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Securities and Exchange Commission
100F Street NE
Washington, DC

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Attn: Chairman Mary Schapiro and the Commission Staff

So the Securities and Exchange Commission claims Regulation SHO is working. Is it working well enough to passavate a sleeping and disinterested Congress or is it really working?

If you peruse through the analysis published by the SEC's Office of Economic Analysis they will tell you that Fails-to-Deliver, in aggregate, are down as compared to the June 2008 record highs. What the OEA's analysis fails to identify is that the aggregate fails still exceed 2005 levels.

Further studies by the OEA reveal that the number of companies posted on the SEC's Reg.SHO threshold list is down considerably. This again is true but deceiving when you consider that the aggregate fails to deliver are greater than 2005 levels while the SHO listed companies are far below 2005 levels.

It is called localization of fails and localized fails spell trouble.

But in all the PR rhetoric that the agency dispels, what is most concerning is that the agency has claimed that they are enforcing the rules regarding fails to deliver and Regulation SHO's mandatory buy-in requirements. And to illustrate what is wrong with Regulation SHO I will offer an example. I ask that as I offer this example up as evidence that all is not well in trading land, please look at this as an example of a broader picture of our trading markets and not an isolated case involving a micro-cap issuer.

Remember, under SEC Rule 204T:

- FTDs Resulting From Short Sales - Participants are generally required to close-out FTD positions resulting from short sales by borrowing or purchasing securities, by no later than the beginning of regular trading hours (9:30), on the settlement day following the regular settlement date (T+4).

- FTDs Resulting From Long Sales And Bona-Fide Market Making Sales – Participants are generally required to close-out FTD positions resulting from long sales and bona-fide market making sales by registered market makers by purchasing or borrowing securities, by no later than the beginning of regular trading hours (9:30),on the third consecutive settlement day following the regular settlement date (T+6).

So based on these rules alone, there are very few legitimate reasons for a company to be listed on the regulation SHO threshold security list. To be on the list, there must be greater than 0.5% of the shares issued and outstanding in a fail status for a period of 5 consecutive days after settlement date (T+7). Under the guidelines above the longest standing allowable fail is T+6.

The example to consider is a micro-cap stock called Jag Media Holdings. No stranger to allegations of naked shot sale abuses.

After hours on July 31, 2009 the company completed a long awaited reverse merger with CardioGenics. The merger brought in liquidity as the volume trading on Monday August 3rd was more than 3 times that of July 31st and market volatility ensued as the $0.38 stock climbed as high as $0.51 before closing at $0.42.

But after the next few trading days showed a relative stable market, August 10th showed a small increase in market before August 11 peaked volume. On this day volume again spiked at the $0.48 stocked peaked to $0.74 before closing at $0.72. August 11 represents Trade Date (T+1). August 12th had remained heavy in volume and while the stock peaked at $0.78 the market closed at $0.69. August 12th represents T+2.

The markets continued to trade at the closing prices went progressively down.

August 13th closing $0.63 (T+3), August 14th closing at $0.57 (T+4), August 17th closing at $0.57 (T+5), August 18th closing at $0.62 (T+6), August 19th closing at $0.59 (T+7) and August 20th closed at $0.57 but only after collapsing down to $0.45 (T+8).

On August 19, 2009 Jag Media was first published on Regulation SHO. In the four years since SHO has been effective Jag Media was only there once before and during times when SHO had significant loopholes in the settlement requirements. Loopholes the SEC said was addressed by the latest rounds or rules.

So what put this company on to the SHO list?

Short Sale failures? As a penny stock short sales come with high margin requirements. According to public documents, the short interest in Jag Media was 58,000 shares with over 65 Million issued and outstanding. With a short interest of less than 1% it would be hard to think that legal short sales could create a threshold problem.

But should this have added to the problem, under Rule 204T short sales resulting in failure would require buy-ins on T+4 and if adhered to would prevent a threshold listing under the guidelines set by the SEC.

Long Position Fails? Certainly long investors could have sold out shares during the run-up to lock in profits but according to SEC records, there wee no settlement issues in this market and the shot interest levels were too small to create a substantial long sale failure level. The only way that long fails could have supported this problem would be if the account records at the DTCC were inaccurate relative to past trade settlements.

But should this have added to the problem, under Rule 204T long sales resulting in failure would require buy-ins on T+4 and if adhered to would prevent a threshold listing under the guidelines set by the SEC.

Bona-Fide Market Making? Now here is where there is interest. In the days that trading resulted in the excessive failures the sell side market became dominated by select few market makers, some with absolutely no prior history in the stock.

Puma Capital out of Miami Florida (PUMA) had a year-to-date trade volume of 75,000 shares and no volume reported at all in July 2009 and yet they were heavily represented as the best offer on these critical days.

Noble International Investments (NOBL) had no prior year to date volume and none in 2008 and yet they too were weighed heavily in the markets best offer during those critical days.

Finally, Natexis Bleichroeder Inc. (ABLE), which has become an increasingly large market maker in the stock this year, also participated in boxing the market with the best bids and offers showing throughout the critical days.

Of interest in not what these market makes did on August 11 and August 12 but what actions they took once Jag Media became a threshold security. Were the fails their fails, fails generated in bona-fide market making activities, and did these firms need to manipulate the market down to cover their trades?

On August 20th, two days on the Reg SHO list, the market opened at $0.60 but with ABLE and PUMA dominating a sell side market the bid was pounded and the stock tanked to $0.45. At one point ABLE representing a market best bid of $0.42 and best offer of $0.425.

Were these member firms using the exemptions provided by the SEC to sell naked into a market, and sell naked into the bid to collapse the market. If they did so while market makers failed to maintain an orderly market of liquidity it could easily collapse a market and manipulate prices.

Now granted most will say “who cares” this is a penny stock of no significance. The problem is, market making activities are not just selective. If a market maker is caught out of the money these firms can and will manipulate any market to recover their losses and no agency that regulates these capital market would ever know it.

Did the SEC pick this up? Would the OEA pick this issue up as an anomaly? No!

The OEA differentiates fails to deliver that persist for greater than 17 days with fails that deliver less than 17 days. Those less than 17 days are ignored and rationalized away. Problem is, in only 8 days nearly 50% of this less liquid market cap could have been destroyed and done so by most likely predatory market making activities.

The SEC owes us an explanation. They owe us answers as to how many events like this occur and why they occur. They are responsible for creating systems to detect and address immediately abuses of the exemptions they offer market making firms. Will they do so is yet a separate question.

Ironically, this issue Jag Media has a great deal of history with the trading markets and the SEC. In 2003 several member firms and clearing agencies contacted the company to address their inability to settle trades in the stock. The issue was bought to the attention of then Senator Paul Sarbanes who brought it to the attention of present co-Acting Director of the Division of Trading and Markets James Brigagliano.

Instead of addressing the concerns raised by the Senator and the e-Mail communications by the member firms, James Brigagliano misrepresented the facts in a response to the Senator. Brigagliano attempted to blame the fails identified in the 2003 e-Mails on a corporate action taken by the company some 14 months later; June 2004. The entire evidence of this intended deception by a federal official of the SEC can be located at http://investigatethesec.com/drupal-5.5/?q=node/123 .

So will we get answers or more of the same?

- Where is the proposal for public comment on a mandatory pre-borrow?
- Where are the reforms and restrictions to be considered regarding bona-fide market making and present day abuses?
- Where are the SEC enforcement actions against those that manipulate our markets as so many smaller markets are manipulated?
- When will the SEC's OEA conduct a more balanced, less biased assessment of what happens across the markets instead of the BS they continue to publish? How many legitimate bear raids have their analysis uncovered?

If the SEC has no intent on protecting 100% of all public companies and 100% of all public investors that put their trust in these US Capital markets, at least have the transparency of informing us of who will be falling off your radar screen? Stop pretending you care and are doing a good job when so many see and feel otherwise.

David Patch
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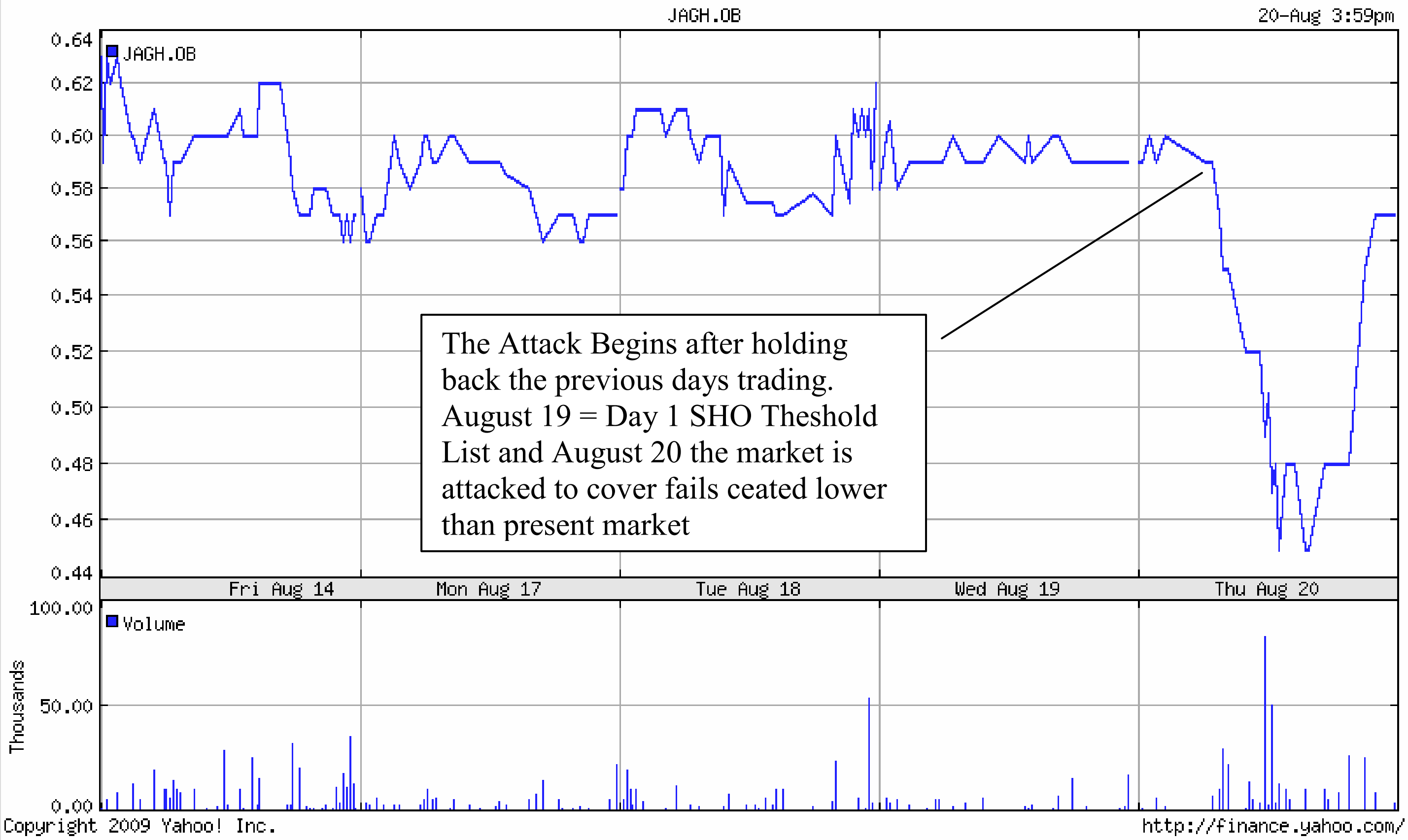
Charts Below…………

JAG MEDIA HLDGS INC (OBB) **Edit**

Range: 1d **5d** 3m 6m 1y 2y 5y max   Type: Bar | **Line** | Candle   Scale: Linear | **Log**   Size: M | **L**

Compare: JAGH.OB vs ☐ S&P ☐ Nasdaq ☐ Dow [Compare]

Want more control over the chart? Try our Interactive Chart.



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