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From: Robert Hallam - Avenue Coins [bobh@avenuecoin.com]
Sent: Friday, December 23, 2005 11:07 PM
To: Wall of shame
Subject: Fw: "Failure to Deliver" crisis

Written to the Dept. of Justice...

----- Original Message -----

From: [Robert Hallam - Avenue Coins](#)
To: newcase.atr@usdoj.gov
Sent: Tuesday, October 11, 2005 9:42 PM
Subject: "Failure to Deliver" crisis

Dear Sirs

I write in utter frustration.

No governmental officials want to publicly tackle the enormous "Failure To Deliver" crisis. I have written numerous letter to the SEC, Congressman Pombo, Senator Feinstein, the U.S. Senate Committee on Banking, Housing and Urban Affairs, the FBI and received nothing but form letters and a polite brush-off.

The financial scandal of the century is not some whacko conspiracy theory.

The SEC's mission statement is clear"

"The primary mission of the U.S. Securities and Exchange Commission (SEC) is to protect investors and maintain the integrity of the securities markets. As more and more first-time investors turn to the markets to help secure their futures, pay for homes, and send children to college, these goals are more compelling than ever."

Yes, I am facing college tuition costs for my two children within a few years. I would say that I fit the model investor described above.

If this is **really** the SEC's mission then consider the following: (from: <http://bobosrevenge.blogspot.com/>)

A Hole In My Head...

What if the US market system was so badly broken, so wildly compromised, that the very basic premise of an auction system was shown to be a hollow farce, an artifice designed to lure investors into a system wherein wholesale larceny, counterfeiting, fraud, collusion, corruption at a scale so pervasive that it jeopardizes the entire premise of the markets, was the reality and the norm, not some delusional construct of a cerebrum badly compromised by paranoia?

What if the worst case scenario, wherein the participants in their ex-clearing system created unknown levels of counterfeit shares which traded in the system and were treated as genuine, was not only reality, but was in fact the norm?

What if the participants had decided that instead of buying shares in the market to settle trades, they would just represent to buyers on their statements that they had gotten their shares, without ever bothering with the costly hassle of actually buying the shares? Doesn't that sound like a neat way to generate untold billions without any cost of goods sold, without any product cost at all?

What if, when caught doing it, they simply pointed at the other broker and said "it's his fault for not delivering", instead of buying in the failed trade, as mandated by the rules?

And what if the vast majority, possibly 100% of some of the trading in Reg SHO stocks, was nothing more than these bogus trades being conducted in order to damage the companies and the shareholders?

And what if, on the rare occasion that someone with enough clout to conduct a conclusive test did so, these "what if's" were

demonstrated as unassailable fact? That trades didn't even settle electronically until the brokerage system was GD good and ready, and had made millions by not performing its most essential and basic function, and had allowed these "cyber-counterfeits" to depress the value of the underlying stock to the point where the shares could be bought for \$10 less than the buyer paid for them? And what if the only reason that they had even done that, and bothered with settling the trades at all, was because the buyers were the owners of a billion dollar market cap company who were visibly involved in questioning the system's capability of performing at a basic level?

And what if the entire scheme was nothing more than an elaborate ponzi scheme wherein ever more fake shares have to be sold in order to buy shares to deliver at ever more depressed prices? Sound fanciful? Crazy? Impossible in today's modern world of Six Sigma nanosecond trading capability?

Wrong. It is apparently the accurate description of the norm.

Folks, I'll make this very simple. The reason that stocks like OSTK and NFI and many of the rest of the Reg SHO list stocks are selling for fractions of what they should be is because a literally unlimited number of bogus shares are being created and sold, with undiminished levels of aggression, by predators who financially benefit from the stocks going down.

And the entire market system, from the clearing system that keeps all information secret from the public, to the regulators who fail the most basic test of their congressional mandate in 17A (SETTLE THE TRADES PROMPTLY) and are uninterested in meeting this simple requirement for a fair market, to the brokers who financially benefit by treating failed trades as genuine transactions, to the hedge funds that use this capability to sell unlimited numbers of shares and manipulate stocks accordingly, all actively participate in what can only be described as a fraud against investors of such mammoth proportions that it defies credible description.

And that is now the tame version.

The test of any theory is how well it predicts future events. If the Fail To Deliver (FTD) problem was just a matter of a few rogue hedge funds gaming a loophole in the system, and of a regulator who was simply too overloaded to clamp down on what was a minor problem, then it would predict that when tested, there might be a small glitch in a few deliveries, but that within a reasonable time frame the system would function as expected and the trades would settle.

If the FTD problem was a widespread systemic problem where few if any shares of Reg SHO list stocks trading in the system are genuine, and where the system understood that, and perpetrated a massive fraud requiring secrecy, opacity of actual deliveries, and active collusion by its participants, one could predict that when tested, even by someone known to be testing it, it would be forced to defraud the buyer in plain view - blatantly, without remorse nor excuse, and with impunity - the latter is a prediction from the piece of the theory that says that the regulators are either compromised and thus in on it, or so fearful of destroying the financial system that they are rendered toothless (no other explanation satisfies the "with impunity" prediction).

That is what happened with Dr. Byrne and his father, who purchased roughly a quarter million shares of OSTK in the market two months ago in a series of extremely visible transactions, and were unable to even get the electronic shares delivered for two months.

Two months.

During which time the stock price was run down by almost \$10, presumably by the same selling pressure generated by the sale of the same "non-shares" as were sold to the Byrnes.

Non-shares.

Day after day after day of non-shares being sold, with limitless availability, a steady stream of counterfeit transactions treated by the system as genuine sales for the purposes of generating commissions, and for affecting the price on the auction market.

And none of the buying brokers doing their fiduciary and legal duty of protecting their customers by buying in the FTDs - rather, simply perpetrating the fraud for profit, secure in the knowledge that most investors will never check to verify delivery, nor have the means to test the delivery claims of the brokers when presented as genuine and believable.

Oh, and did I mention that Dr. Byrne finally got his 25K shares, but that his father STILL hasn't gotten his 200K delivered? Today, as we speak, over 60 days later, no shares, and no forced buy in. So what did John Byrne pay for when the money was debited out of his account? Why did the sale go through, and yet no shares get delivered to this very day, on a billion dollar market cap company? And what kind of treatment do you think small individual shareholders receive if billionaire insiders are sold non-shares and then told to pound sand on the legally mandated delivery thereof? I'll tell you what kind of treatment: they get defrauded as a standard daily business practice by an industry out of control.

Think this is the wild, crazy version of the theory? So did I, for many months. But as I researched my book, Symphony of 1/6/2006

Greed, about the markets and the current state of the union, I noticed something odd. Every time I tested the tame version and used it as an explanation for past events, and to predict future events, it failed, or at best was incomplete. Every time I used the wild version, it accurately predicted what would happen, and completely explained past events.

Now, I'm not saying that there aren't innocent explanations for most conspiracy-driven controversies, but I will say that there doesn't appear to be any for this particular controversy.

Again, we have a total failure by the participants to perform their most basic part of the transaction, we have a company whose value has been materially harmed by that knowing and willful failure (the buying broker could have just bought in the selling broker's position at any point, as mandated by Reg SHO and by Congress in 17A - in fact, the treatment of the two month failure to deliver as some act of nature wherein the buyer's broker is powerless to do anything but hope for delivery, or berate the selling broker, is hogwash - the buyer's broker could have and should have bought the seller in after T+3 days, and chose not to, for unknown reasons), we have proof positive of a major NASDAQ company receiving the same treatment as a penny stock whose shares have zero liquidity, and we have a complete failure by any regulator to take action, define the size of the problem, and put a stop to the abuse.

The truly astounding part about all of this is that in the penny stock world and OTCBB world the failure to deliver shares for months is not unheard of, but the conceit was that it couldn't or didn't happen in the "real", legitimate, big cap market.

Tell John Byrne that as he waits for his shares that he paid \$10 more for than they are worth today, and the sale of which presumably was a sham, as are all of the shares being sold to drive the price down. Why not? Who's going to do anything about it? Who is going to stop it? Does anyone think this is atypical? It isn't. It is simply confirmation of our most dark and ugly suspicions.

I couldn't make this up. We will likely see no coverage of it in the media. Regulators will likely ignore it or explain it away. Senate banking committees, chartered with overseeing the system, will pretend that this doesn't represent a crisis that impacts the credibility of the entire US market system.

The question is will we stand for that anymore, given this definitive proof?

And if this isn't enough hard evidence of a major systemic problem, what precisely would qualify?

I would propose that you do the following things: Send a copy of this article to Richard Lambiaste in Connecticut, who is heading up the state task force exploring this issue. Send a copy to the Senate banking committee, to both Bennett, and to Shelby, who has shelved any examination of this settlement problem. And send a copy to every financial reporter you can think of. And send a copy to the SEC, just for giggles - not because they will do anything about it.

If the CEO of a major company can't get his electronic shares delivered (NOT the paper certificates, just the electronic ticks that can be exchanged in nanoseconds - a feature of the improvement known as de-materialization, wherein paper certificates are eliminated and we are all supposed to trust the system to verify that we are receiving genuine shares) for two months, how can anyone buy any stock on any exchange with any confidence that they aren't simply being swindled?

The answer is you can't. And that makes for a genuine, systemic crisis in confidence in the US market system - a justified crisis given the failure at every level of the system to do its basic job, of exchanging money for genuine shares in a timely manner.

And it further raises the very real questions, "how do I know that any of the shares I am buying aren't frauds? How do I know my broker isn't lying to me when he represents my account as possessing shares? How do I know that the entire trading and valuation in the market of the company I own a piece of isn't a fiction determined by manipulators who can peg the price to whatever they feel like on any given day, and thus what is the point of investing in the markets at all? If large NYSE and NASDAQ companies can be counterfeited to the point where none of the shares bought on a given day are genuine nor delivered in anything approaching a binding reasonable non-fraudulent contract, how can I invest in the market? And how have the regulators chartered with protecting me let it get this bad, and why aren't they doing anything about it?"

So regulators, what now? What is the next move? Do you continue to allow NFI, and OSTK, and all the rest of the Reg SHO list stocks to be driven down by 30, 40, 50+% using non-shares? Do you continue to ignore what can only be described as massive stock manipulation? Do you continue to pretend that overt fraud isn't exactly what it appears to be?

Read this with alarm, and concern, and great care, and consider the implications. This is not a minor event. This is the smoking gun everyone has claimed doesn't exist, when they make the statement that "no company is really harmed by naked shorting if it is viable and legitimate".

Wrong. The value of OSTK has been eviscerated by the practice, as has NFI and a host of others, and we have proof of massive failures on the very first test of the system. And the participants are in on it. And no amount of hand waving and facile tonics will alter that conclusion.

1/6/2006

So now the question is, "what are you going to do about it?"

Sincerely, Robert W. Hallam, private investor
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