NIPC

National Investor Protection Coalition

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"Advocates for the Protection of Equity Securities Investors and Issuers"

May 22, 2008

RE: File File No. S7-19-07 Amendments to Regulation SHO

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

Dear Secretary:

In evaluating whether or not to remove the market maker exemption from REG SHO, we would like to remind the Commission of the following:

1. The Commission must do a cost benefit analysis from the point of view of equity securities investors, as it is equity securities that the amendment speaks to. The subject is not "fails to deliver" of derivative securities, but "fails to deliver" of equity securities.

2. The Commission must address the "failure to receive" securities that are created and issued due to the delivery failures and held for customers in lieu of the contracted for securities and how those affect the accurate representation of securities held for customers.

3. The commission must address under what legal framework “fails to deliver” are authorized to be effected. The word “fail” in “fails to deliver” determines that all legal delivery requirements are violated – no matter how one defines the legal delivery requirements. There for the Commission must address how violating legal delivery requirements – by market makers or any other market participant - is authorized in the first place. The SEC has danced around this issue for years now.

4. The Commission must also me mindful of Section 6(b)(5) of the Securities Exchange Act of 1934 when evaluating any decision:

   > *“The rules of the exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, <u>in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers</u>, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the exchange.” (Emphasis added)*

5. The Commission must act quickly, as “fails to deliver” are piling up, precisely due to CBOE members and derivative market makers causing “fails to deliver” in equity securities and the Commission has now had plenty of time to make a determination and evaluation.

Sincerely submitted,

Thomas Vallarino
President - NIPC