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To: SEC Chairman Mary Schapiro

From: Jim Cramer, William Furber, Eric Oberg, Scott Rothbort

RE: Reinstatement of the Uptick Rule

We the undersigned believe in not just free markets, but fair markets. While the practice of short-selling equities can contribute to the market in terms of liquidity and price discovery, if left unchecked the practice can impede capital formation. We believe that a relatively simple check that was in place for nearly seventy years, the "Uptick Rule", helped serve the markets well in balancing various participants' interests. We therefore urge the SEC to reinstate such a price test rule, and specifically would urge a plus tick rule over other alternatives such as a "best bid" or "circuit breaker" test.

When the Uptick Rule was initially implemented in the late 1930's, there was an implicit acknowledgement that companies were not commodities. There was recognition that the capital markets served the broader purpose of capital formation; that companies create products, provide services, employ citizens and pay taxes and thus there was an interest to promote market integrity and protect interstate commerce.

In 1963, the SEC's Special Study reiterated the Uptick Rule as being a simple, but effective, mechanism for balancing the various competing interests: allowing for relatively unrestricted short sales in advancing markets, eliminating short selling as a tool for driving the market down by preventing short sales at successively lower prices, and preventing short sellers from accelerating a declining market by exhausting all available liquidity thus leaving long sellers to sell at successively lower prices. Indeed in 2007, with their report on the Regulation SHO Pilot Study, the SEC's Office of Economic Analysis made the express point that in the context of a "Tick Test", short sellers were liquidity providers, but without such a price test they could readily become liquidity takers. An Uptick Rule validates short sellers as liquidity providers, thus should help remove stigma with the practice.

When considering the objectives of protecting investors and capital formation, it seems that the Tick Test seems to balance the interest of both the short seller and market integrity, and therefore ought to be reinstated. Furthermore, the undersigned not only support the letter of the rule, but also the *spirit and intent* of the rule. A rule with myriad exemptions and carve-outs will not fulfill its purpose. Therefore, we urge the SEC to enforce not just the letter of the law, but also be mindful of the principle of the rule.

There has been considerable attention around the topic of the Uptick Rule because of a confluence of issues that, while independent, are inter-related around the practice of short selling. One of the most obvious related areas of unease is the practice of naked short selling. This is a fraudulent practice that appears to have been laxly enforced in the past. Naked short selling is essentially the creation of shares out of "whole cloth", shares that never had to undergo SEC review, *diluting the rights of existing shareholders*, placing a price control on a stock and thereby inhibiting capital formation. No doubt, there is genuine concern from all market participants to put an end to this egregious practice; this is not an issue of "balancing interests", but instead an issue of enforcement, and we urge the SEC to continue to step up their efforts in this regard. Naked short selling simply can not be tolerated.

Another question that has arisen is the proliferation of levered "short side" sector based ETFs. These funds have mushroomed with the elimination of price tests, and have raised innumerable issues in the markets. These ETFs were somehow approved by the Commission, despite seemingly obviating the margin rules set forth by the Federal Reserve. There is an entire body of evidence that shows a relaxation in margin constraints brings more noise to a market by drawing in uninformed traders. These funds have exacerbated volatility and created significant selling pressure during the downturn.

The great irony is that these products, due to their construct, do not even work for longer term holders, so in reality these are speculative instruments meant for intra-day trades, not for hedging or for investment. As intra-day speculative short selling vehicles unchecked by a plus tick test, they are sopping up available liquidity, rather than providing liquidity. In the past, there was a "diversification exemption" for Rule 10a-1. While such an exemption may be understandable for a broad based ETF, it does not seem to make much sense with regards to these "short side" ETFs. If such an exemption was applied here with regards to the underlying hedging activity, then people would simply use these funds as a dodge for the Uptick Rule much as they are used as a dodge for the margin rules.

The proliferation of complex, algorithmic trading has also contributed to rapid-fire, unchecked short selling. There have been many comments about how embedded the code is in these program trades that would be impossible to reverse. This is a very specious argument. If the programmers can create code to trade thousands of stocks a second, they can surely accommodate a plus tick test.

To be appropriately comprehensive, the Commission will need to address these concerns, as well as many others including married put abuse and "dark pool" trading, in order to level the playing field for all participants. It is when too many exceptions are created, or rules are not enforced, that integrity and confidence suffer.

In conclusion, we the undersigned urge the Commission to promote market integrity and capital formation, and to help uphold free and fair markets. We support the re-implementation of the Uptick Rule in not only form, but in substance, as it best balances the interests of all market participants.

Thank you for your consideration.

Sincerely,

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