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The SEC Battle, Round 2

By Alexis Glick

One thing is clear about our almost daily coverage on the merits of the job the SEC is doing and whether or not they have to reconsider the “Uptick Rule,” or extending the number of institutions protected under this new emergency naked short selling order: people care. I want to thank all of you for responding to these blogs on the SEC and what you think needs to change. I would much rather have an open dialogue with you on this blog and welcome your input.

A couple days ago I interviewed the former SEC Chairman William Donaldson and Robert Shapiro from Sonecon. I wrote a blog entitled “[The SEC’s Battle](#).” Shortly after I posted that blog I received a letter from the Depository Trust & Clearing Corporation that they were unhappy with Mr. Shapiro’s appearance and that they did not think that he properly disclosed his legal work against the DTCC. If you don’t know what the DTCC is or the SEC and how they work together, here is a simple explanation:

The SEC or U.S. Securities and Exchange Commission is responsible for maintaining a fair, orderly and efficient market for anyone who trades in them. The SEC governs the rules and regulation that make markets fair and it also makes sure that the corporations that trade in those markets report financial information to the markets about the health and well being of their companies. The DTCC clears, settles and provides information services on the trades that get executed on those exchanges. At any one time the DTCC holds assets and provides custody to as much as \$40 trillion dollars worth of securities. Which securities? Equities, corporate and municipal bonds, mortgage backed securities and many more.

With that in mind, take a look at the note below that I received from the DTCC:

Alexis,

On your broadcast today, Robert Shapiro made the assertion that “DTCC was leading the fight against regulation to curb naked short selling.” Not true.

Mr. Shapiro should have disclosed to you—and your viewers—that he has been a paid consultant to lawyers involved in litigation against DTCC. The litigation was unsuccessful...and his assertions are without foundation.

The SEC has affirmed on many occasions that both short selling and naked short selling are trading activities, regulated by the markets and the SEC....and has nothing to do with clearance and settlement.

As you know, The Depository Trust & Clearing Corporation is involved in the post-trade process of clearing the trades executed on the exchanges, helping settle the financial obligations between major firms involved in trading and moving the ownership of securities held at our securities depository. Last year, we settled \$1.86 quadrillion in securities transactions.

DTCC provides information daily to the exchanges and to the SEC, that along with information obtained from financial firms, empowers SROs and regulators to police the markets. For Mr. Shapiro to suggest otherwise is misleading to your viewers, at a time when factually accurate reporting is so critical to market and investor confidence.

We'd appreciate if you'd address this correction on air....and insist Mr. Shapiro disclose he has made part of his living as a paid litigation associate on this issue.

Thank you.

Stu

ps. I tried to call you to discuss, but was not permitted to reach you.

Stuart Z. Goldstein
Managing Director
Corporate Communications
Depository Trust & Clearing Corporation

In response to Stu Goldstein's note, I sent the following note:

Stu,

I thank you for this very thorough note and for clarifying the role of the DTCC. May I post the second half of this note on my blog to help clarify what has been misstated? Also I am cc'ng my Executive Producer Brian Donlon and my senior booker Yvette Michael. I would be thrilled if Chairman Donald Donahue could join me for a live interview to talk about what the DTCC does and how it is impacted by the temporary change in naked short sale rules. Very few people in this country know that you provide the clearing and settlement for so many different securities and that the assets you hold in custody are valued at \$40 trillion. This is an important story and I want to help tell it and explain it. This SEC story and the future of regulation in the markets will be a big story for months to come. Can we book Mr. Donahue? I would be thrilled to have him on tomorrow morning. I anchor the show from 7-9am.

Yvette or Brian can coordinate. And I am serious that I would like to post your comments assuming you feel comfortable.

All the best,

Alexis

P.S. Also we are looking into Robert Shapiro's background and ties. Clearly we had no idea.

We then called Robert Shapiro to allow him to respond to Mr. Goldstein's note. Here is what he had to say:

I can appreciate Mr. Goldstein's frustration. For several years, representatives from the DTCC have minimized the significance of naked short sales and criticized those analysts who, like myself, have studied the phenomenon and concluded that it is widespread and often used to manipulate share prices. Now they have to contend with the SEC's findings that naked short sales are, indeed, widespread and often used to manipulate share prices. He is correct that the SEC has said that short sales and naked short sales are trading activities; but he fails to note that the SEC also says that naked short sales are illegal trading activities. The DTCC's role in the process of naked short sales is also acknowledged, albeit implicitly, in Mr. Goldstein's statements: Naked short sales, in which a short seller sells shares he doesn't own (as does every short seller), receives payment for those shares (as does any short seller), and then fails to borrow and deliver the shares (the crucial difference with legitimate short sellers), would not be a problem if at the end of the three-day period allowed to deliver the shares, they were not "cleared and settled" as if the shares had been borrowed and delivered. That's precisely what the DTCC does through its stock borrow program, and that is also precisely what naked short sellers depend upon when they try to manipulate stock prices, as the SEC has effectively acknowledged..

As to Mr. Goldstein's ad hominem attack on me because I have advised attorneys pursuing litigation against the DTCC, my role there has been to analyze overall market movements and interpret their significance, matters on which the SEC also has asked me for advice. I have worked hard to establish the means and credibility to carry out that analysis, including degrees from the University of Chicago, the London School of Economics, and a doctorate from Harvard University, stints as a Fellow of Harvard University, of the National Bureau of Economic Research, and of the Brookings Institution, and service as the U.S. Under Secretary of Commerce for Economic Affairs. I am paid to do economic analysis, as Mr. Goldstein is paid to advocate the positions of the DTCC. What matters here is not whether he or I have to earn a living, but whether the analysis and conclusions we reach are backed up by real data. I am gratified that the SEC recent steps on naked short sales have effectively reflected the positions and analysis which I, among others, have pursued.

I have asked to meet with the DTCC on more than one occasion to see if we could collaborate on at least identifying the basic data on the incidence of naked short sales

against particular companies, data which they control. , and open a dialogue about their significance. The DTCC has never even responded. I reiterate that offer. The data should see the light of day, so many outside analysts can study them and provide analysis and recommendations. This matter is too serious to degenerate into the personal attacks which Mr. Goldstein unhappily offers.

Robert Shapiro

As you can see from my note to Stu Goldtsein, I invited the Chairman on and would very much like to continue the dialogue and allow Robert Shapiro and the Chairman of the DTCC Donald Donahue to respond to each others points. I want to reiterate once again that I am happy to have him on and welcome this discussion. ***The response I received from Mr. Goldstein is below***

Alexis,

We'd be pleased to have you post the full note on your blog. If Mr. Shapiro is invited back on FOX to talk about naked short selling, your viewers would also be well served to know the full nature of his involvement in this issue.

With regard to DTCC, it is never easy covering the complex nature of trading markets and how market infrastructures function in the tight timeframes (3-4 min segments) that TV requires. I'm certainly open, however, to talking with your folks to see about appropriate subjects.

The current changes by the SEC have no impact on DTCC, since these changes only reaffirm that short selling and naked short selling are trading activities.....unrelated to what happens "after-the-trade" is executed. Requiring firms to secure the source of borrowed securities to cover a short sale....are SEC actions focused on further regulating trading activities.

However, there are other subjects that might interest you. For example, if you want to understand why investors have such wide choice in buying mutual funds in the U.S.....its because our Fund/SERV system links all fund families with all broker/dealers, banks and financial planners. In contrast, in the UK or Europe, you can only buy the 10 or so funds your bank offers you. Huge difference.

Why don't you come visit with a colleague. Our low key nature as an organization is in part because of the critical role we play in the industry and the threat of terrorism. But we can always look for common ground....as long it fits the medium.

Stu