Nancy Morris 8/29/06
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,

My name is Dr. Jim DeCosta and I thank you for this opportunity to comment on these much-needed amendments to Reg SHO. In studying the 51-page circular attached to the proposed amendments I can see that the SEC has put in a great deal of time and thought into this process and your efforts have been duly noted by the investment community and are greatly appreciated. On the other hand though I see that there are those among you that still don't appreciate the pandemic nature of this systemic "Fraud on the market" or the emergent nature of it as victimized corporations are drowning today in a sea of unaddressed and archaic delivery failures. These unaddressed delivery failures have in turn procreated often unexercisable "Share entitlements" that nearly all investors believe to be legitimate "Shares" that they can vote and receive tax preferential treatment of cash dividends from. Nothing could be further from the truth, however, yet these mere "Share entitlements" are readily sellable as if they were legitimate shares and are capable of inflicting massive dilutional damage upon the share structures of targeted corporations when their numbers and their lifespan are not scrutinized meticulously and kept in check as per the Congressional Mandate of the DTCC management. I'd like to make some suggestions starting in more of a macro sense and then follow it up with some specific suggestions as to amending Reg SHO.

I would suggest that the SEC "Zoom out" for a moment and take in a more panoramic view of their prior legislative and regulatory efforts in this realm and the current landscape on Wall Street as it relates to the practice of naked short selling (NSS). In other words let's learn from history so that we don't keep repeating it. I've spent the last 25 years studying naked short selling and I've written 3 unpublished textbooks on the matter. Although I obviously don't have a life I do feel that I have more than a passing interest in the study of this heinous form of securities fraud/racketeering. As I've said for the last 25 years education is the key here because if the public truly understood this fraud it would lead to its immediate eradication due to its incredibly heinous nature. Keeping that in mind, I'll try to make my comments in as educational of a manner as possible so that all of us can hopefully advance on our respective steep learning curves for this form of securities fraud known as naked short selling (NSS).

I believe the focus of any legislative efforts has to keep front and center the anticipated response of the abusive DTCC participants to any new legislation and then err on the side of over-legislating if anything. In the past we've seen a cat and mouse game being played wherein the more abusive DTCC participating market makers, clearing firms, prime brokers, hedge funds, etc. and their legal and management teams comb through any new SEC legislation looking for loopholes to attain leverage from and to commit fraud within. The SEC must realize that they are completely outmuscled and outspent in this regard and that it is much easier to detect loopholes within laws than it is to write laws without loopholes.

We need to go back no further than to the "Comment period" associated with the original Reg SHO wherein the DTCC puffed their chest out and proffered that since they were a "Registered Clearing Agency" ("Sacred cow") the SEC had no power to add to or abrogate (delete from) their rules and regulations. They hinted that they would lower themselves all the way down to the SEC's level and still work with whatever the new Reg SHO laws brought to bear with the same "Cooperative spirit" that they have shown in their prior dealings with the SEC.

Shortly thereafter, the text of Reg SHO, the new Federal Law of the land incorporated into the 1934 Securities Exchange Act, "Mandated" that "Immediate action" be taken and buy-ins be performed on "Threshold list" securities on T+13 by buying-in failed deliveries of "Like kind and quantity". Almost before the ink had dried on Reg SHO the DTCC put out a 14-question "Self-interview" related to Reg SHO. In the response to question #10 the DTCC General Counsel stated that Reg SHO <u>does not</u> force DTCC participants to buy-in these "Threshold list" delivery failures on T+13. The SEC, however, comments in the 51-page circular attached to these proposed amendments that: "Specifically, Rule 203(b) (3)'s close out requirement requires a participant of a clearing agency registered with the Commission to take immediate action to close out a fail to deliver position in a threshold position in the Continuous Net Settlement (CNS) system that has persisted for 13 consecutive settlement days by purchasing securities of like kind and quantity".

If I'm not mistaken the DTCC's stance is based upon one of two theories. The first being that the terminology used in Reg SHO in the very next sentence of 203(b)(3) mentioned that if a participant "Cannot" do the mandated buy-in then they at least have to utilize "Bona fide borrowing arrangements" on any further short sales of that particular "Threshold list" issuer. The term "Cannot" remains ill-defined except that it may not involve any financial reasons and in my opinion it definitely needs to be removed from Reg SHO during this amendment process. If you "Cannot" follow the Federal Securities Laws then by definition you shouldn't be in any business involving the public trust and public markets.

The inclusion of that sentence was very unfortunate in that it provided an escape valve to circumvent the very clear "Spirit of the law" which the DTCC management spat upon on without a blink. That's the mentality that you legislators and regulators at the SEC are up against. The other justification for this comment was perhaps referring to the fact that the

DTCC has a rule in its "Untouchable" rulebook that states that it need not do even "Mandated" buy-ins if they might prove to be "Disruptive to the market".

Thus perhaps an abusive DTCC participant could plead that it "Cannot" do one of these "Mandated" threshold list buy-ins because it might violate one of the "Untouchable" DTCC rules by leading to a "Market disruption". In the case of a victimized issuer whose share price has been manipulated downwards from the $5 level to the 10-cent level via a naked short selling attack then yes if buy-ins were to result in the share price returning to the lofty 10-cent level then that would indeed be a 100% "Disruption" to the then market price and we sure wouldn't want that. I would hope that the sentence containing this billion dollar "Cannot" loophole will be the first amendment to the text of Reg SHO that you consider.

Now the SEC might wonder as to where this "Cooperative spirit" of the DTCC disappeared to and I would have to refer them to the DTCC to ask that question. The point being made is that no matter what the text is that you at the SEC come up with it has to be extremely "Bullet proof" in design to provide the investor protection and market integrity intended because the will of abusive DTCC participants and their co-conspirators to steal from the $90 trillion currently "In play" on Wall Street is very strong and it only takes one inadvertent "Cannot" to open the flood gates to a continuation of the current massive naked short selling abuses as well as the blatant refusal to buy-in previous acts of abuse.

We saw this very same phenomenon in the pre-Reg SHO version of NASD Rule 3370 before its 4/1/05 amendment wherein Canadian and non-NASD b/ds naked short sold the shares of U.S. micro cap corporations by the truckload since they were not technically "Customers", as per the SEC's and NASD's definition of a "Customer" of an American b/d.

Abusive U.S. market makers could and did knowingly process these bogus sell orders for years on end without incurring any legal consequences. Many of them remain on the books to this day. With this constant searching for loopholes around the "Spirit of the law" being the sad reality then the use of stronger DETERRENT measures must be utilized by the SEC since the always flawed and human-written "Letter of the law" can never match the intended "Spirit of the law" especially when the brightest (and most expensive) legal minds on the planet are the ones searching for the loopholes.

DETERRENCE

The single greatest **DETERRENT** measure to naked short selling abuses on Wall Street is by far and away the **FEAR** of an untimely buy-in leading to a "Short squeeze". What the SEC has to realize is that DTCC policies have surgically removed <u>any</u> fear of a buy-in from the risk-reward analyses done by even securities fraudsters before engaging in naked short selling campaigns. Of all of the studies done in this realm the one by Evans, Geczy, Musto and Reed (2003) clearly showed this the clearest as their research revealed the stunning statistic that 99.875 % of even “Mandated” buy-ins were successfully circumvented by DTCC participants. Now those types of statistical realities can only be generated by a formidable opponent to any regulator or market integrity proponent and therefore this battle is not going to be easy.

The SEC must come to the realization here and now that the abusive DTCC participants and their usually unregulated co-conspiring hedge funds are not going to execute buy-ins **NO MATTER WHAT THE SEC LEGISLATES.** Recall that NASD Rule 11830 “Mandated” buy-ins were in effect even during the time period that the Evans et. al. study was done. Imagine the hubris of the DTCC when they publicly comment that they’ll obey the new Reg SHO Federal Laws while showing this wonderful “Cooperative spirit” and 5 minutes later they publish to that same public as well as to their participants their 14-question self interview claiming that Reg SHO does not force their 11,000 “Participants” to perform these “Mandated” buy-ins forming the very foundation of Reg SHO’s efforts to enhance investor protection and market integrity.

The question becomes how can the severely outmuscled SEC with its limited financial resources and manpower constraints reintroduce the concept of **DETERRENCE** to the currently pandemic levels of naked short selling frauds when no matter what is legislated history teaches us it will be ignored? The desired effect in this process is a little more complex than merely writing well thought out rules and then enforcing these rules i.e. legislate then regulate. History has irrefutably shown us that the “Regulate” function has been the Achilles heel of the SEC as even the old 1934 Act’s 10(A)-1 and 10(A)-2 short selling rules were well written. Perhaps the approach to take is to “Legislate that which you are able to regulate” keeping in mind any manpower or monetary constraints.

The single largest resource at the disposal of the SEC if manpower constraints are a problem is the investment community whose dollars are in play and who have a vested interest to keep Wall Street abuses in check, use them! Notice the difference between a “Police force” with a “Vested” interest like shareholders versus one with massive “Conflicts of interest” like the SROs especially the DTCC. Once the absurd notion that the trading data revealing market abuses is somehow of a “Proprietary” nature deserving to be concealed falls by the wayside, and it will, then the investing public would be an excellent resource to utilize to detect these predatory trading strategies.

Theoretically “Bona fide” market makers accessing the exemption from borrowing before short selling just don’t sell nonexistent shares from the $5 level to the 10-cent level in a non-stop fashion without ever buying back anything. This exemption is not legally available to those practicing these tactics. This investor scrutiny could be done in an anonymous format so that only the regulators know the identity of the abusive party whose trading data is being analyzed. This approach might **DETER** the actions of those hiding behind the fact that their dirty deeds have to be concealed due to incredibly bogus “Privacy” issues.

It is a national disgrace that victimized investors and issuers need to go through a "FOIA" or "Freedom of Information Act" process to get the license plate of the truck that just ran them over in the market. Transparency is a wonderful deterrent for a cash-strapped regulator to utilize and the light of day is an excellent sterilizing agent. Random and unannounced audits of the DTCC "D" sub accounts, Ex-clearing "Open positions" and trading desk/ "B/d internalization" accounts are also highly suggested as deterrents. Think of it as hosting a game of "Musical chairs" wherein the music stops at unannounced times and all of the "Electronic book entries" in the system must find a chair of which there are only enough for legitimate "Shares" backed by a paper certificate. The trouble we have now is that the music at the DTCC has never stopped since its inception almost 35 years ago.

THE NEED FOR DARKNESS

It is no accident that the participants in most naked short selling frauds are obsessed with darkness whether it is the secrecy-obsessed hedge funds, market makers, offshore banks, prime brokers, clearing firms, "Nominee corporations", etc. The very nature of naked short selling as being such a blatantly heinous type of fraud necessitates that the main players operate in the dark.

In the United States of America in this day and age how else BUT IN THE DARK could you sell that which you don't own to a naïve Mom and Pop investor/ retiree, take their money, pay a little collateral on the debt until the share price predictably tanks, send the investor a monthly brokerage statement IMPLYING the blatant MISREPRESENTATION that what he or she purchased were indeed legitimate "Shares" and that they were indeed "Delivered" in good form and are being "Held long" somewhere, then refuse to deliver that which you sold to him or her and then pocket the proceeds. To top that off how else BUT IN THE DARK could you continue to sell yet more nonexistent shares into the onrush of buy orders of opportunistic investors sensing a bargain at the current ridiculously low share price levels, take their money also, collateralize this debt for a short term and then smother the issuer's share structure with a plethora of yet more mere "Share entitlements" thereby hopefully either bankrupting or inducing the 12-J deregistration of the targeted issuer and then move on to the next targeted company?

(The above paragraph I like to refer to as the "**R**eality **O**f the **F**raud" or the "ROF" involving naked short selling.)

Mandated buy-ins within a timeframe to accommodate "Legitimate" delivery failures and enhanced transparency measures are the #1 and #2 deterrents to naked short selling crimes. If history teaches you at the SEC with 100% certainty that the abusive DTCC participants and their co-conspiring usually unregulated hedge funds are irrefutably going to cheat on whatever rules are written then at least make them cheat in the light of day and allow natural market phenomena like mandated buy-ins within reasonable timeframes to meter out any punishment to the violators and even more importantly to provide a deterrent effect to the commission of these frauds. In other words add “RISK” to these otherwise “RISKLESS” transactions. You at the SEC don’t have the monetary or manpower resources to do it any other way because of the incredibly large volume of trading and the frenetic pace at which Wall Street moves.

As a baseline measure, I would suggest enforcing the law that the DTCC rulebook cannot have rules that are in direct contravention of the new Federal Law Reg SHO or any other of the 7 main Securities Acts. If I’m not mistaken any contravening rules were to have been removed from the DTCC rules and regulations by the effective date of Reg SHO or of any other of the securities laws.

As an example, how can the DTCC with a Section 17 A (’34 Exchange Act) Congressional Mandate to “Promptly and accurately settle” (which mandates prompt “Good form delivery”) all trades possibly have a rule on their books to be able to circumvent mandated buy-ins if they might prove to be “Disruptive” to the market. If a trade inadvertently didn’t promptly “Settle” as per the Congressional Mandate then why would the “Securities cop” that missed his assignment (the DTCC) intentionally “Handcuff” himself from correcting his mistake? Is there perhaps some other agenda in play or perhaps conflicts of interest present? As far as buy-ins leading to disruptions, any buy-in would obviously be “Disruptive” to the share price of a previously victimized issuer whose share price has plummeted. This ace up the sleeve of abusive DTCC participants which has historically emboldened them to commit these no risk frauds needs to be removed as well as a variety of other rules and regulations in direct contravention of the 7 main Securities Acts.

The combined rules and regulations of the DTCC and its subsidiary the NSCC is an 800-page document that is literally riddled with rules that are directly antipodal to the spirit of those in the 7 main Securities Acts. The conflicts of interest in this document between DTCC participants and those investors they owe a fiduciary duty of care to are literally innumerable even though the ‘34 Exchange Act strictly forbids conflicts of interest especially when they’re not brought to the attention of the investors owed the duty of care. These are known as “Undisclosed conflicts of interest” in legal parlance and are strictly forbidden especially when the party benefiting was paid a commission and is acting in an “Agency” capacity owing a fiduciary duty of care.

The SEC needs to take responsibility here as all additions to the DTCC rules were vetted by the SEC for what amounted to as no more than a “Rubber stamping” throughout history. The combined rulebooks of the DTCC and the NSCC were too much for the average SEC lawyer to get his arms around during the typical brief tenure that an SEC attorney has there before moving on to a much higher paying position on Wall Street. The SEC failed to recognize the now obvious pattern involving the diminution of investor protection and market integrity occurring as the DTCC constantly introduced new policies ostensibly designed to speed up the clearance and settlement system. The policy of having the rules and regulations of any “Registered Clearing Agency” (“Sacred cow”) untouchable by the SEC is absurd. This sets up the incentive for corrupt DTCC participants to “Sneak in” easily-abusable rules knowing that once they’re in they’re in for life and if the SEC is asleep at the switch at the time then it’s just tough luck for the investors they are commissioned to provide “Investor protection” and “Market integrity” to.

Further, the DTCC actually has a rule on the books that a participant cannot buy-in a fellow participant out of the open market without first going to the DTCC proper to have them mediate any buy-in (“Procedure X(A)1”). This then allows any deterrent value provided by the fear of open market buy-ins of an archaic delivery failure to be mooted as the delivery failure can be shunted yet once again to either the DTCC’s “Automated Stock Borrow Program” (SBP) with its self-replenishing “Lending pool” of securities. It can also be shunted to the Ex-clearing netherworld via DTCC “Securities orders” leading to “Non-CNS delivery arrangements” involving the use of “Unconditional contracts” (basically off balance sheet arrangements) and therefore refuge from 15c6-1. A third route would be the shunting to a “B/D internalization” hiding spot/repository for the delivery failure. The SEC should be expecting a whole lot of this activity now that the short positions of even nonreporting Pink Sheet issuers must be publicly disclosed.

If you take the Evans’ study and work backwards then you can imagine the variety of tricks available to circumvent 99.875% of even “Mandated” buy-ins. That’s why you legislators at the SEC must take heed and not just throw rules against the wall to see which ones stick. You just don’t circumvent 99.875% of even mandated buy-ins “Accidentally”. Trust me when I tell you that there is a very SYSTEMIC nature to NSS frauds. Certain people on Wall Street feel that this is their “Turf” and that they are above the law. There clearly is intent to defraud these Mom and Pop investors. In my second book I asked the question in regards to the meticulous lining up of perhaps 20 “Coincidences” in a row at the DTCC and at what point does this meticulous lining up of loopholes fail to no longer be a “Coincidence”? In other words if a clearance and settlement system with integrity and no undisclosed conflicts of interest present were to have a 1-in 10 chance of having a certain suspicious policy in its rulebook and you could line up 20 of these 1-in10 chance suspicious policies side by side then what are the chances of having a non-conflicted clearance and settlement system with <u>all 20</u> policies meticulously lined up side-by-side?

“PROMPT AND ACCURATE <u>SETTLEMENT”</u>

I believe that these issues can better come into focus if the SEC concentrates on enforcing the ‘34 Exchange Act and its mandate for the DTCC to **<u>“Promptly and accurately settle”</u>** all transactions. This has to become the foundation for any clearance and settlement system. After all, the DTCC Management’s refusal to honor their Congressional Mandate and “Promptly and accurately settle” all transactions forms the

<u>foundation</u> for and provides the emboldening of their participants' abusive behavior. The abusive DTCC participants "Rely" on DTCC management for two main things. The first is to refuse to perform their Congressional Mandate of effecting the "Prompt and accurate settlement" of all transactions and the second is to help them circumvent even "Mandated" buy-ins of the failed deliveries resulting from the lack of "Prompt settlement". Looking at the 99.875% success rate of this second endeavor then I believe we can officially declare the DTCC management to be very "Reliable" in this regard. Thus there are two distinct issues here. The first is the generation of these "Not so legitimate" delivery failures and the second is the refusal to deal with them once they are generated. Coincidence?

Recall that "Settlement" is defined by you at the SEC as "The conclusion of a securities transaction; a b/d buying securities pays for them; <u>the selling broker **DELIVERS** (emphasis added) the securities to the buyer's broker."</u> In short, **"Settlement"** equals "DVP" or "**D**elivery **V**ersus **P**ayment". Therefore "Prompt and accurate settlement" would mandate "Prompt and accurate good form delivery". Almost all securities scholars and researchers agree that "Prompt and accurate <u>settlement</u>" is the driving force for "Investor protection" and "Market integrity". It is the "Sine qua non" of investor protection and market integrity, without it you have neither.

THE SEC ROLLS THE DICE

Note that the role of "Mandated" buy-ins were historically to provide the "Safety net" to catch those cheating on the "Pre-trade" regulatory measures associated with "Borrowing" shares (bogus "Locates", bogus "Reasonable grounds", bogus "Bona fide arrangements to borrow", bogus SBP "Pseudo-borrows", etc.) after the fact and they theoretically would be rarely needed to resort to as the "Prompt settlement" of all trades, the Federal Law of the land, was being seen to by the party with the Congressional Mandate, namely the DTCC management. Historically, where the naked short selling fraudsters got a toehold in this business is due to the fact that there are indeed "Legitimate" reasons for T+3 delivery failures. The SEC was then forced to address a dilemma. Do they insist that "Good form delivery" be made **BEFORE** they allow a trade to "Clear" or do they cross their fingers and trust that the party doing the selling does indeed own the shares and that the certificate really is "In the mail" and will successfully land by "Settlement day" or T+3 <u>as is being implied</u>.

THE TRILLION DOLLAR "PRESUMPTION"

The SEC chose the latter, crossed their fingers and placed a trillion dollar bet by presuming that the DTCC management would fulfill their Congressional Mandate of "Prompt and accurate settlement", be ever vigilant for signs of abuses in regards to bogus "Borrows" that could be rapidly bought in once detected and that all 11,000 of the DTCC participants would “Act in good faith” with this incredibly inviting temptation to sell that which one of these participating b/ds and banks doesn’t own and simply allow the delivery to fail and be “Bailed out” by an SBP “Pseudo-borrow”. Once this “Naked short position” was established the next step would then be to simply flood the markets of these targeted issuers with yet more naked short sales resulting in the accumulation of massive amounts of readily sellable and incredibly damaging “Share entitlements”.

Keep in mind that these “Share entitlements” dilute an issuer’s share structure because they can be sold at will by their unknowing purchasers that thought they were buying legitimate paper certificate-backed “Shares” and that their was “Good form delivery” of that which they purchased. Notice the similarity between a human drug “Mule” unknowingly carrying drugs in his suitcase for a criminal and the average investor. The overly-trusting investor that never questions the accuracy of his monthly brokerage statement or never demands delivery of his share certificate is the critical component for these frauds to be perpetrated. This form of securities fraud necessitates that all investors be kept in the “Dark” by the SROs and regulators like the SEC with a Congressional Mandate to shine a ’33 Securities Act (the “Disclosure Act”) “Light” on Wall Street.

Think about it from a naïve investor’s point of view. They paid their money and they’re allowed to sell that which they purchased. Why would an investor suspect nefarious activity? Why would he or she ever suspect that what he or she was being allowed to sell, mere “Share entitlements” with no rights attached, wasn’t that which he thought he was purchasing i.e. legitimate “Shares” backed up by a paper certificate and with a full complement of rights attached?

Recall that investors are basically naïve and too trusting. They know absolutely nothing about how our clearance and settlement system works. They have zero access to the system and zero visibility of the system. They have a monthly brokerage statement that looks pretty official and that’s about it except they do have a sense of trust that the SEC is a strong-armed regulator and that they would have a working knowledge of any systemic frauds on the market and would be clamping down on them aggressively once detected. They also assume that SRO’s like the DTCC are following their Congressional Mandates to “Promptly and accurately settle all trades” as well as their SRO mandates to “Monitor the business conduct of its participants” and to act as the “Front line defense against market manipulations”. The investors are dead wrong in all of these regards! You at the SEC have historically absolutely refused to flex the muscle that you are mandated to flex and the DTCC has morphed into a self-serving SRO/monopoly that pretends it has no duty to the public it is supposed to be protecting while acting as an SRO, a member of the Federal Reserve, a “Qualified control location” as per 15c3-3, the legal “Depository” for shares, the legal “Custodian” for shares, the party with the Congressional Mandate to “Promptly settle” all trades, etc.

What could be easier than a fraud like this? It sets up a self-fulfilling prophecy; just never stop selling nonexistent shares and you’re guaranteed receipt of the investor’s funds. With this being the reality the fraudsters couldn’t help but bankrupt or at least mortally wound via artificial dilution even the most promising of development stage companies trying to develop in these “Incubators” provided by the lesser trading venues of the Pink Sheets, OTCBB and Amex.

Thus the goal of the illegal naked short sellers (as opposed to genuine “bona fide” market makers injecting liquidity into thinly traded securities) was to make “Illegitimate” delivery failures look “Legitimate”. The DTCC management sprang into action by instituting the unconscionable policy that <u>all</u> delivery failures are of a “Legitimate” nature unless proven otherwise and the trading data providing the proof of “Illegitimacy” was deemed to be of a “Proprietary” nature and rendered inaccessible.

Well that took care of that, all delivery failures were deemed to be “Legitimate” and worthy of an SBP “Bailout” despite the spirit of Addendum C to the rules and regulations of the DTCC/NSCC providing these “Bailouts” to delivery failures of a “Legitimate” nature only. This resulted in an engraved invitation to commit fraud when the DTCC in charge of monitoring for “Prompt and accurate <u>settlement</u>” and “Prompt good form delivery” tells the world that they’re not going to be monitoring for the abusive nature of any failed deliveries.

You at the SEC are well aware of this reality as your attorneys filed the following quote to an Appellate Court Judge in an Amicus Brief coming to the aid of the DTCC while they were being sued for naked short selling abuses: “Furthermore, NSCC has no mechanism for determining whether particular fails to deliver have occurred because of illegal naked short selling or for some legitimate reason.”

The problem is that in 1981 you at the SEC implied to the investing public that only “Legitimate” and very short termed delivery failures would be given access to SBP “Bailouts” because of the incredibly-damaging nature of the “Share entitlements” being procreated. What I can’t figure out is why the SEC would make that statement in a document addressed to an Appellate Court Judge trying to convince the Judge about how “Unflawed” and wonderful the SBP is as you point out a flaw that should be interpreted by any regulator truly interested in providing investor protection and market integrity as enormous. Can you not see how this easily-corrected gigantic flaw in the SBP <u>facilitates</u> naked short selling frauds involving intentionally selling bogus shares and letting the delivery fail because <u>admittedly</u> nobody is monitoring for the “Legitimacy” of delivery failures because there is no “Mechanism” available to do so?

I have two separate issues with the above comment of the SEC. Why announce to the world in a public forum like an Amicus Brief this gigantic invitation for committing securities frauds to those previously unaware of this gaping loophole. Secondly, the premise that there is no mechanism for determining the “Legitimacy” of delivery failures is absurd.

Perhaps you at the SEC can co-design with the DTCC a “<u>Mechanism for determining whether particular fails to deliver have occurred because of illegal naked short selling or for some legitimate reason.”</u> You might start by noticing the pattern of the same abusive DTCC participants working through the same abusive clearing firms that result in the preponderance of delivery failures well above statistically normal levels that just so happen to remain unaddressed for inordinate amounts of time.

This was the status quo before Dr. Leslie Boni was given access to the DTCC records during her research done prior to Reg SHO as a visiting financial economist in the employ of the SEC (more on her findings later). It is still the status quo today despite her shocking findings and the implementation of Reg SHO. I'll leave it up to you at the SEC to evaluate the corrective efforts made by DTCC management in lieu of these startling research findings by both Dr. Boni and the Evans group. I'll give you a hint, absolutely nothing constructive has occurred and the DTCC has been in an active "Cover up" mode ever since.

ADDENDUM "C" TO THE RULES AND REGULATIONS OF THE DTCC AND THE FORMATION OF THE "SBP"

As you well know the SEC endorsed what Addendum C to the rules and regulations of the DTC set up as a means to allow "Legitimate" <u>and only</u> "Legitimate" delivery failures of a very short term nature to go ahead and "Clear" <u>now</u> rather then wait for delivery which was implied to be just around the corner. The SEC knew full well that a basically "Counterfeit" share or mere "Share entitlement" capable of causing dilution was going to be created <u>but their thought process was that it would have such a short life span and there would be so few of them that the dilutional damage to the issuer involved would be insignificant.</u> This was allowed to occur via the intervention of the DTCC's "Automated Stock Borrow Program" or "SBP" which was signed off on by the SEC in 1981.

As mentioned, the presumption that you at the SEC made when you went way out on this limb was that the DTCC management and its 11,000 participants would all act in good faith with this new found ability to allow trades to "Clear" in the absence of the "Good form delivery" needed for the legal "Settlement" of the trade. Note that this was similar to Rule 3b-3 of the '34 Act's precept that the "Ownership" of a security could be transferred even though "Good form delivery" had not been attained yet. This was another incredibly high risk move made by the SEC that didn't work out very well.

When the fraudsters coupled these two loopholes together then trades could insanely be allowed to "Clear" and "Ownership" could be transferred as necessitated by Section 17 A both WITHOUT "Good form delivery" being made or the trade legally "Settling". <u>Thus when the new "Owner" of shares whose buy order involved a delivery failure "Cured" by the SBP sold his shares then the fact that the trade involving his buy order never did "Settle" either "Promptly" or "Accurately" or any other way for that matter became a moot point and boy didn't the fraudsters smell opportunity there</u>! Since this "New owner" and his b/d were kept in the dark by the DTCC and the SEC then they never did have a clue that the trade involving his buy order never "Settled" and that which he bought and sold perhaps never did exist in the first place even though DTCC participants were busy raking in their commissions and fees.

But one might ask what happened to the “Prompt and accurate settlement” mandated by the U.S. Congress in Section 17 A of the ’34 Act and the “Prompt receipt and delivery of fully paid for securities”? The answer provided by abusive DTCC participants became “Who needs it, this is our turf and you at the SEC have no power to modify our rulebook because we are a “Registered Clearing Agency”! The question is how in the world is the DTCC with a Congressional Mandate to “Promptly and accurately settle” all trades allowed to run the SBP in this fashion and why does the SEC continue to heartily endorse it and its incredibly obvious and easily-corrected flaws even after 25 years of it encouraging and facilitating naked short selling frauds?

Note that at this point in time the student of naked short selling’s brain typically starts shifting from wondering if NSS is as pandemic as everybody says it is to how can it not be as pandemic as everybody says it is or even worse when all of the “Securities cops” are turning their heads to these incredibly obvious crimes in unison. But I have to ask you, is that so much of a surprise when you have the finest legal brains on Wall Street diligently looking for loopholes within the laws and gray zones around the laws that they can link together in a “Daisy chain” of possibly defendable individual acts that once linked together constitutes an irrefutable “Fraud on the market” sucking in tens of millions of victims and perhaps trillions of dollars over time? Remember, the DTCC “Cleared” $1.4 quadrillion in trades in 2005 alone! The question is how many of these will ever legally “Settle” or is the lack of “Settlement” for a large percentage of these trades now a moot point?

THE “DECOUPLING” OF CLEARANCE FROM SETTLEMENT

Thus for the first time in history the “Clearance” of a trade was allowed to be **“DECOUPLED”** from the infinitely more important “Settlement” of the trade irrefutably needed to provide any degree whatsoever of “Investor protection” and “Market integrity”. It should be no surprise that certain of the 11,000 participants of the DTCC were not quite up to the “Acting in good faith” presumption, imagine that! Again the SEC’s presumption at the time of taking this incredible risk was that the DTCC management would carefully scrutinize the age, the amount and the “Legitimacy” of these theoretically ultra-short term delivery failures being “Cured” by their SBP as well as fulfill their Congressional Mandate of “Promptly and accurately settling” all trades and their mandate of effecting “The prompt receipt and delivery” of fully paid for securities on behalf of their participants.

History has clearly taught us that the SEC’s presumptions of DTCC participants “Acting in good faith” with trillions of dollars up for grabs and the DTCC management’s carefully monitoring for abuses of this public trust bestowed upon them by the SEC as well as Congress were misplaced. There was just way too much free Mom and Pop investor money available to steal in a veritably riskless manner than to worry about little things like the DTCC's management obeying the Federal Securities Laws as well as their honoring their Congressional Mandates as well as relying on 11,000 b/ds and banks to all behave themselves. Remember, the SEC was well aware that these mere "Share entitlements" being created would irrefutably become extremely damaging if their lifespan was not kept ultra short and their numbers kept below 0.5% of the number of legitimate shares outstanding. The ball was clearly put into the DTCC management's court and they either inadvertently dropped it or intentionally fumbled it.

Since you at the SEC approved of the concept of the SBP things really have "Devolved" quite a bit. What started out as a mechanism to allow trades involving "Legitimate" delivery failures of a short term nature to go ahead and "Clear" <u>now</u> rather than later since "Good form delivery" was implied to be imminent has inadvertently provided the foundation for rampant naked short selling abuses. Yes, your predecessors at the SEC blew it partially during the design phase of the SBP because a self-replenishing lending pool of securities really is bordering on insanity <u>even if</u> the DTCC management could be trusted to do their job.

Recall that the DTC was formed as an <u>emergent</u> measure to address the 1969 "Paperwork crisis" on Wall Street so perhaps your SEC predecessors felt that they had to roll the dice but where the SEC really let the investors down was by not noticing what the SBP had "Devolved" into over the years and that allowing "Ownership" transfer and the "Clearance" of the trade to happen independent of "Settlement" made "Settlement" or the lack thereof a moot point and it was this "Prompt Settlement" that provided the investor protection and market integrity. <u>With this being the reality notice the absolutely critical role that the DTCC management and Board of Directors was counted on to play.</u>

In a sense the weight of the financial world was and is currently placed on the shoulders of the DTCC management and Board of Directors. They could either run a tight ship leading to investor protection and market integrity or they could run a loose ship and let their participants/bosses ransack the investments made by naïve investors. What was their choice from a regulatory point of view? History has clearly shown us that they chose neither and went with option #3 namely to fraudulently claim to be "Powerless" to do 8 simple tasks that they have all of the power in the world to do and therefore their choice was and still is to "Abandon ship" and let their participants/bosses run wild and that's exactly what they did and what their abusive participants are doing today.

THE BONI REPORT

Dr. Leslie Boni's now often-quoted 2004 research study done for the SEC revealed that the mean age of one of these theoretically "Legitimate" and short-termed delivery failures at the DTCC had grown to a staggering 56-business day average within this "Regulatory vacuum" provided by DTCC management's professed "Powerlessness" as well as the lack of either interest, courage or understanding of the fraud by the SEC. Note that any delivery failures of perhaps even 10 day's age is very damaging for an issuer suffering the resultant dilution when "Prompt settlement" is theoretically the law of the land. It's embarrassing to need to "Buy-in" delivery failures when your financial system is the model for all other countries to ascribe to.

In 2004 Dr. Boni referred to the "Extent" of the delivery failure crisis at the DTCC as being "Pervasive" and much larger than many had anticipated. She concurred with the results of a different work of Evans, et. al. and concluded that many of these delivery failures were "Intentional" and not inadvertent. The reason proffered to intentionally allow trades to fail in delivery was to circumvent expensive or even unavailable "Borrows". Why would anybody "Rent" shares when the DTCC refuses to monitor the legitimacy of delivery failures and you could merely fail delivery and let the SBP bail you out? Granted you still had to collateralize the debt but you didn't need to come up with an usurious amount of money to borrow extremely "Hard to borrow" shares. Thus what was designed as a means to enhance the efficiency of the clearance and settlement system had been co-opted by abusive DTCC participants selling nonexistent share replicas to unknowing investors in order to gain access to their investor dollars. Note that the Dr. Boni and Dr. Evans reports align nicely. The question that begs to be asked after studying both reports is why weren't these delivery failures "Bought-in" on T+13 by the DTCC management in charge of providing the "Prompt and accurate settlement" of all transactions as well as "The prompt receipt and delivery" of all fully paid for shares?

Note that the only flaw I detected in the Boni report is that just because the average age of a delivery failure is 56 days doesn't mean that it was finally "Bought in" or that "Good form delivery" occurred on this day. The Evans report suggests what we empirically find all the time is that these archaic delivery failures are often "Crossed" to a co-conspirator or from the abusive DTCC participant's left hand to his right hand to illegally end one archaic delivery failure and start a new one without covering the short position. These "Rejuvenating crosses" take the heat off of embarrassingly old delivery failures. Kudos to the SEC for being aware of these "Sham close outs" as you refer to them and warning any potential "Utilizers" of these means that you were on the look out for them.

Thus if individual parcels of shares were traceable, which they aren't due to the "Anonymous pooling" format that the DTCC <u>insists</u> on holding shares in (imagine that!), the average age of a delivery failure at the DTCC would be the arithmetic sum of the delivery failure Dr. Boni measured plus the ages of all "Predecessor" delivery failures <u>of that particular parcel of shares</u> before any "Rejuvenating crosses" were effected. The 99.875% of mandated buy-ins being circumvented tells us that these "Crosses" are the <u>rule</u> and not the exception and that the true age of one of these delivery failures of a theoretical short-term and "Legitimate" nature being held at the DTCC might be <u>many times</u> the 56-day figure which is totally unconscionable and might seem to be more of a matter for the DOJ than the SEC as the line into criminality had obviously been traversed. This is yet another reason for the SEC to break up the "Anonymous pooling" formats in use at the secrecy-obsessed DTCC to allow a little sunshine in. One question I've always had is what kind of light was Dr. Boni allowed to use in the darker corners of the DTCC, a lit match, a candle? What might she have found if given unfettered access?

WHY WOULD YOU EVER "DELIVER" THAT WHICH YOU SELL IF YOU DON'T HAVE TO? WHY WOULD YOU EVER "BUY BACK" THAT WHICH YOU PREVIOUSLY SOLD IF YOU NEVER HAVE TO "DELIVER" IT?

Later we learned of the unconscionable policies of the DTCC management and participants that allow the sellers of nonexistent shares access to the investor's money <u>even though they have never delivered nor ever intended to deliver that which they sold.</u> All the naked short selling fraudsters need to do in the DTCC clearance and settlement system is to "Collateralize" the resultant debt on a daily marked-to-market basis. Then as the "Bear raid" plays out and the share price of the targeted company predictably plummets so do the marked-to-market collateralization requirements thereby allowing the investor's funds to actually flow into the pockets of those selling the nonexistent "Share look alikes".

This occurs even though the abusive DTCC participants continue to refuse to deliver that which they sold well into the past and the trades involved never did "Settle" despite the fact that the facilitators of these acts are the DTCC management "Securities cops" with a Congressional Mandate to "Promptly and accurately settle" all trades. Is the NSS story basically one about "Dirty cops"? Note that there is quite a distance between being a good "Securities cop", obeying your Congressional Mandate and providing investor protection and market integrity and going well out of your way to provide the meticulously-designed foundation to facilitate the theft of investor funds and the annihilation of market integrity all on behalf of your bosses the participants of the DTCC.

I think the message needs to get across to you at the SEC that the OTC markets are in essence "Rigged" and our clearance and settlement system is <u>badly</u> broken and in need of <u>emergent</u> care. I understand that the term "Rigged" seems harsh but what other way can you characterize these markets when the "Reality of the fraud" or "ROF" is as it is. Why is emergent care needed? Because each of these unaddressed and archaic delivery failures has resulted in the creation of readily sellable "Share entitlements" which you at the SEC have given your blessing upon to be created and which many times occur in numbers grossly above and beyond the number of legitimate shares backed up by a paper certificate in an issuer's share structure.

Many hundreds of previously victimized development stage issuers are currently out there trying to keep their head above water and are in dire need of the SEC's removing of the weight of these excess "Share entitlements" off of their back. These issuers are aware of the nature of the gamble you at the SEC took with good intentions but now they need for you to acknowledge that this gamble you made did not pay off and that corrections need to be made because the DTCC management did not follow through on their mandates and many DTCC participants were just not up to the "Acting in good faith" presumption that you at the SEC incorrectly made.

Management teams I've interviewed over the years liken being on the receiving end of one of these "Bear raids" as similar to treading water in quick sand. They hate to have to raise funds at steep discounts to share price levels that have been grossly manipulated downwards but it's either that or go bankrupt. Typically development stage issuers are not yet mature enough to approach a bank and qualify for debt financing. Former business partners of these companies often refuse to do business with them as they watch these ships sink. Often these former business partners are actually approached by agents of the naked short sellers and warned to steer clear and don't do any more business with this "Scammy" company. Angry shareholders watching their percentage of ownership as well as investment dollars dissipate immediately think that it is a corrupt management team that is doing all of this selling <u>since they are the only ones that own as many shares as are being sold</u>. The confidence in management gets so low that previous financiers look upon further cash infusions as good money after bad and soon it's time to close the doors and send the employees packing.

All the while angry investors think that their investment succumbed to a "Pump and dump" fraud perpetrated by a dirty management team and these management teams seldom get a second kick at the can on Wall Street after their reputation is damaged. I can't go into it in this limited venue but the damages involved in one naked short selling attack will encompass things that you would have never in your wildest dreams thought of like the above management teams being tainted for life. Notice how the total obsession that both the SEC and DTCC have with "Pump and dumps" takes the attention away from what is really going on in many of these manipulations namely a "Short and distort" campaign.

THE SELF REPLENISHING NATURE OF THE SBP's "LENDING POOL" OF SECURITIES

In addition to the DTCC's, NASD's and SEC's blatant refusal to monitor for the "Legitimacy" of delivery failures and their short-termed nature one of the more important factors leading to massive abuses of this clearance and settlement system is the policy of DTCC management to allow purchasing b/ds whose trades were allowed to "Clear" via the electronic book entry "Pseudo-delivery" of an "SBP" pseudo-borrowed (a bogus borrow made from a self-replenishing source) parcel of shares to place these "Pseudo-borrowed" shares, since they are now their new legal "Owner", right back into the same SBP "Lending pool" from whence they just came out of <u>as if they never left in the first place</u>.

This was caused by the aforementioned glaring loophole in 3b-3 allowing the transfer of legal "Ownership" to the new buyer of shares <u>despite the lack of "Good form delivery" leading to this new found ability to separate "Clearance from "Settlement".</u> From a legal sense it's fine if you deem that the instant "Ownership" is transferred occurs at the mere

"Clearance" of a trade as long as you notify the previous owner that he is no longer the legal "Owner". If you can't identify or locate him due to "Anonymous pooling" issues then all bets are off and the policy is insane and represents an engraved invitation for criminal activity. By the way, the "Lending b/d" could easily determine exactly whose shares got loaned out and they could send this information to the DTCC in a heartbeat but the DTCC doesn't want to know the name of the actual shareholder. If they knew then the anonymously pooled format couldn't be utilized to obfuscate these issues. I've noted over the years that within the DTCC and its various subsidiaries and within their interactions with their participants there is a lot of information shared only on a "Need to know" basis such that nobody has all of the puzzle pieces and therefore the duty to alert the regulators when they witness fraudulent conduct.

This anonymous pooling and the theoretical inability to warn investors that they lost "Ownership" led to the need to intentionally MISREPRESENT (since the b/d does indeed know whose shares were loaned) on the monthly brokerage statement of the investor whose shares were loaned, anonymous to some but not to others within the DTCC structure, that he or she, the investor, still was the legal "Owner" of that particular parcel of shares. The abusers thankfully never had to identify WHICH parcel of shares was involved again due to the magic of "Anonymous pooling". Note that both the identities of the "Owners" of shares held in the lending pool as well as the ability to identify particular parcels of shares held in the lending pool were lost via this use of "Anonymous pooling".

This was the collateral damage sustained when a paper certificate with a specific shareholder's name and a specific certificate number was converted into an electronic book entry during the "Dematerialization" mandated by 17 A. In regards to not identifying and informing the shareholder who lost his "Ownership" during the SBP loan process even though his identity is known to his broker note how the "Darkness" mentioned earlier has spread to the shareholder's monthly or quarterly brokerage statement and to the NSCC themselves fortuitously unaware of the identity of the loaning shareholder.

Recall the legal definition of MISREPRESENTATION being: "the statutory crime of obtaining money or property by making false representations of fact". Would these investors have purchased shares in a victimized issuer preordained to an early death by a plethora of undisclosed "Share entitlements"? Of course not. Is there a general MISREPRESENTATION out there now that these OTC markets are highly regulated by the SEC and that the DTCC management is following its Congressional Mandate to "Promptly settle" trades? Is the SEC's, NASD's and DTCC's refusal to disclose the absolute number of incredibly damaging "Share entitlements" within the share structure of an issuer an example of MISREPRESENTATION? How about their failure to disclose "All material facts regarding the "Character" of securities bought and sold in interstate commerce and through the mails"? I would say that abusive DTCC participants are definitely "Obtaining money or property by making false representations of fact".

The net effect of this SBP loan process was the creation out of thin air of new "Share entitlements" indiscernible from legitimate "Shares" to the eyes of the investors but not to the eyes of the DTCC participants and since Reg SHO became effective now to the eyes of the SEC. The only problem here is that the DTCC's Congressional Mandate only empowered them to change the **FORMAT** to account for share ownership from a paper-certificated basis to an easier to deal with "Electronic book entry" basis via "Immobilization" and "Dematerialization". There was no permission granted to create a plethora of long-lived share imposters out of thin air that unbeknownst to their purchasers couldn't be voted and had none of the dozen or so rights attached that a legitimate share does. This led to the need to design a cover up fraud every time a shareholder tried to exercise one of the dozen rights that was missing in this mere "Share entitlement". In the legal system only the Board of Directors of a corporation can issue new "Shares" and only via a "Director's resolution". Then it was the job of the SEC working with the issuer of shares to "Register" these shares to make them readily-tradeable which is another formality that got lost in this mad dash to an investor's wallet as these "Share entitlements" are not "Registered" with the SEC.

If you picture all of the "Anonymously pooled" shares in the SBP's "Lending pool" at any given time as being white marbles of various sizes (numbers of shares) and you dye one marble red for identification purposes; if the NSCC division of the DTCC were to choose the red marble (a specific parcel of shares) for borrowing and use it to allow a trade involving a "Delivery failure" to "Clear" by wiring these shares now in an electronic book entry format devoid of any identifying information to the new buyer then the new buying b/d, as the new legal "Owner" as per 3b-3, could place this "Red marble" of electronic book entry shares right back into the same lending pool of shares from whence it just came again <u>as if it never left in the first place.</u> This "Red marble" of shares could then be available to "Cure" yet another delivery failure of a different naked short seller 10 minutes later.

The net result would be to have the same "Parcel of shares", if it were identifiable which it is not due to the "Anonymously pooled" format of the "Lending pool" at the SBP which the DTCC insists on, loaned out to perhaps a dozen different naked short selling groups SIMULTANEOUSLY. Another result would be a perpetually full lending pool keeping lending fees artificially low and the inducement for other naked short sellers to "Pile on" with their own naked short selling efforts artificially high. In other words it would shift the risk/reward scenario towards the commission of more acts of fraud. Recall that the lack of "Borrowable" shares provides a defense mechanism from these abuses. Naked short selling attacks are very much a "Team" effort although market makers are not supposed to be communicating with each other except during order executions.

Each of the dozen "Co-owners" of this same single parcel of shares would receive a month end brokerage statement MISREPRESENTING that it was the sole owner of this parcel of shares and that it had the right to vote these shares as well as to receive tax preferential treatment for any cash dividends (JAGTTRA legislation) as well as access to the other 10 or so rights attached. The key is that even though "Good form delivery" was not attained because of the nature of a "Pseudo-borrow" being totally bogus it didn't matter because of 3b-s's loophole allowing "Ownership" to be transferred independent of "Good form delivery" being accomplished.

These shortcomings of the securities laws can be circumvented if the regulators concentrate on "Prompt settlement" and not "Prompt clearance" as being the foundation providing investor protection and market integrity. I do applaud the efforts of the SEC in tightening up the definition of "Ownership" in the original Reg SHO via the 8 additions made but more obviously has to be done. It's really pretty simple, either notify the actual shareholder that he no longer "Owns" those shares or amend 3b-3 and Reg SHO so that the transfer of ownership needs "Good form delivery" i.e. "Settlement" of the trade before "Ownership" can be transferred. I will be the first one to admit that there has to be a well-defined moment at which "Ownership" is transferred but bestowing "Ownership" of a parcel of shares, whether specifically identifiable or not, upon a new buyer without taking "Ownership" away from the lender of this parcel, again whether specifically identifiable or not, is absurd no matter how "Streamlined" or "Ergonomic" it is in allowing commissions to go to brokers.

The damage being incurred by the corporations being victimized by these "Bear raids" is due to the massive dilution involving the accumulation of readily sellable "Share entitlements" that result from EACH delivery failure as all 12 co-owners in the above example will be allowed to sell their "Share entitlements" at their will. After all, how could a DTCC participant deny allowing a client to sell the "Entities" that he purchased and paid a commission for without giving away the existence of the whole fraud?

This artificially enhanced "Supply" of readily sellable "Shares" and/or "Share entitlements" would then interact with an artificially depressed "Demand" for shares due to the constant naked short selling into genuine buy orders with its always attached cash that appear resulting in a greatly diminished share price. Why is there naked short selling into the buy orders that appear? It's because of the "Reality of the fraud or "ROF" which allows he who sells into a buy order access to the attached cash no matter what he is "Selling". Note that it is the SIMULTANEOUS increasing in the supply of readily sellable "Shares" and/or "Share entitlements" in the face of decreasing "Effective" demand allowed to interact with this inflated "Supply" that creates synergies to provide a **MARKED** decrease in share price because the laws of supply and demand are still operative although the two variables have EACH been grossly manipulated. As you at the SEC well know the legal definition of MANIPULATION is: "The intentional interference with the free forces of supply and demand". Can a 56 or 156 or a 256 consecutive day of refusal to deliver that which was sold be anything other than "Intentional"?

So who is responsible for the intentional MANIPULATION of share prices downwards or the direct or indirect facilitation of this MANIPULATION? It would be those parties interfering with "The free forces of supply and demand". The Answer according to many would have to include the abusive DTCC participating market makers, clearing firms, prime brokers, etc. and their co-conspiring hedge funds, as well as the DTCC, the NSCC and according to most securities scholars the SEC also. Why the SEC? Because their role as a "Facilitator" is due to their continual refusal to enforce "Prompt settlement" and their refusal to correct and insistence on standing behind the self replenishing "Lending pool" of the SBP which grossly "Interferes with the free forces of BOTH supply and demand".

In fact, in the case of allegedly victimized issuers suing the DTCC for SBP-related naked short selling frauds you at the SEC are there to file an Amicus Brief stating that you indeed signed off on the SBP some 25 years ago and that you stand by that decision. I think investors deserve better than to see their main "Securities cops" refusing to take responsibility for and refusing to see to the correction of a severely flawed Stock Borrow Program encouraging and FACILITATING the perpetration of this massive "Fraud on the market".

The investors in development stage U.S. Corporations that are typically targeted in these naked short selling frauds would greatly appreciate your mandate that the "Anonymously pooled" format of the SBP be done away with and if an investor's shares have been loaned out then he has to be identified and notified that he has lost his voting rights, tax preferential treatment of cash dividend rights, etc. I think the IRS would be greatly appreciative also. Unfortunately for the DTCC participants this message might connote that having shares in margin accounts is a little more damaging than the margin agreement suggested. If investors knew the truth then a lot fewer investors would use margin accounts and a lot of that lucrative banking activity might be lost. Note the SYSTEMIC RISK issues here also as this is often <u>BORROWED money being stolen back by its lenders who will get repaid no matter what the investment does</u>.

It's gotten to the point that a U.S. Corporation can't even carry out a proxy vote without running into issues of whose vote should or shouldn't count. This opens up these corporations to "Spin off" frauds involving bogus voting. The lack of your refusal to provide this curative methodology has resulted in the "Over-voting" crisis we are in the midst of and that the NYSE is trying to address. The one share-one vote system has been around a lot longer than the SBP's "Lending pool". The fraudsters thank goodness that a lot of shareholders don't cast their votes which kept these "Missing rights" issues under the surface for decades and it was actually the IRS's refusal to provide tax preferential treatment of cash dividends to mere "Share entitlements" that caused this "Missing rights" issue to resurface.

Although the DTCC refuses to admit it I would think that the SEC could recognize the obvious abuses available via what amounts to a form of "Counterfeiting" permitted by having perhaps a dozen different investors <u>unknowingly</u> co-owning the same parcel of shares listed in the "Shares held long" column on their monthly brokerage statement. The problem is that 11 of these 12 "Parcels" do not contain "Shares" and they're certainly not being held "Long" by anybody. This concept is rather heinous and totally unconscionable to investors and management teams yet 25 years later both you at the

SEC and those at the DTCC just don't seem to get it or worse yet you do get it but you don't care to do anything about it except to continue to cover up prior atrocities while not addressing the current and future ones. This is not a difficult concept to comprehend and in fact these abuses involving "Anonymous pooling" serves as the basis for many types of frauds especially in the real estate arena.

In my 3 textbooks on NSS I've always referred to an SBP "Borrow" to cure a delivery failure as a "Pseudo-borrow" because you cannot effect "Good form delivery" if you're borrowing from a self-replenishing source. The "Lending pool" at the SBP should go down a notch with every "Borrow" being made otherwise these frauds will obviously develop their own leverage from within. In our current system the lending pool goes down a notch for 10 minutes and then is allowed to refill. In your Amicus Brief submitted recently on behalf of the DTCC that was being sued for NSS crimes you made the statement that "The Stock Borrow Program is designed to improve the efficiency of the Continuous Net Settlement system by increasing the likelihood that purchasers will receive their securities on settlement date". That "Increasing the likelihood" was very, very clever. As you well know a lot of what is being electronically transferred has no paper certificate to justify its existence. If an issuer has 100 million legitimate certificate-backed shares at the DTCC and 50 million shares in a "Failed delivery" status then there is a 33% chance that the electronic book entry sent to the new buyer of shares in a trade involving an SBP "Pseudo-borrow" has no paper certificate to back it up. You SROs and regulators are all hung up on being unable to identify which shares are real and which are fake. It doesn't particularly matter whether you at the SEC or DTCC can identify which particular parcel of shares is real or fake, that is immaterial. The important point is that there are inordinate amounts of these "Share entitlements" zipping through cyberspace whose existence causes the rerouting of investor funds into the pockets of abusive DTCC participants.

Many of these purchasers are not receiving that which they paid full retail price for and thought they had purchased. The SBP creates the ILLUSION that "Good form delivery" is being made and that the trade is legally "Settling". What the SBP in essence does is it "Undoes" yesterday's "Good form delivery" in order to allow today's trade <u>to appear</u> to have involved "Good form delivery". And the rub of it is who says that yesterday's trade involved "Good form delivery" in the first place when in the above example there was a 33% chance it didn't involve "Good form delivery"? What we're left with is a giant "Ponzi" or "Pyramid" scheme defrauding unknowing Mom and Pop investors and enriching DTCC participants that know not only how the game is played but also which U.S. Corporation is the "Target du jour". Under which shell are the "Shares" that really have paper certificates somewhere to justify their existence? I can't tell you, that's "Proprietary" information.

Trades involving SBP "Pseudo-borrows" over the last 25 years have not been legally "Settling". <u>This fact should absolutely terrify those at the SEC sincerely interested in providing investor protection, market integrity and the diminution of SYSTEMIC RISK.</u> When Dr.s Boni and Evans published their research findings the alarms at the DTCC, SEC and NASD should have created deafening noises and resulted in a mad scurrying around to plug the holes in this regulatory dyke that had obviously been breached. The SYSTEMIC RISK incurred by all Americans due to this reality is now palpable by those with a solid understanding of the discipline of naked short selling and yet our SROs and regulators still just don't seem to get it. Was Usama Bin Laden kidding when he recently said that he knows the weaknesses of the U.S. financial system like the lines on his hand?

By definition, there can be no integrity in a clearance and settlement system not based upon "Prompt and accurate settlement", which necessitates "Prompt good form delivery", being at the heart of each and every transaction. Don't be confused by the term "Clearance" of a trade. "Clearance" only refers to making sure that both parties to a trade agree as to which party acted as the buyer and which as the seller, the date of the trade and the date of the settlement of the trade, the price at which the transaction was struck, in which capacity the parties were acting i.e. as a "Broker/agent" or as a "Principal/dealer", etc. "Clearance" merely results in what is referred to as a "Locked in" trade. There are 13 places on Wall Street where "Locked in" trade data can enter the DTCC and all of them have loopholes beyond description whether we're talking in terms of "Service bureaus", "Cross border arrangements" with Canadian b/ds, "Interfacing" with the Canadian Depository System or "CDS", etc. In the overall scheme of things "Clearance" is just a means to minimize clerical errors; "Settlement" is the critical thing to concentrate on. There are just too many "Pre-trade" locations and systems off of the radar screen of regulators and SROs that allow delivery failures to enter the system. That's why the "Prompt settlement" of trades needs to take center stage.

EXTOLLING THE VIRTUES OF THE SBP IN AMICUS BRIEFS FILED BY THE SEC

When allegedly victimized issuers of NSS abuses are denied relief by the SEC and the various SROs they may resort to suing the DTCC for facilitating NSS attacks via their use of the SBP and a variety of policies. Their goal is typically to get access to the trading data proffered to be "Proprietary" in nature by the DTCC and SEC during the "Discovery" process which they feel will irrefutably prove their case. As you well know since the PSLRA was instituted in 1995 any plaintiff involved in securities litigation must pretty much make his case in the preliminary phases before being granted access to "Discovery". Plaintiffs' attorneys are then faced with the catch -22 that because of the secrecy that the DTCC shrouds themselves in they can't get access to the trading data without discovery and they can't get discovery without access to the trading data. In the 14-question self-interview done by the DTCC recently they boasted of how successful they had been in fending off alleged victims of NSS attacks suing the DTCC for the knowingly corrupt nature of the SBP.

Part of the reason for this success rate has to do with the SEC siding with the DTCC and going way out of their way to file "Amicus Briefs" on behalf of the SBP and how wonderful it is. I want to list out some "Snip-its" from a recent Amicus Brief filed in an NSS case against the DTCC and a critique thereof.

1) "Section 17A of the Exchange Act charges the Commission with overseeing the national clearance and settlement system in accordance with the public interest and the protection of investors."

(Comment: Here we see that the SEC does indeed oversee the DTCC and they are to do so with the "Public interest and protection of investors" in mind.)

2) "The Stock Borrow Program is designed to improve the efficiency of the continuous net settlement system by increasing the likelihood that purchasers will receive their securities on settlement date"

(Comment: Here the SEC lawyers claim that the SBP "Increases the likelihood that purchasers will receive their securities on settlement date". Reality: the buying b/d "Received" an electronic book entry for a parcel of shares that 11 other b/ds may have received also. These aren't the "Securities" the purchaser <u>thought</u> he was buying and becoming the sole owner of. How can "Hoodwinking" those you owe a fiduciary duty of care to "Improve the efficiency" of anything. The "Delivery" of often non-exercisable "Share entitlements" without voting or any other rights attached is not "Good form delivery" of that which the purchaser was led to believe he was buying.)

3) "The Commission has approved the Stock Borrow Program as being in compliance with the Requirements of the Exchange Act".

(Comment: The self replenishing nature of the SBP and its "Anonymously pooled" format for holding shares is in direct contravention of the Congressional Mandate to "Promptly settle" all trades as well as dozens of other rules in the '34 Exchange Act including the banning of conflicts of interest, the postponement of settlement, creating "Artifices to defraud" (10b-5), etc.)

4) "Some of plaintiffs' claims for relief allege that operation of the stock borrow program itself gives rise to damage claims, while others are characterized as "misrepresentation" claims, but both sets of claims are in actuality challenges to the correctness of the Commission's decision to approve the stock borrow program."

(Comment: Here we see the incredible importance of the SEC's blessing being placed on a totally corrupt SBP. This is why it is crucial for the SEC to come forward and admit that the SBP has "Devolved" into the foundation for a perhaps trillion dollar fraud. Why? Because the DTCC management didn't hold up their part of the bargain and monitor the amount, "Legitimacy" and lifespan of the incredibly damaging "Share entitlements" that the SEC knew were being created. They relied on the DTCC management to do certain things which they now publicly proffer to be "Powerless" to do and they relied on 11,000 b/ds and banks to "Act in good faith". How can the SEC <u>not</u> pull their support for this foundation for fraud when the DTCC publicly states that they are "Powerless" to do what the SEC knew full well they had to do in order to effect "Investor protection and market integrity" and prevent the obvious invitation to commit fraud? Quote #1 above talks about the "Public interest and the protection of investors". It is the heart of 17 A which gave birth to the DTCC!

5) "the Commission has a strong and direct interest in seeing that the threats created by plaintiffs' lawsuit are ended by the affirmance of the district court's dismissal."

(Comment: "The threats created by plaintiffs' lawsuit" are that the discovery process will irrefutably prove their contention and that of hundreds if not thousands of other victimized issuers that the delivery failure crisis is for real and that the SEC has been standing up for the SBP for 25 straight years even though it provides the foundation for the frauds being alleged.)

6) "Whether the Exchange Act preempts state law claims against registered clearing agencies either for operating the stock borrow program in accordance with Commission-approved rules, or for failing to disclose alleged "defects" in that program, the existence of which would be contrary to the factual basis on which the Commission approved the program."

(Comment: Again we see the damage done by the SEC in refusing to either fix the SBP or at least admit its flaws. Imagine the frustration of a victimized issuer that had to go all the way to legal measures to witness the regulator that failed to recognize these frauds in the first place and offer any "Investor protection" as is in their mission statement to see this same regulator interfering with any chance to go to discovery to find the irrefutable proof by misrepresenting the SBP as being unflawed. This behavior by the SEC is held by many securities scholars to be nothing short of criminal in nature.)

7) "The prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating transactions by and acting on behalf of investors."

(Comment: This is the crux of Section 17A of the '34 Exchange Act. The prompt and accurate SETTLEMENT of trades is needed for the protection of investors. Trades involving delivery failures "Bailed out" by the SBP DO NOT LEGALLY "SETTLE"-NOT EVEN CLOSE! There isn't anything even vaguely resembling "Good form delivery" when the lending pool of the SBP is self replenishing and when the administrator of the system refuses to monitor for the "Legitimacy" of the delivery failures being made. You just can't have 12 different people receiving "Good form delivery" for the <u>same</u> parcel of shares. Recall that "Settlement" was defined by the SEC as basically "Delivery versus payment".)

8) "Congress directed the Commission, "having due regard for the public interest, the protection of investors, and the safeguarding of securities," to "facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities * * * in accordance with the findings and to carry out the objectives set forth" above. Section 17A (a)(2), 1512 U.S.C. 78q-1(a)(2)."

(Comment: Amen! What happened to it?)
9) "The Commission also has plenary rulemaking authority with respect to clearing agency conduct."

(Comment: Please use this authority! You have the muscle to save our clearance and settlement system. Do you have the heart?)

10) "No registered clearing agency may engage in any activity as a clearing agency "in contravention of such rules and regulations * * * as the Commission may prescribe as necessary or appropriate in the public

interest, for the protection of investors, or otherwise in furtherance of the purposes of the ’34 Exchange Act.”

(Comment: No rules allowed to be in contravention of the PURPOSES of the ‘34 Act.)

11) “The stock borrow program is intended to improve the efficiency of the clearance and settlement system by increasing the likelihood that purchasers will receive delivery of their securities on settlement date even though insufficient securities have been delivered to NSCC. NSCC Rules, Addendum C. Under the applicable Rules, the program is automated and operates without the exercise of discretion by NSCC.”

(Comment: The SBP was formed in 1981. Here is one of my favorite lines of all time: “The program (SBP) is <u>automated</u> and operates <u>without the exercise of discretion by NSCC</u>”. Twenty five years ago the SEC approved it and turned it loose on the public corporations and now nobody is responsible since it is “Automated”. The SEC refuses to fix it and the DTCC need not doing anything about it since they have no “Discretion”.

The money stolen flows into the pockets of the abusive DTCC participants and even if they wanted to fix it they can’t, they have no “Discretion”, after all it’s “Automated” silly! DTCC participants knowledgeable about the incredibly flawed nature of the SBP can therefore sell that which they don’t own to naïve Mom and Pop investors/retirees, allow this “Flawless” SBP to “Cure” the delivery failure, collateralize the debt for a short while, refuse to deliver that which they sold months ago and then pocket the investor’s money as the share price does its inevitable “Tanking”.

Co-conspirators can join in and also sell nonexistent shares, BORROW THE SAME EXACT PARCEL OF SHARES FROM THE SAME EXACT SBP LENDINGPOOL OF SECURITIES THAT THE ORIGINAL FRAUDSTER BORROWED after his b/d was insanely allowed to place them right back into the same lending pool from whence they just came, collateralize the debt, refuse to deliver that which he sold and then pocket the Mom and Pop investor’s money and then move on to the next Mom and Pop investor sensing a wonderful investment in this issuer trading at perhaps 10% of book value. Then after all of this when the victimized Mom and Pop investor and the issuer involved file suit for damages they can read the Amicus Brief wherein the SEC lawyers went in front of an Appellate Court Judge and swore to the Judge how wonderful and unflawed the SBP is and that we at the SEC proudly stand behind it and please Judge don't let the mom and Pop investors and the issuer involved acting as plaintiffs move on to the discovery phase where they might find the evidence irrefutably proving that what I am swearing to is a total crock!

12) "Plaintiffs' incorrect descriptions of important aspects of the Continuous Net Settlement system and the Stock Borrow Program: This summary of the applicable NSCC rules makes clear that plaintiffs' descriptions of the continuous net settlement system and the stock borrow program are flawed in important respects. Among their erroneous allegations are that (1) the stock borrow program is the only way that fails to deliver can be cured, (2) NSCC is at fault for not requiring buy-ins, and (3) the stock borrow program results in the creation of phantom securities. *First*, a receiving member that has failed to receive securities can obtain those securities through a buy-in that does not involve the stock borrow program at all.

(Comment: Evans' research cites that 99.875% of the time these are circumvented so why intentionally mislead an Appellate Court Judge?)

13)*Second*, NSCC does not have the authority to require buy-ins.

(Comment: 1) They have a Congressional Mandate to effect "Prompt settlement". If a DTCC participant refuses to make delivery then a buy-in is the ONLY way to effect "Settlement". 2) They are an SRO mandated to "Monitor the business conduct of its participants" and "Provide the front line of defense against market manipulations", 3) They are a member of the Federal Reserve one of whose 4 objectives is: "Maintaining the stability of the financial system and containing **SYSTEMIC RISK** that may arise in financial markets", 4) They act as a "Qualified Control Location" mandated to "Take the physical possession of all fully paid for shares" on behalf of 99% of Wall Street firms utilizing them as their means to be in compliance with 15c3-3, "The customer protection rule", if people refuse to deliver after even prolonged timeframes then they must buy-in their delivery failures 5) They are the creditor of this IOU owed by clearing firms failing delivery, their bosses, directly to their NSCC division after acting in this "Loan intermediary" role in their "Automated Stock Borrow Program", 6) They are the "Legal Custodian" of the shares held at the DTC depository 7) They administer the DTCC "Automated Stock Borrow Program" which the SEC went way out on a limb to authorize in order to avert the looming "Paperwork crisis" in 1969. The SEC trusted DTCC management to aggressively monitor for and correct any abuses detected in this open invitation to steal from investors as the "Share entitlements" being created were known to be incredibly damaging if their lifespan, numbers and the "Legitimacy" of the delivery failure that procreated it are not scrutinized constantly.)

14) "As noted, its role in the stock borrow program is automated and non-discretionary -- the only entity authorized by the rules to require a buy-in is the receiving member. If a long position remains open for an extended period of time that is because the receiving member has not initiated a buy-in, presumably because that member is willing to rely on the fact that it will eventually be allocated securities pursuant to NSCC's procedures."

(Comment: The "Receiving member" does not know that his buy order needed an SBP "Bailout" to clear. He did "Receive" an electronic book entry even though it may not have a paper-certificated share to justify its existence. He didn't initiate a buy-in because he was "Hoodwinked" into believing that he did get "Good form delivery". That's also why he mistakenly thinks he's in compliance with 15c3-3. This baloney that the DTCC and SEC PRESUME that he didn't order a buy-in because he was willing to wait for delivery to EVENTUALLY occur is nonsense and swearing to it in an Amicus Brief is reprehensible.

<u>This very statement proves that the SEC and DTCC are well aware that a "Pseudo-borrow" does not constitute "Good form delivery" and that these trades are not legally "SETTLING".</u> The buying b/d doesn't realize that the entry on his computer screen might be bogus and that the parcel of shares it represents might have been "Received" by 11 other b/ds. In regards to "The receiving member has not initiated a buy-in, presumably because that member is willing to rely on the fact that it will **<u>eventually</u>** be allocated securities pursuant to NSCC's procedures", how can the term "Eventually" be used by the DTCC fully aware of the damaging nature of "Share entitlements" that has a Congressional Mandate to "Promptly settle" all transactions?

As mentioned earlier you at the SEC knew that it was CRITICAL for the DTCC to monitor the lifespan, numbers and "Legitimacy" of the delivery failures leading to the creation of these incredibly damaging "Share entitlements". In regards to the NSCC's "Role in the stock borrow program is automated and non-discretionary", how can the party entrusted by the SEC to administer this critical program claim that nonsense? If you're administering a program this critical to the U.S. financial system then you're RESPONSIBLE TO THE INVESTING PUBLIC for how you run it. Over the years the DTCC has exercised a lot of DISCRETION in explaining the abusive actions of their participants in regards to the SBP.)

16) "Furthermore, NSCC has no mechanism for determining whether particular fails to deliver have occurred because of illegal naked short selling or for some legitimate reason."

(Comment: Thus all delivery failures are deemed to be of a "Legitimate" nature even though Addendum C mandated that only "Legitimate" delivery failures should have access to an SBP "Bailout". A note to the SEC: Please help design for the DTCC this "Mechanism for determining…...")

15) "Nor are there any standards or rules that would guide its discretion in deciding whether to make a buy-in, if it were to undertake do so. In short, the assertion that NSCC is in some way culpable for failing to initiate buy-ins is contrary to the clear terms of the Rules."

(Comment: A note to the SEC: Please design the "Standards or rules that would guide its discretion". If the Congressional Mandate of the "Prompt settlement" of trades is not being done then you don't need to exercise discretionary thinking you have a Congressional Mandate. How can the DTCC claim "Powerlessness" when they have a Congressional Mandate to perform all of these tasks?)

16) "*Third* and finally, neither the continuous net settlement system nor the stock borrow program creates artificial securities. The number of securities issued and outstanding is determined by the security issuer and is reflected in the issuer's records of registered ownership;

> nothing that happens in the course of clearing and settling trades, including any action taken by NSCC, can change that number."

(Comment: Is the term "Artificial securities" appropriate for readily sellable and incredibly damaging "Share entitlements" that Mom and Pop investors are unknowingly buying and that the DTCC refuses to monitor for the sale of? Would "Counterfeit securities" be more appropriate? Would "Often non-exercisable share entitlements" be more accurate? They'd better be "Securities" because you at the SEC are allowing them to be sold to naïve investors. Are they artificial? Well, there's no paper certificate being held anywhere to justify their existence so I would think "Artificial" would be accurate. Call me sensitive but I just have problems with the concept of intentionally misleading an Appellate Court Judge with blatant misrepresentations of the truth.)

17) "As to the stock borrow program, as noted above and as further explained by the Commission's staff in guidance on the Commission's website, the securities loaned by NSCC members for use in the program must be on deposit at DTC, and are debited from members' accounts when the securities are used to make delivery."

(Comment: Sure they're debited from member's accounts but the members don't identify their clients that lost the "Ownership" of these shares and inform them of this fact. They continue to send the same old monthly statement implying that nothing happened and the shareholder thinks that he still has his voting powers. Meanwhile the buying b/d gets his account credited with these shares and because of the loophole in 3b-3 he becomes the new legal "Owner" despite the lack of "Good form delivery" and puts them right back into the lending pool as if they never left. The net effect is to create "Artificial securities" out of thin air that can be sold at any time and cause massive damage to these targeted issuers. In other words tell the Judge the whole truth in a straight up fashion and let him make any decisions based on that. Remember, if the SEC and DTCC executed on their mandate of "Prompt settlement" then those plaintiffs wouldn't have filed this litigation that you are trying so hard to snuff out short of discovery. Why are these 2 groups of "Securities cops", the DTCC and the SEC, going well out of their way to prevent an alleged victimized U.S. Corporation access to the truth regarding the allegation? How about if all of the facts were put out on the table and a judge or jury was allowed to determine guilt or innocence? Could "Wall Street" come way down to the level of the U.S. Constitution and let our judicial system do its thing in an unimpeded manner?)

18) "The fact that a broker-dealer that is an NSCC member fails to receive securities that it purchased on behalf of a retail customer does not mean that the customer's purchase is not completed until the member's failure to receive is cured. Under Article 8 of the Uniform Commercial Code, a securities broker- dealer may credit a customer's account with a security even though that security has not yet been delivered to the broker-dealer's account by NSCC. In that event, the customer receives what is defined under the Uniform Commercial Code as a "securities entitlement," which requires the broker-dealer to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the security. See UCC Sections 8-104, 8-501".

(Comment: This paragraph represents the roots for the naked short selling fraud in general. Note the similarity to the old Rule 3b-3 of the '34 Act allowing "Ownership" to be transferred without "Good form delivery" being made. This gives the right to the creation of a "Share entitlement" or "Securities entitlement". The buyer's b/d must then treat his client as being "Entitled" to all of the rights that the share represents. Note that the customer's "Purchase" is "Completed" BUT THE TRADE HAS NOT LEGALLY "SETTLED" YET. The term "The purchase is completed" is a self-serving way to allow the commissions and fees to flow to the DTCC participants in the absence of legal "Settlement". I would heartily recommend that commissions not be released UNTIL "Settlement" is achieved. That would put a serious crimp on NSS frauds.

Abusive DTCC participants don't want the public to realize the difference between "Trade completion" and legal "Settlement". The Congressional Mandate the DTCC has is to "Promptly and accurately settle" all transactions not to "Promptly complete purchases". Note how critical it is to identify and inform the investor whose shares were borrowed of his loss of all of the rights that a share entails including the voting right. It's either this or redefine the moment in time at which "Ownership" is transferred from the "Completion of the purchase" to the "Settlement of the trade".

What's critical to grasp here is the rest of UCC Article 8 that neither the SEC nor the DTCC ever want to talk about. It addresses just how these mere “Share entitlements” must be treated due to their damaging nature. It’s similar to how the SEC assumed that the DTCC management would be all over these “Share entitlements” monitoring for any abuses due to their incredibly damaging (or incredibly enriching depending on your framework) nature.

UCC Article 8 tells us that in the case of the dividend distribution of shares, the party that is short on the dividend record date is supposed to go out and secure the proper amount of dividend shares and deliver them to the rightful owner. What the DTCC corruptly does here is allows their participants that are short on the dividend record date to just throw more incredibly-damaging “Share entitlements” with no voting or other rights attached into the account of those owed the genuine dividend shares. Note that the dividend that was distributed was for <u>legitimate</u> paper certificate-backed shares with a full package of rights attached. Why do they do this? Because they don’t want to be forced into the open market to buy shares whether to cover dividend distributions or otherwise. This is beneath their dignity and if they did cover then all victimized issuers would be issuing dividends right and left. Perhaps the abusive DTCC participants will use their “Market disruption” excuse as to why they need not cover the missing dividend shares.

So what happens is the abusive DTCC management and participants decide to “Cherry pick” UCC Article 8 and use the parts that allow them to steal from naïve investors and discard the parts that inhibit their stealing from investors. UCC Article 8 keeps in mind the damaging nature of “Share entitlements” and gives explicit instructions on how they must be treated. It’s kind of like reading the instructions inside a box of C-4 plastic explosive. It can also be very damaging if the damaging nature of it isn’t incorporated into the instruction manual on how to treat it otherwise somebody (like investors) might “Accidentally” get hurt.)

In regards to these Amicus Briefs in general, from an academic point of view they are loaded with information that allow the student of NSS an inside view of the SEC’s brain with regards to naked short selling frauds and the issue of gaining access to potentially incriminating trading data. As you can tell a lot of the information came straight from the DTCC. All of those statements made were made to an Appellate Court Judge who before this case probably wouldn’t know Addendum C to the rules and regulations of the DTCC if it bit him in the backside. One must keep in mind that the learning curve to NSS frauds is very steep and it takes a lot of study to be able to even pretend that you have a decent grasp of it. The learning curve has to be steep because of the heinous nature of the crime and if it weren't steep then the fraudsters wouldn't be able to pull off the frauds involved because the investors would be on to them.

The one document that I think is the ultimate learning tool as to really comprehending the heinous nature of these crimes is the 14-question self-interview that the DTCC recently did. It is 100 times more revealing as to the mindset of the DTCC in regards to NSS as this Amicus Brief was to the mindset of the SEC.

RULE 15C3-3 OF THE 1934 SECURITIES EXCHANGE ACT

If the Stock Borrow Program run by the DTCC and heartily-endorsed by the SEC in litigations brought on by the victims of its abuses had integrity then the parcel of shares loaned ("Red marble") would not be allowed to be placed back into the "Lending pool" by the new buyer of shares **UNTIL** the original loan was paid back. As it stands now the buying b/d does not even realize that his buy order needed a "Pseudo-borrow" to clear. All he knows is that he did get "Delivered" (sort of) a blip on his computer screen. Was this "Blip" or electronic book entry backed by a paper certificate? Until proven otherwise it was backed by a paper-certificate and by the way don't ask to see the proof, it's top secret!

As his "Agent", this buying b/d owes a duty of care to his client making the purchase and paying his commission. Under Rule 15c3-3 of the '34 Act, "The Customer Protection Rule", the buying b/d must make sure that his client's buy order resulted in the "Taking of physical possession or control" of the securities fully paid for which are in turn to be "Segregated" away from the host b/d's securities. The buying b/d either has to do this "In house" or he has to keep the shares at one of 12 "Qualified control locations" ("the dirty dozen") like the DTCC <u>where it is supposed to be done for him</u>. Knowing how the SBP functions is there any way in the world to construe that the DTCC is "Taking physical possession of fully paid for securities" on behalf of their participating b/d so that they can achieve compliance with 15c3-3? The amount of shares in an electronic book entry format over and above the number of paper-certificated shares held in DTCC vaults obviously are not in the "Physical possession" of the DTCC because they don't even exist.

The self replenishing aspect of the SBP's lending pool allows the DTCC to completely shirk this "Customer Protection" duty owed to an investor as well as the buying b/d that they at the DTCC assumed as that particular parcel of shares which is theoretically being

"Promptly received and delivered" and that the DTCC theoretically "Has taken the physical possession or control of" may have also been "Promptly received and delivered" by or to 11 other buyers of shares. Note that the DTCC is only in the "Physical possession or control" of the paper-certificated shares in their vault and not the "Share entitlements" that these shares acted as a template for. Further, what kind of a "Control" location would allow that being "Controlled" to be essentially counterfeited and loaned out in perhaps a dozen different directions SIMULTANEOUSLY?

Thus neither the DTCC as the buying b/d's appointed "Surrogate" for compliance with 15c3-3 nor the buying b/d is in compliance with 15c3-3 which behind Reg SHO represents the second most important form of investor protection from naked short selling frauds. Since the buying b/d has been blinded to the fact that his buy order needed a "Pseudo-borrow" from the SBP then he doesn't even know that he wasn't in compliance with this "Customer Protection Rule". This rule is **critical** to maintaining a level playing field on Wall Street, that's why it bears the name it does. Somewhere in the resultant cloud of dust is the duty of care owed to the purchaser of shares that paid his broker a commission while he acted in an "Agency" capacity.

Section 17 A of the '34 Act contains the Congressional Mandate determining that it was this new "DTC", a "Registered clearing agency", being formed that was in charge of "Promptly and accurately settling all trades". They were to do this under the direct supervision of the SEC which is in charge of enforcing the 1934 Securities Exchange Act as well as the other 6 "Securities Acts" and Section 17 A is an integral part of the '34 Act. This is especially critical with this direct alignment between "Investor protection" and "Market integrity", the mantra of the SEC, and the "Prompt settlement" of trades which is by far and away the key factor that provides this "Investor protection" and "Market integrity".

Thus after reading the SEC's old pre-Commissioner Cox Mission Statement before "Market integrity" got deleted one might think that the SEC would be all over any market frauds involving the lack of "Prompt Settlement" of trades caused by the lack of prompt "Good form delivery" due to its absolutely catastrophic effect on "Investor protection" and "Market integrity". History has obviously proven this thesis to be in error. Recall how critical it was to have the "Share entitlements" being churned out by the DTCC to be of an ultra short lifespan and only in amounts not exceeding the 0.5% metric due to their damaging nature (NASD Rule 11830).

Try to picture each U.S. Corporation as being a "Scale" or "Balance" with 2 trays on it labeled the "Corporate success" tray and the "Corporate failure" tray with the "Corporate vitality" candle burning brightly under the "Corporate failure" tray. The **readily sellable** "Share entitlements" above and beyond the number of legitimate paper-certificated shares which result from **each and every** naked short sale as evidenced by unaddressed "Delivery failures" stack up on an issuer's "Corporate failure" tray like lead weights. In the above example one parcel of shares held in a DTCC vault was allowed by the SBP to procreate 12 equally-sized parcels of "Share entitlements" all stacked up on the

"Corporate failure" tray. Note that "Share entitlements" are not legitimate "Shares" as there are no "Packages of rights" attached to them and it is important to keep in mind that a "Share" **IS** a "Package" of about a dozen rights. Electronic book entries and paper certificates are mere **FORMATS** to account for legitimate "Share" ownership but the mere **FORMAT** has no intrinsic value.

Section 17A mandated the change of the **FORMAT** for accounting for share ownership; it did not mandate nor approve the change in the definition of a "Share" which DTCC policies have resulted in. For some **not so mysterious** reason the existence of mere "Share entitlements" without the "Package of rights" which make a "Share" a "Share" is kept as a tightly held secret from prospective investors as well as a corporation's management team **BOTH** of which are in desperate need of this very **"MATERIAL"** information regarding the **"CHARACTER"** of these securities. The secrecy around their existence allows their levels to expand well beyond the number of paper-certificated shares held in DTCC vaults and elsewhere. The problem though is that the fundamental purpose of the 1933 Securities Act ("33 Act") as expressed in its preamble is: **"To provide full and fair disclosure of the CHARACTER of the securities sold in interstate commerce and through the mails, and to prevent fraud in the sale thereof."**

When the actions of both the DTCC and the SEC are 180-degrees antipodal to the 2 "Fundamental purposes" ("Disclosure" and preventing fraud during the sale of shares) of the grandfather of all of the Securities Acts, the 1933 Securities Act or "The **Disclosure** Act", then I would proffer that there are some SIGNIFICANT issues that need to be promptly addressed in regards to naked short selling. When the fundamental purposes of the '33 Act itself **AND** the mission statement of the SEC **BOTH** literally **SCREAM** for the addressing of naked short selling frauds and the SEC doesn't respond and the DTCC management chooses to continue on its path to deny the existence of any problems despite irrefutable evidence to the contrary then one can just feel the **SYSTEMIC RISK** levels being allowed to build to a crescendo. This occurring in order to actively cover up previous crimes and to satisfy the insatiable greed of the abusive DTCC participants operating in this "Regulatory vacuum" created by **BOTH** the SEC and the DTCC management's voluntarily chosen **"DEAFNESS"** to these screams.

The question that obviously begs to be asked is if these admittedly counterfeit "Share entitlements" really are necessary for our clearance and settlement system to function **EFFICIENTLY** and their numbers are not totally out of control as is constantly being proffered by the DTCC then why isn't a prospective investor or an issuer's management team entitled to the **"DISCLOSURE"** of this insignificantly low number of these dilution causing "Corporate assassins" that are in existence? The other question that begs to be asked is since they are so small in number why not just buy them in and be done with it. One might think that in these days of **"Enhanced disclosure"** mandates like Reg FD, Reg SHO, and Sarbanes-Oxley that our regulators and SROs like the SEC, NASD, NYSE and the DTCC might join in on these efforts to increase TRANSPARENCY in our markets but in fact just the opposite has happened.

As our regulators and SROs push for increased transparency on the part of corporations and their management teams these same regulatory bodies and SROs have headed in the other direction towards actively concealing “Material” information related to “The “Character” of the securities sold in interstate commerce and through the mails” which is so pertinent to investors and management teams. It’s a sad state of affairs when a prospective investor, previously victimized investor or management team have to go to the hassle and expense of executing a FOIA (Freedom of Information Act) search just to get a peak at the number of delivery failures in a prospective investment.

This is an especially disturbing pattern when one realizes that these are the “Securities cops” whose mission statement centers on the provision of “Investor protection” and “Market integrity”. What could possibly be more “Material” to a prospective investor then the existence of a plethora of unaddressed delivery failures i.e. mere “Share entitlements” that have basically preordained many of the issuers unfortunate enough to have become chosen as a target of these “Bear raids” to an early death? Why the active cover up and the willingness to allow more U.S. investors and corporations unaware of their existence to join the list of the victimized? From the DTCC’s point of view the reasons are obvious. They want to avoid criminal prosecutions for past fraudulent behavior and from a financial point of view their abusive participants would just as soon keep the funds irrefutably STOLEN from investors in their wallet then to deploy them into the market in an effort to buy back and finally “DELIVER” that which they already sold well into the past in order to allow these trades to finally “SETTLE”. The SEC’s reticence to act is a little bit more complicated but equally problematic and time constraints don’t allow me to develop that thesis here in this venue.

These extremely damaging “Share entitlements” are basically “Electronic book entries” whose creation was admittedly allowed by the “Immobilization and Dematerialization” mandates of Section 17 A of the ’34 Exchange Act but only for “Legitimate” i.e. short term “Delivery failures” as per Addendum C to the rules and regulations of the DTCC and only in very minute amounts above the number of paper-certificated shares in existence i.e. 10,000 shares and 0.5% of the “Outstanding” number of paper-certificated shares before the buy-in of any excessive amount of them above this critical “Metric” was MANDATED (NASD Rule 11830 and its successor Reg SHO). There’s that concept again of “Mandated” buy-ins which the Evans study shows are circumvented by DTCC participants 99.875% of the time.

WHAT CONGRESS HAD IN MIND

Thus “Congressional intent” was that 100 million paper-certificated shares would be “Immobilized” in a DTCC vault and “Dematerialized” into no more than 100.5 million easier to deal with “Electronic book entry” shares. Simple right? The reality is that now there is evidence indicating that the numbers have grown completely out of control due mainly to regulatory neglect and the DTCC management’s claim to be **“POWERLESS”** to perform 8 simple but critical tasks that they actually have a CONGRESSIONAL MANDATE to perform and that they have all of the power in the world to perform but VOLUNTARILY CHOOSE (to steal a phrase from Dr. Robert Shapiro, the Under secretary of Commerce under President Clinton) not to. The most important of these being ignored is to effect the “MANDATED” buy-ins of the excessive numbers of “Share entitlements” above the 0.5% “Metric” necessary to **“PROMPTLY SETTLE ALL TRADES”** as per Section 17 A of the ’34 Exchange Act which gave birth to the then “DTC”. The mandate is on their birth certificate for crying out loud!

The DTCC management, however, has the audacity to claim to be “Powerless” to buy-in the failed deliveries of their bosses no matter how archaic they have become despite the fact that this simple action is the ONLY way to finally “SETTLE” these trades involving a “Delivery failure” that may have slipped through the cracks provided by bogus borrowing efforts (“Locates”, “Reasonable grounds”, “Bona fide arrangements to borrow” and the SBP) as well as not-so bona fide market making activity which the DTCC management pleads “POWERLESS”, as if on cue, to monitor for also. Thus the age of the delivery failure becomes critical when the Congressional mandate specifies PROMPT “Settlement” which by definition necessitates PROMPT “Good form delivery”.

Was Section 17 A of the ’34 Exchange Act a total faux pas on the part of Congress? No, it was a very well written and timely document due to the emergent nature of the “Paperwork crisis”. The problem seems to be that the DTCC management and abusive participants have trouble deciphering 17 A (a) (2) (A) which addresses the foundation upon which this expedited clearing process was to be based i.e. based upon showing “Due regard for the public interest and the protection of investors”.

Recall also that the 1934 Securities Exchange Act, the SEC’s “Birth certificate” mandated that this new “SEC” they were creating “purge the markets of short selling abuses” especially in light of their role in the recent 1929 market sell off involving “Unregulated pools” of money similar to how hedge funds operate now. As a side note, if you current SEC Commissioners can’t see this train barreling down the tracks at us ONCE AGAIN then we all are going to need some help. The question arises just how much more “Empowerment” than a direct Congressional Mandate does the SEC or DTCC need to do their prescribed jobs of enforcing the ’34 Act and “Promptly settling” all trades?

PRE-TRADE VERSUS POST-TRADE LEGISLATION

What I would like the SEC to do is to categorize this proposed legislation into pre-trade and post-trade “Issues and realities” and then attain a balance between the two. If pre-trade regulation is somewhere between lax and nonexistent as it is currently when we’re talking in terms of engraved invitations to commit fraud like “Locates” and “Reasonable grounds" to believe that shares are borrowable and deliverable by T+3 as well as the DTCC's claim to be unable to determine the "Legitimacy" of delivery failures, then stringent post-trade buy-ins are needed to catch the expected tsunami of cheaters. In my opinion the SEC needs to start concentrating on the post-trade realities. The DTCC and their co-conspiring unregulated hedge funds are in no way, shape or form going to execute buy-ins no matter what you legislate. They are so far heads and shoulders above following the Federal Laws that they can't even be bothered with such trivia.

History has irrefutably taught us that as did the Boni (2004) and Evans (2003) research. It doesn't really matter whether it's due to greed, hubris, arrogance or plain old corruption from the ground up. That's for the DOJ to concern itself with and not the SEC legislators on stage right now with this proposed amendment. These other issues can be addressed by the SEC in cooperation with the DOJ, IRS and Homeland Security once this amendment has been drafted.

With this in mind the pre-trade legislative activity must be no nonsense because there is no mandated buy-in "Safety net" to catch the cheaters. Look at the Boni report and its 56-day average age of a delivery failure at the DTCC. Note also that the median age (half being older and half younger) of delivery failures at the DTCC is 13 days. Based on a bell-shaped distribution this implies that the younger half of delivery failures average 6.5 days and fits nicely into the "Legitimate" delivery failure category for which the SBP was designed and the SEC did indeed sign off on. Note also that this makes the average age of the <u>older half</u> of delivery failures a whopping 106 days as 106+6.5 =112.5 divided by 2 = about 56.25 days. When factoring in illegal "Matched trades", "Wash sales", "Rejuvenating crosses" and "Sham close outs" the average age of the older half of delivery failures could be <u>many times</u> this 106-day figure which is a very scary thought indeed from a <u>systemic risk</u> point of view. For instance, in the case of the older half of delivery failures if the "Average" number of "Rejuvenating crosses" experienced by a parcel of shares is two then this 106-day figure measured by Dr. Boni translates into a whopping 318-day average age of a delivery failure for the <u>older half</u> of delivery failures. Does two "Rejuvenating crosses" for the average parcel of shares seem excessive? Could it be grossly low? That's how powerful these tough to detect "Rejuvenating crosses" are. How can the average development stage issuer survive in this environment? The answer is they don't very often and those that do never do reach their true potential! Note also that the average age of the younger half of delivery failures would also have to be adjusted upwards due to "Rejuvenating crosses" which might push some of these delivery failures into the "Illegitimate" category.

I think that Ex-SEC Commissioner Irving Pollock back in 1986 hit the nail on the head. He said that in the absence of an "Automatic check' on "Borrows" being done in the post-trade arena then anything short of a full-fledged no nonsense "Borrow" is mandatory on the pre-trade side. Instead for the last 20 years we've been through "Locates", "Reasonable grounds", "Affirmative determination in writing", "Bona fide borrowing arrangements" for threshold securities, easily corrupted "Hard" and "Easy to borrow" lists, etc. and the "Extent" of naked short selling has become "Pervasive" as Dr. Boni puts it. Thus the DTCC has already determined the lack of post-trade regulation to be near zero and it's up to the SEC to ratchet up the pre-trade regulations accordingly because once that delivery failure gets into the system and onto the "Corporate failure" tray it's not going anywhere very quickly as Dr. Boni and Dr. Evans has shown us. One must appreciate that in an "Anonymously pooled" format electronic book entries backed up by a paper certificate in a DTCC vault <u>blend in seamlessly</u> with electronic book entries representing nothing more than often unexercisable "Share entitlements" that can't even be voted.

Note also that with the self-replenishing nature of the SBP the same parcel of shares ("Red marble") can be justifying a "Locate" or "Reasonable grounds" to a dozen different naked short sellers simultaneously. This is insane and mandates that anything short of a firm "Borrow" is equally insane. This shouldn't be that complex of a concept for the finest brains on Wall Street to grasp! In my humble opinion, the use of "Locates" and "Reasonable grounds" in our current sad state of affairs at the DTCC and of post-trade regulation in general is bordering on criminal and definitely aiding and abetting fraudulent behavior. They are no more than engraved invitations to commit fraud when you factor in their undeniable history that we currently have 20-20 visualization of.

THE ROLE OF THE HEDGE FUNDS

While writing this new legislation hopefully the SEC can appreciate the role of the 800 pound gorilla in the back seat known as the "Hedge fund". As you well know, these 8,700 behemoths are now managing about $1.3 trillion and many are fighting becoming regulated aggressively. The hedge fund managers known especially for their short selling prowess are usually paid 2% of the funds they manage plus 20% of the profits they generate or "2 and 20". They are therefore <u>highly</u> incentivised to generate profits utilizing <u>whatever</u> means they can. How <u>highly</u>? The top 26 money earners in this group all made over $130 million in 2005. Being that they collectively have about $10 billion per year to spread around Wall Street annually in commission flow it is not very hard for them to find extremely "Accommodative" market makers and "Accommodative" prime brokers willing to do <u>anything</u> in their power to earn their business. That's just the nature of things, money talks. This is especially true when the bribing can be done via non-cash methods like directing "Order flow" to corrupt market makers or ridiculously cheap clearing fees given to b/ds in exchange for the ability to rent out their client's shares to the mortal enemies of their investments.

When you get right down to it, when an investor is responsible for all losses and has to give 2% of committed funds as a fee and give up 20% of all earnings <u>then he'd better hope that his fund manager has access to a playing field tipped in his favor and some extremely "ACCOMODATIVE" DTCC participants somewhere because he's counting on it and paying dearly for it!</u>

LEGITIMATE SHORT SELLING

Keep in mind that legitimate short selling is a very good thing for the markets. Its main benefits are the injection of liquidity especially in the markets of thinly traded securities like the ones usually attacked (coincidence? Not!) and "Pricing efficiency". Note however, that "Pricing efficiency" is severely limited when the regulators and SROs knowingly withhold "Material" information from investors pertaining to the "Character" of securities sold in interstate commerce and through the mails. Sound familiar? Legal short selling is also an aid in risk management via the creation of hedging opportunities. That's the good news but the bad news is that abusive naked short sellers have the ability to reverse all of these beneficial effects of legitimate short selling while hiding behind the fact that there are indeed beneficial effects to "Short selling" in general.

For instance, abusive naked short sellers typically only "Inject liquidity" when buy orders outnumber sell orders and as mentioned earlier are nowhere to be found when the share prices drop and it's time to "Inject liquidity" by buying back the shares previously sold at higher levels. Abusive naked short sellers will hide their naked short selling efforts behind the lie that they are "Hedging" a long position held elsewhere (on the Berlin Bremen Exchange for instance) or that they are involved in "Arbitrage" activities both of which were permitted by the old NASD Rule 3370.

As far as bringing about "Pricing efficiency" obviously nothing could be further from the truth as abusive naked short sellers illegally increase the supply of readily sellable "Shares" and/or "Share entitlements" while artificially decreasing the "Effective demand" by naked short selling into any buy orders that do surface. Why? Because all buy orders have a check attached to them. Manipulating both the "Supply" and "Demand" variables <u>simultaneously</u> hardly provides "Pricing efficiency". Naked short selling is held by many securities scholars to not be a form of "Short selling" per se because "Short selling" by definition involves a firm "Borrow" leading to "Good form delivery" without any intent to defraud. NSS is more a form of securities fraud/racketeering conveniently <u>camouflaged</u> by what we refer to as legitimate "Short selling" done by those anticipating a market drop, injecting both buy and sell-side liquidity into thinly traded securities or hedging an existing position. In naked short selling on the other hand the mere fashion in which you place your "Bet" against a corporation increases your chances of a successful outcome for the bet due to the creation of these very damaging "Share entitlements". That's why the DTCC management's cavalier attitude to the age and amounts of these incredibly damaging "Share entitlements" is so reprehensible.

"BONA FIDE" MARKET MAKERS

The one group of players on Wall Street that can legally naked short sell are the market makers but only while they're acting in a "Bona fide" market making capacity at the time. The subjective nature of acting in a "Bona fide market making capacity" and the lack of any SRO or regulator showing much interest in monitoring for this activity have opened the floodgates for NSS crimes by "Not-so bona fide market makers". Again, the DTCC claims to be "Powerless" to monitor for just how "Bona fide" the activity of their own participating market makers is despite the fact that they operate as an SRO mandated "To monitor the business conduct of its participants". Any criminals with access to even the ILLUSION of acting as a "Bona fide" MM in our current "Regulatory vacuum" has been bestowed with what amounts to a "Get out of jail free" card as well as access to investors' wallets.

When you address the "Darkness" issue in terms of how market makers are able to operate it just doesn't get any "Darker" than this. There is absolutely no transparency whatsoever in the OTC markets when it comes to tracing down which market makers are the guiltiest of these offenses as they are actually able to act in "Packs". Lately we've learned about a lot of lawsuits involving some of the activities of "Specialists", individual MMs as it were, that are forced to operate somewhat in the light. One can only extrapolate as to what is going on in the pitch black with organized "Packs" of MMs whose trading activity has been rendered inaccessible due to its theoretical "Proprietary" nature.

The ability to be able to put on what appears at a quick glance to the regulators or to the public to be a Bona fide market maker "Hat" is worth a fortune to any groups interested in participating in short selling frauds without having to go to the hassle, expense, creation of a paper trail and possible unavailability of a "Borrow". They know that the SEC, NASD, and DTCC are famous for NOT monitoring the appropriateness of the wearing of this "Hat" which exempts the wearer from borrowing before short selling. How could they possibly have interest here when they refuse to even monitor the "Legitimacy" of delivery failures? In one sense you barely need to even fake being a "Bona fide" MM being that all delivery failures have been officially proclaimed to be "Legitimate" as if by default.

There are just too many buy orders placed on a daily basis for any SRO or regulator to monitor in real time for the "Bona fide" nature of any market making involving naked short selling into those buy orders. Of course, this is my argument as to why deterrent measures are so critical. The level of public trust involved in theoretically bona fide market makers being the only ones with access to the incredibly powerful exemption from borrowing before short selling is beyond description as are, unfortunately, the number of market maker manipulation ("MMM") tricks available to any market maker. I did a paper once listing I believe it was 53 different examples of "MMM" all with a specific nickname and modus operandi. For instance, "Stop loss tripping" involves a MM with visibility of a "Stop loss order" well below the market naked short selling at let's say the $3 level knowing that a "Stop loss order" is placed at $2. Abusive MMs will naked short sell with reckless abandon at the $3 level and then on a day when there aren't many buyers around knock out the bids between $3 and $2 thereby tripping the sell order which in turn might drop the market to the $1 level. The abusive MM is there to buy the shares at the $1 level and thereby pocket $2 per share in profit with basically no risk. With trillions of investor dollars in play and with the middleman with a vastly superior visibility of the market given the ability to operate in the dark how many of the 11,000 b/ds and banks acting in an abusive manner does it take to steal hundreds of billions of dollars from Mom and Pop investors over time when the DTCC management claims to be "Powerless" to do anything to reign in these frauds? In a clearance and settlement system with integrity and with regulators willing to flex the muscle given to them by Congress a "Stop loss order" might be a good idea to minimize potential losses. In our current OTC markets operating in these "Regulatory vacuums" the practice borders on insanity.

When "Decimalization" commenced about 6 years ago the "Spreads" between the "Bid" and "Ask" that ethical market makers must live off of became razor thin. Many market makers nearly devastated by "Decimalization" decided to push the envelope a bit and started illegally "Renting" access to this "Hat" and to their "In-house proprietary accounts" to billion dollar hedge funds in exchange for order and commission flow.

Yet others adopted what you at the SEC refer to as "Predatory trading strategies" to make up for the lost income associated with "Decimalization". Some MMs actually felt justified in these illegal actions because of how painful "Decimalization" was and the fact that they believe that Wall Street "Owes them a living" and that they are not subject to any evolutionary processes in the markets that might indicate that the benefit of their role as the "Injectors of liquidity" is not worth the cost incurred involving NSS related thievery.

THE ATTEMPTED "EVOLUTION" OF THE OTC MARKETS

Hopefully you at the SEC can realize that the OTC markets are trying desperately to evolve into a more efficient ECN ("Electronic Communication Network") type format that not only gets rid of the middleman whose role has been greatly diminished due to technological advances but also gets rid of the human greed bound to be expressed by any human middleman when trillions of investor dollars are up for grabs and the middleman possesses a vastly superior "KAV" factor.

There was an amusing clash that occurred during the original Reg SHO Comment Period wherein one of the General Counsels for an ECN attacked the market making community blaming them for the current naked short selling crisis because the rules exempt theoretically bona fide MMs who do most of the trading from following the borrowing rules and the market making community fired back and stated that the ECNs were to blame for the NSS thievery since they don't honor the "Bid" and "Uptick" rules preventing abusive DTCC participants from wailing away at the bids in a wanton fashion. Meanwhile the DTCC management with a front row seat for this fight sat there claiming that there was no fight going on in that ring in front of them.

The market making community will argue that they are integral to the system because they inject much needed liquidity into thinly-traded securities but what we see empirically is market makers naked short selling with reckless abandon into buy orders but as mentioned are nowhere to be found when the share price tanks and the injection of buy side liquidity is needed as a truly "Bona fide" market maker would provide. Why? <u>Because in our current clearance and settlement system selling shares, even if they are fake, insanely allows the sellers access to the proceeds of those sales without ever delivering that which was sold and the buying of shares by Mom and Pop investors, again even if they're fake, necessitates the payment of real money to the sellers of the fake shares that refuse to make delivery</u>. (The above underlined sentence I like to think of as "Reality of the fraud" part 2 or "ROF 2")

Does it sound like a little "Evolution" is overdue when these are the realities? Since the advent of "Decimalization" the natural selection process has lowered the survivability of the ethical MMs. That leaves us with a pleasant reality, "Survival of the corruptest". Lately the "In house" proprietary trading profits of market makers and prime brokers have gone absolutely through the roof despite steady volumes and razor thin "Spreads". Those guys must be really "Lucky" I guess!

THE MAGICAL NATURE OF BUY-INS

Due to the accretive nature of "Share entitlements" over time associated with the lack of anybody performing mandated or voluntary buy-ins this problem will never be easier to solve than at the present. The numbers of victimized issuers and victimized investors will never be lower than they are now and the amount of money stolen will never be lower than the present. The good news is that buy-ins are extremely accurate in that the bill will land in the lap of the naked short seller no matter how many offshore "Straw" or "Nominee" corporations he is acting through. They act like a heat-seeking missile with the investors' money in the wallets of the thieves providing the heat source.

Relatively innocent parties will be left relatively untouched and the extremely guilty parties' consequences will be proportional to the crimes committed and the amount of money stolen in the first place. There's no need to stake out all of the mailboxes in the Cayman Islands or to travel to Argentina to look for the crooks. Buy-ins deliver justice in a very "Measured" manner and evolutionary processes can start weeding out the criminals. This unique character of buy-ins makes the refusal of both the SEC and DTCC to use them very problematic. Recall that the DTCC proffers that these "Open positions" don't exist in any significant numbers whereas the SEC at least admits that their cleaning up might lead to "UNWANTED Volatility", that is "UNWANTED" <u>by those whose wallets hold the stolen investor funds</u> but very much "WANTED" by the victims of the theft. Was this "UNWANTED" comment a Freudian slip or does the SEC really want the stolen money to be "Grandfathered" into the thieves' wallets? If so, then why?

It's funny how the DOJ folks always seem to understand this fraud much easier than the SEC folks. To the DOJ it's black and white. This is a very well-organized form of racketeering and it is a RICO matter. The SEC types have a tendency to hem and haw and talk about how it has always been this way and liquidity concerns and then change the subject to preventing "Pump and dumps". It takes them a while to be convinced that shutting down NSS frauds will take a huge bite out of "Pump and dumps" also. Anybody crooked enough to orchestrate a "Pump and dump" is obviously crooked enough to be "Dumping" nonexistent shares just like the pros on Wall Street do every day.

DEVELOPMENT STAGE U.S. MICRO CAP SECURITIES

You at the SEC have no doubt noticed the type of securities typically on the receiving end of these "Bear raids". They are the not yet cash flow positive development stage issuers. Why is this? NSS is what you at the SEC refer to as a "Predatory trading strategy". The billionaire behemoths perpetrating these frauds pick on corporations when they are at their weakest stage of development. This is not a "Macho" type of a fraud by any means. You already know how incredibly easy it is to flood an issuer's market with mere "Share entitlements" without a paper-certificated share anywhere to justify their existence. All you have to do is intentionally fail in making delivery whether or not you mark the sell ticket "Sell long", "Sell short" or "Sell short exempt".

This will allow the DTCC's SBP to come to the rescue and voila! you just created another readily sellable "Corporate assassin" known as a "Share entitlement" which assumes its spot on the "Corporate failure" tray and increases the amount of readily sellable "Shares/share entitlements" which compose the "Supply" side of the supply and demand interactions that determine share price. What the abusive DTCC participants, hedge funds and naked short selling cartel have figured out is that not yet cash flow positive issuers must constantly go to the market to sell shares just to pay their monthly "Burn rate". Due to the implied risks of these usually "Penny stocks" as well as the holding periods involved these sales are typically made at "Steep discounts" to the current share price. If the fraudsters can force the share price into its typical downward spiral via naked short sales then these necessary financings will be extremely dilutive but in this case the dilution is caused by legitimate "Shares" and not mere "Share entitlements" posing as legitimate shares. Note that these extra legitimate shares above and beyond those needed to finance the burn rate in the absence of the "Bear raid" also stack up on the "Corporate failure" tray on the right side of the "Corporate balance" next to the stack of "Share entitlements".

Oftentimes the "PIPE" (**P**rivate **I**nvestment in **P**ublic **E**quities) financiers that appear at the doorstep to "Rescue" these corporations under attack are the naked short sellers themselves or their co-conspiring associates. They will typically offer what is referred to as a “Death spiral convertible” financing package which allows the crooked financiers posing as “Agents” of the company to convert their loan into shares at a time of their choosing in a “Floorless” manner. They can thus pummel the share price with the NSS attack and then cover by converting their debt into an inordinately large number of shares.

THE “BALANCE” MODEL

Now let’s take a look at the nature of the “Corporate success” tray on the left side of the balance. If “Corporate success” for a development stage issuer not yet cash flow positive can be associated with an upwardly moving share price wherein any necessary funds can be raised in a less dilutive manner at higher price levels then the “Golden” weights occupying this tray are BUY ORDERS from prospective investors that perceive an undervalued share price and therefore a bargain. A disparity occurring when more buy orders than sell orders appear at any given time would have a natural tendency to push share prices higher. Right? Hold it a minute that phraseology “When more buy orders than sell orders appear at a given time” sounds awfully familiar. Didn’t we see in Chapter 5 of Book #2 that these circumstances justify a theoretically “Bona fide” market maker naked short selling a MODERATE (although the DTCC claims to be “Powerless” to monitor for this “Moderation”) amount of shares to “Inject liquidity” and buffer sharp swings in share prices and then theoretically if this imbalance of buy orders outnumbering sell orders should persist then he would increase his asking price to allow the market forces to find a new somewhat higher equilibrium level? Right? Wouldn’t a THEORETICALLY bona fide MM given permission to legally naked short sale <u>prefer</u> to do it at higher levels then at lower levels? I would guess yes <u>unless</u>, of course, that MM already had an astronomic naked short position on the books that he didn’t want to have to collateralize at higher levels. Another reason he might refuse to increase the level of his offer is that he doesn’t want a competitor MM to undercut his offer and get his hands on any opportunistic investor’s money. Remember, every buy order has a check attached to it and it’s the investor’s check that drives this entire fraud.

But look at what happens in an NSS attack. The “Golden weights” (buy orders) that occupy the “Corporate success” tray and buoy share prices upwards are rerouted to the “Corporate failure” tray and converted into “Lead weights” (“Share entitlements”) that pull share prices downwards. This leads to some questions. How perverse is a clearance and settlement system that can actually convert a “Positive” for shareholders and a “Positive” for State-domiciled U.S. corporations and their employees (buy orders) into not a net “Neutral” for shareholders and the corporation but actually into a net “Double negative” (more later on this) for the owners of a corporation, its employees and the corporation itself? What kind of alchemy must be involved to convert “Golden” weights, as it were, on the “Corporate success” tray into “Lead” weights on the “Corporate failure” tray? How perverse is it for development stage corporations to have their prognosis for success and share price appreciation actually DIMINISHED by attracting new investors that see promise in the corporation's new cancer cure or technological breakthrough and that sense a bargain at prevailing low share prices and market cap levels? How perverse are all of these phenomena when the proceeds of this rerouting of investors' funds is directed to those owning and running the clearance and settlement system, the DTCC and its 11,000 "Participants", that are supposed to be acting as an SRO (Self Regulatory Organization) which the SEC refers to as "the first line of defense against market manipulation"?

Further, what kind of a clearance and settlement system set up by a Congressional Mandate would not only ALLOW**,** via pleading to be "POWERLESS" to provide any investor protection or market integrity, but actually go well out of its way to PROMOTE and FACILITATE the conversion of "Golden weights" promoting corporate success (buy orders) into "Lead weights" known as "Share entitlements" without the attendant "Package of rights" which make a "Share" a "Share" and that promote corporate failure? In other words why does the "First line of defense against market manipulations", an SRO like the DTCC, have their guns pointed at the investors they are supposed to protect and why is the SEC busy supplying the DTCC sharpshooters with ammunition while stealing the investors' combat helmets?

Note that when you add the dilution incurred by the delivery failures leading to "Share entitlements" to the dilution caused by the legitimate shares sold in necessary financings at ridiculously low price levels (the "Double negative" referred to above) then you can exacerbate and actually accelerate the downward spiral in the share price. Why? Because the market cap has no reason to go up as these issuers are put into "Survival mode" in these corporate incubators known as the Pink Sheets, OTCBB and AMEX trading venues. Their management teams are often "Handcuffed" by various acts of tortous interference being performed by the naked short selling community, "Hatchet job" journalists, paid Internet bashers, etc. The fraudsters know that even if the company does survive and start realizing earnings then these earnings will be divided by an inordinate amount of legitimate shares which decrease the earnings per share which is usually the prime determinant of share price based upon whatever multiples that business sector is used to trading at. In other words there is a "Self fulfilling prophecy" aspect to this fraud as long as the DTCC and SEC continue to turn their heads the other way during the commission of these frauds.

In visualizing the "Balance" model, picture for a moment a cartoon with the "Not so bona fide" market makers, clearing firms, prime brokers, corrupt research firms, "Hatchet job" financial journalists, custodian banks, Internet bashers, "Death spiral" financiers and co-conspiring hedge funds pulling down on the issuer's right "Corporate failure" tray while management is holding onto the left "Corporate success" tray for dear life as they get hoisted upwards and you'll get the picture of what development stage issuers' corporate management teams, investors and employees are currently experiencing while fighting these billion dollar behemoths. Wouldn't this make a good Time magazine cover!

TIME IS OF THE ESSENCE

You at the SEC must realize the effect of TIME in these battles and how it works against the victimized issuers and the investors therein and for the fraudsters. The older half of DTCC delivery failures averaging 106 or 306 days for that matter is a very, very long TIME. Recall how the SEC knew of the damaging nature of these “Share entitlements” and relied upon the DTCC to “Promptly settle” all trades and to scrutinize any delivery failures within the system that their participants weren’t addressing promptly. Thus these issues you at the SEC are now contemplating are of an EMERGENT nature because the share prices of these victimized issuers are for the most part either in a downward spiral or bouncing off of the market cap attributed to a badly-damaged shell company. Yet they must continue to pay their monthly “Burn rate”. Time is therefore of the essence! It took you at the SEC 5 or 6 years to enact Reg SHO from its conception to its effective date.

If you at the SEC want these victimized issuers assumed by some within the SEC as scammy “Pump and dumps” until proven otherwise to dry up and blow away then continue on the path that you have been on. Reg SHO was the first meaningful rewrite of the short selling laws in the last 67 years and the final draft came back with significant loopholes as if they were scripted and there appears to many to be a fair amount of evidence that they indeed might have been. Is there something difficult about the ’34 Act’s Congressional Mandate regarding the “Prompt settlement” of all trades? Are there questions out there about the SEC’s Congressional Mandate to enforce the ’34 Act?

Any well-designed “Fraud on the market” will always include a mechanism to entice new victims once the old victims have been fleeced. In the case of the NSS fraud the ever decreasing share price creates a new list of opportunistic investors with cash in hand to take advantage of these bargain basement prices wherein issuers may be trading at 10% of perceived book value. Why? Because neither the DTCC, SEC nor NASD warned these U.S. citizens that this particular issuer’s share price is under a NSS attack and that the amount of unaddressed delivery failures within the system pertaining to this issuer may have already pretty much preordained it to an early death. This death being due to excessive amounts of “Share entitlements” that these three venerable institutions conjointly allowed to build up, refuse to address and refuse to disclose the existence of as mandated by the ‘33Act. Instead the decision was originally made to officially sweep them under the carpet in a “Grandfathering-in” process to avoid “Volatility” in the share prices of issuers that just took a perhaps 80% apparently “Non-volatile haircut” in their share price.

These fine institutions making up the securities industry’s “Police force” instead have chosen to sit on their hands and quietly watch this procession of new victims to the slaughter. Why? In the case of the DTCC management it's their abusive participants/bosses and their co-conspiring usually unregulated hedge funds that are guilty of stealing the money. In the case of the SEC it's probably either because they don't want to admit their ineptness in the handling of this fraud in the past or perhaps some employees there just don't want to rock the boat and destroy any chances of being hired by one of these DTCC behemoths at some time in the future. For whatever reason, and there are many being opined, the SEC has the distinct history of REACTING to well-entrenched frauds rather than anticipating them and nipping them in the bud. The stimulus usually needed to induce this REACTION is either the efforts of the "Elliot Spitzers" of the world or public outcry from so many victims that it would be tough to ignore their pleas for help. Well, here's your plea for help from the masses!

Now here is why you at the SEC must act swiftly and decisively. The unaddressed delivery failures that have led to readily sellable "Share entitlements" of victimized issuers are currently weighing down on the prognosis for these victimized issuers. These U.S. Corporations domiciled in a variety of states are slowly dying as you amend the amendments of your prior amendments. The damage to their share prices is being done by the SIMULTANEOUS upward MANIPULATION of the number of readily sellable "Shares/share entitlements" (the "Supply" variable) and the downward MANIPULATION of the number of buy orders allowed to interact with the artificially enhanced "Supply" variable (the "Demand" variable). The DTCC's SBP is a tremendously powerful agent of MANIPULATION favoring abusive DTCC participants that sell nonexistent shares, wait for a delivery failure "Bailout" by the SBP, collateralize the resultant debt for a short period of time, refuse to deliver that which was sold and walk away with the proceeds of the sale as the share price of the targeted issuer tanks.

You at the SEC are now fully aware of the absolute number of delivery failures in U.S. micro cap securities being held at the DTCC and you know that they are also being stored in much larger numbers in "Settlement" circumventing "Ex-clearing" formats all over the world within Lending Departments and at trading desks in "B/d internalization" formats where "Good form delivery" isn't even faked.

You can see the new opportunistic investors thinking that our markets are indeed regulated lining up to buy shares in these promising young issuers. The absolute number of unaddressed delivery failures/"Share entitlements" in a given issuer is extremely MATERIAL to prospective investors in these issuers, current shareholders as well as the management teams of these issuers needing access to all pertinent information about their corporation so that they can fulfill their duty of care to their shareholders. Here again we see duties of care being "Extinguished" by the darkness provided by Wall Street. The levels of these failed deliveries is much more important to a prospective investor than the contents of any prospectus in that with naked short selling the assets, liabilities, risks and prognosis for success of a company are rendered moot when manipulators can easily kill even the most promising of U.S. development stage corporations.

As mentioned earlier in the preamble to the ’33 Act, the SEC is mandated by the ’33 Act to make sure that all MATERIAL information relating to the CHARACTER of the securities traded in interstate commerce and through the mails be made available to prospective investors. This includes information that the SROs and regulators have that the issuers don’t have. This access to all MATERIAL information is why you at the SEC make new issuers produce a “Prospectus” listing every single “Grain of sand” of risk associated with an investment in a given issuer. Now you at the SEC, DTCC and NASD are in possession of information analogous to a “Boulder of risk” associated with victimized issuers again some of which have been basically preordained to an early death and yet you refuse to reveal this information to the investing public.

There is no longer any safe middle ground for the SEC, DTCC and NASD to take and continue to sit on their hands in regards to preexisting delivery failures as the levels of “Share entitlements” grows daily. Recall the nature of NSS in that many of the naked short sellers cannot only not cover their positions but they can easily get to the point wherein they can’t even halt their nonstop daily naked short selling attacks without allowing the share price to migrate upwards and force inordinate amounts of cash to be tendered just to meet the collateralization requirements of a now astronomic naked short position. The absurdity is that the more they naked short sell on a daily basis the stronger they and their net capital reserves “Appear” to their prospective investors as well as to the regulators as the share price ticks downwards even though they are approaching panic mode.

Remember all of these positions are “Marked-to-market” on a daily basis and the worst of the abusers look wonderful on paper but they haven’t covered yet and covering has a tendency to move share prices upwards. This starts hinting at the systemic risk issues that arise which I don’t have time to develop here in this venue. Just think of “LTCM” and a very large multiple thereof. Note the 2 new breeds of victim entering upon the scene namely those prospective investors that read the balance sheets of abusive DTCC participants which fail to account for any price appreciation associated with not only the stopping of selling but the actual buying of the shares leading finally to their “Good form delivery” and the “Settlement” of these trades. Do these U.S. investors deserve some “Investor protection”? Note also the appearance of a new second breed of victim namely all U.S. taxpayers that are going to be on the hook to pay for any potentially massive “Bailout” necessitated by the greed and hubris of a few.

As I see it your two choices are to either fix the problem IMMEDIATELY and buy in these invisible “Corporate assassins” OR you warn prospective investors and management teams of their existence and the amounts being held in the three different repositories where they are housed and you allow the already anemic confidence levels in our markets to plummet yet further. Fix or warn! The “Fix” involves the magical aspects of a “Buy-in” touched upon earlier. The “Warn” involves admitting to the free world and to thousands of opportunistic plaintiffs’ lawyers that Wall Street has been corruptly stealing from investors for decades with the blatant approval and facilitation of the DTCC “Securities cops” and the tacit approval of the SEC and NASD “Securities cops”.

What particularly aggravates the U.S. investors and U.S. citizens is the heinous character of naked short selling frauds and why you at the SEC would even pause to reflect on forcing common thieves to finally deliver that which they sold to Mom and Pop investors well into the past and continue to refuse to deliver day in and day out as the share price of the invested in company predictably plummets from the presence of all of these mere "Share entitlements" piling up. Are you at the SEC even the right regulator to be approaching for help at this stage of the game? Perhaps the "Counterfeiting" aspect of this fraud should be addressed by Homeland Security and the Secret Service, the racketeering and money laundering aspects by the DOJ and the tax issues by the IRS. You at the SEC and even more so those at the DTCC have been sweeping these matters under the carpet for so long that I doubt the ceiling fans can still turn in either of your venerable institutions.

The systemic risk levels that you have exposed the U.S. citizens to are no longer tolerable and are easily palpable by those with even a rudimentary understanding of the naked short selling fraud. This country's financial system is much too important to the U.S. as well as the rest of the world to be taken down by a bunch of thieves and thugs in need of longer yachts. If it's empathy for those needing to finally cover these positions that is responsible for your reticence just keep in mind that the money taken from the millions of investors whose invested-in companies have already successfully been bankrupted or deregistered is safely in their wallets never to be seen by these investor again.

The DTCC constantly proffers to the public that the NSS problem is insignificant and that 99% of trades "Settle" on time. Of course, they still think that trades involving delivery failures "Cured" by a "Pseudo-borrow" from a self-replenishing pool actually legally "Settle". You at the SEC should challenge them on this, if the problem is so miniscule then let's just buy in all delivery failures older than T+13 or whatever age is deemed appropriate, add some transparency to the system and since the problem is so tiny then there should be no untoward effects anywhere. This would allow investor confidence levels to soar which would in turn increase business flow to the DTCC participants and most importantly of all decrease SYSTEMIC RISK or perceived SYSTEMIC RISK to tolerable levels for all of us. It's a win-win situation if the DTCC is telling the truth. Let me guess, no takers at the DTCC to this approach. Whatever did happen to that "Cooperative spirit"? Why would any SRO or regulator Congressionally mandated to provide "Market integrity" and "Investor protection" turn down a win-win proposition like that? You can learn a lot by studying the reaction to win-win propositions that are based upon certain presumptions like the provision of "Market integrity" and "Investor protection" really being important to an SRO or regulator.

THE THEORETICAL QUEST FOR "ENHANCED EFFICIENCIES" BREEDING DARKNESS BREEDING FRAUD

What the SEC has to realize is that all of these wonderful efforts of the DTCC to speed up the clearance process have the common denominator of generating a lot of darkness and darkness in turn provides the opportunity for fraudulent conduct. For instance:

1) The conversion of paper-certificated shares with an investor's name and certificate number inscribed on it into electronic book entry shares that all look alike was efficient but we lost the ability to track specific parcels of shares which created darkness.
2) "Anonymous pooling" enhances the efficiency of moving shares around quickly but it allows electronic book entries to coexist such that we lose sight of which represent are mere "Share entitlements" and which have a paper-certificated share somewhere to justify its existence. The DTCC's treatment of electronic book entries is to assume that each one involved in a transaction just happens to be one of the legitimate ones until proven otherwise and then the proof is concealed.
3) The "Continuous Net Settlement" (CNS) system of the DTCC is super-efficient and it nets out share transfers and cash transfers on a daily basis such that 96% of the transfer of shares and cash is eliminated. What it also does is it hides the individual delivery failures and allows the DTCC to proffer the nonsense that "99% of transactions settle on time and the vast majority that don't do settle on time do so within 5 days". Well, I think Dr. Boni would beg to differ!
4) Allowing "Cede and Co.", the nominee of the DTCC, to act as the "Nominal" or "Legal owner" of all shares held in street name circumvents the need to execute deed-like instruments for each transaction on Wall Street but it obfuscates share ownership issues for a company and its transfer agent because "Cede and Co." now owns 96% of all shares in the U.S. and what goes on inside of CEDE and Co./the DTCC is top secret. The result at the end of the day is what I have always referred to as "The Ultimate Enigma" namely that the clearing firm that failed delivery in a transaction involving an SBP "Pseudo-borrow" ends up owing the NSCC which it co-owns that which it is already the partial legal owner of. Does it remain any wonder why there are no buy-ins on Wall Street? Why would anybody buy-in themselves when they're legally the co-owner of that which they owe? But of course "Cede and Co." was only designated the "Legal owner" of shares in an effort to enhance efficiencies and they were strictly forbidden to LEVERAGE this legal owner title over those to whom they owe a duty of care.
5) The trading data irrefutably showing all of these fraudulent sales being deemed to be of a "Proprietary" nature and in need of being concealed and kept in the dark is total insanity that literally represents an engraved invitation to commit fraud.
6) The DTCC's theoretical "Powerlessness" to shine a light on any of the obviously fraudulent conduct of their participants also provides darkness to commit fraud within.
7) Even DTCC participants are sometimes kept in the dark. In the case of a buy order needing an SBP "Pseudo-borrow" to "Clear" (not "Settle") the buying b/d is even kept in the dark as to the fact that his buy order needed help from the SBP. This "Darkness" serves to mislead this b/d that compliance with 15c3-3 was met and that his duty of care to his client paying him a commission was satisfied.

This duty of care providing investor protection was artificially extinguished by the DTCC keeping this time their own participant in the dark.

8) The DTCC's claim not to have the ability to discriminate between "Legitimate" delivery failures and "Illegitimate" delivery failures allows all delivery failures to be cast into the black hole of "Legitimacy".
9) The DTCC's claim that the SBP is "Automated" and that they have no "Discretionary control" as to how it is run would be comical if not for the financial pain being felt by U.S. investors due to this nonsense. The SBP is a black box roaming the countryside stealing from citizens and handing the stolen funds to abusive DTCC participants and DTCC management cannot enter into this black box and reprogram it because the box is "Automated" and the SEC never gave the DTCC the key to it 25 years ago. Why did the U.S. investors swallow this line for the last 25 years? Because they never got EDUCATED as to the nature of the NSS fraud.

There are literally dozens of other examples but the 2 questions begging to be asked is why does every addition to the DTCC's rulebook always seem to be done in order to provide theoretical efficiencies that always have a cloak of darkness attached and why didn't the SEC in charge of providing "Disclosure" as per the '33 Act notice this pattern while rubber stamping all of these "Efficiency enhancers" over the years?

NO OFFENSE BUT YOU AT THE SEC STILL DON'T QUITE GET IT

Some quotes from the 51-page explanation of the proposed amendments to Reg SHO:

1) "We are concerned that large and persistent fails to deliver may have a negative effect on the market in these securities". (Gee, do you think so? Of course flooding the market with "Large and persistent" numbers of readily sellable "Share entitlements" that grossly distort the "Supply" side of demand and supply interactions that determine share price is going to "Have a negative effect on the market in these securities". This is especially true if these "Share entitlements" have been on the issuer's "Corporate failure" tray for a long time say 106 days or perhaps 318 days for example due to "Rejuvenating crosses". You at the SEC need to get your arms around the incredibly powerful effect of tough to detect "Rejuvenating crosses".
2) "Although we believe that no failure to deliver should last indefinitely" (Well, that's certainly going out on a limb when the Federal Law you're being paid tax dollars to uphold mandates "Prompt settlement" of all trades.)
3) "Allowing flexibility for some failures to deliver also may deter the likelihood of manipulative short squeezes because manipulators would be less able to require counterparties to purchase at above market value". (Well, at least you used the word "DETER" but you're supporting the deterrence of artificially reduced share prices (Manipulation) moving back to pre-manipulation levels. Why are you coming to the aid of securities fraudsters that have sold that which they never owned, irrefutably refused to deliver that which they sold well into the past and

are now in the possession of the investor's money after both the share price and the collateralization requirements "Tanked" despite the fact that they continue to refuse to deliver that which they sold? Should they not open up their wallets and take the investor's stolen money and deploy it into the open market? Shouldn't they be required to purchase these shares at what ever levels the market dictates even if they are above the currently artificially "Manipulated" lower price levels?

Your terminology "Manipulative short squeezes" is missing some context. The manipulation has already occurred and the share price was irrefutably "Manipulated" to the downside. At the 11/30/05 NASAA Forum on naked short selling you at the SEC had trouble with this concept also. The moderator asked why the SEC and NASD were so intently interested in preventing an artificially manipulated lower share price from ever rising. Silence filled the room. Can you not understand that a cash-strapped and manpower-lacking SEC should welcome naturally occurring DETERRENT phenomena like short squeezes or more accurately the fear thereof to act as an invisible regulator to DETER this type of activity? Astronomically high naked short positions and their delivery failures and resultant issuer-damaging "Share entitlements" being MISREPRESENTED as legitimate shares on monthly brokerage statements do not just happen. Ethical MMs move up their "Offer" levels after naked short selling a moderate amount of shares into buy order dominated markets. Predatory MMs apply a "Blanket" of naked short sale orders because they can't allow the share price to advance due to the cost of collateralizing their previous astronomically high naked short position. This is not the "Accidental" behavior of naïve market participants unaware of how the system works as there is clear intent to defraud.

When the clearance and settlement system run by the DTCC actually allows the seller of nonexistent entities access to the investor's money without ever delivering that which was sold then there are no ACCIDENTAL running up of gigantic naked short positions that might be subject to a short squeeze. The "Intent to defraud" issue is crystal clear. The fraudsters operating in this realm count on the SEC and the DTCC to have these attitudes about short squeezes being a bad thing and not a deterrent to doing bad things like racketeering and theft. This "Industry within an industry" is not a good old battle between the shorts and the longs or between the "Pump and dumpers" and those that despise them. This is now a very sophisticated form of organized crime and racketeering as confirmed by the jury in the Elgindy case. In the old days when these more tame battles between the shorts and the longs were being waged opportunists realized just how much easier it was to kill a development stage corporation developing in its incubator than it was to build one. This reality in conjunction with the meticulously designed infrastructure of the DTCC allowed free access to an investor's wallet for the practitioners of this new criminal enterprise.

4) "To what degree will eliminating the grandfather provision make it more difficult for short sellers to provide market discipline against abusive practices on the long side"? (Is that what abusive DTCC participants are doing, "Providing market discipline"? Is that how you really see naked short selling being perpetrated by abusive DTCC participants as a form of "Police activity"? What kind of a

“Securities cop” steals from Mom and Pop investors while theoretically chasing the bad guys?

A theoretically bona fide MM injects BOTH buy side and sell side liquidity as needed and he buffers any sharp price swings in either direction. He’s not a market policeman that is supposed to determine the proper share price level that an issuer should be trading at and inject “Market discipline” should an issuer be trading at levels higher than his infinite wisdom dictates to be appropriate. Just where does an abusive MM gain all of this expertise as to the merits of all new technologies and thousands of business plans? Why is all of Wall Street totally obsessed with issuers’ share prices getting too high? Because assuming naked short positions allows access to the investor’s wallet without ever having to deliver that which you sell and those that know this “Reality of the fraud” are naked short most development stage companies. They’re not going to attack Microsoft because if they knocked down the Microsoft share price by 90% then Microsoft would use their cash to buy back almost all of their shares and induce a short squeeze beyond description. They need to attack corporations unable to buy back their shares should they be driven down to ridiculously low price levels.)

JUST HOW FAR OUT OF CONTROL ARE THINGS AT THE DTCC

FROM THE DTCC POINT OF VIEW

WE ARE THE DTCC:

1) We have a Congressional mandate to “Promptly and accurately **settle** all trades” as per Section 17 A of the ’34 Exchange Act (“Settlement” mandating “Good form delivery”) **YET** we dispense “Securities orders” allowing access to “Non-CNS delivery arrangements” commonly known as “Ex-clearing arrangements” to our abusive participants oftentimes trying to bypass the legal “Settlement” of their trades. We then claim to be “Powerless” to monitor the “Unconditional contracts” being entered into by our participants in the Ex-clearing arena despite the Congressional Mandate to “Promptly settle” all trades. Instead we’ll delegate out our own Congressional Mandate and put our abusive DTCC participants on the “Honor system” and allow them to make sure that these trades “Promptly settle” (wink, wink, nudge nudge). Note that these “Unconditional contracts” that cleverly utilize the 3b-3 loophole allowing the transfer of ownership without “Good form delivery” basically amount to two co-conspiring b/ds, sometimes both being DTCC participants other times not, promising “To EVENTUALLY deliver the shares in “XYZ” issuer that we just sold to you” in exchange for its co-

conspiring b/d to make the same promise in regards to the shares of "ABC" it just sold to them i.e. to intentionally indefinitely postpone legal "Settlement" of these trades by promising never to buy-in each other's debt. This is, of course, unless the much sought after bankruptcy of either issuer occurs in the meantime or if the purchasers of these shares turn around and sell these shares then it all becomes a moot point.

2) As the "**Qualified control location**" of choice for 99% of Wall Street we must see to the "Prompt receipt and delivery of securities" and the "Taking of physical possession or control" of fully paid for and excess margin securities on behalf of those 11,000 b/ds and banks choosing to utilize us as their means to comply with 15c3-3-"The Customer Protection Rule" **YET** we sponsor the SBP, create access to NON-CNS delivery arrangements and B/D "Internalization arrangements" all of which FACILITATE and then hide the fact that the "Prompt receipt and delivery" and the "Taking of physical possession or control" of fully paid for securities didn't occur. We then claim to be "Powerless" to do any of the mandated buy-ins needed to accomplish "The prompt receipt and delivery" of shares and the "Taking of physical possession". The question that begs to be asked is then why did you at the DTCC volunteer to act as a "Qualified control location" for 15c3-3 compliance if you weren't "Qualified" or "Empowered" to perform the prescribed tasks of a "Qualified control location"?

3) We operate as an SRO mandated "To monitor the business conduct of our participants" **YET** we claim to be "Powerless" to monitor the business conduct of our participants in regards to what types of shares they are "Donating" to the SBP lending pool, whether or not trades are ever "Settling" in Ex-clearing and B/d "Internalization arrangements", whether or not their participants' market making activity is truly "Bona fide" and deserving of an exemption from borrowing before short selling, whether their delivery failures being granted access to SBP "Bailouts" are "Legitimate" and short term in nature or not and a variety of other inappropriate "Business conducts".
4) We are a member of **THE FEDERAL RESERVE** one of whose 4 main responsibilities is "Maintaining the stability of the financial system and containing **SYSTEMIC RISK** that may arise in financial markets" **YET** we refuse to halt the abusive practices of our participants that greatly increases the SYSTEMIC RISK incurred by all U.S. citizens i.e. allowing delivery failures to pile up to astronomic levels and then pleading to be "Powerless" to deal with them.
5) We are the creditor of this IOU owed by a DTCC participating clearing firm failing delivery, our bosses, directly to our NSCC division after acting in this "Loan intermediary" role in our "Automated Stock Borrow Program" **YET** we, a banking entity operating as a Limited Purpose Trust Company under the banking laws of the State of New York, have the audacity to claim to be "Powerless" to call in the IOUs directly owed to us belonging to our abusive participants/bosses which would be needed to do in order to allow these trades to FINALLY "Settle". We're a "Banking entity" unable to demand the payment of our unpaid loans-an interesting concept!

6) We cannot pay our own debts back to the actual lending b/d whom we owe unless we demand payment of our own debts **YET** we refuse to call in our own IOUs which in turn makes us unable to pay our own debts. Not to worry though as we allowed the party loaning us the shares to keep the cash value of the shares involved for their own use and to count towards their own net capital reserves. Thus the lending b/d has been pretty well “Pacified” and is not about to demand the loaned shares back unless he has to. This “Pacification” then short circuits the need to do buy-ins as confirmed by the Evans study.
7) We are the “Legal Custodian” of the shares held at the DTC depository and we hold 96% of all shares in “Street name” **YET** we allow the shares we are acting as the “Legal custodian” for to serve as the “Template” for making many, many copies of in the form of “Share entitlements” irreversibly damaging the value of the shares we act as the “Legal custodian” for while benefiting the participants of the “Legal custodian”. You might as well be renting out certificates out of the back door of the vault so that the thieves can run down to the nearest Kinko’s and make copies.
8) We run the DTCC “Automated Stock Borrow Program” which the SEC went way out on a limb to authorize in order to avert the looming “Paperwork crisis” in 1969. The SEC trusted DTCC management to aggressively monitor for and correct any abuses detected in this open invitation to steal from investors **YET** we claim to be “Powerless” to monitor the age, amount, and “Legitimacy” of delivery failures within our own DTCC D sub-accounts even though we have full visibility of them all day long unlike any other SRO or regulator and as the “Legal Custodian” of all shares we know exactly how many are in paper-certificated format versus electronic book entry format and we know that any electronic book entry shares over 0.5% of the number of shares outstanding must be bought in and 96% of all shares are held with us in electronic book entry format.
9) We promised the SEC to follow the tenets of the new Reg SHO in the same “Cooperative spirit” of previous involvements with the SEC **YET** we don’t think we have to perform the single most important tenet of Reg SHO and perform the “Mandated buy-ins” of “Threshold list” securities so prescribed.
10) We do the day-to-day administration of the DTCC’s SBP and “Lending pool” of securities **YET** we claim to be “Powerless” to monitor for the types of shares being donated into our SBP’s “Lending pool” but instead we put our participants on the “Honor system” even though any shares/ electronic book entries donated into the pool that are chosen for loaning result in that participating b/d receiving the cash value of those shares, perhaps in the billions of dollars, for its own use and counting towards its net capital reserves. While being placed on the “Honor system” a participating b/d with net capital reserve problems would then be tempted to illegally put shares into the “Lending pool” from Type 1 cash accounts and retirement plan accounts since these electronic book entries all seem to look alike after a while and nobody’s watching.
11) We have the brightest lawyers on Wall Street in our employ **YET** we claim to be unable to realize that our policy of allowing our participants whose buy order needed an SBP loan in order to allow the trade to “Clear” to place those borrowed shares right back into the lending pool from whence they just came would lead to

the same parcel of shares, even though they're not readily-identifiable, being loaned out in a dozen different directions simultaneously to a dozen different groups making delivery failures. They probably refuse to also recognize that all of these excess "Share entitlements" in the system that are readily sellable helps generate a lot of extra commission and rental income flow that otherwise wouldn't exist in their absence because these mere "Share entitlements" are bought, sold and rented all day long.

12) We administer the SBP **YET** we claim to be "Powerless" to change its "Self-replenishing" nature because if there were any flaws then the SEC would have corrected them by now and we haven't heard anything from the SEC.

13) Dr. Boni provided irrefutable proof that the delivery failure problem is out of control at the DTCC and that the average age of even the THEORETICALLY short term "LEGITIMATE" failed deliveries given access to the SBP's lending pool to "Bailout" only "LEGITIMATE" delivery failures of a very short term nature was an incomprehensible 56 days in length **YET** no changes have been made to address these problems nor to admit their existence nor to even acknowledge the Boni report in a 14-question "Self-interview" ostensibly designed to clear up misconceptions about naked short selling and the role of the DTCC. Despite the Boni report the party line at the DTCC is still that 99% of trades legally "Settle" on time and that all is hunky-dory in regards to delivery failures and NSS is nothing but a myth.

14) We cannot do anything about the SBP because it is "Automated" and we have no "Discretionary control" over it **YET** when it works in the best interest of our participants/owners we'll yield all kinds of "Discretionary control".

15) The win-win scenario involving the buying in of all failed deliveries older than T+13 would greatly enhance investor confidence in our clearance and settlement system, provide deterrence to fraudsters, increase order flow to all DTCC participants and decrease SYSTEMIC RISK to all Americans dramatically **YET** the DTCC refuses to even consider the proposition since they are still operating in "Cover up" mode and proffering that there is no NSS related problem out there despite irrefutable proof to the contrary.

SUGGESTIONS TO THE SEC

0) Please <u>OFFICIALLY AND DEFINITIVELY</u> "Bestow" upon the DTCC the "Power" to do all of the things they claim to be "Powerless" to do in regards to stopping naked short selling abuses. This being conveniently "Powerless" nonsense in an effort to facilitate the continuance of and cover up the existence of a massive fraud on the market must come to an end. Some of these might include formally bestowing the POWER to: do whatever it takes to "Promptly and accurately settle" all trades as is their Congressional Mandate, buy-in archaic delivery failures of its participants when it becomes obvious that the seller does not intend on delivering the shares sold (perhaps on T+13), buy-in the IOUs owed

to the NSCC while functioning as the "Loan intermediary" in the SBP borrowing process, monitor the contents of the SBP "Lending pool" for the legality of those shares being there i.e. no electronic book entries representing shares held in qualified retirement plan accounts or Type 1 cash accounts, monitor the age, amount and "Legitimacy" of delivery failures as if the INTEGRITY of the clearance and settlement system depended on it which it does, monitor the market making activities of their participants accessing the exemption from borrowing before short selling accorded only to bona fide MMs acting in that capacity at the time, monitor for any trading activity in the in-house proprietary accounts of participating MMs being done by hedge funds trying to illegally access the exemption from borrowing before short selling accorded to bona fide MMs only, exercise "Discretionary control" in regards to the SBP, etc.

1) Codify the new NASD Rule 3210 and 3360 into this amendment of Reg SHO so that it gets incorporated into the '34 Exchange Act and brings Federal Reg SHO protection to all OTC securities.
2) In order for the SEC to fulfill its disclosure mandates of the '33 Act b/ds should be mandated to disclose to the public on a regular basis the "Declared" short position in a stock, the number of delivery failures held at the DTCC, the number of delivery failures held in an Ex-clearing format and the number of delivery failures held at trading desks in a "B/d internalization" format.
3) Reword the mandated close outs to include all trades and not just DTCC CNS (Continuous Net Settlement) trades otherwise all of the fraudsters will predictably shunt their abusive trades into "Ex-clearing" and "B/d internalization" repositories for delivery failures trying to circumvent "Settlement" .
4) Study the Global Links case and see for yourselves where all of these unaddressed delivery failures are being "Parked".
5) Delete the "If you CANNOT close out delivery failures then…. part of the "Close out" rule.
6) Rid the system of "Locates", "Reasonable grounds", "Bona fide borrowing arrangements", SBP "Pseudo-borrows", etc. You either pre-borrowed the shares and made delivery on T+3 or you didn't. Commissioner Pollock was correct back in 1986. With trillions of investor dollars on the table trust nobody if you are interested in providing investor protection especially don't trust those at the DTCC that say we have to do it this way to "Enhance efficiencies" and that it is necessary "To clear trades at supersonic speeds". If DTCC participants are really interested in "Enhancing efficiencies" go to the fully computerized ECN model that eliminates the greedy human middleman with a superior critical mass and a superior "KAV" factor. There's too much money on the table to put 11,000 b/ds with massive conflicts of interest on the "Honor system", been there done that!
7) If an analogue of a "Stock Borrow Program" is deemed necessary then it needs to be run by an entity without these conflicts of interest.
8) In other words let's just wait the 2 or 3 day delivery delay that DTCC participants are implying is involved before the trade is allowed to "Clear". No more extensions of "Credit" especially to those that have clearly shown their credit unworthiness.

9) When share dividends are distributed then those with short positions on the books on the dividend record date must deliver legitimate share dividends with its attached "Package of rights" not just more "Share entitlements" that can't even be legally voted. This would obviously necessitate naked short sellers to go to the open market and buy legitimate shares for delivery before the dividend delivery date just like UCC Article 8 mandates. Notice the DETERRENT effect against fraudulent conduct being provided by a policy like this.
10) There should be no more "Cherry picking" of UCC Article 8. If you want to utilize "Share entitlements" then you need to follow the specialized instructions in UCC-8 when dealing with them. "Share entitlements" are clearly much more damaging and subject to abuse than legitimate "Shares" and they need to be treated that way.
11) The "Prompt and accurate settlement" not just "Clearance" of trades mandated by Congress must become the "Gold standard" for all trades no matter which market center is used. "Prompt settlement" provides "Investor protection", "Market integrity" and a level playing field. "Prompt clearance" in the absence of "Prompt settlement" provides the foundation for abusive DTCC participants to pick the pockets of naïve Mom and Pop investors to the tune of perhaps collectively trillions of dollars which is a form of "Racketeering" in addition to a form of "Securities fraud on the market".
12) Please realize that our current clearance and settlement system is based upon brokers being paid commissions upon the "Prompt clearance" and the ILLUSION that legal "Settlement" is occurring like at the SBP or in Ex-clearing "Arrangements" for instance. Once the b/ds have cashed their commission checks where is the incentive to monitor for the legal "Settlement" of the trade?
13) Reduce the amount of "Legitimate" delivery failures so that the fraudsters lose their ability to camouflage "Illegitimate" delivery failures. Remember the fact that there indeed are "Legitimate" reasons for failing delivery gave the fraudsters the toehold in the first place. A warning, the DTCC is trying to do just the opposite. Realize that if you allow the DTCC to go to "STP" or "Straight through processing" (Settlement date=T+0) like they are aggressively pushing for then nearly all deliveries will fail and abusive delivery failures will be camouflaged amongst a plethora of legitimate delivery failures. Trust me; the level of greed being expressed by abusive DTCC participants and unethical DTCC management members is totally insatiable. Imagine for a moment the increase in the already intolerable SYSTEMIC RISK levels if you allow the DTCC to effect "STP".
14) "Legended" shares shouldn't be sold until the legend has been removed. Put the burden on investors to get their shares into a fungible format so that fraudsters can't use the existence of "Legitimate" delivery delays as an excuse to perpetrate frauds. No selling of previously paper-certificated shares should be allowed until they have been put back into electronic book entry form and can be delivered without delay on T+3. If you start with the premise that abusive DTCC participants will steal every penny from Mom and Pop investors that they can get away with then I don't think they'll disappoint you in their conduct. If you can rid the system of "Legitimate" delivery failures then nobody can steal investor money via PRETENDING to be producing legitimate delivery failures. This

would shut down Rule 144 abusers also that pre-sell their yet to be registered shares and just sit on the delivery failures as well as "Death spiral" financiers that do the same. Killing several different forms of securities frauds <u>simultaneously</u> is a good thing. "Prompt settlement" does this. Many "Pump and dump" fraudsters are "Dumping" yet to be registered shares via naked short selling them. The DTCC as well as you at the SEC worry about the balance between NSS and the levels of "Pumping and dumping". You have to realize three things; firstly many "Pump and dumpers" are dumping unregistered shares utilizing NSS methodologies supported by the DTCC and the SEC. Secondly, addressing the NSS frauds will put these guys out of business and you can kill two birds with one stone. Thirdly, many "Pump and dumpers" sell real shares into the pump phase and then go net naked short at the market peaks and then cover these naked short positions later with post-reverse split shares after the market cap predictably tanks from the reverse split.

15) Delete the part of 15c6-1 that allows the buyer and seller involved in a trade to avoid T+3 "Settlement" by making "Arrangements" between the 2 parties to the trade "At the time of the transaction". You should no longer be allowed to "Arrange" your way around 17 A's "Prompt settlement" mandate and the "Prompt receipt and delivery" of shares as well as the "Taking of physical possession or control of fully paid for shares and excess margin securities".
16) Get rid of the "Regulatory vacuum" within which these fraudsters operate. Clarify which regulator or SRO is in charge of monitoring: A) the contents of the SBP "Lending pool" (no Type 1 cash a/c or retirement a/c shares), B) the age of delivery failures, C) the "Legitimacy" of delivery failures, D) the quantity of delivery failures held at the DTCC, in Ex-clearing formats and at B/d trading desks in a "B/d internalization" format, E) for the execution of "Mandated" buy-ins and that an illegal "Matched trade" or "Sham close out" wasn't involved to "Park" a delivery failure elsewhere, F) the authenticity of the "Bona fide" in the behavior of theoretically bona fide MMs accessing the exemption from borrowing before short sales, G) hedge funds being given access to the in-house proprietary accounts of theoretically bona fide MMs in order to gain access to the bona fide MM "Hat" and the exemption from borrowing before short sales, etc. In other words clear cut understandings as to which regulator or SRO is in charge of which regulatory function. Currently most of the abusive activity occurs within the gray zones where regulatory responsibility is ill-defined mostly because the DTCC claims to be "Powerless" to do anything and the NASD and SEC seem to be assuming that the DTCC is performing the tasks that the SEC presumed they would perform before they went way out on the limb to take these incredible risks inherent in "Immobilization", "Dematerialization" and setting up the SBP.
17) Set up a committee well-trained in NSS crimes that a victimized issuer can approach, make its case as being a victim of a NSS "Bear raid" and have mandated buy-ins effected for <u>if it has indeed been victimized</u>. This will add the much needed and currently missing <u>DETERRENCE</u> factor. There is no "Privileged" OR "Proprietary" information issue involved when the <u>SEC</u> looks into the trading data for verification of a fraud alleged by a victimized issuer. I use a "Point system" that I devised to determine which issuers are legitimately

claiming to be an issuer victimized by a "Bear raid" as opposed to a crooked management team with a faulty business plan looking for an excuse to explain their own ineptness. One thing that I have learned is that the survivors of 5 or 6-year long "Bear raids" usually do indeed "Have the goods" or they would have succumbed by now. You can't fake it that long!

18) Keep in mind that all development stage issuers are not "Scams" and that there are certain times in their development cycle where they are very susceptible to predatory actions, especially when they're not cash flow positive yet.

19) Realize that predatory naked short sellers create their own statistics. If 8 out of 10 development stage corporations fail within a 3 year period on these currently "Rigged" markets, how many would fail on a level playing field, perhaps 5 or so? The more recruiting abusive DTCC participants can do to encourage their fraternity brothers to join in on these "Bear raids" the higher they can get that death rate statistic which aids in future recruitment efforts.

20) Dismantle the current Ex-clearing system allowing NSS fraudsters to "Pair off" their delivery failures outside of the DTCC by making pacts not to buy in each other's delivery failures. This is nothing short of criminal and represents the antithesis of "Prompt settlement". The FACILITATION of Ex-clearing modalities to circumvent "Settlement" by the DTCC's issuing of "Securities orders" leading to "Non-CNS delivery arrangements" is totally inconsistent with the DTCC's Congressional Mandate to "Promptly settle" all trades. The DTCC management was not empowered to delegate out the "Prompt settlement" function to its participants/owners and then turn a blind eye to monitoring to see if "Settlement" was ever achieved because of the "Contractual" nature of these "Unconditional contracts" entered into by fraudsters trying to circumvent "Settlement" in order to steal from Mom and Pop investors. Congress mandated that the DTCC as a unit make sure that trades are "Promptly settling". The SEC needs to explain this to the DTCC so that there are no misunderstandings. Concentrate on "Prompt settlement" and not "Supersonically prompt clearance" of trades.

21) Realize that the DTCC and NSCC rulebooks are full of rules that you approved of (while napping) and that this constant theoretical "Quest" of the DTCC to "Clear" trades at supersonic speeds has had collateral damage wrought upon U.S. Corporations in the form of lessened investor protection and market integrity. Is it coincidental that the diminished investor protection and market integrity <u>just so happens</u> to allow investor funds to be shunted to abusive DTCC participants? This "Need for speed" of the DTCC is a wonderful cover up for systemic fraud.

22) Dismantle the current "B/d internalization" system now used to circumvent "Settlement" in order to steal from Mom and Pop investors. The argument that it sometimes takes a while for a MM to "Trade out" of a naked short position is not valid if the MM was truly acting in a bona fide market maker capacity and was increasing the level of the "Ask" after a MODERATE amount of shares were sold at a certain level and the buy orders kept coming in. Greedy market makers that sold truckloads of shares at a certain level are the ones that get caught because they can't increase the "Offer/ask" level because the collateralization requirements on their preexisting astronomic naked short positions might be

usurious. Bona fide MMs want to increase the level of the “Ask/Offer” and let these markets “Breathe” by naked short selling into excess buy orders at higher levels but abusive MMs don’t have that luxury and are forced to put a “Blanket” of naked short selling at certain levels. These are the markets where 50% of the “Float” mysteriously trades on a daily basis. It is the visibility of buy orders that allows NSS frauds to be perpetrated as there is a check attached to each buy order. You need a buy order to NSS into. The larger and more abusive MMs will obviously have a far superior visibility of buy orders.

23) Note that “Clearing fees” are incredibly cheap. Why? Because the “Ownership” of the shares goes to the clearing firm and with that “Ownership” goes the right to earn rental income. Our current system allows host b/ds to “Sell out” their own clients. They receive cheap clearing fees in exchange for allowing their clearing firm to rent out an investor’s shares to naked short sellers intent on bankrupting their investment. What happened to the “Fiduciary duty of care” owed to the client that paid his “Agent” a commission? It was cashed in on but since it was indirectly done via an intermediary “Clearing agreement” then investors don’t recognize that it was done. The real big money on Wall Street is in the rental of shares to the enemies of the client’s investment which seems to most securities scholars as an undisclosed CONFLICT OF INTEREST that should have been disclosed more clearly in a “Margin agreement”. Margin agreements should also address the disposition of each of the 12 rights attached to legitimate shares i.e. upon being loaned who gets the voting rights, tax preferential treatment of cash dividend rights, etc. Since one of the rights attached to legitimate shares is the “Dispositive” right to sell at a time of one’s choosing then theoretically these “Share entitlements” should not be readily sellable. The DTCC had to “Fudge” in this regard otherwise this entire fraud would have been exposed decades ago when investors would have been refused the ability to sell that which they purchased. The counterfeiting of “Dispositive” rights is the key to “Death spiral” financiers using co-conspirators to pre-sell yet to be registered shares after they signed a contract not to pre-sell the shares they were purchasing.

24) The SEC needs to realize just how easy it is for a MM to get into trouble when it refuses to increase the level of the “Ask” after selling a moderate amount of shares into a buy order just because some competing MM might get access to the investor’s money by selling at a lower level. This is all about human greed when the system has trillions of investor dollars up for grabs and it allows you to systematically pick the pocket of investors. Perhaps hard and fast rules need to be designed in this regard. Nowadays when a buy order surfaces for a not yet cash flow positive development stage issuer there is a mad scramble to naked short sell into it before a competitor does. That money will soon be in the wallet of whoever acts the quickest once the inevitable tanking of the issuer’s share price occurs.

25) Reconnect the “Clearance” of a trade with the “Settlement” of a trade. In every other banking-related business on the planet except the one hosted by the DTCC “Clearance” and “Settlement” are joined at the hip. When they are artificially separated crimes related to “Kiting” can be committed. “Kiting” involves crimes related to the “Float” period between “Clearance” and “Settlement”. It’s amusing

how the DTCC will lecture on how risk is proportional to the time difference between the trade date and the settlement date which is accurate and why they're pushing for STP ("Straight Through Processing") or T+0 as settlement date and then in practice they stall "Settlement" to death to allow their own abusive participants to get their hands on the unknowing investor's money i.e. do as I say and not as I do. Another way to think of this is to put the "Settlement" back into "Settlement day". What we currently have is a T+3 "Settlement day" and perhaps a T+200 date of "Settlement". Misrepresentation? How about if you either make it truly "Settlement day" or change its name to keep from inadvertently doing damage to investors. Somehow "T+3 Settlement day" doesn't belong in the same sentence with "Locates", "Reasonable grounds", "Bona fide arrangements to borrow", "SBP pseudo-borrow", "Eventually" deliver, etc.

26) Damages incurred by issuers victimized by a NSS attack are proportional to the number of "Share entitlements" in the system at a given time multiplied by the amount of time separating the "Clearance" and the "Settlement" of the involved trades. That's why Congress had the foresight to mandate the "Prompt "Clearance" AND "Prompt settlement" of all trades. Fraudsters trying to reroute investors' money into their own pockets seek to assume a naked short position in a targeted issuer and then intentionally increase the time delay in between the "Clearance" and "Settlement" of further trades in order to allow those mere "Share entitlements" sitting on the "Corporate failure" tray plenty of time to do their damage via dilution. Remember the DTCC is a "Banking entity" and a member of The Federal Reserve. One of its regulators is the State of New York Banking authorities. "Kiting" is a banking-related crime. In regards to the DTCC's SBP it is comical that the DTCC claims to be a "Banking entity" that is "Powerless" to call in the IOUs of its debtor bosses/participants that make delivery failures. How can we all become members of this very special bank? Sorry, it's for Wall Street fraternity members only. Right now DTCC participants are paid their commissions, mark-ups and fees based on the unimportant "Clearance" of a trade and the ILLUSION that "Settlement" is hopefully occurring. That's why their emphasis is on trades "Clearing" at supersonic speeds no matter what ill effects there are upon market integrity. This results in the collateral damage caused by the lack of "Good form delivery", the lack of "Settlement" and the genesis of enormously damaging "Share entitlements" upon the chances of success of an issuer.

Theoretically the investors' checks should be cashed upon the "Settlement" of their trades because they are unaware of the incredible amount of looseness in the DTCC system and the DTCC participants should be paid their commissions upon the cashing of the investor's check upon "Settlement" and not until. Another way to look at it is, why are investors paying the full retail price for legitimate "Shares" with its attached package of approximately 12 different rights (Voting, preferential tax treatment of cash dividends, etc.) when all they're receiving are often unexercisable "Share entitlements" with no rights attached.

Remember Section 17 A allowed the DTCC to change the FORMAT to account for share ownership from paper-certificated shares to electronic book entry shares. They were not allowed to create new "Packages of rights" ("Shares") out of thin air or to change the definition of the "Share" as the unit of equity ownership in a form of business known as a "Corporation" consisting of a package of about 12 different rights. What is an IOU that can't be called in worth? Zero! Now what are the rights to an IOU that can't be called in worth? Less than zero? The mere "Rights to an IOU owed by a DTCC participating clearing firm to the NSCC as the "Loan intermediary" in an SBP "Bailout" of a delivery failure that the NSCC claims to be "Powerless" to buy in" is not a legitimate "Share". It is more of a paradox that forms the foundation for a perhaps trillion dollar "Fraud on the market" that set up an "Industry within an industry" on Wall Street related to the systematic pocket-picking of the wallets of unknowing Mom and Pop investors by those with a superior view and much greater financial means.

27) Please review the level of archaic delivery failures of the last 20 companies that you deregistered via a 12-J deregistration process for whatever reason (usually the cessation of reporting after Sarbanes-Oxley kicked in). I think you'll note a significantly higher level of unaddressed delivery failures when compared to statistical norms. Perhaps you can come to the same conclusion that investors and securities scholars have namely that naked short selling fraudsters have significant pull within your Enforcement Division and they use this pull to convince you to deregister issuers that they have previously run up astronomic naked short positions in but were unable to bankrupt successfully.
28) Reassess the argument of the DTCC and their participating market makers that "Trading data" is indeed of a proprietary nature. The trading data of a market maker claiming to be acting as a "Bona fide" market maker as he accesses the exemption from borrowing before short selling is BY DEFINITION not of a "Proprietary" nature deserving of a "Privileged" status. It is just boring old naked short selling into markets predominated by buy orders and covering in markets predominated by sell orders. Right? What's the big secret? You can't out of one side of your mouth ask for an exemption from borrowing before performing short sales and then out of the other side of your mouth proclaim that the results of this wonderful service you are performing should be concealed. Bona fide MMs should be proud of their contribution to market integrity, investor protection and the implementation of an unmanipulated share price discovery infrastructure leading to pricing efficiency. They don't need secrecy they deserve commendations and acclaim. They should be wanting to post this trading data on billboards to get the acclaim they deserve from the investing public. Right?
29) While legislating in this arena, I think it is important for the SEC to keep in mind the history of SROs and why most securities scholars think that they just don't work especially in the naked short selling arena. The problem has to do with the inherent "Conflicts of interest". There is currently about $90 trillion "In play" on Wall Street. When "Settlement" of trades is allowed to be postponed or circumvented entirely abusive DTCC participants can siphon off billions of dollars of those funds easily by taking advantage of the playing field tipped in their favor. When the Congressional Mandate of "Prompt settlement" is followed

then the playing field becomes level. It's that simple! Expecting the DTCC to act as an SRO "Mandated to monitor the business conduct of its participants" and to act as "The first line of defense against market manipulations" is insanity. There's too much money on the table and it's too easy to steal. The SRO "Cops" can't have a $90 trillion dollar conflict of interest with the investors they are mandated to protect. These DTCC SRO "Cops" start out with a vastly superior "KAV" factor. When you allow 11,000 b/ds and banks, most of which are multi-billion dollar behemoths in their own right, to coalesce themselves into a single unit in an emergent fashion to battle the "Paperwork crisis" of 1969, if you don't think that a certain percentage of them are going to leverage this superior critical mass and superior "KAV" factor over the investors they have a fiduciary duty of care to then you're not thinking like a regulator should think.

30) A system involving SROs like the DTCC, NASD and NYSE is not going to work out UNLESS the SEC flexes the muscle that Congress mandated it to flex because of the incredible conflicts of interest at play with these SROs. Congress said to enforce the '34 Act. Section 17 A mandates the DTCC to "Promptly settle" all trades. What am I missing here? Buy-in the archaic delivery failures that the DTCC claims to be "Powerless" to? It's a no-brainer. Whether or not they're lying about being "Powerless" is a moot point, the SEC has to do their job ESPECIALLY when those they regulate and appoint as SROs won't do their job. The overseers of SROs with that much critical mass and political clout need to be the toughest sons of guns on the planet. Is the SEC also pleading to be "Powerless" also? Are the Congressional Oversight Committees of the SEC also pleading to be "Powerless"? I don't think the American taxpayers want to fork out billions of dollars to defend the SEC from lawsuits alleging that the SEC didn't warn investors of inordinate levels of unaddressed delivery failures and their resultant "Share entitlements" that had preordained their invested in company to an early death especially when the information was available to the SEC and not made available to the investors as mandated by the '33 Act.

31) As far as the concept of good old fashioned "FAIRNESS" in the markets I think that you at the SEC will admit that fining a firm "X" amount of money for illegally driving the share price of an issuer from $5 to 10-cents and not demanding the buy-ins of those delivery failures doesn't do the victims a whole lot of good nor does it deter the crooks from doing it to a different firm tomorrow. I think that Congress was well aware of this little issue called FAIRNESS when they mandated the "Prompt settlement" of all trades and the deterrence value that it brought to the table. These crooks are smart. They can do risk/reward analyses better than anybody else on Wall Street. They have deeper pockets than anybody else on Wall Street. I think you're starting to realize why. You can have all of the legislation in the world but if you just hand out traffic citations that are looked upon by the crooks as a "Cost of doing business" without offering any deterrent value then what's the point of looking upon yourself as an effective legislator and regulator? The historical attitude of the SEC in addressing naked short selling frauds is what emboldens these criminals today. They couldn't pull off these crimes without relying on the SEC to be negligent in enforcing the "Prompt

settlement" mandate of Congress. It's up to the SEC and its Congressional Oversight Committees to become part of the solution and not part of the problem. The previous attempt to "Grandfather-in" prior acts of blatant securities fraud to avoid "Volatility" was probably one of the most despicable acts attempted by any government agency in history. There's no more room under that rug to sweep anything else!

32) Remove all rules from the DTCC and NSCC rulebook that are in direct contravention of the 7 main Securities Acts you are in charge of regulating. This is the law and it should have been done a long time ago.
33) Remove as many of the conflicts of interest from the system that SROs may have with investors as is possible or practical. Any system-wide stock loan program like the SBP should be run by an agency with no inherent conflicts of interest.
34) Mandate that the DTCC follow through on the 15c3-3 compliance issues that they are shouldering on behalf of those that choose them as their "Qualified control location" of choice to attain compliance. This means to see that the shares purchased and fully paid for or those that are in an excess margin capacity are taken physical possession of or are kept in a qualified "Control" location. The DTCC is currently in no way, shape or form acting as a "Qualified control location" bringing about "Customer protection" as per this "Customer protection rule". By the way neither are the Canadian b/ds and banks that insanely also qualify even though a significant percentage of the Canadian brokerage industry is built upon the naked short selling of U.S. development stage corporations due to the loopholes in the old Rule 3370!

    Acting as a truly "Qualified control location" as per 15c3-3 shouldn't be very difficult for an SRO already with a Congressional Mandate to "Promptly settle" all transactions since prompt delivery is a part of "Prompt settlement". Can you see how weak this "I am powerless" argument from the DTCC really is when they are theoretically wearing all of these "Hats" that should provide investor protection? How can the DTCC volunteer to achieve compliance with 15c3-3 on behalf of its clients and then plead "Powerless" to effect the "Prompt delivery and receipt" of securities when it mandates a buy-in being done? They should obviously recuse themselves from this role and make their participants attain their own compliance with 15c3-3. How in the world can a "Qualified control location" as per 15c3-3 claim to be unable to tell the difference between a "Legitimate" and "Illegitimate" delivery failure?
35) When trying to distinguish between "Bona fide" market making activity and a "Predatory trading strategy" keep in mind that a truly bona fide MM will sell a **MODERATE** amount of shares into an imbalance of buy orders dwarfing sell orders and then he will raise his offer accordingly to allow the market to find a new equilibrium level. He doesn't put a "Blanket" of sell orders on the offer so that the market can't move up no matter how strong the imbalance of buy orders over sell orders becomes. If the imbalance of buy orders over sell orders reverses and the share price starts backing off he is there to post bids to buy back <u>with the same zeal</u> with which he previously sold. The bona fide MM is not supposed to DICTATE share prices but instead to buffer the sharp swings in share price. He is

supposed to be happy with living off of the "Spread" and if he isn't then he shouldn't volunteer to be a market maker. Many are of the opinion that an ethical MM can't make a living today and the evolutionary forces at play are being stifled. As mentioned the MMs most likely to be acting in a predatory mode are the larger market makers because they have the superior view of incoming buy orders and this business is all about buy orders and how they are treated because the investor's money is attached to each buy order.

36) When the DTCC was formed the "Paperwork crisis" was in full swing and Congress took some huge risks to allow 11,000 b/ds and banks to coalesce themselves into a single unit with an infinite amount of critical mass. That crisis is now over and we survived it. Is it now time to unwind some of that risk and re-level the playing field so that those DTCC management members and participants that aren't up to the ACTING IN GOOD FAITH presumption of Congress can no longer look upon Wall Street as their personal "Fiefdom"? Have you noticed the incredible amount of disdain that DTCC participants have for the non-Wall Streeter crooks that perform "Pump and dumps"? Could part of this be explained by one group of thugs that steal by selling nonexistent shares into buy orders does not want his "Turf" or personal "Fiefdom" being moved in on by a different group of thugs that also steals by selling into buy orders? Do you see any similarity to how a lot of organized crime comes about in regards to these "Turf wars".

37) The SEC has to reconsider defining the moment at which "Ownership" has been transferred. If you leave it as it is today which is upon the "Clearance" of a trade then you need a mechanism to identify and inform the previous owner that he lost "Ownership" otherwise we're left with the insanity we have today in which a dozen different people might be "Co-owning" one specific parcel of shares. If you change it to the date of "Settlement" then investors may not be liquid UNTIL "Good form delivery" was accomplished. This way naïve investors won't be getting hoodwinked into paying full retail price for a mere "Share entitlement" they can't even vote all the while thinking that they're an "Owner" of legitimate shares.

38) The "Unconditional contracts" involved in Ex-clearing are clearly designed to avoid the "Settlement" of trades and expensive or unavailable "Borrows". The current state of the art is that if you can't find a legitimate "Borrow" then just clear the trade outside of the DTCC and just offset your collateralization requirements with those of a DTCC "Fraternity brother" that also is having difficulty in making a tough or expensive "Borrow" of a different security. What could be simpler than this? These have to be done away with. The difficulty or expense of a "Borrow" is part of the natural protective measures of an issuer from abuses. There's usually a reason for a difficult "Borrow" and just perhaps it has to do with educated shareholders keeping their shares in certificate form to circumvent DTCC abuses UNTIL the SEC has regained control of this chaos. The SEC can't forget to address the naked short selling going on OUTSIDE of the Registered Clearing Agencies like the DTCC. Can you notice the lack of reference to "Settlement" and "Good form delivery" in the terms "Ex-clearing" and "Non-CNS Delivery **ARRANGEMENTS**" in the proposed amendments to Reg SHO?

The practice of 2 co-conspiring DTCC participants promising to "Eventually" deliver that which it just sold to the other in exchange for the same courtesy being extended in the other direction is criminal in nature. "Good form delivery" as well as the legal "Settlement" of the trade is intentionally circumvented and the two collateralization requirements are basically netted out against each other in sort of an off balance sheet type methodology. Like most other crimes there are victims involved. The resultant "Share entitlements" from these clever "ARRANGEMENTS" involving the hiding of delivery failures damage all issuers involved as well as the investments made therein by those investors owed a duty of care by those to whom they paid a commission. The collateralization of the debt on a marked-to-market basis has nothing to do with "Good form delivery". When the issuers involved distribute a dividend in the form of shares the co-conspiring DTCC participants merely credit the involved investors' accounts with yet more "Share entitlements" instead of going out and securing legitimate dividend shares to deposit into the accounts as mandated by UCC Article 8. Unbeknownst to the investors they can't vote these mere "Share entitlements" being dividended out nor do they qualify for tax preferential treatment for any future cash dividends. The MISREPRESENTATION needing to be made on the monthly brokerage statements then implies that the Transfer Agent sent and the host b/d received genuine dividend shares from the company that they will no doubt attempt to vote. The crediting of an investor's account with bogus "Share entitlements" is not a "Payment in lieu" of a dividend or a "Pil". Note what these bogus dividend distributions end up being worth when shareholders demand all certificated shares and when after the DTCC runs out of paper certificates they say that we can't deliver these requested for shares because it might cause a "Market disruption" and our rules don't allow us to do that.

The problem here centers around the use of "Unconditional contracts" which in the old Rule 3b-3 would justify "Ownership". "I UNCONDITIONALLY promise to EVENTUALLY deliver that which I just sold to you" (unless of course the corporation goes bankrupt in the meantime from the NSS attack) is no more than the embodiment of a fraud on the market. As mentioned before, allowing the legal "Ownership" of securities to be transferred <u>without good form delivery</u> being realized is the loophole being utilized. When this is the case if the new buyer of the securities goes ahead and sells them then the fact that the trade involving his buy order never did "Settle" becomes a moot point. Note that most anti-naked short selling laws are directed at the "Registered Clearing Agency" being used but Ex-clearing occurs outside of ("Ex") these venerable institutions. NASD rules expressly forbid the intentional prolongation of the settlement period which is exactly what Ex-clearing does. Hopefully you at the SEC can target these abuses in the text of the amended Reg SHO. The original Reg SHO tightened up "Ownership" issues nicely and I commend you on that but it didn't thwart those intent on committing Ex-clearing crimes. Note also that compliance with 15c3-3 is nowhere to be found in these Ex-clearing "Arrangements".

39) If I'm not mistaken the SEC is supposed to be making referrals to other branches of the Federal Government when it notices laws pertaining to these other branches being violated. For instance, in the case of the IRS's being victimized in NSS frauds, if the victimized investors in a company bankrupted during a "Bear raid" write off $100 million on their taxes as capital losses does anybody on the planet think that the perpetrators of the NSS fraud are claiming a commensurate $100 million capital gain?

    In regards to the DOJ, the selling of bogus entities followed by the taking of the investor's money, collateralizing the debt for a little while, refusing to deliver that which was sold and then pocketing the proceeds of the sale of the nonexistent goods as the share price tanks sure seems to be something that the DOJ might be concerned with.

    As mentioned earlier the "Counterfeiting" aspect of this form of securities fraud might be of concern to Homeland Security and the Secret Service. Those that might be perpetrating these frauds to destabilize the U.S. financial system might be of concern also to these parties. Just think of the pleasure involved for some of the current enemies of the U.S. to aid and abet abusive Wall Streeters to elevate SYSTEMIC RISK levels to intolerable levels by just appealing to their level of greed and watching our financial system convert into a "House of cards" created by the insatiable greed levels of those with an inside view. Would that be poetic justice or what for these people to design and implement a plan to allow the greed of abusive U.S. citizens to take down their own financial system? The key to reigning in these frauds is to get as many Federal Agencies involved as is appropriate especially those <u>without any innate conflicts of interest.</u>

    One aspect of the current hedge fund regulation issues that never seems to be brought up has to do with the predatory trading strategies some of the more abusive ones implement. In the discussions on hedge fund regulation we hear nothing but whether or not the "Accredited" and "Sophisticated" investors therein really need the regulatory efforts of an already stretched-thin SEC. The average U.S. Mom and Pop investor would much rather have you at the SEC concentrating on the naked short selling practices of these secrecy-obsessed behemoths with $10 billion per year in commission flow to send in the direction of market makers and prime brokers that can be the most "Accommodative" to the needs of the hedge fund manager i.e. huge profits no matter how many rules need to be broken by those doing the "Accommodating".

40) I would hope that the study by Evans, et.al. in regards to the 99.875% refusal to do even mandated buy-ins make a significant impression on the SEC as to the inadequacy of just throwing more regulations involving "Mandated buy-ins" at this issue. I also would hope that the Boni research was not just done because it was required and that instead the results made a profound impression on the SEC that would attest to the EMERGENT nature of this crisis.

41) During your legislating I would ask that you at the SEC keep in mind that delivery failures leading to “Share entitlements” are for the most part housed in 3 different repositories. The first is in the DTCC “D” sub accounts. The second is in an Ex-clearing format and the third is at trading desks via a process known as “Desking” or “B/d internalization”. Please keep in mind that these delivery failures are mobile and can easily move from one repository to another via illegal “Matched trades”, “Crosses” or what you at the SEC refer to as “Sham close outs” which are extremely tough to detect. The original Reg SHO concentrated on repository #1 and the “Registered Clearing Agencies” like the DTCC. As you probably noticed there were a very large amount of suspicious “Crosses” being made prior to the 1/3/06 effective date of Reg SHO. The “Threshold list” qualifications only apply to delivery failures held at “Registered Clearing Agencies”. Your experience with the Reg SHO “Threshold lists” and companies dropping off of these lists as their share price “Tanked” yet further should illustrate to you how easy it is to move delivery failures around as these issuers’ share prices should have theoretically gone up with all of these naked short positions being closed out. This proposed legislation badly needs to be beefed up in the areas of Ex-clearing abuses and “B/d internalization” abuses because of the portability of delivery failures and their resultant “Share entitlements” because no matter which repository they’re housed in they still weigh in equally heavy on an issuer’s “Corporate failure” tray.
42) The SEC also needs to realize that these “Share entitlements” are not legal “Entitlements” at all because the DTCC commonly refuses to allow their holders to “Exercise” them at a time of his or her choosing. Why not? Because if the DTCC were to have a “Run on the bank” wherein all investors demand the delivery of their certificates then they can and have played the “Market disruption” card and refused to deliver that which was being demanded for under the pretense that if they were to “Buy-in” these shares then a “Market disruption” would occur. Selling mere “Share entitlements” in excess of the 0.5% metric without any rights attached and at retail rates matching what a real share trades at is unconscionable. Selling “Share entitlements” that aren’t even legal “Entitlements” that can’t be readily exercised at will might be more aptly characterized as a form of organized crime and racketeering.
43) I think the SEC should address the role of the Chief Compliance Officer within a b/d and reinforce his role in reporting and addressing these abuses especially in regards to Ex-clearing and B/d internalization abuses.
44) The role of an abusive b/d’s auditor shouldn’t be overlooked either. It is important for an abusive b/d to disguise all of these delivery failures in their various repositories. Shouldn’t a prospective investor in a publicly traded abusive b/d be made aware of these “Contingent liabilities” should the abuser be asked to <u>finally</u> deliver all of the shares he’s sold but never delivered over the years? Shouldn’t these auditors be put on alert as to the repercussions for knowingly covering up fraudulent behavior? Should there be a GAAP standard addressing how to report these “Open positions” and their ages? Should the PCAOB get involved? Are “Off balance sheet” cover up measures being employed here?

45) Due to the self-replenishing nature of the SBP, when an SBP “Pseudo-borrow” is needed to “Cure” a delivery failure the buying b/d should be alerted so that he can follow up on his duty of care to his client and his own 15c3-3 compliance to monitor for the taking of “Physical possession of fully paid for shares”. Why? Because the DTCC isn’t complying with 15c3-3 on his behalf because you can’t make prompt “Good form delivery” by making a “Pseudo-borrow” out of a self replenishing pool. The DTCC should not be allowed to “Extinguish” the duty of care owed by a b/d to his client that paid him a commission. Of course, the same effect can be achieved by getting rid of the “Anonymous pooling” aspect of the SBP “Lending pool”.
46) The SEC needs to start thinking of shares as “Packages of rights” and that “Share entitlements” have no rights attached. For instance, right #7 is what are referred to as “Pre-eminent rights”. If a company trading at $1 needs to raise money and offers to sell shares to existing shareholders in amounts equal to their current shareholdings at 60-cents per share the share price after the offering will typically equilibrate at 80-cents per share. Those artificially deemed to have bought “Share entitlements” do not have the right to buy these cheap shares and must sit on their hands and watch their investment drop 20% in value UNLESS the DTCC perpetrates a “Cover up” fraud to hide the existence of the original NSS fraud.
47) The SEC must realize that some of the 12 rights are “Matchable” by those short the stock at a given time like on the dividend record date of a cash dividend. Those short can make a “Payment in lieu” of the cash dividend to match the amount. Other rights are not “Matchable” by those short the stock like voting rights, preferential tax treatment of cash dividends rights, “Preeminent rights”, etc. A “Share” is more complex than an electronic blip on a computer screen being debited from and credited to accounts. Section 17 A only allowed the FORMAT to account for share ownership to change to a more efficient computerized electronic book entry but not the definition of a “Share”.
48) I think the SEC might want to make sure that “Margin agreements” accurately portray all of the risks involved in buying on margin when all of these NSS games are going on and the DTCC is pleading “Powerless” right and left to do anything about it. Think about it, Bob wants to buy $100,000 worth of “Acme” in his margin account. He puts up $50,000 and his b/d puts up the other $50,000. The b/d or a co-conspirator is an abusive DTCC participant and he illegally naked short sells into the buy order to get his “Mitts” onto that money as the “Bear raid” plays out. What happened here was that a “Banker” loaned money and then stole back the loaned money as well as the investor’s original money. It’s like a banker hiring a couple of thugs in the back alley to beat up his clients walking out of the front door of the bank with loaned money in their pockets knowing that the person was still on the hook for the loaned money even if he was robbed of it. Now that’s a scam, loan money out and then steal it right back. In the case of the corrupt b/d there’s no risk for him because he knows that the client is good for paying back the loan because he can sell his shares out from underneath him during a margin call. Recall that the “Banker”/ b/d is still the “Legal owner” of those shares.

49) Where are the banking regulators in these NSS crimes having to do with margin accounts, Reg T issues and the fact that the DTCC is a member of the Federal Reserve? Can the SEC be relied upon to educate them as to the nature of these crimes?
50) Forcing all issuers, even those with a 12-g exemption from registration and reporting requirements to at least report the number of shares outstanding at a given time is critical. I agree that development stage companies becoming fully reporting with Sarbanes Oxley in effect might be extremely burdensome which is why there are 12-g exemptions available. Filing a quick quarterly form disclosing the number of shares outstanding is not burdensome, however, and is critical. This would decrease the ability of crooked management teams to perform "Pump and dumps" and it would also decrease the number of NSS attacks as there would be less "Scam" companies to attack. If these young companies are going to insist that the SEC becomes more transparent in disclosing the number of "Share entitlements" in their share structure then these companies should be forced to also increase transparency in return.
51) The SEC must realize that the superior **K**nowledge, **A**ccess and **V**isibility enjoyed by DTCC participants represent 3 commodities that are "For sale" on Wall Street. Hedge funds pay for these unfair advantages with commission flow. It's basically a form of "Insider trading" whether it's in the form of **A**ccess to a hot IPO or the shared **V**isibility of stop loss orders. In an ideal world those with this superior "KAV" factor should not be able to be participants within the system much like a politician sets up a "Blind trust" to circumvent any appearances of improprieties. There's an awful lot of money out there and being able to operate as 1 of 11,000 b/ds and banks operating as a single unit on Wall Street with access to an SRO "Sheriff's badge" and a "Bona fide MM hat" brings temptations beyond one's imagination.
52) I might suggest that the SEC list out the top 10 reasons for "Legitimate" delivery failures and then put the burden on the investor to get his paper-certificated shares into a fungible electronic book entry format BEFORE he is allowed to pull the trigger on a sale. If you get rid of the "Legitimate" reasons for delivery failures then the imposters will be easier to detect. This would force the recoupling of "Clearance" and "Settlement" which should never have been allowed to "Decouple" in the first place.
53) I'd like to see an open forum wherein SEC employees can anonymously inform the public of just what is wrong at the SEC and why you at the SEC refuse to flex the muscle that Congress has given you. Is it due to political pandering? Is it due to the fear of reprisal from billionaire behemoths on Wall Street? Is it plain old corruption involving "Payola"? Is it the fear of being fired for standing up for what you believe in and doing the right thing? Is the problem at the higher levels? I never could figure out why the 5 Commissioners were composed of 2 from the political party not in the White House and 3 from the incumbent party in the White House. Why would the "Securities cops" be tied to politics so tightly? All I ever seem to see is a bunch of very frustrated ex-SEC attorneys that can't take it any more and find out that they are actually more effective in trying to cure these problems from the outside than from within the SEC.

54) Now that we're theoretically going to get a view of short positions on the OTCBB and Pink Sheets I would remind the SEC of how easy it is to shunt delivery failures to and from their 3 repositories and that any suspicious activity going on here would probably represent fraudsters trying to hide prior evidence of crimes. If I'm not mistaken you don't need to cross these positions visibly in the market and more of it is back office related. Hopefully the SEC will have as much or more disdain with the covering up of these crimes as they do with the commission of these crimes.
55) After assimilating any information that you at the SEC find of value in this letter please study the 14-question self interview produced by the DTCC recently and I think you may have an epiphany as to what is going on behind the closed doors there. I can't imagine a more blatant cover up maneuver than this unsolicited self interview.
56) I think that a no nonsense letter to the DTCC that is available to the investing public could be very helpful in outlining just what the DTCC has the "Power" to do and what is expected of them in regards to the treatment of these "Share entitlements" they're creating but refusing to monitor.
57) I would hope that the SEC can realize that the issuers typically targeted just so happen to be those that act as the job growth engine for our economy. In fact, the damaging effects of NSS are so widespread that the SEC needs to realize that the entire nation is depending upon you to realize just what a critical role the SEC plays in addressing this NSS issue and the need to get the excess "Share entitlements" off of the "Corporate failure" trays that they currently inhabit.
58) I won't even try to get across to you the breadth of the damages wrought upon our country and upon investors and non-investors alike in this venue. It literally takes over 100-pages of script to even attempt to do it justice. Suffice it to say that there are victims involved and damages involved that you would have never in your wildest dreams thought about as being even remotely involved. For instance, the terminal cancer patient in need of the cancer cure that a certain biomedical company was working on before being bankrupted by a "Bear raid". When you're dealing with changing the definition of the unit of equity ownership, the "Share", of this form of business we know as a publicly-traded corporation then you could expect the repercussions to be quite far-reaching into all aspects of American society.
59) Does the SEC have a firm grasp of the "Driving role" that the hedge funds' $10 billion in commission payments it has to spread around annually to the DTCC participants that can be the most "Accommodative"?
60) I would suggest that 1 or 2 investor advocates be placed onto the BOD of the DTCC. The DTCC needs to be reminded that they have a huge duty to the American public via their wearing the various "Hats" that they do. Currently the 21 member BOD of the DTCC is pretty much Wall Street through and through. This would help out with these "Lack of transparency" issues.
61) If the SBP is not dismantled then I would suggest that a non-DTCC and non-SEC entity without any inherent conflicts of interest administer it.
62) The banning of "Crosses" done outside of the market would aid transparency. If there were no fraudulent intent then why do these in the dark?

63) It should not surprise the SEC that certain hedge funds are now filing suit against prime brokers for not borrowing and delivering shares for the hedge funds executing short sales but charging the hedge funds “Rent” on these shares as if they did. People aware of the NSS fraud can design all different kinds of secondary level frauds on top of the primary fraud involving NSS. Another example of a secondary fraud involves those with the knowledge that a “PIPE” financing is about to occur attacking the issuer doing the financing with a NSS attack of their own. They’re aware of the study cited by Dr. John Finnerty of the Fordham University Business School recently showing that 263 of 263 “PIPE” financings studied showed a drop in the share price 6 months after the financing with a very large percentage of these issuers going bankrupt soon thereafter.
64) If the DTCC is going to allow Canada’s “Central Depository System” or “CDS” to “Interface” with the NSCC then it only makes sense that they follow all of our rules addressing NSS frauds otherwise the fraudsters will simply utilize “Regulatory arbitrage” and enter our clearance and settlement system through the “Gate” with the most lax rules. This is often times referred to as the “Tunnel under the border”. To this day the Canadians still don’t have a national regulatory agency but instead have about a dozen different provincial securities commissions very susceptible to “Regulatory arbitrage”. The “Investment Dealers Association” of Canada, the “IDA”, which is the analogue of our NASD, has a distinct history of having no problem with the naked short selling of U.S. micro cap securities. In fact, a distinct percentage of the Canadian securities business is built upon it as revealed during the Thomson Kernaghan bankruptcy proceedings which the SEC was involved with as well as a variety of NSS legal cases against Canadian b/ds.
65) In regards to “Share entitlements”, UCC Article 8 clearly allows the creation of them but since these are not “Shares” or a package of about 12 different rights and one of these “Rights” is the “Dispositive right” to sell your “Shares” at a time of one’s choosing then the issue of whether mere “Share entitlements” should be readily sellable is still out there but never addressed. Any “Share entitlements” above the 0.5% metric clearly should not be readily sellable. The fact that “Share entitlements” are not registered with the SEC is another matter needing to be discussed. Do the 5% ownership requirements for special filings refer to owning 5% of “Outstanding” shares or 5% of the total of all “Outstanding” shares plus “Share entitlements”? When you “Tweak” with the definition of the “Share” as the DTCC has done then you undermine all laws related to “Share” ownership in all 7 of the main Securities Acts as one of the presumptions made in legislating is that there are no “Counterfeits” in the system needing to be addressed.
66) When your “Office of Economic Analysis” quotes statistics related to delivery failures please do not quote the statistics of the NSCC without verifying these numbers yourselves. Otherwise the SEC is depending on and tacitly approving of the statistics derived from an irrefutably conflict of interest-riddled entity that no regulator providing investor protection and market integrity should be using as an information source.
67) Hopefully the SEC will see their job as not just the provision of investor protection and market integrity but also to establish efficient and honest capital

markets wherein entrepreneurs can gain access to capital formation opportunities and develop their cancer cures and technological breakthroughs on a level playing field without going through the typical “Rites of initiation” performed by the DTCC’s abusive fraternity brothers smothering infant companies at their weakest points in their development cycle especially in the incubators known as the Pink Sheets, OTCBB and Amex.

SEC BEHAVIOR THAT IS PARTICULARLY TROUBLING

Recently we’ve seen some relationships being unearthed between the abusive participants of the DTCC and the SEC that is rather troubling. Some examples:

1) Several victimized issuers became so fed up with DTCC abuse that they attempted to move to a “Certificate only” or “Custody only” basis for the transference of share ownership of their securities. Their complaint was that the DTCC was wonderful at “Clearing” trades in their shares at supersonic speeds but the trades weren’t “Settling” due to the lack of delivery. The SEC sprinted to the side of their DTCC counterparts and ruled that these issuers can’t escape the DTCC because it wouldn’t be consistent with Section 17 A which mandates the “Prompt clearance” of all trades and going back to a “Certificate only” basis for ownership would be too slow and head us back towards the “Paperwork crisis” days. The truth, however, is that the “Certificate only” basis for transferring ownership would be a lot quicker in the much more critical “Settlement” of trades although perhaps admittedly slower in the not very important “Clearance” of trades. Note that there were about a half dozen issuers trying to escape while there are over 15,000 issuers trading publicly. Now let’s walk through this scenario to try to explain the DTCC’s and SEC’s behavior. When a company bails out of the DTCC and moves on to a “Certificate only” basis for transference of ownership the very first thing that will happen is that all shareholders will march down to their b/d and demand the delivery of their certificates in order to gain liquidity. What would happen if only 60% of them got their shares and then the shares ran out? Would this not expose the level of the fraudulent activity going on at the DTCC and lead to forced buy-ins and huge short squeezes? The SEC and DTCC couldn’t let this happen because it would have lead to perhaps 6,000 other short squeezes as all victimized issuers would obviously follow suit. Transfer Agents were even threatened with jail time if they were to aid these issuers in setting up these “Certificate only” programs. Whew, that was a close one! Was this entire charade just one giant cover up? I mean really, threatening to send Transfer Agents to jail for “Aiding and abetting” criminal behavior was just a bit over the top was it not?
2) We touched a bit on the SEC riding in on a white horse and filing an Amicus Brief on behalf of the DTCC to prevent allegedly victimized issuers to getting to the “Discovery” phase of their naked short selling case against the DTCC. Getting access to “Discovery” would allow the trading data irrefutably proving what is going on behind the scenes at the DTCC to become public. Whew, that

was another close one! Note the common denominator with #1 above being that whenever the truth as to the number of share entitlements in the system is about to be exposed the SEC is "Johnny on the spot" to keep this from happening. Coincidence?

3) The SEC has shown on many occasions that they are totally obsessed with preventing "Short squeezes" even though the fear of a short squeeze caused by mandated buy-ins is the prime <u>deterrent</u> to this entire family of frauds. Why side with the crooks to prevent this "Unwanted volatility" they fear and the investors need to recoup their stolen money? Not doing your job is one thing but going out of your way to prevent natural market phenomena from re-leveling the playing field is quite another.
4) The attempt to "Grandfather in" prior acts of blatant securities fraud involving the lack of "Settlement" of trades to avoid "Volatility" is probably one of the most egregious acts of any government agency that American citizens have ever witnessed. Yes, let's just leave all of those excess "Share entitlements" on the issuer's "Corporate failure" tray for a few more years because "We don't want to rewrite history" as the SEC told us in the Reg SHO interpretive guidance. That won't be an easy sell to the investors that have already lost maybe 80% of their investment dollars partly because of regulatory neglect.
5) The 12-J deregistration of issuers that just so happen to have enormous numbers of unaddressed delivery failures seems a bit coincidental but serves to hide the number of "Share entitlements" in the system as well as to hide the fact that it wasn't real shares purchased by these investors in the first place. Perhaps when members of the investment community suggest the deregistration of an issuer you might look to see if this person might have an alternative motive for his actions.
6) The refusal for 25 years to mandate the changing of the self-replenishing nature of the SBP is inexplicable especially when the DTCC publicly claims that they can't change it since it is "Automated" and they have no "Discretionary control". The DTCC even has the audacity to claim to be "Powerless" to screen for the "Legitimate" nature of delivery failures. Do you at the SEC also claim to be unable to fix the flaws in the SBP because of this "Automation"? Do you at the SEC have "Discretionary control"? Do you have the a
7) Allowing DTCC policies to change the definition of a corporate "Share" from a "Package of rights" to a mere "Share entitlement" devoid of rights that need not be honored is of definite concern.
8) The refusal to warn prospective investors of being lead into an ambush by buying shares of issuers basically preordained to an early death due to the massive accumulation of excess "Share entitlements" is very troubling.

If we study past SEC behavior and NSS in general we see several disturbing patterns that keep appearing. The first is that every time we get an unobstructed view of the truth behind the scenes via things like the Dr. Boni report or a "FOIA" (Freedom Of Information Act) we see how incredibly corrupt our clearance and settlement system really is. This is followed swiftly by the DTCC stating that there is no problem in their clearance and settlement system. Then we notice that every time an unobstructed view is <u>about to be attained</u> via companies bailing out of the DTCC or a legal case advancing to

"Discovery" for example we see the DTCC and SEC close ranks and do all that they can to obstruct this clear viewing of the truth. Thirdly, whenever the DTCC participants are put on the honor system and forced to voluntarily disclose things like short positions then everything looks hunky dory and all market integrity proponents trying to clean up this mess come out looking like nut cases. Fourthly, we see strange phenomena like share prices of threshold list securities falling completely out of bed <u>at the same time</u> that their failed delivery positions are being cured theoretically by the covering of naked short positions (or more likely the mere "Parking" of the delivery failures into repositories outside of the "Registered Clearing Agencies" like the DTCC.) Without trying to sound like a conspiracy theorist, the only thesis that can be generated keeping in mind all of these realities is that we have a very corrupt clearance and settlement system the existence of which is actively being covered up by all of the "Securities cops" involved.

SOME THOUGHTS

Here's how I see things playing out. The SEC will stay true to form and do nothing of substance in a hurry which will kill perhaps another 100 corporations with perhaps 1,000 employees that are barely able to tread water in their current sea of "Share entitlements". They will APPEAR to look busy and concerned, however. The efforts of lower and middle tier employees at the SEC will be sincere but they know that the higher-ups are going to shoot down their efforts with one stroke of the pen. Their morale will continue to spiral downwards and they'll realize like so many previous employees of the SEC that they can actually do more good in regards to naked short selling crimes from the outside of the SEC then from the inside and they will be warmly welcomed by the masses currently working to cure these abuses once and for all from the outside of the SEC.

I see some new players on the horizon. I see some very large pools of this time "Ethical" money, often in the form of hedge funds, that are so fed up with the status quo that they are going to try to make a difference and <u>save</u> instead of <u>target for annihilation</u> as many promising young corporations and jobs therein as they can. These people are going to make a whole lot of money in the process. They will in essence be the antithesis of the predatory hedge fund which will turn the hedge funds modus operandi around 180-degrees while taking a page from their playbook.

The premise of this whole movement that I see mobilizing is that there are more ethical money managers out there than there are abusive ones and when they sense an advantage they're going to exploit it. In other words they sense that the good guys still outnumber the bad guys and the good guys aren't going to stand around and watch our SYSTEMIC RISK levels go through the roof while our SROs and regulators ponder their next move whether it be of a constructive nature or yet more cover up activity. The only difference is that the good guys will have the law and public sentiment on their side. Are they going to have the critical mass of 11,000 b/ds and banks like the DTCC has? No, but they won't need to because all of the players at the DTCC aren't abusive. They'll probably seek out and define survivors of "Bear raids" that are trading at perhaps only 10% of their book value. The foundation for their investment approach is that the cat is indeed out of the bag and the SEC will indeed be forced to either remove preexisting share entitlements via mandated buy-ins or warn the investing public of their existence which would probably lead to massive numbers of short squeezes because the SEC could be used to identify the victimized issuers.

After taking significant share positions in these companies these new sources of clean money will nurture them and help them onto their knees. They know that they can enhance the reputation of hedge funds in general which are often vilified. They'll probably demand the delivery of their shares at some point which will go fine for a while until the delivery of demanded-for shares slows down to a trickle. Yet there will be a long line up of those still waiting for their share certificates. The DTCC will be contacted and the response will be that they're looking into the problem and we'll get back to you. The DTCC won't get back to them and further inquiries will be met with the answer that there is a "Chill" on the shares of that stock that we're looking into.

Eventually the DTCC will realize that they can't do any further manipulating on behalf of their abusive owners/participants that are naked short these shares and they'll wash their hands of the matter and tell the angry shareholders to work one-on-one with the b/ds involved which will lead to more stall tactics. **Here is where the epiphany typically occurs and the light will go off in the ethical investors' brains revealing that what they paid full retail price for were not legitimate "Shares" nor were they even readily-exercisable "Share entitlements".** They submitted their "Entitlement orders" (delivery mandates as per UCC Article 8) but it was to no avail. They will come to the realization that they bought nothing but "Air" with their post-tax dollars. This will naturally infuriate them as it well should.

Let me go way out on a limb and suggest that it's time to get rid of that one DTCC rule stating that buy-ins need not be done if they might lead to "Disruptions in the market". The question I pose to the SEC is this, when in this above-described process will you intervene and effect the "Prompt and accurate settlement" of these trades that the DTCC is actively refusing to do the next time you see it because I think you're going to be seeing a lot of it in the future? These issuers and investors just can't wait any longer for you at the SEC to get your act together because the stakes are getting way too high and if you at the SEC really did realize this then you'd have done something about it by now instead of continually sweeping these issues under the rug with policies like "Grand fathering-in" prior acts of securities fraud to circumvent "Unwanted volatility".

I thank you for this opportunity to weigh in on these issues and I support the efforts of the ethical employees at the SEC being made to finally rid the markets of these "Share entitlements" currently on the books as well as the efforts being made to make sure they are never allowed to grow to levels above the 0.5% of outstanding share metric set for reporting issuers and the $50,000 metric set for nonreporting issuers. I can't overemphasize the gravamen of this issue and the critical role that the SEC must play in spearheading the attack on this fraud in a task force type manner with other governmental agencies due partly to the complexity of the securities laws which the other agencies do not share your expertise in but also due to the widespread nature of the collateral damage being wrought ranging from Homeland Security issues to system risk issues facing U.S. investors and non-investors alike. I hope you will agree that due to the heinous nature of this fraud that EDUCATION is truly the key to addressing it in any society that abhors the concept of the already ultra-rich stealing from the average Joe. So what will it be FIX OR WARN? Contact me if I can be of assistance!

Sincerely,

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