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Individual Investor

September 28, 2006

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

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

Dear Secretary :

It is confusing to read the comment letters bellow from market participants (Wall Street firms) as they contain contradictory statements.

Are Delivery Failures a big problem or not?

On the one hand, the comment letters by Wall Street firms state that REG SHO is working in curbing delivery failures and that in any case, delivery failures are only a very small percentage of the market.

On the other hand, these letters from Wall Street firms and those who represent them, suggest vast harm and danger to the securities market if delivery failures are curbed any further. Especially if the old grandfathered delivery failures are required to be bought in.

So the question is: Which one is it?

If we are to believe Wall Street firm statements that buying in old delivery failures and curbing new delivery failures will have a large effect on markets, then by definition old delivery failures and new ones also affect the market in significant ways. Either they both do or neither do.

It can not be that only the buying in of delivery failures has an effect on markets but the selling does not. No, if the buying has an effect, the selling has an equal effect.

Since both have negative effects to one party or another in either the buying or selling due to delivery failures, all delivery failures must stop.

Unfortunately, regular investors did not ask the SEC for special exemptions or relief in the form of No Action Letters or exemptions from the 1933 and 1934 Acts when the selling was damaging their capital investments. This seems to be the sole privilege of Wall Street firms. And I have yet to read a comment letter that states the main reason to allow the continuation of delivery failures is out of concern for the protection of investors.

Also unfortunate is the fact that REG SHO has done nothing to curb delivery failures. The FOIA data shows that the number of delivery failures for the NYSE are the same on May 31, 2006 as when REG SHO first started. And these are only delivery failure that are reported by the DTCC. Ex-clearing fails are not even included and are an unknown quantity.

What makes delivery failures so effective and harmful is that many are highly concentrated on a small subset of securities. Nobody likes to play Russian Roulette in the equity markets. Not investors and not issuers. Certainty must rule that no security will fall victim to a large number of delivery failures.

Price Discovery

What's a fair price for a security? In several Wall Street letters and those representing their interests the term "price discovery" is used in place of market equilibrium and in the same breath to justify delivery failures.

However, the price in any market is a function of supply and demand. Wall Street firms want everyone to forget that delivery failures increase supply. The only possible effect is a price decline due to this increase. However, is it a legitimate increase? Are real corporate securities being traded for the purchase money taken from investors and increasing supply?

No. The number of corporate issued securities remains constant while the supply is increased via delivery failures. However, the market perceives this as a real dilution as real money is taken from investor accounts.

The Wall Street firms know that they are influencing the actual price of the securities negatively, not just trying to "discover the price". Increasing supply will do that in any market. But this simple economic fact is not mentioned in any of the Wall Street firm letters. It's an inconvenient truth.

Unfortunately for equity investors, this economic fact is what harms them.

So perhaps investors should petition the SEC to exempt them from provisions of the 1933 and 1934 Acts to allow investors to fail to pay for securities at least for an equal amount of time as sellers are exempt from delivering. This would counter balance the failure to deliver on the part of Wall Street firms. Naked buying would equalize naked selling. Of course both are equally absurd. Yet Wall Street persists on wanting to practice one of the absurdities – and only they not investors, because the Wall Street firms make a lot of money this way. $21.5 Billion in bonuses this year alone. But it remains absurd and illegal as per the 1934 Act.

This is why is foreign markets do not easily tolerated this absurdity, as opposed to the U.S. market's whole sale practice of it. Is it any wonder why U.S. markets are losing global market share?

SEC's Exemptive Authority

In many Wall Street letters, it is suggested that the SEC should do this or that and determine economic impacts on Wall Street firms, etc…. In contrast, in the NCANS letter, which was signed by over 1,000 people including myself, and in almost all other individual comment letters including this one, nothing more is asked of the SEC but to uphold the law. That is all. The law is the Securities Act of 1933 and the 1934 Securities Exchange Act.

It is very simple. It's not complicated

I am not only asking that the law be upheld and enforced, and that the SEC stop exceeding it's authority. These two Acts are the Bible for the SEC and all other market participants to follow. The SEC has an obligation to enforce them and has strict limits in allowing any explicit exemptions to these Acts. Section 36 of the 1934 Acts only gives exemptive authority to the SEC.. *"…to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors."*

Since delivery failures have a significant negative impact on the markets and investors, any SEC rule that exempts the 1934 Act requirement that all sales include the transfer of record ownership of securities is not permitted by the Act.

All we ask the SEC to do in regards to the REG SHO Amendment is to uphold the rule of law. If the SEC won't do it, it will be done a different way. In this country, the rule of law applies to all equally.

Respectfully submitted,

Thomas Vallarino