous prices. Further to that these naked short positions represent "contingent liabilities" that should be disclosed to prospective investors.

51) There is a need for the back offices of abusive brokerage firms to systematically diminish the voting power of its clients in order to cover up the existence of astronomic levels of unaddressed delivery failures on their books. Thus the voting power of the clients of abusive clearing firms have their voting power **selectively** reduced while the clients of clearing firms that don't engage in these abuses involving ex-clearing arrangements and massive levels of unaddressed delivery failures get to exert their full voting power for that which they purchased. One must keep in mind that an investor's monthly brokerage statement comes from the clearing firm of his brokerage firm although some broker/dealers are "self-clearing". This selective

diminution of an investor’s voting power is of course kept in the dark probably for reasons related to “privacy issues”. As mentioned the seminal concept of a corporation being based upon “one share, one vote” had to be discarded by the DTCC policies looking after the financial interests of its abusive participants and their “guests. I would hate to hazard a guess at the criminal implications of “stealing voting power”.

“CONTINUOUS NETTING” TYPES OF FRAUDS

There are a variety of frauds that incorporate the concept of “continuous netting”. The 3 most common types are pyramid schemes, chain letters and Ponzi schemes.

Unfortunately for U.S. investors the DTCC has chosen to base their clearance and settlement system on “Continuous Net Settlement” which they refer to as their “CNS” system. In order to avoid the obvious invitation for fraudulent behavior there is one standard that cannot be circumvented in a system based on “continuous netting” and that is that there cannot be allowed “credit” into such a system. If “credit” is allowed into the system then fraudsters are bound to convert a system based on “continuous netting” into schemes based on the fraudulent concept of “kiting” mentioned earlier.

From a dollar stolen point of view the DTCC’s CNS settlement is probably the most abused “central netting” system on the planet as it is also based on easy access to credit. How? Recall earlier that due to the existence of truly “legitimate” reasons for ultra short termed delivery delays “credit” is readily available to anybody using the system. All a fraudster has to do is to deceitfully portray his “illegitimate/intentional” FTD as being of a “legitimate” nature and then he is extended credit and his FTD is allowed into the system without being questioned. Once into the system at the DTCC the NSCC will predictably plead to be “powerless” to buy-in the delivery failure no matter how old it gets. Hence the cardinal rule of not allowing “credit” into a “continuous netting” system has been violated.

Picture a stock that has been manipulated down from the $10 level to the 20-cent level through abusive naked short selling. Let’s assume that the perpetrators of this fraud decide to cover their 5 million share naked short position at this level. Since they do not want to drive the share price up while buying back these shares let’s assume they perform the standard fraud of buying the 5 million shares from a co-conspirator that naked short sells into his buy order. The naked short position has now been successfully “crossed” to or “parked” in the co-conspirator’s account which might even be a subsidiary of the original naked short selling group. This 5 million share block of fake shares can now be “pseudo-delivered” to the DTCC to net out the delivery failure of the co-conspirator’s new FTD. Now the “baton of fraud" has been successfully passed as the new FTD has been "continuously netted" into place.

A system allowing "credit" in conjunction with "continuous netting" basically sets up a revolving door for fraudulent behavior. The incoming "pseudo-delivery" of "securities entitlements" hands the baton onto its successor to initiate a new cycle. How do you stop this nonsense? You don't allow "credit" into the system. This is done via mandating BOTH "hard decrementing pre-borrows" and "hard delivery" requirements for all but truly bona fide MMs willing to follow the 98% rule. In other words you don't allow FTDs in a system utilizing "continuous netting". By definition a clearance and settlement system with one scintilla of integrity can't issue credit while utilizing "continuous netting".

Matters really become hideous when you study the behavior of the NSCC which acts as the "central counter party" to all trades on Wall Street. The NSCC utilizes the legal concept of "novation" while acting as the CCP on Wall Street. The NSCC "Novates" (creates anew) two new contracts from the one original contract between the buyer and the seller of shares. The 2 new contracts "Novated" include the promise **to get delivery of the shares from the seller** and hand them onto the buyer and secondly to accept the cash from the buyer and hand it onto the seller. The beauty of "novation" and the resultant "trade settlement guarantee" is that the counterparties to the trade don't need to worry about the credit worthiness of each party it does business with. The NSCC as the CCP **guarantees** that the shares and the cash will be delivered in a timely manner. The trouble in our system is that the NSCC absolutely refuses to follow through on this **"guarantee"** to perform in a timely manner. But how can it do that when that was part of the original contract to deliver by T+3? In a system based on "novation" you can't be discharging delivery obligations and "assuming" them but refuse to "execute on" that which you "assumed". This is a charade. The NSCC simply takes on the role as a "powerless straw man" to look after the financial interests of its owners/bosses. Prior to "novation" the selling party contracts to deliver the shares sold to the buying party on or near T+3. Then the CCP intercedes and acts as the seller to the buyer and the buyer to the seller and generously "Discharges" the delivery obligation of the selling party (the naked short seller refusing to make delivery) to the buying party and "Novates" this contract into acting as the new "surrogate creditor" of this delivery obligation that in turn "Assumes" this delivery obligation to the buyer itself which it promises to "Execute" on. This allows the NSCC to issue a "trade settlement guarantee" to the world indicating that the U.S. markets are a safe place to trade in. Just as the duty of care owed by the buyer's b/d to its client that it just took a commission from to make sure that what it paid for got delivered "evaporated" so too does the delivery obligation of the naked short seller when the party "assuming" the obligation unconscionably pleads to be "powerless" to do what is necessary to "execute

> on" this obligation i.e. buy-in the missing shares when the original seller refuses to deliver that which it sold. Under which "shell" in this "shell game" lies the fiduciary duty of care as well as the delivery obligation? It's not under any of the "shells" it disappeared!

What is rather shocking is that after assuming the role of the "surrogate creditor" of this new (novated) delivery obligation the NSCC turns around and states that it is "powerless" to force the delivery of these shares when the original party selling the shares absolutely refuses to deliver to the NSCC as the intermediary that which it sold. But wait a minute, how can the party with the "power" to discharge that original delivery obligation of its boss by the way "assume" that delivery obligation as the new surrogate creditor and then turn around and refuse to "execute" on the obligation by pleading to be "powerless" to do what is necessary to do so i.e. buy-in the debt? Think about it, how can you be "powerful" enough to "discharge" the debts of your bosses, the abusive DTCC participants committing these crimes, and then profess to be "powerless" to buy-in these debts when your boss refuses to deliver that which it sold? What happened to the rights of the purchaser of the shares to receive his shares on or near T+3 as previously contracted for? Let's go back to the DTCC's now famous 1/27/06 press release:

"DTCC subsidiaries clear and settle trades. Short selling and naked short selling are trading strategies regulated by the marketplaces and the SEC. DTCC is involved after a trade is completed at the marketplace. <u>DTCC does not have regulatory powers or regulatory responsibility over trading or to forcing the completion of trades that fail.</u> As the SEC has stated, fails can be the result of a wide range of factors."

Now can you see why the extension of "credit" cannot be introduced into a clearance and settlement system based on the "continuous netting" of debts or on CVP. I think it goes without saying that a clearance and settlement system based upon mere "collateralization versus payment" that also utilizes "continuous net settlement" has integrity issues beyond comprehension **<u>especially</u>** if the "central counterparty" (the "CCP") doing the "discharging" of delivery obligations is not only actively refusing to "execute" on these delivery obligations that it theoretically "assumed" due to being supposedly "powerless" to do so but also is employed by them. When all 3 of these phenomena are overlaid upon each other by the CCP which constantly professes that there is no issue as to naked short selling abuses and that 99% of trades "settle" on time and the majority of the rest "settle" within 5 days then it's probably time for an **<u>unconflicted</u>** regulator along with **<u>unconflicted</u>** congressional oversight committees to investigate "intent to defraud" issues via a full-scaled congressional inquiry and special prosecutor while we still have markets that investors are willing to trade in. It's refreshing for securities scholars to finally recognize in their comment letters to the SEC the need for "decrementing hard pre-borrows" and "hard delivery" requirements but it is important also to recognize exactly **<u>why</u>** these are critical to market integrity because these types of frauds have been around for centuries in slightly different formats.

The very format of the DTCC has allowed 11,000 broker/dealers, banks and finance companies many of which are individually billion dollar behemoths to "lock arms" and to take on incomprehensible critical mass that makes it "too important" to fail or too integral to our overall financial system to be called on the carpet to explain its actions. The result is a "Wall Street" versus "Main Street" mentality wherein the financial interests of those administering our clearance and settlement systems have essentially "hijacked" our market system thereby imposing a "toll" on unknowing investors presupposing that unconflicted regulators and SROs are making sure that all securities transactions "promptly settle" and that the provision of "investor projection and market integrity" is job #1 for these parties with these congressional mandates.

THE NEED FOR A CENTRALIZED INFORMATION REPOSITORY WITH A VIEW OF THE ENTIRE PLAYING FIELD

What I've noticed over the years is that no one intermediary in our clearance and settlement system has a full view of the entire playing field. For instance, the NSCC knows how many shares that a given b/d "A" has in its DTCC "participant's share account". Let's say its 10 million shares of Acme. B/d "A" might however, be sending out monthly brokerage statements **implying** that it is "holding long" 18 million shares of Acme for its clients. The discrepancy **could be** associated with delivery failures or shares out on loan. Just what is being "held long" in the case of the missing 8 million shares? Nothing is being "held long". There is an "accounting measure" or IOU in place memorializing the "refusal to deliver" but nothing is being "held". One might think that the DTCC which as an SRO is in charge of monitoring the "business conduct" of its participants might want to know of any large disparities on or off of the books of its various "participants" whose "business conduct" it is mandated to regulate.

Likewise the DTCC does not want to know the identity of the clients of b/d "A" that own the Acme shares. They would prefer to hold all of b/d A's clients' shares in an "anonymously pooled" format bequeathing darkness. But if they did know the identity of b/d A's Acme shareholders then it could make sure that its "Stock Borrow Program" wasn't lending out one Acme shareholder's shares in a dozen different directions simultaneously. Nobody within the clearance and settlement system gets a full view of the playing field which provides them with plausible deniability in case they're caught misbehaving.

There seems to be a central planning aspect wherein all intermediaries to a trade are placed on a "need to know" basis without access to all of the puzzle pieces needed to recognize fraudulent behavior. The DTCC could always say shame on b/d "A" for being found guilty of massive naked short selling abuses. We had no idea they were misrepresenting to their clients that they were "holding long" 18 million shares of Acme! Likewise b/d "A" could also claim that it had no idea the NSCC's SBP was lending out their client Joe Sixpack's shares in a dozen different directions simultaneously. Shame on them for treating our trusted client Joe in that manner!

As an example, let's assume Acme Corporation has 100 million shares issued and outstanding and they are all held at the DTCC in "street name". Let's further assume that

10 DTCC participants each hold 10 million shares in their "participant's share account". Let's also assume that there are 80 million shares currently in a "failure to deliver" status with each of the 10 firms responsible for 8 million. For simplicity's sake let's further assume that there are 18 investors that each have purchased (or thought they did) 1 million legitimate "shares" of Acme through each of the 10 b/ds.

In this example the DTCC really does have 100 million paper-certificated shares in its vault system for which their DTC subdivision is the "legal custodian" of. These shares are held in an "omnibus" format in the name of the b/ds. Each of the 10 b/ds holding Acme shares is "implying" to its shareholders that it is "holding long" 18 million of "Acme's securities" (not necessarily "shares"). The DTCC does not want to know the names and shareholdings of the 18 investors at each of the 10 b/ds. If it had this information then their SBP couldn't fraudulently replicate these parcels of shares and loan them out in a dozen different directions simultaneously. This information has to be "covered up" from the DTCC management's eyes otherwise the whole corrupt foundation for the system would be revealed.

Note that the DTCC management can always say that the books balance perfectly at the DTCC as their "participants' share accounts" total 100 million "shares" which matches their vault contents. When the management of a corporation under attack orders a "securities position listing" or "SPL" list management will see how things wonderfully balance out from the DTCC's **<u>intentionally blind</u>** vantage point. Management gets hoodwinked into believing that there are no "counterfeiting" problems at hand. Obviously the management team was looking for the 80 million share disparity which is bestowed with "darkness". The DTCC management' insistence on not knowing the names of the investors or the amounts of the disparities between what their "participants" are implying as the number of "securities held long" and what they do in fact have in their DTCC "participant's share accounts" is rather odd in that they have the mandate to "promptly settle" all transactions and as an SRO they have the mandate to "monitor the business conduct of its participants". How can you effect the "prompt settlement" of all securities transactions and monitor the "business conduct" of your "participants" if you intentionally put on blinders?

To illustrate the corrupt nature of our clearance and settlement system let's assume that Acme has a suitor "ABCco" that also has 100 million shares "outstanding" and they launch a successful tender offer in the form of a share swap on a 1-for -1 basis with Acme. "ABCco's" transfer agent will cut a certificate to the DTCC in the amount of 100 million legitimate "shares" of "ABCco" to be distributed to the owners of the 100 million shares of Acme being held in the DTCC's custody. Ten million shares of "ABCco" will be credited into each of the 10 "participant's shares accounts" formerly holding Acme shares. But what happens to the purchasers of the 80 million shares of Acme currently in a FTD position? The DTCC doesn't care because they are theoretically unaware of these FTDs and the massive disparities. Each of the 10 b/ds will credit their 18 clients' accounts and monthly brokerage statements with 1 million readily sellable "securities held long" of "ABCco" but only 10 million are legitimate "shares" of "ABCco". The purchasers of all 18 million "shares/securities entitlements" at each of the 10 b/ds were supposed to be given legitimate voting "shares" of "ABCco". Either 8 of the 18 investors received only nonvoting “securities entitlements” or all 18 received less than they were owed perhaps discounted in a pro rata fashion. But which is it? We’ll never know because of “anonymous pooling”. None of the 18 will have a cause of action to right this wrong because they can’t prove that they were slighted. The b/ds have to commit this “cover up” fraud otherwise the underlying fraud would be revealed. But wait a minute? Does the management and board of directors of “ABCco” realize that they just paid 180 million of their readily sellable “securities” for the purchase of Acme? Do the shareholders of “ABCco” realize that their ownership percentage and voting power just got diluted by a lot more than they had figured? No, this had to be kept secret to cover up the original fraud associated with our clearance and settlement being based on mere “collateralization versus payment” and that the “trade guarantee” advertised by the DTCC is bogus.

Might this help explain why the value of the acquirer’s shares in almost all share swap tender offers always tanks even if the acquisition was accretive to earnings? Does not the management and BOD of “ABCco” have a right to know of this very “material” fact before they pull the trigger on the acquisition? Did the shareholders of “ABCco” that voted for this acquisition also get duped? This is why a central repository for information related to the total amounts of FTDs held in ex-clearing “arrangements”, in “C” sub accounts at the DTCC and held at trading desks must be established so that all of the players can no longer claim that they had no idea of these disparities. One centralized **unconflicted** party needs full visibility **of the entire playing field.** This information has to be made available to all prospective investors and voters as per the ’33 Act and if this information is too embarrassing to the DTCC and Wall Street in general then just buy-in the FTDs and start to “SETTLE THE TRADES PROMPTLY” as mandated by Congress!

Can you see how Wall Street **has to** act in this manner? If they didn’t then all victimized issuers would be lining up to do share swap tender offers and then later “boge” out on them because the information would have to be made available to the acquirers **before** a deal was voted on and executed and upon learning about the disparities they could simply exercise the “opt out” clause. Time and time again we see the need for darkness, cover up frauds and the fact that when there is a massive problem in the very **foundation** of a clearance and settlement system it will show itself all throughout the structure when any investor tries to exercise **any** of the missing rights that “securities entitlements” don’t have. This includes the right to take part in share swap tender offers and to receive “in like kind and quantity” that which is being tendered i.e. legitimate “ABCco” shares with their “package of rights” tightly attached. It is very easy to list out the 12 or 13 rights attached to legitimate “shares” of a corporation and the corresponding “cover up” frauds needing to be perpetrated to hide the original fraud associated with a clearance and settlement system being unconscionably based on merely CVP. These include the already mentioned back office vote cancellations, defrauding of the acquirers of corporations via share swaps, the jury-rigging of “rights offerings”, the stalling or refusing to act on demands for delivery of paper-certificated “shares”, etc.

Note that in the case of a paper-certificated share delivery demand program (via filing “entitlement orders”) the DTCC would do just fine in servicing the “demanders” of the first 100 million shares of Acme but from there on out the DTCC has to whisper to its 10 "participants" that we at the DTCC did all that we could to stall the delivery process but now you guys are on your own!

Note that in regards to the damage done to the corporate governance issues in the voting process an investor's voting power needs to be diminished proportionate to the amount of FTDs on the books of the clearing firm used by their b/d. In the "ABCco" example above not only is the voting power issue affected but that which was being voted on by "ABCco's" shareholders i.e. the tender offer for Acme was also affected as the damaging nature of the "extra" dilution associated with the invisible 80 million extra readily sellable securities entitlements was not on the table. Companies with massive levels of FTDs which result in their share price being grossly manipulated downwards are going to look like excellent acquisition targets to unknowing management teams because of their bargain basement price levels. One can only wonder how many acquiring companies have been bankrupted over the years by being forced by DTCC policies to absorb the toxic waste secretly hidden in the share structure of the companies they acquired at bargain prices.

THE ROLE OF THE MARKET MAKERS IN ABUSIVE NAKED SHORT SELLING CRIMES

On Wall Street there's a saying that you can have your investment money stolen from individual thieves known as "specialists" or by gangs of thieves known as "market makers" depending on the market capitalizations of the corporations you invest in. The epicenter of ANSS-related frauds being perpetrated against development stage corporations and the investors therein is located at the market making level and typically involves the **illegal** accessing of the exemption available **only** to theoretically "bona fide" MMs from making "pre-borrows" or "locates" before making admittedly naked short sales. The theory behind the granting of this exemption is that bona fide MMs acting in fast moving markets do not have the time to execute "pre-borrows" and/or "locates". The "injection of liquidity" into markets characterized by "order imbalances" would then theoretically be compromised due to the delays associated with making "pre-borrows" and/or "locates". The problem with this argument is that it is tenable only in markets wherein the proper controls against abuses have been instituted. In a clearance and settlement system based merely upon CVP with no mandated buy-ins being executed (Evans, et. al. study) the concept is unconscionable due to the lack of the proper safeguards designed to thwart the **glaringly obvious** invitation for abuse.

One of the obvious questions that arises is when exactly does a theoretically bona fide MM that continues to naked short sale into markets characterized by buy orders dwarfing sell orders become guilty of "capping" a market with a "blanket" of sell orders so that its previously established naked short position's collateralization requirements don't become too onerous. Where is the codification for how much a theoretically bona fide MM can sell at a given level before it must allow the "price discovery" mechanism to work in order to find the higher equilibrium level even if it causes some financial pain for the MM during the collateralization process? A different way of asking this is when does the "injection of liquidity" become creating an intentional tsunami of "liquidity" to protect the naked short position previously established. I would assert that the answer would be available if the PPS downticks and the theoretically bona fide MM refuses to inject "buy side" liquidity in an effort to cover its previously established naked short position. That would be the moment of truth as to how legal the previous accessing of that exemption was. Abusive MMs are very well aware that all waves of buying eventually must come to an end and if they just keep naked short selling into any buy order they have visibility of then when the wave of buying does end the weight of the mere "securities entitlements" generated from all of the previous naked short selling will predictably cause the share price to crash which will allow an abusive MM to "walk" the PPS down to any level it chooses.

What's ironic is that abusive MMs can convert share price buoying buy orders into share price depressing "securities entitlements" merely by hiding behind their exemption from having to make "pre-borrows" before short sales and then refusing to deliver that which they sell while theoretically "injecting liquidity" into markets characterized by buy orders dwarfing sell orders. The investors in these securities targeted by abusive MMs for destruction are left with markets characterized by **both** buy and sell orders causing share prices to tank. That's what's referred to as a "rigged" market. Granted the abusive MMs serving as the "gatekeepers" into these markets make it easy for investors to get in at bargain basement levels but the share price levels are doomed only to get cheaper; so much for all of that beneficial "liquidity" being "injected". These share prices spiraling downwards then results in a long line of opportunistic investors lined up with cash in hand to take advantage of these now super-duper bargain basement price levels. Any meticulously-designed fraud would provide for a constant flow of new victims once the previous victims cover their losses and run after getting fleeced. The exemption from making "pre-borrows" comes in especially handy for the hedge fund "guests" of abusive MMs not wanting to pay onerous rental fees for "hard to borrow" securities. In a clearance and settlement system with integrity the lack of legally borrowable shares and therefore their greater expense would provide a natural deterrent to these crimes but abusive MMs willing to prostitute their access to the exemption negate this natural market phenomenon.

The "98% rule" described earlier would clearly address these thefts by "not so bona fide" MMs committing these crimes for their own proprietary accounts or on behalf of unregulated hedge funds directing it order flow, commissions and fees. It was interesting that during the "comment period" for Reg SHO market making firms cited that sometimes it takes several months to "unwind" naked short positions. MMs have no right to poison the share structures of targeted corporations for months at a time. As it stands now MMs refuse to take losses. They just keep naked short selling into waves of buying only to wait for the weight of all of those securities entitlements to cause the PPS to tumble in between waves. Theoretically being granted access to that exemption was supposed to be earned by the assumption of some detectable risk. There is very little risk being incurred as that access to the "self-leveraging cycle" associated with a clearance and settlement system being based on CVP pretty much mitigates any risk which leaves abusive MMs with access to a "self-fulfilling prophecy" associated with both buy and sell orders leading to share price depression which benefits previously established naked short positions which were established by simply refusing to deliver that which you sold. This isn't rocket science!

IS THIS AN "INCONVENIENT" TIME TO ADDRESS THIS CRIME WAVE?

Currently we're in the middle of a market crisis perhaps not seen since perhaps The Great Depression. Would this be an "inconvenient" time to force via mandated buy-ins a minority of Wall Street "professionals" turned thieves to finally deliver that which they previously sold but continue to refuse to deliver? In these days of massive numbers of job losses would this be an "inconvenient" time to help salvage the development stage corporations currently under attack that comprise the job growth engine in the U.S.? Would this be an "inconvenient" time to **selectively** address these criminals with absolutely zero unintended consequences affecting the clean players on Wall Street? Would this be an "inconvenient" time to finally institute measures that could provide some truly **meaningful deterrence** to the future commission of these crimes? Would this be an "inconvenient" time to prevent these massively leveraged fraudsters from accessing the "self-generated leverage" available to the perpetrators of this particular "fraud on the market"? Might this be a good time to minimize the enormous level of "systemic risk" that this vast minority of Wall Street intermediaries and their "guests" have selfishly placed onto the shoulders of all U.S. citizens?

The Technical Committee of the International Organization of Securities Commissions Recommendations for Central Counterparties (November 2004) as well as the Bank for International settlement (BIS) have made it crystal clear that clearance and settlement systems with integrity need to be based on "Delivery Versus Payment" and that the funds of investors should in no way be accessible to the sellers of securities **until** that which they sold was delivered in good form. Would this be an "inconvenient" time to return our clearance and settlement system to one being based on DVP instead of CVP? Would this be an inconvenient time to stop the **selective** targeting of U.S. development stage corporations by the worldwide perpetrators of these crimes because of our allowing our clearance and settlement system to be hijacked by the financial interests of those owning and administering it?

The one reality that stands out clearly is that something is going to have to give soon. The SEC as the congressionally mandated provider of "investor protection and market integrity" as well as the enforcer of the 1933 Securities Act ("The Disclosure Act) mandating that all information of a "material" nature must be made available to prospective investors is going to **either** have to remove from the share structures of victimized corporations the excessive levels of "securities entitlements" **or** disclose their numbers and ages to the investing public and thereby inform the investing world of the corrupt nature of our clearance and settlement system that makes our markets essentially "rigged" in favor of abusive DTCC participants and their paying "guests" the unregulated hedge funds. There is no comfortable middle ground left to occupy; this is an "either/or" choice.

I thank you once again for this opportunity to weigh in with suggested solutions to ending this crime wave associated with abusive naked short selling (ANSS) and delivery failure related abuses (DFRAs).

CONFLICTS OF INTEREST

1) The b/d of the purchaser of securities is financially motivated to direct his client's buy order to a counterparty that is apt to naked short sell into the order because the purchasing b/d receives the interest income on the monetary value of the delivery failure. B/ds are financially incentivised to set up relationships with abusive MMs and unregulated hedge funds specializing in naked short sales. In the absence of legitimate sellers of shares the purchasing b/d can receive commissions that he otherwise wouldn't have received i.e. he gets a dependable "quick fill" on his order which doesn't need to be "worked".

2) The purchaser of securities paying his b/d a commission assumes that his "agent" is going to make sure that he got delivery of that which he purchased.

3) The buyer's b/d will receive his commission no matter what the delivery status of his client's buy order is.

4) The seller of nonexistent share's b/d will likewise receive a commission independent of the fact that what his client hedge fund is selling doesn't exist.

5) Everybody on Wall Street makes a fortune via buying and selling the readily sellable "securities entitlements" associated with FTDs; the more the better because they're all readily sellable.

6) DTCC participants are highly motivated to donate their client's shares to the SBP because they earn interest off of the dollar value of the shares chosen by the NSCC to "cure" FTDs. This is despite the fact that the SBP blatantly counterfeits that which the purchaser bought which results in diminished voting rights associated with the number of FTDs his b/d's clearing firm is sitting on. The same "parcel" of shares could be earning interest income for a dozen different participating b/ds. This particular parcel of shares would it be readily identifiable which it isn't due to "anonymous pooling" of shares implemented at the DTCC would then be "co-beneficially owned" by a dozen different investors.

7) The clearing firms and MMs willing to shirk their fiduciary duties of care owed to their investing clients and break the greatest amount of rules and regulations on behalf of their "introducing" b/ds will naturally get the lion share of the order flow they seek.

8) The DTCC refuses to monitor for the appropriateness of the shares being donated into the SBP i.e. they came from margin accounts only. Instead the DTCC chooses to blindly put their "participants" on the honor system despite the huge temptation to cheat and earn extra interest income.

THE LACK OF TRANSPARENCY ON WALL STREET

1) Due to the nature of the NSCC's "pre-netting" process associated with its CNS system the buyer's b/d often does not realize that his client's buy order resulted in an FTD.

2) The investor that paid for these nonexistent shares has no idea that what he paid for didn't get delivered nor that it never existed in the first place. He doesn't realize that the "securities held long" cited on his monthly brokerage statement might only refer to a mere IOU that is damaging the prognosis for the success of his investment.

FIGURE 1

THE "SELF-LEVERAGING CYCLE OF CORRUPTION AND FACILITATION"

"PRIMING THE PUMP"

An unregulated hedge fund manager takes the funds he receives from wealthy investors as well as borrowed funds from his "prime broker" ("outside" leverage source #1) and places a "short sale" order through one of his "executing b/ds".

INTRA-CYCLE STEPS

A) The "executing b/d" executes the short sale order (or intentionally mislabeled "long sell" order) and knowingly fails to make delivery on T+3. Note that a bogus "pre-borrow", a bogus "locate" or claiming a bogus "customer assurance" might be involved. With the relationships involving hedge funds, prime brokers and executing brokers there is always plenty of plausible deniability available as one can always say "but I thought that "X" was taking care of the pre-borrow or locate" or "my client told me that he took care of the pre-borrow or locate and therefore I **<u>technically</u>** had a "customer assurance" qualifying as a locate."

B) The resultant "failure to deliver" FTD needs to be "collateralized". The cash value of the sale plus usually about 2% of the sale value serves as the collateral. The interest earned by this collateral during the life of the delivery failure goes not to the investor who didn't get what he paid for and whose money it is but is shared by the investor's b/d and the party failing to deliver according to a formula dependent on how expensive a legitimate borrow **<u>would have been had it been done</u>** i.e. "hard to borrow" securities versus "easy to borrow" securities and "rebate spreads". This is independent of the fact that a legitimate borrow never did occur. Note the financial incentive present for the purchasing b/d to aim this buy order to a party likely to naked short sell into the order. These parties are not very difficult to find on Wall Street. This is but one of dozens of conflicts of interest built into our current clearance and settlement system.

C) The FTD results in the issuance of readily sellable (dilution causing) "securities entitlements" which accumulate in the share structure of the corporation previously targeted for attack.
D) This extra "supply" of readily sellable "entities" (legitimate shares plus mere "securities entitlements") predictably causes the share price to drop. The laws of supply and demand still interact to determine share price through the "price discovery" process it's just that the individual variables of "supply" and "demand" are subject to manipulation.
E) As the PPS drops the "collateralization" requirements lessen and the investor's money is shunted to the abusive naked short seller despite his refusal to deliver that which he sold; after all it doesn't exist. This money can then be taken outside of the cycle (dotted lines labeled "self-leveraging #1") and reintroduced into the cycle at step "A" and be used to assume and collateralize that much higher of a naked short position. This added "self-leverage" or "self-generated leverage" (the money stolen from the unknowing investor) created out of thin air increases with each trip around the cycle as the share price predictably drops. This is over and above the continued day to day naked short selling needing to be done to keep the collateralization requirements manageable for naked short positions that have "accidentally" become astronomical because the targeted company refuses to die on cue.
F) If the corporation under attack is not yet cash flow positive then it is forced by necessity to pay its monthly burn rate by selling an **excessive** amount of "legitimate" shares at an artificially depressed level (via "manipulation") to raise a fixed amount of money. This "**forced dilution"** for yet to be cash flow positive corporations involves legitimate shares and not the mere "securities entitlements" associated with failures to deliver (FTDs) which are synonymous with refusals to deliver (RTDs).
G) These "extra" legitimate shares further depress the PPS.
H) This results in another lessening of the "collateralization" requirements for those refusing to deliver that which they previously sold and yet more of the investor's money is shunted to the seller of nonexistent shares again despite his refusal to deliver that which he sold as the DTCC has previously illegally converted the clearance and settlement system in the U.S. from "good form delivery" versus payment (DVP) to mere "collateralization versus payment" (CVP).
I) These proceeds can also be taken out of the cycle (dotted lines labeled "self-leveraging #2") and reintroduced back into the cycle at step "A" to assume and collateralize yet another wave of naked short selling. The result is the self-fulfilling prophecy that this corporation is going down.

OUTSIDE OF THE CYCLE

1) Wealthy hedge fund investors place money into the hands of hedge fund managers. They pay a usurious rate of 2% of funds under management and 20% of all profits (or more) to their hedge fund manager. Why would the wealthy pay these exorbitant rates when the minimum investment is often $1 million? Don't you usually get a "volume discount" when you invest larger amounts of money?

The reason is that this is the cost of admission for being granted access to the "self-leveraging cycle of corruption and facilitation" which they otherwise couldn't access. In most unregulated hedge funds the cost of admission to access the "cycle" is $1 million minimum plus the "2 and 20".

2) The prime broker of the hedge fund does the back office work involved and also loans cash to allow hedge fund managers to utilize "outside leverage" which is different from but additive to the "self-generated leverage" created **within** the cycle. With their own money in play the prime broker is now financially motivated to do everything in its power (bend or break as many rules as possible) to make sure that the "bets" placed by hedge fund managers against targeted corporations work out for the best.
3) All throughout the cycle the various "facilitators" of these frauds get a piece of the action (the investor's lost money) spun out to them in the form of enhanced order flow, commissions, fees, "mark-ups", clearing fees, etc. The hedge fund managers will naturally seek out the DTCC "participants" willing to be the most "accommodative" to the financial interests of the hedge fund manager. These market intermediaries acting as "facilitators" to these frauds will get their palms "greased" in an effort to lubricate the cycle so that it spins freely so that the targeted corporation can go down that much quicker.
4) The money of the hedge fund clients, the prime brokers and that stolen from unknowing investors with each spin of the cycle serves to "drive" the cycle while the wallets of the investors is clearly the "target" of the cycle. As the cycle spins round and round the share price of the corporation under attack drops lower and lower which serves to attract the funds of new victims sensing opportunities in the resultant bargain basement prices. Any meticulously-designed fraud will provide for the constant inflow of fresh money from new victims as the old victims get fleeced, take their losses before they get any larger and limp off.
5) The hedge fund manager takes his "2 and 20" periodically as per the agreement with his investors. If he is allowed to "mark to market" his paper profits in short positions and periodically cash in on them without covering these "open positions" then with the DTCC policies currently in effect he can avoid **ever** covering his naked short position which would have the untoward effect of driving up the share price of the targeted corporation in the process which would diminish his profits and increase the collateralization requirements on his yet to be covered naked short position.
6) Let's go back to the beginning and recall how DTCC policies render this IOU known as a "securities entitlement" that resulted from an FTD basically equivalent to an unbinding pledge to "eventually" deliver that which was sold unless of course the corporation under attack goes bankrupt in the meantime. This "pledge" buys enough time for these securities fraudsters to fire up the "cycle of corruption" and get it hitting on all 8 cylinders.
7) An analogy that comes to mind involves the type of firework known as a "pinwheel". You nail it to a fence post and light its fuse and it will spin round and round while showering sparks all over the place. The sparks flying represents the money of those shareholders that bought **both** fake shares from the securities fraudsters as well as real shares from legitimate sellers of shares that is showered

upon all of the "facilitators" to these frauds as well as those pulling the trigger on the actual naked short sales. After the "cycle of corruption" spins for a while then the firework comes to a rest and just smolders for a while like the remains of the corporation that just got torched.

ANALYSIS

First of all this "cycle" described is the bare bones version of reality simplified for educational purposes. My full blown model is much larger and it identifies the existence of many, many entry points into the same basic cycle. This simplified model does not even address ex-clearing arrangements, the role of the ECNs, "sponsored direct access programs", service bureaus, abusive MMs illegally accessing the exemption from making pre-borrows or locates, etc.

Hopefully even the ridiculously simplified version can reveal to those in authority why the previous measures of the SEC proved to be woefully deficient. What are the salient components of the simplified version of the model: 1) Unregulated hedge funds operating in the dark. 2) The option to refuse to deliver that which you sell. 3) The necessity to merely collateralize the resulting debt i.e. "collateralization versus payment" (CVP) as opposed to "delivery versus payment" (DVP) as recommended by the Bank for International Settlements (BIS) and IOSCO's Technical Committee on Payment and Settlement Systems. 4) The unconscionable allowance of those absolutely refusing to deliver that which they sold to gain access to the funds of the investor being hoodwinked. 5) The resultant access to the "Self-leveraging cycle of corruption and facilitation".

The realities of meaningful reform literally jump off the page at you. **<u>YOU CAN'T ALLOW FAILURES TO DELIVER TO EVEN OCCUR IN ANY WAY, SHAPE OR FORM IN A CLEARANCE AND SETTLEMENT SYSTEM ILLEGALLY CONVERTED INTO A "CLEARANCE AND COLLATERALIZATION" SYSTEM BECAUSE OF THE RESULTANT ABILITY TO ACCESS THE "SELF-LEVERAGING CYCLE OF CORRUPTION AND FACILITATION".</u>**

Hence this brings us back 54 pages in this document to the aforementioned need for "Hard decrementing pre-borrows" (HDPBs) and "Hard delivery requirements" on T+3 with no exceptions except in the case of truly bona fide MMs willing to prove their bona fides by placing a like-sized bid simultaneous with any naked short sale at 98% of the level he is naked short selling at. In other words a theoretically bona fide MM must **<u>prove</u>** in advance that he is legally accessing that powerful but universally abused exemption from "pre-borrows" and "locates" accorded only to bona fide MMs while acting in that capacity. Like former SEC Chairman Donaldson clearly articulated when asked how much of this theoretical injection of liquidity by short sellers done for purely fraudulent purposes should he put up with. His answer was a resounding "None"!

For all parties excepting truly bona fide MMs you can't make the sale **UNTIL** that which is being sold is already in place to be delivered on T+3; no more extension of "credit" and IOUs. The criminals in this arena imply to the purchasers of what they are selling that any delivery failure they are associated with will be of an ultra short term lifespan. Fine, if that's the truth then let's just wait that ultra short term period of time **NOW** until you are allowed to sell that which you are selling. If you weren't lying about the ultra short termed nature of your delivery failure then it would be no big deal but nobody has the right to poison the share structure of a corporation with readily sellable "securities entitlements" in a clearance and settlement system illegally based upon CVP. This theoretical need for "liquidity" in fast moving markets has resulted in fraudsters literally drowning corporations that they have pre-targeted for destruction with a tsunami of "liquidity". Again, study the graphs at deepcapture.com clearly showing the share prices of targeted corporations literally being forced off of a cliff as the number of FTDs go ballistic.