September 15, 2006

Ms. Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: Amendments to Reg SHO Release No. 34-54154
File No. S7-12-06

Secretary Morris:

Thank you for the opportunity to comment on the abysmal failure of Regulation SHO to date, and specifically on the amendments the SEC is proposing to fix it.

As other commenters have pointed out, Section 17A of the 1934 Securities Exchange Act is very clear in mandating "prompt and accurate *clearance and settlement* of securities transactions, including the transfer of record ownership..."

Wall Street has become very adept at the "clearance" part of the transaction -- that is, the taking of a customer's money for the purchase of securities and the charging of commissions and fees for the purchase of securities. But Wall Street has more and more ignored its fiduciary duty in completing the "settlement" part of the transaction; that is, *delivering the securities the customer has paid for*. ..even though non-delivery of stock is expressly forbidden by Section 9 of the Securities Exchange Act. More often than not, what is "delivered" is an electronic entry in the customer's account representing an IOU for the security they purchased -- an IOU the customer is completely unaware he holds, and which too often is unsupported by any underlying share certificate.

This delinking of the clearance and settlement of transactions has resulted in hundreds of millions of undelivered equity securities being outstanding on any given day in the U.S. equities markets. *This is blatant and outright fraud -- the taking of money for a product which is never delivered.*

As far as elimination of the Grandfather Exception to Reg SHO, I find it ironic that the SEC would even *ask* for comment on something which is so clearly illegal and in such obvious violation of Section 17A of the 1934 Securities Exchange Act to begin with. *The SEC does not now, nor has it ever, had the authority to exempt illegal behavior*. Period. What on earth was the SEC thinking when it allowed implementation of the Grandfather Exception? Section 36 of the 1934 Act specifically prohibits the SEC from creating any exceptions to the 1934 Act except "...to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors."

Allowing Wall Street firms to continue to NOT deliver the securities their customers have already paid for-- which is what the Grandfather Exception to Reg SHO does-- is nothing more than condoning and institutionalizing fraudulent activity and *theft* which has already taken place. *The Grandfather Exception must be eliminated*. DTCC participants and options market makers have had well over a year and half to close out the fails which existed when Reg SHO was first implemented. If they have not done so by now, they obviously don't intend to; and these fails should be immediately bought-in. That the grandfathered fails have *not* been closed out by now is testament to the confidence naked short sellers and their facilitators have that their powerful allies at the DTCC will continue to protect them from any enforcement of SEC delivery rules.

It is noted that this blatantly illegal "grandfathering" provision was NOT part of the proposed Reg SHO language which was originally put out for public comment prior to Reg SHO implementation. No wonder. I guess even the SEC was too embarrassed to risk doing that.

One can only assume that the SEC was convinced by DTCC participants-- i.e., powerful Wall Street interests--that the fail-to-deliver problem was so pervasive and so systemic in the U.S. markets that there was risk of a market meltdown if they were actually forced to *deliver* all the securities they had fraudulently created out of thin air and "sold" to their unsuspecting customers over the years. And as they so often have over the last 35 or so years, the SEC caved in and did what Wall Street wanted -- which was to NOT upset Wall Street's very profitable applecart.

In 2005, the average diversified stock fund returned 6.7%; the average stock rose just 3%; and the small slice of the country known as Wall Street paid its employees **$21.5 BILLION just in BONUSES** -- over and above their normal salaries. Bloomberg reports Wall Street's 2006 profits are on track to exceed last year's bonus amounts by at least 15 per cent. As these massive and unconscionable bonuses reflect, when the 11,000 DTCC participants are able to loan out over and over and over again the same shares, and are able to sell shares which don't exist, much of the time never delivering to buyers the securities they thought they had bought, but instead are allowed to deceitfully mark their customer account statements as if they *had* delivered the shares ...well, this obviously has been extremely profitable for Wall Street firms...to the clear detriment of investors' retirement and investment accounts.

In a related matter, the Cayman Islands has just announced that it now has more than **8,000 registered hedge funds**; an increase of more than 2,000 funds compared to the beginning of 2005. The announcement was quick to point out that the Cayman Islands provide hedge funds--with estimated assets of over a trillion dollars-- with a "no tax" jurisdiction, and therefore the ability to achieve "measurable savings."

So we have 8,000 hedge funds paying no taxes on the massive profits they make from defrauding investors by taking their money and refusing to deliver the product they paid for. And the recently passed 2006 Pension Reform Act will automatically funnel even more retirement money to Wall Street to be "redistributed" from the retirement accounts of American citizens to the coffers of off-shore hedge funds.

By whatever name you call it--market manipulation, naked short selling, failing to deliver, or stock counterfeiting--it all describes fraudulent stock trades that have become a spreading cancer in the system -- a malignancy that threatens to bring down the entire U. S. equity market.

As a long-time observer and investor in the U.S. markets, it appears to me that the "...prompt and accurate clearance and settlement of security transactions..." mandate of the 1934 Securities Exchange Act began to unravel about the time of the formation of the DTC and the NSCC--and later, the DTCC. These organizations, formed in response to the paperwork crisis of the late Sixties, were staffed and advised by people who had *Wall Street's* best interests at heart -- not investors. If one puts a charitable face on it, one could say that the SEC was simply naive at the time these organizations were formed, and trusted them to "do the right thing" in exercising their fiduciary duties and complying with the Congressional mandate of protecting investors. If one is *not* charitable--and any number of recent incidents, including the Aguirre firing; the SEC's refusal to cooperate in the investigation of that firing; the Refco debacle; the Vonage scandal; the revolving door of SEC employees leaving that agency and subsequently landing high-paying jobs at Wall Street firms and law firms representing Wall Street firms; and a general lack of enforcement of securities laws linking clearance and settlement over the past 35 years are certainly disturbing in this regard--one is forced to conclude that the SEC has been corrupted from its original mission of protecting U.S. investors and has shifted its focus to protecting the profits of Wall Street firms and hedge funds. This latter conclusion is unfortunately borne out by comments made by the likes of Annette Nazareth while she was Director of Market Regulation at the SEC. With more and more evidence of market manipulation due to naked short selling and the non-delivery of shares coming to light every day thru FOIA data and otherwise, this ill-informed bureaucrat had the arrogance and audacity to make the statement that companies and shareholders who complained about their stock being manipulated were just 'annoyed' because they 'wanted their stocks to go up.' That a person displaying this kind of attitude was later promoted to the SEC Commission is extremely troubling; and as long as this obviously ignorant and totally incompetent individual is on the SEC's payroll, it will be difficult for the agency to regain any credibility at all among investors.

For the SEC to remain true to its Congressionally mandated mission, it must realize that the DTCC is *not* its friend. It is not the friend of investors. *Its sole motivation is to increase and protect the profits of its 11,000 participant firms*. Asking--or assuming--that this organization will adhere to the investor protection mandates of the 1933 and 1934 Securities Exchange Act on the "honor system" *will not work*.

Because it has become more and more clear that exempting options market makers from Reg SHO provisions has rendered Reg SHO completely useless in controlling naked short selling, the SEC is *finally* proposing to limit the options market maker exception. This obvious loophole in Reg SHO was pointed out in numerous comment letters to the SEC *prior* to Reg SHO implementation; and one can only surmise that, again, the SEC was persuaded by DTCC participants to overlook its Congressional mandate to protect investors because it might impact negatively on Wall Street profits.

Ever since the CBOE was founded in 1973 and *trading* began on options (prior to that, the only way to realize the value of a purchased option was to buy the stock from the options dealer, and then sell the shares on the exchange), options market makers have been enjoying windfall profits while being subsidized by equity investors. Apparently, though, at the time options trading began, there was *some* realization how negatively option activity could impact share prices and cause problems with prompt clearance and settlement of trades, since it took four years for Wall Street to convince the SEC to allow trading in *put* options.

The massive downward pressure on share prices by manipulative put option activity is harmful to many, many stocks; but is particularly acute with the Reg SHO Threshold stocks. With these heavily-shorted stocks, short sellers have found they can easily circumvent high borrow fees by instead buying large numbers of put options, thereby letting the options market makers do the naked short selling for them as they hedge their positions. This is being done for the sole purpose of allowing the hedge funds to engage in activities which Reg SHO was supposed to prevent. With their Reg SHO "exception" from prompt delivery rules, the options market makers create millions of counterfeit shares, enabling and facilitating the shortsellers in their manipulative schemes to drive down the price of their targeted stocks.

If the SEC is truly interested in investor protection, *it must eliminate the market maker exception in Rule 203 of Reg SHO completely*, and require a pre-borrow on the part of ALL market makers and specialists.

I note with shame--as should the SEC-- the comment letter from Research Capital Corporation (RCC), a Canadian brokerage firm that has tried to "buy-in" failed deliveries of Overstock.com on *39 separate occasions.* In each attempted buy-in, the failed delivery has simply been replaced by another delivery commitment *which also fails*.

This brokerage firm also states it has requested proxies for its clients which it is not receiving -- which reveals another problem engendered by naked shortselling. That is, the massive over-voting of proxies. A number of independent studies, as well as work done by the Securities Transfer Association, has revealed that over-voting has taken place *in every single company studied.* Such over-voting means only one thing: That there are far more people and institutions who *think* they own shares than there are legitimate shares to go around; and that there are millions of "phantom" or "counterfeit" shares in clients' accounts -- IOU's with no underlying stock certificates supporting them. ADP actually has an algorithm that "adjusts" shareholder votes by throwing out votes, making a mockery of the shareholder rights which are supposed to attach to share ownership.

As Frank Partnoy, law professor at the University of San Diego, has noted, "*It might seem incredible, but shareholder voting in developed countries is more tainted than voting in undeveloped ones. Some shareholders' votes are counted, others are not."*

Since the clearance and settlement system of the U.S. securities markets has been so badly corrupted and is currently dysfunctional, RCC suggested in its comment letter that the SEC review the buy-in rules of other countries, including those used in Canada. They could also have suggested Australia, Japan, Euronext, the London Stock Exchange, Singapore, Austria, and Germany. All of these countries and exchanges have strict share delivery requirements, and all function very well without the numerous delivery "exceptions" allowed by the SEC for certain favored Wall Street groups.

Is it not embarrassing that the capital markets of all these other countries are more honest in their clearing and settlement processes than the United States?

Unfortunately, RCC is not the only foreign company to see the U.S. securities market for the way it is. While Wall Street/DTCC interests have been successful in having most New York financial publications--which they largely control--downplay the magnitude of the fail-to-deliver problem, a perusal of foreign media and investor message boards and internet blogs, all with an international audience, clearly shows that the perception is growing all over the world that the U.S. equity securities markets are as crooked, corrupt and manipulated as those of any third world country...and that the SEC is doing nothing about it.

This is truly shameful and humiliating...and should not be the case for the most powerful nation on earth.

There have been many thoughtful suggestions made in a number of the submitted comment letters for ways to eliminate current short selling abuses and correct the fail-to-deliver problem. It won't be easy. For while the DTCC has sought to minimize the perceived size of the problem, the reality is that it is a large and growing one; and it will require courage and fortitude on the part of the SEC to fix it. Selling non-existent shares, and loaning out the same shares over and over again for high borrow fees have been immensely profitable activities for Wall Street interests -- and you can be sure they will object strenuously to giving up those easy, albeit illegal, profits.

I hope Chairman Cox and his Commission are up to the task of bringing back market integrity, investor protection, and investor confidence in the U.S. securities markets...because if they are not, they will no doubt go down in history as being the regulators on whose watch this century's first great Stock Market Crash took place. The problem is that serious...and that close to the tipping point.

Edmund Burke observed that: "The only thing necessary for evil to flourish is for good men to do nothing."

The SEC has done nothing for too long about the fraudulent and illegal practice of naked short selling. It's time **now** to act decisively to stamp it out once and for all.

Sincerely,

Lynn Keith
Individual Investor

cc: Senator Chuck Grassley
Senator Arlen Specter
Senator Orrin Hatch