Ms. Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F St. NW
Washington, DC 20549-9303

File No. S7-12-06

Mr. Chairman and Commissioners,

As the comment period has now wound down and as has become a pattern over the years, those who have commented have an overwhelmingly common opinion as to what should be done. The investor public remains uncertain whether this will be the case based on the Commissions historical pasts.

In 1998 there was a concept release proposed in which the general public overwhelmingly sought relief from this abusive practice we speak of today and yet nothing came of it. In 2003 when the first SHO proposal was presented, that too received overwhelming responses by the public seeking help in addressing this issue. Nothing effective ultimately came from that either as the SEC not only trampled public opinion but also refused to consider the opinions of other SRO's and Congressional members.

With each failed attempt by the Commission to address this issue comes the uncertainty of the future relative to investor confidence.

You can only kick a dog so many times before it stops returning home and for decades the SEC has been kicking the investing public. One day the investing public will leave these markets never to return.

SEC Objectivity:

Is the SEC objective in their evaluation of this subject matter? Does the SEC care to address this issue or is this simply a game of smoke and mirrors?

By law the SEC must be objective and by law the SEC must put the rights of the investing public over the rights of any private or public company. That is part of the mission of the SEC and part of the laws passed down through the Exchange Acts of 1933 and 1934. Corporations can come and go but the people must remain for our capital markets to grow.

On Friday September 15, 2006 the objectivity of the SEC was clearly put to test when the SEC held an open panel discussion on Regulation SHO. In that open public forum the SEC loaded the panelists to represent a single side of this issue and thus cheated the investing public of a realistic debate over the pros and cons, and successes and failures, of Regulation SHO.

As would be the standard, the SEC stacked this deck to satisfy their attitudes and their intended responses. Answers were not being sought here, it was merely a well-orchestrated marketing job directed by the SEC's Division of Market regulation.

Does the SEC recognize the harm it creates just by the appearance alone of a non-objective and partial panel?

For the afternoon session of the roundtable conference on Regulation SHO the SEC selected three finance professors from reputable Universities, a former professor who the SEC routinely uses as a spokesman but who now works for a Hedge Fund, and ranking executives of Bear Stearns and Goldman Sachs. This panel was enlisted to interpret evidence of the SHO pilot program.

Instead of looking at the data from many different angles the panelists evaluated the data as if they themselves conducted the analysis making it impossible to pick out any flaws in the assumptions made. The media has editors for a reason, to check the work of others, and in this case the SEC ran a roundtable without editors.

The six panelists were provided an opportunity to speak prior to interpreting data and each of these six panelists used their intro time to present to the public their views not on the Pilot program but on short selling in general.

The panelists spoke of the significant role short sellers play in our capital markets with several just coming short of calling these investors American heroes. When it came to settlement failures, the panelists had come together to agree that settlement failures, like short selling, is a necessary tool in the securities markets because these settlement failures executed on behalf of short sellers are the policing force behind the “possibility of” a pump and dump. The panelists never considered that settlement failures into the wrong company is more like a stray bullet killing the innocent than a deterrent to a non-existent Pump and Dump.

One panelist, University of Maryland Professor of Finance Albert Kyle concluded that there should be no mandatory closeout provisions to any failed trade because settlement failures save our markets from “potential” fraud (to paraphrase). Imagine that; let every sale of unregistered security remain free from meeting any and all laws pertaining to settlement. The lunacy suggests that we should eliminate the “sale of unregistered securities” laws all together.

And thus we have the objective panelists selected by the SEC Division of Market regulation and speaking as experts on the interpretation of SHO.

My conclusions out of this panel, Overstock.com, Taser, Netflix, Travelzoo, Martha Stewart, Delta Airlines, United Airlines, Baidu, Vonage, Fairfax Financial, Biovail, and the thousands of other SHO listed companies were all “pump and dumps” opportunities thwarted by short sellers. The investing public should be thankful for these investors and the SEC and thus consider the profits made off those settlement failures as mere commissions paid in protecting our investments. The fact that their profits came at our expense is irrelevant.

Bear Raids:

The Commission continues to be elusive in the enforcement of bear raids. The Commission is under the belief that a bear raid must be similar to that taking place in1929 and thus easily detectable. The Commission is wrong.

Bear raids are merely the opportunity to steal 10, 15, 20% profits over a shortened period in time. Settlement failures provide that opportunity of leverage and the SEC has taken into ignoring these opportunities for securities enforcement.

The FOIA data obtained by myself looking into individual companies and into total markets show the results of a failed system. The level of fails in the markets has not changed since SHO was enacted in January 2005 despite the allegations of the SEC. Since failures have not been reduced even thought that was the intent of the new law, the SEC has instead chosen to use the number of companies on SHO as a metric for success and failure.

This metric is simplistic enough that success can be shown despite fraud actually existing. In sports this type of measure of success is where a sports team improves in the number of wins this year over last and yet still lost 80% of the games.

Consider that to get listed on SHO a massive trading into fails can take place over a period of 8 trade days before the company is ever listed on the threshold security list. This is called the “Bear Raid Window” because these are the grandfathered fails under present laws.

Since the industry is fully aware that the SEC only monitors fails once they have created a threshold security, the seller now responds efficiently to attempt to close out these original settlement failures in a timely and orderly fashion. They do so by buying in these fails at the manipulated prices and, if necessary the members work additional “liquidity” fails into the system to protect this manipulated price level. This is evidenced by the increases in daily volatility in the stock trading.

The bear raid has evolved over time as laws change and systems change and the SEC has not adapted to these tactics. The panel the SEC chose also failed to adapt to these tactics and concluded bear raids do not exist in today’s markets purely based on the “lack of SEC enforcement action “ in this area.

Well, we all know that basing the existence fraud on the level of SEC enforcement is foolish just based on recent market scandals exposed. The SEC has routinely been the last to know and the last to take action.

Attached in the back of this memo are the supporting documents that highlight the failures of SHO but more importantly the failures of the SEC in the dissemination of accurate information to the public. These supporting documents come from information gathered directly out of the SEC making it impossible for the Commission to claim they did not work from the same script.

Conclusions:

The comment period is over and, outside of those private meeting between the SEC and the Industry which will be documented at a later date, the people have spoken on this matter. This time the people are not simply those the SEC considers unqualified on this subject and can dismiss but instead the people include our distinguished members of Congress, State regulators, State Attorney Generals, and some members of Wall Street willing to admit they too see this problem.

This time, to ignore the voices of the people would be a deliberate attack on the integrity of the public comment system. To deny the people a right to a fair and protected market would once and for all prove that the SEC really does not care what the public has to say and what rights they have to protection.

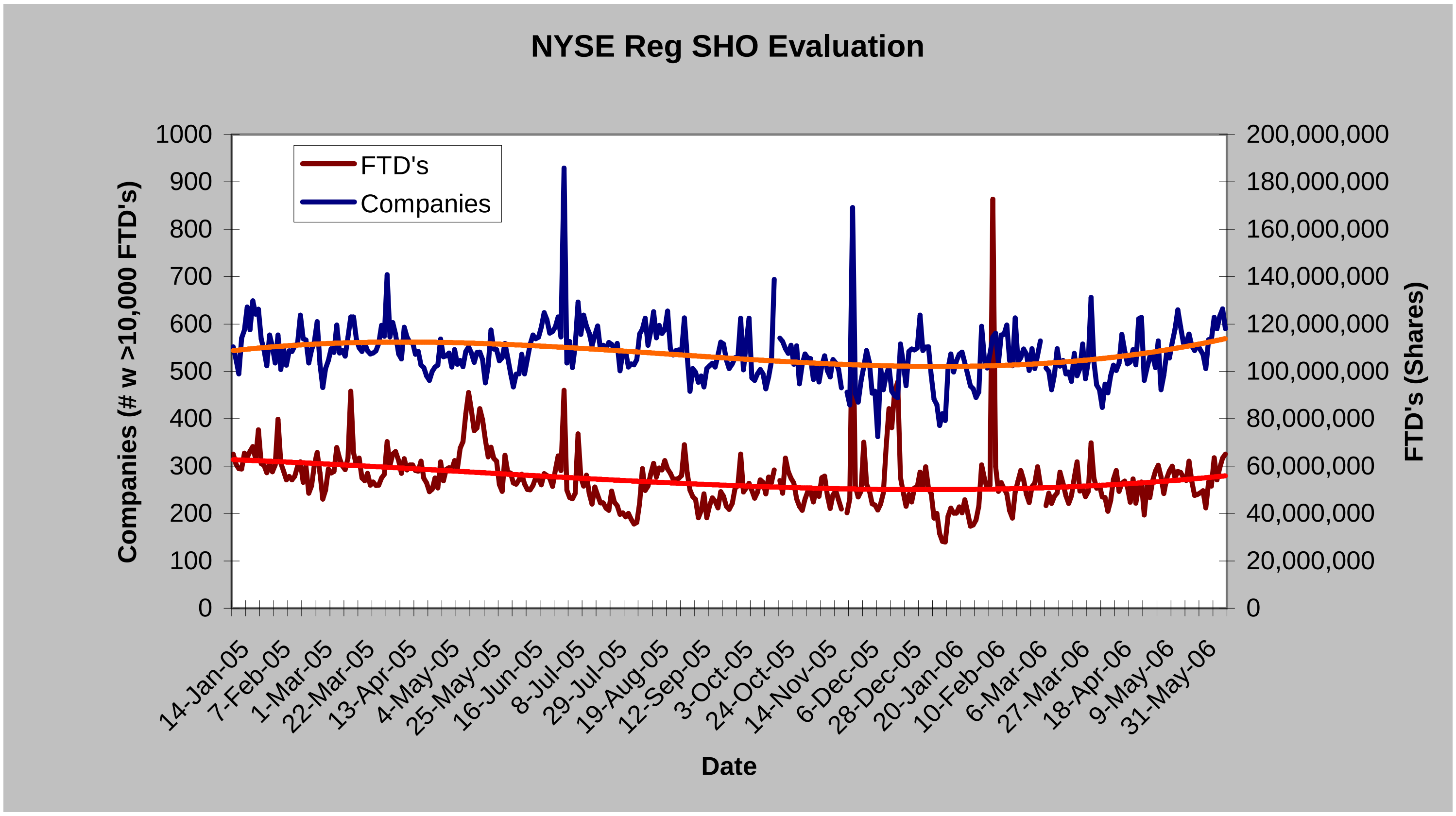
For the sake of our future markets, I urge the Commissioners to look closely at those within the Division of Market Regulation who are responsible for drafting these new laws and insure that there is not a similar bias and lack of objectivity we saw displayed in the recent public roundtable. There are several common threads between some market regulation individuals working this project and the biased undertone of the Commissions responses to date. Those who are ill qualified to be an objective “juror” must be removed from the jury pool before the entire pool becomes tainted.

Chairman Cox spoke before the House Financial Services Committee and deemed the recent roundtable a success. Clearly the Chairman is not yet up to speed on the efforts taken to rig that panel.

Dave Patch

Example I. (Failed SHO Evaluation)

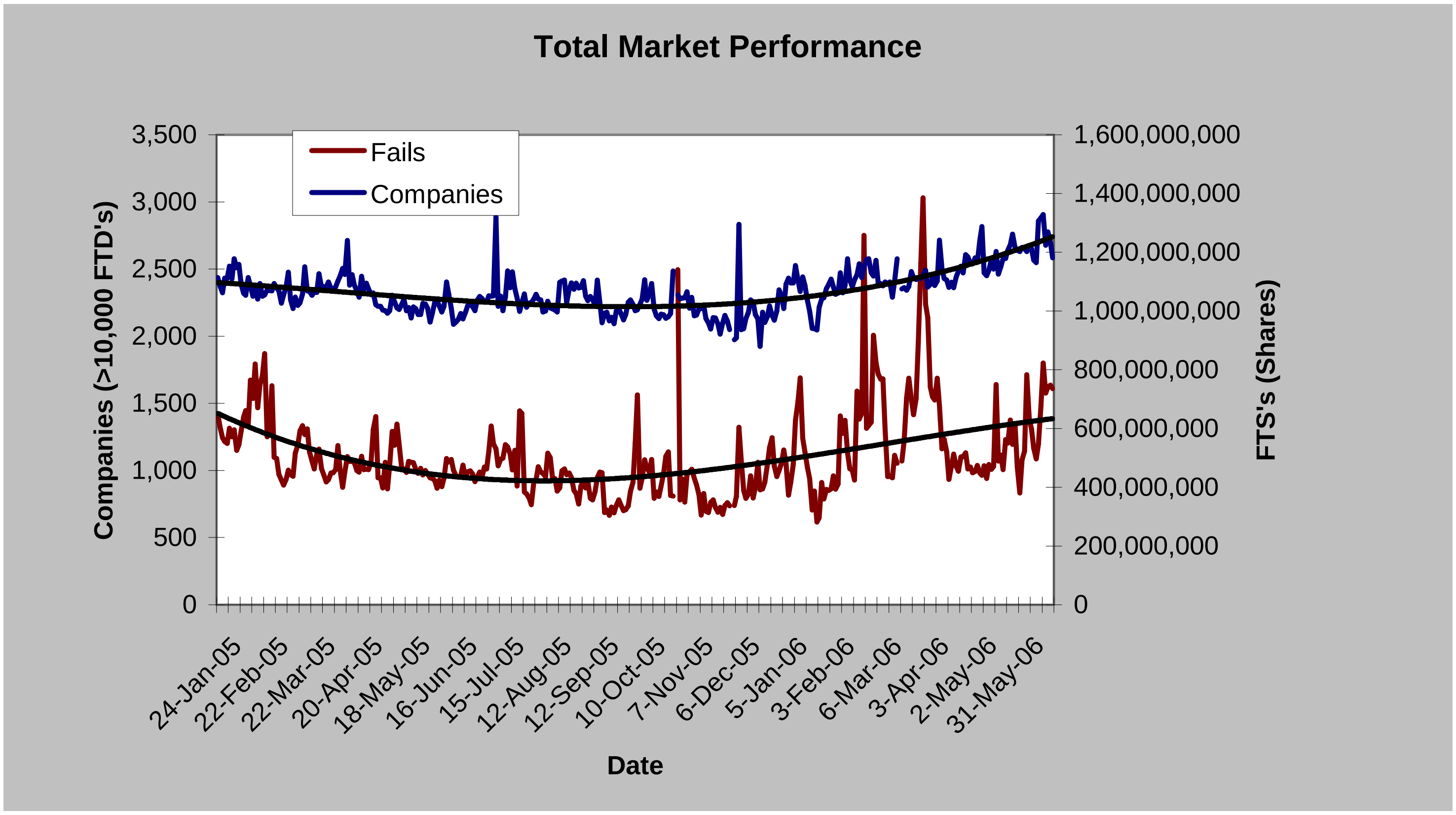
NYSE Fail to Deliver Data as plotted from FTD Data received from the SEC under FOIA #06-06997



Data illustrates a lack of success in reducing the level of fails over time and illustrates a lack of success in reducing the level of companies with greater than 10,000 fails over time. The numbers for both of these categories were higher on May 31, 2006 than seen on January 3, 2005 when SHO first became law.

Example II (Failed SHO Evaluation)

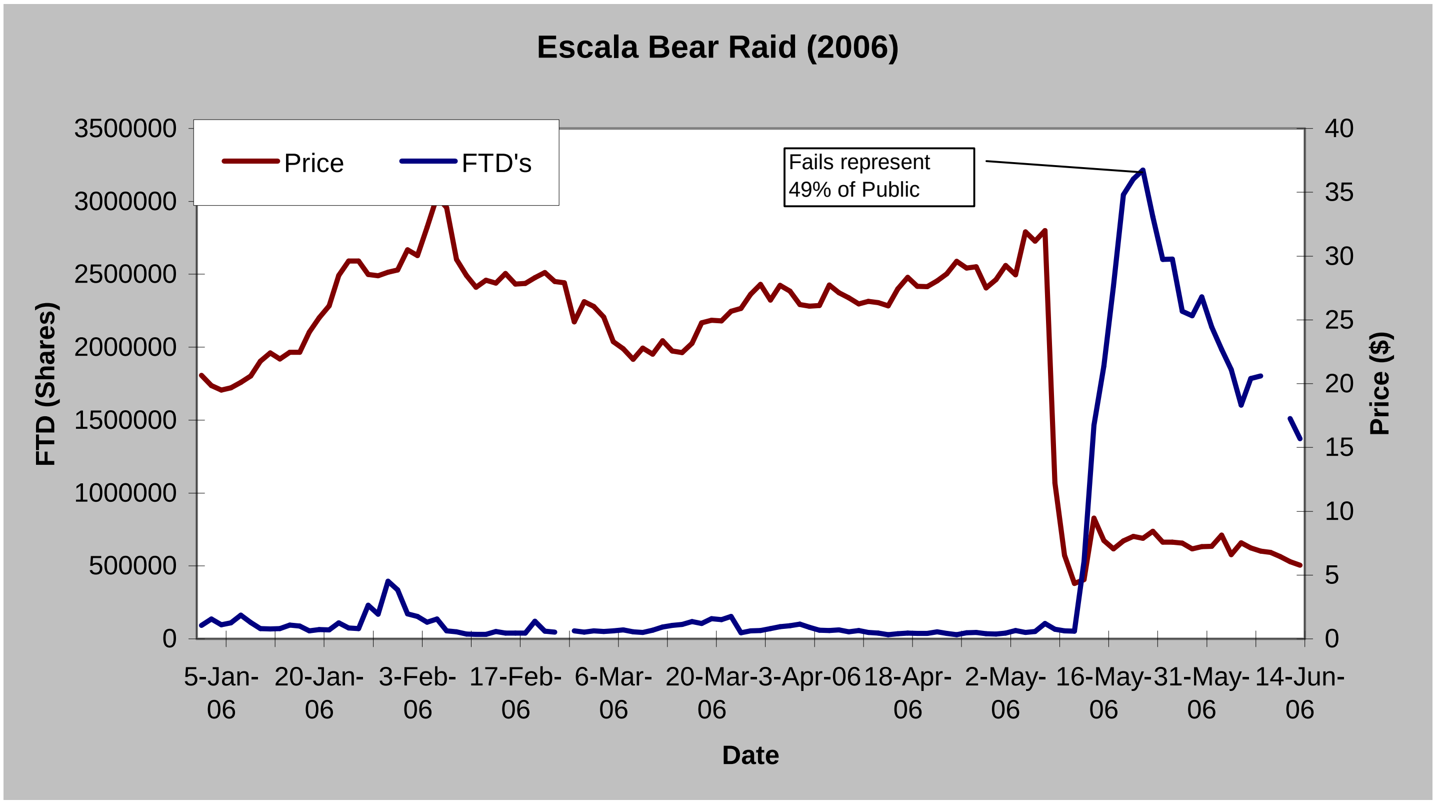
Data based on a combination of FTD reports provided by the SEC. The NYSE FOIA used above FOIA #06-06997 and FOIA #06-07003 representing aggregate fails in the NASDAQ, OTCBB, and Pink Sheet Securities.



Data illustrates a temporary improvement in FTD's early on in the program before settlement volatility came back to the markets. This volatility is timed with the enforcement actions and settlements discussed between SRO's and Tier I Wall Street firms over their handling of Regulation SHO and the closeouts of grandfathered positions. (Ref: NYSE v. Goldman Sachs, Daiwa Securities, Credit Suisse, Citigroup [July 2006], and JP Morgan [Sept. 2006] and NASD v. Morgan Stanley [Aug 2006] also Ref. SEC guidance on closing out grandfathered fails [March 2006] and the NASD follow up memo to members [March 2006].)

Example III. (Bear Raid)

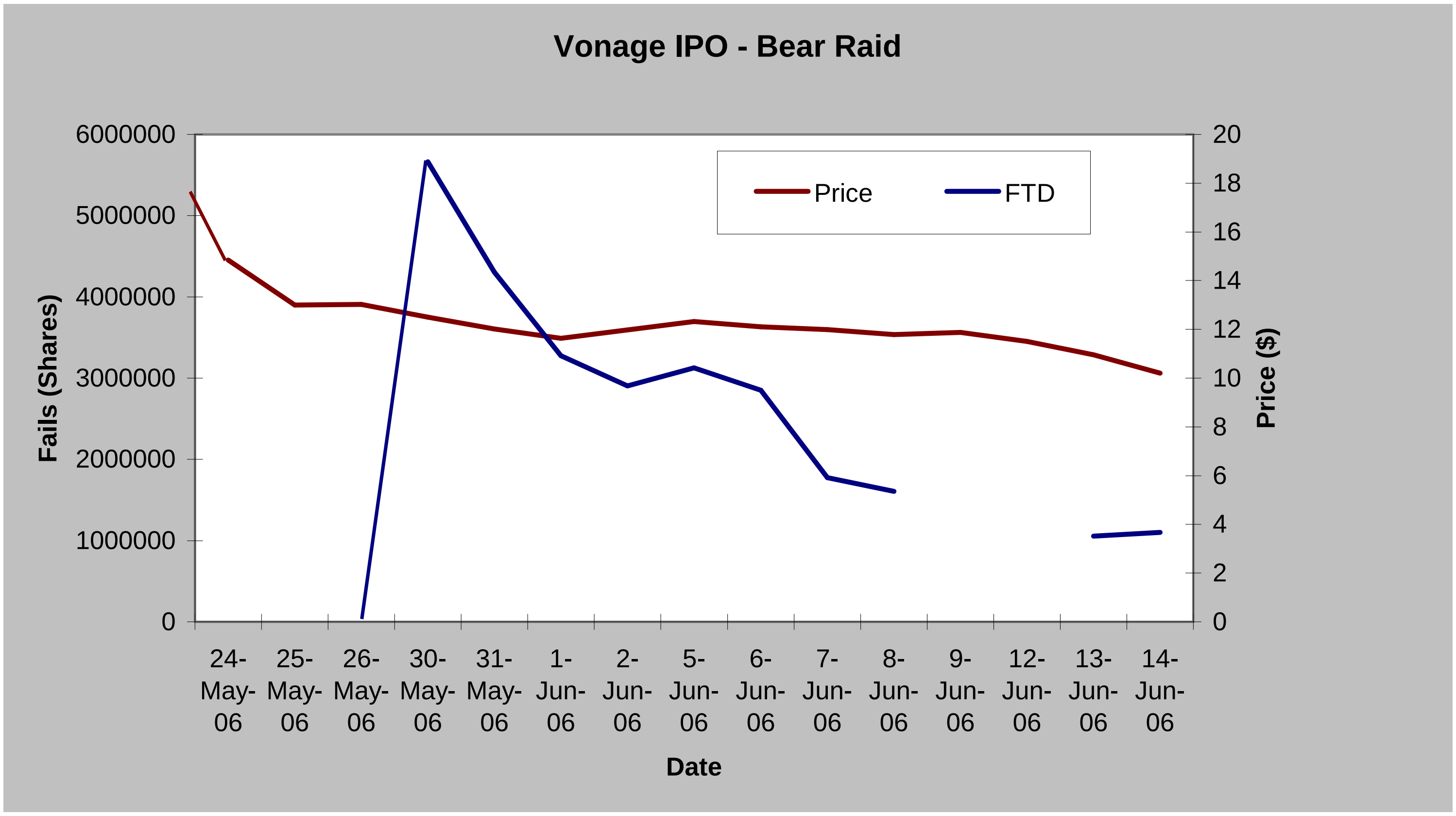
NASDAQ Security Escala Group (NASDAQ: ESCL) is bear raided after a negative press report that was later corrected. The Fails data used in this analysis was obtained under FOIA # 06-08009



In a matter of 1 week the fails in Escala Group escalated some 6400% driving the fails from 50,000 shares to 3.2 million shares. The meteoric rise took place after a negative news report that was later challenged 3 days later. The fails aided in raiding 87% of the company's market capitalization. The trading volatility in the security over 6 trading consecutive days averaged +/- 25% from nominal.

Example IV. (Raided IPO)

NYSE security Vonage (NYSE: VG) went through an initial public offering in May 2006; Tier I Wall Street firms managed the offering. With massive levels of short sales hitting the market the stock tanked into instant losses for all involved (except the M&A firms responsible). Fails provided by the SEC under FOIA #06-08046 provide insight on a Bear Raided IPO.



The Stock opened at $17.00/share and within days was trading at $10.00/share. The fails that opened the stock could be explained by the IPO process but the lingering time these fails remained