

-----Original Message-----

From: Austin/Shipway

Sent: Saturday, November 15, 2008 10:39 AM

To: Paredes, Troy A.

Subject: Short Sale Proposal

Commissioner Paredes, please find attached a letter addressed to you and also letters to the primary exchanges. These letters lay out in detail a solution to the problem of short selling. While it may be unusual for a member of the public to put forward a rule proposal and have you comment and act on it, these are unusual times. Even the public has a right and an obligation to come forward when they see something wrong and can contribute to a solution - it is not always the government's responsibility.

Regardless of what the market does from this day forward, there has already been a great loss of confidence and trust. Once lost, it may take decades to restore. If we don't do something about it, and do it quickly, we run the risk of completely ruining the engine that ultimately drives our economy. Put another way, can we risk not eliminating this as an issue. I implore you to act on this matter.

Sincerely,

Glen Shipway

The Honorable Paredes
Commissioner, Securities and Exchange Commission

Date: 14 November 2008

Subject: Short Sale Proposal

Dear Mr. Paredes

I have written to the NYSE and Nasdaq regarding the above subject. The two letters are attached. As the subject of this letter suggests it is a proposal to adopt an industry wide rule governing short sales. I am writing to you because, while the exchanges will have the primary role in proposing any changes, in the final analysis it will be your perspective that matters.

The two most recent attempts at controlling short selling i.e. the ban on short selling for some 800 companies that expired in October, and a proposed change banning short selling after a stock was down 20%, suggested to me that there was a search for a quick fix but I had no way of knowing if a structural change was being sought. As a public investor watching a market evaporate before my eyes, I became concerned and set about to find one. The proposal I came up with is actually not complicated but it will take real conviction on your part to make a meaningful change. A whole industry subset and an enormous computer infrastructure supporting its activity, has evolved that represents literally billions of shares a day - arguably, 60 plus percent of the market on any given day. Those interests will resist any change because their very existence and profitability comes from having unfettered access to the trading markets. The only restriction they understand is the physical limitation on how many thousands of orders can be routed into the markets in a second. To the degree a short sale rule alters that unrestricted access, it will be for you to judge what real value this computer driven activity, left as is, brings to the marketplace.

My proposal is really quite simple. It is a market wide solution that deals with turning the negative attributes of short selling into positive ones, addresses settlement issues, increases market transparency and improves regulatory control. The obvious question is how easy would it be to accomplish? I am not a systems expert, but this proposal utilizes existing indicators on orders and follows the logic already resident in exchange systems to track the various market rebate schemes and the inside market. Therefore, my answer would be some effort but not a lot - certainly it would take less time to program than it will take the Commission to approve the rule.

I cannot begin to estimate the possible resistance within the SEC to change something that took many years to analyze, weight the consequences and eventually adopt a rule decoupling short selling from the up tic rule and bid test. Nevertheless, I hope the Commission will give this proposal serious consideration because quite frankly doing nothing or not making a meaningful change jeopardizes the financial markets and the well being of the country. I only suggest that you approach the subject with at least the thought that the ability to sell short is neither a basic law of economics nor a God given right.

If you have any questions or comments you may reach me through the contact information below. Thank you in advance for your consideration of this critical issue.

Glen Shipway

6 Bristol-town Rd

Southbury, CT 06488

203-262-6159

Email: [shipway6159@earthlink.net]

Attachments

Copies to:

Hon. C. Cox, Chairman, SEC
Hon. L. A. Aguilar, Commissioner, SEC
Hon. K. L. Casey, Commissioner, SEC
Hon. E. B. Walter, Commissioner, SEC
Mr. R. Greifeld, CEO, Nasdaq OMX
Nasdaq OMX Board of Directors (c/o Mr. Greifeld)
Mr. D. Niederauer, CEO, NYSE Euronext
NYSE Euronext Board of Directors (c/o Mr. Niederauer)
Mr. R. Ketchum, CEO, NYSE Regulation
NYSE Regulation Board of Directors (c/o Mr. Ketchum)

Robert Greifeld, Chief Executive Officer, NASDAQ OMX

Date: 13 November 2008

Subject: Short Selling

Dear Mr. Greifeld

The performance of the equity markets in the past two months has been unlike any that I have seen in my 35 years of experience. It is hard to put a finger on any one specific reason for what is causing this volatility in the extreme and rapid devastation of market values but there are many forces in play today that did not exist in the past market declines. The ones that come to mind specifically and in no particular order of priority are (1) unprecedented amounts of money coming into the market through unregulated hedge funds, (2) computer programs designed to detect minute changes in prices, generating millions of orders and then immediately reversing the same (3) other computer programs generating similar orders seemingly for no other purpose than to arbitrage between various market rebate schemes (4) a 1 cent spread in stocks that was intended to save investors money, has in actuality made (2) and (3) above, possible - along with other high volume, low monetary risk trading strategies (5) a benign, plain vanilla instrument, the home mortgage, was bundled into highly leveraged esoteric products that were virtually impossible to evaluate accurately; the market for which eventually collapsed, creating a credit crisis of global proportion (6) the financial sector and banks in particular, were always the bedrock of support in previous bear markets - they are now the problem and in no position to provide liquidity or support of any kind (7) individual stocks frequently in a free fall with no real industry back stops and (8) unrestricted short selling. This is a deadly set of circumstances to counter, particularly combined with the current deteriorating economic and credit scenarios. Just a short six weeks ago the US stock market was arguably the last real source of liquidity in the world. Very few people understand that. It is no wonder that when the slightest bit of negative information appears, whether real or perceived, the forces of supply will instantly overwhelm whatever little buying interest might appear. One of your listed companies, Constellation Energy (CEG), an electric and gas utility, is a good example. It went from 47 to 13 in less than a few hours. I would not be surprised to see a high value American company literally sold down to zero simply because buyers failed to appear in the seconds that it takes for a stock to be overwhelmed. When an event like that occurs, the stock never fully recovers and more importantly, the confidence in the market is severely shaken. I believe unrestricted short selling is one major contributor to this type of volatility. It is creating a lack of trust and confidence which, once lost, may take decades to restore. If we don't do something about it, and do it quickly, we run the risk of completely ruining the engine that ultimately drives our economy. I believe I have a solution for at least this element of the problem and it's a simple one.

I am writing to you because Nasdaq has an enormous stake in a resolution that satisfies your important issuer constituency, their stockholders and the investing public. I have been associated with the securities industry for 35 years, a former officer of your company and a life long investor in US companies. I think I understand how markets

work but even I have had my confidence shaken wondering if you can take back control of the market. I do know it will require meaningful change – change that will require an industry wide solution and change that will pose an inherent conflict of interest in advancing any proposal that might reduce transaction volume on your trading system. I believe you and your Board have the stature and ethics to drive that change.

Background for the Proposal:

When the SEC changed the short selling rule, the impact of their careful step by step lifting of restrictions, were evaluated during an unprecedented bull market. There were (1) no extended periods of extreme volatility (2)no key industries on the brink of disaster with large numbers of individual companies facing a high degree of future uncertainty - particularly the financials which are interconnected with other companies and industries and (3) no extended decline in the overall market. None of these three components were present to test the impact of unrestricted short selling and it is this kind of environment we find ourselves in today. Also, I believe there had to have been an assumption by all concerned that buying interest would always appear to stop a decline in a stock. Lastly, during other major declines in the market, the up tic rule and the bid test were in effect; and specialists and market makers were still present and acted as a backstop. Both aspects played some role in ameliorating declines. Those positive forces that were in play then, are now gone, and we are witnessing firsthand what the old adage of “sell to whom?” really means.

In my opinion, the current system of unregulated short selling does not support what the proponents of short selling have always claimed, i.e. short sales reduce volatility, add to liquidity and act as a check on overpriced securities. I agree in principle with the latter but the notion that hitting bids is somehow adding liquidity and reducing volatility makes no intuitive or logical sense, and is also not fair given the computer driven nature of the market - regardless of what the studies show. Taken in its simplest form, if you have two sellers, one who owns the stock and another, a short seller with a computer program designed to hit bids when a down trend is detected, who do you think will win the race to the bid? I'll guarantee it won't be the investor - and to say that buying to cover a couple of points down neutralizes the original sale is simply false because declines beget more selling, not buyers. This is particularly true in times of a steep decline in the general market. Whatever positive affect short covering has, it will not leave the stock unchanged. Also, I don't believe any study can be designed that takes into account the effect that intraday short selling has on drawing into the market additional selling that might otherwise not occur –both the long sellers, out of fear, and other short sellers. Lastly, it drives other potential investors away from ever participating. What investor of utility stocks is likely to buy CEG in this market?

If short selling is supposed to add liquidity - make it real. I suggest simply following the rules of liquidity that virtually all exchanges and trading systems use to determine who gets paid and who gets charged. i.e. these entities pay those who post a bid or offer and charge those who hit bids and lift offerings. The sharing of market data revenue is even distributed in part to the exchanges supplying the bids and offers creating the inside

market. The exchanges, ECNS and trading systems, all know who is important to the liquidity of any market - those who post the bids and offers. If the short sellers were really the supplier of liquidity, those payment/charge schemes between exchanges and their customers would be reversed. On that basis alone, I think this proposal has validity. The proposal has 6 specific steps. The first three are critical to the success of turning the negative effects of short selling into positive attributes, while at the same time leaving in place the liquidity that is added by the equity and option market makers. The last three, are not essential to accomplishing that mission at the outset, but I believe they strengthen regulation at a critical time and would help short selling meet the important objectives of reducing volatility, adding to liquidity and keeping a check on overpriced securities. If short selling can't do these simple things without creating havoc, then perhaps a ban is the best thing that can happen.

The Proposal:

First: In order to effect a short sale, the seller must post an offering at a price either above the inside ask price, at the inside ask, or at a price that may improve the bid –ask spread; however it may not be at a price point that would trigger an execution. If the market moves coincidentally with the entry of the short sale offering that effectively locks or crosses the market, no execution can take place and the short sale offer is rejected from the system i.e. a short sale can only happen if that short sale offer is lifted.

Second: Leave in place the exemptions for bona fide equity market making and option market making.

Third: Start with enforcing the present delivery requirements. Adopt new rules that: (1) penalize non exempt short sales with an immediate buy in for failing to deliver- no exceptions. If they haven't lined up their delivery requirements before hand, there must be a cost associated with failing to do so and (2) force all non exempt short sales to settle shares for money on a gross basis not net. If that doesn't conform with clearing house rules, change the rules. With the present system and using the example of a stock that has a collective amount of 1 million shares available for borrowing from all sources, tens of millions of shares can be shorted without ever borrowing a single share and making delivery, so long as the short sales are covered on the same day. That is an artificial expansion of supply. If brought to bear rapidly, can and will overwhelm any potential buying interest.

Fourth: Seriously consider the possibility of going to a one day settlement (as a step toward same day settlement). This would remove even more systemic risk than what the three day settlement has already accomplished. We have a micro second trading market and three day settlement-this is gross inefficiency in the extreme. A shorten settlement window would also virtually eliminate the stock loaned/borrowed machinations that go on.

Fifth: Require covering short sales be made through the posting of a bid that may improve the bid –ask spread but not up to a price point that would trigger an execution –

essentially the reverse of the first rule. This adds to the liquidity on the down side and does not artificially increase upside volatility when the stock price starts to recover and the shorts run to cover.

Sixth: The short interest should be calculated and accumulated on a real time basis. It should be either displayed or made readily accessible through a query function. The nature of selling is thus known to all, not just to the person making the short sale. As it stands today, one is always left to wonder if steep declines are the result of holders of stock unloading their shares or is it the result of short selling? That information is important to all classes of investors and adds to market transparency. It would certainly add to the regulators' arsenal of tools – being able to focus on stocks under short selling pressure in general and to help quickly identify potential insider trading.

The Benefits:

1. Unlike an up tic rule or bid test, posting a limit order to sell short does not suffer the same electronic logistics of multiple execution centers attempting to read when a bid or tic is up or down. In this proposal, a short sale offer is either joining the offer side of the market, improving the inside market, or waiting at a higher price to eventually set the inside market as the price moves up. Once resident in the system, its execution would be triggered as any other order.
2. All of these requirements are fairly easy to accomplish. Short sales are still marked on entry and the burden is on the short seller to enter a legitimate offer. Exchanges and other execution systems can and do read the short sale indicator now. It would require programming changes to accept short sales that meet the requirements or to reject them when they do not. Exchanges and other execution systems are currently tracking who to pay and who to charge so this is just a variation on that theme.
3. If a short sale is accurately identified, it is virtually impossible to manipulate a stock down through aggressive naked short selling. The short seller can only initiate a limit order to sell. They cannot initiate a transaction but must passively wait on the buyers.
4. Short sale interest in a stock has historically been a good predictor of overpriced stocks. Oftentimes overvalued stocks get to that state because of the lack of freely traded shares and tightly controlled ownership. This leaves in place the ability to effectively “increase the supply” of stock through short selling. It is a value worth preserving.
5. Posting a limit order to sell does add liquidity. Selling short at the bid does not.
6. Reintroduces an element of risk to short selling that has all but been removed- particularly in times of steep market declines and with computers driving the decision and order initiation process. With this proposal, a short seller has to be right about the price of the stock and perhaps suffer a momentary loss rather than just being able to step into the middle of a decline with little or no risk.
7. If the volume is tracked with a short selling component identified, all market participants, including the regulators, will know the nature of the selling interests on a real time basis, not some static end of month number.

8. Returning to a tic test or a bid test, would be better than not doing anything but that approach doesn't address the issue of short selling adding to downside volatility in the straight forward manner that this proposal does. Hitting a bid, even an up bid, does not add to liquidity. It will still be a race to be first. It is not as if short sales wait politely in line until all long sales are effected at any given price point and then go off. Also, as mentioned previously, the bid test suffers from the logistical problems associated with multiple execution centers accurately reading an up or down bid.
9. Short sales make up a significant portion of any exchange's overall mix of business and any regulation will have some negative effect on volumes. However, the integrity of the marketplace should outweigh the monetary advantages associated with higher volumes. A solution to deal with short sales in a fair and equitable manner will go a long way to restoring trust in the market, for issuers and the investing public.

I have not attempted to address every detail or potential critique that would naturally come from a thorough examination of any proposal but I have sought rather to lay out a basic concept. Undoubtedly, the adoption of any change to the rules will require the input from many sources and certainly by persons far more intelligent than I on the rule making intricacies. My interest is in seeing this market survive the test it is being put through and in keeping politics out of the decision process – it is complicated enough already. If this subject is taken up by an industry committee and there is a need to have a member of the investing public involved, feel free to call upon me.

Disclosures

In the interest of disclosure, I own equities, preferred stock and closed end funds all of which are subject to this proposal. Also, I am an independent public director of NSX, a member of their Regulatory Oversight Committee and Chairman of the Exchange's Audit Committee. I have not consulted them on my writing this letter. These are my opinions and are being expressed by me as a private citizen. They come purely from my perspective and experience gained as a former practitioner and supervisor of a proprietary trading firm, engaged in all aspects of short selling, as a former regulator of the NASD and Nasdaq, as the former CEO of a partnership engaged in the development of an electronic trading system, and currently as an active and engaged board member of NSX, an electronic exchange as well as a member of the investing public.

Lastly, I have no proprietary interest or pride of ownership in these ideas. If you see merit in what you have read please use them in whatever way you see fit. If you have any questions or comments you may reach me through the contact information below.

Thanks and good luck on solving this important issue.

Glen Shipway

6 Bristol-town Rd

Southbury CT 06488

203-262-6159

[shipway6159@earthlink.net]

CC: Securities and Exchange Commission

Mary Schapiro, FINRA

Board of Directors, NASDAQ OMX

Duncan L. Niederauer, Chief Executive Officer, NYSE Euronext
Richard G. Ketchum, Chief Executive Officer, NYSE Regulation Inc

Date: 13 November 2008

Subject: Short Selling

Gentlemen,

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own NYSE listed stocks because I know they have met the highest financial standards but even I have had my confidence shaken wondering if you can take back control of the market. I do know it will require meaningful change – change that will require an industry wide solution and change that will pose an inherent conflict of interest in advancing any proposal that might reduce transaction volume on your trading system. I believe both of you have the stature and ethics to drive that change.

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In my opinion, the current system of unregulated short selling does not support what the proponents of short selling have always claimed, i.e. short sales reduce volatility, add to liquidity and act as a check on overpriced securities. I agree in principle with the latter but the notion that hitting bids is somehow adding liquidity and reducing volatility makes no intuitive or logical sense, and is also not fair given the computer driven nature of the market - regardless of what the studies show. Taken in its simplest form, if you have two sellers, one who owns the stock and another, a short seller with a computer program designed to hit bids when a down trend is detected, who do you think will win the race to the bid? I'll guarantee it won't be the investor - and to say that buying to cover a couple of points down neutralizes the original sale is simply false because declines beget more selling, not buyers. This is particularly true in times of a steep decline in the general market. Whatever positive affect short covering has, it will not leave the stock unchanged. Also, I don't believe any study can be designed that takes into account the effect that intraday short selling has on drawing into the market additional selling that might otherwise not occur –both the long sellers, out of fear, and other short sellers. Lastly, it drives other potential investors away from ever participating. What investor of utility stocks is likely to buy CEG in this market?

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Disclosures

In the interest of disclosure, I own equities, preferred stock and closed end funds, all of which are listed on the NYSE and would be subject to this proposed rule change. Also, I am an independent public director of NSX, a member of their Regulatory Oversight Committee and Chairman of the Exchange's Audit Committee. I have not consulted them on my writing this letter. These are my opinions and are being expressed by me as a private citizen. They come purely from my perspective and experience gained as a former practitioner and supervisor of a proprietary trading firm, engaged in all aspects of short selling, as a former regulator of the NASD and Nasdaq, as a former CEO of a partnership engaged in developing an electronic trading system, and currently as an active and engaged board member of NSX, an electronic exchange as well as a member of the investing public.

Lastly, I have no proprietary interest or pride of ownership in these ideas. If you see merit in what you have read please use them in whatever way you see fit. If you have any questions or comments you may reach me through the contact information below.

Thanks and good luck on solving this important issue.

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6 Bristol-town Rd

Southbury CT 06488

203-262-6159

[shipway6159@earthlink.net]

CC: Securities and Exchange Commission

Mary Schapiro, FINRA

Board of Directors, NYSE Euronext