

United States Senate

WASHINGTON, DC 20510

January 9, 2017

The Honorable Mary Jo White
Chair
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Chair White:

We write regarding the need for greater transparency and disclosure of short positions in the market. As you know, institutional investment managers are currently only mandated to report and disclose their long position investments under Section 13(f) of the Securities Exchange Act of 1934. Because there is no analogous reporting and disclosure requirement for investors engaged in short-sale activity, we are concerned that some investors are exploiting this lack of transparency by engaging in trading behaviors that unfairly disadvantage growing companies, harm investors, and undermine the quality of information available to the market.

While we understand and acknowledge that short selling is not always detrimental to the market, and in some instances may offer value in the form of liquidity to offset temporary imbalances and pricing efficiency to mitigate against artificially high prices, only appropriate disclosures and transparency can provide for a healthy market able to sustain both long and short position investments in securities. However, given the current absence of reporting and disclosure requirements of short positions, there exists a precarious information vacuum which can be easily manipulated by investors seeking to peddle inaccurate data and unfounded rumors in order to maximize their own financial gain.


These practices are particularly damaging for emerging biotech and life science companies, which often require years of research and development to bring product to market. For these long-term innovations, the impacts of short selling can be devastating to the company and its investors. For example, we've heard reports of short investors using social media, blog posts, and cherry-picked reports to spread rumors and negative sentiment following an increase in a small company's stock value. The resulting drop in share price generates a quick return for the short investors, but does long-term damage by disincentivizing investments in the company's growth and in the innovation it seeks to bring to market. In the biopharmaceutical industry, certain investors have abused the Patent Office's Inter Partes Review process by taking a short position in a company's stock and then filing a patent challenge in order to generate a short-term stock drop. As you can see, these undisclosed short sale activities can be particularly damaging for companies that face a long runway from concept to market. Ultimately, such behaviors could delay or undermine the advancement of critical lifesaving technologies and result in costlier or fewer products and services for patients and consumers.

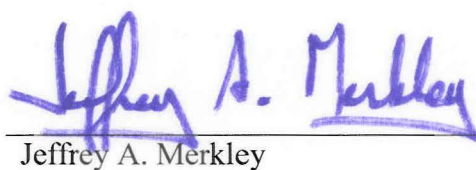
The current lack of transparency of short positions has a trifold impact on the securities market by: depriving issuers of insights into trading activity and inhibiting their ability to interface with investors; stripping investors of information crucial to making meaningful investment decisions; and withholding critical information from the market, which ultimately impedes efficiencies and dilutes transparency.

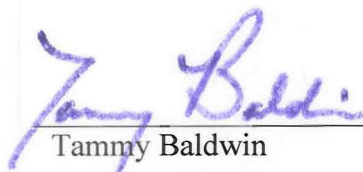
An enhanced short disclosure regime would substantially mitigate the effects of this manipulative behavior and allow market participants to make informed trading decisions. This action will ensure fair rules for all investments, investors and companies. As such, we urge you to consider File No. 4-691, the December 7, 2015 petition for rulemaking submitted by Nasdaq, Inc., File No. 4-689, the October 7, 2015 petition for rulemaking submitted by NYSE Group Inc., and to take action to ensure greater parity between the public disclosures required of investors taking long and short positions.

We look forward to your response, which should be delivered no later than February 3, 2017.

Sincerely,


Robert Menendez


Jeffrey A. Merkley


Tammy Baldwin

cc: SEC Commissioner Kara Stein
SEC Commissioner Michael Piwowar