

July 12, 2008

P. O. Box 322

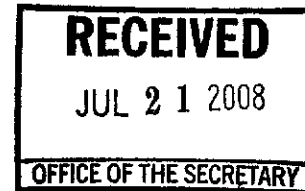
Chowchilla, California 93610

Secretary

Securities and Exchange Commission

100 F Street NE

Washington, D. C. 20549



In Re File Number S7-19-07 (Regulation SHO comments)

Dear Sir or Madam:

I am writing to request regulation changes, accompanied by legislation where necessary, to deal with fails caused by naked short sellers. I am very concerned by this, because this was listed by the commission investigating the Great Depression as one of its chief causes. Naked shorting appears to be accelerating, and, as long as it carries at best limited penalties, it introduces moral hazard into the system. I have been investing for 48 years, have been a stock broker, and manage two trusts, yet I have seldom seen such volatility in the markets as yesterday, when two government agencies, now held as quasi public stock entities, were sold almost down to zero, a result that bore the earmarks of naked shorting. If we do nothing about this, it could be, to quote Yogi Berra, *déjà vu*, all over again. It appears that the present system is woefully unprepared to deal with this problem. I am proposing modifications which will involve both governmental and non-governmental entities in its aid.

Underpinning my comments are the realization that selling shares one does not own, and does not plan to acquire, is criminal fraud, or, as they used to say in the east Kentucky mountains, "He that sells what isn't his'n, shall buy it back or go to prison". Therefore, the first thing we must realize is that we are only dealing with criminals, and criminals are not entitled to any respect or deference. The only issue is that we do not create such a wide net that those with non-criminal intent are caught up in it. So the first step is to set up a regulatory structure which the prosecuting authorities can use if they wish, and then create reasonable exceptions. Since there are numerous securities trading felonies already on the state and federal books, some are already triggered by this practice, so all we have to do is develop a mechanism which will force the "usual suspects" to identify themselves. This should also dispel much of the practice, as turning on the light dispels cockroach activity.

Honest and legal short sellers must first borrow the stock. Therefore, the rules should only apply to those who have not borrowed stock. Since legitimate short sellers cannot sell at all without lining up shares to borrow in advance, we should not need to limit our inquiry to the threshold securities list. It should be easy to determine who has not secured borrowed stock from the brokers as they are already checking anyway. Therefore, what we need is not a threshold securities list, but a threshold shorters list of non-borrowers, including the brokers themselves.

Once that list is acquired, we need to force their brokers, clearing houses, DTCC, etc. to escrow all their money from the sale and not let it be used for any other purpose until it is determined whether they are a non-borrower, or whether it is simply a clearance problem, e. g. failure to get certificates signed, etc. In a worst case scenario, all an entity would have to do to stay off the list was borrow the stock, which is what he should have been doing anyway. If they will not do this, they are presumed to be trying to manipulate the system, and should pay in advance. Thus, you should rapidly increase their escrowed money to 200%, 300% etc of the sale monies as the fail continues without excuse. The broker should withhold, just like he would for income taxes. The maximum should be worked out by rulemaking fact finding, but with an idea to escrow in advance the losses the criminal shorter could cause and/or sustain, but I would think the maximum escrow should never be less than 500% of the gross sale price. Money to enforce the escrow would be raised by a lien on the naked shorter's entire account, and, if necessary, outside people could come in as private attorneys general to collect the escrow beyond that account, with further assurances to the public that such shortfalls would not be dischargeable in bankruptcy. The whole purpose is for the would-be criminal to be forced to guarantee the unprofitability of his own enterprise. That is the archetypal purpose of deterrence based upon self-interest built into any effective regulatory structure, civil or criminal, and which is presently totally lacking.

After a shorter is on the list for, say, 60 days, or if his short position exceeds a dollar amount in and/or percentage of capitalization of, the shorted company, his name, with his list of non-borrowed fails and their quantity, should be frequently published, say weekly. Since the listee has presumably sold what isn't his'n, a copy of the list should be turned over to the U. S. and State attorneys general for his states of residence and where his sell order was produced. In addition, a private attorney general provision should be inaugurated, to make it a profit center for shorted companies and stockholders to pursue these people, with such legislation as is necessary. Most states have augmented penalties for fraud, typically treble damages plus attorney's fees. Since the non-borrowing shorter has already deposited 500% of the money he received, it should be easy picking by the public or private attorney general, since damages have already been escrowed. Computer matching programs could quickly detect illegal shorting conspiracies, and allow for suits against groups of people, with joint and several liability probably provided for by existing civil and criminal securities laws or theories of litigation.

This would appear Draconian. However, a list with no one on it is not Draconian at all. It will affect only people who need to be chastised, since there would be exceptions for unavoidable and unintentional fails. They also should be allowed to post a short rebuttal, so that those who had a legitimate excuse would not be sued or arrested, since it is securities fraud which is actionable, and this would allow them to countersue overzealous private attorney general plaintiffs. Cleaning up the mess could cost the

government nothing, because private litigants could make a profit off the exemplary damages or the money placed in escrow for the stockholders of the illegal short target. This type of class action is working very well already as to matters of failure of corporate governance, director misfeasance, etc. This simple list would place the non-borrowing seller failing to deliver in a situation where he must either expiate his behavior by a buy-back or endanger his firm's liquidity, as well as its reputation, by the deposit of more than he could ever profit. It would immediately make the criminal process of naked short selling non-economic, so the practice would end swiftly and of its own accord.

We have developed a skeptical mindset in our citizens that the laws are not enforced against the big guy. This issue has hit me close to home. We shorted Novastar Financial and made quite a bit of money, but that all ended when we were forced to cover when our broker could no longer lend us shares. At the same time, various public records showed that 80% of Novastar's shares were sold short. How could these millions of shares be short when we couldn't even keep shares against our short position? My broker claimed to have searched the street unsuccessfully for more shares when the shares we were borrowing were sold by his customers and our shorts were called in. Yet millions of shorts remained outstanding. This kind of thing makes people very suspicious of your agency as to whether it is upholding its sworn purpose.

Actually the job is too big for your agency. That is why we need to add the private attorney general provision. I also think that this problem would disappear. It also will level the playing field between long and short investors. Long stock investors can only leverage to 50% on margin, and it is illegal to borrow the other 50% solely for stock investment purposes from a bank. The same is true of the legitimate short seller. But the criminal short seller faces the prospect of unlimited gain with no risk under the present system. Things you subsidize you get more of. We are heightening the moral risk, as well as risk to our financial system, by continuing the present system of lax oversight, whether of will, lack of manpower, or lack of legal authority.

Any financial system which is so structured that more leverage can be employed on the downside than on the upside is inherently unstable. This week's bear raids on the two giant government mortgage corporations shows that enough people have learned how to play the game that no one is big enough to be safe. Nothing that big moves that fast by word of mouth. There was coordinated selling, and there could not have been enough shares legitimately borrowed, let alone borrowed and sold, to drive these stocks down that far in one day. Please act before we have 1929, all over again.

Yours faithfully,



Brent Welke

Chief Executive Officer

Agnova Corporation

P. S. Why not restore the uptick rule while you are at it?

CC: Feinstein

Boxer

Radanovich