July 30, 2008

Attention: Mr. Erik Sirri
Dept. of Trading and Markets
SEC 100 F st
NE Washington DC 20549

Dear Mr. Sirri,

I had the pleasure of speaking with Jack Hardy, SEC Branch Chief SEC Office of Investor Education and Advocacy on 7/29/08 regarding the Uptick Rule, enforcement of the Naked Short rule,(`http://www.sec.gov/spotlight/shortsales.htm`) SHO and tracking activity, and The SHO study done by OSU (`http://www.sec.gov/news/studies/2007/regshopilot020607.pdf`). I was aware of the study last year and had concerns that is was a bad idea at the time. Since then, I have only become more convinced of the problem. He said there is currently a debate as to which is causing havoc, if at all in the markets. Let me provide some examples in different industries below. I believe all of these stocks which have incredibly big floats have showed up on the SHO list since the uptick rule has been rescinded except Exxon. You will note the increased volatility and volume after the uptick rule was in place on all of the shares. This combined with naked short selling is a huge problem. (Subject: FW: SEC Response - File HO1285460)

The major problem with having naked shorting going on (other than it is illegal) is that it causes a release of dilutive multiples of the actual float and artificial selling pressure to be applied to the markets and increase the volatility . (`http://www.sec.gov/rules/other/2008/34-58166.pdf`) Add to that the abolishment of the uptick rule and you have increased volatility in the best markets. I am requesting the release of tracking information between departments be allowed to facilitate the orderly tracking and compliance of these rules. Without the actual accurate tracking of the short shares by the investment banks pledging the shares, no one agency, person or firm would know how many shares have been sold into the virtual float. It could be and probably is many times the actual shareholders positions. The companies CEOs are left to respond to false rumors and accusations (by traders) of problems with the companies when no problem may even exist. This leads to a crisis of confidence that is fracturing our markets stability. Because of this CEOs have to file 8-ks every time something comes up that is baseless.

In the last 12 months I have seen on my Thompson One platform the (r) restriction on multiple stocks which is the fail to deliver or SHO indicator. This indicator only shows up after the fail to deliver is more than a week old I am told (maybe more). I used to see the restriction rarely and usually only on arbitrage situations when the institutions stepped in after an announcement of a takeover.

The firms that are lending these shares out have to be aware of the problem, but know you (the SEC) are powerless to stop it. They also know that if you are not going to enforce your rules, that if they don't provide the shares, their competitors will. (Just exactly what is the penalty for falsely pledging shares?) Essentially, you are left with a rule that nobody has to abide by. This is a problem. It is destroying the capital base of this country at a time when we desperately need capital. You need a method of tracking and enforcing the rules you have in place. You need to hold those firms lending the shares illegally and collecting the interest accountable. Believe me, they know who borrowed the shares and who is paying them interest and trading fees. Short selling is necessary and legitimate, but we need some accountability for those abusing the system at the expense of investors. If you need additional signatures I am sure I could find many brokers from my firm and others to sign on to this. Don't let political infighting and bureaucratic pressure from keeping you from your job. We are counting on you. Please feel free to call me.

Sincerely,

Jeff Lutz

Jeffrey A. Lutz
Vice President - Financial Consultant
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Otto/Lutz Group of Hilliard Lyons