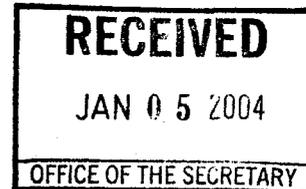


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January 2, 2004

Mr. Jonathan G. Katz, Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609



RE: FILE NO. S7-23-03

Dear Mr. Katz:

I am writing as an individual investor who is interested in fundamental fairness of trading in equity markets. The views expressed are my own. My comments will be primarily directed to the borrowing and delivery requirements of Section 242.203 (b) of the proposed Regulation SHO.

The proposed Regulation is appropriate and should help protect buyers of securities by substantially curtailing naked short selling. However, it does not go far enough and naked short sellers will continue to abuse the trading system unless additional changes are made.

As the Commission states in its Background Information section describing current naked short selling practices, "At times, the amount of fails to deliver may be greater than the total public float". This statement is highly instructive and, in fact, probably understates the problem. Abundant evidence exists to suggest that, in some cases, the amount of "fails to deliver" may be greater than the total number of shares issued and outstanding by the company that has issued the underlying security. Such a situation creates fertile ground for rampant fraud and manipulation in the shares of companies having small market capitalizations, not only on over the counter markets, but with Nasdaq securities as well. In the absence of a requirement, strictly enforced, that shares be available for shorting, all that is required for significant market manipulation is a large sum of cash. Many hedge funds, and even wealthy individuals, in today's market have access to funds far exceeding the market capitalization of most small companies. Allowing such funds or individuals to sell short securities which are not truly available (in fact, securities that do not exist) allows those with economic power to manipulate stock prices and distort stock values. In some cases, this naked short selling can reduce stock prices to the point where the targeted company is unable to obtain the financing it needs to survive. In other cases, the resulting depressed share prices can interfere with the company's ability to market its products and lead potential customers and investors to conclude, incorrectly, that there are fundamental problems driving the company into bankruptcy. In all of these cases, the naked short selling has created a self-fulfilling prophecy.

Proposed Regulation SHO is a step in the right direction, and I urge its adoption. At the same time, additional action is required. The comments below respond to some of the questions that the Commission has posed for public comment, and also address additional action items that should be implemented if currently existing abuses are to be eliminated.

1. Q What harms result from naked short selling?

Comment: Naked short selling creates an environment in which fraud and market manipulation can easily occur. In general, markets operate on the premise that price is set (or at least impacted) by the economic laws of supply and demand. These laws suggest that a purchaser can only purchase a commodity (or security) that actually exists. If a corporation has 10 million shares outstanding and none are available for sale, either (i) a prospective purchaser cannot purchase shares or (ii) the price of the shares will rise until a prospective seller makes an economic decision to sell.

In the absence of available shares, naked short selling, on the other hand, is basically the sale of a share that does not exist. If a short seller borrows shares in amounts equal to those he sells, or at least confirms that such shares are available for borrowing, he is doing nothing to upset the laws of supply and demand. The shares available for sale are only those shares that in fact exist to be sold. If, on the other hand, such a short seller can sell "phantom" shares, which he does not own and cannot borrow, the fundamental economic laws that govern commercial transactions will have been violated. There will be an unlimited supply of shares available to be sold and a discreet, limited number of actual shares available to be purchased. A naked short seller with sufficient economic power can drive the price of a security down to a point where the target company cannot survive, either because it cannot obtain financing or because prospective customers become reluctant to enter into long term arrangements or because of other similar factors. A naked short seller can literally drive a company out of existence by manipulating its market price and, in the process, profit from his inappropriate use of economic power. Meanwhile, the investor who purchased shares, assuming that the laws of supply and demand would ultimately prevail, will have lost his investment.

This system lends itself to abuse. A naked short seller with substantial assets at his disposal, intent on driving a company out of existence, can "walk the price down" by a series of short sales, creating the illusion that an unlimited supply of shares are available for sale and creating panic among other investors when in fact the shares available for sale do not actually exist. This trading pattern is evident among many of the smaller companies on both the OTC and NASDAQ markets today.

It is not a satisfactory answer to assert that the current anti-fraud provisions of the Federal Securities Laws are available to correct such abuses. In fact, such cases are difficult to prosecute and, although the practice is rampant, enforcement today is almost non-existent. If broker-dealers actually had to borrow shares in order to sell short, or if they had to make a genuine determination that shares were available to borrow, most of these illicit practices would cease, because the laws of supply and demand would dictate that such practices would only succeed in those cases where companies fail because their economic fundamentals are insufficient to sustain them.

2. Q Conversely, what benefits accrue from naked short selling?

Comment: It has been suggested that naked short selling can dampen speculation and help to hold down prices of securities of companies whose results or prospects are undeserving of higher share prices. While this is undoubtedly true, naked short selling can have the same impact on companies whose securities are deserving of those prices. More importantly, this same benefit can be achieved through legitimate short selling, where the underlying security is either borrowed or truly available, without disrupting the laws of supply and demand.

3. Q Should short sales effected by a market maker in connection with bona fide market making be excepted from the proposed "locate" requirements?

Comment: I do not believe there should be an exception for market makers. If the security is truly available and appears on a previously existing availability list, market makers should have no difficulty in maintaining an orderly market while relying on such lists. In fact, the roles of a market maker which trades for its own account and which also maintains a market for the public are often blurred. The Commission is correct in asserting that extended failures to deliver appear characteristic of an investment or trading strategy rather than one related to market making. In fact, some significant portion of the abuses occurring in today's market undoubtedly results from market makers trading for their own accounts. If such abuses are to be stopped, market makers cannot be exempt from the rules.

4. Q Are the proposed consequences for failing to deliver securities appropriate and effective measures to address the abuses in naked short selling? Should broker-dealers buying on behalf of customers be obligated to effect a buy-in for alleged fails?

Comment: The proposed consequences are appropriate and partially effective measures to address the abuses. Section 242.203 (b) (3) is helpful but should be extended to address previously existing "fails to deliver". Section 242.203 (b) (3), as currently drafted, would allow a broker or dealer which is hopelessly delinquent in delivering securities from past naked short sales to continue its practice of short selling so long as the broker or dealer borrows shares needed for the current transaction. Thus, a broker or dealer which has failed to deliver a million shares of a particular security in the past and which has still not borrowed shares necessary to fund such a deficit, may sell another 1,000 shares short so long as 1,000 shares are available to cover that particular trade. The proposed regulation should be further amended to provide that such broker or dealer must correct past imbalances if it is to continue its practice of short selling securities when there are fails to deliver for such security which exceed 10,000 shares or that are equal to at least one-half of one percent of the issues total shares outstanding.

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Please note that the above suggestion would not require a broker or dealer to correct past imbalances; it would merely prohibit such broker or dealer from short selling until they do so. As such, it represents what should be considered a minimum standard. If past abuses are to be truly corrected, broker-dealers should be obligated to effect a buy-in for aged "fails".

5. Q Should short sales effected by a market maker in connection with bona fide market making be exempted from the proposed delivery requirements targeted at securities in which there are significant "failures to deliver"?

Comment: Such short sales should not be exempted for the reasons explained in the comment to Question #3 above. The line between bona fide market making and self-dealing is blurred and exemptions are subject to substantial opportunity for abuse.

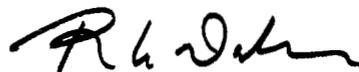
Odd-Lot Transactions: The preceding comments relate to the borrowing and delivery requirements of proposed Rule 203. The following comment concerns Exception 3 to Rule 10a-1 (odd-lot transactions).

Q Should all odd-lot transactions have an exception from the Rule? Would providing an exception for all odd-lot transactions pose a risk of increased short sale manipulation, e.g. would traders break up trades into 99 share odd-lots in order to avoid the price test?

Comment: I believe that odd-lot transactions should not have an exception to the Rule. Traders would clearly break up trades into smaller odd-lots in order to avoid the price test. One only has to examine trading patterns in heavily shorted NASDAQ securities to confirm that this conclusion is highly probable. Naked short sellers today, in attacking small NASDAQ companies, employ strategies in which a barrage of 100 share offers are placed sequentially in an attempt to depress the price of a security. If odd-lot transactions are excepted, it is reasonable to conclude that these same traders will break up trades into smaller lots. They will not likely select 99 shares for most of their trades, because that will make their intentions too obvious. Instead, there will be blocks of 70, 80, 90 and 95 share offers using the same sequential procedures that have been used in the past.

Thank you for the opportunity of commenting on the proposed Rule. I urge its adoption, followed by further steps to assure its effectiveness.

Sincerely,



Richard G. Dahlen