SEC's Roundtable on Regulating Short-Selling was a Replay of Waxman Hearings on Regulating Tobacco

DATE: 11 May 2009
TO: Honorable Madam Chairman Mary L. Schapiro
CC: SEC Commissioners, Selected Members of Congress
FROM: Reza Ganjavi
SUBJECT: Critique of SEC's Roundtable on Short Selling Regulation

Dear Honorable Madam Chairman Mary L. Schapiro:

I am writing to humbly give you feedback on the 5 May 2009 "Roundtable to Examine Short Sale Price Test and Circuit Breaker Restrictions" which I watched with great interest.

First off, it was a pleasure to see both your interview with Bloomberg and you chairing the panel discussion on short selling on May 5. Your nomination has been one of President Obama's best moves so far. Congratulations to you and the country for having such a fine SEC Chairwoman. I hope your actions will speak louder than words and that my optimism is correct. So far, you seem to have shaken up the SEC in a good way.

I agree with those who believe the SEC has been asleep at the wheel or that it's been a "joint venture between the Government and Wall Street." Its awakening is long overdue. Good luck in your efforts in really protecting investors and not criminal manipulators which many hedge funds are, in one form or another, whether they've been convicted of it or not. I remind you that prior to your engagement, the SEC had not, and to my knowledge, and to date still has not, prosecuted a single case against illegal, criminal naked shorting. The SEC has a long long way to go to get out of its apparent siding with Wall Street and win the confidence of Main Street investors.

Here are some of my observations and opinions about the Roundtable:

In general I was surprised by the makeup of the first two panels which to a large majority represented the interest of Wall Street, not Main Street. Invesco and Fidelity, both as Wall Street as you can get, shamelessly said they are representing Main Street because of their individual investor accounts. Nobody asked them about how much fees they get from institutional investors and large hedge funds who spend billions of dollars in fees and have analysts, journalists, and brokers in their pockets. This is not a matter of fad, but a matter of fact.

The testimonies reminded me of the famous "Waxman Hearings" on the Regulation of Tobacco Products on April 14, 1994, by the House's Subcommittee on Health and the Environment chaired by Representative Waxman in which the "7 Dwarves", the 7 CEOs of Big Tobacco shamelessly testified, under oath, that "nicotine is not addictive".

I could not believe that Fidelity, Invesco, Credit Suisse, Citadel, and other major Wall Street firms or those with an interest in protecting hedge funds testified that there is nothing wrong with the market, and denied manipulative practices that their clients are engaged in.

These large brokers and their large hedge fund customers that were represented on the panels, even by a couple of academics, such as Charles M. Jones of Columbia Business School, clearly do not wish for more regulation. They're used to going virtually unregulated for years during

Bush Administration's hands-off approach. More regulation will mean a cut in their profit, a cut in their taking away money which Main Street should have if it was not for manipulative practices which are done so politely that these folks are shamelessly denying it even happens.

Naked short selling happens every day. Now the SEC, after ignoring the subject for a long time, finally said the 3-day hard-delivery rule should really be followed. However, is this rule enforced? Even if it is, it is an ineffective rule without a pre-borrow requirement since during those 3 days a hedge fund can naked short a stock, drag it down, paralyze it, and then buy at a lower level and the repeat it – without violating the hard-delivery rule. This happens every day to good hard working companies that are trying to make the world a better place. And these guys have the nerve to say there is nothing wrong.

Main Street is regularly abused and bullied by Wall Street and it all goes seemingly unnoticed while the SEC was asleep behind the wheel before your time. Will you have the courage to change that and stand up to the crooked elements who are not exceptions but run rampant up and down Wall Street? On that note, I have heard numerous times recently that the SEC's enforcement division problems are due to lack of enforcement resources. However, I watched an interview with Mr. Cox in which he said this was not the case – that there were enough resources. If he was right then the problem was something else. Today's GAO's report sheds new light on the workings of the SEC under Mr. Cox: "*Cox's SEC Hindered Probes, Slowed Cases, Shrank Fines, GAO Says*", reads one headline, and it point to Republican Commissioners as supporting less stringent enforcement.

Contrary to what some of the speakers at this roundtable stated, the concerns about short selling are not paranoia. My concerns are very real and legitimate. I have an MBA from a top-rated Business School and lots of professional experience in various fields such as management consulting, analysis, engineering, and managing large projects. I have had several Wall Street firms as clients and am as well educated an individual investor as most get, or at least not merely as naive as Republican Commissioners Troy A. Paredes and Kathleen L. Casey, and Fidelity and Invesco representatives like to believe – one who blindly believes shorts are to blame because s/he does not understand the subject, has paranoia, is following fashion, and needs to get educated.

The problems associated with short selling is NOT just a matter of perception as implied by these Republican Commissioners and stated by Wall Street representatives. Many individual investors are well educated. You have to be knowing you're playing in a non-level playing field. It seems that the SEC is the one what needs better education. Listen to a self-admitted manipulator, Jim Cramer bragging about crooked techniques of hedge funds and how they get away with it because of SEC's lack of competence:

"You can't foment [create the impression that a stock is down]. That's a violation... But you do it anyway because the SEC doesn't understand it…. What's important when you are in that hedge fund mode is to not be doing anything that is remotely truthful, because the truth is so against your view - it is important to create a new truth to develop a fiction".

I am very well educated on the subject and I am still very wary, very untrusting of the financial system and believe deep in my heart that it is crooked and criminal because criminal activity happens every day and it is not stopped, and not even investigated. The very lack of SEC rules, such as NOT requiring pre-borrow for shorting, and NOT disclosing to the public who large naked short sellers are, help and protect Wall Street to the detriment of Main Street investors and companies. Those few rules in palce are not enforced (as proof, please show us a single case of naked shorting that's ever prosecuted in SEC's entire history). I am therefore upset. I like to invest the little money I have saved through hard work and painful investments, but it is not a level playing field. The hedge funds have the upper hand, and the cop, the SEC, seems to be on their side.

I could not believe that Charles M. Jones of Columbia Business School was trying to sell a false idea so cunningly. He said if shorting is stopped after circuit breakers goes off, it could hurt the stock more because it takes away the liquidity. How do you figure that? If shorting is not allowed any more it means no more shorting. Simple. Shorting makes the price drop. Naked shorting makes the price drop artificially. How in the world would it help a stock not fall further if shorting is disallowed when shorting is an act which makes a stock drop (supply/demand). I don't need to be a finance professor to see his logic is false and that his whole attitude is in bed with hedge funds.

It was refreshing to hear Dr. Robert Shapiro's academic testimony supporting pre-borrow rules and other regulations to tie up hands of manipulative short sellers.

Testimony of Michael McAlevey of General Electric Corporation was sincere and honest and not rooted in some crooked inclination and affiliation unlike some of the other testimonies which were clearly aimed at protecting large hedge fund customers.

Brian Conroy of Fidelity stated there is no problem, that everything is just fine, no further regulation is necessary, and two times he shamelessly contended that the subject is one of fashion, a fad.

Larry Leibowitz, of The New York Stock Exchange clearly doesn't like further regulation or tying hands of shorts. He likes his commissions and his hedge fund customers.

Dan Mathisson of Credit Suisse also dominated the presentation, again, to push his agenda of "let us go unpoliced." I was shocked that right off the bat he threatened that a proposed change will take a year to implement. Please ask him to submit the details of how he derived this estimate. I have run a lot of software projects for over 20 years including ones for Wall Street firms. One year is a long time, and what you're trying to do is not inherently complicated. He's just trying to scare you.

Kevin Cronin of Invesco in his opening remarks emphasized a point which was not even part of the agenda: that SEC should not disclose short positions. I think the public has the right to know who large short sellers are, and without much of a delay – a delay long enough as dictated by technical reporting constraints and no longer. But Mr. Cronin and others on Walls Street are nervous about this possibility because they will be very embarrassed for their clients to know how these good guys could be bad guys at the same time. Please read Bill Capp's letter, the CEO of Beacon Power, in which he explains how not knowing who his large short sellers are hurts him in knowing who his financiers really are. Companies fall in the claws of vulture financiers every day because the large shorts and their affiliations are not known. Many Wall Street firms are nervous about this because it will trim their ability to manipulate. The "front running" concern is just an excuse. Why is not an issue for long positions. Why should short sales be treated differently?

Republican Commissioner Kathleen L. Casey dominated the questioning and I felt her questions were prompting answers which were pro-Wall Street. Democratic Commissioner Luis A. Aguilar's silence was deafening.

Dendreon (DNDN) was mentioned a couple of times during the Roundtable. Dendreon’s problems with short sellers and naked shorts are not only from last month. They go way back and the SEC did nothing about manipulative hedge funds, analysts, and journalists who helped deny a life extending safe biologic from reaching dying patients. Such can be the consequence of the policeman being sleep at the wheel, and we tried to warn the SEC about this problem long ago.

Beacon Power (BCON) is another one of many companies which like Dendreon are victimized by problematic short selling. I believe naked shorts are manipulating the company’s stock by taking advantage of the dysfunctional 3-day hard-delivery rule which is either not enforced or hedge funds have an easy way of abuse it (as described above). The SEC needs to mandate that all publicly traded companies are subject to a pre-borrow requirement. This will fix a major corruption hole that's bogging the financial system. I am sure the "Seven Dwarves" will disagree and tell you that we have no problems with short selling. But we indeed do.

I am as Main Street as you can get, and I know lots of other small investors who are highly educated, and we all neither trust the financial system nor the SEC. When we hear SEC speak about protecting investors, it sounds like a joke, because as soon as a small investor buys a small company stock which has a large short interest, they're entering an unfair game against a criminal group who manipulate, lie, cheat, distort, abuse the system, sell what is not theirs, and sell what they have not even borrowed (that is a crime under every judicial system in the world but the SEC tolerates it as long as you sell what is not yours and what you have not even borrowed for three days and buy it back once you've pressured the price down).

Madame commissioner, please do not let us down. Please do not let these rituals and rhetoric slow you or distract you. Fidelity is wrong. There is very much a problem. There is chaos in confidence. Small investors do not trust Wall Street, and do not trust the SEC because Mr. Cox gave us nothing more than a lot of lip service. Please help restore our confidence by going head on against manipulative shorting practices which have only one solution and that is a pre-borrow rule. And reveal to us who our companies’ large short sellers are. Short-and-distort is not a joke. It happens every day. We feel it with our sweat and blood. Investors need protection against these rampant predators. Please help us.

In summary, it is absolutely critical that:

a) The SEC should impose a mandatory "pre-borrow" requirement for shorting all stocks.
b) The SEC should reveals to public, without much delay, who large short sellers are, just like it reveals who large shareholders are. Every public company deserves to know who is betting in a big way against it so that it can prevent being a victim of toxic financing.
c) The SEC should establish a circuit breaker rule, and an uptick rule.

May God Bless You.

Kind Regards
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