

October 2, 2007

Securities and Exchange Commission
100 F. Street, NE
Washington, DC 20549-1090

RE: Comments on Proposed Amendments to Regulation SHO No. 34-56213; File No S7-19-07

Distinguished Staff of the Commission and members of the Division of Market Regulation, they say a picture is worth a thousand words. Fortunately for the present SEC administration, the delays in taking appropriate action regarding market abuses has afforded us the luxury of responding to this proposal with such a picture.

Below is a chart of the trading in Overstock.com for the last 3-months. It is the telling tale of a company once abused by the special rules created for the Options market maker and the clients who purchase such exemptions for personal profit. This chart is not showing the abuse itself, it is illustrating the market response to an issue once such abuse is suddenly lifted from the market.



In 2005, when SHO was created, Overstock.com was trading near \$65.00/share. On January 3, 2005 Overstock also traded with the burdens of 38,000 shares that had failed to deliver. Soon the life of Overstock.com and the life of the Overstock.com investor would change, a devastating and disruptive change.

By February 1, 2005 the stock had accumulated an additional 600,000 FTD's as the stock was now closing trade at \$48.39. Time continued to pass as FTD's increased and market pricing decreased. By year-end, the FTD's had increased to over 2 Million shares as the market was dropped to \$28.00/share. All the while Overstock was protected by the provisions of Regulation SHO with the only legal fails to deliver being those created under market exemption. Options market exemption.

Time continued to pass and fails continued to accumulate. Peak levels of 3.8 Million shares were achieved as reported under a FOIA request to the Commission and the equity market pricing reached lows of \$14.00.

But that is all the past.

Today market investors, options market investors, appear concerned about what effect the latest changes to Regulation SHO may have on the market in Overstock.com. Suddenly the heavy Put options volume in Overstock.com has all but dried up as those investors who have pounded negative bets into that market have suddenly moved to the sidelines. Investors can no longer be guaranteed the right to an open settlement exemption and thus they have no protection against positive price movements, investment losses.

Suddenly the investors are not feeling a guaranteed profit and thus they are no longer investing in such a negative manner.

What happens when an equity market is not burdened with the abuses of options market making naked shorts? The chart above is illustration of what happens. The equity market is again free to trade under the economic principles of supply and demand and price recovery can be achieved.

Uninhibited pricing freedom is achieved and the rights of an equity investor to profit are restored.

Imagine that. Equity investors are no longer burdened by the manipulation orchestrated through the options market by sophisticated investors who purchased the options market-making exemption to manipulate a market.

"More significantly, naked short sellers enjoy greater leverage than if they were required to borrow securities and deliver within a reasonable time period, and they may use this additional leverage to engage in trading activities that deliberately depress the price of a security."¹

Fact is this statement is truer than even the Commission fathomed when it was drafted.

Naked shorting does create greater leverage than if a borrow were required and excessive naked shorting, exempt or otherwise; will create the same market impact. The market does not have the capacity to distinguish a market exempt 30% naked short from a manipulative 30% naked short executed by a client. Both are disruptive and both create the excess dilution that drives a market lower. The chart explicitly illustrates such as it identifies a market without such burdens.

¹ October 2003 SEC Proposed Rule on Short Sales <http://www.sec.gov/rules/proposed/34-48709.htm#IIA>

The Commission has long been remiss in addressing this problem because of the conflicts of equity investor protection over the rights of market liquidity to sophisticated options investors. This conflict of interest has resulted in the abuse of investors worldwide and has destroyed investor confidence in our capital markets.

If an investor is not confident that they can invest, and invest safely, they will not participate. As time passes it is becoming clearer that such derivative markets have positioned themselves to manipulate and abuse the primary equity market on a feeding frenzy of liquidity.

This proposal has the opportunity to right that course. The complete elimination of the options market maker exemption is the only alternative for the Commission if pricing stability of the underlying equity market is to be sustained.

The abuse of the options market has never been clearer. Investors trading on inside information will use the options market as the venue of choice due to the limited capital required as compared to an equity purchase or short. It was long believed that the enormous levels of Put contracts on the airlines leading into 9/11 were an effort by terrorists to profit off their actions. Such contract levels can only be achieved, and illegal profits gained, when the markets become unencumbered by limitless supplies at the expense of the equity investor.

Consider for a moment those investors who sold Overstock.com at the \$14.00 levels, cutting their losses on an investment they saw had no opportunity for recovery. Was the right to profit of the Options market maker and Put investor above that of the equity investor who purchased such a security?

Overstock.com has 23.7 Million shares. Based on the present pricing of the equity, and assuming that such pricing is reflective of a non-abused market, the manipulation in Overstock would have reached levels exceeding \$400 Million ($(\$32.00 \text{ Stock} - \$14.00 \text{ Low}) * 23.7 \text{ Million shares}$). The \$400 Million not representing the profits made by the Put investors but the losses investors incurred so that a limited investor base could make the riskless investment.

Should the SEC choose not to eliminate the Options market making exemption, you will once again open the equity markets to the abuses seen previously in this and other "targeted" issuer markets. This present reprieve we are witnessing is merely a reaction to short term uncertainties by the options investors regarding the recent changes in Regulation SHO.

This isn't a difficult decision based on the irrefutable facts. It is only a difficult decision based on the political pressures created by those members who have a personal gain in all this. Unfortunately, the SEC is a federal agency representing the financial safety of the American people. This Commission staff has no right to bring politics into our brokerage accounts.

I continue to offer my time to the Commission staff for an opportunity to openly discuss investor concerns and to debate the merits of this reform, good and bad, as they are presented. Investors should be provided such access to the Commission staff if the Commission staff is willing to provide access to the self-serving members and lobbyists of the industry.

David Patch