RE: File Number S7-08-22

Introduction

I am submitting this comment as an individual investor from the UK who (like so many others) has been the victim of price manipulation through abusive shorting of GameStop shares, some of which seems to be hidden through the use of swaps.

Firstly, I must take issue with the statement in the introduction that *"Short selling has also been shown to improve pricing efficiency by providing information to the market."* - This is simply not true. Selling short violates the most basic and fundamental rule of economics, that of supply and demand. The introduction admits that *"it also may be used to drive down the price of a security, to accelerate a declining market in a security, or to manipulate stock prices.",* a fact that I am acutely aware of, having seen the price of my own investment repeatedly crashed by manipulative short selling (see the video archive at www.youtube.com/c/StocksBigPlays/videos).

The commission's lack of any visible action on the manipulation of GameStop shares is shocking to me, as an investor used to European markets where regulations are respected and enforced. There is ample evidence that short positions are abused, and the SEC has authority to regulate them, so why does it not already do so effectively?

Secondly, it is important to point that this proposal will be worthless if not enforced, and enforcement action must be sufficiently tough to deter offenders and repeat offenders. Time and time again the same organisations are found guilty of violations, as even the most cursory reading of the SEC's litigation database confirms. It is clear that current level of fines does not provide an effective deterrent and that fines are seen merely as a 'sot of doing business' This proposal should be amended to specify fines and jail sentences that are sufficient to deter, with multipliers for repeat offenders, and an '*x* strikes and you're out' clauses that will remove licences to trade from severe offenders. The SEC must also end the absurd practice of accepting fines without an admission of guilt, and must make it clear where money obtained from fines goes.

While I agree that greater transparency through the publication of short sale related data to investors and other market participants is important, and agree with the stated aims of the proposal, it does not go anywhere near far enough, and in its current form would not do much to reassure me that my investments are properly protected.

Comments

1) If the SEC is unwilling or unable to prevent price manipulation through shorting, then shorting should simply be prohibited, and all short positions forcibly closed.

If anyone reading this is recoiling in horror from reading that last sentence then I must ask them to consider what prevents this from being a simple and non-damaging rule change. Surely if the markets are not rigged and short positions are opened in expectation that they will eventually be closed, then nothing bad would happen?

It is important to understand that short selling is both wildly out of control and clearly detrimental to investors.

As the commission admitted in its recent *Staff Report on Equity and Options Market Structure Conditions in Early 2021* the GameStop short interest was 122.97%. Surely the SEC cannot pretend that the price of shares on that day was fair, given that the stock had effectively been subject to an involuntary 2.2 for 1 split?

Surely the SEC cannot pretend that the market capitalisation figure was fair, given that investors held shares with a value totalling 222.97% of that market cap?

Surely the SEC can see that investors so are justifiably furious that there is less than a 50/50 chance that the shares they paid for in good faith on that day actually exist?

Surely the SEC can see that the most basic economic principle of all, that of supply and demand, cannot function fairly when supply can be more than doubled by short sellers?

Surely the SEC should be enforcing regulation SHO to prevent shorting beyond 100%?

Regulation SHO requires borrowers to have "reasonable belief" that a share can be located, but if a stock is beyond 100% short, it cannot be reasonable to believe that any given "share" in the DTCC system is backed by a genuine share, since the majority are demonstrably not. This issue alone provides a strong reason to require accurate reporting of short interest.

Investors (including myself) who have paid brokers for GameStop shares, expecting to acquire not just genuine shares but also their attendant voting and dividend rights, actually had a more than 50/50 chance of having entered into a mere Contract For Difference (CFD) around this time, and as time goes on the percentage of genuine shares appears to have decreased further. It is illegal to sell CFDs in the US (as argued by the SEC in the case of 1Pool Ltd: https://www.sec.gov/litigation/complaints/2018/comp-pr2018-218.pdf) and it is clearly fraudulent to describe CFDs as "share purchases", but the SEC seems totally disinterested in enforcement action on this matter.

2) The effect of lack of effective action may be devastating to the US economy

Confidence in the US financial markets is essential to prevent investors moving their money to other markets such as London, Frankfurt or Tokyo, and this confidence has been rocked by the revelation that Archegos was able to effectively hide dangerously large positions in swaps.

Exposing the true level of short selling in US markets may cause financial turmoil (particularly if an 'infinity pool' is formed), but it is important to understand that doing so is the only way to restore confidence and order to the market and to prevent the 'next Archegos'.

Participants with short positions hidden in swaps have huge incentives to lie, and little incentive to tell the truth

Exposing the magnitude of very large short positions may risk triggering a 'short squeeze' as investors rush to take advantage of an under-priced stock (shorting necessarily involves downward price pressure, unbalancing supply and demand by falsely increasing supply), but this must not be interpreted as an argument against swap reporting, instead it is precisely the reason for requiring it.

Huge efforts have been made to hide the magnitude of short positions (see: Evans, Richard B. and Moussawi, Rabih and Pagano, Michael S. and Sedunov, John, *ETF Short Interest and Failures-to-Deliver: Naked Short-Selling or Operational Shorting?* (March 3, 2021). Darden Business School Working Paper No. 2961954, 2019 Academic Research Colloquium for Financial Planning and Related Disciplines, Available at http://dx.doi.org/10.2139/ssrn.2961954)

Swap reporting is just one part of a much bigger picture of hidden short positions. Coordinated action needs to be taken to close ALL loopholes, not just ones relating to swaps.

GameStop investors have published many theories on how shorts are hidden, and there is a public archive of them titled "The Superstonk Library of DD, Art Books and Periodicals" available for free at https://fliphtml5.com/bookcase/kosyg While the quality of research presented there is unarguably mixed, and some are less credible than others, the following loopholes are commonly mentioned:

Failing to Deliver.
Married Puts.
Marking Shorts as Longs.
Shorting ETFs with large holdings in Gamestop.
Failing to deliver ETFs with large holdings in Gamestop.
Synthetic positions.
Counting extremely out of the money option positions that are practically certain to expire worthless as 'longs' that offset 'short' positions.
Hiding positions offshore.
Naked shorts.
etc.

While some of these may be far-fetched, or simply wrong, many have already been the subject of SEC enforcement action (albeit action without sufficient penalty to deter repeat offending), and can therefore be assumed to exist, and of course this list is likely to be incomplete. *Any action by the SEC that does not close ALL these loopholes will be treated with extreme suspicion by retail investors.*

Luckily, a simple method of closing potential loopholes exists:

Suggested Amendment: Double check reported short data by measuring long positions.

For every short position, there is an equal and opposite long position. Reported short data can therefore easily be checked by using the following formula

Short position = Long position - Float.

By simply requiring brokers to report the number of shares their customers hold in street name, the authenticity of short data can easily be verified. Any discrepancy between the reported numbers (after taking into account direct registered shares) would be clear evidence of fraud that the SEC would then investigate. The SEC is invited to consider the case of Archegos Capital Management when evaluating this suggestion. If taking this approach would have highlighted the failings of Archegos earlier, then surely it makes sense to employ this approach?

Suggested Amendment: Once this regulation gives better short interest measurements, Reg SHO should be amended to explicitly require location of genuine shares rather than hypothetical ones, either using Direct Registered Shares or DTC 'shares' pro-rata the short position.

The locate requirement should be adjusted to take account of the lack of genuine shares caused be shorting. For example: if a stock is shorted by 20%, a borrower wishing to borrow 1000 shares should be required to locate either 1200 'street name' shares (as these are statistically likely to be backed by 1000 actual shares) or 1000 direct registered shares (held outside the DTC system) or some equivalent combination thereof.

Robust Enforcement is required

All the above is meaningless if penalties for breaking the rule are trivial enough to be considered a mere cost of doing business.

Suggested Amendment: Add specific and substantial index linked fines, multipliers for repeat offenders leading to sanctions and a commitment not to accept payment of fines without an admission of wrongdoing

Penalties must act as both a deterrent and reassurance to the investor that fines for not following the proposed rule are not simply a mere cost of doing business. Affected investors must also be compensated from the proceeds of these fines, investors will not be reassured if their perception is that fines simply go 'into the SEC's pocket'.

Sincerely,

Andrew Robinson
Private Investor