

August 1, 2008

Regulation SHO

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Dear Sirs:

The United States stock markets currently find themselves in serious turmoil. Although part of that turmoil is undoubtedly due to the rapid fluctuation of oil and energy prices, and part is due to the fall out from the Collateralized Debt Obligations fallout, a very large and significant portion of the turmoil is directly due to the abysmal failure of the SEC to protect market order and to enforce the regulations they already have.

There are several aspects of the SEC's failure.

1. On July 26, 2007, the SEC arbitrarily and without discussion with market participants chose to eliminate the 'uptick rule', that required an increase in share price before a person or institution could short that security. The 'uptick rule' was instituted by the Securities Exchange Act of 1934 in the aftermath of the 1929 market crash in order "to avoid the perpetration of a financial crime known as a 'bear raid', i.e. to prevent short-sellers from adding to the downward momentum when the price of a security is already experiencing sharp declines" and it had worked well for over 70 years. If a 'bear raid' was a financial crime in 1934, does the removal of the 'uptick rule' mean that such a bear raid is not longer a financial crime? Please reinstate the 'uptick rule' at once.

2. In 2004, the SEC issued "Regulation SHO". It is my understanding, from reading your own publication that "... short sales effected to manipulate the price of a security are prohibited. ..." As I understand the situation, it is currently illegal to naked short a security, that is to say, to short a security without first borrowing that security. Yet this activity happens continually throughout each and every trading day. An example: Apple Computer (AAPL) was trading at 181+ recently. I saw large sell orders being placed at more than \$1.00 less than the bid price. A normal seller of the stock would sell "at market" in order to get the maximum amount for his shares, so the only reason to offer shares significantly below the bid is to manipulate the share price down.

Why does the SEC not enforce their regulation? And why does the SEC arbitrarily decide to announce they will enforce their own regulation ONLY in the case of 19 selected financial stocks, and ONLY on a temporary basis? Regulation SHO should be enforced across the board, for all stocks. Make Regulation SHO permanent. I would suggest a fine of not less than 20% of the share price for the first infraction, not less than 50% for the second infraction, and a total trading ban plus appropriate penalties for a third infraction.

3. Why does the SEC not enforce the regulations for "Fail to Deliver". Under the current system when a short seller sells a security without borrowing that security first, we

frequently see situations where millions of shares of shorted stock has been classed as "Fail to Deliver". The Office of Economic Analysis reports that in the time period from 5/1/07 to 1/31/08, \$30.87 TRILLION dollars of trades was classed as "Fail to Deliver". If I sell my house or my car to someone, and fail to deliver it, I can go to jail. Why do you not prosecute the traders who fail to deliver the stocks they sold? Once again, I suggest enforcement with strong punitive measures: for a first offense, 50% of the value of the price received plus delivery of the stock; for a second offense, 100% plus a one year ban on trading of any kind, or imprisonment.

Your egregious failure to enforce the regulations of your own agency, your arbitrary removal of long-time market safeguards, and your self-serving attempt to salvage a few financial stocks at the expense of the overall market constitute grounds, in my opinion, for prosecution of you, the SEC, for criminal negligence and possibly culpability in financial fraud. Not only have your actions and inactions severely undermined public trust in our markets and corporations, but your actions have exposed the United States free market system to the possibility of manipulation and extortion by any organization or country with extensive financial resources which might be unfriendly to the US.

Sincerely,
Stanley Podlofsky