Thomas Vallarino

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

RE : Amendments to REG SHO's Market Maker Exemption
Release No. 34-56213; File No. S7-19-07

September 13, 2007

Ladies and Gentlemen:

I would like to add my opinion that the SEC must eliminate the market maker exemption in REG SHO as quickly as possible. There is no conceivable reason why the SEC would permit investors and issuers to be harmed and permit market makers to continue to violate the Securities Acts.

In particular I would like to expand on the issue mention by Medis Technologies Ltd., before I get into the market maker exemption – as they are directly related.

When Do The Securities Acts Apply?

The issue about the legality of brokers borrowing registered securities from accounts they are holding on behalf of investors, but not debiting the registered security when they are removed and thus not correctly accounting for the accounts nor reflecting the true securities held there in, has been brought up to the commission before.

Both NCANS, myself and other comment letters in the past have gone into great detail about how brokers can not be in compliance with the securities acts, especially section 5 and 9 of the Securities Act of 1933, when they continue to credit the original registered securities after they remove the registered securities from the accounts. It is impossible, unless the SEC has an exemptive rule to this effect – which it does not.

"Securuties Entitlements" or whatever the commission wants to call them, are substituted for the registered securities, without the account reflecting this activity and this change is securities held on behalf of the account.

In the past, and only via Amicus Briefs and Guidance Letters, has the SEC explained that what remains in investor accounts are "securities entitlements" and thus with the commissions supposed plenary authority, makes this activity legal.

However, what the SEC fails to explain, is that these "securities entitlements" are securities themselves and thus fall under the provisions of the Securities Acts. And exempting provisions of the Securities Acts is not as simple as issuing an Amicus Brief. The U.S. Congress has established a procedure in which the SEC can exempt the Acts – and these must be followed. So the only way the SEC can say that brokers are not in violation of the Securities Acts when they credit incorrect securities in accounts, is by exempting the relevant sections of the Acts via a formal rule making process that produces a rule that permits this. This process must also follow the Administrative Procedure Act (APA). However, this has never happened.

Merely issuing Amicus Briefs or no action letters is not proper execution of the commission's exemptive authority to authorize market makers to violate the Acts in this manner.

As such, the owner of the account is mislead as to the securities held on behalf of the account and is a false statement on the part of the broker. In my opinion, the broker is then in violation of sections 5 and 9 of the Securities Act of 1933 and section 17a of the Securities Exchange Act.

Boilerplate language in account agreements permitting brokers to borrow securities without notice does not give them the right to violate the Securities Acts either. So in this borrowing activity, the commission must use its exemptive authority to come up with a rule to permit this or force the broker and market makers to comply with the Securities Acts.

There is no way that investors are served by having their accounts misrepresented as to what is held on their behalf by brokers. It only benefits brokers at the expense of investors, the same way the market makers exemption does.

The simple solution would be for the brokers to register a certain type of "securities entitlements" security to be credited to investor accounts when the original security is removed and lent out.

That would be in compliance with the Securities Acts and would correctly reflect the accounts with an accurate accounting of the securities held. Investors can then see what their brokers are doing with their property and make adjustments accordingly if they wish.

Market Maker Exemption

The commission must also act in regards to the market maker exemption and eliminate it.

In reading through the comment letters already submitted, I have little to add. There is plenty of empirical evidence to the harm caused to investors and issuers. Even how executing the market maker exemption as interpreted by both the SEC staff and the market makers is beyond the scope of the exemptions in the rule and thus violates the securities acts.

With so many reasons given, that any one of them alone is a good reason to eliminate the exemption, I see no other way but for the Commission to eliminate the exemption.

Recommendation

I recommend the commission start over. Eliminate the market maker exemption and eliminate the threshold security. Also make it clear to brokers and market makers that they must comply with the Securities Acts completely, unless the Acts are exempted for them. This means correctly reflecting securities in accounts and delivering no later than T+3.

Then propose new all encompassing rules, which don't leave Swiss cheese like holes in the regulations, like the current rules in REG SHO do. The current regulatory scheme is a mine field for everybody.

I recommend that the SEC look at how other countries are managing this issue and at least match if not exceed the standards set there. Otherwise, I think the U.S. securities markets will continue to slip against these other securities markets, to the detriment of the entire country.

Sincerely submitted,

Thomas Vallarino