Nancy Morris 9/27/06
Secretary
Securities and Exchange Commission
Washington, DC

RE: Amendments to Regulation SHO (Release No. 34-54154 File No. S7-12-06)

Ms. Morris and SEC Commissioners,

I thank you for this opportunity to add some thoughts to my previous comment letter dated 7/26/06 in regards to the much needed proposed Reg Sho amendments. As I study some of the recent comment letters from market makers and DTCC participants arriving after the conclusion of the scheduled comment period which I assume was done to circumvent rebuttal opportunities it becomes clearer and clearer to me that one of the weaknesses in our current clearance and settlement system is the lack of a strict definition of what constitutes "Bona fide" market making activities.

As it stands now bona fide market makers merely simultaneously post a bid and an offer in a given security of certain prescribed minimum levels. The barrier to entry into this time-honored fraternity system is negligible. The necessity to have a minimal amount of net capital reserves and to file a 15c-2-11 or "Piggy back" onto a DTCC fraternity brother's filing hardly keeps the unethical players off of the field yet access to this "Bona fide" market making "Hat" involving the exemption from borrowing before making short sales could be worth billions of dollars in the regulatory vacuum we refer to as "Wall Street".

I would suggest the creation of well-designed and clearly articulated parameters to adhere to in order to EARN the exemption from borrowing before short selling. From a regulatory point of view, the intent of bona fide market making activity is to inject liquidity especially into thinly-traded securities and to buffer sharp swings in share prices. "Bona fide" market makers provide a much-needed service and are rewarded by being able to live off of "The spread" between the bid and the ask.

If a truly bona fide market maker found it necessary to naked short sell 1 million shares of a given security at the $10 level in order to "Inject liquidity" into a buy order that arrived when no other sellers were active then the question becomes what would this "Bona fide" market maker do should the share price fall to $9 within let's say a 2-week timeframe. This market maker has been fortunate enough to make a $1 million or 10% profit in a 2-week period which annualizes out to about 260% per annum return.

In a clearance and settlement system wherein the DTCC absolutely refuses to follow their Section 17 A Congressional mandate to "Promptly settle all trades" should there not be clear cut laws on the books to delineate truly "Bona fide" market making activity from what you at the SEC refer to as "Predatory trading methodologies" undertaken by "Not so bona fide" market makers illegally accessing the exemption from borrowing before short selling accorded to only "Bona fide" market makers while acting in a "Bona fide" market

making capacity. In other words is there a valid reason why the market maker cited above should not be FORCED to place the $10 million of investor money under his control onto the bid at the $9 level to "Earn" the exemption from borrowing before short selling he accessed earlier? Could there be a valid reason why this 260% return on investment could be deemed inadequate for the risk assumed? Should there not also be penalties involved for performing these illicit activities that provide a deterrent effect and amount to more than a "Cost of doing business" hand slap?

Our current clearance and settlement system operated by the DTCC is badly broken in that criminals allowed access to this exemption from borrowing by gaining access to these theoretically "Bona fide" market maker "Hats" are insanely allowed access to the proceeds of these transactions without ever delivering that which they sold. They must merely "Collateralize" this debt on a daily marked-to-market basis and as the share price of these victimized issuers predictably tanks and the collateralization requirements drop proportionately from these "Bear raids" the investor dollars actually flow into the pockets of the perpetrators of these frauds EVEN THOUGH they never owned nor planned on buying or delivering that which they sold to unknowing investors. This is the sad but true reality of the naked short selling fraud being performed by "Not so bona fide" MMs and co-conspiring and largely unregulated hedge funds bathing these "Accommodative" MMs with commission flow while being granted access to their "Bona fide" MM exemption and in-house proprietary accounts.

A parallel argument might involve limiting the amount of naked short selling done at a given level before a "Bona fide" MM must lift his offer to allow the share price to find an equilibrium level in a nonmanipulated manner. Instead what we see empirically are "Blankets" of selling done at various levels ostensibly to circumvent a MM from digging into his own cash reserves to collateralize his preexisting sometimes astronomic naked short position in an upwardly moving market.

The MM cited in the above example is faced with a dilemma. As the share price of the security drops does he deploy the $1 million in profits he has "Earned" in order to finally deliver some of the undelivered shares which might drive the share price up which further dissipates the pile of money under his control due to increased collateralization requirements of his undelivered shares or does he continue to sell into any buy orders at the $9 level and add to his profits and further diminish his collateralization capital? Decisions, decisions, do I dissipate the size of the pile of money stolen from investors in 2 different directions or do I add to the size of the pile of money from 2 different directions while pounding the share price to the $8 level? What would most people do if given free access to an exemption from borrowing before short selling in a regulatory vacuum provided by the DTCC's refusal to follow the Congressional mandate to "Promptly settle all trades" which, of course, involves prompt "Good form delivery"? Can the world investment community direly in need of regaining confidence in the U.S. clearance and settlement system count on you to clearly articulate what constitutes "Bona fide" market making activity including the need to cover preexisting naked short positions ESPECIALLY in markets whose share price is tanking? If you refuse to do this then could you at least explain how theoretically "Bona fide" MMs can be constantly

naked short selling from the $10 share price level to the $1 level while theoretically injecting much needed liquidity into markets characterized by a preponderance of buy orders dwarfing sell orders? Don't markets in need of "Bona fide" MM naked short selling activity and characterized by buy orders constantly dwarfing sell orders for prolonged periods of time typically go up and not down?

By far and away the "Grandfather" clause, the curbing of options market makers exemptions and the strict definition of "Bona fide" market making activity are the 3 parameters that need most to be addressed. The definition of "Bona fide" market making activity needs to be clearly delineated with percentages, timeframes, etc. so that the current subjective nature of "Bona fide" market making activity doesn't provide a safe harbor for nefarious activity. In a nutshell, SETTLE THE TRADES like Congress told you at the SEC and those at the DTCC to do.

Dr. Jim DeCosta