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From: David Patch [idpatch@comcast.net]
Sent: Sunday, December 25, 2005 11:30 AM
To: letters@ncans.net
Subject: FW: Your correspondence to Congressman Tierney

From: marketreg [mailto:marketreg@SEC.GOV]
Sent: Wednesday, July 27, 2005 4:24 PM
To: 'idpatch@comcast.net'
Subject: Your correspondence to Congressman Tierney

Dear Mr. Patch:

Your March 31, 2005, letter to Congressman John F. Tierney, was sent to the Chairman by Congressman Tierney via letter dated June 20, 2005. The correspondence was forwarded to the Division of Market Regulation for a response.

In your letter, you expressed your concerns regarding abusive naked short selling. On April 11, 2005, which was after you sent your letter to Congressman Tierney, the staff of the Division of Market Regulation posted on the Commission's website a document entitled "Key Points About Regulation SHO." This document is available at <http://www.sec.gov/spotlight/keyregshoissues.htm>.

This document provides a detailed response to many of the concerns expressed in your letter. For example, it appears from your letter that you misunderstand "grandfathering" under Regulation SHO. Regulation SHO does not require the close-out of fails to deliver that existed before a stock became a threshold security (known as "grandfathered" securities) because the Commission was concerned about creating volatility through short squeezes if existing positions had to be closed out quickly. SEC staff is working closely with the SROs to monitor whether "grandfathered" fails are being closed out in due course. In fact, the SROs are closely scrutinizing all sizeable fails, whether or not they reach the threshold securities levels, to assess whether broker-dealers are taking steps to close them out. In addition, the SEC and the SROs are currently examining firms for compliance with Regulation SHO.

The "grandfathering" clause of the Regulation does not affect the Commission's ability to prosecute violations of law that may involve such securities or violations that may have occurred before the adoption of Regulation SHO or that occurred before the security became a threshold security. Thus, you are mistaken when you state in your letter that "grandfathering" under Regulation SHO "accept[s] the prior abuses."

You also state that you may have evidence of manipulation. If you have specific enforcement-related information, you should forward that information in an email to enforcement@sec.gov. The staff of the Commission's Division of Enforcement carefully considers any comments it receives. As you may be aware, however, the Commission will neither confirm nor deny the existence of an investigation unless, and until, it becomes a matter of public record as the result of a court action or administrative proceeding. In addition, Commission investigations are conducted on a non-public and confidential basis to help assure the integrity of the investigative process.

As we have informed you in our previous discussions with you, the Commission takes naked short selling concerns seriously and pursues allegations vigorously where warranted. We believe that Regulation SHO is a

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significant and balanced measure and will be effective in curtailing potentially abusive naked short selling. In addition, the Commission staff is closely monitoring all aspects of the operation of Regulation SHO. As we learn more about how Regulation SHO is working, we will consider whether any adjustments to the rules are necessary. In addition, the SEC will continue to investigate complaints about abusive short selling, and will not hesitate to bring enforcement actions where violations of the law can be proven.

We hope the information provided is helpful.

Sincerely,

Office of Trading Practices

Division of Market Regulation