August 13, 2008

Sirs:

I am responding to the SEC provision for public comments with regard to its options market maker exception and elimination, as well as the elimination of the "grandfather" exception.

Missing from this discussion is the simple fact that fails to deliver (FTD's) are, for whatever time allowed and in whatever amounts allowed, constitute a shift in the total aggregate supply of shares for any company to the upside. This is fundamentally improper, as it amounts to the counterfeiting of shares and the removal of control from a public company over the supply of its own shares (and therefore, fractional ownership) in the marketplace.

The urging of some responders for the SEC "to obtain empirical data to demonstrate the relationship between fails to deliver and the options maker exception before it determines whether additional rulemaking is necessary" completely misses the point. Companies should have control over their shares outstanding, not broker dealers, hedge funds. or combinations of the two, acting in concert or otherwise.

Even more troubling is the request that the SEC "obtain data relating to the impact of the elimination of the grandfather provision." The grandfather provision was fundamentally flawed from the outset, as it "grandfathered" an illegal practice. That this even passes for sound public policy is deeply troubling.

I am quite concerned about the ability of some hedge funds and broker/dealers to effectively distort and manipulate what is supposed to be a free market...free from manipulation, that is. To the extent the SEC either fails to regulate the markets toward that end or fails to extirpate such participants from market participation (via strong fines, prosecution through the DOJ, etc.), then the SEC is not fulfilling its public trust. As a citizen and individual investor, I consider that to be unacceptable.

I realize that the SEC is concerned about efficient markets, and that is the argument heralded by opponents of any additional regulation. But honestly, with the data I already have seen, there certainly appears to be an issue of market manipulation, or the temptation toward that end at the minimum, with allowed fails to deliver beyond the T+3 allowance.

Grandfathering was a poor public policy decision, and indicated that the SEC believed a substantial problem existed. Exemptions to broker/dealers falls in the exact same category, because it is fundamentally and even morally wrong to be allowed to counterfeit any company's shares, especially for months at a time.

I therefore strongly urge the elimination of any grandfathering provision, the elimination of the broker/dealer exemption in its entirety, and the re-institution of the uptick rule on a decimalized basis. Further, the SEC must begin to actively and aggressively enforce the law and its own rules. Fines must not be a million or two (as in a recent case, where the offender described the fine as merely a "cost of doing business"), but a percentage of either the damage caused or a significant percentage of their capitalization. That would force a change of behavior, as the fear of being caught manipulating stock prices of companies would far outweigh the possible benefits.

Failing these steps, I fail to see why I should even be in the equity markets. Forex might prove to be a more honest market.

Very sincerely yours,

Stephen Kellogg
Individual Investor