CHRISTIANLEVINE
LAW GROUP

James W. Christian
[redacted]

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**Recommendations to be added to the CSA paper:**

Our request to present to the task force was denied so we submit this written submission. My belief is that Canadian capital markets are very susceptible to abuses around the settlement system given there appears to be ZERO regulation and enforcement of this crucial system; nor is there any real transparency and oversight into the market making activities of the banks and brokers who control this system from arms-length and uncaptured parties.

Not surprisingly, there are large amounts of fails to deliver in the Canadian system otherwise known as "Counterfeit Shares." Counterfeit shares are shares that the buyer has paid for, but the seller hasn't actually delivered to consummate the transaction.

This activity can be used to overwhelm the share price of any company no matter the size of its market capitalization with unlimited supply guaranteeing that the stock price rapidly declines. This downward manipulation activity can also be done with spoofing on a massive scale to manipulate any quote lower. This fake volume does what it's meant to do, create the affect that there is a potential problem with the issuer which brings in additional sales of the stock impairing the issuers cost of capital.

This illegal activity has been well documented by us to authorities in detail in both Canada and the United States. We have prosecuted approximately 20 cases that have at their core these illegal activities by market makers, prime brokers and others.

Given a large portion of this illegal activity is being done by many of the banks, brokers and market makers who are abusing their privileges (sanctioned under the alleged bona fide market maker exemption) there must be active monitoring of the settlement system and significant fines and penalties imposed for abusive behavior. We believe Canadian pension funds and small investors alike have lost billions to this illegal activity.

This activity cannot successfully be regulated by a self-regulatory body owned and paid for by the same culprits engaging in this illegal activity. To put this in perspective the fails to

deliver in New York in Q1, 2020 stood at over $1.7 trillion. How anyone can say this isn't the biggest threat to capital markets and democracy itself is beyond me. This needs to change.

Therefore, we recommend the following to eliminate these forms of illegal activity.

1) Regulate the settlement system. Enforce a T+2 settlement on all trades with no exceptions. This will force everyone to borrow the stock prior to execution of the short sale so to timely deliver it and timely consummate the trade.

2) This includes market makers who are marking the shares long (when they are short) and posting multiple offers that are not real in their market making activities with no intention of ever covering the trades in the required time frame under the market making rules. This will force them to get the borrow to cover as they are currently required to do by law, but fail to do. Interestingly, this is what Europe appears to be implementing early next year.

3) Bring back the uptick rule so that stocks can't be driven down relentlessly by the abuses listed above which will help with market structure and integrity. This rule was put in place for a reason and should never have been removed.

4) Implement a pre borrow requirement on all short sales.

5) Regulate the stock loan business to make sure over lending isn't occurring which happens all the time. Impose large fines for this behavior if violated.

6) Never let cash account shares be borrowed in any manner. IIROC's recent change to allow the borrowing of cash account shares was in our opinion done to cover the tracks of this abuse of prior lending of cash account shares that was happening on a large scale.

7) Put in place the same reporting requirements for short sales as currently in place for long positions. If a 10% beneficial ownership threshold is deemed appropriate, then have the same for requirements for short sales.

8) Spoofing and layering to drive stocks lower during short attacks has to be able to be tracked. Upgrade the systems and talent in house at the regulatory bodies to track this is a good start.

9) Transparency into the positions of all broker dealers must be implemented. It is astounding that in today's age of required transparency that this already isn't in place. This should include the following: (a) Daily publication of total short sale volume; and (b) daily publication of all failed trades by broker.

Should you have any questions, please feel free to contact me.

Sincerely,

*/James W. Christian/*
James W. Christian

# Naked Short Selling Legal Case Chronology

The following represents a general chronological overview of the cases that Christian Smith & Jewell ("CSJ") (and others) have worked on in the naked short selling and counterfeiting of securities space, commencing 2001 to present.

The involvement of CSJ began once Internet Law Library hired CSJ and the John O'Quinn firm ("O'Quinn") to prosecute a case where they believed the entire issued and outstanding shares of the company at the time (in 2001) were being traded on a daily basis, notwithstanding that they held a very large percentage of the shares of the company in their founders possession (in certificate form). As a result in 2001, CSJ and O'Quinn began investigating (through consultants and others) understanding how stock: a) is issued by the transfer agent; b) sent to the buyer or new shareholder; c) forwarded to the broker for the placement into the shareholder's account; d) when does it ultimately go to the Depository Trust Company ("DTC")[1] to be held in street name under CEDE & Co.; and e) what is done with the shares thereafter. After understanding this chain of events, we then focused on: a) where are the shares kept; b) who is responsible for the safekeeping of the shares; and c) how can the shares be used (directly or indirectly) for any illicit purpose.

It was then that we learned that the entity that holds the shares in storage is the DTC in New York City. The DTC is owned by many prime brokers and other entities. In the undersigned's opinion, it is the "fox in the hen house" as it is a Self-Regulatory Organization ("SRO"). The DTC is in turn owned by a holding company called The Depository Trust Clearing Corporation ("DTCC")[2]. The holding company also owned (after it acquired the same in late 1990's) the National Securities Clearing Corporation (referred to as the "NSCC")[3]. The sole purpose of the NSCC (in theory) is to solve short term fails to deliver based upon a signature missing or some other technical issue with regard to stock which results in the stock not clearing and being timely delivered.

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[1] http://www.dtcc.com/about/businesses-and-subsidiaries/dtc
[2] http://www.dtcc.com/
[3] http://www.dtcc.com/about/businesses-and-subsidiaries/nscc

In reality, we learned that the main purpose of that the NSCC was to: a) lend stock to short sellers; or b) cover fails to deliver of individuals or entities who had sold stock naked {naked short selling} by failing to borrow the stock in advance and deliver it within the required time period after the sale.

To date, we have prosecuted approximately 19 cases in the litigation space and performed due diligence on approximately 50 cases. A list of all the cases that we have prosecuted is attached hereto as Exhibit "A".

Our earlier cases, were principally small-cap bulletin board companies, few of which were even making money, and all of which needed capital. We noticed a trend in these companies which consisted of the following elements: a) a convertible debenture (sometimes referred to as a PIPE transaction) whereby the investor, individuals or company were providing the funding (loan) to the small-cap company, with the funder having the option to get paid solely in the stock of the small-cap company. In funding these PIPE transactions, monies would come in typically from an offshore account into a lawyer's trust account who in turn would consummate the funding to the issuer. Many of these convertible debentures were "floorless" meaning the stock price they could convert to had no minimum price. As such, the lower the price of the stock (to pay back the loan), the more stock the funder received.

In virtually every case, once the term sheet was signed (the closing to be held typically 60 days thereafter), the stock sales volume went up significantly (later to be discovered sales by the funder), the result of which was the stock was worth materially less at closing then it was worth at the time of the execution of the term sheet.

The SEC[4] and/or FINRA[5] in the early 2000's began to issue Administrative Fines for this illegal process of (in essence) loaning an issuer its own money. The details and illegality of those cases are best set forth in the Hillary Shane case[6] and Guillaume Pollet case attached hereto as Exhibit "B".

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[4] https://www.sec.gov/

[5] https://www.finra.org/

[6] http://www.finra.org/newsroom/2005/hedge-fund-manager-hilary-shane-barred-pay-145-million-settle-nasd-sec-fraud-and

We then began to notice that there appeared to be an organized crime element to this process of making convertible debenture loans to a company (the issuer). Those transactions were labeled by the market as "death spiral financing". This was first discovered initially (in two of our floorless convertible cases, Sedona Corporation and Eagletech Communications, (both listed on Exhibit "A"). Through an enormous effort, we ultimately met with the Securities Exchange Commission and the Department of Justice (out of the Southern District of New York office) and showed them certain documents in connection with Rhino Advisors. Rhino Advisors was owned and run by two brothers (Thomas Badian and Andreas Badian). The Badian brothers did business through Ladenburg Thalmann who at the time was in part owned by Carl Icahn or his affiliated entities.

In Eagletech Communications, through a deposition with John Serubo, he admitted he was an organized crime participant and testified how they infiltrated the company Eagletech Communications.

This ultimately resulted in a civil action filed by the SEC and a criminal complaint filed by the Southern District of New York against Thomas and Andreas Badian.[7] Thomas Badian fled the country prior to them catching him and he remains a criminal in flight in Vienna, Austria, where we later deposed him in another case known as Petquarters, Inc., described in Exhibit "A". We met numerous times with the Assistant U.S. Attorneys and the SEC in connection with the DOJ prosecuting the criminal complaints. As a result, the charges against Andreas were dropped for reasons unknown to the undersigned. Ultimately, Thomas Badian remains a criminal in flight and extradition by him to the United States to my knowledge has not occurred.

Based on our work with the SEC, the U.S. Attorney's Office (and others), including reviewing documents in connection with Thomas Badian, Andreas Badian, Rhino Advisors and the records of Sedona Corporation, investigators were led to REFCO (in Chicago, Illinois). At the time, REFCO was a very large options house that was led by a gentleman named Robert Bennett. Post filing of bankruptcy, Robert Bennett was indicted and was sentenced to a 16 year prison term.

It is the belief of the undersigned that Robert Bennett/REFCO committed massive naked short selling.[8]

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[7] https://www.courtlistener.com/opinion/2117596/sec-v-badian/
[8] https://en.wikipedia.org/wiki/Naked_short_selling

REFCO consummated an initial public offering in August 11, 2005 and only a few weeks later by October, 17, 2005, it filed for bankruptcy. The U.S. Attorneys and the SEC ultimately began looking at documents in detail with REFCO which led them to two suspicious entities: a) a purported hedge fund out of New Jersey named Liberty Corner Capital Strategies, LLC, (the "Hedge Fund") and b) Bawag Bank in Vienna, Austria. Allegedly, Bawag Bank is a bank owned by labor unions and oligarches from Russia.

In doing certain due diligence on the Hedge Fund and Bawag Bank, it was apparent to the undersigned that this appeared to have a significant Russian connection. Bawag Bank admitted that it assisted Robert Bennett in covering up his losses from 2000 to 2005 by loaning him $250-$300 million each year. Moreover, the bankruptcy documents filled by REFCO revealed connections with financial companies from the Cayman Island, Colombia, Latvia, Venezuela, and numerous ties with Russian companies. This is evident as financial companies from each of the aforementioned countries (and many more countries around the world) are listed as some of REFCO's biggest creditors. See Exhibit "C". Ultimately, Robert Bennett was indicted (a copy of which is attached hereto as Exhibit "D") and plead guilty, however the undersigned is not aware what exactly happened to the Hedge Fund or Bawag Bank.

Overtime it became apparent that the prime brokers, Merrill Lynch, Credit Suisse, Deutsche Bank, Goldman Sachs, Bank of America Securities, Salomon Smith Barney, JP Morgan and other prime brokers (collectively "Prime Brokers") (those brokerage firms also clear their own trades – most of which own a piece of and/or sit on the Board of Directors of DTC) were becoming more involved in this process through their proprietary trading desks; and also going up the food chain to attack much larger companies (NASDQ, NYSE and AMEX) with this illegal practice of naked short selling and lending stock that they do not have to short sellers.

It was at this time that we discovered from Q's and K's of the Prime Brokers, two of the largest sources of income for the Prime Brokers was stock lending and proprietary trading.

The first case that this was evident in was Overstock.com against Rocker Partners and Gradient Analytics (a hedge fund and analytics firm respectively), set forth in Exhibit "A" and a

related case against Merrill Lynch and Goldman Sachs, et, al. for stock manipulation, also in Exhibit "A".

It was at this time, approximately 2003 to 2004, that the undersigned and O'Quinn believed this was a systemic problem in the market place.

Thereafter, CSJ and O'Quinn teamed up with Patrick Bryne (at Overstock.com), Mark Griffin General Counsel of Overstock.com, Jonathan Johnson then President of Overstock.com, the American Chamber of Commerce, and the National Organization of Security Administrators ("NASA") at the state level, et al, who all got together and wrote comment letters to the SEC concerning a new SEC regulation we had paid lobbyist to help get enacted (referred to as REG SHO which stands for "short" by acronym). After substantial lobbying efforts, numerous comment letters and multiple trips to the SEC, we were able to (with the help of many others) get REG SHO[9] passed and effective January, 2005. As part of REG SHO, each exchange was required to publish daily the name of the issuers whose shares were being sold but not timely delivered and the number of shares that were not delivered (which were/are defined as fails, or fails to deliver). Unfortunately, the exchanges did not publish the name or names of the entity that were perpetrating the crime. It was around this time (approximately 2004) that we added to our team which already included James Wes Christian (CV attached as Exhibit "E") five key players: a) Robert Shapiro (CV attached as Exhibit "F"); b) Robert Blakey (CV attached as Exhibit "G"); c) Mickey Rosen (CV attached as Exhibit "H"); d) Peter Chepucavage (CV attached as Exhibit "I"); and e) Alan Pollack (CV attached as Exhibit "J") (collectively the " Legal Team").

This Legal Team allowed us to: a) pursue RICO claims in state court (with Robert Blakey who wrote the Federal RICO statute and most state RICO statutes); b) have a world renowned economist (Robert Shapiro) compute damages; c) have a former senior SEC attorney help us prove REG SHO violations (Peter Chepucavage); and d) have a back office expert (Mickey Rosen) who had run the back office of several large brokerage firms.

On the first day that such information appeared in January, 2005, thousands of companies appeared on REG SHO evidencing that this was a systemic problem. Over time, the list has presently dwindled down to several hundred companies. The undersigned believes the reason the

[9] https://www.sec.gov/investor/pubs/regsho.htm

numbers of companies on the "REG SHO List" has been greatly reduced is the mismarking of trading tickets long (when in reality it is a disguised short) and other nefarious ways – too complicated to explain in this memo – regarding how they tried to circumvent REG SHO and other related laws and regulations. See Exhibit "K". This list sets out fines that prime brokers have paid just in connection with mismarking tickets, naked short selling and violating REG SHO.

Unfortunately, the above illegal practices have become customary. It is the undersigned's belief that the Prime Brokers have essentially built in the cost of paying these token fines from mismarking tickets, naked short selling and violating REG SHO while stealing billions (if not trillions) by mismarking tickets and the failing to deliver.

Thereafter, we filed numerous other cases (involving naked short selling) including the Taser Gun International case, the Petquarters, Inc. case, the Raser Technology case, the Eagletech Communications case, the Hyperdynamics case and many others. All of which are set forth in Exhibit "A". All of these cases have more sophisticated ways of hiding fails to deliver, manipulating the stock, etc., all of which is set forth in the complaints of each case filed with the court.

As a result, our Legal Team discovered a lot of illegal activities in these various cases. However, due to protective orders entered by the courts, we cannot make any such documents public.

Wall Street continues to try to find different ways to hide what they are doing. As set forth in the enclosed enforcement actions in Exhibit "K" (understanding that some of the information contained in these enforcement actions most likely came out of some of our cases) Wall Street found ways to: a) continue to mark a short sales long; b) lend stock that does not exist to generate enormous amounts of illegal lending fees; c) programming their computers to mark a short sale long; d) mark a hard to borrowed stock/easy to borrow; e) entering into fake "puts" and "calls" which were never consummated; and f) teaming up with market makers who utilize stacking, blocking and iceberging as a market maker who claims to be "bona fide" but is not to neutralize any bona fide trading that would happen with respect to a particular issuer.

Thereafter, certain individuals on our Legal Team were involved in trying to get a particular provision put in the Dodd Frank Act requiring an absolute mandatory borrower requirement on a short sale. Unfortunately, at the last minute, our proposed amendment was taken out.

Today we are prosecuting the Raser Technologies case and have two more cases that will soon be filed.

The undersigned also recently acted as a testifying expert in the Expert Report attached hereto as Exhibit "L". The facts of this case are consistent with what is going on in the market place in the U.S., Canada and United Kingdom.

This Fraud is still ongoing. We must demand transparency of these transactions.

James W. Christian

**Response to SEC Questions Regarding the List of Rules to be Reviewed Pursuant to the Regulatory Flexibility Act, File Number S7-21-16**

We recognize this SEC request for comment is for a review of Regulation NMS and its' affect on small entities under the Regulatory Flexibility Act. However, we are using this comment period as an opportunity to provide a brief overview for consideration of a more holistic review of Regulation NMS and its' effect on the U.S. equity markets.

We believe a review of Regulation NMS and the U.S. equity market structure should be undertaken and consider, at the least, all of the relevant market factors and systems discussed below:

- There are ongoing, high levels of short selling being executed across Self Regulatory Organizations ("SROs") in important U.S. publicly traded companies and exchange traded products. Short selling can be used to manipulate securities and markets, raise leverage throughout the capital markets to dangerous levels and increase the extent of activity in violation of federal securities laws (including customer protection rules). There are only two types of sales in the general securities marketplace; long (owned by the sellers) and short (not owned by the sellers). The data indicates that since the 2008 financial crisis, the second type of selling (short) has become very extensive. Regulation NMS allowed the creation of many additional trade venues, including Alternative Trading Systems ("ATSs")/dark pools that do not report short sales by security. For transparency purposes, it is important that all venues in the National Market System (SROs and other trading venues) report short sale data daily to regulators and the public, as most SROs do today. The availability of this information could help to shed light on these under-regulated, opaque trading venues that now make up a third or more of the trading in some securities.
- The industry has stated that ATSs are a tool for institutions to trade large blocks of shares discreetly and avoid predatory trading strategies designed against institutional traders. However, the data shows most ATSs have a trade size averaging between 100 and 200 shares (far less than a block trade), which brings into question the value that ATSs/dark pools add to the marketplace. If the purpose of ATSs is to hide trades from the rest of the market, not disclose legitimate bids/asks or to internalize trades for the benefit of the dark pool operators as contra parties, then the value of their very existence is debatable. In considering market structure, we do not think this was the expected outcome/goals when the SEC approved Regulation NMS.
- False locates are being provided on a large-scale for what could be unbridled illegal short selling (locates are affirmative determinations shares are available and there is an intent by the clearing firm to borrow/legitimately supply the shares to complete legal settlement of a short sale). As we have previously stated,[1] a system referred to as 'hard locates' would be the effective way to curtail this dangerous activity. The share availability data is currently distributed in the morning by firms that have shares available to loan for short sales. At the present, there are no intraday share lending controls across the markets and no central repository for availability information. All shares available to be loaned should be uploaded into one central securities lending database with the lending party identified. Throughout the trading day, the data would be updated in real-time; shares that are committed for delivery of

[1] *Response to SEC Questions Regarding the CAT File Number 4-698 071816*, dated July 18, 2016 https://www.sec.gov/comments/4-698/4698-12.pdf

short sales or otherwise should reduce the number of available securities and new availability of securities coming into the lending market should be added to the database by the lending party (a running inventory of share lending and borrowing). The database should also include internal broker-dealer inventory that is available for lending, regardless of whether the inventory is available for external or internal (designated as such) borrowing from a firm.

- All data (including FOCUS Reports, Financial Stability Oversight Council Annual Reports,[2] short sales versus reported short interest and the joint working paper between the Office of Financial Research, Federal Reserve and the SEC[3]) indicates the lending markets are not being adequately used by clearing firms to support the short selling (some appear to be profiting from not borrowing). High levels of short selling without share lending (described as naked short selling by the SEC) disrupts the natural supply/demand in the lending market that normally constrains short selling through costs to borrow and supply availability. A properly functioning lending market adds to a more true and accurate price discovery and is very important to the operations and natural functioning of the U.S. capital markets. Short sales with unlimited supplies of synthetic securities borne from sham transactions do not contribute to the underlying fundamentals of the economic system, which; a) cause inaccurate reporting to the marketplace, investors and regulators, and b) raise the probability of systemic risk from over-leveraging, which impedes assets segregated under consumer protection regulations and the fundamental underlying net capital that supports a firm's financial stability.

- Ex-cleared transactions (trades not sent to the national clearance and settlement system, including pre-netted, compressed, summarized and internalized trades) have become a detrimental loophole in the national clearance and settlement system that can affect the real net capital of a firm (causing inaccurate reporting) and/or the segregation of securities for the protection of investors. The mounting number and value of ex-cleared trades could produce systemic risk for the settlement system, which is advertised to be the central counterparty to transactional activity in the U.S. securities markets. When Regulation NMS was adopted, the SEC and market observers did not recognize ex-clearing as a significant loophole. In the original crafting of Regulation SHO (implemented in 2005), the industry told the SEC that ex-cleared trades were "rare".[4] The SEC determined that NSCC data would be an accurate measurement of fails in the clearance and settlement system that would red flag the SEC of abusive/illegal short selling behavior and therefore ex-clearing was excluded from Regulation SHO. This NSCC/CNS ex-clearing trade reporting loophole/problem appears to have developed significantly after the implementations of Regulation SHO and Rule 204-T (a

[2] For example, see Financial Stability Oversight Council 2014 Annual Report and Annual Report Data http://www.treasury.gov/initiatives/fsoc/studies-reports/Pages/2014-Annual-Report.aspx

[3] Office of Financial Research joint working paper with the Federal Reserve Board of Governors, Federal Reserve Bank of New York and the SEC titled *A Pilot Survey of Agent Securities Lending Activity,* August 2016 https://www.sec.gov/dera/staff-papers/white-papers/Porter_PilotSurveyAgentSecuritiesLendingActivity.pdf

[4] The SEC stated it would revisit its ex-clearing decision if ex-clearing was found not to be rare; it no longer appears to be rare and this loophole should be closed. Division of Market Regulation: Responses to Frequently Asked Questions Concerning Regulation SHO, Question 5.3: Does the close-out requirement apply to delivery failures that do not occur at a registered clearing agency? Answer: We interpret the close-out requirement to apply only to fail to deliver positions at a registered clearing agency. Our interpretation is based on our understanding that transactions conducted outside the Continuous Net Settlement System ("CNS") operated by the National Securities Clearing Corporation ("NSCC") are *rare*. If this historical pattern changes and a significant level of fails are not included in CNS, we will reconsider this position. http://www.sec.gov/divisions/marketreg/mrfaqregsho1204.htm

NSCC fails closeout rule, October 2008). Clearing outside of the national clearance and settlement system increased further with the growth of high frequency trading/trade compression/internalization, unscrupulous market access provided by some clearing firms and multiple non-exchange trading venues. The ex-clearing loophole and the true extent of delivery failures (which become undisclosed liabilities and operational risks) are flaws within the clearance and settlement system that ultimately could create substantial systemic risk throughout the financial system, threatening the actual day-to-day function of the U.S. markets themselves.

- Whether intentional or not, the outcome of the high levels of trade volume appears to be large-scale washing/matching of trades in some important U.S. securities (resulting in little change in actual beneficial ownership of shares). Washed/matched trading produces an illusion of high intensity demand in the marketplace that does not actually exist. When three of every four shares are sold short (as is the case for some securities), logical math suggests short sellers are trading with other short sellers. In other words, they are buying and selling shares that neither party owns (i.e. thin air). For example, the SPDR S&P Retail ETF (Symbol: XRT) has been sold short for the last 5 years at an average of 69% of the trade volume on reporting markets, while institutional owners alone have continued to report multiple ownership claims of shares issued by the XRT. This volume of short sales cannot be covered with a matching long sale, so it appears that excessive short selling is being 'covered' by round-trip type trading of additional short selling, which again adds the illusion of real activity between buyers and sellers that may not exist.
- When the SEC approved Regulation NMS, it surmised the rules would likely cause increased computerized trading. This result occurred and caused additional abusive pre-market trading that was not anticipated during the crafting of the regulation. The data shows there is a distortion from an unprecedented level of orders placed and cancelled (billions of dollars worth per day for some important securities) that clearly impact price discovery and the appearance of actual interest in the pre-execution market. When this level of orders and cancels are used as a trading strategy (known as layering/spoofing type trading activity), it causes the dissemination of false information into the marketplace and creates a false sense of supply and demand for securities, which is manipulative and damaging to investors and the capital markets.
- Sponsored market access has allowed some market participants that are not market makers to avoid actual market maker registration and circumvent securities regulations. There is no benefit to the public interest to have non-market making firms concealed behind a sponsored access agreement. It is just the opposite; it is against the public interest and regulatory efficiency. Some of the problematic sponsored access activity has been coming from offshore jurisdictions where manipulative trading has been executed through U.S. clearing firms. Some of these offshore participants using sponsored access through U.S. clearing firms have flooded the markets with illegal orders, at times overwhelming other market participants'

trading activity.[5] These types of manipulative acts could seriously undermine the integrity of the U.S capital markets. Sponsored access appears to be a cyber threat loophole that would be easy to close for the protection of the U.S. financial system. If the practice is not eliminated entirely, which it should be, at the least clearing firms supplying such access should be closely monitored with heightened scrutiny and oversight responsibilities.

The U.S. markets have changed considerably since the implementation of Regulation NMS in 2005. The reality of the current marketplace is that real demand has been falling, short selling has skyrocketed, shares borrowed have been decreasing, internalization (shares executed not through the marketplace, but within the clearing firms) appears to have increased significantly and NSCC fails are no longer a relevant metric in the trading of U.S. securities, i.e. the data suggests a lack of real settlement has become the unintended outcome of current regulation along with distorted prices and appearances of demand. We believe a comprehensive, holistic review of Regulation NMS and the current U.S. market structure should include at least the important market mechanisms, strategies and resulting effects discussed above.

[5] *FINRA Charges Wedbush Securities for Systemic Market Access Violations, Anti-Money Laundering and Supervisory Deficiencies*, August 18, 2014 http://www.finra.org/newsroom/newsreleases/2014/p578458
In FINRA's August 2014 press release announcing its action against Wedbush, FINRA stated: "The complaint alleges that from **January 2008 through August 2013**, Wedbush failed to dedicate sufficient resources to ensure appropriate risk management controls and supervisory systems and procedures. This enabled its market access customers to ***flood U.S. exchanges with thousands of potentially manipulative wash trades and other potentially manipulative trades, including manipulative layering and spoofing***."
See also SEC Administrative Proceeding No. 3-15913 *In the Matter of Wedbush Securities, Jeffrey Bell and Christina Fillhart*, June 6, 2014 http://www.sec.gov/litigation/admin/2014/34-72340.pdf