April 13, 2009

To the Commission:

"Circuit breakers" and "uptick rules" will not address the fundamental problem with short selling. The problem is not short sellers being able to sell a stock whose price is falling. The real problem is short sellers not borrowing the shares they purport to sell and then failing to deliver real shares to their "buyers" (i.e. "naked shorting"). Price tests and circuit breakers will not stop failures to deliver.

If the Commission wants to address the fundamental problem with short selling it must do the following:

Strengthen and <u>ENFORCE</u> the pre-borrow and delivery requirements already in Reg SHO.
-- Make it a rebuttable presumption that ALL failures to deliver are intentional. Let the short seller who has failed to deliver *prove* that he borrowed before selling and that there was an "error" or "processing delay" that resulted in the failure to deliver.
-- Make the time by which a short seller must deliver the same as for any other seller (3 days). NO exceptions. Eliminate the special 13 day window currently enjoyed by short sellers.
-- Require the immediate buy-in of any short position in which the short seller cannot document actual borrowing and actual delivery.
-- Publish a schedule of fines for short sellers caught not pre-borrowing. Make such fines large enough to have a strong deterrent effect.

Eliminate the "options market maker exception" to Reg SHO. Issuers and true investors (as opposed to speculators and outright crooks) have *nothing* to gain from "depth and liquidity" in a market for options in an issuer's stock. If the options market maker (OMM) is unwilling to fill an order for an option without a "hedge" (i.e. a naked short sale), then *let that order go unfilled*. Let the *real* supply and demand for options in a stock determine the depth and liquidity of the market for those options. Eliminating the OMM exception would have no negative impact whatsoever on any issuer or investor. Why should speculators or OMMs be allowed to profit at the expense of issuers and investors that have nothing to do with these options? (See my previous comment on the OMM exception attached hereto .)

Note that the measures above would not only make "circuit breakers" and "uptick rules" unnecessary (since *enforced* pre-borrow and delivery requirements would in themselves do much to slow the short sellers down). These measures would also bring some much needed economic reality back to the markets by preventing the creation of phantom shares and reducing speculation in derivatives (stock options).

Nothing would restore investor confidence in the markets more effectively than a big dose of reality.

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July 15, 2008

To the Commission:

The rationale for the options market maker ("OMM") exception was supposedly to provide "depth and liquidity" to the options market:

> "In response to the [original] proposal to adopt Regulation SHO and the Commission's determination at that time not to provide an exception for market makers, including options market makers, from the delivery requirements of proposed Regulation SHO, the Commission received letters that stated that <u>the effect of not including such an exception would be to cease altogether options trading in securities that are difficult to borrow, as it was argued that no options market makers would make markets without the ability to hedge by selling short the underlying security</u>."
> http://www.sec.gov/rules/proposed/2007/34-56213.pdf

And that would be a problem . . . how?? It's not as if trading in options furthers any legitimate goal of the capital markets. Issuers do not capitalize themselves in the options market. Trading in these options doesn't even even help establish an accurate valuation at which issuers are able to capitalize themselves. (As a matter of fact, allowing the OMMs to hedge by way of limitless naked shorting eliminates any possibility that the trading in the options will help set an accurate price for the underlying equity.)

Why should OMMs be allowed to naked short in order to hedge their participation in options contracts in which there otherwise would be a seller but no buyer (or buyer but no seller)? What legitimate or desirable purpose does such "depth and liquidity" serve? *Why not just let an options order go unfilled if the OMM is unwilling to take one side of the deal without hedging it*? At the very least, why not require the OMM to locate the shares he wants to use to sell short in order to hedge his options position? How would this negatively impact *any* useful or legitimate goal of the capital markets?

Meanwhile, the OMM exception clearly has *negative* effects on the capital markets. Allowing the OMMs to hedge like this, by effectively printing reams of shares and dumping them in the market, allows the OMMs to shift the risk *they* choose to undertake onto (typically) unknowing investors in the underlying equity. The exception also gives less scrupulous OMMs an incentive to do whatever they can to make sure the price of the underlying stock goes down and stays down once they have sold short. Even worse, the OMM exception is an open invitation to outright crooks to engage in sham options transactions in order to get access to the OMM exception so that they can naked short a stock to their heart's content.

The solution is simple and obvious: **eliminate the OMM exception**. If the OMM is unwilling to take one side of the trade without a hedge, then *let the order for the option go unfilled*. Let the *real* supply and demand for the options determine the depth and liquidity of the market for those options. Other than some lost transaction fees, which probably constitute only a tiny portion of the revenue of firms that are *bona fide* OMMs, eliminating the OMM exception would have no negative impact on anyone except crooks and manipulators.

[continuing from the SEC quote cited above:] "In part, in response to these comments, we adopted a limited options market maker exception to the close-out requirement of Regulation SHO. As discussed in more detail in this release and, in particular, in Section II.B.3. below, ***we no longer believe that the current options market maker exception is necessary***."

Then WHY HAVEN'T YOU CLOSED IT????? What are you waiting for? Why should an exception to Reg SHO exist that serves no purpose other than to enable pure speculation, and maybe even pure criminality?

I am a shareholder in Medis Technologies (NASDAQ:MDTL), which has been on the Reg SHO threshold list longer than any other stock (now an astounding 739 days, http://buyins.net/tools/short_list.php), and which also has a "legitimate" short position currently equal to more than 38% of its nominal float, http://online.wsj.com/mdc/public/page/2_3062-nasdaqshort-highlites.html.

I have watched literally tens of millions of shares go through the Chicago exchanges in large blocks (hundreds of thousands of shares at a time) that correlate perfectly in time and in size with volume in MDTL options. What has been going on with MDTL and its options could not be more obvious to anyone who is paying attention.

Is the SEC regulating the capital markets or a giant casino? Isn't what's good for Fanny and Freddy good for all companies? Why won't the SEC cut to the chase, skip the upteenth comment period, and issue an emergency order eliminating the OMM exception to Reg SHO?

Why not do it *today*?

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