Title: Fail to deliver? More like fail to report. Ex-clearing needs to be talked about more.
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Without shares failing to deliver at the NSCC, it appears that regulators cannot find fraud in the market. Counterfeiters of securities can bypass the NSCC system and carry out their operation by failing to deliver shares outside the NSCC system, commonly referred to as ex- clearing (an agreement between market participants to clear trades with each other rather than at the NSCC). The SEC does not regulate fails to deliver outside of the NSCC system.
Pg17: https://www.sec.gov/comments/s7-08-09/s70809-407a.pdf

Dark pools, ex-clearing, round trip, & xrt:

https://www.sec.gov/comments/s7-21-16/s72116-6.pdf
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.

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.