June 15, 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,

I am a trader with no short-term bias towards the general market direction on a day to day basis. Understanding how the market works and some of its components, I do not believe the short selling up-tick rule should be reinstated for many reasons. Historically, over the 70 year period that the up-tick rule was in place, the market experienced many ups and downs. The market is cyclical; it eventually becomes overbought and oversold. A natural correction occurs (The Efficient Market Theory) as the market and our economy demonstrate.

To date there are many vehicles that investors and traders can use to make bets against the market. Anyone with a personal trading account can buy a share of SDS. This is an Ultra Short Exchange Traded Fund that by definition "seeks daily investment results that correspond to twice the inverse of the daily performance of the S&P 500 Index." This fund gets these results with complex derivatives that the majority of the public and the investing and trading community do not know anything about, nor understand. However, these complicated vehicles are an essential part of the day to day function of the markets. Many of these funds or ETFs exist; single, double and triple leveraged ETFs are created to provide alternative trading methods and to hedge investment strategies. There are long ETFs and short (inverse) ETFs. This particular fund and countless other ETFs and inverse ETFs are legitimate investment vehicles used by many people to trade daily, weekly, monthly, and yearly cyclical trends.

With that being said, one of the biggest accusations of the recent market recession is that short selling fuelled the decline in the markets. If that is true, any investor or trader that purchased an inverse ETF played a role in the downfall of the market. This is not possible because these funds are reactionary. An influx of buyers into an inverse ETF does not push the market down. SDS for example has an average daily volume of just over 44 million shares which equates to about $2.33 billion dollars of transactions. Any individual investor or trader will not be able to have any impact on the direction of this fund or any other stock in the S&P 500 or DJIA. To reinstate an up-tick rule would be like saying there needs to be a down-tick rule to buy. That idea sounds preposterous.

Using the inverse ETF example, it becomes obvious that it is irresponsible to say that short selling caused the market to deteriorate. Since the up-tick rule was abolished in 2007, this seems a likely scapegoat for those unwilling to identify the root cause of this problem and point blame to moral and legitimate trading strategies.

To reinstate the up-tick rule would only create new ways to make bets against the market with more complex derivatives to allow investors and traders to engage trading in a company going bankrupt for example, or a pharmaceutical company losing FDA approval, or an information technology company losing a patent. Based on the efficient market theory, the up-tick rule would only slow the inevitable price adjustment.

To those who blame the system of short selling for causing a collapse of our capital markets, I ask if you would feel the same way if your investment strategy included inverse ETFs, or if you have ever put on a short position. To not change your investment strategy based on the deteriorating economic environment and turning a blind eye to historical market data and cyclical bull and bear markets, is as irresponsible as piling up massive credit card debts or buying a house without the means to pay for it.

The foundation of this current bear market has nothing to do with or the abolishment of the up-tick rule. Given the reasons for reinstating the up-tick rule, regulators are showing their lack of confidence in the principals of the capital markets and slowing the inevitable downward correction in our economy.

The National Bureau of Economic Research defines a recession as “a significant decline in economic activity spread across the economy, lasting more than a few months, normally visible in real GDP, real income, employment, industrial production, and wholesale-retail sales.” There have been 11 recessions from 1945 until 2007 (The up-tick rule went into effect in 1938). I have outlined these with a brief explanation of the cause of each:

1) Recession of 1945: Post-WWII demobilization.
2) Recession of 1948: Brief cyclical economic downturn. The Federal Reserve failed to maintain a balance between the money supply, interest rates, and inflation.
3) Recession of 1953: Post-Korean War inflationary period.
4) Recession of 1958: Monetary policy was tightened by the Federal Reserve.
5) Recession of 1960: High Unemployment rates, high inflation and bad GDP rating.
6) Recession of 1969: Federal Reserve raising interest rates to hold down inflation.
7) 1973 Oil Crisis: Quadrupling of oil prices by OPEC coupled with high government spending due to the Vietnam War
8) 1980 Recession: Elevated unemployment, rather short cyclical recession.
9) Recession of early 1980s: Iranian Revolution sharply increased the price of oil around the world in 1979, tight monetary policy in the US to control inflation led to another recession.
10) Early 1990s Recession: Black Monday (DJIA lost 22.6%), collapse of the savings and loans, worldwide recession ensued.
11) Early 2000s Recession: Collapse of the dot-com bubble and 9/11 attacks

The common theme in these recessions is war, surging oil prices, and cyclicality. These recessions along with *the largest single day decline in the Dow Jones Industrial Average* happened while the up-tick rule was in effect.

In legitimate short selling, someone buys the shares that you borrow and sell to them. When an investor or trader enacts a short sale there is no guarantee of a favorable result. The short sale transaction only happens if someone buys those shares, they do not disappear into thin air. People have to be willing to buy for an investor or trader to sell short.

Short selling increases liquidity and participation in the market and is much riskier than typical buying of the market. There is unlimited risk when taking on a short position, where there is only the risk of a particular security going to zero when taking on a long position. With volume and liquidity come a more transparent market and a situation for the efficient market theory to be even more prevalent. With the addition of an up-tick rule, the liquidity will be greatly diminished, volume deeply reduced, and the added ability to manipulate pricing by institutional investors and hedge funds. The ones who will suffer if this rule is put into place is the majority of the investing public, not the ones who have the ability to create new products. They have the buying power, ability and means to create new investment vehicles to get around the “safeguards” put in place by the government that try to slow the inevitable cyclical declines of the capital markets.

In conclusion, to reinstate the up-tick rule sounds as foolish as abolishing selling of any kind. Selling stock is an essential part of investing, and to not be able to legitimately and morally short sell stock would halt the progression and advances the financial markets have seen in recent years.

Sincerely,

Adam Braim
Registered Representative