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Sent: Thursday, April 03, 2008
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Subject: Reg SHO; Charts illustrates a bust.

Friends,

According to the Securities and Exchange Commission's Office of Economic Analysis Regulation SHO has been a success. Fails to Deliver were being reduced under SHO and Companies with threshold level fails was likewise being significantly reduced. The problem is, data provided on the SEC web site tells of a significantly different phenomenon. Since Regulation SHO first became law failures in the system have only gotten worse. Regulation SHO changed nothing, except maybe the mechanisms for the fraud.

Prior to Regulation SHO fails to deliver, according to DTCC's Larry Thompson, had been stable. In the 4th Quarter of 2004 that appeared to change as the fails skyrocketed just prior to the January 2005 incorporation date. Since January 2005 the level of fails had simply become more volatile. The volatility followed the markets as the markets have become volatile and the volatility insinuates a change.

Prior to Regulation SHO there was no market practice of closing out fails and as such fails simply persisted on the books. Now that Regulation SHO became law, old fails had to be covered and new fails had to be covered faster. Small raids on the market replaced the persistence over time. The elimination of the tick rule and the most recent market volatilities exacerbated the volatility of short raids using massive FTD's. The other change came via the options market. Where fails would no longer be tolerated in the equity market, investors simply took their business over to the options market and utilized the OMM exemption to replace their prior equity fail position. Soon, November 2007 became the new high water mark exceeding anything seen previously.

January 2005 represented a month where the average level of fails was maybe 750,000 shares. December 2007 averaged greater than 1 Billion shares or a 33% increase.

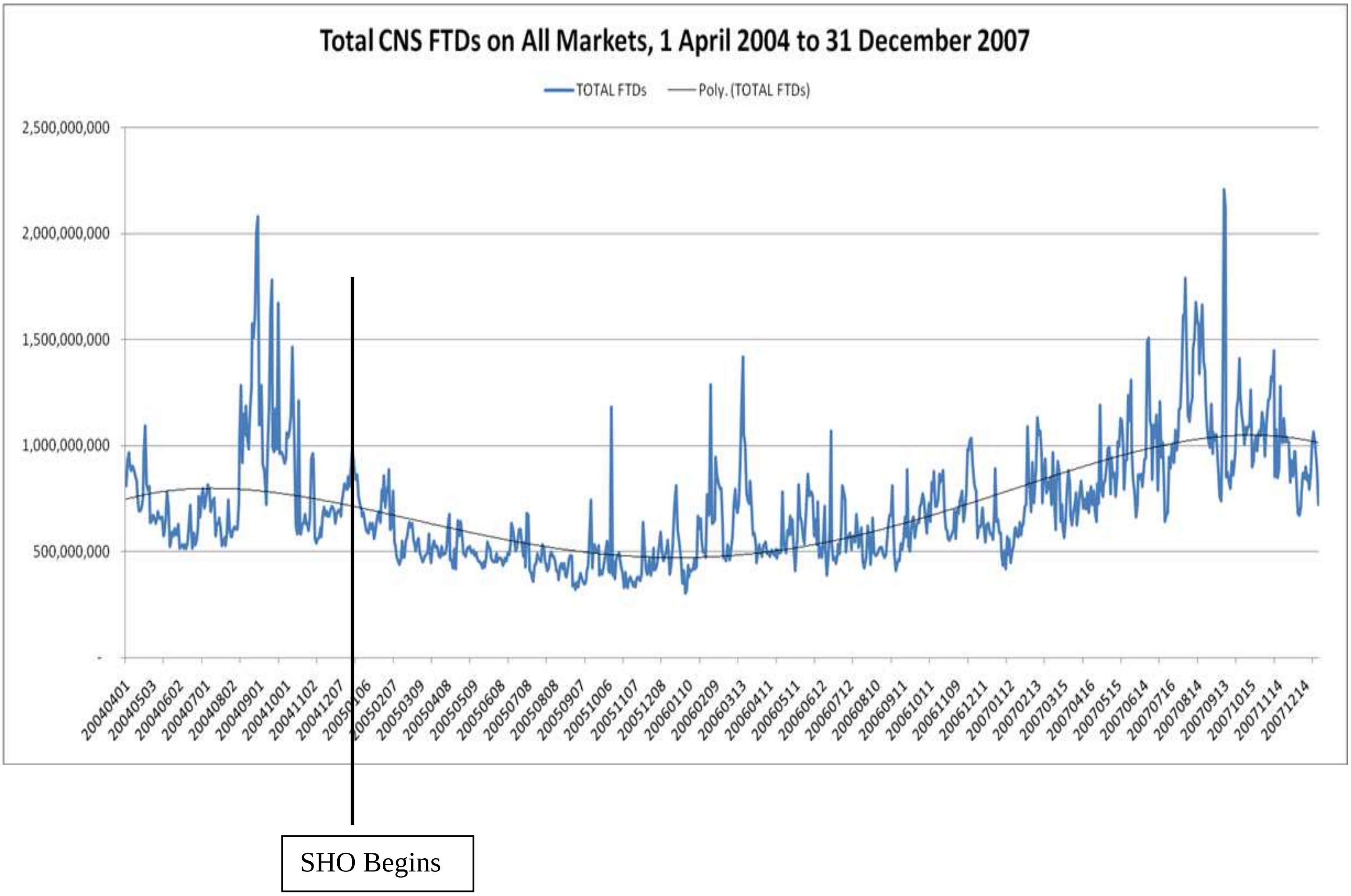
As the SEC's Division of Enforcement decides whether or not they want to step up to the plate and enforce existing laws, the SEC's Division of Market trading has stalled on a ruling that would close out the options market venue the equity fraud was moved into. Rumor now has it that this change will be most likely proposed next month but that the proposition will not be the elimination of the exemption but a lesser option. The SEC will allow for some delay in closing out the OMM hedge into the equity market and in doing so you can expect to see little change in this chart and the volatility of the aggregate total we see drifting higher.

In 2004 James Brigagliano told member firms during an SIA conference on SHO that January 2005 was to be the high water mark for fails to deliver in the system. Unfortunately Mr. Brigagliano's expectations could not be further from reality. January 2005 was not the high water mark but a mark closer to the low tide. The low tide stench caused by poor decision-making and procrastination will remain until such time as the SEC Commission as a whole addresses this issue once and for all.

The chart below tells the real story - not the story disseminated by the Commission to the public.

Remember, a failed trade represents a mark-to-market liability. Bear Stearns is proof positive that capital reserve cannot cover a run on the bank. Similarly, **mark-to-market does not represent the true cost of settling failed trades.** It is not a short squeeze the SEC is most concerned with, it is the squeeze of net capital that will hit the member firms should they be forced to cover fails they have not properly accounted for with capital reserve. This is the true cover-up associated with the procrastination.

Dave Patch


Total CNS FTDs on All Markets, 1 April 2004 to 31 December 2007
TOTAL FTDs
Poly. (TOTAL FTDs)
2,500,000,000
2,000,000,000
1,500,000,000
1,000,000,000
500,000,000
-
20040401
20040503
20040602
20040701
20040802
20040901
20041001
20041102
20041207
20050207
20050309
20050408
20050509
20050608
20050708
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20061011
20061109
20061211
20070112
20070213
20070315
20070416
20070515
20070614
20070716
20070814
20070913
20071015
20071114
20071214
SHO Begins