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Via Electronic Mail: rule-comments@sec.gov
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I thank you for the opportunity to once again comment on these proposed amendments to Reg SHO. Since the topic of rescinding parts of Rule 10 a-1 which along with NASD Rule 3350 have historically outlawed abusive "Bid-banging" by the short selling community (The "Bid" and "Tick" tests) is also on the table currently I will address this issue also as it is inextricably linked to any proposed amendments to Reg SHO in general.

EXECUTIVE SUMMARY

"On Wall Street one can make money by betting for or against U.S. corporations. Abusive DTCC participants illegally accessing the exemption from borrowing before making short sales accorded to "Bona fide" market makers only have merely noticed that whether it pertains to building corporations or sandcastles it is much easier to destroy one than to build one". (JAD-2005)

Until at least three events occur on the regulatory landscape I wouldn't recommend removing ANY protective measures from your arsenal against naked short selling crimes including the "Bid test" and the "Tick test". The first event that would need to occur would be the immediate rescission of the "Grandfather clause" which in relative terms is a hundred times more important in the provision of "Investor protection and market integrity", the Congressional Mandate of the SEC, than Rule 10 a-1 ever was. As you at the SEC well know, this "Grandfather clause" was one of the biggest "Sandbagging" events in the history of securities legislative efforts and U.S. investors are not about to readily forgive and forget this obvious acquiescence by a "Captive" and "Conflicted" regulator to the desires of the securities industry after their intense lobbying efforts.

What was your response at the SEC when you learned from Dr. Leslie Boni's 2004 research done at your behest revealing the DTCC's widespread refusal to perform their Section 17 A of the '34 Act Congressional Mandate to "Promptly settle" all trades? Was it to provide "Investor protection and market integrity" by making the DTCC management and their abusive participants IMMEDIATELY settle those trades that "Accidentally" never got "Settled" in a "Prompt" manner like any unconflicted regulator would have ordered? No, it was more along the lines that since these DTCC participants already missed their "Prompt settlement" and "Prompt delivery" deadlines on previous trades then somehow ordering them now once and for all to "Promptly" settle those obviously abusive trades from the past that have now come to the attention of the SEC and to do it "Immediately" wasn't the appropriate route to take. It's almost as if there was some sort of invisible statute of limitations issue involved or that the SEC now has the power to grant "Presidential pardons" for behavior that has been irrefutably proven as being fraudulent due to the timeframes and the congressional mandates involved. Did the DTCC of their own accord jump into action to finally "Settle" the involved trades? Of course not, instead the DTCC management proffered to the investment community that there is no problem at the DTCC in regards to delivery failures and even if there were any then they were "Powerless" to buy-in these archaic delivery failures held by their abusive "Participants"/bosses.

The second event needing to occur would be for the SEC to finally realize that they have not only a congressional mandate but all the authority in the world to break up the criminal network involved in intentionally setting up Ex-clearing "Arrangements" and "Repurchase agreements" between co-conspiring DTCC participants **in order to cleverly postpone, often indefinitely, the "Good form delivery" of previously sold shares** and therefore circumvent the congressionally mandated "Prompt settlement" of trades. All of this while strategically keeping these "Delivery failures" out of any "Registered Clearing Agency" like the DTCC that the Reg SHO "Threshold list" as well as other protective measures target abuses in.

The excuse that some of you at the SEC have proffered over the years that you have no "Authority" in this field due to the "Contractual" nature of these illegal "Arrangements" just doesn't fly any more. You have "Plenary authority" over all short selling matters as well as a congressional mandate to provide "Investor protection and market integrity". That's why you were created in the first place; to "Purge the markets of abusive short selling crimes". Can you recall that little incident back in 1929 that short selling abuses involving those administering "Dark pools" of money similar to today's hedge funds were partially causative of? Are you not sensing an element of déjà vu with all of these delivery failure issues being exposed as these unregulated and highly leveraged hedge funds allowed to operate in the dark come into their prowess?

Irregardless of the intent or results of the "Pilot study" undertaken by the SEC in regards to Rule 10 a-1 the investment community is appalled that you would even consider the "Removal" of ANY protective measures against naked short selling ahead of these far more important issues dealing with the "Addition" of protective measures via the amendment of Reg SHO. Please don't concentrate on "Housekeeping" measures as the very foundation of our financial system, our clearance and settlement system, morphs into nothing more than a self-serving personal fiefdom.

The third event would be to address the rampant abuses occurring in regards to options market makers being allowed to hedge their positions by making "Proxy" naked short sales unencumbered by these "Anti-bid banging" rules. This clever methodology allows criminals to use the options market maker to do the dirty work involving the actual naked short selling of the equity underlying an option. Now how clever is that especially in the cases we see now where the hedge fund attacking the targeted corporation actually owns the options market maker? Particularly heinous is the selling of “In the money” calls or buying “In the money” puts with their extremely high delta which can literally result in the intentional evisceration of the targeted issuer and the investments made therein. It’s not a very difficult concept to force any hedging maneuver related to an underlying option to be closed out when the option expires otherwise you’ve built a “House of cards” weighing down on the prognosis for the equity underlying the option. It’s high time that you at the SEC and the DOJ recognize the fine line between “Cleverness” and “Criminality” as the “Intent to defraud” issue is crystal clear in a fairly large percentage of these Ex-clearing “Arrangements”, “Repurchase arrangements” and options market maker hedging policies.

As far as the timing involving this need for **yet another** look at possible amendments to Reg SHO and the issue involving the rescission of Rule 10 a-1 specifically I’m not really sure what meaningful information you at the SEC can extract from a “Pilot study” involving only a select group of stocks none of which included the issuers typically on the receiving end of these “Bear raids” i.e. the yet to be cash flow positive development stage issuers. The fact that there wasn’t apparently much manipulative “Bid banging” misbehavior occurring while Wall Street participants were acting under a regulatory microscope that everybody was well aware of shouldn’t be that surprising. Legitimate short sellers and investors selling shares held “Long” just don’t repeatedly knock out bid after bid nor do they actively promote legislation permitting it. They want to receive the maximum amount of money for their “Short” or “Long” sales.

Abusive naked short sellers needing to collateralize huge **preexisting** naked short positions on a daily marked-to-market basis however, find manipulative “Bid banging” a wonderful criminal tool to psychologically “Shake the tree” to induce selling by weak-kneed investors, to illegally trigger “Stop loss” orders that they and not the investors have clear visibility of and to create low “Prints” usually near the close of a trading session made in an effort to decrease the collateralization requirements associated with maintaining astronomic levels of naked short positions/delivery failures. Removing these protective measures before filling the other holes in the dyke is pure insanity and removing them after these other loopholes are plugged would only provide yet another loophole to access.

As the initial Reg SHO taught us legislating against naked short selling abuses takes on an “All or none” aspect because if you don’t close all of the loopholes involved SIMULTANEOUSLY then you’re only going to see the mass migration of this activity to any remaining loopholes. Can you recall the “Berlin Bremen Exchange debacle” recently involving hundreds if not thousands of development stage issuers learning that their shares were now suddenly trading on the Berlin Bremen Exchange literally within hours to days of when several of the loopholes within the old NASD Rule 3370 were closed up? In a sense only the “Bad guys” want permission to mercilessly knock out bid after bid during short selling. What was the terminology used in the Badian naked short selling case evidence? Wasn't it something to do with the order to "Mercilessly" knock down the share price of the targeted issuer with "Unbridled" levels of aggression?

A cunning market maker in trouble on a naked short position can make the selling of 1,000 bogus shares look like and have the market effect of 1 million shares of legitimate selling when his superior visibility notices that there aren't many bids in a market and/or that there are "Stop loss orders" within reach underneath the market. For this reason alone I wouldn't rescind Rule 10a-1. This manipulative process is very common and is referred to in the industry as "Tripping" a stop loss order. Instead what I would suggest is that the SEC concentrate on the issue of "Delivery failures" and the shortcomings of the initial Reg SHO and address the remaining loopholes contained therein and then the rescission of Rule 10 a-1 would be a less risky prospect although still not a good idea.

The SEC must remember that market makers trading via their in-house proprietary accounts and Mom and Pop investors compete against each other on a playing field illegally tipped steeply in favor of the MMs. Imagine the trading advantages in having the visibility of stop loss orders as well as the buy and sell orders queuing up right in front of your eyes. The clearly superior **K**nowledge of**,** **A**ccess to, and **V**isibility of the playing field (Superior "KAV" factor") retained by market makers is not supposed to be "Leveraged" over those to whom they owe a fiduciary duty of care. As members of an SRO like the DTCC and while performing the role of a "Gatekeeper" to the U.S. market system they were "Entrusted" in a "Fiduciary" capacity with this superior "KAV" factor and market makers are therefore involved in a "Public trust" relationship with the U.S. investors they act on behalf of. Having members of an "SRO" like the DTCC actively competing with the investors they owe a duty of care to represents a CONFLICT OF INTEREST beyond description. This is one reason why "Self Regulatory Organizations" have been so ineffective over the years and also why a no-nonsense and unconflicted SEC is critical to oversee this conflict of interest-riddled clearance and settlement system that has "Devolved" over the years while the SEC was apparently concentrating on other matters.

THE KEY SUPPORTING ROLE OF THE DTCC IN NAKED SHORT SELLING AND DELIVERY FAILURE RELATED CRIMES

The SEC needs to realize in all of their legislative and regulative efforts that the DTCC management and its abusive participants will in no way, shape or form perform their 8 congressional mandates and regulative assignments related to the delivery failure problems that are now pandemic in their clearance and settlement system. This is why the American people need the SEC as well as the DOJ to once and for all step up to the plate on their behalf. The DOJ is direly needed as the SEC has no powers in the criminal realm except in regards to fraud. The DTCC run clearance and settlement system is corrupt beyond imagination. The SEC needs to keep in mind how integral the DTCC structure as well as its rules and regulations are to the commission of these delivery failure related crimes. As the trading volumes on Wall Street increased over the years Congress saw the need to design a more efficient clearance and settlement system. They did this through the formation of the DTC whose Section 17 A congressional mandate was to “Immobilize” all paper-certificated shares into one “Depository” where they would “Safeguard” them and keep them under their legal “Custody”. They were also to “Dematerialize” all paper-certificated shares **into an equal amount** of the much easier to work with “Computerized electronic book entries”. Congress was aware of two main risks here. The first was that electronic book entries were much easier to counterfeit than their paper-certificated predecessors and the second was that the administrators of this new clearance and settlement system, the DTC’s later to become DTCC’s management, had to be trusted to never allow their “Participants”/owners to use this ease of counterfeiting in order to acquire LEVERAGE over the investors to whom they owe a fiduciary duty of care. Otherwise abusive DTCC participants could **PREDICTABLY** take short positions against targeted corporations and then easily flood their share structures with counterfeit versions of the legitimate “Shares” they were “Safeguarding” for their “Beneficial owners”, the investor that purchased them, to reap immense financial benefits at the expense of the investors owed a duty of care. Unfortunately, Congress’s emplacement of a “Public trust” onto the shoulders of the administrators of this system was obviously misplaced.

Where did things go wrong? Congress felt pretty good about this obvious risk they were taking after introducing a litany of risk mitigating measures. First of all they had the foresight to give the administrators of this new clearance and settlement system a congressional mandate to “Promptly settle” all trades. This way if any abusive counterfeiting were done then at least the counterfeit version of the legitimate shares would be detected and rapidly removed from the system. Secondly, the DTC was set up as a “Limited purpose trust company” under the banking laws of the State of New York. This brought in the banking regulators to prevent any intentional “Kiting” issues related to the float period between the “Clearance” and the “Settlement” of trades. Thirdly the DTC was set up as an SRO or “Self Regulatory Organization” which is defined as: “An entity, such as the NASD, responsible for regulating its members through the adoption and enforcement of rules and regulations governing the business conduct of its members”. Congress thus assumed that if there was any abuse involving the “Counterfeiting” of these new electronic book entries then the DTC would be officially “Empowered” to deal with this “Business conduct” of any abusive members.

Fourthly, the DTC was also commissioned to act as the “Surrogate legal owner” of all shares held in “Street name”. This was done through their nominee known as “CEDE and Co.” The “Surrogate legal owner” would obviously be there to protect any “Ownership” issues involved in any counterfeiting attempts. It also greatly streamlined the system. Fifthly, the DTC was appointed as the “Legal custodian” of all shares held in “Street name”. This provided another layer of protection involving the fiduciary duties owing as a “Legal custodian” as obviously no legitimate “Legal custodian” would allow any abusive counterfeiting of that being held in their “Legal custody” that they were “Safeguarding”. Sixthly, the DTC was appointed to run the official “Depository” for these securities which brings in certain protective banking regulations for any shares being held “On deposit”. Seventhly, they were commissioned to act as the “Loan intermediary” in their “SBP” or “Automated Stock Borrow Program”. This was set up to allow ONLY delivery failures of a **“Legitimate”** nature, as per Addendum “C” to the rules and regulations of the NSCC, to clear via the delivery of “Borrowed” shares. The “Legitimacy” of delivery failures obviously involved them being of an ultra short lifespan due to the “Prompt settlement” congressional mandate underlying the system. Eighthly, they were commissioned to act as a “Central Counter Party” or “CCP”/”Contra party” to basically all trades on Wall Street. Being that a “CCP” has the power and duty to act as the “Intermediary” between a buying and a selling party with the power to “Discharge” the original obligations of a buyer and seller and to replace or “Novate” them by the substitution of the CCP as the buyer to seller and the seller to buyer thereby creating two new contracts. In a transaction with brokerage firm “B” acting as the buyer and brokerage firm “S” acting as the selling brokerage firm then after the “Novation” involving this new “CCP” the buying firm “B” owes the cash to the CCP (The DTCC) who then passes it on to the selling firm “S”. The selling firm “S” then was to deliver the shares sold to the DTCC who would then pass these shares on to the buying firm “B”. How did the DTCC live up to their responsibility while acting as this all important surrogate for the buying firm as the “Contra party” to the trade? They had the audacity to plead to be “Powerless” to force the delivery to them of shares that have been sold by their own “Participants/owners” and are owing directly to them the “CCP”. The result was delivery failures piling up at the DTCC and the buying firm and their client investor never getting delivery of that which they paid for even though the selling firm did receive the buying firm’s cash which was used to collateralize this new “Open position” UNTIL the share price of the corporation whose shares were involved in this abomination predictably “Tanked”. Thus the obligation of the selling firm to deliver the shares was officially “Discharged” by the DTCC but never reassumed by the DTCC as a “CCP” is mandated to do. Instead the DTCC pleads to be “Powerless” to fulfill its duties as a “CCP” yet they continue to act in that role on behalf of their abusive participants/owners.

Congress figured that having this DTC wearing all of those different “Hats” and bearing all of these responsibilities and congressional mandates SIMULTANEOUSLY would mitigate any risk of abusive counterfeiting occurring with these new easy to counterfeit electronic book entries. Congress was wrong as opportunities were sensed and human greed reared its ugly head!

After Dr. Leslie Boni’s research in 2004 revealed that the delivery failure problem at the DTCC was much larger than anybody had anticipated and that many of these delivery failures were what she and the Geczy, Evans, Musto and Reed team of researchers labeled as “Strategic” or “Intentional” delivery failures the DTCC immediately denied the existence of any problem. Later they proffered that even **IF** there was a problem then they, the DTCC management, were “Powerless” to do anything about it i.e. “Powerless” to force their participants/bosses i.e. themselves, to deliver that which they had previously sold but continuously refuse to deliver. Despite their congressional mandate to do that very thing i.e. “Promptly settle” all trades they were still ”Powerless”. Despite their acting as an SRO mandated to monitor the “Business conduct” of their participants and to write and enforce laws regarding their “Business conduct” they were still “Powerless”. Despite the fact that they were the “Legal custodian”, the “Surrogate legal owner”, the surrogate “Contra party”, the “Safeguarder” of shares, the administrators of the “Depository” and acting as a limited purpose trust company under the banking laws of the State of New York they were still "Powerless" to do anything about any problem should a problem even exist. When their abusive DTCC participants enter into Ex-clearing "Arrangements" and "Repurchase agreements" to INTENTIONALLY bypass the "Prompt settlement" of trades the DTCC management pleads yet once again to be "Powerless" to address this "Business conduct" of their owners/bosses. Despite the fact that they acted as the "Loan intermediary" in the Stock Borrow Program loan process and that they, as the NSCC division of the DTCC proper, borrowed the shares from the "Lending pool" and sent them to the buyer of the shares involved in the delivery failure and are acting as the actual creditor of the loaned shares they still plead to be "Powerless" to force one of its abusive participants to deliver that which it has sold. They actually have the audacity to plead "Powerless" to demand the delivery **of that which is now owed directly to them,** the shares purchased and paid for by an investor who they are now acting on behalf of in a surrogate capacity. I like to refer to this as the "Forgiving creditor syndrome". What is the result? The DTCC management goes well out of its way to shun its congressional mandate to "Promptly settle" all trades as well as its duty owing to the purchaser of the shares and instead decides to act almost like a "Fence" for stolen property or perhaps a get away car driver on behalf of one of its abusive participants/owners/bosses clearly breaking the law by refusing to deliver that which it sold. The rub of it is how do you go after the DTCC proper when the clearance and settlement system it runs is the foundation for our entire financial system? The abusive DTCC participants are very well aware of this dilemma as it serves to embolden their criminal behavior.

Note that if the DTCC DIDN'T act as the "Loan intermediary" or "Contra party" then the party failing delivery would have had to go to another b/d for the "Borrow" and that broker/dealer could call in that loan at an inconvenient time. Imagine that a member of the Federal Reserve proffering that it is unable to call in its own debts. The cleverness of this "Arrangement" is beyond belief. The b/d failing delivery used to owe the buying firm these shares. The NSCC division of the DTCC comes to the rescue as the "Loan intermediary" and it executes the "Borrow" from the lending pool of shares at the SBP. The firm failing delivery, a DTCC participant, now owes the "Fraternity headquarters" this parcel of shares. The "Fraternity headquarters" then on cue pleads to be "Powerless" to make the abusive fraternity brother refusing to deliver that which he sold to pay back this parcel of shares. The result is an eternal delivery failure leading to a readily sellable "Share entitlement" diluting the share structure of the victimized corporation. Now that's one smooth form of securities fraud; the DTCC management volunteering to act as the "Loan intermediary" in SBP loans and "Contra party" in all transactions on Wall Street with the power to "Discharge" the delivery obligations of its owners/bosses only to later pretend to be "Powerless" to demand the delivery of that now owed directly to it on behalf of the owners and "Participants" of the DTCC, management's employers/bosses.

The DTCC has thus been allowed to convert itself into a behemoth involving 11,000 broker/dealers and banks with critical mass and political clout beyond imagination that has a management team willing to plead "Powerless", as if on cue, to stop or reverse any delivery failure related abuses committed by its abusive participants/bosses despite the fact that it SIMULTANEOUSLY HAS 8 DIFFERENT SETS OF CONGRESSIONAL

MANDATES AND REGULATORY RESPONSIBILITIES **<u>EACH OF WHICH</u>** EMPOWER IT TO FORCE THE DELIVERY OF SHARES SOLD BY ITS PARTICIPANTS INORDINATE LENGTHS OF TIME AGO AND THAT ITS PARTICIPANTS CONTINUE TO REFUSE TO DELIVER.

These 8 “Hats” they wear not only “Empower” the DTCC to intervene to force delivery they “Mandate” it. The SEC needs to realize the current nature of this clearance and settlement system conceived of by Congress and how it has morphed into a self-serving “Industry within an industry” with DTCC management proudly leading the interference for its abusive participants to illegally gain access to unknowing investors’ funds. There is no such thing as “Accidentally” pleading “Powerless” to fulfill your congressional mandates and regulatory responsibilities. You at the SEC need to realize that you are going to receive absolutely no help from the DTCC on this delivery failure fraud because it has grown so far out of control over the decades that by necessity DTCC management has had to enter into first the denial mode and now the cover up mode. You at the SEC have to realize that you are flying pretty much solo and into a head wind of indescribable intensity in this endeavor. That’s why a close relationship with the DOJ in this endeavor is mandatory as they have the ability to provide the all important DETERRENCE factor that the SEC hasn’t been able to muster up yet.

The focus of this no nonsense regulator and/or task force has to be on the age, absolute number of, the “Legitimacy of and percentage of “Outstanding” shares that these **“Delivery failures”** in the share structure of a given issuer comprise and all other issues regarding naked short selling will be rendered moot. This entire corrupt “Industry within an industry” associated with naked short selling and the resultant heretofore unaddressed delivery failures has up until now been built upon the foundational premise that the SEC and the DTCC can be 100% relied upon to refuse to perform their Congressional Mandates to provide “Investor protection and market integrity” in the case of the SEC and to “Promptly **SETTLE** all trades” as per Section 17 A of the ’34 Act in the case of the DTCC.

One must keep in mind that “SETTLEMENT” mandates the “Good form delivery” <u>of that which was intended to be purchased in the absence of warnings to the contrary</u> i.e. legitimate “Shares” of a corporation and that this “Good form delivery” is congressionally mandated via Section 17 A to be accomplished in a “Prompt” manner. “Good form delivery” cannot be accomplished “Promptly” or in any other manner when an electronic book entry in excess of the 0.5% of the number of “Outstanding” shares metric WITHOUT a paper-certificated share somewhere in the system to justify its existence is “Delivered” electronically. This does not constitute “Good form delivery” of that which was <u>intended to be purchased in the absence of warnings to the contrary</u>. This bears a closer resemblance to the world’s largest and most lucrative “Ponzi” scheme.

Due to the fact that some “Bona fide” market making activity in “Thinly traded securities” can legally involve the creation of **minor amounts of ultra-short lifespan (Resulting from a “Legitimate” delivery failure as per Addendum C)** “Share entitlements” above the number of shares “Outstanding” (Not to exceed 0.5% of the number of shares "Outstanding") then both the SEC and the DTCC would theoretically be all over the percentage amount, age, the absolute number of and the "Legitimacy" of the delivery failure procreating these mere "Share entitlements" **DUE TO THEIR INCREDIBLY DAMAGING NATURE AND THEIR <u>OBVIOUS</u> POTENTIAL FOR ABUSE BY DTCC PARTICIPANTS LEVERAGING THEIR SUPERIOR "KAV" FACTOR AND ANY CO-CONSPIRING LIGHTLY OR UNREGULATED HEDGE FUNDS CAPABLE OF PROVIDING "ORDER FLOW" AND "COMMISSION FLOW" BEYOND YOUR DREAMS.**

DTCC SLEIGHT OF HAND

It is important to keep in mind the legal definition of "Settlement" that Congress was referring to many years ago i.e. "The conclusion of a securities transaction; a broker/dealer buying securities pays for them; a selling broker **<u>DELIVERS</u>** (Emphasis added) the securities to the buyer's broker". Many securities scholars refer to "Settlement" as "DVP" or "Delivery Versus Payment". The DTCC has gratuitously thrown in a "Red herring" to confuse the issue. The DTCC contends that "Fail contracts" (Like "Failures to deliver" and their corresponding "Failures to receive") are defined as this: *"Transactions carried on the books of a brokerage firm representing trades that have "Settled" but have not been "Closed out" (Delivered or received)".*

The reality is that these trades lacking "Delivery" have not legally "Settled" **UNTIL** "Good form delivery" has been accomplished. As the definition states "Settlement" represents "*The conclusion of a securities transaction*". After the "*Conclusion"* of a transaction there's nothing left to do. The term "Closed out" is the DTCC's terminology not that of Congress. With this quicksand acting as their self-serving foundation for the United State's clearance and settlement system they will attempt to proffer that we at the DTCC are indeed "Promptly settling" these trades as per 17 A; they're just not being "Closed out" very often. This is, of course, an intentional misrepresentation of the truth to create the illusion of a level playing field which keeps the line up of "Victims to be" wrapped around the block with their cash in hand. Note the duality here. Claiming that "Delivery" has occurred when a selling broker sends an electronic book entry with no paper-certificated share in existence to justify its existence above the 0.5% parameter is insane enough. Claiming that a trade legally "Settles" despite the lack of "Delivery" is sheer lunacy.

An equally heinous practice occurs in the DTCC's now famous "Stock Borrow Program". After shares donated into a "Lending pool" of securities by a loaning DTCC participating broker are used to address a delivery failure at the DTCC, they are appropriately electronically credited to the account of the buying broker/dealer's clearing firm. The DTCC then has the audacity to also credit the account of the loaning broker/dealer with another "Long" position even though the parcel of shares are now legally "Owned" and in the possession of the new buyer's clearing firm. The lending broker is no longer "Long" those shares; those shares are gone.

Their cleverly designed accounting system maintains that the loaning broker also maintains a "Long" position because he has the right to demand the return of those shares when he so chooses. The result is 2 separate investors holding a "Long" position in the same parcel of shares. Herein lies the "Counterfeiting" aspect of this form of securities fraud. A "Counterfeit long" position has just been created out of thin air. As you may imagine this causes chaos in the voting of shares which necessitates a cover up fraud needing to be perpetrated when the involved corporation votes on certain matters and the votes cast embarrassingly outnumber the "Outstanding" number of shares in existence. The original purchaser of the shares, "Buyer Bob", has no idea any of this is going on. He continues to get monthly statements "Implying" that he owns and may vote these shares. Meanwhile the new buyer of this parcel of shares, "Buyer Bill", whose buy order involved a "Failed delivery" and thus needed a "Stock Borrow Program" bailout, again unbeknownst to him, starts receiving his monthly statements implying that he too owns and can vote this same parcel of shares.

When asked about this fairly simple accounting issue the DTCC management predictably answers that every transaction at the DTCC needs a "Long" and a "Short" position for accounting reasons. My question is since when does a unidirectional loan without a buyer or a seller qualify as a buy-sell transaction? Note that Section 17 A also mandates the "Transfer of ownership" to occur in these trades that are to "Promptly clear and settle". If the legal "Ownership" of the parcel of shares was transferred to the new buying broker in the above-referenced transaction involving borrowed shares then how in the world can the lending broker/dealer still have a "Long" position on the DTCC's books? THE RIGHT TO DEMAND BACK LOANED SHARES DOES NOT CONSTITUTE A PARCEL OF "SHARES" WHICH THE INVESTOR THOUGHT HE WAS BUYING NOR DOES IT CONSTITUTE A "LONG" POSITION IN SECURITIES ACCOUNTING. IT'S CRITICAL FOR THE STUDENT OF NAKED SHORT SELLING TO RECOGNIZE THAT THIS CHICANERY DESCRIBED ABOVE FORMS THE BASIS FOR THIS PERHAPS MULTI-TRILLION DOLLAR "FRAUD ON THE MARKET" AND IF ONE CAN GRASP THE ABOVE CONCEPTS THEN THE TRULY HEINOUS CHARACTER OF NAKED SHORT SELLING AS WELL AS HOW THE DTCC IS RUN WILL JUMP OUT AT YOU. Note the crucial role of the DTCC management when they have the audacity to plead to be "Powerless" to do anything about all of this fraudulent "Business conduct" of their abusive bosses. The easily recognizable heinous nature of these crimes necessitates somebody stepping forth to claim to be "Powerless" to address it. This claim by DTCC management is precisely what makes the SEC's refusal to deal with it in a meaningful manner infuriating to the American investment community. Let's refer to the above as a "Level 1" understanding of the role of the DTCC's Stock Borrow program (The SBP).

A "Level 2" understanding is a little more complex and it goes like this: The DTCC can proffer the argument that unbeknownst to "Buyer Bob", the original investor, he never really "Owned" those shares since he theoretically bought them in a margin account and only partially paid for them. This would be arguable if his margin account was not in an "Excess margin capacity". In actuality the clearing firm of his broker receives the legal "Ownership" title to his purchases made in a margin account paid for partially with borrowed money. This clearing firm has the right to “Donate” their “Possession” to the SBP’s “Lending pool” in exchange for being paid their value in cash should they be chosen to “Cure” a delivery failure. This provides a huge financial incentive for clearing firms to donate shares into the SBP “Lending pool”. Sometimes the shares being donated are legal to donate and sometimes not but the clearing firms are put on the “Honor system” by DTCC management in this regard. When electronic book entries well in excess of the number of shares legally “Outstanding” are held in an “Anonymously pooled” format then you can’t tell what is being donated. The clearing firm involved can earn interest off of these collateralization proceeds without having to share the earnings with the partial purchaser of that which is being loaned, an interesting concept but legal if it is spelled out clearly in the “Margin agreement”.

The DTCC can proffer that the clearing firm didn’t “Donate” them to the SBP and get paid collateral because perhaps they actually SOLD them to the NSCC division of the DTCC which was playing the role of a “Contra-party” and “Loan intermediary” to ostensibly facilitate the “Clearing” of the trade involving a delivery failure. The DTCC then theoretically sold their “Possession” i.e. this parcel of recently acquired shares to the buyer in this transaction, “Buyer Bill”. They’ll go on to explain that the 2 monthly statements that Bob and Bill receive don’t really say anything about “Ownership” instead the column **implying** “Ownership” states “Shares held long”. They’ll state that a “Long” position does not necessarily imply legal “Ownership”. Either Bob or Bill, and it’s impossible to determine which since these shares are conveniently for the DTCC participants held in an “Anonymously pooled” format, doesn’t really “Own” the shares they thought they purchased but instead they own a “Share entitlement” which UCC Article 8 says is OK for the DTCC to create **as long as they are treated in a very specific manner.** Note that if the DTCC “Paints” this “Lending pool” activity as a “Buy-sell” transaction then the crediting of the “Lending/selling” broker with a “Long” position is totally preposterous because they theoretically “Sold” this parcel of shares to the DTCC. Now perhaps just perhaps the DTCC wants to “Paint” this transaction as a “Repurchase agreement” which brings in a totally different set of inconsistencies.

Note that the “Anonymously pooled” format for holding shares conveniently keeps the DTCC from being able to identify “Buyer Bill” and notify him that he lost his voting privileges when his shares were chosen out of the SBP “Lending pool” to bail out a delivery failure. “Buyer Bill’s” broker knows his identity and shareholdings but the DTCC INTENTIONALLY CHOOSES not to know these facts although they’re readily available. In reality, if this system was transparent then very few investors aware of the truth would hold their shares in “Street name” and especially not in “Margin accounts”. The problem with that would be the movement back to tougher to process paper certificates but at least they’d be much tougher to counterfeit, “Rematerialization” as it were.

This revelation of the “Whole truth” would however cost the DTCC participants billions of dollars in margin account related banking fees as well as lending income. It would also cost them billions in commission fees because these admittedly counterfeit and unregistered “Share facsimiles” are bought and sold all day long **<u>as if they were real</u>**.

Can you see the conflicts of interest piling up upon each other as this move to easier to process computerized electronic book entries resulted in a financial windfall for abusive DTCC participants not afraid of a little counterfeiting? All of the DTCC participants make a fortune when delivery failures are allowed to stack up while being intentionally ignored or while those with the mandate and empowerment to deal with them claim to be "Powerless" to do so. This includes all of the DTCC participating "Fraternity brothers" whether they be "Settlement banks", other "CCPs", market makers, prime brokers, clearing firms, retail brokers, "Introducing brokers", etc.

So far so good on this level 2 of understanding? It basically amounts to "Efficiencies" leading to "Opportunities" for those not afraid to break the law. In regards to "Efficiencies" the DTCC operates as an irrefutable monopoly which, of course, is the least "Efficient" format to operate in as well as the one must likely to be abused. A recent Chicago Fed Letter on clearance and settlement systems stated, *"Abuse of monopoly powers (by a "CCP"), in general, artificially raises costs and decreases efficiency".*

As far as the Level 2 understanding of these issues the DTCC argument is "Sort of" holding water at first glance from an extreme distance but the design of the system is looking very much like there were some "Self-serving" agendas involved and the "Whole truth" is being cleverly covered up to circumvent the investor uproar that would obviously ensue should they learn that this "Handy" way to keep securities in "Street name" or "Margin accounts" was enriching the DTCC participants **while vastly decreasing the prognosis for their investment due to the incredibly damaging nature of all of these "Share entitlements" being intentionally ignored while flying around anonymously in cyberspace.** A clearance and settlement system with integrity would obviously go the extra step to make sure that the "Ownership" of these "Packages of rights" we call "Shares" was readily traceable and clearly identifiable at any moment in time in order to circumvent voting and other issues. This would add much needed integrity to both the "Settlement' and "Lending" processes although it would admittedly involve one extra step.

The authors of UCC Article 8 (Uniform Commercial Code-Investment Securities) were aware of the damaging nature of these admittedly counterfeit "Share entitlements" and they created a long list of just how these easy to abuse and admittedly counterfeit "Share entitlements" were to be treated due to their damaging nature. For instance, there are specific "Over issuance" rules forbidding the number of "Outstanding" shares of an issuer plus "Share entitlements" of an issuer to exceed the number of "Authorized shares" of an issuer. Does anybody really think that those running the SBP or those that take part in Ex-clearing "Arrangements" or "Repurchase agreements" keep an up to date list of the number of "Outstanding" and "Authorized" shares in existence in the 15,000 or so issuers trading in the U.S.? How would "Share entitlements" created via Ex-clearing "Arrangements", "Repurchase agreements", "Broker/dealer Internalization" or "Desking", options market maker hedging, etc. be accounted for due to their illegal and therefore secretive nature? Is the DTCC or SEC keeping track of all of these to avoid any "Over issuance" issues or violations of the 0.5% rule? What the DTCC did was to selfservingly "Cherry pick" UCC Article 8. They took the right to create "Share entitlements" and ran with it and then they fell flat on their face when it came to following the rules in how these incredibly damaging "Share entitlements" were to be treated.

Later on in this paper I'll go over how the DTCC is committing the ultimate "No-no" in "Share entitlement" treatment when they blatantly refuse to deliver paper-certificated shares in a timely manner to investors demanding them as seen when investors attempt to "Exercise" this theoretical "Entitlement". After all, isn't the reason why people buy things like "Options" or "Entitlements" in order to exercise them when they so choose?

I guess it's up to the DTCC to determine whether they dropped the ball in a Level 1 type of understanding (Multiple owners unknowingly having purchased the same parcel of shares some with voting rights and some without) or in a Level 2 type of understanding of naked short selling (Intentional mistreatment of "Share entitlements" and the inaccurate awarding of "Long positions") but it certainly has been dropped. Any official SRO whose participants are "Entrusted" with a superior "KAV" factor and "Entrusted" by the public to deal with these "Share entitlements" in a specific manner would obviously have rigorous checks and balances in place to detect abuses in regards to delivery failures being obfuscated by the existence of mere "Share entitlements" assumed by their purchasers to be legitimate "Shares" held in a DTCC vault. Recall that the DTC subdivision of the DTCC is the "Custodian"/keeper of the vault in charge of "Safeguarding" its contents and is well aware of the exact number of legitimate paper-certificated shares in its vaults as well as the number of electronic book entries representing both legitimate shares plus these mere "Share entitlements" in the DTCC system at any given moment. Being that 96% of all shares are held at the DTCC in an electronic book entry format i.e. in "Street name" then the DTCC has a pretty good idea of the enormous imbalances in the share structures of certain U.S. domiciled corporations.

I've always held that in a civilized society once the utterly heinous character of naked short selling and the related delivery failures leading to "Share entitlement" issues are understood by the masses then and only then can it be eradicated i.e. EDUCATION leads to ERADICATION. I guess the next question to be asked is do we indeed live in a civilized society where blatant theft by the participants of SROs with congressional mandates and supposedly acting in a "Fiduciary" capacity is tolerated? Do we Chairman Cox?

Congress's mandate for "Prompt settlement" necessitates that the lifespan of these sometimes necessary and sometimes fraudulently created "Share entitlements" be ultra short-termed. Congress was very well aware of the SYSTEMIC RISK issues and trade offs involved in allowing a small amount of admittedly counterfeit and readily negotiable share-facsimiles into the clearance and settlement system ostensibly in order to buffer unsustainable sharp peaks and deep troughs in share prices resulting from momentary buy and sell order imbalances that occur especially in "Thinly traded securities". Note that "Thinly traded securities" often just so happen to be those of development stage issuers that are particularly susceptible to manipulative misconduct by naked short selling DTCC participants and their co-conspirators. Opportunistic securities fraudsters recognized these two stars lining up and the synergies possible to harvest. Those issuers that we might be able to justify flooding their share structures with bogus shares after assuming naked short positions just so happen to be defenseless. Congress knew of the trade off involved. They knew that "Thinly traded securities" like those of development stage issuers were prime targets for naked short selling abuses due to their being in a particularly defenseless stage of their corporate development. This is caused by the necessity of these issuers to constantly go to the market to raise funds by selling legitimate shares at steep discounts to market prices just to pay the monthly "Burn rate" since they are not yet cash flow positive.

Securities fraudsters were well aware that if they could pressure the share prices of these issuers downwards by artificially filling their share structures with countless numbers of mere "Share entitlements" by naked short selling into any buy orders that appear then they could force these issuers with no other financing opportunities available except through selling shares into the market to raise funds at steep discounts to ever-diminishing share price levels. This would result in a self-perpetuating downward spiraling share price due to massive amounts of artificial dilution in the form of **BOTH** the "Share entitlements" piling up like crazy as well as an artificially excessive number of legitimate shares sold just to raise money to service the monthly "Burn rate". To exacerbate this process one must keep in mind that financings in these issuers are almost always done at STEEP discounts to current share price levels to offset the implied risk. Part of the "Implied risk" is due to the fact that these manipulations have been going on for so long that the track record for these issuers is artificially tainted independent of the company's merits. Note the "Self-fulfilling prophecy" aspect to these naked short selling attacks. The synergies present are immense which makes the study of naked short selling frauds throughout history totally mesmerizing. All the fraudsters need to do is to remember to **<u>never stop attacking</u>** as this might result in share prices migrating to higher less manipulated levels. This would have the untoward result of making the fraudsters dip into their wallets to come up with the higher collateralization requirements especially when their naked short positions hit astronomically high levels.

There can in no way, shape or form be a more cleverly designed form of fraud than that of naked short selling attacks by abusive DTCC participants followed by the DTCC management's predictable claim to be "Powerless" to do anything about it and their continued denial of and intentional ignoring of the resultant delivery failures. Almost every single base is covered and every detail attended to EXCEPT that involving American investors working hard to learn about the modus operandi of the fraud and just how it could end up being so pandemic in a financial system as theoretically advanced as ours in the U.S. is believed to be. Again, EDUCATION is the key to ERADICATION.

Congress's mistake turned out to be the presumption that those empowered to create these admittedly counterfeit share facsimiles, the DTCC and its management, would follow closely the UCC Article 8 mandates and rigorously monitor the "Business conduct" of their "Participants"/bosses for abusive behavior as any SRO is mandated to do so that defenseless issuers couldn't be intentionally forced to dilute themselves to death while servicing their monthly burn rate amidst a free-falling share price. With the amounts of investor funds up for grabs on Wall Street this presumption of ethical behavior by certain DTCC participants, management members and Board members entrusted as a "Fiduciary" to not leverage their superior "KAV" factor was grossly misplaced and sufficient safeguards to this day are STILL not in place to protect investors.

Instead what we currently have is the DTCC management claiming in their now famous 14-question "Self interview" that there is no problem that they can detect in regards to "Delivery failures" and "Share entitlements" while the SEC does admit to a large problem involving certain "Volatility issues associated with issuers with large numbers of unaddressed delivery failures". I'm not sure which stance is more reprehensible, the denying of the existence of any problem by those receiving the stolen money i.e. the DTCC and its participants or the SEC's concern for the criminals perpetrating these frauds that might actually be forced to spend a portion of the stolen money in order to buy back and finally deliver that which they sold but have constantly refused to deliver for inordinate amounts of time. **THIS IS VERY TROUBLING TO THE AMERICAN INVESTORS AS WELL AS WORLDWIDE INVESTMENT COMMUNITY AND WE HOPE IT IS EQUALLY TROUBLING TO THE PERHAPS CURRENTLY "UNEDUCATED" SEC OVERSIGHT COMMITTEES, THE DOJ, HOMELAND SECURITY, THE IRS, THE BANKING REGULATORS, MEMBERS OF THE JUDICIARY, STATE SECURITIES REGULATORS, ETC.**

The rescission of the "Grandfather clause" is currently the 10,000 pound elephant in the middle of the room that nobody at the SEC seems to want to address in a "Prompt" manner despite the recent SHO amendment "Comment period" during which perhaps 95% of commenters demanded its IMMEDIATE removal. The count in this new "Comment period" appears to be at about 98% in favor of its immediate removal with the "Comments" getting nastier and nastier as these U.S. citizens just can't take it any longer. Another troubling aspect is that American investors are asked to "Comment" on these issues and to become part of the legislative process. They take time out of their busy days to do just that and their collective voice is nearly unanimous on this topic. What is the result? Three voices are heard asking for more data and the entire process after 8 straight years of delays comes to yet another screeching halt which buys yet more time for the criminals to delay delivery and less time for the preyed-upon issuers as their share prices continue to spiral downwards due to the never-ending accumulation of yet more "Share entitlements" diluting their share structure to death as well as the need to pay their monthly bills via selling shares at ridiculously low levels.

Again, the investment community has trouble deciphering the SEC's actions in regards to trades whose congressionally mandated "Prompt delivery" clearly fell through the cracks. Wouldn't a diligent and unconflicted regulator truly interested in providing "Investor protection and market integrity" after noticing trades wherein Congress's mandate of "Prompt delivery" never did occur move at supersonic speeds to make sure that this mistake gets IMMEDIATELY corrected?

Instead you at the SEC decide to leave these dilutive “Share entitlements” right where they are and to reopen yet more “Comment periods” having the effect to prolong the lifespan of these incredibly damaging mere “Share entitlements” already in the share structure of targeted issuers which artificially inflate the “Supply” of “**Readily sellable** shares plus readily sellable share facsimiles”. What part of the Congressional Mandate for “Promptness” don’t you understand? The damages sustained by these victimized issuers are a function of both the number of unaddressed delivery failures i.e. ”Share entitlements” in the share structure of an issuer multiplied by the lifespan of these admittedly counterfeit “Share replicas”. Thus time is of the essence and shouldn’t be spent revisiting nearly unanimously suggested amendments to Reg SHO no matter how badly those responsible for these crimes need to buy some time in order to allow yet more U.S. corporations to go bankrupt.

It is beyond the comprehension of the U.S. investors as to why you at the SEC and the DTCC do not recognize the **EMERGENT** nature of this crisis. Not only does the “Supply” of readily sellable shares go through the roof with this fraud the “Effective demand” variable is muted by the constant need to naked short sell into each buy order that appears in order to keep the share price artificially low so that the collateralization requirements for astronomically large naked short positions don’t become usurious.

The **SIMULTANEOUS** artificial increase in the “Supply” of readily sellable shares and readily sellable “Share entitlements” i.e. the “Effective supply” and the intentional muting of “Demand” leading to an artificially reduced “Effective demand” due to nearly all buy orders becoming neutralized by naked short sell orders can lead to tremendous damages to “Price discovery” mechanisms and “Pricing efficiency” in general. Let’s not forget the legal definition of **MARKET MANIPULATION: The intentional interference with the free (i.e. “Unmanipulated”) forces of supply and demand.** As we both know Rule 10 b-5 of the ’34 Act expressly forbids fraudulent “Manipulation” of share prices.

The question arises as to why the SEC as well as the DTCC are intentionally “INTERFERING”, via the lack of addressing these delivery failures as per their congressional mandate, with allowing the **FREE/ UNMANIPULATED** forces of supply and demand to interact and instead is allowing these **ARTIFICIALLY MODIFIED** supply and demand variables, the products of **“MANIPULATION”,** to continue to interact to determine artificially lowered share prices? The “Grandfather clause” prohibited the “**FREE** forces of supply and demand to interact” and instead allowed previously “Manipulated” “Supply” and “Demand” variables to continue to put downward pressure on share prices especially those of development stage issuers forced to constantly go to the market to raise funds at steep discounts to these artificially lowered levels.

The type of securities fraud known as naked short selling is especially damaging because it affects **BOTH** the supply of and the demand for “Shares” simultaneously. The synergies created by affecting both of these variables in companies constantly needing to go to the market to raise funds is beyond comprehension and the securities fraudsters are very well aware of it. All they need is for the DTCC to continue to disavow any knowledge of the fraud and for the SEC to intentionally stall any meaningful solutions to the fraud and before you know it it's "Game over" for another U.S. Corporation, the jobs it provided and the investments made therein. Note that the "Pump and dump" type of securities fraud is also heinous but it only involves an increase in the "Demand" variable due usually to inaccurate and over-embellished press releases made by corrupt management teams and associated promoters.

In this post-Reg SHO era we now have the benefit of about 26 months of 20-20 hindsight to learn from. We know which remaining loopholes have become the "Loopholes of choice". Among others these include the "Grandfather clause", Ex-Clearing "Arrangements", the activities of options market makers, having "Reasonable grounds" to believe a "Borrow" is available, not so "Bona fide" market making activity, bogus "Repurchase agreements", etc. The use of these settlement circumventing "Repurchase agreements" for example have recently gone through the roof in Q-4 of 2006.

The fact that we are now being asked to once again "Comment" on these issues after the previous "Comment period" was so one-sided in favor of immediate reform tells us that you at the SEC and those at the DTCC are just not up to fulfilling your Congressional Mandates to PROMPTLY settle all trades and to provide "Investor protection and market integrity". This constant stalling of the inevitable mandate to address these archaic delivery failures does not resonate with the concept of "Promptness" mandated by Congress. I am going to bite my tongue and not tell you about how absolutely infuriated the worldwide investment community became when you announced the necessity for yet another "Comment period" on a subject matter that had 95% agreement on in the past "Comment period". I'm going to go way out on a limb and venture that others are going to express their disdain for these incredibly obvious stall tactics. I'll try to make my comments in an educational manner because it is clear to me after 26 years of studying and writing books on naked short selling that EDUCATION is indeed the key to ERADICATION no matter how "Captive" or "Conflicted" the regulators and SROs in charge of addressing these crimes have become.

The eight naked short selling related issues that clearly need the most attention are firstly the IMMEDIATE rescission of the "Grandfather clause", secondly addressing the inadequacies of the "Threshold lists" which unfortunately only relate to delivery failures held at "Registered Clearing Agencies" like the DTCC and which totally ignore the majority of these very mobile "Delivery failures" which not so surprisingly have migrated to other hiding places coincident with the effective date of Reg SHO. Thirdly, I would deal with the shenanigans occurring in the "Ex-Clearing" world involving these "Arrangements" to intentionally postpone "Good form delivery" and therefore the "Prompt settlement" of trades. Fourthly, the abuses of securities laws occurring at "Lending desks" involving the lending of parcels of securities in many directions simultaneously to the mortal enemies of the invested in company while raking in immense levels of rental income needs to be addressed. Fifthly, the need to address the lack of a clear cut definition of what constitutes "Bona fide" market making activity and more importantly what activities don't qualify for accessing the exemption from borrowing before making short sales which is legally only to be accessed by truly "Bona fide" market makers and only while acting in that capacity. Leaving market makers with their clearly superior visibility of the markets on the current "Honor system" in this regard is sheer insanity. The parameters must be more explicit than just the barring of "Speculative trading strategies". Sixthly, the regulators must realize that the combination of "Anonymous pooling" and "Daily netting" used at the NSCC division of the DTCC although theoretically very "Efficient" is ripe for abuse. The true levels of delivery failures are "Efficiently" being covered up as their lifespan is expanded indefinitely.

The clearance and settlement system clearly needs a mechanism to relate any "Shares" reflected as being "Held long" on an investor's monthly brokerage statement to a paper certificate or other benchmark somewhere in the system. Without this the same "Parcel" of shares, if they were identifiable i.e. NOT held in an "Anonymously pooled" or "Fungible mass" format as they currently are, can be simultaneously but unknowingly be "Held long" by many investors and can simultaneously be loaned out to many different borrowers. These "Long positions" need traceability otherwise the well known ravages of "Counterfeiting" will gut not only the integrity of these markets but also the share structures of targeted issuers. The seventh issue that needs to be dealt with is the aforementioned need to end the abusive hedging being employed by certain options market makers knowingly or unknowingly in conjunction with the naked short selling community. The eighth issue would be to strike down the qualification of a solid "Borrow/locate" being attained by "Having reasonable grounds to believe that a "Borrow" was available. The concept of a mere "Locate" in a clearance and settlement system full of damaging "Share entitlements" flying through cyberspace is sheer insanity. You either have a firm and traceable "Borrow" or you have a license to steal from unknowing investors. There is no in between especially when the DTCC acting as the SRO most intimately familiar with these matters publicly claims to be "Powerless" to perform all 8 of its main congressional mandates and regulatory responsibilities.

Despite a sincere effort by some at the SEC during the drafting of Reg SHO the clearance and settlement system in the United States is still not only badly broken but sectors of it are blatantly corrupt. As talented researchers delve deeper and deeper into the inner workings of our clearance and settlement system the corruption becomes more and more appalling. Equally appalling are the entirely fruitless efforts to cover up a systemic "Fraud on the market" this far out of control or the intentional postponement of its being addressed firmly.

Kudos to those at the SEC responsible for effectively closing certain loopholes in the clearance and settlement system via the original Reg SHO especially in the new definition of share "Ownership" which should address some of the horrendous PIPE ("Private Investments in Public Equities") financing abuses but unfortunately in other instances it only resulted in a massive shift to the remaining loopholes especially those involving these Ex-clearing "Arrangements" as well as the lack of a clear cut listing of the activities of market makers that would not qualify for accessing the exemption from borrowing before making short sales accorded to "Bona fide" MMs only. The full beneficial impact sought by the unconflicted employees at the SEC with the original version of Reg SHO without addressing these Ex-clearing "Arrangements" specifically was dead on arrival. How did these Ex-Clearing "Arrangements" get so far out of hand? Firstly, you need willing DTCC participants to "Pair up" and forgive other's delivery failures in exchange for theirs being forgiven. Secondly, you needed the regulator and SROs in charge of ending these crimes to plead "Powerless" to address these crimes due to their "Contractual" nature. The good news is that Reg SHO's original intent in the minds of some anyways is still attainable and even easier to attain now by building upon the foundation created by the first version of Reg SHO. All loopholes must be simultaneously closed off otherwise all you have is a "Shell game" wherein the extremely mobile delivery failures simply reappear under a different shell.

I commend Chairman Cox for his astute observation made at the recent "Chamber Summit" wherein he stated:

"Abusive naked short selling is of great concern to the entire Commission, to all of our members and the professional staff at The SEC. The regulation that was first adopted to get after this and Related problems, Reg SHO, has proven insufficient to stop the problem. One of the reasons is the Grandfather provision in the rule as it was originally adopted, so we are now setting out, as you know, to eliminate that grandfather provision. And we will do more."

Of interest is the fact that as Chairman Cox states that we have a problem and the first course of medicine provided didn't do the trick the DTCC Management's stance is still "What 10,000 pound elephant in the middle of the room are you referring to"? Now that the mass migration of abusive trades having moved to the remaining loopholes has been clearly elucidated the original intent of Reg SHO can be accomplished via some "Tweaking". Of course, this approach is predicated on the assumption that the SEC is more interested in providing "Investor protection and market integrity" to the 99% of American citizens making up the "Non-Wall Street" community than they are in promoting the interests of the 1% of Americans and their powerful lobbyists making up the Wall Street community i.e. the "Privileged few" and politically powerful. If we learned nothing else through Reg SHO we did learn the identity of those Wall Street participants that were lobbying the hardest for the maintenance of the loopholes that are now being taken advantage of.

BY FAR AND AWAY THIS IS THE SINGLE BIGGEST ISSUE OF THEM ALL AND ALL OF THESE OTHER RECOMMENDATIONS ARE BASED UPON THE PREMISE THAT THE SEC AND THE DTCC FIRST GET THEIR OWN HOUSES IN ORDER IN REGARDS TO THIS "DELIVERY FAILURE" ISSUE. THEY MUST COME TO THE REALIZATION THAT THE FUTURE OF OUR FINANCIAL SYSTEM RESTS SQUARELY ON THEIR SHOULDERS AND HOW THEY DEAL WITH THESE CURRENTLY UNADDRESSED "DELIVERY FAILURES" POISONING THE SHARE STRUCTURE OF AMERICA'S

DEVELOPMENT STAGE ISSUERS AS WE SPEAK AND AS SOME AT THE SEC AND AT THE DTCC DILIGENTLY POSTPONE THE INEVITABLE ONLY TO MAKE THE INEVITABLE THAT MUCH MORE DANGEROUS IN A SYSTEMIC RISK SENSE AS WELL AS THAT MUCH MORE DIFFICULT TO ADDRESS.

RULE 10 A-1 ISSUES

I was particularly intrigued by the SEC's comments on page 7 of the proposed amendments to 10 a-1 wherein you state: "We note that today's markets are marked by high levels of **TRANSPARENCY** and **REGULATORY SURVEILLANCE** (Emphasis added) and that "These characteristics greatly reduce the risk of abusive or manipulative short selling going undetected".

If this egregious misrepresentation (MISREPRESENTATION: A false representation of a matter of fact that should have been disclosed, which deceives another so that he/she acts upon it to his/her injury) in the case of micro cap and nano cap issuers, forms your justification for the rescission of protective measures like those involving the prohibition of abusive "Bid banging" then I think the SEC and the American investment community that prefer part of their portfolio to be invested in development stage issuers are once again on totally different pages if not reading from totally different books.

In the case of the 9,000 or so development stage issuers trading on the OTCBB and Pink Sheets you at the higher levels of the SEC either just don't get it or worse yet you do get it but the needs of the "Privileged few" and politically powerful 1% are more important to meet than those of the masses still naïve enough to think that the playing field on these trading venues really is level as misrepresented above. There's no cozy middle ground left on this issue. The SEC and the DTCC need to either diligently address these archaic delivery failures now or continue to cover them up and make yet more intentional misrepresentations to the investing public that "These investment waters are safe, jump on in".

As you well know, there is absolutely ZERO transparency on these trading venues and the evidence of "Regulatory surveillance" in regards to naked short selling crimes against these smaller issuers is slim to none. I'm reminded of the then head of the North American Securities Administrators Association ("NASAA") Ralph Lambiase's question to SEC and NASD representatives at a recent forum on naked short selling that the DTCC mysteriously opted out of because they allegedly "Never got invited". His query had to do with just where the evidence is of all of this "Regulatory action" you at the SEC and those at the NASD keep claiming to be performing in regards to naked short selling crimes. As I recall silence filled the room. You can only get so much mileage out of the Fiero Brothers and Badian cases as well as a couple of other minor hand slaps which in retrospect offered no **DETERRENT** value whatsoever to the further perpetration of these frauds. Mr. Lambiase accurately commented later that the SEC is all over any efforts to upwardly manipulate stock prices via "Pump and dumps" which are indeed heinous in nature but mysteriously nowhere to be found during the downward manipulations of stock prices via naked short selling campaigns involving well organized "Bear raids".

An agency like the SEC swamped with issues like hundreds of corporate management teams being involved in "Option backdating" frauds and the like needs to rely on natural **DETERRENT** measures built into the markets themselves. The natural deterrent to the naked short selling frauds is the **FEAR OF A SHORT SQUEEZE** whether one materializes or not. The "Risk" variable in the "Risk/reward" analyses that even stock fraudsters must make needs to be augmented in this regard. DTCC policies however, have intentionally and surgically removed this natural deterrent to fraudulent conduct as the DTCC management pleads to be "Powerless" to perform 8 different tasks either mandated by Congress or associated with the regulatory "Hats" the DTCC wears just one of which is the buying-in of the archaic delivery failures of its bosses/participants due to its Section 17-a Congressional Mandate to "Promptly **SETTLE** all trades". Recall again the legal definition of **"SETTLEMENT"** as: "The conclusion of a securities transaction; a broker/dealer buying securities pays for them; a selling broker **DELIVERS** (Emphasis added) the securities to the buyer's broker".

It is not a difficult concept to realize that "SETTLEMENT" mandates "GOOD FORM DELIVERY" and that "Prompt settlement" means that this delivery occurred "Promptly". As Congress made it clear, if "Settlement" doesn't occur "Promptly" then the damaging nature of these admittedly counterfeit "Share entitlements" will wreak havoc on the share structures of the corporations involved as well as the investments made therein. This is independent of the ability of the DTCC management to cleverly provide the **ILLUSION** that "Delivery" has occurred as our current clearance and settlement system does.

The question begs to be asked as to why the SEC as well as the DTCC would go well out of their way to **SELECTIVELY** protect the negative bets placed almost exclusively by industry insiders oftentimes acting in collusion and in other illegal fashions at the expense of the 99% of American investors that prefer taking "Long" positions. Note that this has nothing to do with **LEGAL** short selling involving a firm "Borrow" being made before the short sale. Legal short selling is critical to a market's functioning as it provides liquidity, pricing efficiency and hedging opportunities.

Oddly enough naked short selling really has very little to do with legal short selling **because of the indispensable role of a firm and traceable "Borrow"** before the short sale is made. Without a firm and auditable "Borrow" and well-delineated parameters for judging the "Legitimacy" (Addendum "C") for gaining access to the exemption from borrowing accorded to theoretically "Bona fide" market makers only naked short selling frauds will thrive. There's just too much money out there to put market makers with such a superior "KAV" factor on some kind of "Honor system". It is the finite number of legally "Borrowable" shares that acts as the natural governor to legal short selling abuses. In naked short selling this "Governor" is missing and there is an unlimited amount of "Share entitlements" that can be sold usually by fraudulent market makers for their own accounts or for those of co-conspiring usually unregulated hedge funds. The resulting "Leverage" available to intentionally bankrupt these development stage issuers as well as some of the investors therein is infinite. A fair amount of naked short selling evolved from legal short sellers realizing that nobody was monitoring the legitimacy of the "Borrow" due to the frenetic pace that Wall Street moves at as well as the nature of electronic book entries. Fraudsters simply migrated from making legitimate "Borrows" to what the SEC refers to as "Iffy" borrows to a mindset of "To heck with the borrow, nobody's watching anyways".

Although the practitioners of NSS may not look upon themselves as hardened criminals, "Naked short selling" is perhaps better characterized as a form of organized crime targeting the wallets of less well informed investors that assume that these markets truly are heavily regulated and "Transparent" as the SEC misrepresents they are. The unethical market maker's superior **K**nowledge of, **A**ccess to and **V**isibility of these markets provides the LEVERAGE needed to pick the pockets of those owed a duty of care by these DTCC participants. I'll get into the reason for this apparent dichotomy in SEC behavior in a moment but in a nutshell it has to do with massive conflicts of interest on Wall Street, incredibly large amounts of money "Up for grabs", the existence of a "Privileged few" on Wall Street with critical mass and political persuasion beyond comprehension and the resultant emergence of a "Captive" and "Conflicted" regulator typified by lower tiered employees genuinely trying to help these victimized issuers but whose efforts are constantly being stifled by higher ranking SEC employees more susceptible to various political agendas and more directly incentivised to look after the needs of the "Privileged few". One need only interview a dozen past employees of the SEC to learn of how frustrated they are with the clearance and settlement system run by the DTCC and how certain members of the SEC's hierarchy absolutely insist on maintaining the status quo and stalling any meaningful reforms ad infinitum.

My question to you at the SEC is just where are all of these "High levels of transparency" you speak about to be found when it comes to the yet to be cash flow positive development stage issuers trading on these trading venues or did you forget that these companies even existed as you rendered those blatant misrepresentations while soliciting comments from the investment world? Now that Reg SHO is in effect the SEC, DTCC and NASD are all well aware of the astronomic levels of unaddressed archaic delivery failures in certain issuers which often preordain the victimized issuer to an early death yet you refuse to warn prospective investors in these corporations of the numerical levels of the resultant mere "Share entitlements" masquerading as legitimate shares backed by a paper certificate that are damaging their share structures via dilution. You're aware of the amount of damage and the number of unaddressed delivery failures because you admitted that you had concerns for the resultant "Volatility in issues with large amounts of delivery failures" if you were to directly address them as any UNCOMPROMISED regulator with "Plenary authority" over short selling matters as well as a variety of congressional mandates obviously would do once the crisis came to your attention. Note that there are three separate issues here. The first deals with allowing these delivery failures to accumulate in astronomic levels in the first place. The second issue involves the refusal to meaningfully deal with them and the third issue is the refusal to disclose to the investing public of their existence and the resultant damaged nature of the issuers into whose share structure they have been assimilated.

Instead you totally shocked the micro cap investment world and chose to "Grandfather in" blatant acts of securities fraud as if you had some form of amnesty granting powers for organized criminal activities involving the selling of nonexistent shares followed by the absolute refusal to deliver them even after inordinate amounts of time. Now you have the audacity to imply in publications like the Rule 10 a-1 proposed amendments circular that ALL OF our markets have these "High levels of transparency and regulatory surveillance" and that "These characteristics greatly reduce the risks of abusive or manipulative short selling going undetected". I haven't heard a misrepresentative statement like this implying that "The waters are safe so jump on in" since I read the recent DTCC's now infamous 14-question "Self-interview". These waters are not safe. These waters are still shark-infested and the SEC refuses to put up the warning flag as they actively encourage investors to jump in by making intentionally misleading comments such as the above.

In regards to the naked short selling issue the actions of some at the SEC make you as a whole a tremendously conflicted regulator and the American investors in especially development stage issuers deserve better. This worrying about the "Volatility issues" that the dirtiest players in the "Privileged few" might experience is very revealing. Note that after 8 solid years of investigating these delivery failure issues and receiving "Comments" on them the only players still actively playing are the corruptest of the corrupt. Those previous Wall Street players with some semblance of a conscience that have over these 8 years learned that there really are victims involved in this behavior would have cleaned up their act by now. I would proffer that any "Volatility issues" experienced at this late date were pretty well deserved. Eight straight years of ignoring the SEC's tap on the back to cover these "Open positions" and to not run up any new ones in excess is fairly self-explanatory behavior especially when the share prices of these victimized issuers are pretty much in the gutter and yet there is STILL no effort to cover and finally deliver that which they sold. This fact PROVES that there never was any intent to cover these naked short positions nor was there any legal justification to access the exemption from making a "Borrow" before making short sales by a theoretically bona fide MM. This activity is no more than premeditated theft or conversion.

THE ULTIMATE FORM OF HYPOCRISY

I recall in a recent "Amicus" brief filed by NASAA (North American Securities Administrators Association) in a case involving a group filing suit against the DTCC in regards to naked short selling abuses the following quote: "The core postulate of all securities regulation is that investors are best served through transparency: give them the truth, either through a prospectus or an antifraud provision, and they will protect themselves. See, e.g., Rousseff v. Dean Witter & Co., F. Supp. 774, 781 (N.D. Ind. 1978) ([The] primary purpose of federal securities laws is protecting the investing public by insuring it receives **full disclosure of information necessary to effect informed securities transactions**…")

In a prospectus you at the SEC mandate that a corporation clearly list out every tiny "Grain of sand" of risk to prospective investors and then you turn around and refuse to divulge to those very same prospective investors that you have a fiduciary duty of care to provide "Investor protection and market integrity" to the existence of a gigantic "Boulder" of risk in the form of invisible to the public i.e. not at all **"Transparent",** massive dilutional damage incurred by the accumulation of unaddressed delivery failures leading to the presence of readily sellable but mere "Share entitlements" on monthly brokerage statements in the "Shares held long" column. Meanwhile investors were under the impression that they had bought and paid full retail price for legitimate "Shares" which are a "Package of rights", about a dozen in number, just one of which is the right to vote them.

The resultant "Over-voting", "Vote buying" and indiscriminate "Vote cancellation" (The utterly heinous act needing to be performed behind the scenes to provide a cover up for the disparity between "Votes" cast and "Shares" outstanding) crises have been the subject of many recent articles in the financial press. Note that when the fraud being perpetrated involves the "Counterfeiting" of the very foundation of our financial system i.e. the "Share" as being the unit of equity ownership of these entities we refer to as "Corporations", then the fraud takes on a "Systemic" nature and the cover ups needed to hide its existence become numerous and must occur at all levels throughout the clearance and settlement system. Note that when the foundational concept of the "Share" has been perverted then the clearance and settlement system associated with the "Derivatives" of these "Shares" involving options and futures will also be perverted by definition.

What you at the SEC need to realize is that issues like these three voting related issues are signs and symptoms of a much more serious underlying systemic disease that has corrupted the very foundation of our financial system which is based upon the role of the "Share". Greedy Wall Streeters under the watchful eyes of the DTCC and the SEC have made a total mockery of the concept of a "Share" as being the unit of ownership of these "Corporations" by placing bets against these corporations via the selling of and refusal to deliver innumerable amounts of bogus IOUs resembling legitimate "Shares" when held in an "Anonymously pooled" electronic book entry format and thereby intentionally poisoning their share structure with massive amounts of dilution which leads to the self-fulfilling prophecy of them winning the bet they placed against the corporation. The analogy might be in a 2-horse horse race placing your bet on one horse and then being allowed to tie a one hundred pound weight onto the other horse.

In the perpetration of the fraud known as "Naked short selling" **the mere manner of placing the bet** without making a firm and traceable "BORROW" of the shares being short sold helps determine the outcome of the bet due to the damaging nature of the resultant readily sellable "Share entitlements" created by the lack of delivery being made. History has clearly shown us that as the volume of trading on Wall Street increased over the years the move from a paper-certificated "Share" to an electronic book entry "Share" needed to be made for efficiency reasons. Opportunistic fraudsters picked up on the fact that these electronic book entry "Shares" were much easier to counterfeit than their paper-certificated predecessors. They also noted that the DTCC with the Congressional

Mandate to "Promptly settle" all trades was not at all concerned with trades that never "Settled" nor the resultant build up of archaic "Delivery failures" resulting in "Share entitlements" sometimes more numerous than the number of shares "Outstanding" as reported by the SEC.

Handily in the case of non-reporting issuers the DTCC could always proffer the excuse that since the issuer wasn't reporting the number of shares outstanding that they had no idea that these delivery failures were "Excessive". The mindset of both the DTCC and the SEC then became that any nonreporting issuer was by definition a "Scam" unworthy of any protection. The problem was that Congress clearly saw the need for a 12-g exemption from both the registration and reporting requirements for the tiniest of issuers due to the relatively usurious cost of becoming and remaining "Fully reporting" for these non-cash flow positive development stage corporations.

The tell-tale irony in all of this is that nobody is in a big hurry to have Congress rescind the 12-g rules. Why? Because if there were no longer any unprotected purported "Scams" running around on Wall Street then there would be no pockets of naïve investors in these "Scams" to easily pick by the "Privileged few". In order to shoot fish in a barrel you need to have some fish in the barrel. Throughout history, of the 8 main rules and regulations designed to fight naked short selling 7 of them never applied to these nonreporting issuers despite the Section 12-g exemption being made prominently accessible by Congress.

These frauds would be much more difficult to perpetrate if each "Share" existing in an electronic format had a specific and traceable paper-certificated "Share" or other benchmark to justify its existence. The technology is there but the motivation for the DTCC and the SEC to access it is mysteriously missing. The fact that easily counterfeited electronic book entries are much easier to deal with than difficult to counterfeit paper-certificated shares has opened up this niche for these criminals to operate within. The result is a built in cover up wherein these fraudsters play the role of purported "Efficiency enhancers" by currently having the audacity to recommend that we move to a totally paperless system which would conveniently mask these atrocities by removing the "Benchmark" role of paper-certificated shares.

In regards to this supposedly wonderful "Transparency" that investors enjoy the reality is that the only "High level of transparency" attainable by an investor in development stage issuers comes from a Freedom of Information Act (FOIA) **<u>DEMAND TO VISUALIZE THE TRUTH</u>** in regards to delivery failures which government agencies **MUST** process even if they are a bit embarrassed as to what the "Truth" has morphed into due to either their negligence or their inability or refusal to act. It's a sad state of affairs when a government agency like the SEC has to be **FORCED** via a FOIA demand to perform its congressionally mandated job of providing "Investor protection and market integrity" via providing this much needed "Transparency". The 1933 Securities Act ("The Disclosure Act") clearly mandated that all "Material" information pertinent to an investment in an issuer be made available to the investing public.

Why should the due diligence process prior to making an investment decision involve extraneous legal mechanisms like FOIA demands in order to gain access to the single most pertinent bit of "Material" information sought by any investor i.e. how many readily sellable shares and/or "Share entitlements" are out there in circulation? Investors have the right to know whether or not their purchase would result in the "Ownership" of 1% of a company's "Shares" and their attendant voting rights or merely 0.1% of the same or perhaps a hybrid of 1% of an issuers legitimate shares but only 0.3% of the available voting rights.

Imagine for a moment the back office of a corrupt Wall Street broker/dealer being asked by those they owe a duty of care to vote 150 million shares of a company with only 100 million shares outstanding. In order to cover up this abomination and to maintain the "Status quo" on Wall Street 50 million votes need to be "Accidentally" cancelled. Should the back office cancel the "Yeas" or the "Nays"? How can the Board of Directors of a State-domiciled corporation run a U.S. corporation under these circumstances? Where are the State Securities Regulators? Oh that's right; the securities industry ran them off claiming preemption and that this is their turf and to keep their noses out of "Federal" issues because of the lack of "Efficiency" of having 50 different State Securities Regulators trying to protect the rights of corporations and investors domiciled in their state! Imagine the nerve of those pesky State Securities Regulators chiming in when we theoretically have the DTCC "Promptly settling" all trades and the SEC there to provide "Investor protection and market integrity". I'll bet they're all just a bunch of Elliot Spitzer wannabes looking for their 15 minutes of fame!

Again, these FOIA and voting issues are signs and symptoms indicative of an underlying systemic problem being masked and the obvious questions that arise become "Why the need for this secrecy" when the '33 Securities Act forbids it and "Why the need for a cover up" if there's no delivery failure issue as per the DTCC? Note that these issues have nothing to do with the theoretically "Proprietary" or "Privileged" nature of trading data which is a totally different form of "Cover up". Even these "FOIA" analyses as disturbing as their results have been only reveal the tip of the iceberg because they don't include delivery failures held in the "Ex-clearing" system and in "Repurchase agreements" yet they have clearly shown a clearance and settlement system that is totally out of control in regards to unaddressed delivery failures.

The only other "High level of transparency" accessible to non-Wall Streeters to my knowledge is that gained by perhaps a "Visiting economic scholar" hired by the SEC to research the levels and ages of delivery failures being held at the DTCC as part of the background research prior to Reg SHO's effective date. Dr. Leslie Boni's research in 2004 while acting in this capacity to the SEC revealed that the average age of a delivery failure at the DTCC is an unfathomable 56 days and that our clearance and settlement system has been badly compromised by these intentional or "Strategic delivery failures" which she opined were much larger than previously thought to be. She is one of the few TRULY granted a "High level of transparency" as to what goes on behind the doors of the DTCC. She was not given access to delivery failures being housed outside of the DTCC in Ex-clearing "Arrangements" and as "Share repurchase agreements". One can only imagine the age and amount of these well hidden delivery failures when the more obvious ones average an unfathomable 56 days.

The disturbing pattern that is forming is that those few actually granted a slight semblance of a genuine “High level of transparency” are reporting nothing but major corruption problems in our clearance and settlement system all benefiting the “Participants” of this system at the expense of Mom and Pop investors while the DTCC in their “Self-interviews” and press releases and the SEC in their 10 a-1 “Comment letter” solicitation proffer that everything is just fine and all investors have access to this wonderful “Transparency” and all investors are beneficiaries of these high levels of “Regulatory surveillance”.

The intentional misrepresentation of these markets as being “Transparent” in the midst of innumerable cover ups necessitating measures like “Vote cancellations”, “Grandfather clauses”, the stalling of much needed amendments to Reg SHO and the ordering of FOIA analyses as a due diligence measure is very problematic for the investors in development stage issuers and for the nation at large. The result is the currently anemic level of investor confidence especially in these lower trading venues.

I find it especially ironic in that this behavior by some of you at the SEC and those at the DTCC occurs after the effective date of Reg FD (Full disclosure by corporations) and after the implementation of Sarbanes-Oxley wherein you mandate more corporate transparency at the same time you at the SEC and especially those at the DTCC are headed in the other direction on behalf of the “Privileged few” and politically powerful. Again, the hypocrisy is mind-boggling and particularly troubling when this behavior is being carried out by those at the DTCC with the Section 17-a Congressional Mandate to “Promptly settle all trades” and by those at the SEC in charge of providing “Investor protection and market integrity”. If the “Securities cops” are behaving like this just think of what the really bad guys are getting away with.

YET OTHER FORMS OF HYPOCRISY

The SEC is famous for initiating “12-J” deregistration procedures for issuers that were once fully-reporting but then either couldn’t or refused to keep up with their reporting requirements. Some of these issuers probably deserved deregistration while others were probably deregistered at the urging of the “Privileged few” that were naked short their shares but unable to bankrupt them in a timely fashion as their level of naked short positions and therefore delivery failures went into orbit. With a 12-J deregistration these delivery failures are fortunately for the “Privileged few” essentially “Buried in the desert” and the money taken from investors by selling them nonexistent shares flows into the wallets of the fraudsters selling bogus shares and refusing to deliver them. Not only that but since the “Sell then buy” circuit associated with legal short selling was never completed then capital gains taxes being paid to the IRS are also circumvented.

An interesting study would be for the non-compromised members of the SEC or OEA to analyze the number of delivery failures of recently deregistered issuers as compared to statistical norms. Here I'm not referring to those delivery failures still being housed at the DTCC which are probably minimal due to the new "Threshold lists" which shines a partial light on these but those held throughout the entire system in Ex-clearing "Arrangements", "Repurchase agreements" and elsewhere. How many U.S. Corporations with astronomic levels of unaddressed delivery failures and the investments made therein needed to be "Sacrificed" as a cover up measure because the level of delivery failures got to a point where the systemic nature of this fraud might be revealed or because the "Privileged few" might suffer significant financial damage or untoward "Volatility" as it is now referred to should the SEC or the DTCC perform their Congressional Mandates? How many "Sacrifices" are on the docket for next month?

The irony is that while concomitantly deregistering issuers for these offenses the SEC on a daily basis itself refuses to be "Fully-reporting" to these very same investors in regards to the damaged nature of certain issuers. These investors are being hurt twice by the regulators and the SROs. First they are told that the water is safe, jump on in because of all of this "Transparency" and "Regulatory surveillance" when they both know that the opposite is true. Then these regulators and SROs leave the door to the shark cage wide open so that the "Privileged few" can feed on the investor's funds. The "Non-fully reporting" passing judgment on the "Non-fully reporting", that's a pleasant thought!

In the case of issuers refusing to sell yet more shares at ridiculously low levels leading to yet more dilution over and above the dilution caused by regulatory neglect in order to pay for audited financials then perhaps the SEC should recognize that the SEC's refusal to remove the excess number of mere "Share entitlements" in the share structure of that issuer so that its share price can breathe may have been partially causative of the inability to afford auditors and file financials without leading to levels of dilution that might prove to be terminal and an already artificially lowered share price to take yet another big hit. There is nothing the naked short selling community would like more than to see a targeted prey sell truckloads of shares at share price levels decimated by short selling attacks to pay for audited financials especially in the "Post-Sarbox" era where audits are extremely expensive and the supply of auditors willing to work with development stage issuers looked upon as "High risk" clients is minimal. This is not to say that many corporations that refuse to file financials do indeed do so to hide fraudulent activity. Sure, there are plenty of those around and this practice is heinous. But it's the tendency of some within the SEC to lump all development stage issuers into the "Scam until proven otherwise" category that provides the tacit approval for the perpetration of these frauds.

The message here is that you at the SEC might just be in a good position to help these corporations to become fully reporting without it inadvertently exacerbating the previous dilutional damage sustained often partially due to regulatory negligence. What does a competent CEO do when his corporation's share price and market capitalization has been decimated so badly from these frauds that raising funds at steep discounts to those previously decimated share price levels to pay for an audit might be so dilutional as to cut the existing artificially lowered share price and market capitalization by a factor of 3 or so?

As mentioned earlier, now that the SEC, the DTCC and the NASD in this post-Reg SHO era are fully aware of the number of delivery failures held at the DTCC on a daily basis there is no longer any safe “Middle ground” for the SEC and these SROs to stand on. The only 2 choices remaining for you at the SEC, DTCC and NASD are #1 to either WARN prospective investors of the damaged nature and exact levels of the damage sustained by these corporations i.e. become “Fully reporting” as to the absolute number of “Share entitlements” in the system for a given corporation or #2 to mandate that the missing shares be bought in and finally delivered within a given timeframe. The current practice which we see today of either denying the existence of the problem, actively covering the problem up or stalling its repair just can’t go on any longer now that the investment community is aware of the nature of this pandemic “Fraud on the market”.

Your refusal over the years to provide this “Material information” to prospective investors in development stage issuers (That you deem to deserve no protection due to their naiveté) have relegated the investors in development stage issuers to buying nothing but a “Pig in a poke”.

The current “Threshold list” is totally inadequate in warning investors of a corporation’s delivery failure induced dilutional damage as a company with 0.6% of its shares in a failed delivery status looks exactly like a company with 66% of its outstanding shares in a failed delivery status. Besides, the Reg SHO “Threshold List” only applies to delivery failures held at “Registered clearing agencies” which doesn’t include the masses that have migrated to “Ex-clearing” locations and “Repurchase agreement” (“Repos”) locations elsewhere which have become the “Hiding places of choice” since the effective date of Reg SHO. But again there are those in the SEC that have the audacity to proffer the excuse as to why they refuse to monitor for abuses committed by the “Privileged few” in “Ex-clearing” locations i.e. because these illegal “Pairing off” relationships in which broker/dealers refuse to demand delivery of shares owed to it in exchange for its counterpart not ordering delivery of shares owed to it by the first party are issues involving “Contract law” and the SEC is only allowed to enforce “Securities laws”. Due to the organized crime aspect of these “Arrangements” the least you could do is to make the proper referral to the DOJ if you insist on continuing to proffer the nonsensical statement that you don’t have the “Power” to fulfill your Congressional Mandate to provide “Investor protection and market integrity”.

The very predictable result of these Ex-clearing “Arrangements” is that perhaps trillions of dollars of trades never do “Settle” and for which “Good form delivery” never was achieved because of the SEC’s alleged “Powerlessness” in this regard even though they have a Congressional Mandate and “Plenary authority” to regulate all issues related to short selling and the mandate to enforce the tenets of the 1934 Securities Exchange Act which expressly forbids this behavior. You at the SEC have all of the “Empowerment” in the world to address these Ex-clearing “Arrangements” designed to bypass “Delivery” and therefore “Settlement” of the involved trades but **YOU VOLUNTARILY CHOOSE**

NOT TO. By definition, a "Congressional Mandate" is a fairly strong form of "Empowerment" granting. Why do you at the SEC make this voluntary choice? Is it possibly to avoid these untoward "Volatility" (Latin for "Short squeezes") issues being felt only by the "Corruptest of the corrupt" DTCC participants or possibly due to the resultant effect on the "Privileged few" you seem to be beholden to that are holding and hiding these naked short positions after 8 full years of being told to clean them up.

When the purchaser of the nondelivered shares whose delivery failures are hidden in "Ex-clearing" locations turns around and sells these "Pseudo-shares", usually at a steep loss, then the fact that these shares **never were delivered nor did they ever exist** becomes moot as some other victim now has paid for and theoretically "Holds long" these nonexistent shares being represented on his monthly brokerage statements as legitimate shares. Note also the huge financial gains to be made by DTCC participants that earn commissions and mark-ups while processing orders involving the buying and selling of these nonexistent and obviously unregistered "Share entitlements".

The result in the post-Reg SHO world is that the new "Hiding place of choice" for delivery failures becomes these admittedly (For reasons beyond comprehension) unregulated Ex-clearing "Arrangements" and "Repurchase agreements" since Reg SHO only addressed delivery failures in "Registered clearing agencies" like the DTCC. As mentioned earlier the "Conduit" of choice for creating these delivery failures hiding in these locations entails either becoming one or gaining access to the MARKET MAKERS with access to the exemption from borrowing. The SEC with the "Plenary authority" granted by Congress to regulate short selling crimes proffering that they are somehow unable to break up these Ex-clearing "Arrangements" forbidden by the '34 Securities Exchange Act is one of the most glaring evidences of the close relationship of certain high level SEC employees and the "Privileged few" on Wall Street usually acting as DTCC participating prime brokers, retail brokers, clearing firms, market makers etc. and their co-conspiring and usually unregulated hedge funds with their obsession for secrecy while managing these "Dark pools" of money. The driving force for all of these "Relationships" and "Arrangements" is usually the $10 billion per year in commissions and fees available to the DTCC participants willing to be the most "Accommodative" i.e. willing to break the greatest amount of securities laws on behalf of the hedge funds with this much "Juice" to spread around on an annual basis.

With that "We're powerless" mindset being shown by the SEC all crooks have to do is to enter into some semblance of a bogus "Contract" relationship with fellow crooks to funnel investor dollars into their wallets which is exactly what is going on. This couldn't possibly occur WITHOUT the SEC as well as the DTCC proffering to be "Powerless" to regulate the "Ex-clearing" and "Repurchase agreement" arena even though they aren't powerless and in fact have the congressional mandate to do just that. The question arises as to just how deep these ties between some at the SEC and the "Privileged few" and politically powerful really go. Did we get a glimpse of the depth of these relationships in the recent Aguirre case wherein an SEC attorney got fired after pushing a little too hard while attempting to advance a case against the leader of one of the world's top prime brokers?

The SEC and these SROs just can't continue to oversee the leading of these state-domiciled U.S. corporations, the investors therein and the employees thereof to the slaughter while bragging about theoretical "High levels of transparency and regulatory surveillance" and how "These characteristics greatly reduce the risk of abusive or manipulative short selling going undetected". Agencies of the Federal Government of the strongest nation on earth just cannot be allowed to behave like this no matter how much political or financial pressure they must operate under. A partially co-opted police force is a very scary issue.

In regards to this wonderful "Transparency" in our markets even with Level 2 visibility an investor can only see which market makers are on the bid and offer and the size of the bids and offers in these trading venues. Even Canada with its immense regulatory problems clearly identifies the buying and selling market maker in each transaction. In the U.S. however, as trading goes on a given market maker could be buying 1,000 shares of an issuer per month and selling 50 million shares per month for years on end and an investor wouldn't have a clue to this activity. Why not? Because the SEC and the DTCC deem that this "Trading data" racked up by the "Privileged few" is of a "Proprietary" or "Privileged" nature and that they wouldn't want to reveal to the world any "Proprietary trading methodologies" especially those involving the nonstop selling of fake shares of an issuer with no accompanying buying back or making delivery of such. The U.S. investment community is not asking to break any legitimate privacy rules nor to identify who is being represented by a given market maker's buying and selling activity. The current lack of "Transparency" added to this theoretically "Privileged" nature of even orders marked "SSE" or "Short sale exempt" (Exempt from the "Borrow") represents an engraved invitation to commit naked short selling frauds.

Please explain to the nano cap investment community how a theoretically "Bona fide" market maker out of one side of his mouth will claim to be performing the often-quoted and noble task of the "Injection of liquidity into thinly traded securities" by naked short selling into a market with a temporary imbalance involving an overabundance of buy orders and a dearth of sell orders and out of the other side of his mouth claim that the resultant trading data showing this noble and beneficial activity is somehow "Proprietary" and to be kept top secret? If it was a hedge fund illegally accessing the bona fide MM exemption while operating through a theoretically bona fide MM's "In house account" shouldn't the investment world be warned about this activity? Did we not just see a case wherein a broker/dealer was found guilty of allowing a client hedge fund to have the "Keys" to the trading desk in exchange for "Order flow"? Did we not also just see a $2 million fine being levied upon a top "Prime broker" for knowingly allowing its clients to mark "Short sales" as "Long sales" in order to circumvent making a "Borrow".

Another question, how can the nonstop banging of bids especially at the close of a trading session possibly be characterized as "Bona fide" market making deserving of labeling trades as "Short sale exempt". Genuine bona fide market makers should be proud of their role as "Liquidity providers" and providers of "Pricing efficiency" and should be happy to reveal the trading data related to short sales labeled “Short sale exempt” to the investing public. Perhaps the need for the secrecy comes in when the very same market maker refuses to cover this naked short position many months to years later **even after the share price has tanked by 50%.** By definition, there is no client involved needing identity protection when a market maker labels an order “SSE” and again by definition there is no “Proprietary trading methodology” being utilized necessitating treating related trading data as “Privileged”. Why the need for all of this secrecy in “SSE” labeled trades UNLESS massive amounts of market manipulation have become the standard in this current “Regulatory vacuum” these fine “Professionals” operate within?

You at the SEC have this trading data right in front of you day after day and yet regulatory actions against market makers abusing the exemption from borrowing before short selling legally accorded only to those acting in a bona fide market making capacity are few and far between. When they do occur these minor hand slaps are looked upon as no more than a speeding ticket on this “Freeway of corruption” and as merely a cost of doing business without any DETERRENT effect to dissuade further perpetration of the same fraud. The provision of meaningful deterrence to bizillionaires can rarely be effected via fines amounting to less than 1% of the funds stolen. These types of fines PROMOTE not DETER fraudulent activity. On the other hand, the temporary suspensions of licenses to partake in any type of short sale activity might provide meaningful deterrence as those with the suspended licenses would be relegated to handcuffed observers of their fellow DTCC participants still able to wantonly rip off unknowing investors. The conspicuously missing criminal sanctions for this type of behavior would also provide the much needed “Meaningful deterrence”.

THE HEINOUS CHARACTER OF THE “GRANDFATHER CLAUSE” AS REVEALED VIA THE “BALANCE MODEL”

One of the easiest ways to understand naked short selling, unaddressed delivery failures and their related damages is to picture the prognosis for the share price of a U.S. Corporation as being a “Balance” or scale as presented in the “Scale of justice” symbol you see on a court house. The left hand tray represents the “Corporate success” tray and the right hand tray the “Corporate failure” tray. Beneath the right tray is the “Corporate vitality” candle hopefully burning brightly.

The items that enhance the share price and that occupy the left tray are buy orders for the “Shares” of the company. The contents of the right tray that put a burden on share price are the number of “Readily sellable legitimate shares” plus readily sellable “Share entitlements” which result from unaddressed delivery failures in the clearance and settlement system. This is sometimes referred to as the “Float” of readily sellable shares. On a level playing field where people deliver the shares that they sell and do so in a timely manner buy orders landing on the left tray tend to buoy up share prices as the number of “Readily sellable” shares remains fixed in the right tray. On the other hand if previously restricted shares should become registered and unrestricted then they are placed on the right tray which provides a depressant effect on the share price.

When buy orders from investors are sold into by naked short sellers selling nonexistent share look-alikes then a strange phenomenon occurs. The resultant “Delivery failures” lead to the presence of mere “Share entitlements” that are shunted from the left tray where they existed as buy orders to the right tray where they exist as mere “Share entitlements” as if a bridge was built between the two trays. In slow motion you might notice that buy orders that typically drive share prices upwards have been magically converted into readily sellable “Share entitlements” that actively drive share prices lower. All of this is due to the lack of the trades “Promptly settling” and after that the lack of “Promptly” addressing these delivery failures by both the DTCC as well as the SEC.

The failure of the naked short seller to deliver that which he sold converts a net positive for share price enhancement into a net negative that depresses share prices. The result is that the right hand “Corporate failure” tray as well as the share price goes down a notch for each delivery failure created and left unaddressed which, if this behavior is allowed to continue, will snuff out the “Corporate vitality” candle and the prognosis for the corporation itself. The cause of death of the corporation becomes massive artificially induced dilution.

The buy orders rerouted from the “Corporate success” tray and now stacking up on the “Corporate failure” tray in the form of “Share entitlements” act like a poison to the share structure. Note that since a non-cash flow positive development stage issuer is forced in the midst of these “Bear raids” to constantly sell shares at deep discounts to ever-diminishing price levels just to pay its monthly “Burn rate” then the “Corporate failure” tray holding the “Share entitlements” as well as legitimate shares sold in financings can actually accelerate in its downward move towards snuffing out the “Corporate candle”. It’s the necessity to service the monthly “Burn rate” that is why the “Privileged few” attack development stage issuers before they become cash flow positive. They would naturally prefer that their targets have high monthly “Burn rates” to accelerate the bankrupting process. Biomedical companies with potential cancer cures fall nicely into this category because of the amounts of money they need to raise as well as the lengthy timeframe associated with receiving FDA approval for a new therapy or drug. These criminals love to attack biomedical companies with prospective drug therapies because they know with 100% certainty that they won’t have a penny in cash flow for many years if ever. That’s a pleasant thought intentionally targeting young drug and biomedical companies with potential cancer cures! Does this tell us a little bit about the ethical mindset of the “Privileged few” in their quest for the almighty dollar?

What did the “Grandfather clause” bring about in terms of the “Balance model” for understanding naked short selling? It allowed all of the mere “Share entitlements” poisoning the share structure of the targeted company to REMAIN on the “Corporate failure” tray actively weighing down on the share price of the company under attack. It also allowed those that intentionally sold bogus shares and that continue to refuse to ever deliver them to keep the receipts of those sales, the unknowing investor’s money, as the share price diminishes from the ever-increasing weight of the old and new “Share entitlements” as well as legitimate shares constantly being sold to fund the company’s business plan. The "Share entitlements" on the corporate failure tray may be housed in the DTCC "C" sub accounts, they may be a result of Ex-clearing "Arrangements", "Repurchase agreements", broker/dealer "Desking" or "Internalization" procedures, offshore account activity, in other country's clearing systems that are allowed to "Interface" with the DTCC, etc. Although they're not readily quantifiable or visible due to these "Privacy" issues sometimes involving banking secrecy laws you can "Sense" their presence in the way a corporation's stock trades. Oftentimes no matter how much buying comes into the market there always seems to a willing seller present even if the buy orders tally a large percentage of the company's "Float" on a daily basis.

Only the SEC and the DTCC have the "Antidote" to this poison acting on these corporations. The antidote is the ordering of those that INTENTIONALLY sold bogus goods to these investors and that continue after inordinate amounts of time to refuse to deliver that which they sold to finally deliver that which they sold. The simplicity of this obvious solution and the reticence to deploy it speak volumes as to the corrupt nature of the foundation on Wall Street as well as the immensity of the problem. If there were only a handful of delivery failures in the system then they would have been addressed by now. So much for the DTCC's Congressional Mandate for the "Prompt settlement" of all trades.

The antithesis of "Prompt settlement" is "Intentionally postponed settlement" or the circumvention of "Settlement" all together via these Ex-clearing "Arrangements", "Repurchase agreements" and DTCC policies to refuse to monitor the age and level of the delivery failures of their participants held at the DTCC in their "C" sub-accounts as well as elsewhere. This forced delivery mandated by the SEC would remove the poison from the share structure of these victimized issuers via removing the mere "Share entitlements" above the 0.5% metric from the "Corporate failure" tray. The question that begs to be asked is why would the SEC, the only possessor of the antidote according to the DTCC anyways, being fully aware of this poisoning occurring refuse to administer the antidote to these issuers and investors to whom they owe the fiduciary duty of care while operating under the congressional mandate to provide "Investor protection and market integrity".

As mentioned earlier the answer given by the SEC was that they were afraid of "Volatility issues" in the markets of issuers with "Large numbers of unaddressed delivery failures" i.e. issuers with high levels of poison already within their share structure. In other words we refuse to fulfill our congressional mandate because it might selectively penalize the "Corruptest of the corrupt" that continue to refuse to deliver that which they sold. So what is the message being sent? Let's just write these poisoned issuers off as being all but dead anyways or is the goal to cover up the existence of the original fraud by burying the issuers whose naked short positions have gotten so far out of hand that the original fraud might be in danger of being made known to the entire investment community worldwide i.e. to "Sacrifice" those issuers deemed to be terminally ill in order to cover up the evidence of the fraud.

Is the fear that the “Corporate failure” tray in these issuers whose naked short selling attack got a little bit “Out of hand” perhaps because they were misdiagnosed as being “Scams” when they weren’t will move upwards and inflict financial pain/ “Volatility” UPON THOSE MEMBERS OF THE “PRIVILEGED FEW” THAT HAVE NOW BEEN IRREFUTABLY PROVEN TO HAVE INTENTIONALLY SOLD BOGUS SHARES TO U.S. INVESTORS BUT CONSTANTLY REFUSE TO DELIVER THESE SHARES IN ORDER TO ALLOW THESE TRADES TO FINALLY “SETTLE”? Clearly this “Grandfather clause” of 2005 will probably go down in history as one of the most blatantly corrupt and blatantly obvious “Cover up” actions of any government agency in the U.S. being performed on behalf of the perpetrators of a massive fraud on the U.S. markets.

LET’S GET PRAGMATIC

How do you remove the “Share entitlements”/poison from the “Corporate failure” trays of these victimized issuers before they too perish? You mandate the delivery of these yet to be delivered shares within a given timeframe as “Phase 1” and if the naked short selling fraudsters STILL refuse you order their being “Bought in” under a “Guaranteed delivery” basis i.e. no naked short selling into the buy-in orders by co-conspiring market making firms which would only result in hiding the same delivery failures in different hiding places. This would represent “Phase 2”. This common practice of selling yet more bogus shares to a fellow market maker in trouble with a naked short position is referred to as illegal “Crossing” or “Parking” the delivery failures. It is very reminiscent of what goes on in these Ex-clearing “Arrangements” as well as “Repurchase agreements” except that there is a new bogus trade “Novated” which represents yet another Rule 10-b-5 violation (10-b-5 being the broad spectrum “Anti-fraud” rule contained in the ’34 Exchange Act).

How do you stop the conversion of share price enhancing buy orders into share price depressing “Share entitlements”? You ENFORCE the delivery laws and the “Prompt settlement of all trades” Congressional Mandate bestowed upon the DTCC. What don’t you do? You don’t attempt to circumvent “Volatility” issues by correctly diagnosing the presence of the poison in the systems of these victimized issuers and then “Grandfather in” the preexisting poison to allow it to slowly work in finishing off the targeted corporation and therefore bypass any untoward “Volatility” issues felt by the “Privileged few” committing these crimes. Remember that in the case of yet to be cash flow positive issuers under attack the “Corporate failure” tray has a tendency to pick up speed as it falls towards the “Corporate vitality” candle.

Hopefully this can allow you to realize the incredibly heinous nature of the “Grandfather/cover up” clause. I can only assume that the 2 Congressional Oversight Committees that oversee the activities of the SEC will force the SEC to rescind this abomination ONCE THEY BECOME EDUCATED AS TO THE HEINOUS NATURE OF BOTH THE COVER UP OF PREVIOUS CRIMES AND THE INTENTIONAL

CATERING TO THE NEEDS OF THE “PRIVILEGED FEW” OVER THE PROVISION OF “INVESTOR PROTECTION” TO THE “NON-PRIVILEGED” 99% NOT TO MENTION THE REFUSAL TO “DISCLOSE” (As per the “33 Act”) TO PROSPECTIVE INVESTORS THE AMOUNT OF THIS POISON IN THE SHARE STRUCTURES OF THESE ISSUERS UNDER ATTACK.

THE PREVAILING MINDSET

The mindset clearly shown by you at the SEC as well as those at the DTCC is that ALL development stage issuers are “Scams” until proven otherwise and therefore the “Privileged few” are tacitly given a green light to attack. Make no mistake there are certain corporations on these and other trading venues that exist for no other reason than to enrich their management teams as well as promoters and this is no doubt part of the reason for the prevailing mindset. However, your lack of regulation of abusive market making activity tells us that you look upon abusive market makers illegally accessing an exemption from borrowing before short selling and co-conspiring prime brokers, unregulated hedge funds, clearing firms and “PIPE” financiers as fulfilling some type of welcome “Regulatory” role perhaps because you see yourself as undermanned or underfunded to do it yourselves. The attitude seems to be to let the short sellers sniff out the “Scams” and take care of them. This attitude is fine if the short sellers “Borrow” legitimate shares before making the short sale. Naked short sellers, however, need not sniff out any “Scams” because if allowed to bypass the delivery of that which they are selling they can take down a preyed upon company INDEPENDENT of its merits.

True “Investor advocates” professing to be acting in a genuine regulatory capacity and attempting to bring down “Scam” companies before others invest in them however, don’t sell bogus shares to unsuspecting American citizens and refuse to deliver that which they sold for inordinate amounts of time as they pocket the proceeds of the sale. “Do gooders” just don’t commit irrefutable crimes to address perceived crimes. Opportunistic thieves LEVERAGING their superior knowledge of, access to and visibility of our clearance and settlement system utilize this modus operandi to intentionally steal money from those that they owe a fiduciary duty of care to. The acting as an “Investor advocate” ILLUSION is quite a stretch but if it helps these fraudsters sleep better than so be it. Part of the problem might be that these securities fraudsters never have to look their victims in the eye or see the families whose lives they are forever damaging.

You at the SEC and those at the DTCC are in a bind right now in that due to regulatory neglect through the years as well as abusive behavior by certain DTCC participants the levels of unaddressed delivery failures have grown to unmanageable levels i.e. there are hundreds of companies that the “Privileged few” couldn’t successfully bankrupt or get deregistered before this little “Industry within an industry” was exposed for what it is. Perhaps, just perhaps the reason they survived is because they really do “Have the goods”. After all it would be pretty tough to survive a couple year long “Bear raid” UNLESS YOU “HAD THE GOODS”. Your concern at the SEC is now admittedly these

“Volatility” issues. The question that arises is why the concern for the “Corruptest of the corrupt” that have for 8 straight years consistently refused your recommendations to once and for all cover these delivery failures and deliver the missing shares.

JUST WHAT LEVERAGE DO THE “PRIVILEGED FEW” HAVE OVER CERTAIN SEC EMPLOYEES THAT MAKES THEM WILLING TO MAKE THE SEC LOOK LIKE TOTALLY CORRUPT BUFFOONS AND WHY WOULD THE TRULY DILIGENT SEC EMPLOYEES PUT UP WITH IT?

The first assumption would obviously be that the “Sell outs” at the SEC would be located in the higher echelons of the SEC because if the higher echelons were all “Clean” then they would have stomped out any subservient “Evil doers” in a nanosecond.

The next assumption would be that the 2 Congressional Oversight Committees that oversee the SEC are either oblivious to naked short selling crimes and in need of being educated or that they are somehow involved. The next question would be why would a politician be a party to such crimes? Is it a “Power” related thing or is it a “Monetary” related thing? If it is a “Monetary” related thing then how would the “Privileged few” sneak the money into the pockets of a crooked politician? Could it have something to do with the record amounts of political donations being made by lightly or unregulated hedge funds over the last few years? Might it have something to do with the fierce fight that hedge funds are waging to stay unregulated? The next question would be which politicians are working the hardest to put the kibosh on naked short selling reform and hedge fund reform? A little research might be done to help explain just why in the world some at the SEC are willing to make their agency look so obviously guilty of conspiring with those looting the investments of U.S. investors via intentionally shipwrecking U.S. Corporations, the employees thereof and those in need of the goods and services they produce whether it be a cancer cure or whatever?

As far as these “Volatility” issues that some at the SEC want to circumvent, victimized issuers and investors might proffer that the “Volatility” issue has already occurred for the lowly 99% of the rest of Americans as the share price of their investment may have fallen from perhaps $5 to the sub-penny level as the delivery failures pile up at the DTCC, in Ex-clearing locations, in the form of bogus “Repos” (Repurchase agreements), at trading desks, in the form of bogus “Arbitrage” transactions, etc.

Note how “Repurchase agreements” are a clever way to fraudulently sell fake shares without needing to perform a “Borrow” because you theoretically promise to **“Eventually”** repurchase the “Share facsimiles” being sold and thus technically a “Short sell” mandating a “Borrow” didn’t occur because of this “Pseudo-contract”. Again we see the use of bogus contract-like instruments to intentionally circumvent the “Prompt settlement” and “Prompt delivery” securities laws. The problem with this is that “Repurchase agreements” were designed to apply to overnight transactions and not to delivery failures lasting many months at a time as the **INTENTIONAL** postponement of “Settlement” is expressly prohibited by the securities laws. Why? Because Congress recognized the incredibly damaging nature of these admittedly counterfeit “Share entitlements" without corresponding paper certificates especially if their lifespan should exceed more than a few days and their numbers exceed 0.5% of an issuer's number of "Outstanding" shares.

Remember also that in regards to these "Volatility" issues the untoward "Volatility" would ONLY be felt by those Wall Street participants that have illegally "Gamed" the system in the first place. Truly "Bona fide" market makers would have covered their previously established naked short position after the first down-tick. American investors have assumed that you at the SEC have tapped the shoulders of the guilty parties and recommended that they quietly cover these "Open positions" before this "Delivery failure" issue and its obvious SYSTEMIC RISK implications reaches a crisis stage. These investors also assume that you either didn't tap hard enough or that the "Privileged few" consider themselves above the law and refused to heed your attempts at regulation.

The intolerable levels of SYSTEMIC RISK regarding our entire financial system associated with this fraud, however, are incurred by all Americans and not just the "Privileged few" running their personal fiefdom in this "Regulatory vacuum" that some have designed and actively maintain while acting "Above the law". Abusive Wall Street participants are not only greedy thieves in a monetary sense but they are also heinously selfish in a SYSTEMIC RISK sense. The last thing on the mind of a 30-year old hedge fund manager making "2 and 20" (2% of money being managed and 20% of all profits) on a billion dollars entrusted to him is the SYSTEMIC RISK being incurred by all of us. This is especially true when utilizing 20-1 leverage.

The lack of regulatory action in this sector by the SEC and the SROs also hints of a mindset that these development stage issuers should not have gone public **UNTIL** they could stand on their own two feet and qualify for debt financings. The problem is that in the corporate world things don't work that way. There is a gap in time between when an entrepreneur's personal funds and the funds of their close friends and acquaintances run out BEFORE the venture qualifies for bank financings. This is when the companies typically go public and sacrifice ownership interests of the project in order to access public sources of money needed to advance perhaps their cancer cure or high tech advancement to the next level.

As mentioned earlier for some inexplicable reason the "Anti-bid banging" laws being considered contemporaneously with these Reg SHO amendments never did apply to these lower trading venues. These "Scammy" issuers and the assumed to be "Brain dead" U.S. citizens investing therein apparently never DESERVED the protection of 10a-1 nor that of NASD Rule 3350. This is only one of the sequelae of the aforementioned "Scam until proven otherwise" mindset of the SEC and DTCC. Why protect assumed to be "Scams" and the ignorant investors therein? These investors are going to get what they have coming to them because of their naiveté. But wait a minute, perhaps their apparent naiveté came form comments from the SEC like "We note that today's markets are marked by high levels of transparency and regulatory surveillance" and that "These characteristics greatly reduce the risk of abusive or manipulative short selling going undetected".

You at the SEC and those at the DTCC are the ones that said in the past and continue to say today that the "Water is safe, jump on in" in the case of the SEC and that there is no "Delivery failure" issue of any substance in the case of the DTCC i.e. the "What elephant in the middle of the room are you referring to" cover up mechanism.

Many of the non-privileged 99% that invest in this arena wonder why the patients in most need of this protective "Medicine" i.e. investors in temporarily frail development stage issuers seen as being an "Easy prey" to the "Privileged few" were the only ones denied it. Why? Because that is how the "Privileged few" wanted it. They don't want to attack more mature corporations that could put up a fight in the market, buy back and cancel shares should their share price tank or sustain the costs of a lengthy legal battle which targeted corporations that refused to die seem to have a predilection to attract from the very same legal firms time and time again. How in the world can a cash flow negative development stage issuer defend itself from a frivolous lawsuit filed against its management team under the direction of deep-pocketed members of the "Privileged few" that couldn't bankrupt the company in a timely manner? This "Death by lawsuit" weapon is right up there with the "Death by deregistration", "Death by artificial dilution" and the "Death by journalistic hatchet jobs" weapons.

As you at the SEC must recognize by now there is a certain timeframe in which a publicly traded development stage issuer is particularly susceptible to naked short selling attacks by Wall Street participants as well as "PIPE" financiers. Well organized and well funded Wall Street participants execute naked short selling attacks during this time of frailty. This "Hazing" has over the years amounts to no more than a much-expected Wall Street "Rite of initiation" conferred upon these issuers by the "Privileged few" that seems to have the tacit approval of you at the SEC via your refusal to firmly deal with it or perhaps to fully recognize its systemic nature. This "Boys will be boys" regulatory approach just doesn't cut it with the investors in these corporations. The dollars invested in these issuers temporarily unable to put up any defense against Wall Street behemoths are looked upon as no more than a "Toll" being extracted for admission onto Wall Street which is the "Turf" owned and run by the "Privileged few" and politically powerful.

The result of this criminal activity is the predictable shunting of micro cap investors' funds into the wallets of those Wall Street "Professionals" and their co-conspiring unregulated hedge funds which jointly share a superior "KAV" factor or **K**nowledge of, **A**ccess to and **V**isibility of the clearance and settlement system in use in the U.S despite the fact that these trades never did "Settle" and the shares never did exist. But how can that be? How could the U.S. financial system possibly allow something as unconscionable as **allowing these fraudsters access to the investor's funds without ever delivering that which they sold** and which never existed in the first place? The reality is that the DTCC management only asks that their 11,000 "Participating" broker/dealers and banks collateralize these "Open positions" in a daily "Marked-to-market" fashion and as the share price of these victimized issuers predictably tanks from this activity resulting in massive amounts of artificial dilution then the proceeds of these sales actually flow into the pockets of those that sold nonexistent shares. During all of this the DTCC with a Section 17a Congressional Mandate to promptly **"Settle"** all transactions and the SEC with "Plenary authority" to regulate all short sale transactions either idly sit by and oversee the blood-letting or actively participate in cover up measures or stalling maneuvers like "Grandfather clauses".

The problem has never been with the contents of the "33 or'34 Acts. The SEC has done a good job on the "Legislative" front. The problem is and always has been on the much more important "Regulative" front and the existence of a "Captive" and greatly "Conflicted" regulator whose actions, especially by those in the higher tiers, imply that they're not the least bit interested in disturbing the status quo enjoyed by the politically-connected and wealthy few residing on Wall Street. Why? Because of the enormous amount of money "In play" and the massive numbers of "Conflicts of interest" that arise due to this immense amount of money being up for grabs. This fact as well as Sarbanes-Oxley Rule 404 and the litigious environment in the U.S. has resulted in the mass migration of IPOs offshore where the markets are perceived as being less "Rigged". This recent migration is yet another symptom of this much larger underlying systemic disease. Even after the 1995 PSLRA legislation bogus lawsuits against management teams launched with the intent of bankrupting the issuer are much less prevalent overseas.

Perhaps what you at the SEC fail to realize is the importance of the job growth engine represented by these 9,000 or so development stage corporations just seeking a level playing field to develop on. **What very few people realize is that this economic and employment growth engine is extremely dependent upon a no-nonsense SEC that's not all that concerned with the wants and needs of abusive DTCC participants as opposed to the wants and needs of the lowly 99% of the rest of us.** The sheer greed on Wall Street of those with this superior "KAV" factor has resulted in current levels of SYSTEMIC RISK beyond description as powerful prime brokers loan inordinate amounts of cash to unregulated hedge funds allowed to operate in the dark and partake in ultra-risky behavior in exchange for a portion of the $10 billion in commissions and fees these secrecy-obsessed hedge funds spend annually.

Of course the market making arms of these prime brokers are going to do everything in their power to make sure that the "Bets" placed by their client hedge funds AGAINST development stage issuers come to fruition so that their loaned money is never put into peril. They have a dog in the fight-their own cash. The hedge fund advisors allowed to operate in the dark and making "2 and 20" are going to swing for the fences with money from the ultra-wealthy **as well money borrowed to increase "Leverage" 10 to 20-fold** without any concerns for the SYSTEMIC RISK borne by the masses. This results in not only a "House of cards" from a risk point of view but a skyscraper made out of cards when borrowed money enters the scene. What have they got to lose? Step into their shoes and do a risk/reward analysis. There's no personal risk and rewards beyond comprehension. Why swing for singles? If this skyscraper made of cards starts to sway a little bit then the SEC and the Federal Reserve need to stabilize it to circumvent any catastrophic consequences. These fraudsters also are placing the bet that they can count on the SEC and DTCC to continue to sweep these issues under the rug ostensibly to prevent any further lessening in investor confidence levels. **<u>THIS IS THE</u>**

CHALLENGE FOR YOU AT THE SEC, ARE YOU UP TO IT? CAN THE U.S. CITIZENS COUNT ON YOU TO FINALLY RISE ABOVE THE CONFLICTS THAT IN THE PAST HAVE PREVENTED YOU FROM DEALING WITH THIS DELIVERY FAILURE CRISIS?

The shenanigans occurring in the Lending Departments of these behemoths nets about another $9 billion annually. These funds are all up for grabs to the prime brokers, market makers and clearing firms that can prove to be the most “Accommodative” to the needs of these 8,700 hedge funds now managing about $1.4 trillion in the dark.

The currency in use to attain this “Accommodative treatment” is not cash in a brown paper bag, that’s too old-fashioned. The currency is for the most part in the form of “Order flow” to the parties willing to break the most rules which immediately converts into cash and it even saves on brown paper bags which is probably the only tangible benefit to society involved in naked short selling! Another form of currency being spent involves the transfer of the legal title to the investors’ shares to the clearing firms proving to be the most “Accommodative” to the needs of “Introducing brokers”, market makers, other retail broker/dealers and secrecy-obsessed hedge funds. Remember when you get your monthly statement it comes from your clearing firm that may or may not be your retail broker. Along with the legal “Ownership” of a retail customer’s shares being transferred to his broker’s clearing firm comes the right to rent out the shares and not share the rental proceeds with the purchaser of the shares because the clearing firm is now the new legal “Owner”. This is done in exchange for ridiculously cheap clearing fees and not via a brown paper bag full of cash. Again, we see no paper trail. Investors don’t even realize that they don’t legally “Own” that which they paid for when shares are kept in “Street name” under the “Custody” of the DTC branch of the DTCC.

The DTCC “Owns” these shares FBO their participant clearing firm, a member of the “Privileged few” i.e. a DTCC “Participant”. Unfortunately for investors these shares are unknowingly being rented out to the mortal enemy of the investor who purchased the shares in the first place but the presence of an intermediary might supply some plausible deniability as well as a diminution of those pesky “Fiduciary duties of care” issues owed by a party accepting a commission or “Mark up” while acting as an “Agent” for his client. The mortal enemy of the investor, the naked short seller, is intent on bankrupting the invested in company and he gives the investor’s retail broker acting in an “Agency” capacity, cheap clearing fees in exchange for the ownership title to the investor’s shares. No conflict of interest there! Everybody amongst the “Privileged few” seems to be doing quite well with these non-traceable “Arrangements” except the poor putz that bought the shares and doesn’t realize that his investment money is driving this entire “Cycle of corruption”. Wall Streeters can do business with whichever prime broker, hedge fund, clearing firm, market maker, settlement bank, etc. that they choose so they will naturally seek out those agreeing to be the most “Accommodative” to their particular needs. All of these players can always claim that they had no idea that their business associates were behaving in such a heinous manner like that used when indiscriminately canceling votes to cover up the existence of massive amounts of delivery failures (“Plausible deniability”).

What the SEC must remember is that hedge funds were allowed to operate in a lightly or even unregulated environment because their wealthy investors were "Accredited investors" and thought to be "Financially sophisticated" enough to not need the SEC's protection. This allowance by the SEC for them to operate "In the dark" has resulted in predatory behavior against development stage corporations perceived to be an "Easy prey" while occupying these "Incubators" involving the lower trading venues. Why are they an easy prey? Because the $10 billion in annual commissions and fees up for grabs buys access to the "Bona fide" market maker exemption and to a hiding place for the delivery failure in Ex-clearing and other locations. You're right; it's not the ultra-wealthy investors in hedge funds that need the protection it's the targeted corporations of their hedge fund advisors and co-conspiring prime brokers, clearing firms, "Hatchet job" journalists for hire, market makers, paid Internet "Bashers", PIPE financiers and plaintiff's attorneys hired to file prohibitively expensive to fight frivolous lawsuits against management members that need the protection.

Hopefully you at the SEC can learn from the massive corruption being unearthed in the "PIPE" financing world. In PIPE financings the financiers routinely promise to not short sell the securities of the issuer they are providing finances for. Unfortunately the issuers getting financed were unaware that in the old 12b-3 ('34 Exchange Act) definition of share "Ownership" someone holding a convertible instrument was technically the "Owner" of the shares that could be converted into (By the way kudos to those at the SEC responsible for closing that loophole in the original Reg SHO). Since the definition of a "Short sale" is "Any sale of a security that the seller does not "Own" or one that is consummated by the delivery of the security by, or for the account of the seller" then PIPE financiers weren't "Technically" performing "Short sales" as they intentionally pummeled the share price of these issuers in order to convert their instrument at lower prices and receive more shares (A "Death spiral" financing). Soon a whole new branch of this "Industry within an industry" grew as opportunists knowledgeable about the 12 b-3 loophole and upcoming "PIPE" deals aggressively naked short sold these issuers just because they were aware of how predictable it was that this issuer was going down in flames after its management signed a "PIPE" financing. How predictable were the results of this form of securities fraud? A recent study of 341 "PIPE" financings showed that within a matter of months of the financing **ALL** 341 issuers studied took a nosedive in their share price many resulting in bankruptcy. When one sees statistical aberrations like this a trained observer has to suspect that other forces must be in play and indeed they are. What's particularly disgusting is that these abusive "Pipe" financiers and their co-conspirators couldn't have done it without the help of the DTCC as well as the SEC.

As you at the SEC know a lot of the perpetrators of this fraud associated with these financings are now being prosecuted for "Insider trading" infractions as these financings were not a matter of public knowledge. What you should be wondering is how in the world were all of these trades allowed to "Clear" but never "Promptly settle". Note the hypocrisy here on the part of the SEC. In a "Transparent and highly regulated" environment where the age and amounts of delivery failures are rigorously scrutinized financings like these COULDN'T result in precipitous drops in share prices because the financiers couldn't naked short sell these yet to be created and unregistered future shares. The regulators and SROs rigorously performing their congressional mandates would have been all over these obvious frauds. In addition to the SEC the DTCC would also theoretically be there to provide a "Safety net" while following their Congressional Mandate to monitor for the "Prompt settlement" of all trades. Therefore there would be no niche for those with their ear to the ground listening for rumblings about upcoming PIPE deals. But the problem arises in that the abusive members of the 11,000 broker/dealers and banks making up the DTCC and theoretically providing this "Safety net" **ARE THE "PRIVILEGED FEW".** Yet again we see conflicts of interest beyond description. The presence of a "Captive" regulator is what emboldens these fraudsters to do their thing. What is a "Captive" regulator? It is an ineffective regulator working in the midst of countless conflicts of interest many being of a monetary nature while others of a political nature that either refuses or is unable to regulate those with a superior critical mass and superior political capital.

What did these "PIPE" financiers need in order to pull off these heists in such an incredibly predictable manner? They needed an SEC and a DTCC to allow the delivery failures involved to remain unaddressed for many months or even years at a time until the convertible note or bond could be converted into real shares and the shares became registered. In other words they needed these regulators and SROs to turn their head to the fact that the trades involving these sell orders were not "Promptly settling" as mandated to the DTCC by Congress via Section 17-a of the '34 Act. One aspect of these crimes that never seems to get much attention is that all of these fake shares/"Entitlements" flying through cyberspace are not "REGISTERED" which for some inexplicable reason doesn't seem to bother anybody especially the SEC in charge of registering securities.

It's a scary thought that the regulator with the "Plenary authority" to regulate all short sales and the DTCC with the Congressional Mandate to "Promptly settle" all transactions knowingly or unknowingly are and have been playing the key supporting role in the perpetration of these "Frauds on the market". The same role is played all day long every day by these venerable regulators and SROs when unethical market makers in an uncontested manner illegally access the exemption from borrowing before making short sales legally accorded ONLY to market makers acting in a "Bona fide" market making capacity at the time. How can a market maker label sales as "Short sale exempt" while claiming to be acting in a "Bona fide market making capacity" involving selling admittedly counterfeit and unregistered share-facsimiles into markets characterized by more buyers than sellers as the share price plummets from $5 to 10-cents? Don't markets characterized by more buy orders than sell orders for months on end typically go up and not down? Shouldn't this apparent paradox have caused the alarm bells to start ringing?

Just how tough is it for the SEC to see the trading data of the same group of corrupt market makers labeling short sales as "Short sale exempt" while doing nothing but selling all day long, knocking out bids and refusing to buy back or deliver that which they've sold within a reasonable timeframe. By definition, a sale labeled "Short sale exempt" can't knock out bids in a serial fashion because there is theoretically a preponderance of buy orders at the time. How difficult is it to see that when these corrupt market makers do occasionally cover a naked short position it is often done by buying yet more nonexistent shares from a co-conspiring market maker also naked short selling and marking his sales “SSE” or “Short sale exempt”? Can you not see that these IOUs are just being recycled and constantly being refreshened in age by being illegally “Crossed” and “Parked” amongst co-conspiring market makers all labeling their sales “Short sales exempt”? The irrefutable truth lies in the trading data. There are no “Privilege” issues when the SEC diligently reviews this trading data and diagnoses manipulation and addresses it accordingly. Computer programs could be designed to review huge volumes of trade data very quickly to detect this type of behavior and abusive patterns of “Crosses” between various parties playing “Catch” with “Share entitlements”.

Nowadays what does the landscape look like? We have unethical market makers swapping their exemption from borrowing before making short sales in exchange for “Order flow” from prime brokers and hedge funds. The $9 billion per year securities lending business has been converted into a total cesspool. We have unregulated hedge funds responsible for providing over $10 billion per year in commissions and fees seeking out the market makers, clearing firms, prime brokers and lending desks that would be the most “Accommodative” to their naked short selling needs i.e. willing to break the greatest number of laws on behalf of a paying client. Hedge funds are suing prime brokers for charging securities lending fees on securities that were never even borrowed which in turn allows these hedge funds to claim that they aren’t guilty of naked short selling crimes because they had no idea that they were actually performing naked short sales. After all they were paying borrowing fees. We have market commentators that used to run hedge funds and with devout followers numbering probably in the tens of millions proudly bragging about how he and other hedge fund advisers belonging to the “Privileged few” would “Torpedo” stocks at the end of a trading session. A quote from his blog: *"On days like today when I was short, I would come in with a lot of firepower and try to blast things down at 2:45. I wasn't alone. We were never organized, but we did get the call from the trading desks that other guys were torpedoing the tape*." Later he added: "And don't forget, it's fun for these guys to try to break the market. And there's a level of sport in the bigs that can't be denied."

Note that this is the same ex-hedge fund manager that on national television recently took an SEC subpoena in a naked short selling related case, wrote a deletable expletive on it and then wadded it up and threw it on the ground. These actions tell us just how the “Privileged few” see their relationships to the securities laws and the SEC. They are heads and shoulders above being regulated because of money and political clout. They brag about breaking the securities laws and how much fun there is in *“Breaking the market”* of companies with perhaps millions of different investors’ investment dollars at stake and that there’s a *“Level of sport in the bigs (Big leagues) that can’t be denied”.* By the way, if you have employees at the trading desk regularly tipping you off as to these illegal attacks how can you say that you weren’t “Organized”? This commentator went on to describe how the SEC has no clue to what they’re doing. These 2 tirades thrown by this one commentator give us an inside view of the hubris and overall mindset of the “Privileged few”. So what if that cancer cure never makes it to the market.

How can the above scenario be even plausible in this country of ours in this day and age? How can the author of these comments literally brag to tens of millions of people publicly about this clearly illegal activity with no fear of repercussion from the SEC or DOJ? Both these comments and the ripping up of a subpoena on the air tell us that the SEC is looked upon by the "Privileged few" as being a joke that is so weak that it can be taunted in public forums like this with no fear of redress. The SEC needs to ask itself why this is the prevailing mindset of the "Privileged few" and what can they do to turn this around on behalf of the 99% "Non-privileged". What can you do? You can immediately order the buy-in of these delivery failures within a given timeframe which will take the weight of these "Share entitlements" once and for all off of the back of the victimized issuers that have been fortunate enough to have not succumbed yet. This action will also provide the DETERRENT effect to make sure that this never happens again in the U.S. financial system. For those amongst the "Privileged few" at the DTCC that continue to proffer that there is no delivery failure or naked short selling problem then the buy-ins will obviously be a non-event except for the dramatic increase in investor confidence in our markets. Where is this "Volatility" risk that the SEC seems to be so worried about if what the DTCC continues to proffer is factual? The DTCC management should theoretically be anxious to clean what few if any delivery failures there are in the system which should result in greatly enhanced investor confidence levels which would increase Wall Street activities to benefit all DTCC participants. Why the reticence to finally prove that you were not intentionally misleading the investing public?

This demand by the "Privileged few" for secrecy and the ability to operate "In the dark" sure seems to coincide with the location of where these frauds are being perpetrated. Coincidence? The SEC might want to analyze just which of these demands for secrecy are justifiable and which are just being used to cover up criminal activity and then codify the results. A clear definition of "Bona fide" market making activity as well as not so bona fide market making activity might close some loopholes also. For instance, if a market is down 30% and 60-day old delivery failures are still on the books then I might go way out on a limb and suggest that not so bona fide market making activity might be involved and the access to the exemption was fraudulent. The allowing of market makers to "Cure" delivery failures in a premeditated fashion by buying yet more mere "Share entitlements" from a co-conspiring market maker labeling his sales also as "SSE" obviously has to end.

History is trying to tell us something but the message is falling upon deaf ears. In 1934 Congress created the SEC partially to help address the recent short selling crimes that have clearly been shown to be at least partially causative of the The Great Depression wherein large secrecy-obsessed "Dark pools" of money belonging to the "Privileged few" of the time raised havoc in the financial system. What have we learned in the last 73 years? Apparently not much as the current Treasury Secretary, the former head of Goldman Sachs, is advocating for LESS regulation of today's "Dark pools" of money being shepherded by hedge funds. Instead he is advocating for the prime brokers that lend these entities money and are the main beneficiaries of the $10 billion in annual commissions and fees they have to spread around to act as the "Securities cops" in an attempt to decrease systemic risk. His message to the SEC is to "Butt out". Could there be a more obvious conflict of interest than having the prime brokers receiving order flow and loan business from hedge funds to regulate those that are buttering their bread? Wouldn't an opportunistic hedge fund advisor making "2 and 20" naturally gravitate towards throwing business to a prime broker willing to shirk these new regulatory duties that Mr. Paulson recommends? Is this little regulatory "Turf war" between a previously elite member of the "Privileged few" and politically powerful and the commission created by Congress to regulate these markets really that surprising despite its obviously heinous character? I'm not sure which is the bigger face slap this recommendation by the new Treasury Secretary or the verbiage of the financial commentator cited above but they sure reflect the same mindset. The "Privileged few" are not only above the law they want to be the law despite the fact that Congress created the SEC to circumvent any 1929-type catastrophes from ever happening again. Let's hope history doesn't repeat itself because it sure looks like we're heading down that road once again. Human behavior obviously hasn't changed that much!

THE COMMON DENOMINATOR

The one common denominator that fuels all of these illegal activities is the ability of the criminals involved to rely 100% upon the DTCC to shirk their Congressional Mandate to "Promptly settle" all transactions as per Section 17 a of the 1934 Securities Exchange Act and to rely upon the SEC to shirk its duty and ignore its mandate "To provide investor protection and market integrity" which also includes development stage issuers and the investors therein. But is this not the type of behavior to be expected from those having a mindset that all development stage issuers are "Scams" until proven otherwise and these yet to be cash flow positive companies had no right to go public when they did? Imagine that, a development stage issuer not yet qualifying for the listing requirements of the higher exchanges not having positive cash flow right from the get go. They must be a "Scam". Let's allow the "Privileged few" to go pick the pockets of their investors to remind them whose turf they're playing on. That'll teach 'em!

What the DTCC and the SEC need to remember is that timeframe mentioned earlier in the development of ANY corporation, for instance when Phil Knight was selling Nikes out of his trunk, wherein the corporation is fragile and can be easily preyed upon by Wall Street behemoths with a superior "KAV" factor. The best example is in the PIPE financier activity described above. These smaller corporations obviously can't walk into a bank and procure debt financings yet as they are looked upon as being too risky. The result is a bunch of predatory financiers feigning a sincere interest in supporting these corporations while peddling "Death spiral" financings. All these criminals need in order to kill these corporations is a clearance and settlement system willing to hide these delivery failures for inordinate amounts of time as evidenced by the results of recent FOIA analyses as well as by Dr. Boni's research revealing her discovery of massive amounts of intentional or what she labeled "Strategic delivery failures". This allows the readily sellable "Share entitlements" resulting from the delivery failures to inflate the "Supply" of "Shares" variable which is the arithmetic sum of legitimate paper-certificated shares in the system plus not so legitimate “Share entitlements” to interact with an artificially reduced “Demand” factor to determine share prices.

Next is where things get particularly heinous because as the share price predictably tanks from this artificially induced oversupply of readily sellable “Shares” and or “Share facsimiles” the proceeds of the bogus sales actually flow into the wallets of the criminals that sold them **despite the short position never being covered, the trade never legally “Settling” promptly or in any other way nor the shares ever being delivered.** Why? As mentioned earlier the DTCC only mandates that these debts be collateralized on a daily marked-to-market basis. Soon the buyer of these bogus shares decides to cut his losses and sells them and the fact that they never were delivered to his broker/dealer or never even existed for that matter **becomes a moot point**. Notice the critical time element here in which it might take for a frustrated investor to cut his losses and sell the shares whose share price is falling out of bed. What is the SEC doing during this critical time element? They’re “Busy” postponing the amendments to Reg SHO. What is the DTCC doing during this critical time period? They’re “Busy” denying that there is even an issue and even if there was an issue that they’re powerless to do anything about it.

After capitulating and cutting his losses by selling these fake shares the bogus “Share entitlements” are then represented as being “Held long” on a monthly brokerage statement of another unsuspecting victim despite the fact that they never existed in the first place. If you look at this in slow motion you’ll notice that the DTCC cleverly “Disconnected” the “Clearance” of a trade from the much more important “Settlement” of a trade which necessitates the “Good form delivery” of that which was purchased. The “Clearance” of a trade is also referred to as “Trade matching” which merely refers to the 2 parties to the trade agreeing as to which party was the buyer and which the seller, at what price level the transaction occurred at that the trade was to “Settle” on T+3. The usual terms are “DVP” or “Delivery versus payment”. Note that the “Settlement” of a trade is much more important than the “Clearance” of a trade which is just a formality. The product of the “Clearance” of a trade is referred to as “Locked in” trade data or previously “Matched” trade data.

The question remains as to how many more issuers, cancer cures, jobs and investment dollars need to be lost before the SEC either buys in these delivery failures or warns prospective issuers of the absolute number of them in existence for any given issuer? Another question is how much more time will the SEC need to ponder the rescission of the “Grandfather clause” that about 95% of U.S. citizens recently advocated during the prior “Comment period” associated with the amending of Reg SHO? How many more “Capitulations” by frustrated investors trying to cut their losses will occur in this time period?

While the politicians receiving donations from hedge funds in record amounts, along with the prime brokers, the market makers, the clearing firm representatives, the securities industry lobbyists and other members of the Wall Street elite roam the halls of the DTCC and the SEC the lowly U.S. citizens that invest in micro cap securities are invited to “Comment” on proposed regulatory changes. They commented in numbers and near unanimity rarely if ever witnessed by the SEC. What effect did it have? Absolutely zero, but thank you for the invitation to waste our time in commenting.

The clock is ticking and these companies and the investments made therein are dying as we speak. Why? It's because of the weight of all of those bogus "Share entitlements" upon the shoulders of development stage corporations which are artificially increasing the "Supply" of readily sellable "Shares and/or "Share entitlements" in the system while the SEC S-L-O-W-L-Y ponders rescinding the "Grandfather clause". You at the SEC need to realize that these issues are of an EMERGENT nature and that the failure to act swiftly and decisively has collateral damages. The clock is ticking. "TIME" is the killer of these corporations trying to develop in this DTCC sponsored "Shooting gallery". The same kind of "TIME" that you are spending while balancing the demands of 95% of those micro cap investors that you solicited comments from with the needs and desires of the "Privileged few".

"TIME" is what the "Grandfather clause" that you pushed through out of nowhere bought for the "Privileged few" holding and actively hiding these illegally attained naked short positions. The preliminary talks for Reg SHO started in 1999 for crying out loud. What did we finally end up with after all of this "TIME"? We got a regulation that was DESIGNED TO FAIL. Why? How about a "Grandfather clause" that was never discussed? How about instead of a firm and documented "Borrow" being necessitated before a short sale a DTCC participant just needed to "Have reasonable grounds to think that a "Borrow" was available. How about a "Threshold list" that only dealt with delivery failures parked at a "Registered clearing agency" and not those easily shunted from "Registered clearing agencies" into "Ex-clearing" and "Repurchase agreement" locations? Which micro cap companies died in this 8-year period? How many employees lost their jobs? How much money was re-routed from family savings plans to already wealthy Wall Streeters? How many of these stolen dollars were then re-donated to the campaigns of those politicians preaching for no regulation of hedge funds and the allowing of them to continue to manage trillions of dollars and 20 times that in borrowed dollars in the dark no matter what the effect on SYSTEMIC RISK was? How many cancer cures or technological innovations did we miss out on? Did our military men lose out on any new advancements in weaponry or protective devices that should have been in use overseas?

Is there any way that the citizens of this country can get the point across to you at the SEC and your colleagues at the DTCC that the clearance and settlement system in use in the U.S. as it applies to development stage issuers EVEN AFTER Reg SHO is badly broken and extremely corrupt. Everybody knows about it and investor confidence in this sector is dropping precipitously. Allowing "Dark pools" containing enormous amounts of money to borrow yet more money to increase "Leverage" to take part in the most ultra high risk activities involving complex derivatives and the naked short selling of penny stocks is unconscionable. Who do you think is going to bail them out when they crash and burn? Suggesting that prime brokers regulate the activities of the hedge funds that feed them is preposterous. The result of all of this fraudulent activity is the absolute obsession with preventing "Short squeezes" shown by the DTCC and the SEC.

Perhaps if you regulators could look upon these practices on Wall Street as just outright theft and clearly a form of organized crime then maybe you could focus your attention better. I'll grant you that it is indeed a very clever variety of theft as well as a clever variety of organized crime but it's still blatant theft. You just can't sell nonexistent entities to investors, take their money, collateralize the debt on a marked-to-market basis daily and then refuse to deliver that which you sold for inordinate amounts of time to allow the resultant "Share entitlements" to dilute an issuer's share structure to death. What is particularly repugnant is watching Wall Street broker/dealers refuse to deliver paper-certificated shares **even after they are demanded for delivery**. This reveals that what these investors bought is not only not a "Share" with voting rights attached but wasn't even a legal "Share entitlement" as is allowed to be created for SHORT periods of time and in minute amounts by UCC Article 8 as well as Addendum C to the rules and regulations of the DTCC and NSCC. You can only find out if a "Share entitlement" is legitimate or not by trying to exercise the "Entitlement" by demanding the delivery of the underlying share. That's why we need firm laws addressing how much time a DTCC participant has to deliver paper-certificated shares upon the exercising of a "Share entitlement" by an investor demanding delivery. In other words "Prove it" to me that I bought legitimate "Share entitlements" and not just "Air" with my hard-earned money.

The DTCC cleverly gives a "Share entitlement" holder the right to sell this "Entity". They are indeed "Fungible" in this regard and that's why they're so damaging from a dilutional point of view. The problem is that a "Share" is a "Package of rights" numbering about a dozen just one of which is the right to sell it. The other 11 rights can't be faked like the right to sell can be.

There are dozens of companies whose shareholders are currently demanding the delivery of their paper-certificated shares that are being stonewalled by the DTCC and the brokerage community that absolutely refuse to buy-in the delivery failures involved and finally "Deliver" these long overdue shares and allow the associated trades to finally "Settle". People that see themselves as being above the law aren't going to voluntarily do these buy-ins. It's going to take a no-nonsense regulator to mandate the delivery of these missing shares so that investor confidence and market integrity can be reinstated into our clearance and settlement system. In cases wherein investors are intentionally denied the delivery of their demanded-for paper certificates the investors involved that paid full retail price for paper-certificated shares clearly bought nothing but "Air" with their post-tax dollars. The financial system took a risk and empowered these Wall Street "Professionals" to create and sell mere "Share entitlements" that were to be small in number and of ultra short term life spans. Certain criminals amongst the "Privileged few" took this empowerment and used it as leverage to steal the investment dollars of those it owed a fiduciary duty of care. This little experiment of Congress obviously didn't work out in regards to certain DTCC participants as well as DTCC management.

Note that UCC Article 8 does indeed allow for the creation and sale of "Share entitlements" which is consistent with bona fide market makers being allowed to sell nonexistent shares into surges of buying. However, UCC Article 8 also specifically dictates how these mere “Share entitlements” are to be treated in a special manner due to their incredibly damaging nature. This part of UCC Article 8 is universally ignored by DTCC policies. As mentioned earlier the DTCC only wanted to selfishly “Cherry pick” the ability to create “Share entitlements” from UCC 8 and then they decided to ignore the rest of it just like not so bona fide market makers ignore the fact that bona fide market makers “Promptly” buy back “Share entitlements” that they had previously sold, **especially if the share price drops**. This is where a quick analysis of the trading data by a no nonsense regulator will clearly reveal the identity of those illegally accessing this exemption from the “Borrow”.

Based upon the three sad realities that firstly fraudsters on Wall Street can actually get their hands on the investor’s money without ever delivering that which they sold and secondly that trillions of dollars in the secrecy-obsessed hedge fund community are allowed to operate as “Dark pools” and thirdly that these hedge funds spread around $10 billion per year in commissions and fees to those being the most “Accommodative” to the needs of the hedge fund adviser then what can we expect as far as the behavior of the various associated Wall Street participants? The $10 billion is obviously going to migrate to the most corrupt market makers willing to illegally rent out their bona fide market making “Hat” or access to their in-house proprietary accounts in exchange for order flow. If the MM gets busted the hedge fund’s not on the hook. This money will also migrate to the most corrupt prime brokers willing to break the laws regarding lending activity, “Locates” of borrowable shares, etc. It will also migrate to the most corrupt clearing firms and custodian banks willing to break the laws regarding the custody of shares, clearing arrangements, etc.

The result is a financial system based upon the “Survival of the corruptest”. The main “Engine” driving the corruption is the $10 billion annually up for grabs from the hedge funds. Yet other hedge fund dollars will migrate to the coffers of the politicians most willing to advocate for no hedge fund regulation ostensibly because the ultra wealthy customers of hedge funds are already “Financially sophisticated”.   These politicians and their surrounding “Privileged few” and politically powerful don’t want to talk about the 10,000 pound elephant in the room having to do with these hedge funds and the politicians they contribute dollars to allowing the attacking of defenseless corporations at a point in their life cycle where they are looked upon as an easy prey. Hedge fund investment money will naturally flow to the hedge fund advisors with the strongest connections to these well-established chains of corruption because they can siphon off the greatest amount of investors’ dollars which in turn rewards the hedge fund investors and their advisors. Again we see the “Survival of the corruptest”. Ethical hedge fund managers, market makers, clearing firms, etc. can’t compete with this. They have been and will be “Naturally selected” out of existence.

Even more hedge fund dollars may head in the direction of certain groups of plaintiffs attorneys willing to file frivolous lawsuits against the management teams of issuers that just won’t go bankrupt on cue. The mere announcement of these bogus lawsuits used as a “WEAPON” have predictably caused the share price of the victimized corporations to drop precipitously thus allowing the perpetrators of these naked short selling frauds to go for the Jugular and bankrupt the company. As the share price tanks, of course, the investor's money flows into the wallets of those that sold but never delivered nonexistent shares due to the diminishing collateralization requirements. The same phenomenon occurs when the SEC is encouraged by members of the "Privileged few" into filing a "Wells notice" against a management team member of a victimized issuer or perhaps a 12-J deregistration procedure against the issuer. The share price of that issuer is going to tank **INDEPENDENT** of the guilt or innocence of the management team member or issuer. What better way to get rid of the delivery failures of a pesky issuer that refuses to go bankrupt on cue? This shows how incredibly powerful the SEC can be while knowingly or unknowingly being "Played" by the "Privileged few". What the 99% comprising the "Non-privileged few" need to witness is how incredibly powerful the SEC can be while taking on the "Privileged few" when they break the securities laws that are to be enforced by the SEC.

Have you ever wondered why hedge funds don't get the low commission rates that might be fitting for providing that much order flow? These risks of a criminal nature taken by the "Corruptest of the corrupt" need to be compensated for. So what are we left with? We're left with a CONFLICT OF INTEREST riddled "Industry within an industry" all participating to various degrees in attacking the easily preyed upon development stage issuers that happen due to no fault of their own to be caught in a certain stage of corporate development that relegates them and the investors therein to becoming no more than ducks in a shooting gallery. What's the difference between this and flat out organized crime? Is this the most accepted yet malignant and profitable form of organized crime on our planet today?

Along with this "Corruptest of the corrupt" of the DTCC participants and hedge funds being allowed to thrive a similarly heinous phenomenon occurs to the corporations under attack. Oddly enough the ability of the "Cream of the crop" of these victimized issuers that attract significant amounts of buy orders from interested investors works against them as these buy orders need to be naked short sold into at all costs in order to keep the collateralization requirements of astronomically large naked short positions in check. The result is the ACCELERATED pile up of large numbers of readily sellable but mere "Share entitlements" that artificially inflate the "Supply" of readily sellable shares and/or "Share entitlements" that reacts with the diminished "Demand" variable to determine an artificially manipulated lower share price. A question: Just how perverse is a financial system that rewards corruption on the part of a privileged perhaps 1% and selectively punishes the highest quality entrepreneurial efforts that the other 99% seek to invest in?

In reality buy orders for the shares of quality development stage issuers actually end up representing a net **DOUBLE** negative for those issuers and the previous investors therein. Why a double negative? Because firstly the share price gets slammed from the piling up of readily sellable but dilutive "Share entitlements" on the "Corporate failure" tray and secondly since these issuers are not cash flow positive yet they have to continuously raise money by selling legitimate shares at steep discounts to the artificially depressed share price levels. There's a novel concept; the best and the brightest of the smaller corporations are selectively driven out of existence! Note that cash flow positive issuers at least might not have to be going to the market constantly to raise funds. That's why they're not nearly as much fun to pick on. Just how perverse is a clearance and settlement system wherein buy orders for issuers that stand out as being the "Best in breed" become a net double negative while the best young corporations are selectively persecuted as the most corrupt of the DTCC participants selectively thrive? Can I go way out on a limb and suggest that it is time to rid the system of these delivery failures while we still have a financial system worth fixing?

I found a recent comment by one of the SEC Commissioners to be very revealing. The comment made was to the effect that those critical of Reg SHO and suggesting that certain amendments like removing the "Grandfather clause" should be made were merely "Whining" because Reg SHO didn't result in massive numbers of short squeezes. Here again we see the "Mindset" of usually the upper echelon at the SEC. As mentioned earlier, in a financial system riddled with conflicts of interest the one NATURAL deterrent to naked short selling abuses by the "Privileged 1%" within markets is **THE FEAR OF SHORT SQUEEZES.** However, the SEC's and especially the DTCC's policies and actions have surgically removed this one NATURAL deterrent to these abuses. It is one thing to foster and to allow the creation of a system that rewards corruption but it is a much more intent revealing action that witnesses the designers and congressionally appointed regulators of the system as well as the SROs to go well out of their way to REMOVE the one natural deterrent to these crimes. This is very troublesome to the U.S. investment community. It's bad enough for these regulators and SROs to not do their jobs and fall asleep at the wheel but please don't INTENTIONALLY REMOVE THE NATURAL DETERRENTS TO THIS MISBEHAVIOR.

So what's the new project of the DTCC and SEC now that this cat is out of the bag? It's the new movement to remove ALL certificated shares from the system ostensibly to "Enhance efficiencies" even more yet. If there are no paper certificates in the system then there would be no way to tell the difference between genuine and bogus "Share entitlements". The result would be to lose the "Yardstick" OR "Metric" by which we can measure the extent of past and present naked short selling frauds. Is this the Wall Street version of burying all of the evidence in the desert while ostensibly searching for "Enhanced efficiencies"?

You at the SEC need to realize how much the American citizens are depending on you to do your job in regards to the delivery failures stacking up in these younger corporations. The SRO system of regulation never had a chance to succeed. There's just too much investor money in play and too many conflicts of interest out there. That's why the role of a no nonsense SEC is so critical and why investors are currently fuming while losing their investment dollars to the "Privileged few" on Wall Street that are busy dividing up record profits as bonuses amongst themselves at the end of the year. Where do you think these record earnings from "In-house proprietary trading accounts" are coming from? Where do you think these record earnings in companies that charge a $7 per trade commission are coming from? A fair percentage of these record earnings are coming from predatory trading strategies and associated corrupt lending activities. The $7 commission fee gets the naive investors in the door and the ability of the retail brokers clearing firm to rent out these shares in many different directions simultaneously to the mortal enemies of the invested in corporation in exchange for charging the retail broker ridiculously cheap clearing fees.

When a MM labels a trade as “SSE” or “Short sales exempt” it means that the market maker involved was simply and dutifully “Injecting liquidity” as a truly bona fide market maker does when markets are characterized by having an imbalance of buy orders dominating sell orders. The problem is that if the share price were to drop from an imbalance involving sell orders dominating over buy orders then that same liquidity is supposed to be “Re-injected” in the form of buy orders made to cover the original naked short position as well as to maintain “Liquidity” and provide “Pricing efficiency”. This is what truly bona fide market makers do. They inject BOTH buy and sell-side liquidity evenly and provide “Pricing efficiency”.

If there wasn’t truly bona fide market making involved or intended on **BOTH** the sell and the buy side during these imbalances then that exemption was never LEGALLY to be accessed. Why the reticence to buy back that which you already sold? It’s human nature because selling shares in a clearance and settlement system as perverse as ours is even if they’re nonexistent shares that you never intend on delivering MAKES MONEY whereas buying shares COSTS MONEY. It’s only natural to not want to deploy the funds stolen from unsuspecting investors ESPECIALLY when the repurchasing of the missing shares has a tendency to drive the share price upwards which increases the collateralization requirements for the naked short position yet to be covered. That pile of stolen money actually gets dissipated in 2 different directions should the fraudsters cover these naked short positions and that’s part of the reason why they seldom cover. Nobody’s forcing them to “Promptly deliver” that which they sold. The SRO in charge of making sure that “Prompt delivery” leading to “Prompt settlement” occurs in our clearance and settlement system, the DTCC, absolutely refuses to fulfill its congressional mandate to make sure that all trades “Promptly settle”.

I think that you at the SEC must realize that a market maker that labels a sale “Short sale exempt” or “SSE” is making a promise to the investment community that he is indeed acting in a bona fide market making capacity. A fiduciary duty of care is being created by this DTCC participant, acting as a “Participant” of an SRO-the DTCC, when he labels a short sale “SSE”. He is promising to cover that sell with a buy in a timely manner i.e. “Promptly” otherwise he would have been responsible for the DTCC’s failure to “Promptly settle” this trade. These 11,000 DTCC participants ARE collectively the DTCC which is an SRO with this Congressional Mandate. What investors have noticed over the years is that DTCC management seems to be spending its time running interference for its “Participants”/ “Stakeholders” and actively denying the existence of and covering up the misbehavior of its individual participants.

Again the “TIME” factor for covering the “Theoretically” legal naked short sale is critical due to the damaging nature of the “Share entitlements” that were created in the name of this theoretical “Liquidity injection”. From a market integrity point of view when the “Bona fide” market maker repurchases these shares perhaps he should be forced by law to buy them in utilizing either a “Guaranteed delivery” specification or at least not being able to cover by buying shares being sold on an “SSE” basis by a different market maker. Otherwise co-conspiring market makers can simply sell a market maker in trouble on a naked short position more bogus shares that they also label “Short sale exempt” to temporarily take him off the hook which illegally and intentionally postpones the “Prompt settlement” of that trade. The result is what we see today as a “Daisy chain” of delivery failures being passed from market maker to co-conspiring market makers like a hot potato even though no genuine registered shares are ever involved. Typically the market maker being taken off the hook promises to buy back this “Hot potato” of delivery failures in a short amount of time or to help his co-conspirator on a different “Hot potato” that he is having difficulty with. The marked-to-market value of these “Hot potato” naked short positions ends up being held off to the side and collateralized on a daily basis so that neither MM has to deliver that which he sold. This is referred to as “Pairing off” and is often done in an Ex-clearing or “Share repurchase agreement” format. As far as delivery and “Settlement” of the involved trades the DTCC and SEC can both be counted on to claim to be “Powerless” to deal with these pseudo-“Contractual” relationships. As Freddie Prinze used to say, “No my job”.

Forcing a theoretical bona fide market maker to cover his “SSE” labeled sales in a “Guaranteed delivery” fashion would nip these illegal “Crossing” and “Parking” schemes in the bud. It would make an unethical market maker think twice before perpetrating this fraud. Would the market making community howl at such a solution? Of course they would. They would proffer that they couldn’t afford to make markets and that liquidity would suffer greatly and the spreads would widen. The question then needs to be asked is what good is this “Injection of liquidity” into excess numbers of buy orders if it doesn’t result in a commensurate “Injection of liquidity” when sell orders dominate a market and the share prices are tanking? In a system so perverse that the investor’s money is actually allowed to flow into the wallet of those that naked short sale shares, fail to ever deliver them but only have to collateralize the ever-decreasing debt in a marked-to-market fashion then why would a market maker **EVER** close these naked short positions?   The research of Geczy, Evans, Musto and Reed teaches us that they basically don’t EVER cover as only one-eighth of 1% of even Rule 11830 “Mandated” buy-ins amongst DTCC participants are ever executed. That’s 1 out of 800! The reality in our currently corrupted clearance and settlement system is that they’d be insane to cover and lose all of that stolen money in 2 different directions at the same time. If you thought you’d ever have to cover you wouldn’t have done it in the first place as it can’t get much riskier than to naked short sell a penny stock of an issuer that might just “Have the goods” and not be a “Scam” after all. The astronomically high risks of an abusive DTCC participant naked short selling penny stocks have to be mitigated by the DTCC management refusing to follow their congressional mandate to “Promptly settle” all trades otherwise abusive DTCC participants would be dropping like flies.

We have all learned that in our damaged system selling nonexistent shares makes money and repurchasing them costs money. The argument of “Injecting liquidity” is not a valid argument when it is only one-sided liquidity that is involved. You know, the type of liquidity that results in the investor's money flowing into the wallet of the provider of this liquidity. In these days of computerized matching of buyers and sellers what is the role of the market maker only providing one-sided liquidity? He becomes nothing more than a no longer needed middleman placed on some type of "Honor system" blessed with a tremendous visibility advantage over those to whom he owes a duty of care after labeling a trade "SSE". He basically is assessing a "Tax" on the system. Why not migrate towards a fully computerized system similar to an ECN where a nonbiased and nongreedy computer matches up buyers and sellers? This evolution has been trying to occur but it can't UNTIL the previously established naked short positions/delivery failures are cleaned up. This EVOLUTION to a truly efficient system has been intentionally put on hold by necessity. Corrupt market makers have to stall this eventual move to a fully computerized system. It might be very expensive for the "Corruptest of the corrupt" to cover these preestablished naked short positions **on a level playing field** provided by a computer. This leaves us in the current stalemate where the goal of the fraudsters is to finish off as many corporations as possible where the naked short selling "Accidentally" got out of control and the targeted corporation "Accidentally" really did have the goods and refused to go bankrupt on cue. It's either this or to continue to stall the inevitable by lobbying for "Grandfather clauses" and yet more rounds of "Comment periods". As far as coming up with any sympathy for the "Corruptest of the corrupt" keep in mind that the hundreds or thousands of U.S. Corporations that they have ALREADY successfully bankrupted over the decades are gone for good and those stolen dollars can now be found in houses in The Hamptons, fancy cars and yachts.

Just what would happen if the SEC were to reverse this perverse form of natural selection 180-degrees and manipulative market makers were selectively "Evolved" out of the system? Obviously those who illegally exchanged order flow for the exemption from borrowing before short selling accorded to bona fide market makers only wouldn't be very happy if this giant loophole were closed. Unethical market makers might be forced to cover their preexisting naked short positions on a level playing field provided by a computer. Prime brokers, hedge funds and hedge fund advisers that had counted on illegal access to a theoretically bona fide market maker's exemption from borrowing before short selling obviously wouldn't be happy and might have to learn how to make their "2 and 20" (2% of the money under their care and 20% of profits realized) on a level playing field. Certain politicians counting on the recent surge in hedge fund donations to political campaigns might be taken aback. Development stage issuers, the investors therein, the employees there of, the U.S. citizens shouldering the SYSTEMIC RISK issues and those citizens needing the cancer cures or technological innovations of these issuers would, however, be ecstatic.

Have you ever wondered why an ultra-wealthy individual that invests in hedge funds would have to pay usurious fees like "2 and 20"? Don't the rich guys usually have the ability to invest with lower fees being charged than "Joe six-pack" pays? That hedge fund would really have to have a "Leg up" on the ordinary investors to justify those kinds of fees wouldn't he? Would having $10 billion per year in cash to spread around to those willing to break the most rules on your behalf help create a "Leg up" justifying such steep fees for the ultra-wealthy to pay?

Recall from Dr. Boni's research the 56-day average age of a delivery failure at the DTCC. Keep in mind that this is the average age of only 1 cycle of delivery failures that are constantly being "Recycled". If this delivery failure was "Cured" by the original market maker buying yet more fake shares from a different market maker that labeled his sell order also as "SSE" then the true age of the delivery failure for that particular parcel of shares, if they were identifiable, would be the arithmetic sum of all of the individual ages of the various "Cycles" of delivery failures. Instead of 56 days we could be talking about 556 days. Again we see the critical role of the "TIME" element. There must be some risk and accountability involved in labeling a sell order as "SSE" otherwise abuse in a totally perverted system like ours is inevitable and investors would be relegated to be buying nothing more than self-replenishing IOUs that never have to be made good upon often due to the untimely death of the preyed-upon corporation.

It would be extremely timely for the SEC to once and for all prove that they're not just a creation by the "Privileged few" and the "Politically powerful" on Wall Street of a mere puppet commissioned to provide the FACADE that these markets are indeed regulated and that the water is safe because all of us standing on the beach and missing a limb or two can recognize the dorsal fins sticking out of the water. Before the door was rapidly shut recently in regards to the Aguirre and Mack case I think that you at the SEC will admit that the American public got a pretty good glimpse of the ties between certain SEC administrators and the "Privileged few" and "Politically powerful". This is independent of the guilt or innocence of anybody involved in that particular case. As you know Congress was not very enamored with what they found during their investigation of the issue. The crime involving the intentional luring in, on behalf of the "Privileged few" by whom you might be intimidated by or in bed with, of investment dollars from the less sophisticated 99% of U.S. citizens by proffering that "The water is fine, jump on in" only to have that money stolen by the more sophisticated 1% in exchange for perhaps immense employment upgrades post-retirement from the SEC or whatever other reasons are out there for "Selling out" U.S. citizens is unforgivable.

I see some parallels between how a corrupt hedge fund and the SEC operate and it has to do with the lack of financial risk being incurred by the parties breaking the law or refusing to enforce the law. A 30-year old hedge fund manager without his own money at risk might as well swing for the fences while operating in the dark with immense leverage provided by borrowed money by placing ultra-high risk bets. He has a shot at making 20% of what might turn out to be enormous profits. If he strikes out then so what? He moves on and starts up a slightly smaller fund. Did we not just see that in the Amaranth fiasco? The same thing applies to the SEC. If millions of victimized investors file suit against the SEC for not warning them of the existence of astronomic levels of these "Share entitlements" that have basically preordained their invested in company to crash and burn then so what? All taxpayers will pick up the tab for not only the litigation expenses but also any awards granted. Where is the incentive to finally put your foot down and put an end to this chicanery? I'm not a big believer in the theory that this mess is so big that our entire financial system might implode if these positions are unwound. The DTCC proffers that there would be essentially zero effect because there is no issue in the first place. I do believe that instead of the "Corruptest of the corrupt" thriving the result will be the "Corruptest of the corrupt" will head towards extinction which I maintain is a more desirable form of natural selection for the 99% of us not making up the "Privileged few".

Another responsibility that you at the SEC have that may not have dawned upon you is in regards to national security issues. This goes a lot deeper than preventing money laundering and filing "SARS" reports (Reports outlining suspicious trading activity). You must know by now that Osama Bin Laden has commented many times that he knows the U.S. financial system "Like the back of his hand". Can you at the SEC not appreciate the poetic justice involved in having their agents or sympathizers run up massive naked short positions through the regular channels that the "Privileged few" have set up, execute some type of attack that brings Wall Street once again to its knees and thereby siphon off the savings of those "Infidels" in the United States. All of this being possible by merely "Piggybacking" onto the infrastructure set up by the "Privileged few" to satiate the greed of the "Privileged few". Do the Homeland Security folks have a working knowledge of how naked short selling and delivery failure related frauds can be used as a "Weapon" by those wishing harm upon us? The abusive DTCC participants do not have exclusivity on the access to the meticulous infrastructure they have set up. Is this behavior of the abusive DTCC participants treasonous?

THE COMING OUT PARTY FOR THE "PRIVILEGED FEW"

I feel that the moment in time when the "Privileged few" actually let the world know of their "Sovereign" status was during the "Comment period" for the initial Reg SHO. The official "Comment" submitted by the DTCC reminded the SEC of Rule 19 C of the '34 Exchange Act. In the "Comment letter" the DTCC puffed their chest out and proffered that since they were a "Registered Clearing Agency" ("Sacred cow") as per Rule 19 C 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. Think of that as a "Shot across the bow" aimed at those "Knuckleheads" at 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 does **NOT** force the DTCC 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". Note the obvious loophole available in getting those delivery failures out of the CNS system and into the form of Ex-Clearing "Arrangements" or "Repurchase agreements" ("Repos").

The DTCC comment suggests that it is the job of the individual participants of the DTCC and not the DTCC proper "**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". That's an interesting approach to adapt especially when it's the DTCC proper that has the congressional mandate to "Promptly settle" all trades, acts as an SRO which the SEC refers to as the "First line of defense against market abuses" and which is to monitor the "Business conduct" of its participants, acts as the "Surrogate legal owner, "Custodian", "Depository", etc. When an individual abusive DTCC participant gets into trouble it will don its DTCC participant "Hat" and seek refuge under the DTCC umbrella of immunity. When the new Federal Law of the land states that these open positions are to be covered by those that authored them the DTCC steps back and says "What participants?" these guys are on their own. What the DTCC management forgets is that the Section 17 A congressional mandate to "Promptly settle" all trades was bestowed upon the DTC proper and not its individual participants. So which Federal Law do you care to break?

One thing interesting about the "Comment period" process is that the securities fraudsters have to go public and make some pretty ludicrous arguments in order to keep the "Non-privileged 99%" from winning the argument in a unanimous fashion which wouldn't leave certain members of the SEC much elbow room to accommodate the needs of the "Privileged few" in the investors' eyes anyways.

In essence Reg SHO never had a chance with this attitude being copped by the "Privileged few" even after publicly promising to cooperate with the new law of the land. The reality is that the SEC has "Plenary authority" over all naked short selling matters and the Congressional Mandate to enforce the precepts of the '34 Act that mandates that the DTCC "Promptly settle" all trades. The rules and regulations of the NSCC and DTC are strictly forbidden to have any contents that are in contravention of any of the tenets of the '34 Act yet there remain dozens of them. Whether or not the SEC can add to or delete from the "Rulebook" of the NSCC and DTCC is a moot point. By the way what ever did happen to that "Cooperative spirit" that the "Privileged few" at the DTCC promised to show towards the final contents of Reg SHO? One of the tasks of the SEC is to obviously review the rules and regulations of the NSCC and DTCC and remove any that are in direct contravention of the 7 main securities "Acts". Although the SEC signed off on all new DTCC rules and regulations as they were introduced through the years they failed to detect the pattern that was forming and how all of these new "Efficiency" measures being introduced were built upon the presumption that the DTCC management would honor their original congressional mandate to "Promptly settle" all trades.

Section 17 A of the '34 Act represents the "Birth certificate" of the DTC. DTCC management seems to have problem with 17 A (b) 3 (F) which deals with the "Prompt settlement" of all trades as well as the protection of investors as well as the public interest which might translate into matters concerning immense levels of SYSTEMIC RISK:

> The rules of the clearing agency are designed to promote the **prompt and accurate clearance and settlement** of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, **and, in general, to protect investors and the public interest;** and are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this section or the administration of the clearing agency.

WHAT IS A BONA FIDE MARKET MAKER?

Some traits of bona fide MMs:

1) They inject liquidity into market imbalances by short selling admittedly counterfeit "Share entitlements" into markets characterized by buy orders dwarfing sell orders WITH THE SAME ZEAL that they inject liquidity into market imbalances characterized by sell orders dwarfing buy orders by repurchasing these previously sold securities.
2) They are content with living off of the "Spread" between the bid and offer.
3) They have a vastly superior Knowledge of, Access to and Visibility of the trading markets. They can literally see buy and sell orders "Queuing" up in front of them. They may know in advance which way markets are about to go but they do not "Front run" any orders in their possession with their own orders.
4) They have a duty to not leverage this superior "KAV" factor over those to whom they owe a fiduciary duty of care whether directly or indirectly. They were "Entrusted" with this superior view of the markets.
5) They close any open naked short positions within a reasonable timeframe because of the "Prompt settlement" laws.
6) When buy orders dwarf sell orders they sell a MODERATE amount of shares into the buy orders and then they let the market naturally equilibrate at higher levels should the buy orders persist. They do not put a "Blanket" of selling onto markets to keep share prices from going up because of untoward effects on their collateralization requirements.
7) They don't dictate share price levels but instead they keep trading orderly and buffer large upwards or DOWNWARDS swings in share prices. They do not interfere with the "Trend" of a stock.

8) No matter how much "Order flow", commission flow or fee flow is promised to them they do not allow hedge funds or other pools of capital access to their exemption from borrowing before short selling or to access to their in house proprietary accounts.
9) They keep relatively neutral on their positions so that they don't particularly care if the share price of an issuer goes up or down. They thrive on large volumes of trading whether they be buy or sell orders.
10) They refuse to communicate with other MMs other than while arranging buys and sales. They don't collude with other MMs to drive a share price up or down and act independently of other MMs. They don't call hedge fund advisors and tell them that the "Torpedoing" process of a stock has commenced.
11) They simultaneously post a bid and an offer for a given security of at least the minimum size indicated by law.
12) They don't make a market in an OTC issuer unless they have a Form 211 for the issuer in their files or some other MM does in his files and the issue is "Piggyback qualified".
13) They don't sign up as MMs merely to gain access to the exemption from borrowing before short selling for themselves or others that put them up to it. They sign up to make money off of the spread between the bid and the ask and they are content with that.

A RECENT QUERY

While writing this last paragraph I got an E-Mail from a very sharp securities lawyer that spent many years with the SEC and is now in private practice. He has developed a very strong desire to learn all there is to know about naked short selling. His question was basically Doc, how can naked short sellers going after penny stocks and limited to relatively small financial gains even if they do bankrupt their target not only survive but also thrive when the risk is enormous because the potential losses are unlimited?

I had to explain to him that the "Relatively small financial gains" concept is way off base as there is NO LIMIT as to **how many** fake shares can be sold while theoretically behaving as a "Bona fide" market maker. Sure the maximum amount of gain per naked short sale is an often tax free 100% if bankruptcy is attained but the number of short sales is unlimited. Likewise I explained to him that **there is no** perceivable risk involved because of how tilted the playing field can become against the investors in these issuers. Even if the naked short seller accidentally picked on a company with tremendous assets and he "Accidentally" ran up a gigantic naked short position in his effort to kill the company but failed then he can always don his "Bona fide" market making hat and sell yet more fake shares into each buy order that comes along. This is referred to as "Capping" a market or applying a "Blanket" of selling to a market. The corrupt MM knows that EVENTUALLY the buying surge is going to be over with. If the fraudulent trading starts to look a little obvious then he can always "Recruit" some selling from co-conspiring members of the "Privileged few" in exchange for helping him out on killing an issuer that they're having trouble forcing into bankruptcy. "Bear raids" are very much a "Team" effort. The concept of the "Critical mass" of the "Privileged few" also can come into play as far as being able to afford astronomic collateralization requirements.

Part of the “Self-fulfilling prophecy” aspect of naked short selling is that the proceeds from previous thefts is there to collateralize existing naked short positions should a targeted prey not go bankrupt on cue.

Remember that large waves of naked short selling result in large waves of new “Share entitlements” inflating the number of readily sellable shares and/or “Share entitlements” that form the “Supply” variable in the supply and demand interactions that determine share prices. Buying surges are not necessarily the enemy of naked short sellers although they might cause some stressful moments. Here’s where the element of “TIME” kicks in and all the fraudsters need to do is to weather any “Storm” of buying because these buy orders getting naked short sold into will indeed be shunted from the “Corporate success” tray where they existed as share price enhancing buy orders to the “Corporate failure” tray where they are morphed into share price depressing “Share entitlements”. Thus surges of buying actually are welcomed as they provide that much more investor money to steal and their long term result is to augment the chance of bankrupting the targeted corporation before management can figure out what’s going on. Recall that management has been lulled into the mindset that these markets are highly regulated and transparent.

So what are we left with; no demonstrable risk and unlimited reward. If there were a balance between risk and reward then a lot of the “Privileged few” would have gone bankrupt by now after partaking in what should be ultra high risk behavior. Recall the 341 of 341 issuers pummeled by the PIPE financiers. Studying statistics like that usually ends up revealing some underlying aberration at play. The attorney’s question was actually pretty good because at face value what activity on Wall Street could be of a more ultra-high risk nature then the naked short selling of a penny stock when a certain percentage of these issuers really do “Have the goods” and one incorrect “Scam” diagnosis could be fatal to the naked short sellers? But not to worry as the above described phenomenon kicks in then the best of the best development stage issuers can be easily taken down because investors are eventually going to become frustrated by the apparent stalemate and many will take their losses and run. When this situation occurs it is very comforting for these securities fraudsters to know that they have an SEC and a DTCC there with the mindset that all development stage issuers are “Scams” by definition and will be treated as such. That’s how you get statistics like 341 of 341 in the win column.

THE FINE LINE BETWEEN “THE INJECTION OF LIQUIDITY INTO THINLY TRADED SECURITIES” AND ORGANIZED CRIME

The three main benefits of legal short selling which involve a firm “Borrow” before the sale of the securities are the injection of liquidity, the provision of “Pricing efficiency” and the creation of “Hedging” opportunities. These are good things as all votes related to the prognosis for a publicly traded corporation both negative and positive need to be tallied to bring about “Pricing efficiency”.

As mentioned, the one “Governor” in place in legal short selling is the limitation of the amount of shares that can be borrowed as there are a finite number of shares that are legally “Borrowable”. These are usually located either in “Margin accounts” or provided by institutional investors. Note however that the development stage issuers usually targeted have neither institutional shareholders nor many shares in margin accounts because these shares are for the most part non-marginable as they don’t qualify under Reg T. This is why a market maker’s illegally accessing the exemption from borrowing before making short sales is the preferred route to commit these crimes against smaller issuers.

Note that these DTCC participating market makers acting as members of an SRO with a congressional mandate are operating pretty much on the “Honor system” when the DTCC management proffers to be “Powerless” to monitor their “Business conduct” related to delivery failures. The fine line between providing the beneficial effects of short selling, whether naked or regular, and organized crime is clearly crossed when the “Borrow” is circumvented by inappropriately or illegally accessing the bona fide market maker exemption or when the delivery of shares leading to the “Settlement” of the trade is intentionally postponed and the resultant and incredibly damaging “Share entitlements” are allowed to do their damage over time. Abusive naked short selling is clearly a form of organized crime that predictably and systematically shunts the funds of unknowing investors with no visibility of the playing field toward those with this superior “KAV” factor i.e. the “Privileged” few. That’s why the remaining 99% of Americans, “The little guys” without this **K**nowledge of, **A**ccess to or **V**isibility of our clearance and settlement system need a hard-nosed SEC to act as their “Advocate” to help level out this extremely tilted playing field.

THE SEC’S CRITICAL ROLE FROM A MACRO VIEW

I think one way for the SEC to realize just how critical their overall role is might be revealed through their studying the disposition of the lawsuits being filed against the DTCC, PIPE financiers, hedge funds and various DTCC participants that are alleged to have committed some of these atrocities. The lack of the ability for victimized issuers and investors to take on these billionaire behemoths in a court of law without spending their way into bankruptcy might stir up the notion within the SEC of how critical it is to **PREVENT** these abuses because attaining justice after these abuses occur is inherently difficult within our legal system especially after the 1995 introduction of the PSLRA laws. This reality is partially responsible for the current furor against the SEC felt by the victims of these abuses. The mindset of the victims has become that if the securities cops would have been diligently walking the beat in the first place then these robberies wouldn’t have occurred. A lot of victims don’t realize until after the fact that the SEC is not a court of equity responsible for making victims whole. This always seems to lead to the question regarding if the SEC refuses to diligently walk the naked short selling “Beat” and they’re of no utility after the robbery then why the heck did Congress grant them “Plenary authority” over short selling matters so that we didn’t risk a recurrence of the 1929 Great Depression.

THE CONSTANT QUEST FOR "ENHANCED EFFICIENCIES" RESULTING IN OPPORTUNITIES FOR YET MORE ABUSE AND A COVER UP MECHANISM FOR PREVIOUS ABUSES

For every movement forwards ostensibly towards a more "EFFICIENT" clearance and settlement system there seems to be a commensurate movement in the acceleration of investor abuses by certain DTCC participants as well as the provision of a means to cover up prior abuses. Unfortunately the "Law of unintended consequences" was clearly at play in these never ending quests for a more "Efficient" system.

Congress was right to "Immobilize" paper-certificated shares in a central depository run by the DTC. Their mandate to "Dematerialize" paper-certificated shares INTO AN EQUAL AMOUNT of shares held in an electronic book entry was also well thought out except the part involving the presumption that the keepers of the system wouldn't capitalize on the incredibly easy means now available to take naked short positions in target issuers and then introduce extremely easy to counterfeit bogus electronic entries into their share structures to bring about their demise.

Having clearing firms act as the legal "Owner" of shares held by their clients as well as those of their "Introducing" brokers made sense in an effort to minimize the creation of deed-like instruments every time a parcel of shares was bought and sold. Who would have thought that these same clearing firms would sell these shares that they held as the "Surrogate" owner of into the public markets in an effort to drive down share prices and lock in the profits between the levels they sold at and the levels their clients finally took their loss at? Who would have thought that these "Surrogate" owners would make billions of dollars in rental fees by renting their client's shares to hedge funds and others intent on bankrupting the invested in company?

The "Stock Borrow Program" of the DTCC seemed like a good way to help trades to clear and settle more efficiently at first glance anyways. Who would have thought that DTCC participants would be put on the "Honor system" and illegally place non-margin accounts into this "Lending pool" and who would have though that the same parcel of shares could easily be loaned out in many different directions simultaneously?

The concept of holding all shares at the DTCC in an "Anonymously pooled" format seemed to make sense from an efficiency point of view. Why would the DTCC need to know the name and account number of the investor who purchased the shares? Who would have thought that related abuses would allow the same parcel of shares to be loaned out in many different directions simultaneously as well as wreak havoc on any corporate voting procedures? Who would have thought that two different investors would receive monthly statements "Implying" the ownership of the **same parcel of shares?** Who also would have thought that there was this mysterious creature known as a "Share entitlement" that allowed these abuses to become rampant? Who would have thought that the "Shares held long" column on a monthly brokerage statement has nothing to do with legal "Ownership" or voting rights?

Who would have thought that the "Enhanced efficiencies" sought by allowing market makers to be bequeathed with a clearly superior "KAV" factor would be converted into LEVERAGE by the holders of this "Public trust" via allowing hedge funds to borrow their "Bona fide" market maker "Hat" when needed in exchange for "Order flow"?

The NSCC division of the DTCC's "CNS netting" of trades throughout the day seemed like a brilliant idea to enhance efficiencies in the clearance and settlement system. Who would have thought that it would be used to intentionally hide delivery failures and allow DTCC management to proffer that the delivery failure problem is minimal and here are the intentionally misrepresentative statistics to prove it?

What's next in this theoretical never ending quest for efficiency? How about moving to "STP" or "Straight Through Processing" where in "Settlement day" becomes T+0? This way nearly all trades will result in delivery failures so that the abusive ones will be able to imperceptibly commingle with legitimate ones. Perhaps we could outlaw all paper-certificated shares so that any "Benchmark" or "Yardstick" that might identify the number of counterfeit electronic book entries in the system and the level of these abuses would be conveniently lost. Now wouldn't that be EFFICIENT? Well, brace yourself because that's exactly what's being pushed by the "Privileged few" and politically powerful as we speak. How about if we put more emphasis on the DTCC's RECAPS system from 1990? This way we could take yet another run at "Netting out" those pesky delivery failures that didn't get buried during the first round of "CNS netting". Keep in mind that "CNS netting" nets out 96% of trades INDEPENDENT of whether "Good form delivery' leading to "Settlement" has occurred or not! In "multilateral netting" at the end of the day the electronic book entries consisting of both legitimate shares as well as mere "Share entitlements" go in one direction and the cash is Fedwired in the other direction. THE "RECAPS" SYSTEM THAT THE DTCC IS CURRENTLY PUSHING FOR IS CLEARLY A MECHANISM TO SWEEP YET MORE ARCHAIC DELIVERY FAILURES UNDER THE RUG AND TO DIAL THEIR AGE BACK TO ZERO.

"WE DIDN'T WANT TO HAVE TO REWRITE HISTORY"

This statement by an SEC mouthpiece in regards to Reg SHO and the introduction of the now famous "Grandfather clause" is very informative. To me it implies that the history of abuse in our clearance and settlement system has been admittedly very unfortunate. The tone seems to be "Sorry about that but get over it". The shortsightedness in this comment tells me that even the SEC doesn't quite grasp the fact that the mere "Share entitlements" resulting from unaddressed delivery failures stacking up all over the system are first of all very damaging and second of all very easily treatable TODAY. The game isn't over yet for some of the victimized issuers still managing to hang in there albeit their share structures by now are already diluted beyond recognition. Please don't write off these corporations, their employees and the investments made therein. You at the SEC and the DTCC **HAVE TO READDRESS HISTORY**. The days of quietly sweeping these delivery failures and these victimized issuers under the rug are over because this cat is way out of the bag and every move you at the DTCC and the SEC make is now under public scrutiny. These companies still have a pulse and some of their employees could easily be rehired after the past is dealt with. The thieves have been identified; they're the ones holding the archaic delivery failures. The stolen money has been located and the victims have been clearly identified. The modus operandi has been successfully elucidated. Why the sentiment of letting bygones be bygones? Just because the "Prompt delivery" leading to the "Prompt settlement" of the involved trades hasn't occurred yet should incentivise an unconflicted regulator into immediate action to address these thefts. Just what is the American investor missing here, it seems so simple?

JUST HOW IN THIS DAY AND AGE CAN DTCC PARTICIPANTS AND THEIR CO-CONSPIRING USUALLY UNREGULATED HEDGE FUNDS GET AWAY WITH A CRIME LIKE ABUSIVE NAKED SHORT SELLING?

Is this version of premeditated theft the "Perfect crime"? When you really think about it how can a crime as heinous as selling unregistered and virtually nonexistent share-facsimiles to unknowing U.S. investors, taking their money, merely collateralizing the debt with securities **owned by yet other U.S. investors** and then refuse to buy back and deliver the previously sold "Shares" even as the share price tanks be so systemic in our financial system and also be so frustrating for victimized issuers and investors to combat. Some contributing factors:

1) Our clearance and settlement system is **COMPLEX** and both victimized issuers and investors therein for the most part just don't understand its inner workings. If they did they'd be investing in real estate and not the markets? This makes EDUCATION job #1 whether it be educating the members of Congress, the DOJ, the IRS, the FBI, Homeland Security or whomever. **COMPLEXITY** creates opportunity especially for those with superior resources that can employ brilliant lawyers to search out loopholes in the law wherein the text of the law might digress slightly from the spirit of the law! One of the key concepts to get your arms around in order to simplify these sometimes complex matters is to focus on the concept of a "Share entitlement". Because of the laws allowing "Bona fide" MMs to legally sell a **MODERATE** amount of **ULTRA-SHORT LIVED** admittedly "Counterfeit shares" when buy orders dominate a market then the concept of these admittedly counterfeit "Share facsimiles" representing a "Share entitlement" arises. However, the concept of these being legal "Entitlements" falls onto its face when a DTCC participant refuses to deliver the share underlying the "Entitlement" when it is demanded for delivery by its "Beneficial owner" the investor. A true "Entitlement" is exercisable by its holder upon demand. You can't have it both ways by referring to what you are selling as a "Share entitlement" and then turn around and refuse to allow its being exercised in a timely manner because of potential "Volatility" issues.

I think grasping this one concept will help the student of NSS sift through this cloud of dust regarding “Share entitlements”. Do the “Privileged few” ever go to the open market and repurchase these shares upon demand when the supply of them at the DTCC is depleted? Of course not, they’re above that recall the 1-in-800 even mandated buy-ins ever occurring findings in the Evans report. They have their alter ego, the DTCC management, explain to the furious investors that there is a “Freeze” in these shares due to some “Issues” and to call back in a couple of months. After all, according to the DTCC they are “Powerless” to buy-in the delivery failures of their participants which translates to they are “Powerless” to make sure that the participants whose “Business conduct” they are in charge of regulating as an SRO perform their Congressional Mandate to “Promptly settle” all trades. Apparently a Congressional Mandate is not very “Empowering” to the DTCC management. Do not be surprised if the DTCC Management comes out of nowhere with some sort of highly convoluted “Grandfather clause” of their own when and if the SEC rescinds Reg SHO’s “Grandfather clause”. You’ve got to know it’s coming in some way, shape or form. There is way too much hubris in that venerable institution to follow any securities laws. My guess is that it will be via the “RECAPS” system involving yet another chance of netting delivery failures out of existence via smoke and mirrors.

This COMPLEXITY of the clearance and settlement system makes it difficult for the Congressional Oversight Committees overseeing the SEC or the SEC itself to get their arms fully around just how corrupted our clearance and settlement system has become in regards to these naked short selling and delivery failure issues. These people have “X” amount of time to spend on each of a vast number of issues and often “X” amount of time doesn’t allow them a glimpse of even the tip of this very ugly but COMPLEX iceberg.

People have trouble with the concept of “Novation” and “Contra-parties” wherein the buyer and seller involved in a transaction have their roles as buyers and sellers “Discharged” by what is referred to as a “Central Counter Party” or “CCP”. This “CCP”, the NSCC division of the DTCC in our country, is then substituted for the original counterparties to the trade and becomes “On the hook” with respect to the future performance of all obligations involved i.e. money transfer and the delivery of the shares. This “CCP” then has the critical mass to provide a “Trade guarantee” to the world in order to entice participation in its markets.

“Novation” is defined as: **A process through which the original obligation between a buyer and a seller is discharged, and is replaced by the substitution of the “CCP” as seller to buyer and buyer to seller, creating two NEW contracts i.e. “to create anew”.** Note that in the case of a trade involving a delivery failure the original obligation of the seller to deliver is DISCHARGED and assumed by the “CCP”. The seller failing delivery is still “On the hook” to EVENTUALLY deliver the shares but only if the CCP forces the issue. The question becomes when running a clearance and settlement system utilizing “Novation” and a “CCP” how in the world can the “CCP” WITH A CONGRESSIONAL MANDATE TO “Promptly settle” all trades turn around and claim to be “Powerless” in demanding the delivery of the missing shares i.e. claim that it’s not “On the hook” to make sure delivery is made “Promptly”? If the CCP truly is “Powerless”, which is a total fallacy in the U.S. due to congressional mandates and the mandates for acting as an SRO, “Custodian”, etc., then by definition the clearance and settlement system can’t be based upon “Novation” and an “Open offer” system like that used in the U.K. or keeping matters at the market participant level like that utilized in Spain should be utilized.

Earlier we talked about how the DTCC has “Surgically removed” the one “NATURAL DETERRENT” to naked short selling crimes i.e. the fear of a buy-in. How did they do this? They did it through “Novation” and acting as the “Central Counter Party” that is theoretically “Powerless” to demand the delivery of that owed to it. In other words it took its abusive participants “Off the hook” to deliver that which an investor purchased and didn’t put itself back “On the hook” for this delivery as it should have. This is pretty clever especially when you realize that the “DTCC” **is** its participants both the ethical ones and the abusive ones. The DTCC proper thus becomes an “Alter ego” used by its abusive DTCC participants to commit crimes.

As far as the SEC’s power to regulate “CCPs” the President’s Working Group on Financial Markets mandated that CCPs like the DTCC “should be subject to regulatory oversight in order to help ensure that **proper risk management procedures** are established and implemented and that the clearing system is properly structured.” The question becomes does anybody with an IQ greater than their shoe size really believe that our current DTCC is utilizing “Proper risk management procedures” to mitigate the currently intolerable levels of SYSTEMIC RISK resulting from the delivery failure crisis? “Proper risk management procedures” are not going to be found in a clearance and settlement system designed in a “Self-serving” manner because throughout history whenever the DTCC has been faced with risk management issues that were not consistent with that which was the most beneficial for the DTCC management and participants then you can guess which fork in the road was taken. The design of a clearance and settlement system is all about risk management and not the desires of the individual participants of a body like the DTCC no matter how much critical mass and political clout they carry.

These “Complexity issues” are exacerbated when you overlie the loopholes present in the rules and regulations of the various worldwide “CCPs” that are allowed to “Interface” with the DTCC. Those securities fraudsters that are familiar with the loopholes created in these complex clearing linkages can base their criminal behavior upon this superior knowledge but we’re still talking about outright theft. One might think that any diligent regulator would be well aware of these “Tricks of the trade” but it would take not only a diligent regulator but also an unconflicted regulator to address these loopholes.

In regards to these “Complexity” issues the system is indeed complex but not that complex. This brings us back to the thesis that "Education permits eradication" as a lot of investors were born at night but not necessarily last night!

2) The clearance and settlement system is intentionally kept **"DARK".** The tell tale trading data is kept away from the public's vision. Why? Ostensibly because the "Privileged few" and their co-conspiring hedge funds do not want to release their "Proprietary trading methodologies". Is this legitimate? In some cases it is as various trading algorithms that have been developed deserve to be protected. The problem is that fraudsters feigning a need for their tainted trading data to be treated as "Privileged" and deserving of secrecy are given access to it by default. Further, any market maker labeling a trade as "Short sale exempt" due to his theoretically acting in a "Bona fide" market making capacity **BY DEFINITION** has no right to claim that the resultant trading data be considered "Privileged" or "Proprietary". He lost that possibility when he accessed the exemption from borrowing before short selling accorded to market makers simply injecting liquidity and "Pricing efficiency" by selling into markets wherein buy orders dwarf sell orders. In these cases there is obviously no client or trading algorithm needing protection. The combination of the 1995 PSLRA legislation which forces plaintiffs to pretty much prove their case right from the get go and trading data being treated as "Privileged" information makes litigation efforts against these fraudsters very challenging UNTIL Judges come to realize that "SSE" labeled trades are by definition not deserving of any "Privileged" status. The ability to get to the "Discovery" phase is very tough in many of these cases. The SEC however has no excuse for their lack of regulation as they have easy access to all of this tell tale trading data.

   Also contributing to this "Darkness" is the fact that there are privacy issues in place and investors are entitled to anonymity. If you're going to commit crimes you might as well do it in a neighborhood where anonymity must be protected.

3) Wall Street moves at a frenetic **PACE** and the sheer volume of trades makes it difficult for even a diligent regulator with finite resources to keep on top of all abusive trading patterns. The resultant cloud of dust provides a natural cover for fraudulent activity and contributes to the "Darkness" cited above. The problem for unknowing investors is that Wall Street participants with their superior knowledge of, access to and visibility of the clearance and settlement system have been provided with a set of "Night vision goggles" for this darkness as it were to use as a source of leverage over investors owed a fiduciary duty of care. The spirit of the 1933 Securities Act or "The Disclosure Act" would provide prospective investors with a clear view of the number of "Delivery failures/share entitlements" in existence for a given issuer on their 10-Qs and 10-Ks. This would necessitate Wall Street to show some "Transparency". These same numbers should be reported on the 10-Qs and 10-Ks of the publicly traded Wall Street market makers, clearing firms, prime brokers, etc. holding these delivery failures so that their prospective investors can acquire an unobstructed view of CONTINGENT LIABILITY issues should these DTCC participants be forced to finally make delivery of these yet to be delivered shares, perish the thought. The auditing profession and the PCAOB have a definite role to play here in order to

provide a transparent view of these publicly traded corporations including both the perpetrators of and the issuers falling victim to these frauds.

Just how important is it to make the level of current delivery failures, no matter where they're residing, transparent to all? Picture an acquiring firm offering one share of its stock for every one share of a target company tendered to it. The acquiring company does not have a clue that all of the incredibly damaging "Share entitlements" sitting on the "Corporate failure" tray of the target company are about to be transferred to the "Corporate failure" tray of the acquiring company by the DTCC. Instead of correcting the delivery failure problem via buy-ins as any SRO with a Congressional Mandate to "Promptly settle" all trades would obviously do upon learning of the tender offer the DTCC is going to merely convert delivery failures of the acquired company into delivery failures of the acquiring company UNBEKNOWNST TO THE ACQUIRING FIRM'S MANAGEMENT, BOARD OF DIRECTORS AND ITS SHAREHOLDERS. Why? Because since they refuse to fix the problem or even confirm its existence then **they need to cover it up**. The acquiring firm ends up buying a "Pig in a poke" because not only did the DTCC fail to bring about "Prompt settlement" of previous trades in the acquired company but they also intentionally covered up the existence of the damaged nature of the acquired firm. They had to. If you're not willing to address the problem when it comes to your attention then you have to at first deny the existence of the problem which is a form of intentional "Misrepresentation" and then you have to intentionally cover up the problem every time it becomes visible to the public i.e. "Vote cancellation" procedures. Concomitant with covering up the problem is typically stalling any correction of the problem by other regulators like the SEC i.e. lets throw another "Comment period" after all its been a couple of months since the last one on the very same topic.

The DTCC may proffer that those short the acquired firm still have to **"EVENTUALLY"** cover by buying shares of the acquiring firm so what's the big deal? The big deal is that the DTCC publicly claims to be "Powerless" to make their participants cover these naked short positions and since the naked short sellers never had to cover their short position in the acquired company why in the world would they ever have to cover their new recently "Refreshed" short position in the acquiring company? You can't claim to be "Powerless" to buy in archaic delivery failures out of one side of your mouth and out of the other side of your mouth refuse to warn the acquiring company of the presence of all of these incredibly damaging "Share entitlements" that it and its shareholders are about to UNKNOWINGLY "Inherit". This is a "Disclosure" issue as per the 1933 Securities Act i.e. "The Disclosure Act". The phrases "EVENTUALLY have to cover" and "Prompt settlement" are diametrically opposed especially when EVENTUALLY never happens due to sudden bouts of "Powerlessness". How many acquiring corporations throughout time have had their share structures "Poisoned" by the DTCC's need to cover up delivery failure problems as well as the existence of this "Industry within an industry"? Again, when you tinker with the concept of a finite number of "Shares" as being the units of equity ownership of this way of doing business we call a "Corporation" then any system involving the clearance and settlement of trades involving these "Shares" is going to be tainted from the ground up and the cover up measures needed to keep this a secret for the well being of the beneficiaries of this tainted system will be innumerable. Since a "Share" is a package of about a dozen rights associated with a specific corporation domiciled in a specific state in the U.S. then every time a shareholder tries to exercise any one of these missing rights like the voting right for example there is the need to provide a cover up measure to hide the fact that there have been many more "Shares/entitlements" sold then there are "Packages of rights" to go around. To wit the "Over voting", "Vote buying" and "Vote cancellation" scandals we're reading about now in the financial press.

In this worldwide move aimed at addressing archaic "Delivery failures" one has a tendency to forget the rights of the shareholders in the publicly traded DTCC participants committing these crimes. As the public outrage grows from an increased awareness of these crimes and the intentional stalling and cover up measures employed by the SEC and the DTCC like "Grandfather clauses", "Vote cancellations", DTCC "Self interviews" and yet more "Comment periods", etc. it can't be that long before this "House of cards" implodes entrapping these unknowing shareholders of the "Bad guys" also because of a liability they were never warned about. If the rebuttal to this argument is that "Short squeezes" aren't really **CONTINGENT LIABILITIES** because the SEC and DTCC are both asleep at the wheel in this regard then what does this tell us?

4) The clearance and settlement system is **CRITICAL** to our financial system and that of the entire world. It is literally the basis of our financial system. The DTCC's recent response to lawsuits against them basically amounts to "Were too **IMPORTANT** in the overall scheme of things to be sued" and that the "Systemic risk" issues would be intolerable if the DTCC had to fight off lawsuits all day long instead of performing its incredibly important tasks. The truth is closer to the fact that the "Systemic risk" issues will be intolerable **IF WE DON'T** address these delivery failures ASAP to once and for all end the bloodletting and address this "House of cards" that fraudsters have built. Due to the **CRITICAL** nature of our clearance and settlement system regulators have a certain level of reticence to risk upsetting the apple cart on their shift. The mindset becomes let's just leave this mess to the next group of SEC Commissioners; we've done what we could. This emboldens securities fraudsters to continue to perpetrate these frauds. They think the issue is too big and too far out of control for any regulator to address efficiently. As new SEC Commissioners come and go the old ones that have been stalling the implementation of meaningful reform will simply pass the baton to the new Commissioners that are going to need a year or two to get up to speed and soon a new cycle has been completed.
5) The clearance and settlement system has a lot of **INTERMEDIARIES** linked together in a "Daisy chain" fashion. Investors are not aware of the delegating out of back office tasks to "Service bureaus" and the role of "Settlement banks" and or "Custodians". "Plausible deniability" issues arise because a retail

broker/dealer can always proffer that it had no idea that the clearing firm it was utilizing was playing these despicable games with the shares of its client who is owed a fiduciary duty of care. Similarly a hedge fund can say the same thing in regards to its prime broker who can say the same thing in regards to the market making firm it utilizes, etc. Even the DTCC management some day will plead ignorant to all of this hanky-panky going on under their noses. That's going to be a tough one to sell after all of these years of producing grossly manipulated statistics claiming that there is no delivery failure problem.

The "Systemic risk" aspects become enormous as any disturbance in this line up of closely spaced dominoes could have far reaching implications due to these linkages. Hundreds of "Introducing" broker/dealers will funnel their "Clearing" activities (The matching up and "Locking in" of "Trade data" or "Trade matching") into one clearing firm. If this clearing firm should go down due to rampant misbehavior a lot of innocent "Introducing" broker dealers as well as their clients might be negatively affected. We saw a mini-version of this when MJK Clearing went under. I refer to this as the "Funnel effect" for emboldening fraudulent activity. The mindset becomes what are the regulators going to do if my firm misbehaves take us as well as all of our clients and their clients down in one fell swoop? The 11,000 DTCC participating broker/dealers and banks have been allowed to lock arms and form a "Clearing but never settling" monopoly where it is "One for all and all for one". This "Locking of arms" can involve everything from Ex-clearing "Arrangements" made to intentionally postpone the "Settlement" of trades to the execution of "Clearing agreements" wherein the ownership title to a client's shares are swapped for ridiculously cheap "Clearing fees". This is why we see the DTCC predictably "Close ranks" when one of its participants is under fire for misbehavior. This is very much a team-based form of securities fraud based upon the necessity to create the "Illusion" that these trades are really "Settling". Unfortunately the most conflicted players in the whole system, the DTCC and its participants, have been delegated the role of managing the risk in this clearance and settlement system and it's the clearance and settlement system that provides the support for the entire financial system. When you overlay onto this the nature of how The Federal Reserve System operates then you can appreciate the conflicts of interest involved.

Recall the incident about 4 years ago when a dozen or so allegedly victimized issuers announced that their share prices have been through enough downward manipulation and they had chosen to bail out of the DTCC and have their Transfer Agent clear and settle their trades. The DTCC immediately jumped up and locked their back door and forbade any exiting from their system. The SEC was noticeably at their side reinforcing the DTCC's ironic claim that these issuers weren't capable of "Promptly clearing and settling" trades when moving back to an inefficient paper-certificated basis. Any Transfer Agent cooperating with these issuers in this attempted mass exodus were even threatened with jail time.

Noteworthy is that when an issuer moves on to a "Self-clearing" modality like this the first thing that occurs is that only paper-certificated shares become legal tender and electronic book entries are done away with. The immediate reaction of all shareholders would of course have been to march down to their broker to demand delivery of paper-certificated shares so that they would regain their liquidity. This obviously would have resulted in the potential for rampant mandated buy-ins and subsequent short squeezes that neither the DTCC nor the SEC wanted any part of; a "Run on the bank" as it were.

Imagine the thousands of issuers that might have followed suit should this dozen or so have been successful. Whew, that was a close one! I have never seen the DTCC and the SEC "Circle the wagons" that quickly before on any issue. It's true that electronic book entries are more "Efficient" and less costly to work with than paper-certificated shares. That's why Congress mandated the move towards "Immobilization" i.e. keeping the paper and electronic book entry shares under one roof and "Dematerialization" which involves converting paper-certificated shares TO AN EQUIVALENT AMOUNT OF ELECTRONIC BOOK ENTRY SHARES. These issuers and their shareholders were willing to absorb these extra costs and inefficiencies in order to find a level playing field. The "Privileged few" were not about to take these financial hits nor allow their "Personal fiefdom" to be jeopardized or unveiled to the public. They're above that in the rarified air they dwell in.

6) The driving force for all of these **INTERMEDIARIES** mentioned above to line up in a serial fashion is the $10 billion in annual commissions and fees available to DTCC participants willing to be the most **"ACCOMODATIVE"** to the needs of lightly to nonregulated hedge funds currently stewarding about $1.4 trillion in invested funds and perhaps 10-20 times that in borrowed funds. If you're willing to break securities laws in exchange for "Order flow" then it might as well be with lightly or unregulated entities often operating out of the Cayman Islands or other tax havens with tight banking secrecy laws and out of the reach of the SEC. Since the SEC might have trouble in directly regulating these guys then they should obviously key their regulatory efforts on the DTCC participants they work through as a "Gatekeeper" into our markets i.e. the prime brokers, market makers, clearing firms, etc.
7) **ACCESS** to our clearance and settlement system is relatively wide open. The weaknesses in any one country's clearance and settlement system that is allowed to "Interface" with our DTCC can be easily accessed. Historically the access route of choice has been through Canada via the "Tunnel under the border" or through other "Offshore" modalities allowed to "Interface" with the DTCC. Since Canada still does not have much of a national securities regulatory system (Except for that provided by the SEC) fraudsters will practice "Regulatory arbitrage" and operate out of the provinces in Canada sporting whatever loophole is needed for any particular variety of securities fraud. For decades the NASD analogue in Canada known as the Investment Dealers Association ("IDA") has seen no problem whatsoever with Canadian broker/dealers naked short selling U.S. development stage issuers with impunity. Their attitude has always been

shame on you nasty hedge funds registered in the Cayman Islands for using our innocent Canadian broker/dealers as a conduit for this misbehavior. The result is that a significant portion of the Canadian Securities industry has the naked short selling of these U.S. issuers as their foundation which helps explain the reticence of the IDA to provide any deterrence to these crimes. Again we see the phenomenon of yet another "Captive" and "Conflicted" regulator.

8) The **CRITICAL MASS** of the "Privileged few" and politically powerful is so great that any lawsuits filed against them can be stalled ad infinitum in an effort to bankrupt the plaintiff. At times it seems like they want to be sued! States Securities Regulators aware of these crimes have "Preemption" issues that need to be overcome. Lawsuits against naked short sellers have been around for decades and the "Bad guys" have paved a pretty solid road with prior victories awarded by jurists that didn't understand the intricacies of the clearance and settlement system nor the heinous nature of the crimes. It is a very rare occurrence for these cases to even make it through to "Discovery" what with all of that "Privileged" trading data being out there and all. The DTCC is constantly chiding the legal community of their wonderful record in these litigations as if to say don't even bother suing us because you know the legal system is also "Tilted" in our favor due to our superior **CRITICAL MASS**. Thus some of the dollars stolen from investors can be deployed towards making sure that the victimized issuers and investors have no practical legal recourse against the thieves.

9) As mentioned The 1934 Exchange Act's Section 19 C states that even the SEC can't add to or delete from the rules and regulations of any "Registered Clearing Agency" like the DTCC which has resulted in a "Sacred cow" status being bequeathed upon the DTCC as they poignantly reminded the SEC in their "Comment letter" to the SEC in regards to Reg SHO. Here they reminded the SEC of Section 19 C and thumbed their nose to any notion of being regulated by the SEC as they promised to obey the final rules of the new Reg SHO in the same "Cooperative spirit" that they have shown in the past with new securities regulation. Before the ink had dried on Reg SHO they put out a 14-question "Self-interview" stating that they do not intend on executing any of the newly mandated 13-day buy-ins of delivery failures involving corporations on the new Reg SHO "Threshold lists". So much for that good old "Cooperative spirit".

10) Rolling the dice and allowing the DTCC to be able to coalesce 11,000 broker/dealers and banks under one umbrella and then putting a deputy badge on them as an SRO despite the obvious CONFLICTS OF INTEREST in the system is incomprehensible unless a regulator with clear authority over every move that this behemoth makes was appointed. Congress thought they had that base covered via the SEC. "Clear authority" does not jive with not having the ability to amend or delete any rules and regulations that "Accidentally" get incorporated into the DTCC's book of rules and regulations. The "Game" thus becomes to sneak some self-serving rules into the rulebook of the DTCC while the SEC was napping which has been happening for decades. A young SEC attorney fresh out of law school does not know the first thing about how the clearance and settlement system actually works. It is complex enough that by the time an SEC attorney really can see the games being played it's time for him to move on to a

much higher paying job. The mindset becomes a cross between you don't want to bite the hand that may soon be feeding you and this mess is so huge that nothing I do in my capacity at the SEC will ever make a difference anyways because somebody above me will put the kibosh on any reforms I push for and I may even end up losing my job if I push too hard (the "Aguirre syndrome").

11) When a DTCC participating broker/dealer does get caught misbehaving he can always don his "DTCC participant" hat and seek refuge under their umbrella of protection and access the critical mass of the DTCC available for "Fraternity brothers" only.
12) There is no meaningful DETERRENCE to these crimes. Being fined a million dollars for stealing $100 million dollars does not provide a deterrent effect. In this "Game" it is looked upon as being no more than an insignificant cost of doing business.
13) When the reality is that fraudsters can sell nonexistent shares all day long, gain access to the proceeds of these sales by only collateralizing this ever-diminishing debt in a marked-to-market basis without ever delivering that which they sold then everybody is going to line up to play this "Game" and the members of the "Privileged few" will scramble to be the first one to sell into any buy order that surfaces for one of these targeted issuers. All they have to do is to don their "Bona fide" MM hat and sell into every buy order that they have visibility of. When there are players on the playing field with a vastly superior knowledge of, access to and visibility of the playing field then of course they're going to leverage their advantage and pounce on these opportunities. As Jim Cramer proffers these frauds become no more than a "Game" to the "Privileged few" and politically powerful. For some of the players of this "Game" the ability to recognize the existence of victims in this game is lost as perhaps they feel that their superior knowledge, access and visibility were somehow "Earned" by years of working on Wall Street and not given to them with explicit instructions NEVER to leverage this necessary superiority entrusted to any "SRO" wearing a badge over those to whom you owe a fiduciary duty of care as being a designated "Caretaker" or "Gatekeeper" into the clearance and settlement system. DTCC participants were "Entrusted" with this superior knowledge of, access to and visibility of the playing field on Wall Street. They did not "Earn" it.
14) Certain SEC officials predisposed to siding with the "Privileged 1%" over the 99% of non-Wall Streeters have no trouble "Spinning" the term "Investor protection" into the 12-J deregistration of issuers deemed by them to be "Scams" despite the fact that they have astronomic naked short positions and just refuse to die on cue. The deregistration in their minds is done ostensibly to protect **NEW** investors from buying the shares of these theoretically "Scammy" corporations. As far as the old investors and current shareholders well they got what they asked for by being brain dead enough to buy the shares of a development stage corporation that shouldn't have been allowed to go public in the first place. Although some deregistrations are obviously well deserved a 12-J deregistration strongly encouraged by certain theoretically "Unbiased" Wall Street participants is an excellent way to bury the targeted corporation as well as the delivery failures and trading data in the desert once and for all.

15) The theoretical quest for "Enhanced efficiencies" in the clearance and settlement system provides a wonderful cover up for these frauds. It just so happens that all of these quests seem to benefit the fraudsters at the expense of the investors. For instance, "Dematerialization" involved moving from difficult to counterfeit paper certificates to incredibly easy to counterfeit "Electronic book entries" in order to capture these "Efficiencies". The "Efficiencies" gained in this case are legitimate but require the presence of a diligent regulator to make sure that the unintended consequences of a trade off involving "Enhanced efficiencies" for market abuses related to counterfeiting isn't occurring. Another "Efficiency" realized is allowing the DTCC as a whole to act as the "Contra-party" to all trades. The use of "CCPs" or "Central counterparties" is common in most clearance and settlement systems but it does allow individual abusive participants of the DTCC to mask their activities because they are just 1-in-11,000 broker/dealers and banks. Here again we see the cloak of secrecy being utilized for "Efficiency" reasons. When those allowed to operate in the dark ALSO have a superior knowledge of, access to and visibility of the clearance system as well as a huge CRITICAL MASS advantage then there are bound to be problems with certain players wanting to "Leverage" these advantages even over those to whom a fiduciary duty of care is owed. Human greed is human greed. To help sleep at night these people might think of themselves as merely "Opportunists" but the fiduciary duty of care owed to investors by members of an SRO with congressional mandates that are accepting commissions and mark-ups in an "Agency" capacity makes them no more than common thieves and abusers of the public's trust. To this day the DTCC management and its participants have no ability to recognize the concept of being in possession of the "Public trust" or of acting as a "Trustee" that would never put its own desires ahead of those to whom they act in a "Fiduciary" capacity as members of an "SRO". The SEC naively refers to SROs like the DTCC, NYSE and NASD as being the "First line of defense against market manipulations".

16) This ability to operate in the dark by treating trade data as "Privileged" information also helps these fraudsters avoid litigation efforts because of the 1995 "PSLRA's" law requiring plaintiffs to state in their complaint "Facts giving rise to a strong inference that the defendant" acted with intent to deceive. Without access to the definitive proof of these frauds which is embodied in the trade data then a plaintiff's lawyer might find it difficult to even make it over the first hurdle in an effort to seek justice for his victimized clients. Again we see the common theme of no DETERRENCE.

17) **OVERLAPPING REGULATORS**: Since the DTCC was set up as a "Limited purpose trust company under the banking regulations of the State of New York" one might ask where are these banking regulators as these "KITING" related frauds are being perpetrated. Are the banking regulators supposed to know all about these various forms of securities industry fraud? Are the securities regulators supposed to know all about these banking related crimes? The DTCC operates in an environment where the identity of the proper regulator is a little bit fuzzy possibly related to the aforementioned COMPLEXITY issues.

18) For some reason the SEC is now, always has been and will probably be in the future extremely **SLOW** in dealing with matters of a crisis nature. This is irrefutable. The reasoning might have something to do with the influence of the "Privileged few" and politically powerful or any of a variety of other theories. The SEC has a distinct reputation of either not intercepting or slowly reacting to already established frauds. Once action is undertaken it is often done in a half-hearted manner wherein no deterrence measures are created to act as invisible cops. The "Grandfather clause" and this need for yet another "Comment period" on rehashing proposed amendments to Reg SHO are perfect examples. Why the timidity while Rome is burning? Oftentimes the stimulus to finally act is provided by the Elliot Spitzers of the world performing the SEC's job in this "Regulatory vacuum". Historically by the time the SEC typically acts in a forceful manner the infrastructure of the frauds are well established and that much tougher to address because of SYSTEMIC RISK and investor confidence issues that enter into the equation.
19) The set up of the DTCC as 11,000 broker/dealers and banks coalesced under the title of acting as a "Limited Purpose Trust Company" and as a "Self Regulatory Organization" or "SRO" is very conducive to the commission of fraud by its "Participants". Individual misbehaving "Participants" can always claim membership to this organization and access its critical mass as well as its rulebook that can't be touched by the SEC as per Section 19 C of the 1934 Securities Exchange Act. As mentioned earlier it's very difficult to go after the DTCC as a whole because of the importance of the clearance and settlement system from a SYSTEMIC RISK point of view. Perhaps they really are "Too important to be sued". This reality leaves us in our current stalemate involving the "Privileged few" being allowed to pick the pockets of the lowly 99% not making up the "Privileged few". This "Stalemate" can only be sustained by the SEC's continued refusal to follow their Congressional Mandate of providing "Investor protection and market integrity" as they have all of the authority in the world to enforce the '33 and '34 Acts that are getting trampled on. This unique set of parameters at work on Wall Street in regards to this fraud is what makes the SEC's hesitancy to do their job so excruciating for issuers and the investors therein. **You at the SEC are all we've got** because all other accesses to a truly level playing field have been cleverly blocked! Imagine the millions of hours of due diligence collectively done on investments in development stage issuers for naught because these investments were doomed from the get go because of the "Rigged" nature of especially these smaller trading venues that host not yet cash flow positive development stage issuers.

THE SEC AND DTCC'S ROLE IN PROVIDING THE FOUNDATION FOR ACCESSORY CRIMES

The SEC needs to learn that the naked short selling fraud that they are tacitly providing the approval for and no deterrence against itself becomes the foundation for a series of other related crimes. We've already touched upon the various crimes needing to be committed to cover up the naked short selling crimes every time a “Right” missing from the “Package of rights” tries to be exercised but there are a variety of other ancillary crimes associated with naked short selling. Some of these include the hiring of “Hit men” journalists to provide an intentionally misrepresentative “Hatchet job” review of an issuer that just won’t go bankrupt on cue. These “Journalists” often knowingly spreading false rumors can hide behind First Amendment rights to free speech as well as new “Anti-SLAPP” legislation. Others include a series of acts of “Tortous interference” wherein co-conspirators of naked short sellers contact business associates of the targeted issuer in an effort to dissuade them from doing business with the issuer. Is this activity listed in the job description of a “Bona fide” market maker? Yet other crimes involve working with certain legal firms to file bogus lawsuits against an issuer’s management team or the issuer itself in an effort to either bankrupt the issuer via legal bills or to at least provide some “Bad press” opportunities. Some have been known to provide bogus information to the SEC’s Enforcement Division to encourage the SEC to deregister the issuer through its famous 12-J deregistration procedure.

Some cases involve the naked short sellers actually extorting shares from targeted issuers in exchange for “Calling the dogs off”. The proliferation of paid Internet bashers hired to dissuade buying and to induce selling of the targeted issuer’s shares has been incredible. These people can hide behind First Amendment rights to free speech, Internet anonymity and “Anti-SLAPP” legislation-the Trifecta! Oftentimes their agenda seems to be to either tie up bandwidth so that no constructive due diligence can be shared or to distract management from their business plan. These purported “Investor advocates” theoretically trying to prevent investors from being swindled by “Scammy” issuers are very effective as research has clearly shown that it is much easier to scare an investor out of an investment then it is to induce them to buy shares i.e. fear trumps greed. These peripheral crimes add to the organized crime aspect that naked short selling takes on at times. Since when does a “Bona fide” market maker hire “Hit men” journalists, “Internet bashers” or associates to intentionally destroy a management team’s ability to execute a business plan?

“COMPLEX MORAL HAZARD ISSUES” AND BEING “TOO BIG TO FAIL”

The DTCC is the result of the consolidation of the NSCC and the CCPs of the various exchanges and trading venues present in the U.S. in years past. An article I’ve always liked is entitled “Chicago Fed Letter: Clearing and settlement demystified”. In it the author cites certain “Complex moral hazard issues” and the concept of being “Too big to fail”. This is from the article: “Another one of the issues that arises is that the continued consolidation among CCPs concentrates the aggregate risk among fewer and fewer CCPs. This consolidation among CCPs could raise **complex moral hazard issues** if some CCPs begin to be perceived by some as **"too big to fail."** Continued consolidation of CCPs eventually gives rise to the public policy conundrum, "How many CCPs are too many; how few are too few?" To date, little research has focused on this important issue.

To understand how clearing and settlement systems operate, specifically how the CCPs support today's modern securities and derivatives markets, we need to consider the intricate inter-relationships that exist between CCPs and payment systems, exchanges, trade intermediaries, settlement banks, depositories, market participants, and other CCPs. One should not take this financial "plumbing" for granted just because it is often out of view."

In my opinion this author hit the nail on the head. This concept of being "too big to fail" explains the hubris of those at the DTCC misrepresenting that there is no perceivable problem and their responses to being sued. How dare you scammy little issuers and your brain dead investors have the audacity to sue a venerable institution like ours? The goal of the regulators therefore needs to be to dismantle this corrupt "Industry within an industry" in the least disruptive way and since there is no problem according to DTCC management then the dismantling process by definition can't be disruptive and they should therefore be more than willing to assist on all fronts instead of continuing to lead interference on behalf of their abusive participants. There isn't an investor in the country that isn't counting down the days until the DTCC management comes forward claiming that they HAD NO IDEA of all of this corruption going on under their leadership and shame on our abusive DTCC participants for misbehaving like that.

As far as the author's comment that "One should not take this financial "plumbing" for granted just because it is often out of view", now that this fraud has been exposed for what it is the "financial plumbing" has come into view quite clearly. The "Complex moral hazard issues" came into focus while studying the DTCC's recent 14-question "Self interview" where we learned that although the DTCC keeps 96% of "Shares" in street name in an electronic book entry format somehow the delivery failures could be ascribed to investors signing the wrong line of their paper-certificated shares.

One of the SEC's spokespersons made what might be referred to as a "Freudian slip" when commenting on the possible shortcomings of Reg SHO. The comment involved was "We didn't want to rewrite history" in this new legislation. I think that most investors inferred that the SEC was very well aware of the corrupt nature of our clearance and settlement system and of the pandemic nature of past abuses.

LET'S CUT TO THE CHASE

For those in the investment and legal community that truly understand naked short selling there are two mindsets that I run into on a daily basis. People are mad as hell and at the same time scared to death for the future of our financial system and country. Certain aspects of our clearance and settlement system are corrupt beyond imagination. Despite some good efforts shown via Reg SHO it appears that nothing meaningful has been accomplished to minimize this corruption as it would necessitate the simultaneous closing of all loopholes. The U.S. investors know all about this mess and they are furious as they should be. Their fury is growing while witnessing some rather clumsy attempts being made to cover up a mess this large at the same time that the SEC and the DTCC are announcing to the public that the waters are safe, jump on in. This just isn't right. What's especially disgusting is the "Privileged few" at the DTCC Headquarters proffering that there is not and never was a problem in the first place. And they're right; there is no problem for them because they're on the receiving end of the stolen funds and raking in commission dollars for buying and selling nonexistent shares. If there's no issue then let's buy-in all delivery failures tomorrow, get rid of the "House of cards" and SYSTEMIC RISK issues and build a solid foundation for our grandchildren.

The current status of the system with innumerable amounts of worthless and very damaging IOUs floating around in cyberspace is broken. When things are broken honest people responsible for the integrity of the system either fix them or warn the users of the system as to its broken nature so that nobody will be harmed. The initial temptation might be to cover up the broken nature of the system in an effort to maintain the status quo for the beneficiaries of the status quo or to circumvent any penalties or sanctions that may or may not be appropriate for allowing the system to fall into such disrepair. As we see time and time again in the legal world the greater crimes are deemed to have been committed **during the cover up phase of a fraud** after the damaging nature of a fraud has become clearly known to both the "Securities cops" like the SEC, DTCC, NYSE and NASD as well as to the investing public. The widespread knowledge of the crime removes any plausible deniability issues later on. These furious investors are doing nothing but growing in number and demanding immediate actions by these regulators and SROs. These investors cannot award you jobs at hedge funds wherein you can make ten times that which you made at the SEC or at the DTCC nor can they award you the General Counsel spot at a Morgan Stanley. They're not going to "Feather your nest" nor sit back and watch you feather it at their expense. They can however offer you a hearty thank you for leveling up this playing field and decreasing the SYSTEMIC RISK levels in our financial system back to tolerable levels especially at a time when we're at war.

I thank you in advance for acting "Promptly" and decisively on behalf of the 99% of Americans that are NOT among the "Privileged few" and "Politically powerful". Just because the first "Promptly" (Settle all trades) deadline was missed doesn't justify "Grandfathering in" this mistake once it came to your attention. That's insane. Now that these mistakes have been uncovered it's your mandate to correct them as "Promptly" as possible and not to continue to sweep them under the rug. Can you hear the cracking of the backbones of these corporations in the background from the weight of these "Share entitlements" as we ponder these issues yet once again? Please, either warn us of the absolute number of these "Share entitlements" in a given issuer whether they be cleverly hidden at the DTCC in "D" sub accounts, offshore, in "Ex-Clearing" formats, at trading desks, in the "In-house proprietary accounts" of market makers via "Broker/dealer internalization", as "Repurchase agreements", as bogus arbitrage transactions, etc. OR rid the system of them by forcing these missing shares to finally be delivered so that these trades can finally "Settle".

The very basis for our securities laws is the 1933 Securities Act which is also known as the "Disclosure Act". In the spirit of Reg FD ("Full disclosure") it's time for the DTCC and SEC to either "Disclose" the truth or to rid the system of the delivery failures. Since we have been discussing Reg SHO and naked short selling intently for some 8 years now the only firms still playing these games and still refusing to cover these "Open positions" are intentionally stealing from investors. Any broker/dealer with even a scintilla of business ethics would have realized by now that there are victims involved in these clever manipulations and that this behavior amounts to nothing less than premeditated theft. Ethical participants at the DTCC would have covered by now and ceased this type of behavior many years ago. That leaves only the "Corruptest of the corrupt" still holding these positions and still perpetrating these "Frauds on the market". If they haven't ceased and desisted from these activities over the last 8 years then they're not going to until you exercise your "Plenary authority" over all short selling matters and mandate the removal of these excessive "Share pseudo-entitlements". The mindset that everybody else on Wall Street is doing it does not really offer much of a defense for premeditated theft.

FACT RECOGNITION:

1) Our clearance and settlement system has been co-opted by those with a superior "KAV" factor that have chosen to leverage their superior **K**nowledge of, **A**ccess to and **V**isibility of our clearance and settlement system in order to re-route unknowing investors' funds into their own wallets.
2) Since the concept of the "Share" as being the unit of equity ownership of the form of doing business known as the "Corporation" has been totally perverted by these self-serving Wall Street "Professionals" the result is that this form of securities fraud/theft has permeated the entire financial system and has had far reaching repercussions involving both equity securities as well as the derivatives thereof.
3) Since any clearance and settlement system based upon "Novation" and the introduction of "Contra parties" to a trade intentionally CONCENTRATES RISK within the structure of this "Central Counter Party" or "CCP" any fraudulent activity occurring within a "CCP" is immediately responsible for massive amounts of SYSTEMIC RISK to the entire financial system which is underlain by this clearance and settlement system. Thus any self-serving misbehavior within a "CCP" like the DTCC really does border on TREASONOUS BEHAVIOR due to the widespread ramifications to all dependent upon that financial system for sustenance. The INTENTIONAL CONCENTRATION OF RISK into the hands of the "CCP" or DTCC is done to create an environment where risk can be

effectively managed by just making sure that there is no manipulative behavior going on within the "CCP". If there is then all bets are off. **The health of the entire financial system is predicated on a no nonsense regulator rigorously monitoring the DTCC and its subsidiaries for manipulative behavior that might undermine the integrity of the entire financial system. In order to fulfill this ultra-critical role the SEC needs to APPRECIATE its critical role so that it won't allow itself to become conflicted should it be pressured into actions against those with vastly superior critical mass and political power that are not averse to undermining our entire financial system for self-serving purposes. This is especially true if those willing to undermine the entire financial system ARE PARTICIPANTS/OWNERS OF THE "CCP" WHEREIN ALL OF THESE RISKS ARE INTENTIONALLY CONCENTRATED.**

4) One of the key types of risk incurred is referred to as TEMPORAL RISK. This is associated with the time increment in between the "Clearance" of a trade and the "Settlement" of a trade i.e. when that which was purchased was delivered in "Good form"; note the similarity to crimes related to "KITING" in the banking world. This has nothing to do with the concept of "Settlement day" as being T+3 in the U.S. What it does have to do with is the actual DATE OF SETTLEMENT of that particular trade which Dr. Boni's research indicates is more on the order of T+ 56 which might approach T+556 when you factor in illegal "Crosses" and intentional "Parking" of delivery failures at co-conspiring broker/dealers. In a system where this occurs the TEMPORAL RISK element goes off the charts. **The importance of IMMEDIATELY cleaning up these "Open positions" related to delivery failures and the presence of mere "Share entitlements" as well as preventing their reoccurrence in the future cannot be overstated. Any further stalling of these corrective actions by the SEC and the DTCC is bordering on treasonous behavior due to the intentional "Concentration of risks" at any "CCP".**

5) Since a "Share" is a "Package of rights" attached to a specific U.S. corporation domiciled in a particular state in the U.S. and since at any one time there are only a finite number of legitimate "Shares" legally "Outstanding" then when admittedly "Counterfeit" versions of shares resulting from unaddressed and sometimes archaic delivery failures permeate the share structure of a victimized issuer in excessive amounts (Above the 0.5% of "Outstanding" shares metric) there won't be enough "Packages of rights" or individual rights available when the purchasers of these legitimate or admittedly "Counterfeit" share-facsimiles try to exercise one of the attendant rights like the "Voting" right. The DTCC is allowed as per UCC Article 8 to create a limited amount of ultra short lifespan "Share entitlements". They are not allowed to create legitimate "Packages of rights" or individual "Rights" associated with state domiciled U.S. corporations.

6) This reality sets up the need for those DTCC participants doing abusive and intentional counterfeiting to "Cover up" the fact that there have been more "Shares plus share entitlements" sold than there are rights available to be exercised. For each of the dozen or so rights attached to legitimate shares there is a separate cover up mechanism needing to be deployed which range from

secretive "Vote cancellations" to the issuance of non-voting dividend share-facsimiles without the attendant package of rights attached even though the dividend being distributed by the corporation was for legitimate "Shares" with a full "Package of rights" attached.

7) It is the "Package of rights" attached to a "Share" that give it its VALUE. The price which a purchaser of "Shares" is willing to pay for this "Package" is what that purchaser is willing to pay for the arithmetic sum of the perceived values of all of the component rights.
8) The astronomic growth in the amount of money invested in lightly to unregulated hedge funds has resulted in hedge fund advisors having the ability and means to pass approximately $10 billion in fees and commissions annually to the DTCC participants willing to be the most "Accommodative" to their needs no matter how many of the securities laws need to be broken. These hedge fund advisors have found no lack of response from the prime brokers, clearing firms, market makers and other DTCC participants more than willing to leverage their individual "KAV" factors in exchange for increased order flow, commission flow, lending fee income, access to "Front running" opportunities, etc.
9) The recent wave of cases involving hedge funds getting busted for "Insider trading" crimes is indicative of the sharing of this superior "KAV" factor with those willing to provide massive amounts of "Order flow". The ultimate potential "Insider trader" in our system is the market maker "Entrusted" with this superior visibility of the markets and the visibility of the actual buy and sell orders queuing up right in front of their eyes.
10) Congress's move to "Immobilize" and "Dematerialize" paper certificated shares for reasons involving the quest for enhanced efficiencies associated with working with computerized electronic book entries has had the unintended consequence of massive abuses by those with this superior "KAV" factor because electronic book entries are much easier to counterfeit than their paper-certificated predecessors.
11) The resultant ease of perpetrating these naked short selling frauds has been so pandemic and the regulatory measures combating it so weak that the current levels of unaddressed delivery failures/"Share entitlements" in the system have made the unwinding of these "Open positions" something to be avoided at all costs by the perpetrators of these frauds that continuously refuse to deliver that which they sold.
12) The clearance and settlement system as well as certain members of the hedge fund community have intentionally shrouded themselves in darkness especially as it relates to the theoretically "Privileged" nature of the trading data they generate. It just so happens that this trading data is the most tangible proof of these abuses. It is the "Smoking gun".
13) Despite the heinous nature of intentionally selling bogus share facsimiles to unknowing U.S. citizens at full retail prices, taking the investors money, merely collateralizing this debt in a marked-to-market fashion on a daily basis and then refusing to deliver these previously sold shares for inordinate amounts of time as the proceeds of these sales flow into the wallets of these fraudsters while the share price tanks the obvious solution of FORCING these criminals to finally deliver that which they previously sold well in the past has not occurred. The reason

given by the DTCC is that they are "Powerless" to order these buy-ins. The reality is that due to their congressional mandate to "Promptly settle" all trades and 6 other regulatory and banking related mandates they are not only "Empowered" to do these buy-ins but they are actually "Congressionally mandated" to perform them especially because of the "Concentration of risk" issues intentionally imposed upon "CCPs" by design.

14) Our current "Clearance and settlement" system has been undermined by an intentional disconnect placed between the "Clearance" of a trade and its "Settlement". Unlike any other business in the world DTCC participants are paid their various commissions and mark-ups upon the mere "Clearance" or "Front end" of a trade and not upon its much more important "Settlement" or "Back end". The result has been a self-serving and systemic risk-magnifying mad dash to get all trades to "Clear" at supersonic speeds while the actually critical part of the transaction its "Settlement" involving the delivery of that which was purchased has been placed on the back burner. Meanwhile the resultant incredibly damaging "Share entitlements" are incorporated into the share structure of the preyed upon corporation and quietly poison it. The hypocrisy present is that the cash has to always be on time in the clearance and settlement system run by the DTCC and it's out of the proceeds of this "Always on time" cash is how the DTCC participant gets paid. Wouldn't the obvious solution to these crimes be that the DTCC participant doesn't get paid UNTIL the transaction "Settles" and delivery occurs just like a real estate broker or agent operates?

15) Our clearance and settlement system has been so perverted that the "Corruptest of the corrupt" DTCC participants now thrive at the expense of the ethical ones at the same time that the "Best of breed" development stage issuers are penalized for attracting buy orders which have become a net double negative as they are naked short sold into and converted into incredibly damaging "Share entitlements".

16) The reasons for the lack of deployment of this obvious solution are multi-factorial but center around the incredible CRITICAL MASS and political influence attained by the perpetrators of these frauds and the willingness of some in the regulatory community to do everything in their power to thwart the employment of this obvious solution.

17) Now that the investment community in the U.S. and worldwide are increasingly becoming aware of the modus operandi of these criminals as well as the heinous nature of this thievery leading to astronomical levels of SYSTEMIC RISK the SEC, DTCC, NYSE and NASD have now come to a fork in the road wherein they must EITHER warn the investment community of the damaged nature of victimized issuers via releasing the absolute numbers of mere "Share entitlements" they have within their corporate structure OR they must remove them by FORCING these fraudsters to FINALLY deliver that which they previously sold but have constantly refused to deliver so that the involved trades can once and for all legally "Settle". The option to merely warn prospective investors, however, still doesn't address the mitigation of these SYSTEMIC RISK issues and might also lead to a further diminution of already anemic investor confidence levels should the DTCC and SEC be forced to admit that our clearance and settlement system has been co-opted by industry insiders.

18) A very noticeable pattern over the years is that every time the DTCC decides to make a move to ostensibly "Enhance efficiencies" in their clearance and settlement system the investing public becomes open to yet more abuses and the old abuses become more difficult to discern. We saw this in "Immobilization", "Dematerialization", the "Automated Stock Borrow Program", "CNS netting", "RECAPS", acting as a "Custodian", "Depository", "Surrogate legal owner" of all "Street name shares, "Anonymous pooling", etc. All of these were excellent ideas to "Enhance efficiencies" but ended up providing opportunities to re-route an investor's funds into the pockets of abusive DTCC participants.
19) Once these crimes of the past are dealt with then these very same regulators and SROs must be ever vigilant to make sure that this dark period in the history of our clearance and settlement system is never repeated again and that the SYSTEMIC RISK levels within our financial system in general return to tolerable levels.
20) Although these "Open positions" do need to be collateralized on a "Marked-to-market" basis which at first glance might appear to mitigate some SYSTEMIC RISK issues the billionaire behemoths doing the collateralizing look upon this as just a cost of doing business and not a very significant cost because of the ease of predictably driving these share prices down which allows the proceeds of these bogus sales to flow into their wallet despite the fact that what was sold was never delivered. This results in no net cost whatsoever and actually positive cash flow. The emphasis therefore needs to be on the "Prompt delivery" and "Prompt settlement" of all trades as mandated by Section 17 A. The lack of the SEC's efforts to enforce this "Prompt settlement" mandate of the DTCC gives way to the organized crime aspect of this form of securities fraud.
21) In regards to SYSTEMIC RISK issues one must keep in mind that the risk management procedures for the equities markets and the options/derivatives markets are VASTLY different due to the different timeframes between "Clearance" and "Settlement" involved. When you layer that fact upon the fact that naked short selling basically results in the creation of an "Undated futures contract" then one can see the SYSTEMIC RISK MANAGEMENT inadequacies arising when naked short sales are treated as equity transactions. Naked short selling leading to delivery failures represents a "Derivative" transaction necessitating vastly different risk management strategies because of the "TEMPORAL" (time between "Clearance" and "Settlement") RISKS involved. You at the SEC need to keep this in mind because the perpetrators of these frauds couldn't care less about the SYSTEMIC RISK that all U.S. citizens are shouldering due to their criminal behavior. The cross margining relationships for derivatives transactions are complex and require special tools not available in the equities markets.
22) In addition to blatant thievery naked short selling frauds can also be committed by abusive DTCC participants in order to make their financials look artificially more favorable. It is extremely easy to erase 90% of a targeted prey's share price via naked short selling. The result of this is a yet to be harvested huge profit position on the books of the abusive DTCC participant based upon being marked-to-market for accounting purposes as is the norm. The problem is that the act of covering this naked short position is going to drive the share price back upwards

but the accountants don't see it that way. They see a huge profit position in a marked-to- market sense. Prospective investors in abusive publicly traded DTCC participants with astronomic levels of delivery failures on the books should have visibility of these obvious CONTINGENT LIABILITIES just in case our society becomes civilized enough some day to mandate that people deliver that which they sell. Thus there is a role here for the PCAOB and FASB to chime in and make recommendations as to how these unaddressed delivery failures should be accounted for and made visible to the investing public. This would necessitate shining a light on the Ex-clearing world as well as the "Share repurchase agreements" ("Repos") world in order to allow prospective investors in abusive DTCC participants a clear view of what they're getting into. Again, we see the recurrent theme of how tinkering with the definition and concept of what a "Share" is will cause the system used to clear and settle trades in "Shares" to be tainted from the ground up and in need of the deployment of a myriad of cover up mechanisms to hide the truth.

23) The fact that the DTCC acts as an irrefutable and uncontested monopoly is also critical to realize. There is nowhere else to go if you're not happy with getting your pockets systematically picked by abusive DTCC participants. This helps to embolden fraudsters to do their thing as an issuer can't go across the street to a different "CCP" if they sense being victimized by the current one. This is undoubtedly responsible for some of the hubris being shown by the DTCC management and certain of its participants. There is definitely a "Captive audience" aspect to this form of securities fraud.

24) There is a trade off involved in the number of CCPs in existence. On one hand it is best to have one centralized CCP like the DTCC because it is more efficient for participants to hold and clear their securities where other participants keep theirs. On the other hand the "Concentration of risks" issue becomes worse as issuers being victimized cannot migrate to a more level playing field hosted by a different CCP. That's why the "President's Working Group on Financial Markets recommended that CCPs "should be subject to regulatory oversight in order to help insure that proper risk management procedures are established and that the clearing system is properly structured". I would think it fairly obvious that "Proper risk management procedures" would mandate that the SEC and DTCC keep close track of the delivery failures stacking up in the Ex-clearing and "Repurchase agreements worlds" as well as at "Trading desks" and in foreign CCPs. It's almost as if the "Banking" regulators are assuming that the "Securities" regulators are providing this oversight and vice versa. Perhaps it would be prudent for the 2 committees overseeing the SEC get together with the banking regulators to make sure everybody is on the same wavelength and to delineate just which regulator is responsible for which aspect of the abusive DTCC participants' misbehavior.

25) It must be kept in mind that our current clearance and settlement system involving "Novation" and CCPs provides anonymity to the perpetrators of these frauds. To the investing public they are simply anonymous DTCC "Participants" whose trade data is of a "Privileged" nature and not to be viewed by the investing public. The flip side to this coin is that those regulators and SROs that do have access to the

names of the offenders as well as the trading data must be held to a higher standard since the investing public and the corporations being targeted have been intentionally blindfolded and are defenseless.

26) In many countries delivery failures are not tolerated whatsoever. In the U.S. they are not only tolerated but many DTCC and SEC policies actually ENCOURAGE them. This has resulted in U.S. development stage corporations being selectively targeted by worldwide naked short selling fraudsters domiciled where naked short sales and delivery failures are looked upon and prosecuted for what they are a form of organized crime involving theft or "Conversion". This phenomenon is known as "Regulatory arbitrage" wherein criminals choose countries with lax laws and lax regulatory supervision of the type of securities fraud they specialize in. Historically the U.S. and Canada have been about as good as it gets for naked short selling fraudsters. The problem for U.S. domiciled development stage issuers is that both of these countries fraudsters and those utilizing their lax regulatory system as a conduit prefer U.S. domiciled corporations to target.
27) Another "Natural governor" restricting naked short selling abuses in the markets is that when there are very few "Shares" available for loan the loan fees go up due to supply and demand machinations. Dr. Boni's research suggested that many of the unaddressed delivery failures at the DTCC arose from the refusal of abusive DTCC participants to pay these higher fees.
28) The DTCC reports that 20% of "Delivery failures" are "Cured" by their "Automated Stock Borrow Program" or "SBP". This helps put into perspective just how important Ex-clearing and "Share repurchase agreements" are to address delivery failures. Note that "Curing" a delivery failure has nothing to do with "Good form" delivery leading to the "Settlement" of the trade. It is more of an accounting issue providing the "Illusion" that "Settlement" has occurred. You can't have "Good form" delivery when shares are borrowed from a self-replenishing "Lending pool" nor when "Settlement" is intentionally circumvented via Ex-clearing "Arrangements" and "Share repurchase agreements".
29) Between the timeframe when Reg SHO was officially "Adopted" and when it became legally "Effective" on 1/3/05 there was a 22-week period during which any abusive DTCC participants could have voluntarily cleaned up their delivery failures. Did any DTCC participants take advantage of this time period to "Clean up their act"? In actuality the new delivery failure rate **more than doubled** during this time period. Why? Because there was a massive rush to attempt to finish off as many corporations as possible as well as to rob that many more investors and be able to allow these new delivery failures to be "Grandfathered in" as per the text of Reg SHO. This "Grandfather clause" not only "Grandfathered" in all historic fails to deliver but also provided the inducement to beat the heck out of these targeted corporations for a 22-week period in order to get that many more "Share entitlements" onto their "Corporate failure" trays.
30) Since the SEC did indeed sign off on the concept of the NSCC division of the DTCC utilizing an "Automated Stock Borrow Program I would think that the SEC would take some responsibility in curtailing the abuses therein. The DTCC's response to curtailing these abuses in one interview they gave was almost comical in that they claimed that it was "Automated" and there wasn't

much they could do to prevent these abuses. The SEC's congressional mandate to "Purge the markets of short selling abuses" should empower it to do this.

31) In legal short selling the practitioners need to do a risk/reward analysis that estimates both the risk and EXPENSE of performing short sales vis à vis the reward sought. Risks, expenses and associated "Hassles" include: the need to borrow, the expense of a borrow, the potential unavailability of the borrow, the need to pay higher rates for borrows in limited supply, the risk of having to cover at higher price levels, the risk of being forced to deliver at a time that is "Untimely", etc. Naked short selling in our current clearance and settlement system run by the DTCC either totally wipes out or greatly diminishes each and every one of these risk, expenses and hassles. The maximum "Reward" for legal short sellers is 100% of the money invested less expenses for each available borrow that was successfully attained if the issuer being shorted goes bankrupt. For naked short sellers the potential "Reward" is 100% per "Bet" placed but since there is no "Borrow" executed there is an unlimited amount of potential rewards associated with very little expense and hassle. This is especially true due to how the SBP is administered with its self-replenishing "Lending pool" as well as the availability of entering into fraudulent Ex-clearing "Arrangements" and "Repurchase agreements".

32) The term "Closing out" a position loosely used by the DTCC usually refers to the "Closing out" of an "Open position" accomplished when a legal short seller returns the shares he borrowed to execute the short sale. You can't "Close out" an "Open position" by delivering shares taken from a self-replenishing "Lending pool" or by entering into a pseudo-contract involving an Ex-clearing "Arrangement" or "Share repurchase agreement" designed to intentionally circumvent the "Prompt settlement" congressional mandate. This activity only provides the well-designed "Illusion" that "Settlement" is occurring.

33) As mentioned earlier abusive DTCC participants do not have an "Exclusivity" on using the meticulously designed infrastructure at the DTCC for perpetrating these frauds. This opens the door for those intentionally trying to bring down the U.S. financial system because the administrators of the system are not about to "Bust" this type of behavior because it might end up pointing the finger at their own past deeds. Thus those with malevolent intent get a "Get out of jail" card by necessity. THIS DELIVERY FAILURE ISSUE IS A VERY, VERY, VERY IMPORTANT ISSUE FROM A MULTITUDE OF PERSPECTIVES ABOVE AND BEYOND THE PREMEDITATED THEFT ASPECT THAT NEEDS ADDRESSING STAT!

34) The same type of behavior on a lesser scale involves a prime broker refusing to file "SARs" reports (Suspicious Activity Reports) on obvious cases of money laundering or terrorist financings done by its client unregulated hedge funds based offshore. Otherwise any snooping around done by the regulators might expose the prime broker to criminal or civil ramifications. Thus these SROs theoretically acting as the "First line of defense" against these crimes has to handcuff itself by necessity and desert his post.

SUGGESTIONS

CONCEPTUAL:

1) Reconnect the relatively unimportant “Clearance” of a trade i.e. “Trade matching” to the all important “Settlement” of a trade to reestablish the “Clearance and settlement system” Congress had in mind. The artificially induced “Disconnect” between the two engineered by the DTCC forms the foundation for this fraud. The “Prompt settlement” of trades congressional mandate necessitates a “Clearance and settlement” system not a “Clearance” system with or without “Settlement” per the whims of abusive DTCC participants.
2) The legal definition of “Settlement” needs to be re-introduced into the system. There is no “Settlement” without “Good form delivery”. There is no “Prompt settlement” without “Good form delivery” occurring “Promptly”. **“Eventually”** having to deliver shares held in “Ex clearing”, “Repurchase agreement”, “Desking/”Internalization”, illegal accessing of the bona fide MM exemption from “Borrowing” and other such formats to circumvent “Prompt delivery” is in direct contravention of the ’34 Exchange Act. This is especially true when “Eventually” never occurs due to the untimely demise of the targeted corporation.
3) Note the EMERGENT nature of this problem. Victimized corporations and the investments made therein are dying as you at the SEC once again stall doing anything proactive. The “TIME” in which these “Share entitlements” are allowed to poison the share structure of victimized issuers when factored with the amount in circulation at any given time is what kills these corporations and the investments made therein. Stalling the addressing of these issues wipes out U.S. corporations, the investments made therein and the jobs that they provide on a daily basis.
4) The concept of “One share, one vote” needs to be reintroduced into our market system as it never should have been removed in the first place if not for the greed of abusive DTCC participants.

PRAGMATIC:

1) This is a systemic problem underlying the entire clearance and settlement system. Systemic problems need systemic solutions. The single most effective systemic solution for a busy and unconflicted regulator would be to provide MEANINGFUL DETERRENCE to these crimes that is built into the system. The single most effective form of meaningful deterrence available is THE FEAR OF A SHORT SQUEEZE WHETHER ONE OCCURS OR NOT. The risk/reward analyses that even criminals do must be augmented in the “Risk” variable. The issue here is not necessarily to “ADD” new meaningful deterrence measures it’s

to replace the natural ones that the DTCC has surgically removed like the possibility of being bought-in in an untimely manner. Another deterrent measure would be the fear of criminal repercussions for these activities. Since the SEC currently has no jurisdiction in this regard then working closely with the DOJ would be only natural and helpful in providing meaningful deterrence. No matter how much lipstick you apply theft is still theft.

LEGISLATIVE:

1) Section 19 C of the '34 Exchange Act prohibiting the SEC from being able to add to or delete from the DTCC's "Rulebook" is very problematic and turns "Registered Clearing Agencies" like the DTCC into "Sacred cows". Abusive participants of "Sacred cows" with a superior "KAV" factor are going to misbehave with this much money up for grabs. Immediate attention must be paid to the rules and regulations of the NSCC and DTCC that are in contravention of the 7 main Securities Acts.

IN GENERAL:

1) Unconflicted people need to be running the DTCC. Our clearance and settlement system is much too important to our financial system than to be owned and run as an irrefutable monopoly by those with conflicts of interest beyond description. The lengths that DTCC management went to in order to deny the existence of this problem in their 14-question "Self-interview" as well as their efforts to keep a dozen or so issuers from bailing out of the DTCC and going to a "Self-clearing" modality to settle trades are indelibly etched into the minds of U.S. investors. The current Board of Directors of the DTCC is a "Who's Who" of the prime brokers, clearing firms, market makers, etc. without an investor advocate in sight.
2) In a clearance and settlement system based upon "Novation" and "Central Counter Parties" the "CCPs" (Our DTCC) cannot operate in a conflict of interest-riddled environment wherein every issue results in a tug of war between the needs of its "Participants" and those to whom the "CCP" owes a fiduciary duty of care i.e. the investors and U.S. citizenry in general.
3) Don't get too bogged down in the complexities involved. Back up and take in a macro view every once in a while. People are selling things that don't exist and are refusing to deliver them to the buyers after taking their money. This is not rocket science! Clever Wall Streeters have merely linked the gray zone around law "A" to the gray zone around law "B" and have gone all the way to end point "Z". If you look at the process of going from "A" to "Z" from a distance you'll see extremely obvious thievery. Any law will have a gray zone around it. It's the difference between the spirit of the law and the always fallible text of the law.
4) If Wall Street insiders are given a gift like the superior visibility of buy and sell orders queuing up in front of them then there must be a rigorous

review by an unconflicted party for any breaches of the associated duty created.

5) Wall Street moves fast. Don't be afraid to slow things down a bit if investor protection and market integrity suffer by trying to keep up with this frenetic pace. Congress did not anticipate a trade off between efficiency and market integrity. Their message was to go as fast and efficiently as you can without sacrificing "Investor protection and market integrity".
6) The use of "Easy to borrow" lists that are no older than 24 hours to justify a "Locate" for borrowable shares is absurd. Abusive DTCC participants will simply counterfeit these at will.
7) The SEC hopefully is able to see through all of these "Injection of liquidity" excuses fro perpetrating frauds especially since only one-sided liquidity is often only being provided i.e. the willingness to sell fake shares into temporary market imbalances involving an abundance of buy orders. The question begging to be asked is where are these theoretically "Bona fide" MMs when the market needs buy orders? Anybody would be willing to sit there and take free money from naïve investors. We did get one glimmer of hope when the SEC Chairman recently asked a reporter how much hedge fund fraud he should put up with in the name of the provision of liquidity.
8) Having a theoretically bona fide MM exempt from making a firm "Borrow" or even a "Locate" presents a very slippery slope UNLESS SELL ORDERS LABELED "SHORT SALE EXEMPT" ARE RIGOROUSLY MONITORED FOR ABUSES i.e. when these "Open positions" are not being covered when the share price of the issuer downticks.
9) Congressional investigations are obviously warranted due to the enormity of the SYSTEMIC RISK issues involved. A lot of this "Darkness" can be removed by putting people under oath while having perjury issues over their head.
10) Keep in mind that "CNS netting" covers up a lot of this misbehavior as delivery failures get "Netted" out of existence. The "Multilateral netting" of settlement obligations was introduced to minimize the sheer number of transactions needing to be settled. The law of unintended consequences has reared its ugly head though in its implementation as delivery failures get swept under the carpet. This has allowed the DTCC management to proffer statistics regarding the extent of delivery failures that are clearly tainted. Their intent in proffering these misrepresentations can only be evaluated by their refusal to retract these comments after the true facts were brought to their attention.
11) I would recommend that the SEC and the DTCC get onto the same wavelength as to the definition of "Settlement" and how "Good form delivery" is part of "Settlement" and that "Close outs" only fog up this issue.

12) Due to the historical reticence of both the SEC and the DTCC to address these issues and their incredibly important nature I would suggest utilizing the services of the DOJ, the IRS, the PCAOB, Homeland Security, NASAA, banking regulators and State Securities Regulators and other LESS CONFLICTED parties to set up a multi-disciplinary task force to address these sometimes complex and overlapping issues.
13) I would suggest the setting up of a committee of well trained experts in naked short selling and delivery failure matters to evaluate individual cases of abuse that are alleged. Access to the trading data to be held in a confidential manner can easily be utilized to judge the merits of individual cases. Typically the evidence literally jumps off the page at you while clearly identifying the abusers of this trust relationship. Computer programs can be easily designed to screen individual cases in a preliminary fashion.

SHO RELATED:

1) IMMEDIATELY rescind the "Grandfather clause".
2) Firm borrows are needed before short selling. Loosely defined "Reasonable grounds" to believe the shares are "Borrowable" is an invitation for abuse. If a firm borrow takes a little longer so be it. One of the few natural protective mechanisms that a development stage issuer especially susceptible to these attacks has is related to the fact that not many of these often "Penny stocks" are legally "Borrowable". Very few of these nonmarginable stocks are held in margin accounts, very few have related options that trade and very few are owned by institutions that often do the loaning of shares. That's why the bogus "Bona fide" MM modus operandi is the methodology of choice in these development stage issuers. There are very few shares in the DTCC's "SBP" lending pools for these securities. The insanity of allowing recently borrowed shares used to allow a trade involving a delivery failure to theoretically "Settle" to be put right back into the same "Lending pool" from whence they just came is nothing less than criminal counterfeiting. You can't have "Good form delivery" when "Shares" from a self-replenishing lending pool are constantly being "Recycled" and used to theoretically "Settle" these trades. Picture all of the shares in the SBP's "Lending pool" as white marbles and dye the next one borrowed to allow a trade involving a delivery failure to clear and settle red. Then watch the clearing firm of the new buyer of shares involving a delivery failure place the red marble they just purchased and got delivery of right back into the same lending pool from whence it just came. This is allowed by the DTCC. Then monitor this activity for a year or so. How many delivery failures were allowed to

clear and settle from this one “Red” parcel of shares in a lending pool with very few “White marbles”? This is “Anonymous pooling” at work. To take it one step further was this “Red” parcel of shares backed up by a paper certificate or merely a “Share entitlement” in the first place before it was dyed? In a system utilizing “Novation” and “Anonymous pooling” you’ll never know so the ASSUMPTION made by DTCC management is that it was a legitimate parcel of “Shares” that got loaned out to “Cure” the delivery failure. Legitimate “Shares” and mere “Share entitlements” are indiscernible when held in an “Anonymously pooled” format. They can be bought, sold, loaned, hypothecated, re-hypothecated, etc. just like the “Real McCoy’.

3) The DTCC’s “Stock Borrow Program” needs to be monitored closely to make sure that all shares contained therein are indeed from margin accounts that are not in an “Excess margin capacity” and not from cash or retirement plan accounts. Donors to the SBP’s “Lending pool” are currently placed completely on the “Honor system” in this regard which is insane when you factor in the immense financial gains available to the brokerage firms that can convert their client’s purchases into their own cash reserves. The “Self-replenishing” aspect needs to be stopped immediately and those in charge of monitoring the SBP need to be unconflicted and at arm’s length from the DTCC.
4) A detailed explanation of what constitutes and doesn’t constitute “Bona fide” market making is needed. A truly “Bona fide” MM, by definition, would buy back that which he recently sold on the very next downtick.
5) Trades labeled “Short sale exempt” need to be traced through the system to make sure that the exemption from the “Borrow” was legally accessed i.e. the position was covered in a timely manner especially if the share price is tanking. The “Bona fide” MM exemption is by far and away the preferred mechanism of choice to steal money because of the existence of that $10 billion in annual fees and commissions available to be spread around to those being the most “Accommodative” to the particular needs of the hedge funds. It deserves enhanced regulatory scrutiny.
6) Delve into the Ex-clearing world and see how “Settlement” is being intentionally postponed through these clever “Arrangements”. In order to be able to warn prospective investors of these “Share entitlements” which are not held in a “Registered Clearing Agency” the SEC and the SROs need to know the number of “Share entitlements” being hidden in this format. This numbers of these as well as delivery failures masked as “Share repurchase agreements” should also be made available to prospective investors in the shares of publicly traded DTCC participants as it is clearly a CONTINGENT LIABILITY that belongs on a 10-K.
7) Let the DTCC management know in no uncertain terms that they do indeed have not only the power to buy-in archaic delivery failures but also the congressional mandate.
8) Review the issues regarding what trading data truly deserves a “Privileged” status as it makes no sense for trades labeled “SSE” to

deserve any "Privileged" status whatsoever. This is critical since this exemption has become the entry point for a large percentage of bogus "Share entitlements". Almost every country on the planet has more transparency in regards to trading data then does ours.

9) DETERRENCE providing penalties for intentionally mismarking "Short sales" as "Long sales" need to be utilized. You can only say "Oops, clerical error" so many times and get away with it.
10) Hedging positions for registered options market makers clearly must be closed out when the option expires. Otherwise this creates a back door for securities fraudsters to poison the share structure of targeted issuers with damaging "Share entitlements". If an options MM used this exemption associated with a hedging maneuver then common sense would say that once the option has expired this hedging exemption is no longer applicable by definition. This is similar to a theoretically bona fide MM refusing to cover within a reasonable time period of accessing his exemption especially as the share price tanks. **By definition** he was not acting as a bona fide MM.
11) Enforce or reintroduce the rule that there are to be no "Share entitlements" in an issuer's share structure greater than 0.5% of the number of shares "Outstanding". This would necessitate the quantification and removal of "Share entitlements" held in Ex-clearing as well as "Repo" formats illegally used to indefinitely postpone the "Settlement" of trades.
12) Short interest reporting must be done on a timely basis and include all "Share entitlements" as per the spirit of the "33 ("Disclosure") Act and Reg FD. In other words the SEC and the SROs need to become "Fully reporting" and compliant with Reg FD and Sarbanes-Oxley also. If investors need to file when they have purchased 5% of a company's shares then why wouldn't a short seller have to do the same? To show how corrupt our current system is does the 5% rule apply to legally "Outstanding" shares or the sum of these plus all "Share entitlements" within the system? Since this rule has to do with "Control" and voting issues I would assume it was 5% of the sum of legitimate shares plus "Share entitlements". How can we do the math if you don't make these disclosures? Again, when you tinker with the definition of a "Share" the corruption will permeate the entire system including the text of ALL of the 7 main Securities Acts.
13) As Sarbanes-Oxley mandates for a corporation's management to sign off on financials the Compliance Officers of DTCC participants should have to "Sign off" on these delivery failure attestations. Just where are the in-house "Compliance officers" during the commission of these frauds?
14) What's the hurry? Abusive MMs claim that they need to be able to inject liquidity into buy orders in fast moving markets. Thus they proffer that they should not be subject to "Borrow" or even "Locate" requirements. The "Locate" requirements are full of subjective loopholes like "Reasonable grounds", "Affirmative determinations", not being on "Hard to borrow" lists, being on an "Easy to borrow" list, "Entering into

arrangements to borrow", etc. This "Liquidity" issue is being overplayed by those wanting to steal money. It's true that a MM must be ready to trade a security but he doesn't have to execute the trade instantaneously after he sees a buy order. There might be 25 other MMs making a market on that security. He can "Work" the order and wait for interested sellers to appear. Very few MMs inventory stocks of development stage issuers because they know how tilted the playing field is. Thus any selling they do into a buy order will be sold in a naked short sell fashion labeled "SSE". What we see now is any MM with visibility of a buy order will scramble to sell into it before their competitors do. Why? Because in our current clearance and settlement system it's free money. The larger MM firms have a distinct advantage here in that they have a superior visibility of order flow in that they get a disproportionate amount of it. There's no time for a legitimate seller to sell into the buy order because it's instantaneously gone and the MM has the excuse that he was just acting in a bona fide market maker capacity in a fast-moving market. If there are only "X" amount of legitimate shares for sale at a certain level then so be it. Just leave your bid there until it gets hit. Orders need not be filled within 10 seconds. Computers can match up buyers and sellers quite nicely without having the human greed element being interposed and setting up a tilted playing field. Perhaps a "Pilot study" setting up an ECN for the lower trading venues is in order. There would be no middlemen "Taxing" the system, no human greed element, no leveraging of superior "KAV" factors, no "Bear raids", no "Crossing" delivery failures of "Threshold list" securities every 13 days, no invisible trade data, no need to monitor if a MM was Acting in a truly "Bona fide" manner, no SYSTEMIC RISK issues spiraling out of control, etc. There would just be a level playing field wherein buyers and sellers DIRECTLY interface just like in an ECN. What is holding up a movement to a market like this? THE EXISTING DELIVERY FAILURES ON THE BOOKS AND THE FIGHT THAT THOSE LOSING THEIR "PERSONAL FIEFDOM" WOULD PUT UP. The SEC needs to delineate how many shares or what percentage of the outstanding shares a MM can legally sell into markets dominated by buy orders. One might suggest that a certain amount of shares can be sold before the offer must be lifted so that the share price is allowed to breathe and find its own unmanipulated levels. The problem now is that MMs in trouble put a rigid "Blanket of selling" onto the markets of stocks that they have "Accidentally" run up astronomic numbers of delivery failures in order to minimize the amount of cash or equities they need to post to collateralize these positions. Without specific guidelines abusive MMs will just continue to don their "Bona fide" MM hat and do their thing because as the share price plummets there typically are new about to become "Victims" lining up with cash in hand to take advantage of these "Fire sales" involving issuers trading at perhaps 1% of book value which theoretically "Bona fide" MMs are supposed to address with naked short sales.

15) The SEC needs to realize that the refusal to cover previously established naked short positions even in markets where the share price is tanking IRREFUTABLY PROVES that the exemption from borrowing before short selling accorded only to bona fide MMs was illegally accessed. Truly “Bona fide” MMs cover at these times and take their profits. Abusive MMs refuse to cover usually for two different reasons. Firstly, they don’t want to spend the recently stolen money. Secondly, if their naked short position is gigantic then covering would not only entail spending some of the stolen money but as the share price inches upwards from the covering the collateralization requirements for the uncovered naked short position also goes up which drains yet more of the pile of stolen money. If the previously established naked short position is astronomic because the targeted issuer refused to roll over and die on cu perhaps because it wasn’t a “Scam” after all then sometimes the fraudsters can’t cover without incurring serious financial damages. Note the SYSTEMIC RISK incurred as the repercussions felt from a large clearing firm or MM going bankrupt might be felt throughout the whole “House of cards” these fraudsters have created. The SYSTEMIC RISK from these “Delivery failures” is growing daily and will never be easier to address than right now. The “Grandfather clause” merely allowed this SYSTEMIC RISK as well as this “House of cards” that eventually must be dealt with to become that much higher.

16) Remember that Reg SHO deals ONLY with delivery failures in the “Continuous Net Settlement” system. There are many other places to hide them.

17) Strictly define a “Bona fide” arrangement to borrow and an “Affirmative determination”. You either made a firm and legal “Borrow” or you didn’t. Traceability is the key here.

18) Be careful in making statements like “Reg SHO is working”. Until Reg SHO addresses the problems in Ex-clearing “Arrangements” and “Share repurchase agreements” (“Repos”) then Reg SHO is insignificant because of the availability for mass migrations to the still patent loopholes.

19) To enhance transparency in the nonreporting Pink Sheet sector and to enable nonreporting issuers to access these protections a procedure needs to be developed to allow nonreporting issuers with a 12-g exemption from reporting to contact the SEC to inform them of the number of shares they have “Outstanding” periodically so that the 0.5% calculations can be made. Congress provided this exemption from reporting requirements to the tiniest of issuers in order to alleviate the sometimes usurious financial burden of becoming and maintaining a fully-reporting status. Despite the regulator’s and SRO’s historical perception to the contrary non-reporting does not equate to “Scam”. Any investor should have access to the

number of shares “Outstanding” independent of whether or not the issuer is fully reporting or not. This should help minimize “Pump and dumps”.

20) As far as a “Phase-in” period for these amendments perhaps this extra comment period should be counted towards any planned “Phase-in” period. After all we’ve been having these discussions for 8 straight years now and any DTCC participant the least bit interested in cleaning up its act would have done it by now voluntarily.

21) Any efforts to merely “Cross” these naked short positions to a co-conspiring firm to buy yet more time should be diagnosed quickly and punished appropriately. You’ve got to know that the “Privileged few” are not about to passively roll over and start obeying the securities laws all of a sudden UNLESS INCENTIVISED TO BY A NO-NONSENSE SEC OR SEC/DOJ combination.

22) As far as your concern regarding “Volatility issues associated with short squeezes in issuers with a large amount of preexisting delivery failures”, I don’t think you have realized it yet but the FEAR of a short squeeze is an **unconflicted** regulator’s best friend especially when the regulator is under-manned and not nearly as well funded as those perpetrating the frauds. Your “Concern” is supposed to be related to “Investor protection and market integrity” and not to whether or not the perpetrators of perhaps a trillion dollar fraud might stub their toe financially while being forced to finally deliver that which they sold an inordinate amount of time ago. Refusing to deliver that which you sold is just that-it’s criminal and inexcusable whether it’s done on Wall Street or “Main Street”. Even the “Privileged few” are subject to common law precepts.

23) Now that we have witnessed first hand the incredible amount of criminal behavior going on in the stock lending business it is time to make sure that all stock loans are traceable so that the same parcel of shares can’t be simultaneously loaned out in a variety of different directions. The “Anonymous pooling” of shares held at the DTCC as well as those in their “Stock Borrow Program” allow just that. These parcels of shares need to be electronically labeled.

24) Investors need to be educated about the perils of keeping their shares in “Street name” and in “Margin accounts”. The critical mass of a clearing firm attained by being able to legally “Own” all of the shares from all of the clients of all of its “Introducing brokers” is beyond comprehension. The fact that income in the billions of dollars is being made by renting out these shares paid for by an investor to the mortal enemy of the invested in company represents a CONFLICT OF INTEREST beyond description which is expressly forbidden by the ’34 Act. The fact that the rental income is not shared with the investor is bad enough. The ability of a

clearing firm to collateralize its own debt associated with delivery failures WITH THE SECURITIES PURCHASED BY OTHER INVESTORS IS OBSCENE.

25) Strict guidelines need to be set as to how much time a clearing firm has to deliver paper-certificated shares **once they are requested by an investor.** Perhaps the accruing of interest might speed up the process a bit. The concept that nobody is rigorously monitoring the age and absolute numbers of mere “Share entitlements” in Ex-clearing and at the DTCC is heinous enough. When DTCC participants refuse to deliver paper-certificated shares in a timely manner upon demand by the investor/”Entitlement holder” then the investment community learns that what they bought and paid for not only wasn’t a “Share” with a vote attached but it wasn’t even a “Share entitlement” without a vote attached. It was nothing but “Air”.

26) The SEC needs to become intimately familiar with the DTCC’s resurrection of their 1990 “RECAPS” program. The SEC needs to make the judgment as to whether or not this is just another clever way to start YET ANOTHER round of “Netting” to provide the “Illusion” that settlement is occurring in trades that previously failed. Many securities scholars hold that the “RECAPS” program is just another blatant effort to avoid the “Settlement” of trades and to leave “Share entitlements” exactly where they are on the “Corporate failure” tray of the victimized issuers and to leave the investor’s funds exactly where they are located in the wallets of those that sold nonexistent shares and continue to refuse to deliver that which they sold. Everybody knew there would be some new sleight of hand coming out of the DTCC to avoid buy-ins and it appears that this is what DTCC management decided on to cover up the crimes of their abusive participants from the past. Being granted permission to roll back the age of an archaic delivery failure to zero is absurd. “Prompt settlement” means “Prompt settlement”.

27) The DTCC should only be allowed to “Interface” with other CCPs that have their house in order in regards to delivery failures. Otherwise the DTCC can be used as a “Fence” is used for other types of stolen property.

28) Allowing the sellers of nonexistent shares access to the proceeds of these sales as the share price predictably tanks from this activity without ever delivering these shares is unconscionable. It’s unheard of in a non-Wall Street setting. Shouldn’t the proceeds of these sales be escrowed **UNTIL** delivery occurs and the trade legally “Settles”? Otherwise what we have is merely a self-fulfilling prophecy-just keep selling fake shares into any waves of buying and watch the money flow into your wallet. Any excessive inflow of buy orders is a good thing for the crooks because that’s just that much more money flowing into the fraudsters’ wallets when the wave of buying ends. Eventually all waves of excessive buying

have to come to an end and that's also good news to the fraudsters. Then the naked short sellers can attack the bid and force the share price down and either go for the jugular to induce bankruptcy or to at least force the targeted prey to raise money at ridiculously low levels. If another wave of buying comes in then that's also more good news for the fraudsters who sell into these orders which will allow these proceeds to flow into their wallets right as more "Share entitlements" take their place on the "Corporate failure" tray. Then after the wave of buying inevitably ends it's time to go back into attack mode.

Picture each wave of buying resulting in the investor's funds being placed onto the top of a table. This is the "Loading" phase which occurs when buy orders dominate over sell orders. When the buying wave ends the fraudsters attack the few bids that are present and the table tips allowing the money to flow into the lap of the fraudsters. This is the "Harvesting" phase of the ill-gotten goods. Then the table goes back to a flat table top position awaiting the next wave of buying to come in. When it becomes time to bankrupt the targeted issuer the table is simply tipped all the way over via a massive naked short selling attack onto its back from which it can't recover. Then it's on to the next targeted corporation.

29) I would suggest reviewing trade data with software designed to detect both victimized issuers as well as the identity of the abusive DTCC participants. Trading patterns associated with abusive behavior could be set up on a point system. Abusive trading behavior would be the typical items like a high rate of trade cancellations after the market closes, bid banging near the end of a session, buying an inordinate amount of shares labeled as "SSE", "Crossing" or "Parking" shares at the same co-conspiring firm regularly only to see them "Crossed" back later on, the lack of buying sell orders labeled as "SSE" after the market drops, the number of "Stop loss" orders triggered as compared to statistical norms, etc. This could be done so that any "Privileged" information is kept "Privileged". The most tell tale information would undoubtedly be the ability to identify the MMs that illegally accessed the exemption from borrowing by refusing to cover these naked short positions while the share price was tanking. There are clean MMs out there; they're the ones with lousy earnings.
30) I would also suggest that the SEC focus in on these issues involving the theoretical "Injection of liquidity" instantaneously upon seeing a buy order. This excuse for abusive activity holds no water when this "Liquidity" only occurs when buy orders dominate a market.

The investment community and U.S. citizens thank you in advance for firmly addressing this issue regarding naked short selling and the related delivery failure issues on behalf of all of the citizens of the U.S.

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