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John H. Fowler
Investment Advisor Representative

S.E.C. Chairwoman Shapiro,

Congratulations on the appointment. I have been a retail stockbroker since 13th of October, 1967 (Goodbody & Co.). E.F. Hutton was the 1st firm to survive more than 3 years of my presence.

Please re-instate the uptick rule. Nothing would add more to the shattered confidence of the investor. My Christmas list also includes limits on hedge fund borrowings and regulatory controls

Best of luck,

John H. Fowler

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1931, Mistakes and Alphabet Soup

2008 was the worst stock market since 1931. In fact, the mechanical functions of the market were quite similar to 1931. For example, it has been reported that between 8,000 to 10,000 Hedge Funds with up to $1 Trillion Dollars in assets operated in 2008. Hedge Funds are like unregulated money pools of the 20's and 30's. Hedge Funds can borrow money and sell stocks short (a short sale is the sale of the stock you don't own hoping for a profitable decline in price). Further, margin requirements were 10% back then and one of the prime reasons for the crash of 1929; excessive leverage on margin. You had to sell a declining stock before it dropped 10% or you were wiped out. Too many Hedge Funds, unregulated as they are, operated on less than 10% margin, sometimes less than 5%. So again we have excessive leverage. Hedge Funds charge 1%-2% up front and take a 10%-20% of the profit. Abusive short selling funded by the false rumors were a daily event in the 20's and 30's and again in 2008.

In the 30's abusive short selling was virtually eliminated by the newly formed Securities and Exchange Commission which became the protector of the individual investor "In the Public Interest".

As simple as it was brilliant, the uptick rule was designed by the first S.E.C. Commissioner, Joseph P. Kennedy. The uptick rule halted almost all abusive short selling. The rule states that a stock cannot be sold short unless the last trade was up in price, usually 1/8th of a point. A shareholder, in contrast, can sell at the best price available any time the market is open. Of special note, Mr. Kennedy had been a "Bear Raider". The uptick rule was highly successful and worked well from its origin in the S.E.C. Act of 1934 until 6th of July, 2007.

Let the nightmare begin. It's called 17 CFR Parts 240 and 242 (Release No. 34-55970; File No. S7-21-06) RIN 3235-AJ76 Regulation SHO and Rule 10a-1. "The proposed amendments were designed to modernize and simplify short sale regulations and, at the same time, provide greater regulatory consistency by removing restrictions where they no longer appear effective or necessary". Shockingly, they cancelled the uptick rule! So it's 1929 all over again (modernized) and the S.E.C. is going to simplify a regulation they just cancelled. Huh? Obviously, unconcerned about abusive short selling and false rumors, they opened the vault @ Fort Knox and expected nothing to happen. Wrong! The Investors Business Daily ("IBD") (October 15, 2008) "Prudent lessons learned from the crash of 1929 and the ensuing depression have been unlearned and, in the process, left us unprotected from predatory trading abuses and financial terrorism". The 4th quarter of 2008 is a prime example of the carnage created by the removal of the uptick rule, assisted by the excessive leverage.

Again quoting the IBD, "Those who stand by the repeal must bear the burden of knowing that their poorly researched decision and reluctance to admit their mistake has put our very nation, our markets, our economy, and indeed our national security at risk. The uptick rule needs to be reinstated now." In fact, the return of the uptick rule could happen in a short period of time as well could the restriction of excessive leverage utilized by the Hedge Funds. In addition to this, we are about to get an experienced new Commissioner at the S.E.C., this is very good news.

2008 may have been the worst ever for the Investment Banking Community as Bear Sterns, Lehman Brothers and Merrill Lynch disappeared from the landscape. Crisis after crisis, day by day, was like pulling "Johnson grass" out of your lawn; hand over hand....it never ends. GSE, CRA's, CDO's, SIV's and LP's made the study of Latin look easy, which it is not. Government sponsored enterprises (GSE's), Fannie Mae and Freddie Mac failed and were taken over by the government. They were the prime mover of the housing mess created by the Community Reinvestment Act (CRA), in the mid to late nineties. Sub-prime mortgages were packaged in a basket called collateral debt obligations (CDO's) and in Structured Investment Vehicles (SIV's), which also contained auto loans and credit card debt. Credit Default Swaps (CDS) were insurance policy's guaranteeing payment on bonds in the event of default and Liquid Puts (LP) insured the SIV's. The history and resume of the above financial instruments, while interesting, is to the individual investor less appealing than a spoonful of caster oil. A whole new world of financial products; unorganized, unregulated and oversold were designed often to hedge a risk only to become the risk itself as they become illiquid and caused massive asset write downs. 2008 was a wild and wooly ride and I hope not to see another one like it...ever.

Now what? The confidence level of the investor is most likely at record lows, and for good reasons. The learning curve of the new administration is disconcerting as they elect to close "Gitmo" without knowing what to do with the prisoners. Next, they fund abortion clinics in what maybe the most pro-life countries in the world, South America. Is this supposed to improve our image? Worst of all, states are now allowed to impose "custom" emission standards on the beleaguered auto industry, who is just trying to survive. While the UAW takes all the heat, the most serious problem for Detroit has always been, and still is Congress! All this is just 7 days of "change". Maybe they should just slowdown and think. On the stimulus package....no comment.

A market recovery at the bottom of a recession often offers the most gains for the least amount of risk. Consider what is expected to happen as business recovers. More credit report, DNB, more mail and package delivery, Federal Express and United Parcel Service, more air travel (pick one), hotel occupancy to improve Marriott International wfgINVESTMENTSinc.

Inc. and housing starts to improve Home Depot, Lowe's Corporation and selected home builders. The aging baby boomer will continue to need hip and knee replacement, Stryker Corporation, Zimmer Holdings Inc., Johnson and Johnson and drugs delivered Express Scripts, Inc., CVS Caremark, TEVA Pharmacy and the hot drug stock of the month (there always seems to be one). Heart related stocks like St. Jude Medical should be fashionable and is expected to do well. Infrastructure spending should benefit Caterpillar Inc., Deere and Company and others. Hopefully, the consumer will lead the way, and worthy of note are Costco Wholesale Corporation, Walmart Stores Inc., Nordstrom Inc. and Best Buy Company. The banking recovery should include Bank of America Corporation and Wells Fargo in particular and technology is anybody's guess. Oil should continue strong Exxon Mobil Corporation, Chevron Corporation, Valero Energy, Schlumberger Ltd. and Transocean Ltd. For speculator's the market has placed some very interesting companies at $4 per share or less, such as; General Motors, Citibank, Ford, American International Group Inc., AMBAC, MBIA, Beazer Homes, American Capital and Media General.

However, until changes are made, we will continue to operate in a market divorced from reality, like never before; thereby increasing the market risk of holding stock. The fundamental valuations are in many, many cases overwhelmingly cheap and caution, courage and patience is the rule of the day.

Sincerely,

John Fowler

John Fowler
January 28, 2009
[redacted]

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