

Ms. Florence Harmon
 Acting Secretary Securities and Exchange Commission
 100 F. Street, NE Washington, DC 20549-9303
 Re: Release No. 34-58773; File No. 87-30-08
 Amendment to Regulation SHO Interim Final Temporary Rule

Dear Sirs,

“When “acting in the public interest, providing investor protection and “promptly settling” all securities transactions as mandated of the DTC by Section 17 A of the ’34 Act butts heads with the financial interests of its abusive participants that refuse to deliver that which they sell NSCC management WILLFULLY chooses to shirk these congressional mandates so that their abusive bosses can reroute the funds of overly trusting investors into their own wallets through this massive “fraud on the market” referred to as abusive naked short selling or “ANSS”.”-Dr. Jim DeCosta

ANALYSIS OF THE NSCC’S CLAIMS TO BE “POWERLESS” TO PROVIDE THE “ONLY” CURE AVAILABLE (BUY-INS) WHEN THEIR ABUSIVE PARTICIPANTS REFUSE TO DELIVER THAT WHICH THEY SELL

There is no policy of the DTCC or its DTC and NSCC subdivisions that directly facilitates the perpetration of abusive naked short selling (ANSS) frauds more so than the unconscionable claim that the NSCC subdivision of the DTCC is “powerless” to execute buy-ins of its abusive participants/co-owners when they absolutely refuse to deliver that which they have previously sold to U.S. investors.

This blatant lie has resulted in the shunting of probably many trillions of dollars of investor funds into the wallets of abusive NSCC participants that have learned that simply refusing to deliver that which they sell results in gaining access to the investment funds of unsuspecting U.S. citizens. Why? Because the ONLY known “cure” when this absolute refusal to deliver that which was sold occurs is for the parties empowered to execute buy-ins do so and the DTCC and its NSCC and DTC subdivisions just so happen to have 15 of the 16 sources of empowerment to provide this ONLY known cure. That is why this topic of theoretically being “powerless” to provide this only cure available is so deserving of a closer look. Are the DTCC and its subdivisions really this “powerless” or are they just claiming to be so to look after the financial interests of its co-owning “banksters”, abusive market makers, co-conspiring clearing firms and their hedge fund “guests”?

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.”

Let’s take a closer look at the statement above on a line by line basis.

Line 1: "DTCC subsidiaries clear and settle trades". (More accurately they "clear" and sometimes "settle" trades. "Clearing" a trade is relatively meaningless. It simply means that the two parties to the trade confirm their role as buyer and seller, the agreed to price of execution, the number of shares bought and sold, the agreed upon "settlement date", etc. The far more important "settlement" of a trade necessitates the "good form delivery" (no counterfeits allowed) of that thought to be being purchased in exchange for the investor's funds.)

Line 2: "Short selling and naked short selling are trading strategies regulated by the marketplaces and the SEC". ("Legitimate naked short selling" (LNSS) is not a "trading strategy" even when it is done legally by a truly "bona fide" market maker while acting in that capacity. It is a service provided by a market maker ostensibly to "inject liquidity" into thinly-traded markets and to buffer wide price swings when order imbalances occur. "Abusive naked short selling" (ANSS) on the other hand is an act of fraud meant to reroute the funds of unknowing investors into the wallets of those intentionally refusing to deliver that which they sell. Neither form of naked short selling are "trading strategies" currently regulated by any authority to any meaningful degree.)

Line 3: "DTCC is involved after a trade is completed at the marketplace". (A trade isn't "completed" until it "settles". As noted the "Settlement" of a trade doesn't occur UNTIL that which was sold is delivered to the purchaser "in good form" in exchange for the purchaser's money i.e. "delivery versus payment" or "DVP". Section 17 A of the '34 Exchange Act, the DTC's birth certificate, mandates that the DTC "promptly settle" all securities transactions i.e. make sure that "good form delivery" occurs "promptly". The DTCC in no way, shape or form arrives on the scene AFTER a trade is "completed". Their congressional mandate is to play a critical role and do whatever is necessary so that a trade can be "completed" or "settled promptly".)

Line 4: "DTCC does not have regulatory powers or regulatory responsibility over trading or to forcing the completion of trades that fail". (That will be the subject of this paper. Despite their congressional mandate to do so the DTCC claims to have neither the "REGULATORY POWER" nor THE "REGULATORY RESPONSIBILITY" to do that which is necessary to "promptly settle" trades when the seller of securities absolutely refuses to deliver that which it sold.)

Line 5: "As the SEC has stated, fails can be the result of a wide range of factors." (The thesis that some failures to deliver are legitimate is indeed true but serves only a "red herring" in this context to distract from the subject at hand which involves the intentional refusal to deliver that being sold done in order to steal the funds of investors.)

THE ONLY KNOWN CURE

When an NSCC participant absolutely refuses to deliver the securities that it sold to a U.S. investor in a timely manner then there is one and only one "cure" to this fraudulent act and that is to "buy-in" the undelivered shares out of the open market and send them electronically to the NSCC participant's "share account" of the buying brokerage firm and debit the NSCC participant's "cash account" of the selling firm for the cost of the buy-in. In other words if an abusive NSCC participant refuses to "voluntarily" deliver that which it sold within a couple of days of the previously agreed to but unmet

“settlement date” then it must be “forced” to otherwise our markets would be totally overtaken by fraudsters accessing the self-fulfilling prophecy available involving the refusal to deliver that being sold allowing the gaining of access to the investment funds of unknowing investors. This self-fulfilling prophecy is easily accessible in any clearance and settlement system like ours in the U.S. whose foundation has been illegally converted into one based on the mere collateralization of the monetary value of a failed delivery obligation versus payment or “CVP” instead of the congressionally mandated “delivery versus payment” or “DVP” associated with the “prompt settlement” of all securities transactions.

The foundation for this entire multi-trillion dollar theft of the investment funds of U.S. citizens is based upon the 100% predictable refusal by the DTCC and its subdivisions to implement this only known “cure” available (a buy-in) when the sellers of securities refuse to deliver that which they sold. That’s why this issue is in need of close analysis especially as our financial system crumbles partly due to these abuses.

The question then arises as to WHICH party in our DTCC-administered clearance and settlement system has the “REGULATORY POWER” and “REGULATORY RESPONSIBILITY” to execute buy-ins when these circumstances present themselves. The answer is that there are 16 separate sources of “empowerment” to execute buy-ins when these circumstances arise. Each of the 16 sources INDIVIDUALLY empower buy-ins not to mention what they do when taken in the aggregate. The NSCC, DTC and DTCC management have 15 of the 16 sources of empowerment and the NSCC participant brokerage firm that executed the buy order on behalf of its client has the 16th source of empowerment to execute buy-ins.

Once again, one must keep in mind the critical nature of buy-ins in that they are the ONLY solution to this set of circumstances and without buy-ins we would have no educated investors willing to participate in our markets. As it stands now it is sadly this lack of investor education that provides support for the participation in our markets. The buy-in is what backs up the “trade settlement guarantee” advertised by the NSCC to entice participation in our markets. The waters on Wall Street are not currently safe to swim in; there are sharks everywhere willing to perpetrate abusive naked short selling frauds with the direct facilitation of those that own and administer our clearance and settlement system.

THE DTCC AND ITS DTC AND NSCC SUBDIVISION’S 15 SOURCES OF EMPOWERMENT TO EXECUTE BUY-INS WHEN THE SELLERS OF SECURITIES REFUSE TO DELIVER IN A TIMELY MANNER THAT WHICH THEY SOLD

SCHEDULE A

- 1) As the “central counterparty” (CCP) in a clearance and settlement system based upon “novation” the NSCC management “discharges” the delivery obligation of its “participant”/co-owner selling securities in exchange for its “assuming” and then “executing” on this delivery obligation. The delivery obligation does not go away it is just transferred from one party to another. Unfortunately for investors the transfer is from a party that is easy to identify and hold responsible to a party that enjoys being “too big to fail” and “too big to hold responsible”. The NSCC management has pledged **to do whatever is necessary** to obtain the securities from its “participant”/co-owner that sold them so that it can then “promptly” forward them on to the buying firm as promised.

If the selling firm refuses to deliver that which it sold to the NSCC as the CCP/intermediary then the only possible way the NSCC can “promptly” forward them on to the buying firm is to “promptly” FORCE their delivery by “buying-in” the missing shares out of the open market. A CCP that has the audacity to plead to be “powerless” to provide the only “cure” to this dilemma AFTER the original delivery obligation has already been “discharged” then by definition never had the power in the first place to “discharge” the earlier delivery obligation as the CCP unless he fraudulently accessed this power. By definition, bona fide “central counterparties” cannot act in this manner. Our entire financial system is built upon a clearance and settlement system whose very foundation has been corrupted by the insatiable greed of its owners and administrators willing to shirk their congressional mandates to service the financial interests of its abusive bosses involving the invisible rerouting of investor funds into their own wallets.

At this point in the argument the DTCC will predictably stand up and proffer that the original seller refusing delivery is not “off the hook” because it still has a “failure to deliver” on the books BUT if that seller’s failure to deliver” (FTD) can never be remedied because those with the power to provide the only known remedy refuse to then for all intents and purposes that party refusing to deliver that which it sold is for all intents and purposes “off the hook” no matter what the accounting says.

The CCP in a clearance and settlement system based upon the legal concept of “novation” pleading to be “powerless” to do that which is necessary in order to fulfill its promise to promptly forward the missing shares on to the original buyer of securities is utterly unconscionable and represents the height of fraudulent conduct especially when this refusal leads directly to the accessing of the self-fulfilling prophecy available in a clearance and settlement system illegally converted to a foundation of mere “collateralization versus payment” or “CVP”.

As noted this self-fulfilling prophecy involves the funds of the investor being defrauded predictably being shunted to the party absolutely refusing to make delivery of that which it sold. The de facto forgiving of a debt owed to a U.S. investor by pretending to be “powerless” to enforce the debt after previously “discharging” the debt when it was held by one of its bosses in exchange for

- assuming the debt is although clever an example of a highly organized form of fraud. The transference of the debt to a party that is “too important to be held responsible” is brilliant although technically probably an example of a “fraudulent conveyance”.
- 2) As the party with the congressional mandate as per Section 17 A **to do whatever is necessary** to make sure that all securities transactions “promptly settle” the NSCC management clearly has the associated power to provide the only known “cure” available when the seller of securities, especially when its one of management’s bosses, refuses to deliver that which it sold.
 - 3) As the “qualified control location” used by the vast majority of market participants to achieve compliance with “The Customer Protection Rule” or Rule 15c3-3 of the ’34 Exchange Act the NSCC is mandated “to take physical possession of all fully paid for securities” on behalf of its buying brokerage firms seeking compliance with Rule 15c3-3. NSCC participants buying shares that have been fully paid for are allowed two options to gain compliance with this critical form of investor protection.

The buying brokerage firm can either take physical possession themselves on behalf of their client buying securities or rely on a “qualified control location” like the DTCC to take physical possession on their behalf. This clearly empowers the DTCC to execute buy-ins when the seller of shares refuses to make delivery as it is the ONLY possible way to take “physical possession” under these circumstances. Unless a knowing participant of the fraud, the NSCC participant gaining compliance assumes that this is occurring when a seller refuses to make delivery otherwise it would not be in compliance with 15c3-3 as the NSCC would not be acting in the capacity of a “qualified control location” capable of granting compliance.

Can you imagine the conflicts of interest present when an employee (NSCC management) has been entrusted with the power to grant compliance with one of the most crucial forms of investor protection, this “Customer Protection Rule”, when the fraudulent granting of compliance results in the funds of investors flowing into the wallets of one of its bosses?

The intentional circumvention of this critical form of investor protection done to facilitate the rerouting of the funds of the investor left unprotected in order to accommodate the financial interests of one’s abusive bosses is totally unconscionable and symptomatic of a heinous form of fraud. The refusal to deliver that which one sold is bad enough but the intentional sabotaging of one of the most significant sources of investor protection done in tandem with this refusal to deliver by the employees (NSCC management) of those refusing to deliver results in a one-two punch reflecting the clear INTENT to defraud U.S.citizens. You just don’t “accidentally” deliver a combination of punches like that.

- 4) As the “legal custodian” of all shares held in “street name” the DTC subdivision of the DTCC has the fiduciary duty of care to perform as a “legal custodian”

- would when the shares presumed by the purchaser to be held by this “legal custodian” never arrived in the first place. The only option left if the seller refuses to deliver that which he sold would once again be a buy-in so that this “legal custodian” can finally attain “legal custody” so that it can perform its “safeguarding” role.
- 5) As the “surrogate legal owner” of all shares held in “street name” Cede and Co. as the nominee of the DTC subdivision would clearly be empowered to execute buy-ins when the shares that they are acting as the “surrogate legal owner” of on behalf of the purchaser never showed up. Acting as the “surrogate legal owner” has fiduciary duties attached. Any market intermediary acting as the “surrogate legal owner” on behalf of the purchaser of securities would according to UCC Article 8 “exercise due care in accordance with reasonable commercial standards to obtain and maintain the [financial asset](#)”. This “surrogate legal owner” would owe a fiduciary duty of care to the “beneficial owner” of these securities i.e. the investor that paid for them.

Cede and Co. was to take on the role of the “surrogate legal owner” of all shares held in “street name” ONLY in an effort to enhance efficiencies otherwise each stock transaction would necessitate the cumbersome transfer of deed-like instruments. It was strictly forbidden to utilize this “surrogate legal ownership” title and role as LEVERAGE over the “beneficial owner” that purchased the shares whom this “surrogate legal owner” theoretically represents.

Note that if the investor purchasing securities were to remain the “legal owner” it would obviously be given access to the information revealing that what he “owns” never got delivered. This generous volunteering of the DTC to act as the “surrogate legal owner” cleverly results in the purchaser of shares not realizing that the securities he purchased never did get delivered. Why? In the case of abusive naked short selling it’s because they never existed in the first place.

On Wall Street the “ownership” of securities is a very tricky concept subject to massive levels of abuse. In the typical transaction “Cede and Co.” is the “legal owner” both before and after the transaction. This obfuscation creates opportunities for fraud. At the end of the day it turns out that the “legal owner” of securities whether acting as a “surrogate” theoretically on behalf of others and theoretically while trying to realize enhanced efficiencies or not can do pretty much what it wants with that which he “owns”.

Any “surrogate legal owner” converting this “ownership” into LEVERAGE over those it is supposed to be acting on behalf of when combined with the bosses of this “surrogate legal owner” refusing to deliver that which they sell is obviously part and parcel of a scheme to defraud the investors relegated to the lowly role of acting as a “co-beneficial owner” of a given parcel of shares.

- 6) As an SRO (“Self-Regulatory Organization”) commissioned to act as “the first line of defense against abusive naked short selling frauds” the NSCC is mandated

- to create and enforce rules and regulations and to monitor the “business conduct” of its participants. As it turns out the “business conduct” and “proprietary trading methodologies” of many NSCC participants is to simply sell nonexistent shares all day long and refuse to deliver that which it sold. This clearly empowers the NSCC to execute buy-ins when the “business conduct” of one of its own “participants” which it is theoretically “self-regulating” involves routinely refusing to deliver the securities that it sold.
- 7) As the designer and administrator of the “Automated Stock Borrow Program” (SBP) the NSCC would clearly have the power to buy-in the delivery failures of any participant abusing the obvious loopholes present regarding the counterfeiting of shares present in the SBP’s lending pool. What kind of a “legal custodian” would administer a self-replenishing lending pool of securities whose electronic book entry representations of the paper-certificated shares it has in its “legal custody” can be blatantly counterfeited?
 - 8) In regards to a corporation’s voting rights, the NSCC is set up such that its participants with shares of a given corporation’s stock being held in their NSCC participants “shares account” own what is referred to as a “proportionate interest” in the shares collectively held by the DTC subdivision of the DTCC in its vault system. The voting rights of any corporation are tied to the legal “ownership” of shares WHICH HAS NOTHING TO DO WITH OUTSTANDING FAILED DELIVERY OBLIGATIONS. At the NSCC “ownership” issues become obfuscated in that Cede and Co., the nominee of the DTC, has been appointed as the surrogate legal/nominal/record “owner” of all shares held in street name.

When the NSCC predictably pleads to be “powerless” to buy-in the delivery failures of its abusive DTCC participants when they absolutely refuse to deliver that which they sold the “proportionate ownership” of the shares held in the DTC vaults falls below the levels needed to provide all purchasers of fully paid for securities the opportunity to vote their shares as provided for by state law. This results in the need to cancel voting privileges also on a “proportionate” basis behind the scenes in order to cover up the existence of this disparity. The result is that the founding concept of a corporation involving “one share, one vote” must be invisibly discarded to accommodate the refusal of those empowered to execute buy-ins to do so.

First came the concept of a “corporation”. Only later came the desire to trade the unit of equity ownership of a corporation (a “share”) in a public format. What the DTCC has done is morphed the entire concept of a “corporation” in order to accommodate the financial interests of its abusive participants acting as market intermediaries in the trading process.

- 9) Under UCC Article 8-504 “DUTY OF SECURITIES INTERMEDIARY TO MAINTAIN FINANCIAL ASSET”
 - (a) A [securities intermediary](#) shall promptly obtain and thereafter maintain a [financial asset](#) in a quantity corresponding to the aggregate of all security entitlements it has established in favor of its [entitlement holders](#) with respect to that financial asset. The securities intermediary may maintain

those financial assets directly or through one or more other securities intermediaries.

(b) Except to the extent otherwise agreed by its [entitlement holder](#), a [securities intermediary](#) may not grant any security interests in a [financial asset](#) it is obligated to maintain pursuant to subsection (a).

(Comment: When the NSCC's "Stock Borrow Program" (SBP) keeps lending out the same parcel of shares in multiple directions simultaneously is it not "granting security interests in financial assets" above and beyond those it "maintains"?)

(c) A [securities intermediary](#) satisfies the duty in subsection (a) if:

(1) the securities intermediary acts with respect to the duty as agreed upon by the [entitlement holder](#) and the securities intermediary; or

(Comment: In the case of the NSCC's SBP did the "entitlement holder" (investor) approve of his "entitlement" being replicated many times over and then be loaned out in multiple directions while "curing" several different failures to deliver?)

(2) in the absence of agreement, the securities intermediary exercises **due care in accordance with reasonable commercial standards** to obtain and maintain the [financial asset](#).

The question now becomes what would constitute "due care in accordance with reasonable commercial standards to OBTAIN and MAINTAIN the [financial asset](#)" when the participant of an SRO like the NSCC absolutely refuses to deliver that which it sold. How might this party "OBTAIN" these missing "financial assets". There is only one way to "OBTAIN" them if the seller refuses to deliver that which it sold and it's called a "buy-in".

How might one "MAINTAIN" them once they were "OBTAINED"? Well, you certainly wouldn't put them in a self-replenishing lending pool like that at the SBP and allow them to serve as a template for counterfeiting and then be loaned out simultaneously in a dozen different directions after "curing" a dozen different delivery failures. A signed margin agreement allows the hypothecation (lending out without formal transference) of shares held in a margin account. It says nothing about the replication of these "financial assets" many times over and then lending out the originals and all of the counterfeit copies.

When a participant of the "central counterparty" (CCP/NSCC) that just "discharged" a delivery obligation of its boss in exchange for "assuming" it and "executing" on it promptly wouldn't the "reasonable commercial standard" be to do what is necessary to **OBTAIN** that "financial asset" so

that it could follow through on its pledge to forward those shares on to the purchaser? Wouldn't this standard also apply to a "legal custodian", a surrogate "legal owner", a "qualified control location" empowered to grant compliance with 15c3-3, etc. in its effort to **OBTAIN** the missing financial asset so that it can **MAINTAIN** it?

- 10) The fact that the DTCC has established what amounts to be a monopoly in securing the available powers to execute the ONLY known cure for when one of its abusive participants refuses to deliver that which it sold should in and of itself empower it to provide these cures being that nobody else in the clearance and settlement system that it administers is left with that ability i.e. if not you then whom?
- 11) When the party with the power to execute buy-ins when it becomes obvious that the seller of shares had no intention whatsoever to do so then the "prompt settlement" of that trade is artificially postponed. This is expressly forbidden by the '34 Act's 15c6-1. When the timeframe between "settlement date" and the date that delivery is finally made is prolonged then a "float period" is created. Crimes related to the abuse of a "float period" are referred to as crimes related to the fraud known as "kiting".

The question that then arises is does this SRO, legal custodian, surrogate legal owner, "securities cop", etc. have the "REGULATORY POWER" and "REGULATORY AUTHORITY" to prevent crimes committed by its own participants whose "business conduct" it is mandated to regulate associated with "kiting". I would suggest it has a lot more than the power but it also has the mandate to prevent crime when it is the only regulatory authority with the power to do what is necessary to prevent the crime. Should it perhaps be referring the associated prosecutions to the DOJ (it obviously can't lest the DOJ learn about these crimes)?

- 12) Operating as a "limited purpose trust company" under the banking rules of the State of New York the DTC is mandated to have a series of checks and balances in place to make sure that its actions are consistent with the laws applicable in the banking industry. This includes the counterfeiting of "financial assets". Since the only "check or balance" available when the seller of shares refuses to deliver that which it sold is a buy-in then clearly this empowers the DTC to buy-in delivery failures when it becomes obvious that the delivery of the securities sold was never intended and thus an act of "counterfeiting" was being committed.
- 13) When the DTCC chooses to hold securities in a "fungible bulk" format or in an "anonymously pooled" format wherein individual parcels of securities are no longer traceable then opportunities for abuse become numerous. Any "registered clearing agency" approved of by the SEC would obviously have safeguards in place to address abuses associated with this lack of transparency. The obvious safeguard would be the power to buy-in delivery failures.
- 14) Abusive naked short selling crimes involve the intentional manipulation of the supply and demand variables that determine share prices through the process of "price discovery". These abuses are forbidden by 10b-5 of the '34 Exchange Act.

The DTCC is mandated to have no rules in its book of rules and regulations that are in contravention of any of the 7 “securities acts”. To prevent this fraudulent “manipulation” of the supply and demand variables buy-ins must be regularly done to rid the “securities entitlements” resulting from FTDs of an intentional/illegal nature i.e. not associated with a ultra short termed “legitimate” reason for a delivery delay.

- 15) UCC Article 8 mandates that those that issue “securities entitlements” never issue so many that an “Overissuance” results. An “Overissuance” occurs when the number of “securities entitlements” issued plus the number of shares already “outstanding” exceeds the number of shares “authorized” as per a corporation’s articles of corporation/charter. In order to comply the DTCC and its NSCC and DTC subdivisions would obviously have to keep a tally of the “securities entitlements” they have issued and buy-in any of the associated failures to deliver when a state of “Overissuance” has been reached. The DTCC can’t keep a tally because that would give away the pandemic nature of these frauds to both the investors and the authorities. They have to refuse to comply with this aspect of UCC Article 8.

SUMMARY

The management teams of the DTCC and its DTC and NSCC subdivisions clearly are not “powerless” to provide the only known cure (a buy-in) when its abusive participants absolutely refuse to deliver the securities that they sold. Recall that the previously agreed to “settlement date” was T+3. They willfully choose not to execute buy-ins of their bosses that steal investor funds because it wouldn’t be in their bosses’ financial interests to do so.

These management teams willfully defy their various congressional mandates in order to attend to the financial interests of their bosses. This results in the ability of these criminals to easily destroy any U.S. corporation and the investments made therein that they simply choose to target for destruction.

The participants of the DTC and NSCC have been ENTRUSTED by the public with a superior knowledge of, access to and visibility of our clearance and settlement system. The management teams of these institutions have allowed their abusive participants to create LEVERGE out of this trustee relationship that they use to predictably reroute the investment funds of less financially sophisticated U.S. citizens into their own wallets.

One must notice the difference between the DTCC management arguing on the validity of any one of the 15 arguments listed and the DTCC management trying to proffer the argument that in the AGGREGATE while keeping all 15 of the arguments cited in mind they STILL claim to be “powerless” to execute buy-ins. What would be the statistical probability of that argument being proffered by 15 separate unconflicted parties ENTRUSTED with these various mandates/responsibilities?

Let's mentally assign those 15 mandates/responsibilities to 15 different UNCONFLICTED parties outside of the DTCC whose bosses cannot access the funds of investors by merely refusing to deliver that which they sell. Let's assume that there is perhaps a 1 in 10 chance that any of these UNCONFLICTED parties would have the audacity to argue that it doesn't have the power to execute buy-ins. The odds that ALL of the parties would argue that they don't have this power would be 1 in 10 times 1 in 10 multiplied out 15 times. Let's call it one in a "gazillion".

What we have now is a very CONFLICTED self-regulatory organization called the NSCC that argues with 100% predictability that every single time that one of its participants refuses to deliver that which it sold it is "powerless" to execute buy-ins DESPITE these 15 separate sources of empowerment being concentrated onto their shoulders which was ludicrous in the first place. The disparity between 100% and one gazillionth of a percent is attributed to the massive numbers of "conflicts of interest" within our DTCC-administered clearance and settlement system. Maybe that's the reason why the "34 Exchange Act expressly forbids their existence.

One cannot overlook the critical role of mandated buy-ins especially keeping in mind that they provide the ONLY solution when the seller of securities absolutely refuses to deliver that which it sold in a timely manner. In a perfect world each of the 15 different mandates/responsibilities cited would be placed onto the shoulders of UNCONFLICTED parties that would have no interest in leveraging the superiorities they were ENTRUSTED with by the investing public. That solution would obviously necessitate massive regulatory restructuring.

A more pragmatic solution would be for the congressional oversight committees as well as the SEC to make it crystal clear to the DTCC that it and its subdivisions have not only the mandate but all of the power in the world to execute buy-ins at a point in time (perhaps T+6) when it becomes perfectly clear that the seller of securities had no intent whatsoever in delivering that which it sold.

If the DTCC management continues to pretend to be "powerless" to buy-in delivery failures once they occur then the obvious solution would be to forbid FTDs from occurring i.e. the seller of shares cannot sell them UNTIL they are in place ready to be delivered by T+3. Due to the fact that there really are a tiny amount of legitimate reasons for delivery delays past "settlement date" then this solution would be tough to implement and the former solution would be preferable.

Dr. Jim DeCosta