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U.S. Chamber of Commerce Joins Anti-Nakeds Campaign

By **Christopher Faille, Senior Financial Correspondent**

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WASHINGTON (HedgeWorld.com)—It may prove a milestone in the ongoing combat over naked short selling that the senior vice president of the U.S. Chamber of Commerce, David Chavern, has written the chairmen of two Congressional committees asking that they hold hearings on naked short sales.

The struggle over what legislation or regulations apply to and limit the practice of selling stock short without first borrowing the pertinent securities has gotten bitter and personal in recent months [Previous HedgeWorld Story](#). The Chamber of Commerce has been largely silent on the issue until this year. By contrast, the Chamber wasn't at all silent on the issue of federal regulation of mutual fund governance. It was the plaintiff in a successful lawsuit to derail one such regulatory effort [Previous HedgeWorld Story](#).

Last week's letter on naked shorts, dated Feb. 16, was addressed to Sen. Christopher Dodd (D-Conn.), who chairs the Senate Banking Committee, and Rep. Barney Frank (D-Mass.), who chairs the House Financial Services Committee.

In the letter, Mr. Chavern told Messrs. Dodd and Frank that the issue of manipulative and fraudulent short selling "is an important issue that is not sufficiently understood or appreciated by the general public," and one that has an especially harmful effect upon new and growing companies.

Mr. Chavern made the point, too, that legitimate short selling plays an important role in the markets and that whatever solutions might be devised for the naked shorting problem "should be carefully crafted to ensure they do not discourage legitimate short selling or other legitimate practices that add liquidity to our capital markets and enable market participants to manage risk."

In an interview Wednesday [Feb. 21], Mr. Chavern expanded a bit on the one-page letter. He said "it's probably been within the last year" that the Chamber became interested in the question of naked short sales. He indicated he didn't see it as a macroeconomic problem, but as important enough in its microeconomic effects nonetheless.

"One could say that it is a big problem for only a small number of companies, but it really *is* a big problem for that small number," which tend to be small to mid-sized and growing concerns, he said.

In January, the Chamber submitted a comment to the Securities and Exchange Commission on the issue, saying that Regulation SHO needs reform because "serious settlement failures persist and some companies remain on the Threshold List for too long with an extremely limited capacity to redress this situation."

Regulation SHO, in effect since 2004, created a closeout requirement for certain securities that had been subjected to an unusual number of failures to deliver, known as "threshold securities." In its comment, the Chamber said that, though inadequate, this was a well-intentioned attempt to address the failure to deliver problem. It supported two loophole-closing reforms already on the table: the elimination of the "grandfather" provision, and tightening of the market-maker exemptions. It also proposed two other reforms: daily publication of the aggregate volume of fails in each security included on the threshold list, and the disclosure of the short positions of institutional investors.

Manuel Asensio, once a prominent and successful short seller himself, said in an email exchange Wednesday that short

sales are already heavily regulated, and he believes further regulation is misguided.

Mr. Chavern said the Chamber held "internal roundtable discussions" among parties with many different interests in the question, in determining what position to take. Its comment to the SEC said much the same. These roundtables have included "representatives from broker-dealers, companies, industry associations, exchanges, economists, securities lawyers, and former SEC staff," he said.

Mr. Asensio observed that short sellers themselves aren't on that list.

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