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

Dear Secretary Morris:

I thank you once again for yet another opportunity to comment on the proposed amendments to Reg SHO this time in regards to the tightening up of the options market maker exemption which we all know was designed to assist bona fide "hedging" activities only. As you well know the exploitation of this loophole has served as the foundation for the theft of perhaps many billions of dollars of investor funds from unknowing "Mom and Pop" investors. In any society there is always going to be a criminal element within any given profession that attempts to perpetrate theft by leveraging their superior knowledge of the laws regulating that profession and their knowledge of the locations within that body of law of the inevitable disparities between the "spirit of the law" and the "letter of the law" over those non-professionals with a lesser knowledge base. In the end, however, premeditated theft is still premeditated theft no matter how "clever" the modus operandi is.

In regards to the options market maker abuses I think several of the SEC's recommendations have merit and it is encouraging to see that the SEC seems to have a firm grasp on the abuses being perpetrated through the nonstop sale of "Puts" and the constant "Rolling" of these positions from month to month for purposes CLEARLY unrelated to bona fide "hedging" activity. Further it is extremely obvious that upon expiration of any option any hedging maneuvers utilizing exemptions from the securities laws must be unwound coincident with the expiration of the option.

In regards to naked short selling and delivery failure related abuses the options market maker abuses are indeed a source of major concern BUT even with Reg SHO in effect the day to day abuses being perpetrated by the EQUITIES market makers in usually development stage issuers undoubtedly dwarf the level of criminal activity we see daily in the options markets. What is very frustrating to securities scholars and market integrity proponents alike is that these abuses are very easy to detect and to deter by any **WILLING AND UNCONFLICTED** SRO or regulator via both legislation and regulation.

It starts with a theoretically "Bona fide" MM that has been **ENTRUSTED** with the incredible power to legally "inject liquidity" by naked short selling into a market characterized by more buy orders than sell orders. This is especially appropriate in the markets of "thinly traded securities". The MM then should label this sale as "Short sale exempt" i.e. "Exempt" from a "pre-borrow" or a "Locate". This exemption was made

available so that truly bona fide MMs could **QUICKLY** i.e. not having enough time to borrow shares, react to large buy and sell order disparities in order to buffer violent and unsustainable swings in share prices. Bona fide market making is a very good thing. The labeling of these sales as "Short sale exempt" tells the regulators that this particular short sale was done by a MM attesting to the investing world that it was acting in a "Bona fide" market making capacity worthy of accessing this powerful but universally abused exemption from borrowing. The question then becomes did this MM access this exemption legally while truly acting in a bona fide market making capacity or illegally while acting as a predatory MM accessing the "Ultimate paradox" (explained below).

This question is easily answered by noting how quickly the MM in question covered this naked short position as a truly bona fide MM covers these naked short positions by also "injecting liquidity" into falling markets characterized by sell orders dwarfing buy orders. If after a specified time period the MM has not covered and the share price is perhaps 10 or 20% below the level at which it naked short sold shares while theoretically acting as a "bona fide" MM then this MM, BY DEFINITION, ACCESSED THE EXEMPTION FROM A "PRE-BORROW" OR "LOCATE" ILLEGALLY AS ANY TRULY BONA FIDE MM SURELY WOULD HAVE "INJECTED LIQUIDITY" FROM THE BUY SIDE AND COVERED HIS PREEXISTING NAKED SHORT POSITION AS THE SHARE PRICE FELL AND THE INJECTION OF "BUY SIDE" LIQUIDITY WAS NEEDED. This information is easily gleaned from studying the trading data. In fact it literally jumps off the page at any **WILLING AND UNCONFLICTED** SRO or regulator truly interested in providing "investor protection and market integrity".

The problem is that the NSCC subdivision of the DTCC has the heinous policy I refer to in my books as the "Ultimate paradox" which allows their "Participants"/owners to sell nonexistent shares and actually be allowed to access the proceeds of the sale (Mom and Pop's investment money) as well as their commissions despite the fact that the seller continually refuses to deliver that which it sold. Yes you read that correctly. All that the NSCC mandates is that the naked short seller collateralize his position on a daily "marked to market" basis. Thus as the share price predictably plummets from this obviously illicit activity and illegal accessing of this powerful exemption the proceeds of the sale are unconscionably allowed to flow into the pockets of the naked short sellers DESPITE THEIR CONTINUOSLY REFUSING TO DELIVER THAT WHICH THEY SOLD EVEN IN FALLING MARKETS WHERE THE INJECTION OF "BUY SIDE" LIQUIDITY IS NEEDED.

Now one might ask him or herself how the regulators and SROs mandated to provide "Investor protection and market integrity" could allow a temptation to commit fraud this blatant to become not only a possibility but a reality apparently not worthy of rigorous scrutiny for abuses. Here is where the frustration arises. Any **WILLING AND UNCONFLICTED** SRO or regulator could nip these crimes in the bud by merely auditing the fate of short positions generated by theoretically bona fide MMs whose sell orders are labeled "Short sale exempt". If the share price has dropped without any covering then the "Ultimate paradox" was obviously and intentionally being accessed for the purposes of premeditated theft. Truly "Bona fide" MMs inject liquidity from BOTH

the buy and sell sides with the same zeal when these disparities occur. The problem with the "Ultimate paradox" being a reality is that selling "shares" even when they don't exist MAKES money in this corrupt system in place at the DTCC while buying shares back COSTS money. The decision making process of an abusive MM goes like this; do I want more money or less money. Truly "Bona fide" MMs are happy living off of the "spread" between the "bid" and the "ask". Predatory MMs intentionally steal money from investors by accessing the "Ultimate paradox" generously provided by the DTCC management without any contesting from the SROs or the SEC. Predatory MMs intentionally bankrupt corporations, cause the loss of untold numbers of jobs and stifle development of medical and technological breakthroughs. Why? Because they are aware of the "Ultimate paradox" and the fact that the SROs, the DTCC and the SEC can all be counted on to allow the massive **conflicts of interest** on Wall Street to remain securely in place such that something as heinous as the "Ultimate paradox" remains as the status quo.

In this day and age of our theoretically highly regulated markets how can the "Ultimate paradox" be a reality? It has to do with the fact that there are indeed LEGITIMATE reasons for delivery delays beyond the T+3 deadline and the system needs to accommodate these. As the door swings shut behind these LEGITIMATE delivery failures entering the "Continuous Net Settlement" system of the NSCC the abusive DTCC participants and their co-conspiring usually unregulated hedge funds have learned that they can sneak their "**intentional"** delivery failures (Dr. Leslie Boni's 2003 research phraseology) inside the NSCC by "Painting" their intentional delivery failures as LEGITIMATE. How can they get away with this? Because no regulator or SRO in the system is monitoring for the "Legitimacy" of delivery failures and therefore the "Legitimacy" of the accessing of the exemption from making a "Pre-borrow" or "Locate". In essence it doesn't take a lot of "paint" to pull off these "forgeries".

Now the question becomes why in the world would the NSCC management knowing that the "Legitimacy" of delivery failures is not being monitored allow their participants/owners to access the funds of investors even though they have continually refused to deliver that which they sold. After all, the worldwide authorities on clearing and settlement systems from the Group of 30 to the Bank for International Settlements (BIS) to the International Organization of Securities Commissions (IOSCO) all recommend that clearance and settlement systems be based upon a "Delivery Versus Payment" or "DVP" foundation i.e. if you don't "Deliver" that which you sold you don't get access to the "Payment" of the investor. The answer to this question may have something to do with the fact that if the DTCC management wants to retain their jobs then they'd probably better do what the owners/participants of the DTCC will that they do.

Thus something as heinous and corrupt as the "Ultimate paradox" becomes the very foundation for our clearance and settlement system since even if that which you sell doesn't exist and obviously never gets delivered you still are granted access to the unknowing investor's funds. In essence, the DTCC management is facilitating the handing out of free money to its participants and their co-conspirators. Unfortunately it

is the money of the much less financially sophisticated investors that thought they were buying legitimate "Shares" of a U.S. domiciled corporation. Why might abusive DTCC participating MMs be willing to prostitute themselves in this fashion? This might be due to the fact that the hedge fund community currently pays $10 billion annually in commissions and fees to the DTCC participating MMs, clearing firms and prime brokers willing to be the most "Accommodative" to the needs of the hedge fund advisors.

The obvious solution to this dilemma is to base the clearance and settlement system upon "Delivery Versus Payment" as nearly unanimously suggested by the relatively UNCONFLICTED world's leading authorities on clearance and settlement systems. If a LEGITIMATE delivery failure of a couple of days really is an accurate characterization then just hold off on paying out the commissions and granting access to the investor's funds UNTIL "Good form delivery" occurs. What's the hurry? Why incur the systemic risk associated with extending credit?

Another approach would be to minimize the number of LEGITIMATE delivery failures so that "Intentional" delivery failures stick out like a sore thumb. In the case of selling "Deemed to be owned" Rule 144 shares why not wait until the restrictive legend is properly removed before allowing the sale to occur. This would be analogous to how Reg SHO mandates that convertible instruments like convertible debentures be converted into the underlying shares BEFORE the holder is deemed to "Own" the securities. This tiny adjustment would help deter the frauds currently being perpetrated with Rule 144 shares. These simple suggestions should not exactly be considered rocket science to **WILLING AND UNCONFLICTED** SROs and regulators that are not beholden to the well-moneyed powers that be on Wall Street i.e. to "non-captive" regulators.

So what's the big deal in allowing "intentional" delivery failures to build up in the system? Don't these crooks "Eventually" have to cover these positions? The big deal is that each and every unaddressed delivery failure in the system leads to the procreation of what are referred to as "Securities entitlements" as allowed by the Uniform Commercial Code Article 8. Although they are technically not "Shares" with voting and other rights attached they are treated on Wall Street as being readily sellable by their purchasers. These incredibly damaging "Securities entitlements" dilute a corporate issuer's share structure by increasing the number of readily sellable legitimate "Shares" and/or mere "Securities entitlements". The total of these two items represents the "Supply" variable of "shares/entitlements" that interacts with the "Demand" variable to determine share price. An artificially inflated "Supply" variable that interacts with an artificially diminished "Effective demand" variable results in share prices well below where the unmanipulated share price would be. "Effective demand" refers to the "Demand" that makes it all the way into the market to interact with the "Supply" variable. If most buy orders are met and cancelled with naked short sales then the "Effective" demand is much less than the total "Demand" variable is. When a grossly inflated "Supply" variable interacts with a grossly diminished "Effective demand" variable then share prices will be grossly diminished and "Pricing efficiency" goes out the window. Since most yet to be cash flow positive development stage issuers under attack need to raise money to pay their monthly "Burn rate" by constantly going to the market and selling shares at

sometimes steep discounts to grossly diminished levels then naked short sellers can easily force the share price of a victimized issuer into a "Death spiral" by merely flooding their share structures with naked short sales and their resultant "securities entitlements".

Thus the premeditated selling of nonexistent shares and the refusal to deliver that which has been sold i.e. accessing of the "Ultimate paradox" becomes no more than a sophisticated form of theft since the intentional build up and maintenance of astronomic levels of mere "Securities entitlements" both at the DTCC and in "Ex-clearing" locations sets up the self-fulfilling prophecy of the share price spiraling downwards UNTIL that which was sold is finally delivered to the purchaser.

The regulators and SROs become complicit in this theft when they refuse to disclose to prospective investors the exact number of mere "Securities entitlements" held at the DTCC and in "Ex-clearing" locations. There is no bit of information more "Material" to the prognosis for an investment than this. Our current clearance and settlement system relegates all investors to "buying a pig in a poke" as astronomic levels of unaddressed delivery failures preordain many corporations to an early death. The irony here is that the SEC mandates that every tiny "grain of sand" of risk associated with an investment in a corporation be revealed BY AN ISSUER in a company's "Prospectus". Yet the SEC and the SROs know, or should know, the exact number of unaddressed delivery failures held at the DTCC and in "Ex-clearing" formats and they refuse to "Disclose" as mandated by the "33 Act (the "Disclosure Act") this very "Material" information to prospective investors in an effort to circumvent these premeditated thefts.

The SEC and the SROs after all of these decades of overseeing these thefts now have two clear options left. You can either warn all investors of the number of mere "Securities entitlements" poisoning the share structure of the various issuers or you can mandate that they once and for all be promptly bought in never to be allowed to build up in numbers like this again. There is no safe middle ground left from which to simply oversee these thefts while sitting on your hands.

Due to the critical importance for both investors and regulators of becoming educated in the discipline involving the study of naked short selling and delivery failure related abuses I'd like to share the first 10% of my fourth book on this subject with you in this forum. I have had the good fortune to be able to dedicate the last 26 years of my life to the study of this discipline so that investors, management teams and any **WILLING BUT UNCONFLICTED** SROs and regulators can learn just how "rigged" our markets currently are for especially the relatively defenseless development stage issuers trading "over the counter".

THE DTCC: IS IT THE MOST "EFFICIENT" FRONT FOR ORGANIZED THEFT CONCEIVABLE?

INTRODUCTION

The SEC has a Section 17A (a) (2) ('34 Exchange Act) mandate wherein Congress directed the SEC **"having due regard for the public interest, the protection of investors, and the safeguarding of securities** to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities". (Section 17A (a)(2), 1512 U.S.C. 78q-1(a)(2). "Congressional intent" was crystal clear as was the partially causative role for the "Great Depression" attributed to naked short selling and delivery failure related abuses orchestrated through "Syndicates" or "Dark pools" of money similar to how many of todays lightly- or unregulated and highly leveraged hedge funds operate. The "Great Depression" in turn precipitated the promulgation of the '33 and '34 Acts. One of the main Congressional mandates of the '34 Securities Exchange Act was "To rid the markets of short selling abuses". The prompt "Settlement" of stock transactions and not the perhaps one thousand times less critical "Prompt clearance" of transactions involving the mere matching of trade data forms the cornerstone of any clearance and settlement system which in turn forms the foundation for a country's financial system.

The study of naked short selling and delivery failure related abuses is thus a critical subject to acquire a working knowledge in as I am a firm believer in the euphemism that "Only education will bring about eradication" of this undeniably brilliant but incredibly heinous form of securities fraud/theft/counterfeiting. The all important legal definition of "Settlement" as in the congressionally mandated "Prompt settlement" of transactions in securities is: *"The **conclusion** (emphasis added) of a securities transaction; a broker/dealer buying securities pays for them; a selling broker **delivers** (emphasis added) the securities to the buyer's broker."* In short, "Settlement" is defined as "Delivery versus payment" or "DVP". The term "Delivery in good form" or "Good form delivery" further refines the definition of "Delivery" in that what is being "Delivered" must have no "Adverse Claims" or legitimate grounds for "Adverse claims" against it (we'll review these in detail later), it must be unencumbered and without any outstanding liens against it, it must not have been illegally "counterfeited" or the product of fraudulent conveyance, it cannot be simultaneously "hypothecated" elsewhere, it cannot have any unaddressed restrictive legends, it must qualify as a "Security", etc. On Wall Street there is "Delivery" and in the legal world and in the world of an issuer's transfer agent and registrar there is "Good form delivery". At the NSCC subdivision of the DTCC there is a 3rd type of "Delivery" which I refer to as "Pseudo-delivery". This is the type of "Delivery"/counterfeiting evidenced when the shares borrowed to "cure" a delivery failure come from an unmonitored self-replenishing "lending pool" of securities like that of the DTCC's "Stock Borrow Program" (SBP) wherein the newly "delivered" but borrowed shares used to "cure" a delivery failure are insanely allowed to be replaced right back into the same SBP lending pool by the new purchaser's brokerage firm as if they never left in the first place. There this very same parcel of shares albeit now with a new "beneficial owner", the purchaser of the shares involving the delivery failure, but the same old "legal owner" i.e. the DTCC's nominee "CEDE and Co." sits ready to bail out yet another delivery failure. One can readily see the similarity to a "Ponzi" scheme or "House of cards" that would come tumbling down if savvy investors merely demanded the "Good form delivery" of their paper-certificated shares which the DTCC and SIFMA (the securities industry lobbyists that allegedly lobbied intensely for the "Grandfather clause") are

frantically trying to rid entirely from the system for reasons theoretically involving "Enhanced efficiencies". Without this "Benchmark" or "Metric" for the number of legitimate "Shares" actually held at the DTCC then prior acts of blatant securities fraud/counterfeiting could be yet once again swept under the carpet in a fashion comparable to the ill-fated "Grandfather clause" that investors wouldn't stand for.

CRITICAL HISTORY

The NSCC division of the DTCC was created by the amalgamation of the subsidiary clearing agencies of the NYSE, AMEX and NASD (OTC securities) in the 1970s. The theory was that a less-fragmented clearing and settlement system would be more "Efficient" especially with the volume of trading picking up which resulted in 1969's Wall Street "Paperwork crisis" that nearly induced a system-wide melt down because of the brokerage firms' back offices inability to keep up with the paperwork associated with these greatly enhanced trading volumes. The obvious risk feared by both the SEC and the Anti-trust Division of the DOJ in registering this new "NSCC" as a "Registered Clearing Agency" was whether or not the NSCC management and/or any NSCC "Participants" would attempt to leverage their new found "Monopoly" powers over the investors they serve as the "Gatekeepers" to our markets for.

From 1975-1983 the DOJ and the SEC deliberated as to whether or not the risk of monopoly-related abuses was worth taking in exchange for a less-fragmented clearing system. The decision was made to cross fingers and go ahead and register the NSCC as a "Registered Clearing Agency" and hope that their management and "participants/owners" would "Act in good faith" with this new found monopolistic power so often the subject of abuse as seen throughout history. As the U.S. clearance and settlement system evolved the DTCC which is basically a "Holding company" and two of its main subsidiaries namely the NSCC and the DTC both before and after they amalgamated in 1999 to form the DTCC have been very busy promulgating various rules and regulations ostensibly as part of their never-ending quest for "Enhanced efficiencies". In these quests they have either been mandated by acting as an "SRO" (Self Regulatory Organization) or have been appointed or have volunteered to act in about 19 different "Efficiency enhancing" capacities and thus they were to assume and perform on about 19 separate responsibility-laden "Task lists" as it were **INEXTRICABLY TIED** to all of these "Efficiencies" being implemented.

In retrospect, one question that arises is has the SEC been showing this **"Due regard for the public interest, the protection of investors, and the safeguarding of securities"** mandated by Congress as they continually signed off via their Section 19 b ('34 Act) SRO "Oversight" (New rule screening) responsibilities on **ALL** of these theoretical "Efficiency enhancing" measures while the DTCC monopoly was **CLEARLY** morphing into a self-serving although perhaps *efficient* "Front"/"Straw man"/"Nominee" facilitating the meticulously organized theft of the investment dollars of the less market savvy "Mom and Pop" American investors.

When Congress added Section 3(f) to the '34 Exchange Act in 1996 the SEC was mandated while reviewing any proposed rule by a "Registered Clearing Agency" like the NSCC subdivision of the DTCC to determine whether or not the rule was necessary or

appropriate in the **public interest**, for **investor protection** and whether the action "will promote **efficiency**, competition and **capital formation".** Another question that arises is has the SEC successfully **COMPLETED** their congressionally mandated task of facilitating the "Establishment of a national system for the **PROMPT** and accurate clearance and **SETTLEMENT** of transactions in securities" or is this a work in progress that direly needs to be put back on track towards completion by a new generation of WILLING AND UNCONFLICTED regulators and SROs.

As the "Agency" appointed to provide "Investor protection" and "Market integrity" the SEC has held themselves out to the investment community worldwide as being "Expert" in matters related to the securities laws including those pertaining to the intricacies involved in the clearance and settlement of trades done on Wall Street. History has clearly shown us that the SEC has dropped the ball in regards to its "Oversight" duties of the DTCC and our clearance and settlement system in general especially as it relates to the DTCC's theoretical quests for these Section 3(f) **"Efficiencies"** without any concern for Section 3(f)'s acting in the "Public interest" and providing "Investor protection". As far as promoting Section 3(f)'s **"Capital formation"** opportunities history has clearly shown us that development stage issuers going public to accomplish their "Capital formation" needs have been ambushed right and left by abusive DTCC participants not all that interested in **"having due regard for the public interest, the protection of investors, and the safeguarding of securities**." In a recent 14-question "Self-interview" with the DTCC their spokesman made it sound like these companies, the investments made therein and the jobs that they provide were getting wiped off the map by delivery failure related abuses basically because "they had it coming" as he stated**:**

> "According to their own 10K and 10Q reports financial auditor's disclosure statements, many of these firms [complaining of naked short selling and delivery failure related abuses] have admitted that "factors raise substantial doubt about the company's ability to continue as a going concern." They have had little or no revenue, according to their financial reports, and substantial losses, for periods of seven or eight years. One of these companies has been cited for failing to file financial statements since 2001."

Imagine that, these development stage corporations started by entrepreneurial risk takers willing to give up a percentage of their ownership in order to achieve the "Capital formation" needed in order to advance these projects not becoming instant successes while busy dodging the bullets of abusive DTCC participants hellbent on rerouting their shareholders' funds into their own wallets. In an effort to mitigate the above misrepresentation and present a little bit of balance to the comments of the DTCC spokesman a "Going concern" warning by an auditor for a development stage issuer is fairly standard protocol and is thought by many in the business community as a form of a "cover your butt" litigation avoidance modality utilized by almost all auditors.

In a recent motion to dismiss via a demurrer the attorney representing the DTCC participating prime brokers being sued for several billion dollars for delivery failure related and other abuses told the Judge in charge that even the financials of the 2 companies allegedly being attacked by the naked short sellers revealed that the companies weren't doing very well financially i.e. "They had it coming". This is the mindset that development stage issuers seeking capital are up against as they enter upon the publicly traded issuer battlefield. Forget the securities laws, if a company isn't maturing quickly enough it, the jobs it provides and the investments made therein **deserve** to be wiped off the map via the selling of nonexistent shares to unknowing investors followed by the pocketing of the proceeds and the absolute refusal to "Deliver" that which had been sold.

These "Efficiencies" theoretically sought after by the NSCC and DTCC management through the years include acting in the following capacities again theoretically **ONLY** for reasons related to these "Quests" and **NEVER** for any reasons related to perceived or actual "Self-dealing" on behalf of the DTCC's owners/"Participants" by the DTCC management in order to acquire "Leverage" over and access to the funds of the investors that they act in this "Gatekeeping" capacity for.

THE DTCC AND ITS SUBSIDIARIES WERE TO ACT:

1) As the "Central Counter Party" or "CCP" which serves as the "Contra party" to veritably all transactions done on Wall Street. In this capacity the DTCC and NSCC management had attained the **UNFATHOMABLE** power, unfortunately not fully appreciated by the SEC, the DOJ, the state securities regulators or the investment community, to **"DISCHARGE"** the obligations **of its own "Participants"/bosses/owners** acting as the buyer and seller involved in a securities transaction in exchange for the NSCC subdivision of the DTCC **"ASSUMING"** and "**EXECUTING**" on these very same "Obligations" of their members/bosses on behalf of all market participants including the investing public in this purported quest for a more "Efficient" clearance and settlement system for the U.S. markets.

   In other words the NSCC subdivision of the DTCC's role is to "Discharge, Assume and Execute on" ("DAE" on) **OBLIGATIONS** ostensibly **ONLY** for reasons associated with the quest for "Enhanced efficiencies" provided by the U.S. clearance and settlement system since it is based upon the concept of **"Novation"** and the use of "Central Counter Parties" or "CCPs". Of the various modalities available "Novation" has been chosen as the foundation for the U.S. clearance and settlement system as opposed to leaving the payment and delivery "Obligations" in

the hands of the original counterparties to the transaction. The British, for example, use an “Open offer” model which is a combination of formats wherein the “CCP” (“Central Counter Party”) is instantaneously brought into play and there never is a “Contractual” relationship between the buying and selling parties. In clearance and settlement systems based upon “Novation” the “CCP” is to act as an “Efficiency enhancing intermediary” that steps in between the buyer and seller and “Novates” (Creates anew) 2 new “Contracts”. The CCP will act as the buyer to the seller and the seller to the buyer. One of the two new contracts “Novated” promises that the CCP (our NSCC), on behalf of its “Participant” that sold the shares, will “**DELIVER IN GOOD FORM”** the shares on T+3 to the buyer while the other new “Contract” created provides that the CCP, on behalf of its member buying the shares, will deliver the buyer’s cash to the selling party also on T+3. The original “Obligation” to deliver both the cash and the shares **on T+3 remains intact** it only got transferred from a relatively easy to identify, relatively easy to sue and relatively easy to hold accountable pair (one buying firm and one selling firm) of the 11,000 individual “Participants” of the DTCC to the nearly impossible to sue and nearly impossible to hold accountable NSCC subdivision of the DTCC itself, the “Alter ego” of the buying and selling firm as it were, unfortunately made accessible for any individual DTCC participant to assume while perpetrating “Delivery failure” or naked short selling related “Frauds on the market”.

Why is the NSCC so tough to hold accountable? The answer is that as the administrators of our clearance and settlement system they are too inextricably linked to the very foundation of our financial system and any rocking of this gigantic boat, no matter how well deserved, may have untoward consequences in terms of **SYSTEMIC RISK** as well as deleterious effects on the already anemic investor confidence levels in the fairness of our markets. Here’s the first line of the executive summary of the 2003 Group of 30’s analysis of clearing and settlement systems:

“[The] CLEARING AND SETTLEMENT OF SECURITIES IS A CORE FINANCIAL FUNCTION on which [the] fundamental confidence in the financial markets depends.”

How’s that for a “Catch 22”? Our clearance and settlement system is supposed to bring us confidence in the markets and the fact that our clearance and settlement system has been partially co-opted by thieves needs to remain a secret so as not to decrease the confidence levels in our markets. That should provide a lot of comfort to the investors in especially development stage issuers getting stolen from today and tomorrow.

In other words **the DTCC is too important to be sued or held accountable** no matter what crimes the DTCC management may be facilitating, knowingly or unknowingly, on behalf of their individual owners/bosses/”Participants”. The aforementioned “Self-interview” of and by the DTCC reminds us of this with this question and answer:

> ***@dtcc: DTCC and some of its subsidiaries have been sued over naked shorting. What has been the result of those cases?***
>
> **Thompson:** We've had 12 cases to date filed against DTCC or one of our subsidiaries over the naked shorting issue. Nine of the cases have been dismissed by the judge without a trial, or withdrawn by the plaintiff. The other three are pending, and we have moved to dismiss all those cases as well. While the lawyers in these cases have presented their theory of how they think the system works, the fact is that their theories are not an accurate reflection of how the capital market system actually works.

It is thus critical that the two Congressional SEC Oversight Committees, the SEC, the DOJ, the judiciary and the legal and investment community acquire a "Working knowledge" of just how this system works or SHOULD WORK and that is the purpose for this my fourth textbook on naked short selling and delivery failure related abuses as well as my research efforts over the last 26 years as "Only education will bring about eradication" for crimes this heinous in nature. Unfortunately for investors, this "Quasi-immunity" of the DTCC further emboldens the commission of these heinous crimes as abusive DTCC participants feel insulated from any legal or regulatory repercussions since they are but one abusive participant amongst many of the 11,000 b/ds and banks forming the DTCC which in turn has heretofore been treated as being basically "Exempt from the law" due to the DTCC's incredible **"Importance".**

To a lesser degree the largest market making firms in the world enjoy this same "Immunity" since if they should go under from having to cover astronomic levels of delivery failures established while illegally accessing the exemption from borrowing shares before making naked short sales while pretending to be acting as a "Bona fide" market maker then the ripple effect could be far reaching since they service so many "Introducing" broker/dealers and their millions of clients. The concept of "Systemic risk" needs to be appreciated by the student of delivery failure related abuses. The definition of **systemic risk** as held by the International Organization of Securities Commissions (IOSCO) as well as the Bank for International Settlements (BIS) is: *The risk that the inability of one institution to meet its obligations when due will cause other institutions to be unable to meet their obligations when due. Such a failure may cause significant liquidity or credit problems and, as a result, might threaten the stability of, or confidence in, markets.*

Thus the rampant abuses from the past committed before a small fraction of the investing public became aware of the modus operandi of this particular variety of securities fraud has made dealing with it quite problematic from a "Systemic risk" point of view. This immense system of unfulfilled "obligations", a veritable "House of cards" built by abusive DTCC participants and their co-conspirators has indeed reached heights which complicate its dismantling without incurring the risk of untoward systemic consequences as well as potentially painful financial consequences to its main architects. This explains the words of the SEC spokesman commenting about Reg SHO when he iterated that "We didn't want to rewrite history" and that the SEC was concerned about "Short squeezes" in the shares of "Issuers with large amounts of preexisting delivery failures".

When stealing from the very investors that it owes a duty of care to it is much wiser to be acting as one of many DTCC "Participants" in essence granted by birthright access to this

"Circumstantial immunity" due to this **"Importance"** then it is to act as an individual b/d (broker/dealer) that might be held responsible for theft from its clients, perish the thought. The key then is for abusive DTCC participants when cornered to paint the relatively immune DTCC proper as the responsible party for any misdeeds committed by the individual participants while DTCC management stays busy catering to the financial needs of its individual "participants" while constantly disavowing responsibility for massive breaches of the **public trust**. What we end up with is the individual abusive participants being able to access the catch phrase "I was just following the rules and regulations of the DTCC" which were indeed all unfortunately approved by the SEC at one time or another as per the SEC's Section 19 b "Oversight" responsibilities. There is plenty of blame to go around not only to the DTCC management and its abusive participants but also to the SEC and even to unethical management teams trying to orchestrate "Pump and dump" frauds.

Through "Novation" and the use of the NSCC as the "Central Counter Party" the individual **DELIVERY** and payment **OBLIGATIONS** of abusive DTCC participants selling nonexistent shares right and left while constantly refusing to deliver that which they sold is officially but unfortunately **"Discharged"** and now the relatively immune NSCC is on the hook for "Assuming" and "Executing" on these payment and delivery obligations. Picture if you can 2 burglars. One is a massive man representing the DTCC proper and the other is a skinny one representing a DTCC "participant". The massive man's hat says "Immune due to importance" on it. As the 2 come upon a police station while carrying a stolen TV set (the investor's stolen money) in their arms the little guy asks the big guy with the hat to carry the TV in the vicinity of the police station while the little guy catches a cab and arranges to meet up with its partner later. The big partner in essence "Discharged" the obligations of its junior partner to carry half of the weight of the stolen TV in the vicinity of the police station. While passing the police station (SEC headquarters) a couple of officers note the suspicious activity but then notice the inscription on the hat and being ever cognizant of the currently anemic levels of investor confidence in the markets as well as the **"Importance"** of the DTCC let the large man walk by without incident.

Keep in mind that "Executing" on these delivery **OBLIGATIONS** is a totally different matter than merely "Assuming" them and later we'll see how the DTCC management actually has the audacity to plead to be "Powerless" to "**Execute on"** these OBLIGATIONS **even though they were the party that earlier "Discharged" them from their bosses/owners/"Alter ego"** before "Assuming" them as their own "Obligation". That's the risk involved with a clearance and settlement system based upon "Novation" when the "CCP" is a financial "Goliath" wearing an "Immunity hat" whose abusive participants may just choose to "Lever" this immense size and "Importance". The situation is further complicated due to the fact that the SEC did indeed sign off on these "Efficiency enhancing" policies.

Any CCP needs to be large enough to support the **"Trade guarantee"** it provides and with this critical mass and "Importance" what are you going to do if the CCP's management refuses to "Act in good faith" and to "Execute" on the "Obligations" it

recently "Assumed". After all, what can the SEC or Congress do when the NSCC refuses to "Promptly execute" on these obligations that they "ASSUMED" as per the congressional mandate to "Promptly settle" all transactions? Should they fire them and shut down the markets for a year or two until they can find a less **conflicted** party to clear and settle literally quadrillions of dollars worth of trades annually? That's what it means to be "Too important to be sued or held accountable".

This is partly why eventually it will be the relatively unconflicted DOJ that will be providing the currently missing **deterrence** to these crimes as even financial behemoths become a little reticent to steal when a jail sentence is clearly a concern. So what did the SEC and the Congress do when they recently learned that the NSCC does indeed regularly plead to be "Powerless" to follow through on these "Obligations" that they recently "Assumed"? Congress did nothing probably due to their lack of a fundamental understanding of a clearance and settlement system based upon "Novation" and the immense associated SYSTEMIC RISK implications and the SEC opened up "Comment period" after "Comment period" in between which Reg SHO, full of loopholes aggressively lobbied for by powerful securities industry lobbyists as well as the market making community, became the law of the land while sporting a "Grandfather clause" that somehow was never previously discussed.

The very nature of "Novation" mandates that the CCP acting as the new surrogate "Creditor" of these delivery "Obligations" theoretically for efficiency reasons **ONLY**, must be willing to "exercise due care in accordance with reasonable commercial standards" (as per UCC Article 8) **as a creditor or its surrogate would** when the seller of shares absolutely refuses to deliver that which it sold otherwise the CCP/creditor of this debt couldn't follow through on its own "Obligation" to deliver the missing shares to the purchasing party. Recall that the CCP is injecting itself in as an efficiency enhancing "Middleman" with 2 new contracts to fulfill. The "Discharging" of obligations followed by the refusal to execute on the "Assumed" obligations does not promote the "Efficiency" of a clearance and settlement system, especially one based upon "Novation". It promotes and facilitates fraudulent misconduct. When the "CCP" doing the "Discharging" is actually the "Alter ego" of the abusive "Participants" of that "CCP" whose obligations are being "Discharged" then the foundation for a **massive and systemic "Fraud on the market"** is easily recognizable should the "CCP" refuse to **promptly** "Execute" on the obligations it "Assumed". A CCP truly "Acting in good faith" would **CLEARLY** have to "Buy-in" any delivery failures of its members that absolutely refused to deliver that which they previously sold within a fairly tight but not overly restrictive timeframe. Otherwise it **CLEARLY** couldn't "Execute" on its newly assumed "Obligation" to deliver the shares in question to the purchasing party and thus **it was not "Acting in good faith" and in the "Public trust" when it "Discharged" these "Obligations" in the first place.**

Basically the way the game has been played by the abusive participants of the DTCC throughout the history of the DTCC is in this theoretical quest for "Efficiencies" to get as many self-serving rules incorporated into the DTCC's and the NSCC's nearly 800-page book of rules and regulations while the SEC either unaware of the subliminal pattern

forming or acting in complicity rubber stamps everything that crosses its desk and then since the SEC has no power to add to or abrogate (delete from) the rules of any "Registered Clearing Agency" like the NSCC then the individual DTCC participants that choose to misbehave can always profess that they were just following the "Untouchable" rules of the DTCC and NSCC and if the DTCC proper gets into trouble then it can always posit that the SEC already approved of this particular program like the "Automated Stock Borrow Program" and its self-replenishing lending pool of securities or the "RECAPS" program with its ability to extinguish delivery failures and roll back their chronological age to zero. We saw this exact phenomenon in regards to an Amicus brief recently filed by the SEC in a naked short selling case against the DTCC which we'll review shortly.

The DTCC management's possession of the power to "Discharge" the obligations **of their own bosses/owners** represents a **CONFLICT OF INTEREST** beyond description **UNLESS** the SEC responsible for the facilitation of the establishment of this "National system for the prompt and accurate clearance and settlement of transactions in securities" while <u>**"having due regard for the public interest and the protection of investors**</u>", were all over <u>**every single trade**</u> in which the NSCC division of the DTCC refused to PROMPTLY "Execute" on the obligations of their participants which it recently "Assumed" i.e. to follow the congressional mandate "To "**Promptly settle"** all transactions" by T+3 barring any "Legitimate" reason for not meeting this timeframe.

Why is this intense scrutiny by the SEC so critical for the SEC to fulfill its congressional mandate to provide investor protection and market integrity? It's because the DTCC **"IS"** the sum of its component 11,000 participating broker/dealers and banks. Those delivery and payment obligations were transferred from 2 "Fraternity brothers" to the relatively immune from prosecution fraternity headquarters itself which is not "At arm's length" and which is in turn owned by the 2 fraternity brothers as well as 11,000 other fraternity brothers plus the NYSE and the NASD which control the "Preferred shares" of the DTCC. Part of the problem here is that most "Intermediaries" appointed to carry out a task involving the "Public trust" are to act in an unconflicted manner and "At arm's length" from the 2 parties being "Intermediated". Keep in mind that those 2 parties being "Intermediated", the buying and selling broker/dealers, also had fiduciary duties owing as "Agents" receiving a commission from their clients the investors buying and selling shares during the "pre-novation" stage.

One can only imagine the CONFLICTS OF INTEREST present when an organization is given the power to forgive the debts of its component members/owners or the power to indefinitely postpone the payments of those debts until such time that the debts become a moot point i.e. <u>until the unknowing buyer of the nonexistent shares that never got them delivered turns around and sells them to somebody else</u> (usually to cut his growing losses). Thus the time increment between the instantaneous "Assumption" of the obligations and the "Execution" on these obligations is critical for a variety of reasons associated with investor protection and market integrity as well as those reasons regarding the SYSTEMIC RISKS associated with any <u>artificially induced</u> delays between trade date and the date when

delivery of that which was purchased is finally made i.e. the time frame in which "Kiting" or "Free riding" related crimes and abuses occur. Recall that 15c 6-1 of the '34 Act strictly prohibits the artificial extension of the T+3 "Settlement date".

THE "ASSUMPTION" OF LITERALLY QUADRILLIONS OF DOLLARS OF DELIVERY "OBLIGATIONS" ANNUALLY BY AN ENTITY TOO "IMPORTANT" TO BE HELD RESPONSIBLE FOR ITS OWN ACTIONS REPRESENTS AN INVITATION FOR FRAUDULENT BEHAVIOR WITHOUT EQUAL AS HISTORY HAS CLEARLY SHOWN. KEEP IN MIND THAT THE DTCC MANAGEMENT HAS NO QUALMS AT ALL IN PUBLICLY DECLARING THAT THEIR PRIMARY RESPONSIBILITIES ARE TO THEIR OWN "STAKEHOLDERS"/"PARTICIPANTS". THE QUESTION ARISES AS TO WHAT HAPPENED TO THIS "DUE REGARD FOR THE PUBLIC INTEREST AND THE PROTECTION OF INVESTORS" THAT THIS NEW CLEARANCE AND SETTLEMENT SYSTEM ORDERED TO BE ESTABLISHED BY CONGRESS WHILE BEING "FACILITATED" BY THE SEC WAS TO BE BASED UPON?AS HISTORY HAS SHOWN US IT IS VERY DIFFICULT TO SIMULTANEOUSLY PROTECT THE INVESTORS THAT YOU ARE BUSY FLEECING.

As mentioned, in a securities transaction the buyer's broker that charged a commission and therefore is acting in an "Agency" capacity has the fiduciary duty of care to make sure that the client that paid him a commission got "Good form delivery" of that which it INTENDED to purchase i.e. an equity ownership position or legitimate "Shares" in a state-domiciled corporation with an intact "Package of rights" attached. I'll review Rule 15c3-3 and its role later on in this regard. This "Investor advocate" role of the buying b/d was also supposed to be "Assumed" and "Executed" on by this "Contra party" (the NSCC) especially any "Contra-party" ALSO acting as a qualified "Control location" (as per 15c3-3 of the '34 Act) as any fiduciary duty of care cannot be legally "Extinguished" at will even in the name of "Enhanced efficiencies" being provided by a "Central Counter Party" performing its critical role in a clearance and settlement system based upon "Novation".

THE DTCC AND ITS SUBSIDIARIES WERE TO ACT (continued):

1) As the Central Counter Party/"CCP" in the United State's "Novation-based" clearance and settlement system (as described above).

2) **As the party chosen by the SEC to effect the Section 17 A congressional mandate** to "Promptly settle" all transactions ("Settlement" necessitating the "Good form delivery" of that being purchased; also referred to as "Delivery Versus Payment" or "DVP") while **"having due regard for the public interest, the protection of investors, and the safeguarding of securities."** The "Prompt settlement" of all securities transactions congressional mandate when overlain with the NSCC's "CCP" duties

described above in #1 is tantamount to the "Prompt execution" by the NSCC on the recently "Assumed" obligations of the 2 parties whose obligations were officially "Discharged" i.e. to deliver the cash and shares by T+3 unless **extraordinary** circumstances of a "Legitimate" nature justified a short term delivery delay. What just happened here? We just "Overlaid" but 2 of the 19 separate "Task lists" that tell us how an UNCONFLICTED NSCC would act keeping in mind the responsibilities attached to these "quests" for "enhanced efficiencies" that they have "Volunteered" or have been mandated to implement. As you read through the next 17 I want you to mentally overlay these also and see if you come to the conclusion that the NSCC appropriately pleads to be "Powerless" to do anything that might cause financial harm to their members or "Powerless" to provide investor protection or "Powerless" to keep the "Public trust" or if they plead this "Powerlessness" for reasons having to do with the financial betterment of their owners/members. The International Organization of Securities Commissions (IOSCO) which is a relatively UNCONFLICTED organization made up of the administrators of about 100 different countries' securities commissions including our "SEC" and Great Britain's "FSA" or Financial Services Authority notes in its recommendation number 3.16:

"Regardless of the settlement cycle, the frequency and duration of settlement failures should be monitored closely. In some markets, the benefits of T+3 settlement are not being fully realized because the rate of settlement on the contractual date falls significantly short of 100%. In such circumstances, the risk implications of the fail rates should be analysed and actions identified that could reduce the rates or mitigate the associated risks. For example, monetary penalties for failing to settle could be imposed contractually or by market authorities; alternatively, failed trades could be marked to market and, if not resolved within a specified timeframe, closed out at market prices."

(Comment: The NSCC has indeed found the "Power" suggested by IOSCO to mark these obligations "to market" but they once again proffer that they don't have the "Power" to execute the last part of the last sentence i.e. "Close out" or buy-in these well overdue debts "at market prices". This recommendation by a relatively UNCONFLICTED group composed of nearly 100 securities commissions worldwide known as IOSCO involving "Monetary penalties for failing to settle" and "Closing out at market prices" which is also referred to as a "Buy-in" of a delivery failure is soundly avoided by both the NSCC for obvious financial reasons and by the SEC for somewhat more mysterious reasons as they too oppose "Buy-ins" vehemently at all costs despite the much needed **deterrence** from criminal behavior they provide.)

One question that arises is did the SEC with the congressional mandate to facilitate the bringing about of the "Prompt settlement" of all transactions show "due regard for the public interest, the protection of investors, and the safeguarding of securities" when they **"Grandfathered-in"** preexisting delivery failures via Reg SHO? Wouldn't the intentional **further postponement** of the already long overdue delivery obligations of this efficiency enhancing "CCP" known as the "NSCC" and therefore the "Settlement" of trades involving archaic delivery failures be the exact antithesis of this congressional mandate to "Promptly settle" all transactions as well as the crystal clear "Congressional intent" of this law"?

The “Grandfather clause” was a travesty as it was promulgated by the SEC the very party with the mission statement to provide “Investor protection and market integrity”. Abusive DTCC participants were thereby granted a 73-day “Open season” (60 days to post in the “Federal Register” followed by a 13-day phase-in period for the rule to become “Effective”) within which to sell as many nonexistent shares of targeted issuers as they wished knowing that the resultant delivery failures would be protected from being bought-in. Equally egregious was the process the SEC followed to rescind this abhorrent miscarriage of justice after being taken to task by the investment community. By the time the SEC orchestrated two separate “Comment periods” followed by an inordinately long period of time to prepare the new amendment of Reg SHO for posting in the Federal Register which necessitated a 60 plus 35 day period before becoming “Effective” the delivery failures insanely “Grandfathered-in” before the 1/3/05 “Effective date” of Reg SHO **were now nearly 1,000 calendar days old** yet the SEC seemed hellbent on stalling matters as long as they could. These deliveries that were due 3 days after “Trade date” and now nearly 1,000 calendar days old had been poisoning by dilution the share structures of the affected issuers for all of this timeframe. Why? Because the “Securities entitlements” these archaic delivery failures procreated were at all times “Readily sellable” during this entire protracted time period and weighed down heavily on the respective share prices of the affected issuers via **ARTIFICIALLY** increasing the “Supply” of readily sellable “Shares” and/or “Securities entitlements”. The buyers and the sellers of these shares entered into a **contract** specifying that the seller would deliver the shares on T+3. Since the buyer of these theoretical “Shares” already fulfilled his part of the contract where did the “Agency” mandated to provide investor protection (the SEC) find the authority to cancel this contract unilaterally on behalf of the sellers refusing to deliver that which they sold **after the buyer had already performed**? Where did this provider of “Investor protection” find the authority to intentionally damage (via dilution) the invested in corporations for a full 1,000 days after the buyer had already placed his bet and fulfilled his part of the contract? The SEC’s actions may have drastically changed the prognosis for the investment made by providing safe refuge for a sustained amount of time for these incredibly damaging “Securities entitlements” created by each and every unaddressed delivery failure. The damage sustained by victimized issuers is proportional to the number of “Securities entitlements” in the share structure of a given issuer multiplied by their average life span and 1,000 days is quite a life span for a debt that was due on T+3. If this is what the “Securities cops” providing “investor protection” are doing to these companies just think of what the really “Bad guys” are doing.

3) As the legal “Custodian” of all shares held in its “Custody” both paper-certificated as well as those held in an electronic book entry format **meant by Congress to mirror in quantity and quality those held in a paper-certificated manner.** The banking regulations are fairly explicit in regards to the duties of any fiduciary acting as a legal “Custodian” of any “Financial asset” especially those representing “Property interests”. As the legal “Custodian” of the cash held FBO other parties one might question the NSCC policy of paying commissions out of an investor’s funds before “Good form delivery” occurs. Those funds were supposed to be “Safeguarded” until “Settlement” i.e. the “Delivery versus payment” recommended by IOSCO, BIS (Bank for International Settlements) and the Group of 30. Once the commission check is

cashed in the absence of the "Good form delivery" of that purchased then there's not a whole lot of incentive or leverage left to make sure that an investor's purchases get successfully "delivered in good form" and in a "Prompt" manner. This sets up a glaring "Conflict of interest" between a "hungry for good form delivery" investor and his "hungry for commissions" agent mandated to be utilized to purchase the securities.

4) As the designer and administrator of the "CNS" or "Continuous Net Settlement" system utilized to streamline the delivery and payment obligations for shares bought and sold via a process known as "Multilateral netting" (more about that later). As we'll see "Netting" which is defined by IOSCO and the BIS as: **An agreed offsetting of obligations by participants in a CCP** is a very tricky process when it comes to issues involving "Good form delivery" and the "Settlement" of a trade because the "Offsetting of obligations" is an accounting measure that has nothing whatsoever to do with the "Settlement" of a trade. In fact it is an excellent way for criminal elements to obfuscate the delivery status of failed to be delivered shares especially when the "Netting" involves the delivery obligations of multiple issuers simultaneously. It is closer in nature to the "Ex-Clearing arrangements" and "Repurchase agreements" made by abusive DTCC participants to INTENTIONALLY avoid the "Prompt settlement" of trades mandated by Congress and to INTENTIONALLY keep the delivery failures outside of a "Registered Clearing Agency" subject to Reg SHO buy-in mandates like the NSCC.

5) As the **surrogate** "Legal owner" of **ALL** shares held in its "Custody" on behalf of the individual DTCC participants who then "Own" them for the benefit of the "Beneficial owners" of the shares or FBO the "Entitlement holders" of mere "Securities entitlements" resulting from delivery failures i.e. the investors that purchased them. This assumption of the "Legal owner" title for all shares held in "Street name" was **ONLY** meant as an "Efficiency enhancing" measure to streamline the transference of ownership of shares which was also mandated by Section 17 A to the '34 Exchange Act via an amendment done in 1975 and via Section 9. This assumption of the "Legal ownership" bypassed the need for the execution of billions of cumbersome deed-like instruments that would otherwise be needed to transfer beneficial ownership which by law must be accomplished during a transaction to prevent it from being an illegal "Wash sale". Creating "Leverage" over the "Beneficial owners" of shares while voluntarily acting as their **surrogate** "Legal owners" for "Efficiency" reasons **ONLY** was obviously strictly forbidden as it would represent a breach of the fiduciary duty of care created subsequent to the assumption of the surrogate "Legal owner" title and associated responsibilities. The "Legal owner" of all shares held in "Street name" is technically "CEDE and Co." which is the "Nominee/alter ego" for the DTCC proper. This rather drawn out "Ownership" structure unfortunately provided opportunities for all kinds of fraudulent behavior as well as the obfuscation of fraudulent behavior as technically "CEDE and Co." is the "legal owner" of a parcel of shares held in "Street name" both before and after a buy-sell transaction or a stock loan transaction. Again we see the use of an "Intermediary" that is not acting "At arm's length" and not on behalf of the investor he is serving as the surrogate "Legal owner" for. Note that the DTCC through its nominee "CEDE and Co." is at the top of the ownership structure which is critical to remove accountability for any abusive

activity of the DTCC's individual owners/participants via opening up any litigation opportunities on the part of victimized issuers and investors as the surrogate legal "Owner" of all shares held in "Street name" is much too "Important" to be sued for "Leveraging" this surrogate "Legal owner" title over the investors it is supposedly acting as a fiduciary for. This is where the individual DTCC participant metaphorically hails a cab near the police station and the DTCC can put on a different "Hat" this time its the "Legal owner of the stolen TV set" "Hat" while passing the SEC headquarters carrying the TV/shares. "Ownership" is a very tricky concept on Wall Street and integral to a thorough understanding of naked short selling and delivery failure related abuses. Why? Because the definition of a "Short sale" is: ***any sale of a security which the seller does not "own" or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller. Reg SHO aptly spells out the 6 categories of "persons" deemed to be "Owners" of a "security" which precludes the necessity to mark any sale as a "Short sale" and the need to effect a "Locate" which could be in the form of a "Pre-borrow", entering into an "arrangement to borrow" or "having reasonable grounds" to believe a borrow was available for T+3 delivery.***

6) As the administrator of the DTC which is the official **"Depository"** for all paper-certificated shares. Again, banking regulations clearly define the responsibilities and duties of any party acting as a "Depository" in our banking system. The DTC also acts as a member of The Federal Reserve and is also subject to the regulation of the State of New York banking regulators which unfortunately are probably about as aware of the abuses that can occur within a clearance and settlement system based upon "Novation" as the average investor out there getting hoodwinked is. As a whole the banking regulators have been absolutely no help whatsoever in reining in delivery failure related abuses.
7) As the administrator of our clearance and settlement system wherein SYSTEMIC RISKS are **INTENTIONALLY** "Concentrated" at the "CCP" level so that proper risk management procedures can be instituted in a focused manner to mitigate these risks for all Americans dependent upon a sound foundation for their country's financial system. Many of the risks associated with the financial markets are of a "Temporal" (time related) nature and are proportional to the timeframe **between the trade date of a securities transaction and the date on which that which was purchased was finally delivered in "Good form" i.e. the date the trade had legally "Settled".** Unfortunately at the DTCC this often has very little to do with what is referred to as the T+3 "Settlement date". IOSCO recommendations note that: *"The longer the period from trade execution to settlement, the greater the risk that one of the parties may become insolvent or default on the trade, the larger the number of unsettled trades, and the greater the opportunity for the prices of the securities to move away from the contract prices, thereby increasing the risk that non-defaulting parties will incur a loss when replacing the unsettled contracts."*

   The term "T+ 3 settlement date" used in the context of our current clearance and settlement system is a misrepresentation beyond description. Part of the problem in regards to the "CCP" serving as the intentional point of the "Concentration" of risks is that the risk mitigation techniques built into the system for "Equities" are vastly

different than those for "Derivatives" of securities like "Options" and "Futures" contracts and naked short selling abuses basically convert an "Equity" transaction into an "Undated futures contract" more under the purview of the Commodity Futures Trading Commission or "CFTC" that utilizes different systemic risk management techniques entirely.

8) As the party mandated by Congress to "Immobilize" and "Safeguard" all paper-certificated shares in a series of centralized locations.
9) As the party mandated by Congress to "Dematerialize" all paper-certificated shares into **AN EQUAL NUMBER OF ELECTRONIC BOOK ENTRY SHARES** except for any LEGITIMATE "Share entitlements" created, up to a maximum of 0.5% of an issuer's number of "Outstanding shares", by "Bona fide" market making activity or legitimate hedging activity by options market makers for instance.
10) As the party approved by the SEC to administer the "Automated Stock Borrow Program" or "SBP" to temporarily provide an emergency "Cure" for "**LEGITIMATE" DELIVERY FAILURES ONLY** as per Addendum "C" to the rules and regulations of the NSCC. Why "Temporarily"? Because of the "Prompt settlement" of all transactions congressional mandate as well as the fact that truly "Legitimate" delivery failures as opposed to what Dr. Leslie Boni's (2004) as well as Evans, Geczy, Musto and Reed's (2003) research refers to as "Strategic" or "Intentional" delivery failures are usually short term in nature.
11) As the party permitted to coalesce itself into an irrefutable clearance and settlement **"Monopoly"** consisting of 11,000 broker/dealers and banks again theoretically for the sake of "ENHANCED EFFICIENCIES" **ONLY**. Utilizing this risk-laden and easily abused business format known as a **"Monopoly"** to attain **"Leverage"** over the investing public being served by this clearance and settlement **"Monopoly"** was strictly prohibited. Although this ability to act as a virtual "Monopoly" was challenged in the 1978 "Bradford case" the courts ultimately decided to cross their fingers and hope that the abuses associated with being allowed to operate as a "Monopoly" would not apply to this "NSCC" being officially designated a "Registered Clearing Agency". (OOPS!) Note that from the point of view of investors this is a clear "Monopoly" and there is nowhere else to go to seek out a level playing field but from the point of view of abusive DTCC participants this is not an **"Exclusive monopoly"** in that they can circumvent the NSCC's CNS system and Reg SHO rules by performing their crimes in Ex-clearing formats. Section 17 A's mandate was to set up this national system for the prompt and accurate clearance and settlement of all transactions **BUT** it is not the only way for abusive Wall Streeters to clear trades and provide the illusion that "Settlement" is occurring however it is the only clearance and settlement system that lowly investors have access to.
12) As the facility allowed to set itself up as a "Limited Purpose Trust Company" under the Banking Laws of the State of New York. Operating in this business format has its own set of regulations to adhere to.
13) As the designer and administrator of the mandatory **"RECAPS"** system (1990) which allows archaic delivery failures held in Ex-clearing (outside of the DTCC) and other non-CNS locations to magically "Disappear" and to be "Repriced" and reappointed a new "Settlement date" if they are merely submitted to the CNS system which was often intentionally circumvented the first time around due to the fact that

the shares being sold never existed and obviously couldn't be "Promptly delivered". Think of delivery failures held in "Non-CNS" locations like Ex-Clearing, "REPO" agreements, "reverse conversions", "buy writes" and "B/d internalization/desking" formats intentionally to circumvent the need to deliver nonexistent shares that were sold as being held in a self-imposed "Holding pattern" until the "RECAPS" program acting as the "Air traffic controller" can allow them to safely land and be extinguished as if by magic EVEN THOUGH "GOOD FORM DELIVERY" STILL HASN'T BEEN EFFECTED. This is due to a phenomenon referred to as "Re-matching" and "Re-netting". Again we see the DTCC intentionally representing to the investing public the ILLUSION that "Good form delivery" and therefore "Settlement" has occurred even though it is just one more example of DTCC "Sleight of hand". Note that this DTCC program is "Mandatory" even if an ethical DTCC participant finds it bordering on criminality since it provides the abusive DTCC participants the means to indefinitely postpone the "Prompt settlement" of trades mandated by Congress and indefinitely push out "Settlement day" as expressly forbidden by 15c6-1. If this delivery process can be successfully stalled until the purchaser of undelivered shares turns around and sells his purchase (often at a steep loss and out of frustration) then the lack of the "Prompt settlement" of his buy order goes undetected, becomes moot and is conveniently swept under the rug as the investor's losses flow into the wallet of those selling nonexistent shares and still refusing to deliver that which they sold.

14) As the party that **"empowered"** itself to allow the investor's money to flow into the wallets of its abusive DTCC participants/owners/bosses **despite the fact** that they continue to refuse to deliver that which they sold to these investors. Instead of escrowing the proceeds of the sale and any commissions earned **UNTIL** "Good form delivery" was effected the DTCC management merely asks that their abusive bosses/owners collateralize the debt in a daily marked-to-market fashion which allows the proceeds of these naked short sales to actually flow into the wallets of the criminals that sold nonexistent shares and continuously refuse to deliver them as the share price of the victimized issuer predictably plunges from this massively dilutionary activity involving the creation of **readily sellable** "Securities entitlements" masquerading as legitimate "Shares" to the unknowing public. Meanwhile all commissions and mark-ups "Earned" by DTCC participants are paid up front upon the mere "Clearance" of the transaction (the matching of the trade data) as opposed to the much more important "Settlement" of the transaction which all of the rest of the business world has to wait for in order to be paid. The Technical Committee on Payment and Settlement Systems of the International Organization of Securities Commissions recommends the vastly different "Delivery Versus Payment" modality wherein an investor's money goes nowhere **UNTIL** "Delivery" occurs. The result is the incentive for DTCC participants to get these trades involving delivery failures to "Clear" at supersonic speeds which releases their commissions and provides the "Illusion" to the investing world that these trades are indeed "Settling" **despite the lack of "Good form delivery".** Instead the DTCC invented a new phrase namely that "the purchase was completed" in order to pull off the "Illusion" that "Settlement" was attained. All that "The purchase was completed" translates into is the unknowing purchaser had his check cashed despite the fact that what he

purchased never was "Delivered". In the absence of "Good form delivery" these commissions obviously haven't been "Earned" as the "Agent" seeking a commission never finished his job and fulfilled his duty of care owed to the party paying him the commission. Buying a mere "Securities entitlement" that the NSCC can refuse to allow the exercising of due to their sudden bouts of "Powerlessness" to buy-in delivery failures when the "Cupboards are bare" at the DTC is hardly what the investor thought he was getting into. A separate issue involves the fact that the corrupt DTCC participants keep the interest earnings of the investor's money despite the fact that the investor never got that which he thought he was buying. If the legitimate "Shares" of a given issuer with its "Package of rights" fully intact trade at $1 then what should "an undated futures contract" for mere "Securities entitlements" without a package of rights attached trade for especially when the DTCC can plead to be "Powerless" to allow the exercising of the "Entitlement" should it necessitate a "Buy-in"? Perhaps pennies on the dollar? Note the "Bait and switch" fraud involved.

15) As the provider of the **"Trade guarantee"** which tells the world that this is a safe market system to participate in i.e. "Jump on in the water's safe". In this way the party with the congressional mandate to see to the "**PROMPT** delivery" of all shares sold leading to the "Prompt settlement" of all transactions is actually only promising to the world via a "Trade guarantee" that it will **"EVENTUALLY"** settle the trade as long as a "Buy-in" isn't needed and **"EVENTUALLY"** deliver that which was purchased if it is demanded for delivery. Whether or not the corporation whose shares are being demanded for delivery will still be alive by then is a different matter entirely. Note that the time differential between congressionally mandated "Promptness" and the DTCC adopted premise to **"Eventually"** deliver demanded for shares but only if a buy-in isn't involved, unless of course the untimely demise of the targeted issuer occurs in the interim, forms the foundation for these massive "Frauds on the market". The **"Trade guarantee"** provided by the "CCP" of any clearance and settlement system based upon "Novation" theoretically represents the official imprimatur that the involved markets have integrity because a colossus like the DTCC will stand behind the completion of each trade unless, of course, you ask for the proof that your trade "Settled" in the form of your share certificate in a company under attack by abusive DTCC participants. This "Exercising" of the "Securities entitlement" via filing an "Entitlement order" by demanding the delivery of the underlying shares has not been a very successful endeavor for thousands of investors whose demands are stalled interminably because of the absolute refusal of the NSCC to buy-in any delivery failures theoretically because they are "Powerless" to do so. "Powerful" enough to sell mere "Securities entitlements" as allowed by UCC Article 8 yet "Powerless" to honor them in a prompt manner and only under favorable conditions is a very problematic stance being taken by the NSCC from the point of view of those buying these mere "Securities entitlements". Equally problematic is having the "Power" to "Discharge" the "Obligations" of one's employer while retaining the right to plead to be "Powerless" to "Execute" on these same obligations after "Assuming" them.

16) As a "Self regulatory organization" (SRO) mandated to act as: "An entity, such as the NASD, responsible for **regulating** its members through the adoption and **enforcement** of rules and regulations governing the **business conduct** of its members".

17) As the party that chooses to keep all shares it holds in an "Anonymously pooled" format again ostensibly for "Efficiency" reasons. As the SRO mandated to "Self-regulate" the "Business conduct" of its participants the DTCC would obviously be rigorously monitoring for any abuses invited by this "Anonymously pooled" format or "Blind pooling" in regards to the use of things like **"Locate requirements"** used to bypass the need for a firm "Pre-borrow" of shares before making short sales as well as the **"Lending"** activities of its participants. This is especially critical when shares are allowed to be held in an "Anonymously pooled" format with no traceability. Otherwise abuses would obviously occur by those trying to circumvent the costs, hassles and potential unavailability of legitimate "Pre-borrows". "Locate requirements" with integrity would obviously not allow the same parcel of shares, if they were identifiable which they are not because of their being held in "Anonymous pools", to be the subject of a "Locate" by more than one borrower at any given time. But mere "Locates" even if they're bogus are looked upon by the NSCC management as being much more "Efficient" than firm "Pre-borrows" with integrity via traceability.
18) As the "Qualified control location" of choice for nearly all broker/dealers on Wall Street. Perhaps the most important "Investor protection" rule in the entire 1934 Securities Exchange Act is Rule 15 (c) 3-3 appropriately referred to as "The Customer Protection Rule". It mandates that the broker representing the buyer of shares in a transaction "maintain physical possession" of the securities purchased **OR** to hold them at a qualified "Control location" where a 3rd party (like the DTC) would theoretically maintain physical possession on their behalf. Of the 12 different qualified "Control locations" which I like to amicably refer to as "The dirty dozen" the DTCC has about 97% of the market for reasons that will become obvious. Similar to what occurs, or should occur, in "Novation" again we see the fiduciary duty of care owed by a buying b/d being officially transferred to a 3rd party, the DTCC. As a "Qualified control location" an UNCONFLICTED DTCC would obviously be responsible for implementing a variety of "Customer protection" rules and regulations on behalf of its participants choosing it as the means to be compliant with this all-important "Customer Protection Rule" or Rule 15c3-3.

ANY PARTY LIKE THE DTCC GIVEN THE IMMENSE POWER TO BESTOW THE STAMP OF "COMPLIANT WITH THE CUSTOMER PROTECTION RULE" ON THE TRADES OF ITS 11,000 "PARTICIPANTS" WOULD OBVIOUSLY HAVE RIGOROUS CHECKS AND BALANCES IN EFFECT TO DETECT AND DETER ANY DELIVERY FAILURE RELATED ABUSES IN THE SYSTEM UTILIZED TO INTENTIONALLY CIRCUMVENT THE "PHYSICAL POSSESSION OF PURCHASED SECURITIES" PROTECTIONS INCORPORATED INTO THE LAW. This is over and above the other 18 responsibility "Hats" and the other 18 responsibility-related "Task lists" that the DTCC has been mandated to wear or execute on in association with the implementation of these various programs theoretically initiated **ONLY** for the purpose of providing "Enhanced efficiencies". Historically we've seen time and time again the DTCC volunteering to take on responsibilities that have the side effect of

providing their participants with financial opportunities resulting in **"Leverage"** over the customers they serve while refusing to perform the investor protection related tasks attached to these "Empowering" responsibilities.

The premise of 15C3-3 was that it would be very **"Efficient"** if all brokers could achieve compliance with this all-important "CUSTOMER PROTECTION RULE" by merely choosing the DTCC as their "Qualified control location" of choice so that the DTCC and not **each** of the 11,000 participants individually would need to institute the myriad number of protective mechanisms associated with such a tremendous responsibility involving the provision of "Customer protection". The responsibilities on the shoulders of the DTCC management in providing the means for the compliance with this all-important "Customer Protection Rule" for 11,000 broker/dealers and banks would obviously be immense and would **"Empower"** the DTCC to implement any of a vast variety of "Investor protection" modalities including the obvious "Buying-in" of shares sold by those that **absolutely refuse** to deliver that which they sold in a timely manner as the spirit of 15c3-3 mandated that the buying b/d take "Physical possession" of all purchased shares or use a qualified "Control location" to do it for them. Many securities scholars aware of the critical protective role of being compliant with 15c3-3 have found the pleas of DTCC management to be **"Powerless"** to provide any "Customer protection" modalities like "Buy-ins" that might be diametrically opposed to the financial interests of their "Participants" very aware of the "Ultimate paradox" as nothing less than facilitating, aiding and abetting blatant theft in a meticulously organized fashion.

19) As the party responsible for preventing the loss of **"voting power"** for the purchasers of shares i.e. making sure that "One share, one vote" is a reality and not a myth. The NSCC and no other regulator or SRO has all of the data related to the disparities between the number of paper-certificated shares held at its DTC and the number of "Securities entitlements" it has allowed to be created through its CNS and which are being represented on monthly brokerage statements as "Securities held long". The DTCC consciously CHOOSES not to know about the levels of "Securities entitlements" procreated by their participants **outside** of their CNS system. These voting issues related to "One share, one vote" is part of the reason why UCC Article 8 mandates that the NSCC "Promptly obtain and thereafter maintain" enough legitimate paper-certificated shares to back up the mere "Securities entitlements" it is allowing to be referenced as "Long positions" in securities accounts. This "Maintaining of voting power" is one task that the NSCC did not go out and volunteer to do in its quest for "Enhanced efficiencies". This responsibility was laid upon its doorstep when it accessed UCC Article 8's right to create and sell mere "Securities entitlements" as well as when the NSCC chooses to "Cure" delivery failures through the intervention of their "Automated Stock Borrow Program". In conjunction with its other responsibilities whether it likes it or not the DTCC has assumed the role of the "Official scorekeeper" when it comes to the allocation of voting power in its complex system of "Securities entitlements" it has implemented.

When you operate an “Automated Stock Borrow Program” that allows the same parcel of shares to be used to “Cure” delivery failures involving perhaps a dozen different buy orders then the 12 different buyers of that specific parcel of shares, if it were identifiable which it isn’t due to “Anonymous pooling”, all believe that they have the right to vote those “shares”/”entitlements” they purchased. This as well as the NSCC’s refusal to monitor the delivery failures held in Ex-clearing, “Share repurchase agreements”, “B/d internalization/”Desking” formats, etc. have resulted in massive disparities between votes able to be cast and the number of votes that investors THINK they are able to vote. This discrepancy has led to the need to quietly cancel votes behind the scenes in a pro rata fashion in order to cover up these discrepancies and the existence of sometimes astronomic levels of unaddressed delivery failures poisoning the share structure of usually development stage corporations deemed by abusive DTCC participants as a worthy target to bankrupt. To not cover up these discrepancies would be risking the investment community becoming aware of just how “Rigged” these markets are in favor of abusive DTCC participants laying down negative bets against an issuer while at the same time flooding their share structures with readily sellable mere “Securities entitlements” resulting from their refusal to deliver that which they sold to unsuspecting investors. This sets up a self-fulfilling prophecy involving winning the negative bets placed while secretly diminishing the voting power of the investors that placed positive bets on the success of the involved corporation.

America’s citizens deserve better then they have received from their securities regulators. It would be very refreshing for the SEC once and for all to step up to the plate and rid the share structures of victimized issuers of these mere “Securities entitlements” poisoning U.S. domiciled corporations, the jobs they create, the technological and medical breakthroughs they provide and the investments made therein.

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