June 6th, 2009

Mrs. Elizabeth Murphy
Secretary, Securities and Exchange Commission
100 F Street, NE
Washington DC, 20549-1090

Ref. File No: S7-08-09

Dear Mrs. Murphy,

The uptick rule should not be reinstated in any form because it will have a negative impact on a stock's liquidity, volatility, and market price efficiency. Imagine a scenario where a company has an immediate negative news event. In the case of Lehman Brothers, for instance, if Lehman was truly a sound company and the average market participant believed that they were a sound company then the most intelligent thing to do as an investor or a short-term trader is to buy that company's stock hand-over-fist because you're receiving what appears to be an incredible discount. At a certain price point, if a company's long term health is not in critical danger, there is always a price at which the risk/reward of buying that company's stock makes sense. For instance, if you saw Apple (AAPL) which currently trades north of $140 trading for $10 wouldn't you consider it a pretty good risk to buy the stock for $10? As long as the average investor believes that $10 is a major discount for AAPL, then the buying at that price level would far overwhelm the selling. The short sellers who attempted to manipulate the stock down would lose a lot of money very quickly and be forced to cover their shorts as the market proves the sellers wrong with continued buying. The short sellers who are forced to cover add to the buying pressure and the stock price should eventually settle back to its true range.

This did not play out for Bear Stearns, Lehman Brothers, or AIG because in reality, these companies were insolvent. One outlandish argument is that short-sellers can put a company out of business by themselves. While it is true that selling and short selling are essentially the mechanisms that make a company's stock physically drop in price, the company's financial health is where a stock derives its true value from. Let me explain, a commodity such as natural gas or steel cannot fall to $0 because they are physical items that inherently hold value - they can be used in the real world (i.e. they're in constant demand). In the case of a company, it is only worth the Net Present Value of the sum of its expected future cash flow plus the value of its assets – accounting for both equity and liabilities. Part of the reason stock prices are constantly changing is because there is constant re-adjustment to these long term expectations as hope and fear changes in the market place. As a capitalist investor (acting rational and logically) would you be willing to buy the stock of company if: 1.They held such little cash on hand that a fall in their stock price (i.e. Net Equity), could lead to potential bankruptcy or the need to raise additional capital? 2. A company's liabilities exceeded current equity by 30x (and consider that some of the assumed equity is being accounted for from stock price x shares outstanding) with default rates expected to rise? 3. This company has an off-balance sheet where the company's most risky assets are hidden and the public is not allowed to view?

These conditions existed for nearly 5 years and then suddenly everyone realized that this was not a healthy way to run a company. As rational investors, they pulled out as market conditions deteriorated. Short selling allows prudent investors a fair right to identify over pricings like these. This vastly improves market efficiency and liquidity because it adds volume to the market (greater volume in a stock shows that more investors have had a say in the direction of the price, or at least that more investment capital is being placed at risk at a particular price and as such, there is more legitimacy to that particular price). Part of the reason the market sold off as violently as it did can be more attributed to a long-term general mischaracterization of risk. The collapse was due to investors incorporating a more realistic risk component to a market environment whose rise was predicated on low interest rates and previously saw very little risk aversion. This fostered an environment in which risk was generally ignored or minimized for a period of time (as seen with real estate, credit cards, and global government debt levels). So as each consecutive metric and data point proved that investors had taken on too much risk for the potential reward, the public quickly and efficiently re-priced risk into the market. As the market overextended itself to new lows (around 6500 on the Dow) the natural market mechanisms have punished overly greedy short sellers who've lost 50% from the lows until now.

Such as with the AAPL example, if short sellers pile on too much they will pay dearly for it – especially when you consider that the highest return a short seller can make is 100% if the price goes to $0 yet always has unlimited risk since stock prices have no ceiling. The public outcry for a short selling ban did not work and an uptick rule would ultimately not work either – merely hindering efficiency and creating a bias potentially leading to another bubble in stocks. When you combine a genuine misunderstanding by the public of how the market place works with an outcry for a villain (short sellers who are being blamed because the public can only understand buying and selling and thus blames the sellers) and let an outspoken TV host lead the charge, all sorts of crazy misunderstood ideas will come up. When things like an uptick rule, stops, and halts are instated, a company like GM can be allowed to live on far past insolvency. Last summer there was a similar public outcry for bailouts. As we're very slowly learning, those bailouts did not save the companies they bailed out as intended and now we are left with irreversible pubic tax and incentive consequences that may linger for decades. I urge you not to make the same mistake with the uptick rule as it will allow for price manipulation on the upside (i.e. companies can more easily become overvalued if sellers are hindered) which will inevitably help fuel another pricing bubble and subsequent larger and more violent collapse in the long term.

Sincerely,

Brent Bonstingl