

Comments on File No. S7-08-09
Amendments to Regulation SHO

Any solution that is to be long lasting and accepted by all has to be fair and symmetric from the long and short point of view.

The proposals presented are a positive step towards restoring market confidence, due to the recent unfair advantage that short sellers enjoyed. The proposals are better than keeping the status quo. Unfair bear raids like the ones we experience on the financial stocks should be stopped. However, the proposals fail due to their lack of symmetry and their temporary favor to long buyers. A long-term solution requires mathematical symmetry. Below, I make an alternate proposal that I believe will go a long way to restore market confidence, and long term fairness to the markets.

The key to the proposal below is transparency which is absolutely lacking on the current system and from the proposals made. Let me describe the proposal in 4 steps:

- 1) For any publicly traded company, at any given point there is a fixed number of shares available for trading. Each of these shares has a unique identifying serial number.
- 2) A digital repository should be created and made available to the public that makes each share of a given company part of a unique group:
 - a) Not available for shorting (examples are shares in an IRA account)
 - b) Available for shorting
 - c) Shorted already (the borrower should be public information).

The repository would provide the following functionality:

- Allow for electronic requests for borrowing shares available for shorting. The request would only be accepted if the number requested is less than the total number available. The shares are immediately transferred from the available for shorting bucket into the shorted already bucket (or a transition bucket called in the process of being shorted).
 - Allow for electronic queries as to the total number of shares available and the distribution in the buckets. The queries should return results real time.
 - Allow for queries of individual or group of serial numbers to determine in which bucket each share is.
 - The electronic repository should be able to allocate and make updates in real-time
- 3) Anybody who wants to short a stock (including market makers) will have to borrow it ahead of time from the electronic pool. This process can be instantaneous with our current technology. The electronic request to borrow a given number of shares will identify the serial numbers and will automatically reduce the number of shares from the total available.
 - 4) Allow retail investors, or anybody who owns shares to block those shares from being shorted. Currently, any individual who has a margin account has no choice but to make their long positions available for shorting. Individual should have the choice by law, to block their broker dealers from allowing the shorting of shares if they so choose.

Some key points to notice:

- By creating the digital repository and making it transparent the practice of naked short selling can also be eliminated.
- At any given point anyone can monitor the total number of outstanding shares for a given company. The sum of the 3 buckets should always add to a constant value.
- If an individual owns shares not available for shorting, the individual will be able to verify that such shares are not available by using the public interface to the digital repository and identifying the serial numbers. Transparency is critical for market confidence and trust.
- Any individual can verify at any given point how many shares are short and how many are available for shorting. Market makers can make decisions based on how many shares remain available. Forcing a pre locate of shares will avoid the need to make a post-facto locates.

- The public knowledge of remaining shares available to short in essence will play the same role as circuit breakers and other artificial mechanisms. However, this is a fair mechanism. One should not be able to sell a non-existent entity.
- Item 4 is fair, using stock as collateral on margin accounts is equivalent to having a mortgage. A bank that generates a mortgage does not have the right to sell the individual's home as long as the individual is current on her payments. The broker-dealer gets interest when an individual uses shares as collateral. That should be sufficient and the individual should be able to block her long shares from being shorted. Incentives can be created for owners of long stock to allow their stock to be borrowed.

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