Retail Investor

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
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Petition for Rulemaking: Closing Loopholes Abused for Naked Shorting (CLANS)

Dear Ms. Countryman,

As a retail investor, I respectfully submit this petition for rulemaking pursuant to Rule 192 of the Securities and Exchange Commission's ("SEC") — Rules of Practice[1], to request that the SEC amend Rule 203(a) of Regulation SHO[2] and Rule 15c3-3[3] to protect investors, including from fraud and deceit, by addressing settlement and clearing failures, market risks arising from (potentially abusive, naked, and/or fraudulent) short selling, and (potentially extreme) market imbalances to support the stability of our financial system by eliminating loopholes and exemptions to ensure that long sellers have possession of and deliver securities sold.

I respectfully submit this petition consistent with information on the SEC's website for Petitions for Rulemaking Submitted to the SEC[4] which states "[a]ny person may request that the Commission issue, amend or repeal a rule of general application" where "[p]etitions must be filed with the Secretary of the Commission" and "[p]etitions may be submitted via electronic mail to Secretarys-Office@SEC.GOV (preferred method)". This petition also satisfies requirements that "[p]etitions must contain the text or substance of any proposed rule or amendment or specify the rule or portion of a rule requested to be repealed" and "petitions must also include a statement of their interest and/or reasons for requesting Commission action." [Id.]

Failures To Deliver On Long Sales

Retail investors are now aware that the regulatory framework for our securities markets includes exceptions (aka "loopholes" colloquially) which may be abused to short sell securities and/or allow sellers to fail to deliver on securities sold. Failure to require sellers to deliver securities sold is obviously a problem as there is no other market in the world where it is OK for a seller to fail to deliver on items sold. Can you imagine if Amazon or eBay sold products to customers and then failed to deliver them? Of course not! So why should we tolerate settlement failures in our securities market?

The SEC provides data regarding failures to deliver (“FTD”) on their website[5] as far back as 2004 which demonstrates how failures to deliver in our securities market is an ongoing phenomenon with a lengthy history. Market participants are even known to strategically fail to deliver securities simply because borrowing costs are high[6]. As shown by the table below, the impact of FTDs have been increasing with the quantity and/or notional value of FTDs increasing over time. The quantity of FTDs grew from 7.3 billion FTDs in the 3 months of 2004Q1 (i.e., approximately 2.4 billion FTDs per month) to 3.8 billion FTDs in the first half of July 2009 (i.e., approximately 7.6 billion FTDs per month). Comparing July 2009 to January 2025, the total notional value of the FTDs (computed as quantity of fails x price where available in the SEC’s data) increased 30x from $1.2B in the first half of July 2009 to nearly $36.7B in the first half of January 2025[7]; outpacing inflation or GDP growth, and delegitimizing the public market system itself.

Filename (Date)	**Date**	**Total Quantity (Fails to Deliver)**	**Total Notional (Fails x Price)**
cnsp_sec_fails_200403 (2004 First Quarter)	2004 Q1	7,343,986,170	N/A
cnsfails200907a (2009 July, first half)	2009-07 1st Half	3,881,580,156	$1,205,872,733
cnsfails202506b (2025 January, first half)	2025-01 1st Half	2,032,216,720	$36,655,085,066

The FTD problem continues to grow as the SEC has acknowledged failures to deliver are explicitly allowed within the regulatory framework of our securities market.[8] For example, when RegSHO was adopted [Release 34-50103 (July 2004)], the SEC acknowledged two commenters at the time who suggested that the proposed Rule did not adequately address long sale delivery fails [Release 34-50103 fn 109] and disagreed with the commenters stating “[w]e believe that the provisions of Rule 203(a) are appropriate to guard against fails to deliver on long sales, in that **a broker may fail to deliver borrowed shares on long sale fails only in the limited circumstances set forth in the rule**” (emphasis added).

The limited circumstances set forth in Rule 203(a) were outlined by the SEC when RegSHO was adopted, and as shown by the SEC’s FTD data, these exceptions render Regulation SHO woefully inadequate for addressing long sale delivery fails:

> This delivery obligation does not apply in three circumstances:
>
> (1) the **loan** of a security through the medium of a loan to another broker or dealer;
>
> (2) where the broker or dealer knows or has been reasonably **informed by the seller that the seller owns the security and will deliver** it to the broker or dealer prior to the scheduled settlement of the transaction **and the seller fails to make such delivery**; or
>
> (3) where an exchange or securities association finds, prior

to the loan or arrangement to loan any security for delivery, or failure to deliver, that the sale resulted from a **good-faith mistake**, the broker-dealer exercised due diligence, and either that **requiring a buy-in would result in undue hardship or that the sale had been effected at a permissible price.**

[Release 34-50103 VI. Rule 203(a) — Long Sales (reformatted with emphasis added)]

The first exception to the delivery obligation, Rule 203(a)(2)(i), is for securities loaned to another broker or dealer. This exception creates issues with settlement, clearing, and artificially inflates the supply of securities in circulation as a broker can lend a security to another broker without obligation to deliver which results in both brokers temporarily claiming possession of the same security! If Hertz loans me a vehicle, Hertz has to deliver the vehicle to me. Why is there an exception to the delivery obligation when a broker or dealer loans a security to another broker or dealer? This petition proposes to eliminate this "loan without delivery" exemption.

The second exception, Rule 203(a)(2)(ii), allows a broker or dealer to fail to deliver when they have been "reasonably informed by the seller that the seller owns the security and will deliver it to the broker or dealer prior to the scheduled settlement of the transaction and the seller fails to make such delivery". As the seller fails to make such delivery after reasonably informing the broker or dealer that the seller owns the security and will deliver it to the broker or dealer prior to the scheduled settlement, this exemption is akin to "the check is in the mail" [Wiktionary] where the seller lied about delivering. Why should a broker or dealer be allowed to fail to deliver if a seller (their customer) lied to them?[9] Are brokers and dealers not gatekeepers for our securities markets[10] who, therefore, should require and enforce (with a buy-in where necessary) delivery of the securities sold by their customers? This petition proposes to eliminate this "seller lied" exemption to ensure brokers and dealers uphold their responsibility as gatekeepers of the markets and prevent customers from engaging in manipulative or fraudulent trading (e.g., selling and lying about delivery)[11].

The third exception, Rule 203(a)(2)(iii), allows a broker or dealer to fail to deliver when "an exchange or securities association finds, prior to the loan or arrangement to loan any security for delivery, or failure to deliver, that the sale resulted from a good-faith mistake, the broker-dealer exercised due diligence, and either that requiring a buy-in would result in undue hardship or that the sale had been effected at a permissible price". As with the second exception, this exception is similarly inappropriate for our securities markets despite having the following three requirements:

(A) An exchange or securities association finds, prior to the loan or arrangement to loan any security for delivery, or failure to deliver, that the sale resulted from a mistake made in good faith,

(B) That due diligence was used to ascertain that the circumstances specified in § 242.200(g) existed; and

(C) Either that the condition of the market at the time the mistake was discovered was such that undue hardship would result from covering the transaction by a "purchase for cash" or that the mistake was made by the seller's broker and the sale was at a permissible price under any applicable short sale price test.

First (A), an exchange or securities association must find that the sale resulted from a mistake made in good faith [Wikipedia, Legal Information Institute]. "Any broker-dealer that is a member of a national securities exchange or Financial Industry Regulatory Authority (FINRA) and handles orders must report to CAT" reportable events which cover the end-to-end lifecycle of trades [SIFMA]. CAT and FINRA have been hosting Monthly CAT Update meetings [catnmsplan.com] with an appendix to each presentation containing aggregated statistics by trade date identifying the Overall Errors Count per Trade Date. As the word error is a synonym for mistake, these Monthly CAT Update meetings provide overall counts of mistakes per trade date as recorded by CAT. If one were to review the statistics in the Monthly CAT Updates, one can eyeball the CAT equities errors and observe there's generally an average level of single to double digit millions of CAT equities errors per trading day with occasional spikes up to single and double digit billions (1,000-10,000x above average) with a few triple digit millions (10-100x above average). For example, the Feb 20, 2025 Monthly CAT Update Presentation [PDF] includes an appendix containing Overall Errors Count by Trade Date for equities from Jan 10 to Feb 13, 2025 where 17 trading days have double digit millions of errors or less, 5 trading days have hundreds of millions of errors, and the remaining 2 of the 24 trading days have billions of errors. Anyone, with or without statistics[12], can see that billions of equities errors 1,000-10,000x above the baseline are anomalies (not to mention the similar spikes in options errors). No reasonable person [Wikipedia] could find billions of mistakes in one trading day 1,000-10,000x above average to be made in good faith. If the national securities exchanges do not recognize these ludicrously[13] excessive errors as mistakes made in good faith, then the exemption in Rule 203(a)(2)(iii) would not apply; and the broker or dealer should cover the transaction with a "purchase for cash" to avoid failing to deliver.

Second (B), the broker or dealer must have properly marked the sell order as "long" according to § 242.200(g) after due diligence determining that the seller was "deemed to own" the security being sold pursuant according to § 242.200(a)-(f) and either (i) the security to be delivered is in the physical possession or control of the broker or dealer; or (ii) It is reasonably expected that the security will be in the physical possession or control of the broker or dealer no later than the settlement of the transaction. As with the second exception above, an issue arises for the broker or dealer if the "seller lied" promising to deliver the security by no later than the settlement of the transaction, but does not. As gatekeepers for our securities markets, brokers and dealers should not pass along failures to deliver by their customers and should instead enforce a buy-in of the securities sold by their customers who fail to deliver.

Third (C), one of two conditions must be true for the delivery exception:

    1) the condition of the market at the time the mistake was
    discovered was such that undue hardship would result from
    covering the transaction by a "purchase for cash" or

    2) the mistake was made by the seller's broker and the sale
    was at a permissible price.

The first condition (1) requires, at the time the mistake was discovered, undue hardship [Wikipedia] from covering the transaction by a "purchase for cash". This exception allows a broker or dealer to fail to deliver if they (i.e., broker and/or seller) will face undue hardship from covering the transaction by a "purchase for cash". This exception would allow a bankrupt short seller to sell securities and collect funds where their broker may fail to deliver because the short seller would allegedly face undue hardship (i.e., be bankrupt again) if forced to cover the transaction by a "purchase for cash". Mistakes should always be corrected and, as errors must be corrected within T+3 from the Trading Day of the Reportable Event [CAT NMS Plan], any (allegedly) good faith mistakes are already quickly identified which minimizes any actual hardship a seller may incur from covering the transaction by a "purchase for cash"; especially when the seller just received funds from the sale. This petition proposes to eliminate this "undue hardship" exemption.

The second condition (2) requires the mistake to be made by the seller's broker and for the sale at a permissible price. Normally, there needs to be reparation or restitution when someone makes a mistake. If you break it, you bought it. If you sell something you can't deliver on, you refund or buy the item for delivery. Screwing up a sale is not a good reason for the broker or dealer to fail to deliver; regardless of the sale price. Consider what would happen if Amazon screwed up and offered to sell items for a seller at a permissible market price when the seller did not have inventory? Can Amazon or the seller collect funds for the sale and fail to deliver? Of course not! This petition proposes to eliminate this "screwup" exemption.

Both conditions for requirement (C) are face-palmingly ridiculous reasons for allowing a failure to deliver; rendering the entirety of the third exception inappropriate.

When the SEC disagreed with the two commenters at the time who suggested that the proposed Rule did not adequately address long sale delivery fails [Release 34-50103 fn 109], the SEC also stated that "17 CFR 240.15c-3-3(m) also addresses fails to deliver on long sales" ("Rule 15c3-3(m)" reproduced below):

> (m) *Completion of sell orders on behalf of customers.* If a broker or dealer executes a sell order of a customer (other than an order to execute a sale of securities which the seller does not own) and if for any reason whatever the broker or dealer has not obtained possession of the securities from the customer within 10 business days after the settlement date, the broker or dealer shall immediately thereafter close the transaction with the customer by purchasing securities of like kind and quantity: **Provided, however, The term customer for the purpose of this paragraph (m) shall not include a broker or dealer who maintains an omnibus credit account with another broker or dealer** in compliance with section 7(f) of Regulation T (12 CFR 220.7(f)).

As with the above, the issue here is the exception to the rule for closing the transaction by purchasing securities of like kind and quantity if for any reason the broker or dealer has not obtained possession of the securities from the customer within 10 business days after the settlement date. Why does the requirement for a broker or dealer to complete a sell order for their customers buying-in their sale 10 business days after the settlement date exclude from "customer" any broker or dealer who maintains an omnibus account with another broker or dealer? This rule 15c3-3(m) would be perfectly reasonable simply requiring brokers and dealers to complete sell orders on behalf of all their customers; so why is a broker or dealer using an omnibus account with another broker or dealer not a customer[14] for the purpose of this rule? The type of account held by a seller, whether an omnibus account or segregated account, is irrelevant to the fundamental problem that the seller did not deliver securities sold. All sellers, regardless of what type of account they maintain, should be required to deliver securities sold; thus, this petition proposes to eliminate this “omnibus accounts” exemption.

This petition proposes to address the issues described above with the following amendments simplifying and enhancing the regulatory framework for our financial markets, reducing failures to deliver, and promoting prompt settlement and clearing; even in volatile markets[15].

Proposed Changes

Regarding the text and substance of the amendment, this petition requests the SEC amend Rule 203(a) and Rule 15c3-3 to address the aforementioned issues excepting delivery obligations by:

removing the “loan without delivery” exemption in Rule 203(a)(2)(i),

removing the “seller lied” exemption in Rule 203(a)(2)(ii),

removing the “undue hardship” and “screwup” exemptions in Rule 203(a)(2)(iii), and

eliminating the “omnibus accounts” exemption in Rule 15c3-3(m).

The text of the proposed changes are specified below (blue and strikethrough, where available), additions are identified by square brackets (i.e., “[“ and “]”) and double-dashes (i.e., “––”) indicate deletions.

Proposed Changes To Rule 203(a)

This petition proposes to remove the exceptions in Rule 203(a)(2) including the “loan without delivery” exemption in (i), the “seller lied” exemption in (ii), and the “undue hardship” and “screwup” exemptions in (iii). This proposed change simplifies Rule 203(a) by eliminating the limited circumstances a broker or dealer may fail to deliver borrowed shares on long sales and preserves the delivery obligations for sellers to deliver securities sold which thereby promotes settlement, clearance, and the protection of all investors and the public interest consistent with the Securities Exchange Act of 1934 [Legal Information Institute]; particularly Rule 10b-5[16] as “[t]hose who deceive about their intention or ability to deliver securities in time for settlement are committing fraud, in violation of Rule 10b-21, when they fail to deliver securities by the settlement date”[17],[18].

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(a) Long sales.

   (1) If a broker or dealer knows or has reasonable grounds to believe that
   the sale of an equity security was or will be effected pursuant to an
   order marked “long,” such broker or dealer shall not lend or arrange for
   the loan of any security for delivery to the purchaser's broker after the
   sale, or fail to deliver a security on the date delivery is due.

   -- (2) The provisions of paragraph (a)(1) of this section shall not
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apply:

(i) To the loan of any security by a broker or dealer through the medium of a loan to another broker or dealer;

(ii) If the broker or dealer knows, or has been reasonably informed by the seller, that the seller owns the security, and that the seller would deliver the security to the broker or dealer prior to the scheduled settlement of the transaction, but the seller failed to do so; or

(iii) If, prior to any loan or arrangement to loan any security for delivery, or failure to deliver, a national securities exchange, in the case of a sale effected thereon, or a national securities association, in the case of a sale not effected on an exchange, finds:

(A) That such sale resulted from a mistake made in good faith; [and]

(B) That due diligence was used to ascertain that the circumstances specified in § 242.200(g) existed; and

(C) Either that the condition of the market at the time the mistake was discovered was such that undue hardship would result from covering the transaction by a "purchase for cash" or that the mistake was made by the seller's broker and the sale was at a permissible price under any applicable short sale price test. --

Proposed Changes To Rule 15c3-3(m)

This petition proposes to remove the "omnibus accounts" exception in Rule 15c3-3(m). This proposed change simplifies Rule 15c3-3(m) by eliminating an exemption based on what type of account a customer maintains with the broker or dealer so that all sellers are required to deliver securities sold. With this proposed change, this rule for completion of sell orders on behalf of customers would apply equally to all customers of a broker or dealer; no exceptions.

(m) ***Completion of sell orders on behalf of customers.*** If a broker or dealer executes a sell order of a customer (other than an order to execute a sale of securities which the seller does not own) and if for any reason whatever the broker or dealer has not obtained possession of the securities from the customer within 10 business days after the settlement date, the broker or dealer shall immediately thereafter close the transaction with the customer by purchasing securities of like kind and quantity[.] -- : Provided, however, The term customer for the purpose of this paragraph (m) shall not include a broker or dealer who maintains an omnibus credit account with another broker or dealer in compliance with section 7(f) of Regulation T (12 CFR 220.7(f)). --

Closing Remarks

As a retail investor, I believe these amendments enhance Rule 203(a) of Regulation SHO and Rule 15c3-3 to protect all investors; maintain fair, orderly, and efficient markets; and facilitate capital formation in accordance with the SEC's mission. Exceptions to otherwise sound rules creates loopholes which are not consistent with the Regulation SHO objectives of simplifying regulations and establishing uniform requirements to address potentially abusive and/or naked short selling and other problems associated with failures to deliver [Release 34-50103 section A. Need for and Objectives of the Amendments]. These amendments should be adopted to eliminate some limited circumstances in which a broker or dealer may fail to deliver to ensure long sale delivery obligations are met as it was (and hopefully still is) the "Commission's view that delivery requirements are important for all securities" [Release 34-50103 Section VI. Rule 203(a) — Long Sales].

Eliminating the circumstances in which a broker or dealer may fail to deliver will also help ensure orders are properly marked as "long" or "short". For example, currently the "seller lied" exception, for when a long seller lies about ownership and fails to deliver, allows their broker or dealer to fail to deliver on the transaction; thus resulting in a (likely naked) short transaction contrary to the long order marking. By eliminating exceptions so that brokers and dealers must deliver as gatekeepers of the securities market (buying in the transaction where necessary), long sales will be properly marked as such. As a result, this petition also supports the proper marking of transactions necessary for the unambiguous application of regulations and the protection of all investors in a fair, orderly, and efficient market.

Notably, these proposed enhancements to Regulation SHO do not change any of the sound underlying principles upon which the rules are based. Instead, these proposed amendments eliminate exceptions so that the sound underlying rules are applied fairly and equally to all parties with uniform delivery requirements for all long sales.

This petition to amend Rule 203(a) of Regulation SHO and Rule 15c3-3 is simple:

> **Sellers must deliver securities sold**. *No exceptions.*

Retail investors like myself appreciate the opportunity to submit this simple petition for rulemaking and respectfully request that the Commission act promptly to amend Rule 203(a) of Regulation SHO and Rule 15c3-3 as explained by this meme:

Sincerely,

A Concerned Retail Investor

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[1] 17 CFR § 201.192(a)

[2] 17 CFR § 242.203. See, e.g., https://www.law.cornell.edu/cfr/text/17/242.203

[3] 17 CFR 240.15c3-3. See, e.g.,https://www.law.cornell.edu/cfr/text/17/240.15c3-3

[4] https://www.sec.gov/rules-regulations/petitions-rulemaking-submitted-to-sec

[5] https://www.sec.gov/data-research/sec-markets-data/fails-deliver-data

[6] See, e.g., “Strategic delivery failures in U.S. equity markets” (2006) available at https://www.sciencedirect.com/science/article/abs/pii/S1386418105000388 which “document[s] the pervasiveness of delivery failures and evidence consistent with the hypothesis that market makers strategically fail to deliver shares when borrowing costs are high” [Abstract] and “show[s] that many firms that allow others to fail to deliver to them are themselves responsible for fails-to-deliver in other stocks” [id.]. See also, “Failure is an Option: Impediments to Short Selling and Options Prices” (2006) available at https://www.sec.gov/comments/4-520/4520-6.pdf which states “Regulations allow market makers to short sell without borrowing stock, and the transactions of a major options market maker show that in most hard-to-borrow situations, it chooses not to borrow and instead fails to deliver stock to its buyers ... and [the market makers’] ability to profit despite the usual competition between market makers appears to result from a cost advantage of larger market makers at failing” [Abstract].

[7] Adjusting for inflation does not significantly change the comparison as, according to the U.S.

Bureau of Labor Statistics inflation calculator [https://www.bls.gov/data/inflation_calculator.htm], $1.2B in July 2009 is equivalent to almost $1.8B in January 2025; still a very significant 20x increase.

[8] "Failures to deliver may result from either a short or a long sale. There may be legitimate reasons for a failure to deliver." [Investor.gov Investor Bulletin: An Introduction to Short Sales]

[9] "The executing broker has the responsibility to perform the locate prior to effecting a short sale, and must have a reasonable basis to believe that the security can be delivered on the settlement date." [SEC.gov | Division of Market Regulation: Responses to Frequently Asked Questions Concerning Regulation SHO]

[10] See, e.g.,

> https://www.nasdaq.com/articles/tech-tuesday:-gatekeepers-of-the-securities-markets discussing a 09/2023 Order issued by a U.S. Federal Court Judge where "[t]he Court viewed brokers as gatekeepers of the markets, who have an obligation to monitor, surveil, and prevent their customers from engaging in fraudulent trading conduct". See also footnote 11.
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> https://www.finra.org/rules-guidance/notices/21-03 which states "[b]roker-dealers play an important part in identifying and protecting investors from potentially fraudulent activity. A firm's failure to take appropriate steps as a gatekeeper to the public securities markets … may expose that firm to liability risks".
> https://www.sec.gov/enforcement-litigation/administrative-proceedings/34-102192-s which states "broker-dealers serve as critical gatekeepers" and the 2024-96 SEC Press Release at https://www.sec.gov/newsroom/press-releases/2024-96 quoting an Associate Regional Director of the SEC's New York Regional Office: "[b]roker-dealers are critical gatekeepers to the securities markets and must diligently monitor for suspicious transactions".

[11] See, e.g., Harrington Global Opportunity Fund Ltd. v. CIBC World Markets, Inc. et al. SDNY 1:21-cv-00761-LGS 9/28/2023 Order at pages 16-17 where the Court stated that brokers have a "continuing responsibility to ensure that their customer's order flow… is in compliance with all applicable rules, regulations and laws and detect and prevent manipulative or fraudulent trading … under the supervision and control of the firm" with primary liability if a broker "was reckless in not knowing that the trades he executed at their customers' direction were manipulative".

[12] A simple statistical analysis could include computing the average of the daily overall errors count and standard deviation to determine how many standard deviations each day is from the average noting the significant deviation on trade days with billions of equities errors.

[13] Please refer to the Spaceballs "Ludicrous Speed" movie clip available at https://www.youtube.com/watch?v=NAWL8ejf2nM. Errors occurring 10,000x above average are nonsensical as would be inaction to address them when "[o]ur job at the SEC is to ensure that we maintain a market that is the best in the world for investors and for issuers" [Paul Atkins Remarks at the 12th Annual Conference on Financial Market Regulation (May 2025)].

[14] As examples, eToro and WeBull both transitioned to holding customer securities in an omnibus account with Apex Clearing Corporation, an SEC registered broker dealer, after the January 2021 GameStop short squeeze [Wikipedia]. As eToro and WeBull both maintain omnibus accounts with Apex Clearing, when Apex Clearing executes a long sell order for eToro and/or WeBull (Apex's "customer", one would assume), but for some reason Apex Clearing does not receive the securities sold from Webull, then one would expect Rule 15c-3-3(m) to require Apex Clearing to close the transaction by purchasing securities of like kind and quantity 10 business days after the settlement date. Except the "omnibus accounts" exception excludes eToro and WeBull from being a customer of Apex Clearing for the purposes of the completion requirement in Rule 15c-3-3(m) so Apex Clearing does not need to complete sell orders on behalf of eToro and Webull who are not a "customer for the purpose of this paragraph (m)" because they maintain omnibus accounts and, for the purpose of this paragraph (m), not a customer. As a result of this exception, Apex Clearing is not required by Rule 15c-3-3(m) to close unfulfilled long sale transactions for eToro and/or WeBull by purchasing securities of like kind and quantity.

[15] See, e.g., SEC "Staff Report on Equity and Options Market Structure Conditions in Early 2021"

(Oct. 2021), the Jan. 2021 GameStop "episode highlighted the risks that exist while trades are settled and raised concerns about the mechanism market participants use to manage those risks. Specifically, volatility combined with settlement risks led some firms to temporarily restrict trading" [id. at 3] and "[b]ecause direct measures of naked short selling do not exist, fails to deliver can be used to learn about naked short selling." [id. At fn 79]

[16] Rule 10b-5 [Legal Information Institute, Wikipedia, 17 CFR § 240.10b-5 available at https://www.law.cornell.edu/cfr/text/17/240.10b-5] under Section 10(b) of the Securities Exchange Act of 1934 authorizes the SEC to regulate securities fraud and states that "it shall be unlawful for any person . . . (c) to engage in any act, practice, or course of business which operates or would operate as a **fraud or deceit** upon any person, in connection with the purchase or sale of any security" (emphasis added) which is particularly relevant to, for example, the "seller lied" exemption in Rule 203(a)(2)(ii) which this petition proposes eliminating. To be absolutely clear for the public record, Rule 203(a)(2)(ii) exempts a broker or dealer from delivery obligations allowing the broker or dealer to fail to deliver when "reasonably informed by the seller that the seller owns the security and will deliver it to the broker or dealer prior to the scheduled settlement of the transaction and the seller fails to make such delivery"; *literally* fraud or deceit by the seller codified into an exemption perpetuating the failure to deliver.

[17] Rule 10b-21 [Legal Information Institute, Release 34-58774 "Naked" Short Selling Antifraud Rule] states "[i]t shall also constitute a "manipulative or deceptive device or contrivance" as used in section 10(b) of this Act for any person to submit an order to sell an equity security if such person deceives a broker or dealer, a participant of a registered clearing agency, or a purchaser about its intention or ability to deliver the security on or before the settlement date, and such person fails to deliver the security on or before the settlement date".

[18] Key Points About Regulation SHO available at https://www.sec.gov/investor/pubs/regsho.htm.