Dear SEC:

While the practice of short-selling equities can contribute to the market in terms of price discovery, the market has experienced a significant decline in liquidity since the elimination of uptick rule. Further, during the worst of the panic stricken market last year, the lack of having the Uptick Rule most likely severely impeded capital formation. I believe that if the Uptick Rule (preferably the "original"), is not restored, we could experience a permanent decline in capital formation which will inhibit economic recovery and growth. This could be as profound as hampering America's competitive position relative to the world across many industries. You could even go so far as to make a case that a healthy vibrant and "fair" U.S. stock market is in our national security interest.

I believe the most simple and complete solution for the Uptick Rule situation is to restore the original Uptick Rule. Prior to its elimination, this Rule had been in place for nearly seventy years and helped serve the markets well in balancing various participants' interests. Further, I would urge the SEC not to experiment with other alternatives such as a "best bid" or "circuit breaker" test.

"In 1963, the SEC's Special Study reiterated the Uptick Rule as being a simple, but effective, mechanism for balancing the various competing interests: allowing for relatively unrestricted short sales in advancing markets, eliminating short selling as a tool for driving the market down by preventing short sales at successively lower prices, and preventing short sellers from accelerating a declining market by exhausting all available liquidity thus leaving long sellers to sell at successively lower prices." If this wasn't prescient, I'm not sure what is. This is exactly what happened during most of 2008.

Furthermore, I not only support the letter of the rule, but also the spirit and intent of the rule. A rule with far too many exemptions and carve-outs will not fulfill its purpose. Therefore, the SEC should also be mindful of the principle of the rule.

One of the most obvious related areas of containing a serious breach of the "intent" of the uptick rule is the practice of naked short selling. Stopping this fraudulent practice appears to have had little enforcement in the past and even the newer rules still seem to lack teeth. Naked short selling is the creation of shares out of thin air. During the Great Depression, this practice was calling "paper hanging" as people would short "fake" shares but have to come up with a stock certificate. So they just counterfeited paper shares and delivered them to a clearing house. Currently, this seems to be done electronically and has had dire consequences. I suspect that a host of companies in the Banking and Brokerage sector still have artificially high share floats due to naked shorting. And stocks of companies like Bear Stearns and Lehman may have been severely impaired due to this practice. No doubt, there is serious concern from a host of market participants to put an end to this egregious practice; this is not an issue of "balancing interests". This is simply an issue of enforcement, and I urge the SEC to continue to step up their efforts in this regard. Naked short selling simply needs to be stopped.

Another objectional activity that has arisen is the proliferation of levered ETFs (some of which are levered three times to one). The ETF's, particularly the short biased ETF's are totally out of control and this proliferation corresponds directly with the elimination of the Uptick Rule. These serve one purpose and that is to promote purely speculative short term trading. These are not hedging instruments. If they were hedging instruments or were restricted for that purpose than I would take no issue with them.

Further, these ETFs seem to completely circumvent existing margin rules. So they not only serve to only fuel excessive speculation but they are also doing it by bypassing margin rules and do not promote safety in the market from being used as hedges. I ask the SEC one question -- Why are these instruments allowed to exist? These funds have exacerbated volatility and created significant selling pressure during the downturn.

In the past, there was a "diversification exemption" for Rule 10a-1. While such an exemption may be understandable for a broad based ETF, it does not seem to make much sense with regards to these "short side" ETFs. If such an exemption was applied here with regards to the underlying hedging activity, then people would simply use these funds as a dodge for the Uptick Rule much as they are used as a dodge for the margin rules.

The proliferation of complex, algorithmic trading has also contributed to rapid-fire, unchecked short selling. There have been many comments about how embedded the code is in these program trades that would be impossible to reverse. This is a very specious argument. If the programmers can create code to trade thousands of stocks a second, they can surely accommodate a plus tick test.

To be appropriately comprehensive, the Commission will need to address these concerns, as well as many others including married put abuse, "dark pool" trading, futures pinning and options pinning. Further, here is an additional list of abuses that have been observed though not as well documented since the uptick rule was eliminated. These include:

I. Shorts routinely target stocks with "high concentration of ownership in margin accounts". These stocks may have initially declined some on their own, but when they have declined sharply in value (say 30% from its high or greater), then additional declines can force out shareholders who purchased their positions on Margin. Margin purchase is the standard practice for most Hedge Funds and many corporate executives that exercise options and convert into common. These holders can literally be wiped out even though they own shares in stocks which have been pushed far below a fair market value. It's a vicious game, knowing that if they can drive a stock price below a certain threshold, certain holders will then be forced to sell and this can create a snowball effect where shareholders panic and selling begets more selling. This in turn allows the Shorts to cover their positions at a price that is both far lower than the average prices they shorted at, and is also massively below any fair market value. That's an easy game to play -- target stocks that are beaten up and owned with heavy margin and concentration.

II. Shorts routinely target stocks that have debt and could be prone to credit downgrades, especially when equity capital is part of the rating criteria. By forcing stocks below certain "threshold" levels, it spurs the various Credit ratings agencies into action and creates a "death spiral". First the warning of a downgrade occurs. This pressures the stock more. Then the downgrade occurs which really fuels the carnage and possibly even more shorting. If this is really frenzied, you can get multiple downgrades by multiple agencies. This in fact happened in 2008 and 2009. See GE and various banks as prime examples of how shorts have used the credit system to wreak havoc. Bottom line, the idea here is for the shorts to trip a switch and create a negative feedback loop. Once they get this started, many times the market will take care of the heavy lifting for them as many trend followers and media folks feed the flames until the company is all but finished.

III. Shortsellers routinely attack stocks when their price is nearing the $5 (five dollar) threshold to drive their prices below $5 which automatically makes stocks non-marginable to many Institutional buyers and individuals. If those Investors and Individuals bought the stock above $5 on margin, they are suddenly hit with a liquidity crisis. All it takes to short a stock to oblivion is to drive out the liquidity and buying interest in a particular equity. Taking a stock to "penny stock" status does just that in many cases. Without Uptick protection, what is to stop them?

IV. Shortsellers can attempt to short a stock all the way down to zero ($0.00) or to the point where the stock gets delisted. In both cases, they don't have to cover their short positions and therefore never even have to pay taxes. This incredibly bizarre tax loophole must be shut down. Who exactly is responsible for this caveat that encourages the TOTAL destruction of companies from a U.S. tax code perspective?

V. Shortsellers have developed many complex Futures strategies like Married Puts and marrying the Cash Market to the Futures market which are so complex in their ability to game the system and so under the radar that I have total confidence that not even 1/10th of 1% of all investors even know that they exist. These unfortunate investors simply see their stocks falling without any shares even being traded and wonder bewilderedly what is going on.

In order to level the playing field for all participants we need to again have an uptick rule which helped prevent many of the abuses described above. In conclusion, I urge the SEC to bring back the original Uptick Rule which supports market safety, soundness, integrity and capital formation (capital formation being possibly the most important aspect of all).

Sincerely,

Sean Udall