June 17, 2009

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

RE: File No. S7-08-09

Dear Ms. Murphy:

The role of short sellers has generated a tremendous amount of attention from people normally not interested in market structure or regulation. The popular perception seems to be that the repeal of the uptick rule in 2007 somehow undermined the integrity of US equity markets and perhaps even the US economy itself. After a vicious bear market, investor uncertainty and angst are understandable; however, the clamor to reinstate the uptick rule confuses correlation with causation.

The SEC itself provided a controlled experiment via the temporary short ban put into place last year for certain financial stocks. Regardless of whether the order achieved its overall goals, one clear outcome was that market quality suffered in the affected names. Numerous industry and academic studies found that bid-ask spreads widened and trading volumes dropped in response to the ban.

I am concerned that implementing a new uptick rule will have a similar adverse affect on market quality, albeit on a much smaller scale. Penalizing short sales hurts price discovery and increases transaction costs, effectively acting as a hidden tax on all investors, long or short. Therefore I would suggest that a circuit breaker style bid test will do the least damage to US equity markets, since the best course of action--doing nothing-- is not presently one of the options being considered.

In closing, I would note that Bernard Baruch published a defense of short selling in 1913 entitled “Short Sales and Manipulation of Securities.” Despite his stature, it was published anonymously due to the misunderstandings surrounding this legitimate and economically important function. Almost 100 years later, we have witnessed tremendous advancements in technology and market structure, and yet attitudes towards short selling still seem to be stuck in the last century. I sincerely hope in the next century we aren’t discussing repealing the uptick rule of 2009, put into place in response to a bear market, not unlike the original uptick rule instituted in 1934.

Respectfully,

W. Lawson McWhorter, CMT, CFA