

March 17, 2007

Chairman Christopher Cox
Securities and Exchange Commission
Washington, D.C.

I am confused here and it appears it is because what the SEC states to the larger general public is not entirely truthful or accurate.

The story disseminated to the general public by the SEC:

Last year the SEC drafted a memo from the Office of Economic Affairs providing the statistical analysis of Regulation SHO from January 2005 – May 2006. The memo found ways to take specific metrics and to illustrate them in such a manner as to imply SHO was working..
<http://www.sec.gov/spotlight/failstodeliver082106.pdf>

The response:

Based on the SEC's interpretations, Wall Street's primary lobbyist SIFMA presented a comment memo in which they referenced this OEA draft and concluded that:

The SIA agrees with the Commission's statements in the Proposing Release that, by and large, the Rule is having its intended effect without imposing undue impacts on the market. Convincing evidence of these positive impacts was provided in the Proposing Release, as well as the Memorandum from the Commission's Office of Economic Analysis, dated August 21, 2006 (the "OEA Memo"), relevant excerpts of which are attached hereto as Appendix A.

SIA believes that, in light of the very positive figures cited in Appendix A, and the overall extremely small universe of securities for which settlement failures represent a problem, the Commission should take care to not impose additional requirements in the Rule that could have unintended consequences (including facilitating potential short squeezes and undue price volatility), and negatively impact the efficient functioning of stock lending and clearance and settlement operations, as well as the markets as a whole.

I have underlined key components of this memo for use later.

Similarly, Knight Capital Markets submitted commentary to the SEC regarding this proposal where they too stated:

We respectfully oppose such a change.

We believe that the empirical data now available shows that this proposal is not necessary -see, Memorandum from the Commission's Office of Economic Analysis (August 21, 2006). For example, "99.2% of the fails that existed on January 3, 2005 are no longer outstanding as of March 31, 2006" (Memorandum at page 2).

Other too referred to this publicly disseminated analysis as justification deferring change.

But here is where concerns over the objectivity of the SEC lies.

The other story not disseminated to the general public:

Last week, before a crowded forum of Business, Industry, and Federal professionals Chairman Cox spoke. The forum was a Summit held by the US Chamber of Commerce on the US Capital Markets. In this non-public forum, Chairman Cox was asked during a Q&A about this issue of abusive short selling. The Chairman had this to say:

The First Annual Capital Markets Summit: Securing America's Competitiveness

Date: 14-Mar-2007 8:15 AM - 5:00 PM

Comments by Chairman Cox during Q & A.

AUDIENCE MEMBER: Chairman Cox, Jonathan Johnson, Overstock.com. You have mentioned in the past that abusive naked short selling is being used to manipulate stock prices down to the detriment of investors. Last month, the Chamber sent a letter requesting that Congress hold hearings on the issue and last night Bloomberg TV ran a piece, a special report, on this issue. What is the commission doing to stop this form of manipulation and when can we expect some action?

*CHAIRMAN COX: Abusive naked short selling is of great concern to the entire Commission, to all of our members and the professional staff at the SEC. The regulation that was first adopted to get after this and related problems, **Reg SHO, has proven insufficient to stop the problem.** One of the reasons is the Grandfather provision in the rule as it was originally adopted, so we are now setting out, as you know, to eliminate that grandfather provision. And we will do more. Just as Congress may well have hearings on this issue and seek to get more information, so too are we looking at this. As you know, there's a technological side to this. This is very closely connected to our system of clearing and settlement in a very very big market, and we want to make sure that we use technology as our friend in relating, potentially and at all times, ownership and particular shares rather than waiting until the end of an arbitrary period of time to match those things up. It's those sorts of things that I think will eventually help us, I think, put an end to **this kind of abuse.** **And I know that people victimized by it have a great deal of right on their side to complain about it.***

CHAIRMAN DONAHUE: You have a lot of support from here in getting that done. Just let us know how we can get some muscle behind it. It is a serious challenge.

These comments are far differing from that presented to the public for comment on this particular reform. Instead, as highlighted previously the Industry commentary, acting on the public information disseminated by the Commission, was to conclude SHO was in fact working.

I can only question why the SEC Chairman will say in a small private forum what the Commission is unwilling to say in a full public proposal.

The Commission thrives on transparency and demands such from our public companies. Why then is the Commission opaque on this particular issue? Where is the integrity of the Commission to disseminate the truth when it comes to this issue?

The SEC manipulated the data relative to the success of SHO and in doing so created the appearance that SHO was actually working. Market professionals jumped all over those lies using them as their justification to deny "victims" a right to fair markets. The fact that these market professionals did use the data, instead of actual market environments; to draft memo's requesting

no change illustrates the lengths Wall Street will go to protect their revenues at the expense of the investing public.

Regulation SHO is not working because the Grandfather Clause was incorporated and done so without public comment. The clause was quickly identified by the victims as a poor feature that would result in a failure to this rule. Those statements were made well before January 2005 when SHO became law.

In response, the SEC shunned those that made these claims and yet privately the Commission is willing to admit the grandfather clause is one of the major reasons SHO is not working.

This failure should be taken as a lesson for the Commission to open your eyes to the realities of the markets and the realities of those they seek assistance from when drafting market rules. Wall Street aided the SEC in the draft of the grandfather clause with the promise that changes would be made. Shortly thereafter, after the SEC backed down to their demands, Wall Street violated the agreement by abusing the flaws they helped to draft.

Wall Street Institutions and the Securities Industry and Financial Markets Association (SIFMA) are about bottom line revenues as any public or private company and lobby firm would be. As easily as a corporate CEO will lay off their workforce, despite the work, to achieve a higher stock value and thus a higher executive compensation package so too will Wall Street bend the laws of investor protection if it will have a direct impact on their bottom line and their bottom line compensation package. With tens of billions available in bonuses each year, fraud is a real personal incentive for Wall Street individuals.

Chairman Cox stated to the audience this past week that the Commission was working to eliminate the grandfather clause. Consider that while the Commission delays such actions to work on methods that appease the abuse settlement processes more and more victims are being created daily. With a lack of appropriate systems in place for investor recovery after being abused, these delays are investor losses due to fraud that are the direct responsibility of the SEC.

The SEC has chosen its ally and so far it has been the criminal and not the victim. From the day Annette Nazareth and the Division of Market Regulation drafted the grandfather clause you signed off on the collateral damage to the hundreds of thousands to millions of victims that continued to be abused while you did nothing.

It is now time to change the tides and protect the victims you speak of Mr. Chairman. Stop this protection of the wealthy Prime Brokers and Hedge Funds who benefit from the fraud and step up to protect the small investors and the public companies these capital markets need so desperately to succeed.

Signed,

One of the Victims left as Collateral Damage.