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The International Association of Small Broker-Dealers and Advisors www.iasbda.com submits the following comments on the pending alternative tick test proposal and roundtables . We are concerned that this additional request for comments has been instituted prior to a roundtable on September 30th that includes specifically a pre-borrow requirement. We fear that putting the tick test ahead of the pre-borrow consideration will result in the tick test being the exclusive pre-trade remedy without proper consideration of other options. We note that many economists including commission staff such as professor Larry Harris have stated that tick tests are not effective while no one to our knowledge has indicated that a pre-borrow is not effective. Criticism of a pre trade/ pre borrow centers around increased costs resulting in less liquidity. Stated another way-if we really need to borrow its not as profitable. The commission's own economist Dr. Leslie Boni has noted the concept of opportunistic short selling to avoid the borrowing costs. This problem has arisen because of the Commission's reluctance over the multiple comment requests to seek formal comment on a pre-borrow requirement. Thus the various tick and circuit breaker proposals are being considered in a vacuum without the alternative of a more effective pre-trade remedy. This will raise for some commenters the question of whether we need both and whether the systems costs are becoming unmanageable. If a pilot is the desired course will we have two pilots after the roundtable.

We therefore believe that whatever results from these comments, the commission should move aggressively to ask whether the pre-borrow alternative is more cost benefit effective than the tick /circuit breaker alternatives? Dr. Robert Shapiro has provided strong evidence that it is and numerous former commissioners and legislators have agreed. Yet we are now considering it in a roundtable 9 days after the end of the second comment period on a tick test and we still have no indication from the regulators as to whether the Bear and Lehman demises were the result of abusive short selling. We noted in our comments to the original proposal to reinstitute the tick test that it would be a diversion from the consideration of other more effective remedies. Our worst fears have come to pass as we now have triangulated various remedies with no consensus on the right one.Furthermore we are 18 months and 12 months respectively beyond the demise of Bear Stearns and Lehman without any indication of whether abusive short selling was involved. We are almost 5 years beyond the effective date of Reg Sho with only one case brought under it. We are very fortunate that our markets have been rising since March but another financial or terrorist crisis leaves investors with no real pre-trade protection against abusive short selling.

Much has been made of the hard close post trade remedy that has reduced the threshold list significantly. We have noticed with frustration the Commission's recent actions' confirmation of a change from pre-trade regulation to post trade regulation of abusive short selling. The essence of our argument is found in a recent courageous Dow Jones article by Joe Checkler .<http://compliancex.typepad.com/compliancex/2009/08/even-with-new-rules-naked-short-violations-hard-to-enforce.html> These arguments were also reinforced by CEO Neiderhauer of the NYSE who recently stated;

"But even if we get that done, your second part of your question is the important part. What was really broken in this country was not the trading rules. It was the borrowing, lending and delivery rules. They were not being enforced. People were not borrowing stock and had no intention of borrowing stock when they shorted. And that was our big issue with the SEC in the previous administration. Enforce the rules.

Settlement's supposed to be T-plus-three in this country, not T-plus-100. And there were a lot more aged fails than people thought. So I think tightening up those rules has made a big difference and has dramatically reduced the amount of naked short selling.

Lastly, Steve, the intraday activity we're never going to be able to stop. You're not going to be able to stop it. I'm not going to be able to stop it, even as the biggest exchange. If someone wants to short a stock in the morning and cover it in the afternoon, that's called day-trading, I'm not sure there's much we can do about that. So I don't really think that's naked short-selling the way the media talks about it. I think that was short-selling where the customer had no intention of borrowing and delivering that stock."

We believe this interpretation of day trading is incorrect in light of the Ko securities case specifically highlighted in fn. 55 of the Reg SHO adopting release, but Neiderhauer's general point is valid. Short term abusive short selling has been given a no-action letter. If the trade can be settled its legal.We think this is wrong and note the destruction of Bear Stearns in one week. The commission has promised a roundtable on September 30th to address pre-borrowing and other remedies. However we do not believe such roundtables can be productive in the near term as we think the tick test debate will crowd it out. We see no estimated specific date for the reinstitution of a tick test and can foresee how the current market surge could justify a decision by the Commission to declare victory and go home on this issue. The pre-trade and post trade analysis is historically instructive.

The tick test was a pre-trade remedy but was eliminated in favor of an allegedly aggressive Reg SHO with its strongest element the post trade threshold list with exceptions. The commission's current posture is that the post trade close out has cured all problems because settlement is insured. But that settlement occurs with another naked short which must be hard closed in another three days. If you don't borrow the stock pre-trade you create the equivalent of a stock loan ponzi/madoff scheme. But because the initial trade settles the commisssion seems pleased. This is why a pre-borrow is arguably more effective then a tick test or hard close. No stock-no trade. But if you limit the trades than you limit liquidity.Is it liquidity or is it leverage we are limiting? Note how much nicer the former word sounds today after the leverage of the sub prime crisis.? So what price are we willing to pay for liquidity? Or as Chairman Donaldson stated how much fraud will we accept for liquidity. We are willing to pay the price of eliminating pre-trade restrictions and allowing unfettered leverage on both sides. We are told that its accepted practice now for Lenders to provide 5 locates for each stock they own. In view of the recent enforcement activity short sellers can calculate that the most that will happen with an abusive sale is a fine five years later. We believe therefore that immediately after the roundtable the commission should move quickly to impose some combination of tick test, circuit breaker and pre-borrow requirement and it should state whether abusive short selling was one of the causes of Bear and Lehman's demise.

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