S7-23-03 327

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

Dear Mr. Katz:

Regarding file no. S7-23-03, I agree with the Commission's assessment of naked short-selling, but must take exception with many of the assumptions underlying the new bid tick test.

There is never an excuse for prolonged naked short-selling. Broker-dealers should affect a buy-in for aged fails. Ideally, clearing (and therefore locating and delivering) should be fully electronic. Then the "hard" or "easy to borrow" lists would be unnecessary -- a stock's suitability for shorting would always be known.

There is no need for an expansion of the short-selling bid-test. In fact, there is no need for any short sale rule whatsoever. The purpose of the stock market is to match buyers with sellers.

The NASDAQ Small-Cap Market has functioned this way for years. Have these stocks all been driven to zero? Quite the contrary, NASDAQ Small-Caps trade in a much smoother, less volatile fashion than their short-protected brethren. Why is this? Because if someone wants to get short, they can simply sell at the bid, regardless of which direction the stock is moving. In a bid-test stock, a short-seller frequently must offer down to the bid, only to see the bid drop in an effort to entice a still lower offer. These sequences of dropping bids and offers chasing them exacerbate downward movements and often interrupt upward movements as well.

Really, it is a question of how the SEC wants stocks to behave intraday. If someone wishes to establish a short position, they are going to do so whether it involves offering low or hitting a bid. Since hitting the bid instantly arrives at a consensus of value, it should be the preferred method.

The proposed pilot program should be expanded to cover most of the Russell 3000. What is the danger to a liquid stock? What is the danger to a stock with a market capitalization greater than $250 million? All shorts must eventually buy back their stock in the marketplace. The only stocks that might be susceptible to prolonged price depression are the smallest and least liquid. Yet these very stocks have always traded without short-sale regulation.

Short-selling cannot be used as a tool for driving the market down. Market manipulation via short-selling is a myth. What is the most extreme scenario possible? A fund can sell short until they borrow the entire float. The most likely outcome here is a very rapid doubling of the stock in order to relieve this particular fund of their delusional belief in market manipulation.

It seems as if the Commission wants to initiate the new bid-test in order to alleviate some of the regulatory difficulties in an increasingly fragmented environment. However, as liquidity gets more spread out, it becomes even more important for market participants to have unfettered access to each other's bids (or offers). Price isn't everything—speed and liquidity are equally and sometimes more important. **There may not be any liquidity at the consolidated best bid**. Liquidity for the trade may be below the bid. I would also remind the Commission that while the OEA study found that the minimum shortable price was improved for stocks currently facing a tick test, the MSP could only be worse for NASDAQ stocks.

Regulatory competition between exchanges is a very good thing. Investors ought to be able to decide for themselves what level of regulation they prefer. The shift in OTC volume away from the NASD and towards the ECNs provides a poignant example.

There is no objective, true price for a stock. There is only the price that people agree on in the marketplace. The shorts have just as much right to say that equity financings are occurring at too high a price as the longs have to say that equity financings are occurring at too low a price. It is not the SEC's job to favor one side over the other, but rather to insure that there is an orderly environment for both sides to trade with one another.

Sincerely,

Daniel C. Sweeney