Thank you for addressing issues related to short-selling. There seem to be two thrusts to your initiatives: disclosure and additional rule-making.

Disclosure is always a good thing. However, collecting and providing short sale information to market participants does require additional time, money, and bandwidth. These all add to the frictional costs of every transaction. I don't have data which show the marginal costs of this information, but I would encourage you to solicit it. On a gut level, without any hard data I doubt that the additional requirements would be that onerous at our firm—a market-making and trading firm. Thus, if your data indicate that this is true generally, we would favor disclosure of additional short sale information.

Your rule-making initiatives seem to focus on three areas: the uptick rule, forced close-outs on failed short positions, and additional locate requirements. As your own Office of Economic Analysis 2007 Report indicates, the uptick rule has no benefit but does impede market efficiency. Despite all the evidence to the contrary, there are people who hold an almost religious conviction that the uptick rule has to be a good thing. Every once in a while, it is probably worthwhile to indulge people of fervor irrespective of data or truth. Since the markets had an uptick rule in place for many years, since the systems are already developed, and since everyone knows the implementation costs, reinstatement of the uptick rule probably falls into the category of acceptable foolishness to indulge people of fervor.

The same cannot be said for the other two areas of rule-making initiatives: forced close-outs of failed positions and additional locate requirements. On the issue of forced close-outs Rule 204T has been in place for a while, and we all know the result: it's a dumb rule which has perverse market effects. As an example, our company got a locate on 14,000 shares of XWES on April 27 from a good firm (Goldman Sachs). We shorted 6,000 shares that day at around $6. I guess the owner of the shares sold them (or otherwise made them unavailable), because on May 1, before the market opened, we were informed that the locate had disappeared. Goldman would have been happy to VWAP the buy-in, but per instructions from the Commission the trade had to happen on the first print. We were bought in on the entire position at $29. The stock immediately returned to the $6 area. Except for our buy-in the stock has never traded above $8 before or since. FINRA denied our request that the trade be reversed as clearly erroneous, since it complied with Rule 204T. This kind of rule violates the most basic tenets of the Commission. Per the Commission's mission statement, "the mission of the U.S. Securities and Exchange Commission is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation." We would encourage you to return to your mission of maintaining fair, orderly, and efficient markets.

Another area of silliness is the proposal to make locates even tougher. There is already in place a large bureaucracy to ensure that locates are good. We have not personally encountered nor heard any scuttlebutt about people trying to circumvent the system, and we would be in a pretty good place to hear about such things. The current tough system makes negative rebates absurdly expensive (over 80% a year in many cases) and causes locates which were given in good faith to disappear. And now the Commission is considering making the locate requirement even tougher? Allegedly everyone agrees that short-selling is a worthwhile attribute to the market, but in the real world the net effect of the current system is to strongly discourage short-selling. We would encourage the Commission to either directly ban short-selling or to make it more efficient—not more onerous.

Now perhaps readers of this comment are thinking that we are just talking our book—that we are part of the cabal of evil short-sellers who care nothing about the integrity of the U.S. financial system (after all, U.S. equity markets suffered a couple of near-death experiences over the last year, and shouldn't the Commission be more concerned about the integrity of the system than the particular biases of a few short-sellers?). Well, in fact, our firm is 90% net long (with more than half that concentrated in U.S. financial companies), and we were even more long financials in March of this year. If anyone ought to have been sensitive to abusive short-selling, we ought to have been. But we saw no evidence of it. What we did see evidence of was fear. Lots of it. Fear feeds on itself—and it looks for scapegoats. As in every other market crash, the most convenient scapegoats are short-sellers. And people who are fearful and hurt don't care much about facts. This anti-short-seller jihad looks to us just like every previous one: long on passion but short on facts.

In fact, this whole crusade to "curtail abusive 'naked' short-selling" appears to be a campaign against chimerical demons. Other than with toxic convertibles or ETF's has the Commission ever found tangible evidence of significant naked short-selling? Sure, there are loads of people who are long plunging stocks who just can't believe that the selling is from fellow shareholders and are sure that they have SEEN naked short-selling. If so, why has it been impossible for the Commission ever to find evidence of such a thing? Just because there is widespread conviction that a despicable evil is taking place does not mean that it is. Pretty much everyone in Salem believed that witches were tormenting their souls, and pretty much everyone in Germany believed that Jews were depleting the national spirit. But such beliefs do not equate to truth.

We have had dealings with many people at the Commission, and almost without exception we have found them to be smart and dedicated. Unfortunately in the current environment we have to assume that their voices are being overwhelmed by those who are more sensitive to the direction the political wind is blowing. We know that the Commission has been besieged by an onslaught of comments from people who have never shorted a share in their lives but purport to be experts on the subject. That volume of hate mail is probably hard to ignore. But we urge people at the Commission to follow their principles (even when they see things differently from the way we do). In the long run a victory for political expediency is a defeat for the markets and the public.