The Honorable Christopher Cox September 18, 2006
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

RE : Amendments to REG SHO *Release No.:* 34-54154*, File No.:* S7-12-06

Dear Chairman Cox:

I am a individual retail investor. I am no expert regarding your regulations, economics, or the securities industry in general, but I do have over 25 years experience in the regulation of financial institutions and can tell the difference between investor protection and industry protection. What disappoints me most about your policies regarding the handling of Failures to Deliver ("FTDs") is the apparent disconnect between those policies and any modern standards of fairness and honesty. I join in the comments and recommendations of the **National Coalition Against Naked Shorting** ("NCANS") submitted to Secretary Morris concerning this regulatory action. I won't repeat or attempt to summarize their comments and suggestions but incorporate them by reference.

My original intention in regard to your proposed rules concerning the "reduction" in FTDs was simply to support the elimination of the Grandfather and Options Market Maker Exception provisions. But after studying the full 51 page proposal of amendments filed on July 14^{th} and considering the underlying policy assumptions and goals they embody, I no longer believe that such amendments would be adequate. I thank you for the opportunity to explain why.

FAILURE TO DELIVER

Simply put, whether it's caused by a "long" sale or a "short" sale, from the vantage point of a retail investor, an FTD amounts to no more than a breach of contract. A failure of one party to honor the performance which both parties originally contemplated.

Such a breach of contract becomes something far worse when one of the parties knowingly enters the agreement with no intention of carrying out the obligations which it knows the other party is expecting. At best it can be categorized as deception and at worse it may also be the business of a racketeering influenced and corrupt organization.

I assure you the average small investor has no inkling that FTDs without interest, penalty, or requirement to cover, are even possible... much less allowed and encouraged. But this is exactly what both the current regulation and proposed amendments do. In either case your regulation would allow a broker/market maker to hold FTDs amounting to 0.5% of outstanding shares of a company indefinitely. If that company has 25 million shares outstanding this would mean up to 125,000 shares sold as naked short sales without even triggering the "threshold" limit. If such issuer had 12 active market makers each one of them could take credit for the sale of 10,000 shares of the company's stock which it never delivers. Now multiply this "free" sale by the nearly 10,000 companies trading on the NYSE and NASDAQ with hundreds of billions of shares outstanding and you get an idea of the largess of your 0.5% "threshold." This is not a fair market. It is the wholesale grant of ***free credit*** to market makers and brokers.

UNJUSTIFIED FTDs

In looking at the original rule proposal and the current proposed amendments I was amazed to find that the only justifications offered are entirely unsupported and generalized assertions of the bogymen of "volatility" and "illiquidity." This grant of ***free credit*** leverage is supposed to combat those "evils." Presumably "experts" provided by the brokerage industry have told you this and you have not contested it.

Such justifications are far too laughably similar to telling all your retail creditors you'll only be paying 99.5% of their bills because if you paid the full price you couldn't buy as much and prices would have too rise too fast. But of course such privileged favoritism is not available in any retail markets. Laughable as it is, they exist quite often at the wholesale level within markets wherein brokers or middlemen of various description exercise excessive control. Which, of course, is exactly the nature of the stock markets.

You no doubt recall the old saying to the effect that it is impossible for a person to serve two masters. Yet in the stock markets we have a situation wherein brokers and market makers not only serve two masters, they are allowed to serve all masters and themselves at the very same time often on the very same transaction. You should at the very minimum demand specific proofs of the "horrendous volatility and illiquidity" which the brokers and market makers "claim" investors would suffer inappropriately if this ***free credit*** leverage were denied to them.

And please... do not accept the argument I've seen in the posted comments on this rulemaking proposal which frequently suggest that OTC/BB or Pink Sheet issuers are horrible, poorly run, scam investments which fully deserve to be sold short because they aren't worth their liquidation costs. Unlike the existence of naked short sales, individual investors have access to all the information necessary to identify the nature of OTC/BB stock issues. Anyone investing in those markets should bear the risk of doing so. Even assuming all such posted comments were true, a rational response would be that whatever "volatility" and "illiquidity" the market imposes upon those companies is entirely appropriate and hardly justifies granting brokers and market makers ***free credit*** leverage to artificially "protect" their investors by selling non-existent shares.

ILLEGITIMATE FTDs

The regulatory proposal also talks of "legitimate" reasons for FTDs such as delays in certificate delivery, the efficient satisfaction of buy side demands, computer error, etc. If by "legitimate" you mean these are in fact ways in which an FTD can arise without the existence of any criminal intent to "manipulate" a market on the part of the broker/market maker, I will not argue the point. While I think your unjustified "fears" of "volatility" and "illiquidity" are the only things "justifying" the excuse that FTDs are needed to enable market makers to "satisfy buy side demand," how the FTD arises is of less concern to me than is the way in which the rules treat them once they are discovered. What I and my fellow individual investors will never understand or accept is why you think the broker/market makers who execute such trades should **ever** be allowed to simply ignore the FTD once it is identified as such. It is the creation of this ***free credit*** leverage to the benefit of the broker/market maker that we find “illegitimate.”

Indeed it is so preposterous from our perspective that most individual investors I've spoken to can't believe it is allowed. And why should they? Who could possibly imagine that any government official, in anything approaching a regulatory system founded on the law of contract, would suborn the use of FTDs on contractual obligations as a tool for moderating the natural ebb and flow of a **fair and free market**? Is the housing market being regulated by hidden FTDs of mortgages on the secondary market? Do we allow banks to print a percentage of unaccounted for US currency on the justification that they need the leverage to issue loans to known deadbeats too? What manner of school teaches such bastardized regulatory theory?

The retail investor is certainly never taught such civics lessons. We certainly aren't allowed to perpetrate such “legitimized” FTDs on our own behalf. Indeed, if we fail to deliver a security on time, we are subject to interest charges, restrictions on trading and/or civil suit to force our performance and to make good such damages that any such failure may generate, including legal fees, regardless of how innocent, or accidental it may be. Even bankruptcy wouldn't absolve us if our default proved knowing and intended to defraud our creditor brokers. And we are certainly never told by the SEC, our brokers, or anyone else in the industry or government when our buy orders have “failed,” that our equity interests have been diluted, or that our voting rights have been compromised. In fact we are clearly “advised” just the opposite by our so called broker “confirmations.” Even today there is no such disclosure, nor even any proposal that such disclosure is due the retail public and no one need wonder why.

Yet your regulations give these actions their blessing and allow them to reach 0.5% of the hundreds of billions in marketable securities outstanding in the United States as long as they are not “intended” as a means to “manipulate” a market. My question is simply this: Why do you not see using a position as a broker/market maker to obtain an undisclosed interest ***free credit*** of up to 0.5% of every company's outstanding shares and diluting the interests of individual investors thereby as “manipulation?”

Chairman Cox, if the founding fathers were justified in taking up arms against King George over the imposition of taxing authority for the administration and defense of the colonies “without representation,” then I must say the Commission is treading on very thin ice. The public perception of this manipulative conduct is no more than one 1987-like market correction, or one major broker/Hedge Fund insolvency away. Please put an end to this unnecessary ***free credit*** for the financial industry. Give us our free market “volatility and illiquidity.” Better a free market investment risk, than footing the bill for the industry's undisclosed **free lunch**.

Sincerely,
Robert Enoex