

July 17, 2008

Subject: SEC's Emergency Order

I write about the proposed emergency order that will require a pre-borrow before short selling in any of the 19 listed companies. I'd like to have a phone call tomorrow with you and whoever else at the SEC you believe is appropriate to discuss OSTK's thoughts on the emergency order. Below is a summary of our thoughts:

1. We fully support the requirement of a pre-borrow before a short sale. However, we ask that the SEC move to afford this protection to all public companies. Even the failure of a small public company can trigger a negative market reaction and harm shareholders.
2. The emergency rule creates, at the very least, an appearance of favoritism by the SEC. As I heard from a Goldman employee yesterday: "The equity markets have become Animal Farm: All equities are created equal, but some equities are more equal than others."
3. The logic of the provided by Chairman Cox on CNBC (see <http://www.cnbc.com/id/15840232?video=795065904&play=1>) doesn't make sense: if the shares are easy to locate in a company with big float, the SEC should prevent naked shorting, but if a company is a thinly-traded stock where the amount of naked shorts could exceed the total float, then the SEC will take no protective action. The argument that the emergency order should only apply where it would "not be a burden to locate the shares" but not when it would be a burden to locate the shares defeats the whole point. If it is easy to locate shares, naked shorting shouldn't really be expected to impact the price.
4. As shown on the attached chart, 12 of the 19 protected companies have never been on the Regulation SHO threshold list, and only one was on the list as of July 15. Also, as you can see in the attached chart, the average increase in the stock prices of the 19 protected companies from July 15 to July 16 was over 12% and the average increase in their stock price from July 15 to July 17 was over 22%. Seeing this, I expect all companies would like to receive similar protection from naked short sellers.

<<2008.07 (SEC) 19 Protected Companies.pdf>>

5. We continue to support the elimination of the option market maker exception. It is OSTK's experience that the option market maker exception is a loophole used to create large and chronic failures-to-deliver. The attached chart show the correlation between the level of ftd's in OSTK from April 2008 thru December 2007 and trades that we believe are taking advantage of the option market maker exception.

<<OSTK FTDs and block trades\_SEC\_20080417.pdf>>

6. Because of our experience with the abuse of the option market maker exception, we believe that if the option market maker exception is allowed under the emergency order, the expected salutary effect of the emergency order will be negated.
7. With the pre-borrow in place, it will be much easier for the SEC to enforce the current buy-in rule (but only if the options market maker exception is eliminated).

I ask that you also forward this email to Chairman Cox and the other Commissioners.

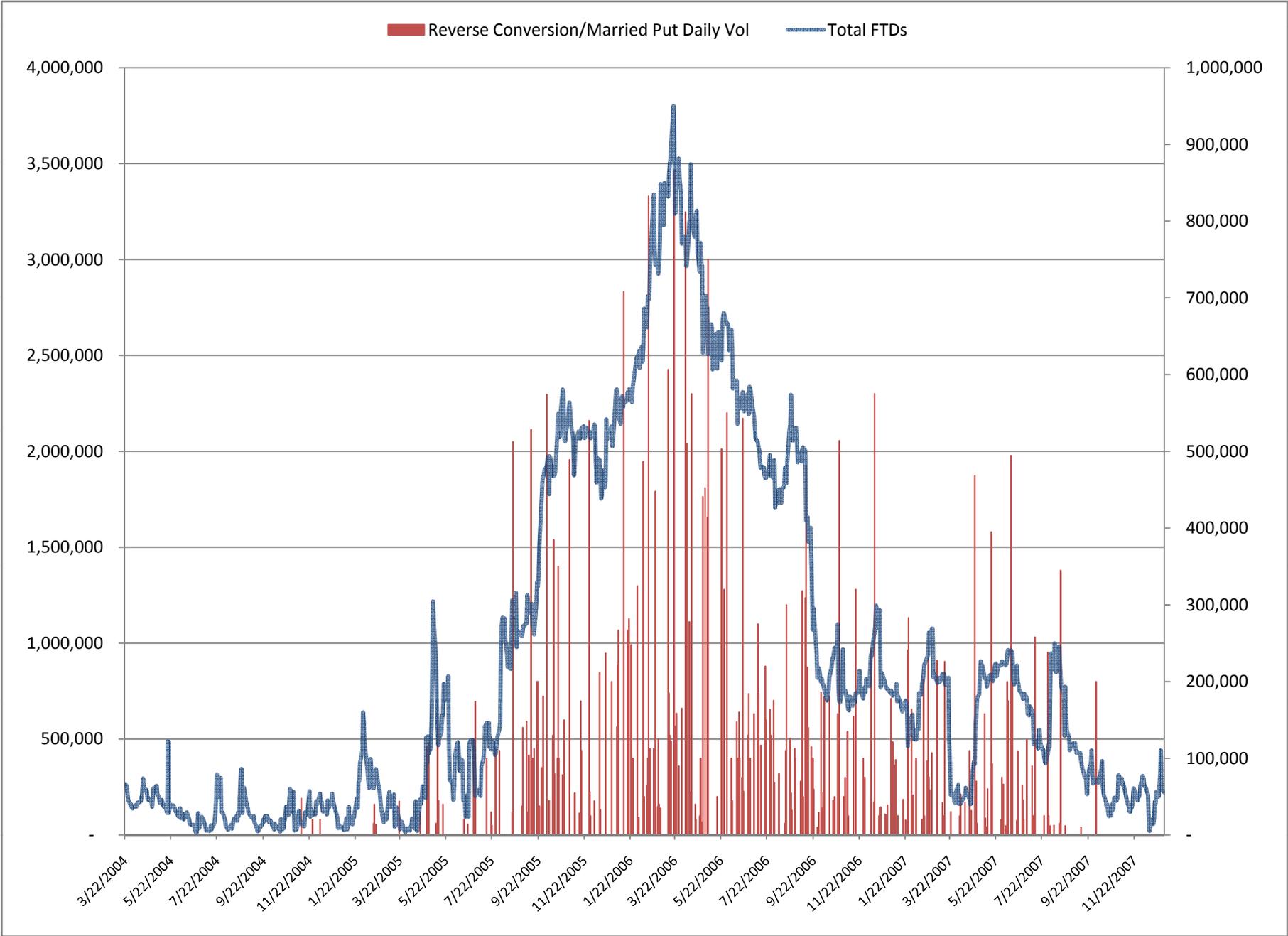
Regards,

Jonathan Johnson  
SVP, Corporate Affairs and Legal  
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## 19 Stocks with an Emergency Pre-Borrow Requirement for Short Selling

	Symbol	Name	SHO Stock?	Total SHO days	7/15/2008	7/16/2008	1D % Change	7/17/2008	2D % Change
1	BNPQY	BNP PARIBAS-ADR	Off since 7/7/08	144 days	\$ 42.75	\$ 44.90	5%	\$ 47.60	11%
2	BAC	BANK OF AMERICA CORP	never on list		\$ 18.52	\$ 22.67	22%	\$ 26.50	43%
3	BSC	BEAR STEARNS COMPANIES INC	Off since 5/30/08	34 days					
4	C	CITIGROUP INC	never on list		\$ 14.56	\$ 16.47	13%	\$ 17.97	23%
5	CS	CREDIT SUISSE GROUP-SPON ADR	Off since 4/3/08	18 days	\$ 39.12	\$ 42.03	7%	\$ 43.69	12%
6	DSECY	DAIWA SECURITIES GR-UNSP ADR	Off since 4/29/08	23 days	\$ 82.75	\$ 88.25	7%	\$ 89.50	8%
7	DB	DEUTSCHE BANK AG-REGISTERED	On list since 7/10/08 (4 days)	194 days	\$ 79.56	\$ 84.60	6%	\$ 87.31	10%
8	AZ	ALLIANZ SE-ADR	Off since 1/9/07	12 days	\$ 16.28	\$ 16.51	1%	\$ 17.12	5%
9	GS	GOLDMAN SACHS GROUP INC	never on list		\$ 157.80	\$ 172.86	10%	\$ 181.24	15%
10	RBS	ROYAL BANK OF SCOT-SPON ADR	never on list		\$ 3.44	\$ 3.56	3%	\$ 3.84	12%
11	HBC	HSBC HOLDINGS PLC-SPONS ADR	never on list		\$ 71.93	\$ 75.16	4%	\$ 77.26	7%
12	JPM	JPMORGAN CHASE & CO	never on list		\$ 31.02	\$ 35.94	16%	\$ 40.80	32%
13	LEH	LEHMAN BROTHERS HOLDINGS INC	never on list		\$ 13.22	\$ 16.65	26%	\$ 18.90	43%
14	MER	MERRILL LYNCH & CO INC	never on list		\$ 24.69	\$ 28.00	13%	\$ 30.73	24%
15	MFG	MIZUHO FINANCIAL GROUP-ADR	Off since 8/22/07	43 days	\$ 9.61	\$ 10.44	9%	\$ 10.73	12%
16	MS	MORGAN STANLEY	never on list		\$ 31.00	\$ 35.05	13%	\$ 38.32	24%
17	UBS	UBS AG-REG	never on list		\$ 17.96	\$ 19.83	10%	\$ 20.52	14%
18	FRE	FREDDIE MAC	never on list		\$ 5.26	\$ 6.83	30%	\$ 8.33	58%
19	FNM	FANNIE MAE	never on list		\$ 7.07	\$ 9.25	31%	\$ 10.93	55%
<b>AVERAGE:</b>							<b>12.66%</b>		<b>22.66%</b>

**Overstock.com Reverse Conversions/Married Puts and CNS Fails to Deliver (FTDs), 22 March 2004 to 31 December 2007**



*Note: The reverse conversions/married puts which generally result in large naked short sales mirror FTDs.*