Ms. Nancy M. Morris, Secretary Securities and Exchange Commission 100 F. Street, NE Washington, DC 20549-1090

Re: Comments on Proposed Amendments to Regulation SHO

File No S7-19-07

10/26/07

Dear Secretary Morris:

I thank you once again for yet another opportunity to comment on the proposed amendments to Reg SHO. The lack of understanding of the basics of naked short selling frauds and "delivery failure related abuses" or "DFRAs" by SEC lawyers entrusted to provide "investor protection and market integrity" continues to astound the investing public and in particular those pleading for market reform. The following was taken from the transcript of a lawsuit adjudicated by Judge Graham Mullen who on this past Wednesday dismissed part of an SEC civil lawsuit alleging that a former executive at a Wall Street firm engaged in illegal conduct related to a securities offering. The claim alleged illegal naked short selling activity associated with a "PIPE" offering.

Judge Mullen: Naked shorts are not legal, are they?

SEC lawyer Amy Greer: No. No, they're just very risky, Your Honor.

SEC lawyer Catherine Pappas: And Your Honor –

Judge Mullen: They're not illegal; they're just risky.

Greer: Correct. Naked short sales are not illegal; they're just risky, Your Honor.

Judge Mullen: Why in the world don't you all make them illegal? Don't you understand what happens in the market when you allow naked short selling to attack companies? I mean, do you understand that?

Greer: Your Honor, I think that that's an issue for the United States Congress. I appreciate your concern –

In regards to naked short selling being legal or illegal I would suggest that a fairly large percentage of it is indeed illegal. Why? Because the market makers and co-conspiring usually unregulated hedge funds often involved illegally accessed the exemption from borrowing shares before short selling accorded to only "Bona fide" market makers.

"Bona fide" MMs do indeed "inject liquidity" into markets characterized by an abundance of buy orders and a dearth of sell orders. Once these disparities cease to exist or are reversed as sell orders start to overwhelm buy orders then truly "Bona fide" MMs

cover these naked short positions so that “Good form delivery” of the shares they initially naked short sold could be achieved. This results in the “prompt settlement” of stock transactions mandated by Congress in Section 17A of the 1934 Securities Exchange Act.

The problem is that “predatory” MMs not the least bit interested in ever covering their naked short positions have learned that they can access this exemption from making a “borrow” before short sales mainly because nobody within the current regulatory and self-regulatory structure monitors for “Bona fide” market making activity and whether or not the accessing of this exemption was done legally or not.

Part of the problem is that the DTCC administered clearance and settlement system in use today insanely allows those making naked short sales to access the funds of the unknowing investor even though they have no intention whatsoever in ever delivering that which they sold. Instead the DTCC only mandates that naked short sellers collateralize these “open positions” in a marked-to-market fashion on a daily basis. Thus as the “counterfeit” shares being sold accumulate in the share structure of the victimized corporation the share price predictably plummets which allows the proceeds of these naked short sales to flow into the pockets of the naked short sellers despite the fact that they continue to refuse to deliver that which they previously sold as a truly “Bona fide” MM would. The statement to the Judge that naked short selling is indeed legal is very near-sighted and presumes that all MMs accessing that exemption are doing it while acting in good faith which couldn’t be further from the truth.

The SEC lawyers also proffered that naked short selling is “risky”. Illegal naked short selling is not very “risky” at all. Why? Because nobody in the regulatory or self-regulatory structure is monitoring for the legality or illegality of accessing the exemption from borrowing before short selling.

The Wall Street participants in favor of naked short selling proffer that they are “injecting liquidity” into these often thinly traded markets of development stage issuers. This is only half true as they typically “inject liquidity” when buy orders dwarf sell orders but are nowhere to be found when sell orders dwarf buy orders and the share price is plummeting. Why might this be? Because as mentioned the selling of shares even when they don’t exist results in being granted access to the proceeds of the sales despite the constant refusal to deliver that which was sold. This is tantamount to the constant refusal to “inject liquidity” into markets characterized by sell orders dwarfing buy orders i.e. to act like a truly “Bona fide” MM would after accessing that exemption. Why might this be? Because in our current corrupt clearance and settlement system selling nonexistent shares makes money while buying back shares costs money. It’s that simple.

The frustrating part of all of this for market reform advocates is how incredibly simple it would be to determine whether this exemption from making a “Borrow” was done legally or illegally. The trading data clearly shows whether illegal activity was involved or not. If the MMs relying on the exemption refused to cover within a given amount of time or when the share price is dropping and the market is in need of the injection of liquidity from the buy side then clearly the exemption was not legally accessed. Thus the market

making activity was of a predatory nature and not a “bona fide” nature. This concept is not rocket science for any regulator, SRO or member of the DOJ truly interested in shutting down this particular heinous from of pre-meditated theft/racketeering.

The response to the Judge’s question: “Why don’t you all make them illegal?” was particularly dismaying. The ’34 Exchange Act has already determined that it is unlawful to illegally access an exemption from borrowing accorded only to certain market participants entrusted to inject both buy and sell liquidity into these markets.

The actions of predatory MMs aware that the regulators and SROs are asleep at the wheel in this regard has predictably resulted in a self-fulfilling prophecy involving these corporations drowning in a sea of incredibly damaging mere but readily sellable “securities entitlements” as the Mom and Pop investor’s money flows into the pockets of those absolutely refusing to deliver that which they sold inordinate amounts of time ago. The irony of SEC lawyers entrusted to enforce the securities laws telling a Federal Judge that Congress needs to get involved when the securities laws already on the books need to be enforced is problematic but not as problematic as the SEC constantly telling Congress that everything’s under control and your help is not needed. Meanwhile the Wall Street participants and lobbyists remind the SEC of how important this “injection of liquidity” is to these thinly traded markets when they know darn well that it is one-sided liquidity allowing access to an investor’s funds without ever having to deliver that which was sold.

By the way I bear no malice whatsoever against the two SEC attorneys involved as they are merely parroting the wishes of their superiors.

Quote of the day:

Judge Mullen: Why in the world don’t you all make them illegal? Don’t you understand what happens in the market when you allow naked short selling to attack companies? I mean, do you understand that?

Dr. Jim DeCosta
Tualatin, Oregon