

## **StockGate: Is The Naked Short Sales Bubble Now Big Enough To Threaten Wall Street?**

October 27, 2005 (FinancialWire) According to Financial Times, the \$10.590,379,000 “securities sold, not yet purchased” line item in the Refco (NYSE: RFX) bankruptcy balance sheet is not only naked short selling, it is under intense investigation by authorities. The article is at <http://www.efinancialnews.com/index.cfm?page=home&pdigest=18500000000074245&uid=5405-7710-922621-810209>

FT says that the firm’s IPO underwriters Goldman Sachs (NYSE: GS) and Credit Suisse First Boston (NYSE: CSR) both have investigators looking into the illegal but allegedly widely practiced manipulative practice among essentially unregulated hedge funds and other financial institutions that now appears to be a naked short sales bubble that could imperil the U.S. and worldwide financial markets. Overstock.com (NASDAQ: OSTK), for example, is suing one of the biggest, Rocker Partners, for conspiracy.

Overstock’s CEO Patrick Byrne appeared late yesterday on News Corp.’s (NYSE: NWS) Fox with Neil Cavuto to state that there are at least twelve Refco’s “buried in the system,” and Cavuto said some say it could be as many as 60 institutions ready to implode. He said a “systemic” problem could cost the Depository Trust and Clearing Corp. as much as \$100 billion to clean up.

The video for this is at [http://www.vmsdigital.com/MyFiles\\_Detail.aspx?mediaId=86578&onum=CDD7589F-A1E6-4B07-B635-4731FE7B438A](http://www.vmsdigital.com/MyFiles_Detail.aspx?mediaId=86578&onum=CDD7589F-A1E6-4B07-B635-4731FE7B438A)

Investment guru Jim Rogers, who co-founded the Quantum Fund with international financier George Soros, is also suing. His suit is against Refco, which has threatened to give his funds a black eye. He says Refco deceitfully moved assets around, and he wants \$362 million back.

The line item was so unbelievably monumental that two of the major critics of naked short selling, Dave Patch, of InvestigatetheSEC.com, and Bob O’Brien, director of the National Coalition Against Naked Short Short Selling, were reluctant to positively identify the \$10.5 billion as Refco’s naked short position. The Financial Times says investigators are not so reticent, and “have been unable to find which shares, if any, were involved.”

It said Goldman declined to comment.

The document is at <http://bankrupt.com/refco.txt>

Critics have said that if you lift the covers off similar financial institutions and hedge funds, and even many of Wall Street’s top investment banks and brokerages, the \$10 billion exposure at Refco could be multiplied 100 times over, and may inhabit every nook and cranny on the Street. Few companies initiate buy-ins, and such exposure is just

bounced around, or “borrowed” from a DTCC. that may also be at significant risk should it be forced to call in its “loans.” The DTCC has also said that there are \$6 billion in “fails to deliver” every single trading day. That could add up to some \$1.5 trillion every year, not counting attrition from late deliveries.

Already the SEC and the U.S. attorney is probing a \$1.4 billion hedge fund, Alexandra Investment Management LLC, and it is not yet known what that investigation will uncover. The fund has revealed that regulators are investigating “numerous participants” in PIPEs, an acronym for private investments in public equities. Often such investigations end, however, with only a knuckle knock, with no restitution to shareholders of targeted small public companies.

The U.S. Securities and Exchange Commission is under heavy scrutiny as well over Refco since many claim it is just the tip of the iceberg in the illegal naked short selling scandal known as StockGate. Some 89% of those voting in The Investrend Poll at <http://www.investrendinformation.com> say the SEC should be “hugely” blamed for the Refco implosion.

Said the New York Post:

“It is believed the monies at the heart of the Refco scandal are in fact unsettled funds related to the illegal naked short selling, and many have theorized that there may be untold billions of dollars in other financial institutions and hedge funds in the same leaking lifeboat.”

The Post said no new laws are needed. Enforcement is needed.

When SEC Commissioner Annette Nazareth, the former head of SEC market regulation, was asked about the SEC’s lax attitude towards the Refco’s and its peers, she told the New York Times (NYSE: NT) that it was much ado about nothing, and that the uproar was only from people who “want their stock to go up.”

One can only theorize that it is this attitude that has resulted in the complete collapse of public confidence in the enforcement division of the SEC, as was the collapse of public confidence in FEMA. In his Fox appearance, Byrne said he does not expect the SEC to be able to clean up this situation, and hinted that it will require either judicial or Congressional intervention.

Gadfly David Patch’s CNBC interview questioning the SEC’s involvement is at <http://www.vmsdigital.com/MyFiles.aspx?Onum=8FD88353-D1CF-49AB-96FB-F5B3D748534D>

His site, <http://www.investigatethesec.com>, has long held that the SEC has scrambled to protect illegal manipulators for fear that the lawbreaking had gone on so long and that it is so huge that it threatens the nation’s financial underpinnings. On CNBC, Patch again asked why the SEC can sit by and watch scores of companies listed on the Regulation SHO threshold list for almost a year, signifying that they are in continuous default of

settlements required by the law.

He also asked why the SEC would try to “grandfather” the millions of settlement failures that preceded Regulation SHO, which went into effect in January. The “grandfathering” still hasn’t been court-tested as to whether it may be a kind of “pardon” that only a President may issue.

The SEC and the Depository Trust and Clearing Corp. continue to stonewall any attempt to require transparency in the marketplace as to the extent of fails to deliver, which some see as just a euphemism for “counterfeit shares.”

This scandal comes hard on the heels of allegations of misdeeds by Gradient Analytics and employees of TheStreet.com (NASDAQ: TSCM), in conspiracy with David Rocker and Rocker Partners in manipulating the stock of Overstock.com (NASDAQ: OSTK) and others comes another explosive case, this time against Refco Inc. (NYSE: RFX), one of the primary alleged miscreants in destroying Sedona Corp. (OTCBB: SDNA), once a Nasdaq-listed company.

Not since the Enron and Worldcom scandals has the financial markets been under such growing suspicion, except this time the cancer is not just in a treatable part of the body. This time it has spread through the lymph nodes and appears to be present in every vital organ as scores of companies seem permanently entrenched in the threshold lists maintained by Nasdaq and the NYSE, signifying over three-quarters of a year of the existence of counterfeit shares and unsettled trades.

Overstock CEO Patrick Byrnes, for instance, has released transcripts of discussions between himself and Morgan Stanley (NYSE: MWD) over shares that he could not get delivery on, and says his father has still not gotten delivery on 200,000 shares that he bought.

Byrne said that he believes between 5 million and 20 million counterfeit shares are currently in the marketplace, presumably on the major exchanges alone.

He has also added libel to the list of legal charges against Rocker and Gradient and others.

Former Refco CEO Phillip Bennett has been arrested on charges of deliberately misleading shareholders when they purchased shares in the company’s recent public offering. He had been placed on leave by his company as it launched an investigation into \$430 million the company said was owed by an entity he controlled in a transaction that was hidden from the public.

The company had already lost \$1.65 billion in market value, leaving investors in the public offering extremely angry.

Also fired was Santo Maggio, president of Refco Securities, whom the company said was believed to have known about Bennett’s activities.

According to the New York Post, Maggio was already “in the middle of an SEC probe that would have probably gotten him suspended one year from his supervisory duties” related to Refco’s relationship with Rhino Advisors, a hedge fund that illegally shorted the stock of Sedona Corp.

The new case winds its way right back to the growing StockGate scandal as the Post quotes a “source familiar with the investigation” that the receivables in the latest probe “probably came from short sale positions made from a shuttered hedge fund.”

The levees protecting the underworld of naked short selling, despite efforts of many regulators to try to prop up a system on weakened stilts appear to be crumbling, forecasting a potential Wall Street disaster that would not be unlike what happened in New Orleans and in other low-lying real estate.

An undermining of confidence in the “independence” of subscription-based institutional research, in the financial media that could even involve General Electric’s (NYSE: GE) CNBC and of course, the undeniable clout of already besieged hedge funds and the “King of Shorts,” David Rocker, whose targets are said to include Martha Stewart Living Omnimedia (NYSE: MSO), would be disastrous in the event of any one of them, but altogether, it could result in a total collapse as investors look for safer investment and savings venues than “crooked” markets.

In a commentary, Motley Fool said any “mirth” regarding “sith lords” and other irrelevant allegations are “obscuring a case with fairly broad implications for security analysis, First Amendment rights, and the credibility of our public markets.”

It said that in an affidavit recently acquired by The Motley Fool, and also apparently acquired by DealFlow and others, Demetrios Anifantis, who identifies himself as a former employee of the research firm Gradient Analytics, alleges that the company conspired with David Rocker of the hedge fund Rocker Partners to publish damaging information "for the purpose of negatively influencing the price of Overstock shares so that Rocker could profit from its existing or intended short positions in Overstock shares.

“Two additional sworn statements in our possession, ostensibly by former Gradient employees Robert Ballash and Daryl Smith, also allege that Gradient provided biased research on behalf of its clients. Both Anifantis and Ballash additionally accuse Gradient of running a hedge fund advisory called Pinnacle Investment Advisors, contrary to the company's public statements at that time.”

Motley Fool notes “the most detailed and apparently most damaging affidavit, if it is true, was delivered by Anifantis. He worked as a customer service representative for Gradient from November 2003 until November 2004. New York Post reported that he was fired from the research firm for forwarding his employer's client list to his personal email.

“According to his statement, Anifantis recalled being on phone discussions, during which "David Rocker, Marc Cohodes, or other representatives of a hedge fund called Rocker Partners, LP, requested that the special report contain more negative information, or that

the report emphasize a specific negative fact and that the report downplay any positive facts.

“Anifantis also states that customers like Rocker would ask that Gradient not disseminate a negative report ‘to the public for a specific period of time, so the customer could get their own position in the stock before the public got the information.’ This conspiracy went beyond just Vickrey and Rocker, according to Anifantis, who also says that it “appeared” to him that Herb Greenberg, who then wrote for TheStreet.com, joined in coordinating the attacks on Overstock.

“At first glance, the affidavits raise troubling questions about the nature of ‘independent research.’ If the three former employees of Gradient are telling the truth, the alleged conspiracy between the research firm and Rocker Partners would represent an egregious example of market manipulation, which most likely would have seriously harmed individual investors, as well as Overstock itself.”

The Fool points out that “the veracity of these individuals has not been established, and Rocker Partners and Gradient vigorously deny the charges.

“As New York Post has reported, at least two of the affiants may have credibility issues or reasons to hold grudges against Gradient. If this case makes it to trial, Anifantis, Ballash, and Smith will have to testify in court and withstand cross-examination by top defense attorneys. It will be interesting to see whether their charges are supported by documentary evidence, such as emails, revised reports, notes of phone calls, and the like. Within the affidavits are charges that would prove quite persuasive if supported with concrete documents.

“For example, in support of the charge that Rocker had considerable input on the creation of reports, Anifantis's affidavit refers to an “exhibit 5” (which we did not receive) allegedly containing revised reports on Overstock with Rocker's revisions in brackets.

“Ultimately, we believe that these affidavits raise important questions for investors about the integrity of our financial system. Unlike a lot of the silliness in the media relating to Overstock, this complaint is not frivolous on its face, and although Overstock will need to prove its allegations, the case must be taken seriously. The question to us is why the atmosphere around this lawsuit has, from the beginning, been comical. If the behavior set forth in these allegations is true, then the implications of the ease at which the financial professionals can manipulate the public markets are stark.”

Overstock has been on the Regulation SHO list, the government’s official list of illegal fails to deliver, for “only” 114 days, far less than 32 other companies. Martha Stewart Living Omnimedia (NYSE: MSO) and Krispy Kreme Doughnuts (NYSE: KKD), among others, have been on the list for 186 days. Legally, trades are supposed to settle within a few days time.

The affidavits, from former employees of Gradient, according to DealFlow state that the research firm provided “hatchet jobs” on companies chosen by clients “coordinated to

deliver maximum trading benefits to them.” The affidavits state that reporters for TheStreet.com “leaked” Gradient’s negative reports to the market ahead of their release. It notes that Rocker Partners is the largest shareholder in TheStreet.com and that Rocker is a contributing columnist. The affiants also say that former TheStreet.com columnist Herb Greenberg had an office at Gradient where he ghost-wrote research reports for Gradient clients such as Rocker.

The former employees, one of whom had been fired after raising questions about Gradient’s practices, said the firm stated its team of 18 to 20 analysts were comprised of CPAs and CFAs when none of them had advanced credentials, and were instead recent college graduates with business-related degrees.

They also note that the research firm’s executives, Donn Vickery and James Carr Bettis, also managed hedge funds and a mutual fund that traded in the securities of companies covered by the research side.

If so, this, among the other allegations, is a violation of the “Standards For Independent Research Providers” at <http://www.firstresearchconsortium.com>.

Gradient is a member of InvestorSide, which has provided it and other member research providers with a seal that “certifies” its research is “free of investment banking conflicts.” It is not clear if running a hedgefund would violate that certification, and no one was available at InvestorSide over the weekend to comment on whether charges such as have been leveled at Gradient would disqualify such a research provider from its membership.

Former employee Demetrios Anifantis, in a sworn statement, said that Gradient would regularly generate “custom reports” for clients, after receiving specific instructions from the clients on whether it should be a “negative” or “positive” report.

Many of the reports were redistributed to PIPES traders and hedge funds by Sagient Research, which distributes the Placement Tracker database of PIPES transactions. Sagient reportedly said it has not distributed Gradient reports since August, 2004. Release dates on the reports were said to have been often delayed for three to five days while Rocker and other Gradient partners secured short positions. These allegations were contained in several affidavits.

The affidavits said that an associate editor working with Greenberg, now at Marketwatch.com, Brian Harris, worked for Gradient to draft research, and had an office in a Gradient office in Seattle. It was noted that TheStreet.com removed Harris’ name as an associate editor shortly after Overstock’s lawsuit was filed.

The affidavits contain numerous other explosive allegations.

In other naked short selling developments, the Depository Trust and Clearing Corp., reportedly itself under NASD scrutiny for its controversial stock lending program that

some, including an 11 state state North American Securities Administrators Association task force headed by Connecticut's chief securities officer, and former NASAA president, apparently believe facilitates the illegal naked shorting industry, has been very secretive about the status of shares for individual companies, stonewalling even companies' efforts to determine their true ownerships and short positions.

Brokerage and clearing firms are apparently under intense NASD pressure to settle failed short trades in Regulation SHO threshold securities or have their clearance firms do it for them at possible substantive losses.

The NASD is in turn acting under political and regulatory pressure from the 11-state task force.

Lambiase had publicly asked the SEC to "fix" the DTCC "problem" as it was considering the adoption of Regulation SHO last year, but taking a page from numerous U.S. Senators, he and other state regulators have grown tired of waiting for Regulation SHO to do more than simply shine a magnification light on the massive fails-to-deliver problem.

DealFlow said NASD officials are concerned that stock loan programs are being used to settle failed short trades in Reg SHO threshold stocks, which must be closed out voluntarily or through forced buy-ins within 13 days. "The regulators are concerned that the stock loan are being used instead of market purchases to provide the shares needed for settlement, creating new transactions that will ultimately fail to settle as well."

The state regulators, DealFlow said, have been "highly critical of the SEC's decision to 'grandfather' settlement failures resulting from naked short sales up to levels that trigger threshold status under Reg SHO."

NAASA was particularly concerned about Regulation SHO, because it excluded the small cap market from any meaningful regulation. "NASAA said the proposal included replacing the so-called 'tick test' with a rule that would provide a uniform price test using the "consolidated best bid" as the reference point for permissible short sales. This, however, would not address problems relating to the naked short selling of smaller, less liquid securities, because, NASAA argued, the requirement of the consolidated best bids meant it could not be applied to securities that were not subject to real-time consolidated quotes. That included Nasdaq Small Cap, OTCBB, and Pink Sheet securities.

NASAA also questioned the wisdom of grandfathering settlement failures under the threshold level, asking why the SEC was willing to permit significant settlement failures at all."

"While there are instances when settlement may be legitimately delayed, existing regulations provide for extensions for settlement. If the Commission continues to allow settlement failures, it may well facilitate the harm that the proposal is designed to remedy," Lambiase warned the SEC.

According to DealFlow, Lambiase urged the SEC to reconsider its stance regarding the role of the stock borrow program operated by the Depository Trust Corp. (DTC).

NASAA wrote that as a threshold matter, NASAA believes that the Commission should explicitly prohibit the DTC from lending more shares of a security than it actually holds. The utility of the overall proposed rule would be severely impaired unless the Commission undertakes to implement such a prohibition."

Brent Baker, an attorney with Woodbury Kesler in Salt Lake City and counsel to naked shorting target and eight-month old threshold list company Overstock.com, previously spent 14 years at the SEC, including time in the Division of Enforcement, was quoted as saying he believes that the SEC tried, with Regulation SHO, to put "their finger in the dike" but failed.

"Three or four years ago naked short selling was being perpetrated by promoters in the micro cap world," he says. "they would publish 'exposes' on the Internet... and they would bring pressure on these little companies."

"However, short selling has changed," noted DealFlow. He believes the SEC does not realize that abusive short selling practices have been adopted by others and are now built into business models of large, mainstream hedge funds.

Meanwhile, the NY Post has reported that traders in Nasdaq stocks are racing to beat a rumored regulatory deadline to close out their positions or take huge losses as clearing firms do it for them.

"Naked short sales are trades executed without borrowing stock beforehand. Naked short sellers can overwhelm an orderly trading market, since unlike traditional short sellers, there is technically no limit to how much stock can be sold short illegally, noted the Post.

The Post also reported recently that the NASD and numerous state securities regulators, led by Ralph Lambiase of Connecticut's Division of Securities and Business Investments, have vowed to increase scrutiny of naked short sales.

"A buy-in is the worst possible development for a short-seller, since he has to accept any price given," it stated.

It seems that everytime the DTCC, which is also the target of numerous lawsuits brought by failed companies and a scorching expose in Investment Dealers Digest, gets under pressure, it begins striking out blindly in all directions. FinancialWire can often determine when the heat has been turned up because it is among the media, also thought to have included Dateline NBC, that begins to receive threats from the organization.

In February, the DTCC interfered with FinancialWire's distribution to Investors Business Daily, and in the past week it sought once more to interfere with another distribution, saying that FinancialWire receives monies for its editorial coverage of the naked short selling issue.

Marshal Shichtman, Esq., attorney for FinancialWire, has been in touch with Proskauer Rose, the outside counsel for the DTCC, warning it of slander, tortuous interference with FinancialWire's business and because the DTCC is owned by two SROs, the NASD and



the NYSE, of First Amendment violations.

Shichtman will be similarly warning the SROs and the directors of the DTCC of what he terms their risks associated with the ruthless, reckless and irresponsible actions of their clearance entity.

In a letter to constituent investor advocate Dave Patch, whose persistence in criticizing Federal regulators over the past several years for shareholder losses at the hands of illegal manipulators was at times a lone quest, often covered only by FinancialWire, Connecticut Division of Securities Director Ralph A. Lambiase, the immediate past president of the North American Securities Administrators Association outlined for the first time the efforts a “working group” of state regulators have been undertaking to assail abusive market practices that Lambiase said has been directly responsible for “an unmistakable loss of investor confidence by the arguably millions of investors who have lost their monies.”

It was an unusual move by Lambiase to outline the states’ enforcement plans in a letter to Patch, who has been vilified and scorned by many top regulators and institutions for his efforts, which includes the maintenance of a website, <http://www.investigatethesec.com> .

Lambiase said that his efforts, and efforts of others, such as Tanya Solov, Director of the Illinois Securities Department, Tanya Durkee, Deputy Commissioner, Vermont Department of Securities, and Rex A. Staples, General Counsel for NASAA, was stimulated by Patch, and an ever-growing group of concerned citizens who have “continued to champion the issue of reform in the naked short selling area for so long,” and added that it has been those grassroots efforts that constitute the “primary reason we are beginning to see reform of any sort.” Lambiase was clear in stating that it is “your determination and persistence in seeing that this wrong is righted is in part responsible for my interest, as well as that of other state regulators.”

Lambiase, whose initial letter to the U.S. Securities and Exchange Commission stated that the SEC needs to look at the role of the Depository Trust and Clearing Corp. in allowing these abuse practices to continue, said that it seems “clear that had the SRO’s and the SEC exercised greater diligence in enforcing pre-existing rules, Reg SHO would likely have been unnecessary.”

He said his working group has begun meeting with SRO’s and issuers alike, and that it will “continue to exert substantial effort to remedy the remaining abusive practices in naked short selling until we are confident at the state level that the companies in our communities and citizens that invest in them will no longer be the possible targets of abusive naked short sellers.”

It had been previously rumored that the reason the NASD has been issuing subpoenas to a dozen or more brokerages over their “fails to deliver” and their failures to enforce buy-ins is due to those regulating at the Federal level not wanting to be trumped again by a state investigation such as occurred in several Spitzer reform efforts.

Lambiase so far appears to be taking the posture that the state group is ready to step in if the Federal regulators do not, thus “inspiring” the current efforts rumored to be occurring at the Federal level.

To make the point, he told Patch in the letter obtained by FinancialWire that “there remains a substantial distance between REG SHO and the ultimate goal of including substantive protections for small business issuers.”

It is these small businesses in our communities, Lambiase pointed out, “who take entrepreneurial risks to grow their companies through listings on the OTCBB and Pink Sheets. These small businesses not only provide employment for the residents of their communities, but also offer the general public the opportunity to invest in local businesses with promising products or services.

“While it may be true that a number of small companies lack the financial depth to succeed, they are nonetheless entitled to succeed or fail by their own honest business decisions and not as a result of the corrupt acts of abusive short sellers.

In what some believe is another swipe at the secretive DTCC, he said that “without transparency, we cannot, as yet, precisely identify each small business that failed as a direct result of abusive naked short selling nor quantify the exact number of jobs lost to our local economies when these companies are forced to close their doors.”

In what is an unmistakable prod to the SEC, Lambiase said that institution is “moving slowly forward as Reg SHO in its current state is studied and debated seemingly ad infinitum. While slight modifications to the existing Rule may result from such an approach, a far more threatening pattern of abuse is certain to continue unless wholesale reforms are made to remedy the concerns of the small business community.”

He said that even Congress, whose members have also called the SEC on the carpet for the slow progress associated with Reg SHO may in fact be missing the point that “abusive short selling poses a direct threat to the economic well being of small business and the entire community.”

The 11-state task force reportedly was in serious strategy sessions a few weeks ago.

New York Post quoted one regulator as saying there is “an epidemic” of naked shorting. Regulation SHO has made that evident for the world to see. Numerous U.S. Senators have called the Regulation fully ineffective, and have repeatedly called upon the SEC Commissioners to get the practice under control.

The Post said that an SEC official confirmed to it “that no complaints have been brought in the nine months since Regulation SHO went into effect.”

It quoted one state securities regulator, Bill Reilly of Florida, as saying he expects the increased effort will result in more voluntary compliance from dealers, as well as enforcement activity.

That may or may not resolve the DTCC “problem.” Recently a stock transfer agent, Transfer Online Inc., had asked then-SEC Chair William Donaldson to put a stop to the control the Depository Trust & Clearing Corp. and Automatic Data Processing (NYSE: ADP) are fast gaining over the transfer business, and to demand DTCC transparency.

Excerpts from the letter, posted at

<http://www.faulkingtruth.com/Articles/LettersToEditor/1012.html> , states: “Over the years as the amount of shares held at DTC has increased it has become more and more difficult to determine who owns the shares, who is trading them and if the trading is proper. This trend, and the resulting problems I will detail below, continues to increase because a minority of the total number of shareholders are reflected on the books and records of the corporation, most activity takes place behind the wall of ownership that is designated as Cede & Co. and neither the company nor the transfer agent has any access to the underlying information.

“Furthermore, DTC recently managed to put through a rule change (Release No. 34-50758A; File No.S7-24-04) that prohibits a transfer agent from representing any company who seeks to withdraw from the DTC system. This change effectively leaves companies with no voice or choice in the management of their stock and their ability to have any transparency as to what is actually taking place in the market in regard to their stock.

“I receive calls from companies seeking information as they watch millions of shares trade in a single day, who watch their share price decrease in value and who have no access to information regarding who is behind the trading of these shares, or if in fact the trades are at all legitimate. As the system now operates, most companies have a large percentage of shares on their books registered to Cede & Co.

“Given the importance of shareholder voting and communication one would assume that the same requirements placed on transfer agents as to accuracy and reporting would be placed on ADP and Cede & Co. as they usually hold or service the majority of the shares owned in any given company.

“I have found; however, that when presented with the tabulation reports from ADP the share totals they report sometimes exceed the total number of shares outstanding for the company. Let me restate this because it is a very important part of my concern about a system that is more and more headed in the direction of increased control by DTC. The shares presented by ADP, that are the shares voted by the brokers on behalf of the shareholders for whom they hold accounts, EXCEED when added to the shareholders of record the total number of shares outstanding.

“Where are these extra shares coming from? Why are there no controls on the number of shares held in the nominee name Cede & Co. vs. the ownership on the books and records of the brokers and why is the company not privy to any information unless it pays whatever fees it is told it must pay by the organizations that control the data?

“In fact, as the system is evolving, DTC is de facto becoming the largest transfer agent in

the industry even though it is an organization formed by and working for the interests of the brokerage community. If, ultimately, the S.E.C. is in place to protect investors then this issue can not be ignored because in the end when the market is completely under the control of the brokers and the organizations that represent them then the market can neither be transparent nor fair.”

The DTCC actions in the StockGate mire are the most serious, if not notorious since the agent of two SROs, New York Stock Exchange and NASD is also peopled by some 21 directors whose companies, such as Merrill Lynch & Co. (NYSE: MER), State Street Corporation (NYSE: STT) and Goldman Sachs (NYSE: GS), are unlikely to support the DTCC in its media censorship.

DTCC board members include Michael C. Bodson, Managing Director, Morgan Stanley (NYSE: MWD); Gary Bullock, Global Head of Logistics, Infrastructure, UBS Investment Bank (NYSE: UBS); Stephen P. Casper, Managing Director and Chief Operating Officer, Fischer Francis Trees & Watts, Inc.; Jill M. Considine, Chairman, President & Chief Executive Officer, The Depository Trust & Clearing Corporation (DTCC);

Also, Paul F. Costello, President, Business Services Group, Wachovia Securities (NYSE: WB); John W. Cummings, Senior Vice President & Head of Global Technology & Services, Merrill Lynch & Co. (NYSE: MER); Donald F. Donahue, Chief Operating Officer, The Depository Trust & Clearing Corporation (DTCC); Norman Eaker, General Partner, Edward Jones; George Hrabovsky, President, Alliance Global Investors Service; Catherine R. Kinney, President and Co-Chief Operating Officer, New York Stock Exchange; Thomas J. McCrossan, Executive Vice President, State Street Corporation (NYSE: STT); Bradley Abelow, Managing Director, Goldman Sachs (NYSE: GS); Jonathan E. Beyman, Chief Information Officer, Lehman Brothers (NYSE: LEH); and Frank J. Bisignano, Chief Administrative Officer and Senior Executive Vice President, Citigroup / Solomon Smith Barney's Corporate Investment Bank (NYSE: C), Eileen K. Murray, Managing Director, Credit Suisse First Boston (NYSE: CSR); James P. Palermo, Vice Chairman, Mellon Financial Corporation (NYSE: MEL); Thomas J. Perna, Senior Executive Vice President, Financial Companies Services Sector of The Bank of New York (NYSE: BNY); Ronald Purpora, Chief Executive Officer, Garban LLC; Douglas Shulman, President, Regulatory Services and Operations, NASD; and Thompson M. Swayne, Executive Vice President, JPMorgan Chase (NYSE: JPM).

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