Plainly stated, I do not support any reimplementation of an uptick rule, but do support enforcement of current regulations that shorted shares not exceed available shares (i.e. no naked shorting except for reasonable exceptions). I am not strongly opposed to the proposed circuit breaker modified uptick rule, but am strongly opposed to a market wide and permanent price test.

My stance stems in good part from my agreement with many of the statements in the Proposed Rule Release No. 34-59748 discussing the benefits and importance of short selling when striving for an efficient market. This sentence on page 9 of the Release in particular states my sentiments well: "The Commission has long held the view that short selling provides the market with important benefits, including market liquidity and pricing efficiency.[15]" The tone of the proposal suggests that its authors recognize the vital role short selling plays in the equity markets and even suggests a good dose of hesitancy on their part to pass any regulations that might interfere with efficient short selling. Given this, I will not expound on these here, but will rather take it as a given that we all recognize the vital role that short selling plays in our equity markets.

After the horrendous decline and loss of wealth that occurred in the equity markets recently, it is only natural for us to scrutinize the events surrounding the decline in order to better understand the various players and mechanisms involved in the hopes of avoiding similar episodes in the future. Unfortunately, it is also human nature to look outside of ourselves as individuals for places to place blame in order to alleviate our own pain. I would strongly encourage the SEC not to bow to the great pressure that is being exerted by many to declare short selling and short sellers a major or even primary cause of the recent decline. I think the root of the decline is fairly well understood to be a steep decline in housing values coupled with foolish lending practices and the corresponding securitization of those loans. Indeed, had short selling been easily available in the housing market, perhaps this financial catastrophe would have been mitigated.

I have many friends who lost a lot of money over the last many months. One remarked to me that the "experts" did not caution him about the impending risks. I mentioned to him that, Jon Stewart aside, CNBC did host several people who did set off stern, cautionary signals in early 2008. My friend then commented that their voices were not loud enough for him to hear. My friend did not hear the voices of caution in early 2008 because they were few. Far from limiting short selling, what is really needed is strong encouragement for all investors to embrace the short side as well as the long so that many more minds and dollars are at work analyzing equity pricing from both sides. It is by these means that we can best hope for a well valued market that is less susceptible to violent swings and whose message is better heard by all.

My direct response to the uptick alternatives at hand:
1) My preference, as stated above, is for no change to the current status - no uptick rule of any kind
2) I strongly oppose a market wide, permanent price test
3) If an uptick rule is implemented, I agree that a price test based on NBB is superior to one based on last sale for the reasons mentioned in the proposal.
4) Since the issue is pertinent only during persistent and relentless declines in stock prices, it seems to me that any limitation to short selling should occur only in such instances. This thinking leads to a circuit breaker rule. I would think that a 2-tier rule would be best. The first tier would be the implementation of the modified uptick rule at a 10% or 15% decline and the second tier would be the implementation of a halt rule at a 20% or so decline. These levels are rather arbitrary and perhaps a study of equity volatility envelopes would suggest more appropriate levels. These levels might best be set periodically based on the prior period's market wide volatility using standard statistical tools to identify outlier behavior.
5) Care should be taken to minimize the effects of any implemented rules on the initiation of hedge positions, bearing in mind that positions can be hedged in a myriad of ways with a myriad of instruments as today's markets offer a slew of "related securities" for any given equity. Perhaps the SEC should consider exempting orders of only a few hundred shares so that legitimate short sellers, particularly those individuals who would like to balance their portfolios and reduce volatility by utilizing both long and short positions, are not negatively impacted by any new regulations.

I can see from the public responses as posted on the SEC site that there is overwhelming support for a reinstatement of the uptick rule. There is a reason that we have regulatory bodies determine how certain of our systems are regulated rather than leaving it up to popular vote. At times, it may be necessary for these regulatory bodies to rule in a manner that is best for the system that they are regulating, even if such a ruling goes against the popular thinking of the moment and particularly when the moment is so emotionally infused with anger and regret. I urge the SEC to do what it truly feels is best for our markets without regard to pressures from others. It is true that many people have been greatly damaged financially in recent months. However, it may also be true that such damage had little or nothing to do with the lack of an uptick rule.

Some thoughts on response letter Type C:
The letter's authors acknowledge that short selling contributes to market liquidity and price discovery. It is only their wish that such selling have some checks in place. I would contend that there are two very strong checks in place. The first is the fact that if a stock declines to a level that is below its fair value, the millions of people who study and research stocks daily will discover this and bid the price back up. The second check, if enforced, is the prohibition against naked short selling. Without naked short selling, the millions of people who will be chomping at the bit to buy this undervalued stock will have virtually unlimited dollars with which to do so in comparison to the limited number of shares that can be shorted or sold outright. The implementation of a market wide, permanent price test would not be a check on the system (a circuit breaker regime would, but perhaps unnecessarily), but rather a tight and permanent restraint. This sentiment is also expressed on page 93 of the Proposal:"In discussing a short selling circuit breaker, one commenter noted that such a measure could address the issue of "bear raids" while limiting the market impact that may arise from other forms of short sale price test restrictions."

The points made in the Type C letter referring to short sales on a downtick as representing liquidity taking can equally be applied to long purchases on an uptick. The Type C letter reflects a biased preference for the long side; a bias towards increasing equity prices. As I alluded to above, it is this bias that is prevalent in almost all aspects of our financial system and that I feel is the true impediment to efficiently priced markets, which in turn is the greatest threat to investor confidence. The tech bubble in the late 1990's, the recent disconnect of equity pricing from fundamental value that resulted in the great price decline of last year, and the housing bubble, are all examples of the boom and bust cycle that asset pricing systems are prone to when there is no significant counterbalancing investing vehicle. I again state that it is my opinion that the greatest improvement to efficient equity market pricing can be achieved by more, not less, informed, non-naked short selling.

Thank you for this opportunity to express my thoughts on this matter.

Michael Wilson
Individual Investor

"If the world were made up of short sellers, there would have been a clamoring for a downtick rule in 1999. "