

March 29, 2007

Mr. Chairman,

In the spirit of full disclosure, I would like to put on record the circumstances surrounding this latest delay in taking action by the SEC.

The June 2006 proposal now up for resubmission for public comment had an original comment deadline of September 19, 2006. Under Federal Law comments submitted after that date may be, but are not required, considered for policy decisions. It comes at the discretion of the agency.

In this case, the SEC contends that this recent delay for an additional comment period of 30 days plus the 1 – 2 week delay in filing in the Federal Register is based on the comments presented by the American Bar Associations (September 27, 2006), Alan Schwartz (September 19, 2006), and CTC LLC (September 28, 2006).

Based on the submission records, two of the three comment memos responsible for these delays were submitted outside of the 60-day comment window provided by the SEC when the proposal was announced. The SEC has had an additional 6 months (Oct 06 – March 07) to address the concerns of these comment memos leading up to today but failed to take such actions until recently despite the SEC's position that this action is pertinent to the process.

Regarding the third memo by Alan Schwartz.

Had the SEC read carefully the comments made by this individual the Commission would have been able to ascertain that nothing the SEC provided for evidence would satisfy the opinion that a problem exists. Such opinion is transparent in each of the memos drafted by this individual.

Consider this.

In 2002 Anthony Elgindy was on trial for securities fraud, racketeering, and extortion. The US Attorney laid out a case in which Elgindy used a pay website to band together individuals who would discuss information obtained illegally and how to trade on such information. After Elgindy was convicted and sentenced to 11 years in prison for his crimes, US Attorney Ken Breen, on the record with Matt Goldstein of TheStreet.com stated that evidence showed Elgindy to have naked short abused at least 40 US Public Companies through his web site. While many were micro cap companies others were recognized names on Wall Street.

So what does this have to do with Alan Schwartz?

Well there was an Alan Schwartz that was a premium member of the Elgindy website and an Alan Schwartz who testified on behalf of Elgindy in the criminal trial.

**CALENDAR ENTRY as to Amr I. Elgindy ; Case called before Judge Raymond J. Dearie on date of 8/22/02 for evidentiary hearing. AUSA Breen present; Dft present with counsel Gerald Lefcourt and Gary Becker. Government witness Probation Officer Mark Riedling sworn, examined and crossed. Government witness Probation Officer Lori Bryant sworn, examined, and crossed. Defense witness Alan Schwartz sworn, examined and crossed. Hearing adjourned to 8/29/02 at 2:00pm. Court Reporter Stephanie Drexler. (Fahey, Lauren) (Entered: 08/28/2002)**

Is this the same individual? The evidence points to it being one and the same or at least these two Alan Schwartz think very much alike.

In a January 2004 comment memo to the initial proposal for SHO Schwartz claimed, as he does in again regarding this proposal that:

**Inexplicably, although the data to support the premise of short-selling abuses is lacking, Reg SHO seeks to regulate the presumed problem. Under such conditions, it is not possible to know if there is a problem or measure the degree of success of new regulations to solve it.**

Concluding...

**Under these conditions, I believe it is premature to modify regulations as you have proposed. If Regulation SHO is implemented as drafted, it risks stimulating a wave of negative unintended consequences due to removing the damper of short selling from abusive stock promotions and frauds, as well as waves of rampant speculation. The market is already rife with such issues.**

Schwartz commentary was fixated on the micro cap stocks and taking advantage of “scam companies” by shorting them. That was the modus operandi of the Elgindy site. Schwartz followed up that 2004 memo with a more recent one where again the claims are of unintended consequences:

**Consider one such glaring unintended consequence already occurring. As currently implemented, Reg SHO's Threshold List provides strict protection for securities which are abjectly delinquent in filings. There are recent examples of securities which are blatant orchestrated pump and dump schemes promoted by offshore and anonymous entities. These issues have demonstrated brief, violent volatility swings, triggered by appearance on the Threshold List. Yet these same companies are so delinquent on filings, it is impossible to ascertain even the most rudimentary information, such as their actual outstanding share count.**

Is this the case? Has the SEC verified that the SHO list is merely a list of “pump and dump” companies so delinquent on filings it is impossible to ascertain even the most rudimentary information, such as their actual share count? Have the unintended consequences Mr. Schwartz continues to raise taken place?

Did the SEC realistically expect that the trivial level of data submitted with this extension for comment satisfy the appetite of this individual that a problem now exists? If not, why present the extension based on the request of this individual?

The SEC has stated publicly for better than a year that naked shorting is a real problem in the market. Chairman Cox identified last week that the abuses have resulted in individuals and issuers being victimized. And with all the recognized concerns for investor protection, the SEC is delaying the incorporation of change after allowing 7-months for public comment and delaying it based on two organizations that could not find the time to submit a comment within the specified time and a third who triggers red flags.

Dave Patch