Ms. Mary Schapiro
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

June 18, 2009

Dear Ms. Schapiro,

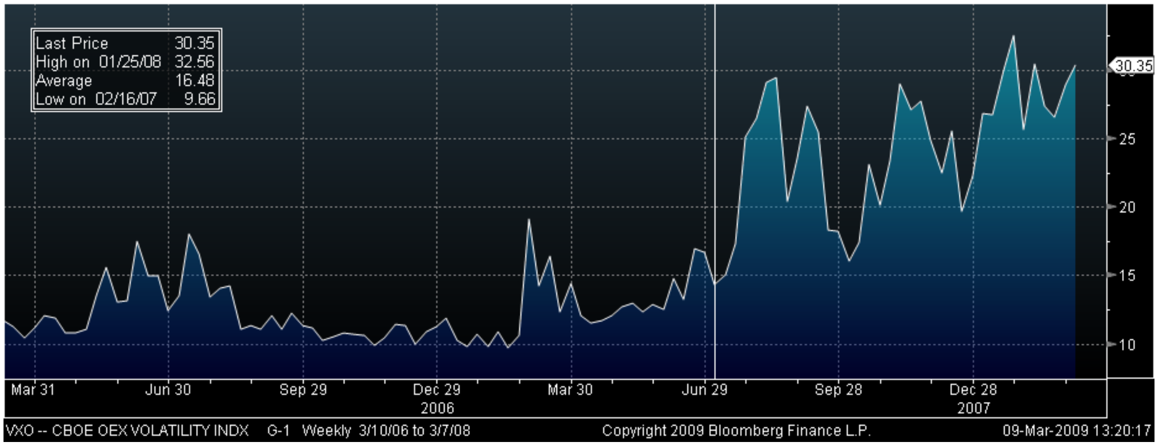
I believe that Rule 10a-1 under the Securities Exchange Act of 1934 (the "plus-tick" rule or "the rule") should be reinstated in a form substantially similar to its original, without circuit-breaker adjustments or other exemptions beyond limited market-maker facilitative allowances. The statements in this letter represent my opinions with respect to issues germane to my argument.

Short selling, where regulated by the existence of such price-restriction rules, is a necessary and valuable component of well-developed capital markets. It adds liquidity by adding offer-side depth and encourages critical thinking by allowing for a way to profit by being bearish. Short selling without a plus-tick rule, however, not only takes liquidity out of the market, but actually promotes behavioral factors which tend to diminish critical thought.

The rule addresses fundamental investment return asymmetries caused by permanent emotional and structural biases in the market. Its continued existence is more critically important today than a generation ago, as technological advancements which have in many ways been very good for the market have nevertheless fueled these return asymmetries. Further, these technological advancements have significantly weakened protections against other destabilizing factors that diminish market integrity, such as inaccurate or improper information dissemination and the use of excessive leverage. The plus-tick rule is an indirect but very effective antidote for these as well.

The capital markets exist so that growing enterprises may access capital, pay for the privilege of getting it, and allow investors to account for their own liquidity needs without necessarily limiting those of the enterprises accessing the capital. The current system, which is continually evolving, is the best yet discovered for harnessing the positive power of the profit motive while restraining some of its destructive extremes. The evolution of the capital markets is a dialectic, a never-ending process of trial-and-error which careens between "not enough" and "too much" while passing "just right", and spending most of the time in that middle area.

To that point, the controversy surrounding the decision to eliminate the rule is irrelevant; we now, at least, have dramatic evidence that bad things happened in its absence. The chart below says a great deal. The vertical line denotes July 6, 2007, the compliance date for the rule's elimination.



The pilot study conducted by the SEC's Office of Economic Analysis ("OEA") reflects both the authors' efforts to be thorough and their reservations with respect to the limitations of the study. However, I believe very strongly that the validity of any conclusions drawn from data generated by the study was unfortunately doomed from the start. There was no way to properly apply scientific method, for there was no way of creating a valid control group. While the plus-tick requirement was eliminated on about a third of the stocks in the Russell 3000, starting in May 2005, and compared the price action of those stocks to the price action of the rest of the stocks in the same index, those remaining stocks, as well as all others in the market not members of the index, remained subject to the rule.

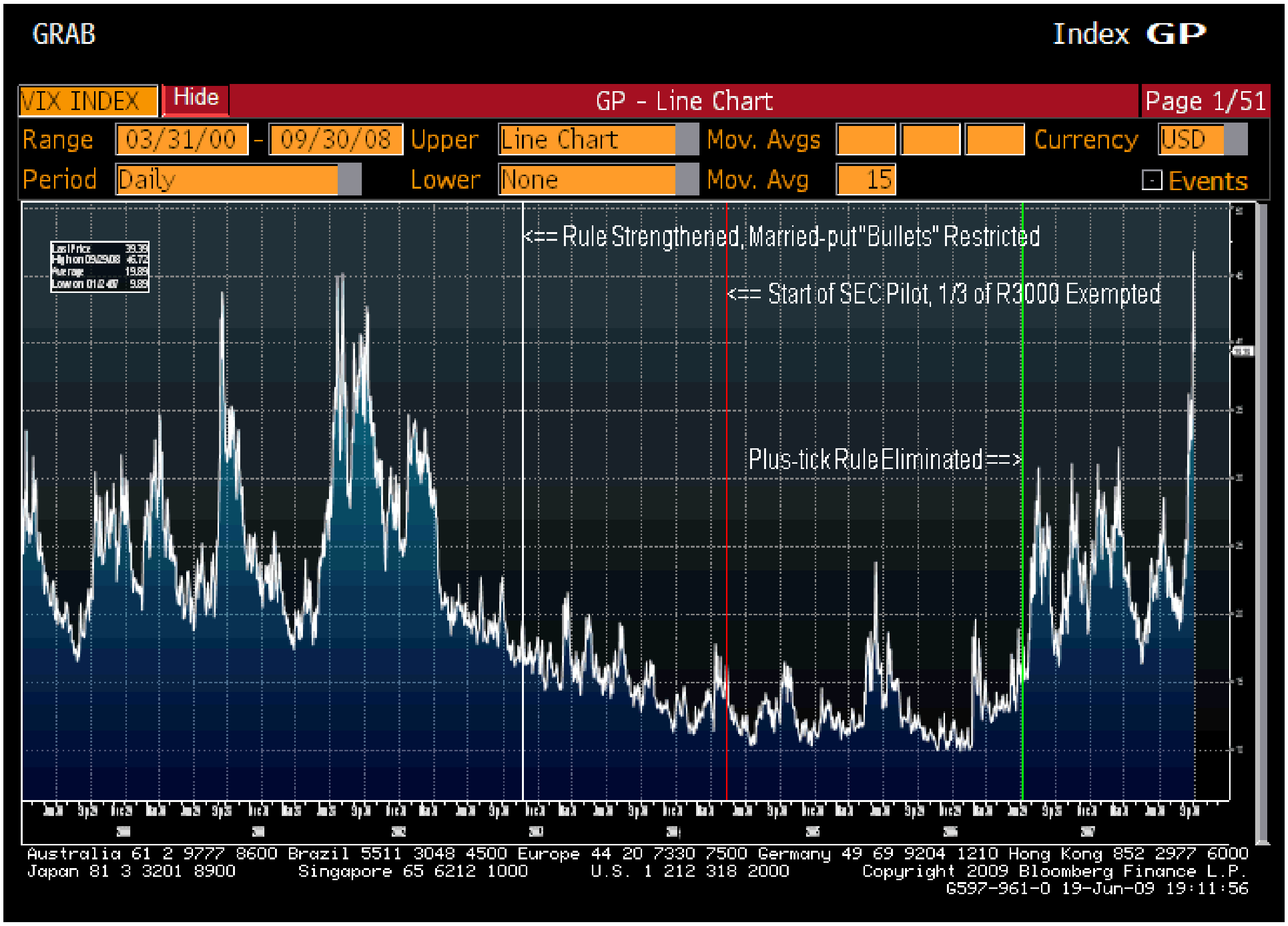
There was simply no way to study the effects, on those individual securities, of a market in which all of the other securities traded were not themselves subject to the rule. In other words, the rule was designed to address negative emotional behavior, and emotional behavior might be reasonably considered to be affected by the price behavior of the majority of stocks in the market not included in the study, of course.

For the OEA to effectively test for the outcome they sought would be so cumbersome if even possible that they really had no choice but to assume it away. Remember the three people stuck on a desert island with a case of canned beans and no way open them? The economist says, "Assume we have a can opener…"

Once the rule was eliminated, of course, better data could be obtained, and it offers a powerful demonstration of the effectiveness of the rule by virtue of the behavior of the volatility we have experienced since.

Additionally and significantly, data generated after a regulatory *strengthening* of the rule back in 2003 appears to corroborate dramatically the conclusion that there is a high positive correlation between the strength of the plus-tick rule and its effect on the markets. This strengthening occurred after a period of attenuation of the rule which began in the late 1980's and early 1990's in the form of practices which evolved with the equity options market and ‘diversification’ and other forms of exemptions granted to exchange-traded fund (“ETF”) sponsors, market-makers and others.

Data from this period provides the opportunity to study market conditions, during recent history, in which at least a portion of the exemptions dilutive to the rule were not in place. In early 2003 the SEC put the industry on notice that it was considering an interpretive release, which then became effective in November of that year, clarifying, effectively, that “married put,” or “bullet”, transactions were also subject to the rule. Note the action of the VIX between mid-2003 and mid-2007, when the rule was repealed:



For the first time in years, the rule had teeth, and the effect on volatility appears to have been remarkable.

Volatility is part of market behavior, but it does not need to be abetted by fiat. Volatility is expensive, and to the extent that a uniform population-wide bias towards it can be reduced, markets may be made more efficient, which is better for the economy overall.

Many of us watched firsthand the destruction caused by the practice known as portfolio insurance in 1987, when a structural bias enabled by emerging strategies and technologies caused a dislocation between futures and underlying prices which could have been profitably exploited by those in a position to do so until price levels reached zero. Then as now it was difficult to get a grasp on the effects of unintended consequences- in that case, while the rule was in existence at the time, the index futures used so heavily to manage the “portfolio insurance” strategy were exempt from it.

The rule was conceived long ago to address the lack of balance between the effects of the active emotions fear and greed as they are applied in a marketplace where the majority of investors are owners of stocks. The rule requires that any person selling a stock short must do so only at the price which is the higher of the last two discrete transactions. This means the final trigger on a short-sale transaction must be pulled by a buyer eager enough to do so. This not only forces the seller into the passive role, but allows long sellers to make their sales ahead of short sellers. Today, in the absence of the rule, the short seller may initiate the transaction and compete with natural sellers.

In this way the rule specifically addresses the effects of emotional behavior on market pricing. There are two primary and related reasons why the rule was applied to selling, rather than buying, stocks. First, and although there are many exceptions to this general characteristic, stocks tend to go down faster than they go up. Second, many more stocks are owned than held as short positions, which results in a permanent bias towards supply which may become available for sale.

Not only are existing investors motivated to sell a security or market that is either trending down or subject to sharp downside moves, but new investors tend to stay away as well. Their risk appetite is diminished along with their confidence in any eventual return of, or on, their capital, so they keep that capital away from the market, and the enterprises that may need it, deserving or no.

News accounts in autumn of 2008 promoted the notion that because spreads are so thin now, the rule is irrelevant. This is a specious argument, as while the width of the spread may influence the relative willingness of a buyer ‘step up’ and take an offer or buy higher than the last sale which was initiated by a long seller, the actual transaction will not occur until the buyer has decided to complete it, proactively. After all, there is asymmetry between the need to enter any investment position and the need to exit the same one. Going in, the choice is unforced. One may take the position, or forget about the whole thing and go bowling. Once the position has been assumed, however, its disposal is a matter of timing only; the act of selling a long, or covering a short, is a foregone conclusion, with the only the future date and price unknown. Further, any investment position must be monitored to some degree until it is gone.   During periods of adverse price action, a person who has not yet taken any investment positions can usually just wait and see whether the price gets better. The person already in a position might also adopt such a stance, but with the very-different awareness that when the price goes the wrong way, real money is being lost rather than opportunity. This awareness, evolved into fear, regret, and other forms of anguish, can lead to poorly-timed exit decisions. History has demonstrated that such negative emotions can be extremely infectious.

Across the whole market more stocks are owned, or held long, for positive investment returns than are shorted for such profits. When overall market price action is adverse to owners of stocks, more of them are forced to sell than are forced to buy when the price action is adverse to those who are short. There are just more people in long positions to be forced out when things go against them than there are people in short positions who get forced to buy when stocks go up.

These behavioral factors coupled with this predominance of long positions are also the reasons that a “circuit-breaker” application of short-selling price restrictions would be far less effective or desirable than the prior rule’s form. These factors are always at work in some degree, and feed upon themselves. As such, the long seller should be allowed to hit any bid first- not because of some higher moral claim, but because panic is an infectious disease which spreads quickly, and it is best to cure the first victims of it immediately.

There are other less obvious issues and exacerbating influences on these negative effects. As stocks go down, and especially into the single-digits, a given absolute unit move- say, a dollar- in the price per share becomes a larger part of the value overall of the position. The absolute value percentage return for that one-unit move increases relative to that of the return for that unit move when the stock had a higher price per share. This is just math, but it matters because of its effect on the shares' liquidity. Transaction and other market impact costs are generally not only fixed or not highly correlated to the share price change, but also are mostly fixed per share, rather than per transaction. As a proportion of a given position size, they actually increase as share prices decrease and the number of shares required for a given position size increases.

This tends to put upward pressure on market impact costs, attenuating liquidity, and increasing volatility, therefore lowering the likelihood that the marginal long-term holder will continue to be willing to stay in the stock, and so adding to potential selling pressure. Share ownership becomes re-distributed to more speculative, or potentially 'weaker', hands, and so on. Finally, share-price limit rules at many institutions and stock exchanges, and margin-lending rules related to share prices create additional selling pressure, while reducing the number of potential new investors and available investment capital as those price limits are broached.

The return asymmetry feeds itself in other ways, as well. As the security at the bottom of the balance sheet, common stock represents not only permanent capital, but also the most sensitive, continuously-priced, and ubiquitous indicator of a company’s fortunes. A rapidly declining stock price can very quickly not just distract management but also begin to limit their ability to accomplish financial and strategic operating objectives, creating a vicious downward spiral of cause and effect which can easily threaten the company’s existence as a going concern.

The plus-tick rule provides a reasonable single-factor counter-balance to these effects. By forcing the short seller to sit on the offer and wait for execution, it adds liquidity to the system. Because under the rule short sellers are forced to be passive, it holds back supply when bids are disappearing, thus acting as a circuit breaker when market action, or the action in an individual stock, becomes so frenetic that there is no time for information to be well-disseminated so that cooler heads may prevail.

Even the freest of markets need good regulations, just as free societies need good laws. We need to be free to make choices, and this includes the ability to make the choices- in the world of finance, that mean we need the functioning and discriminate markets without which no choice is possible. Markets require capital, and capital requires a level playing field. The last 12 months have shown us what happens when capital decides it's not worth it to be engaged in the markets. Money market levels are at all-time highs, as growth capital has been restricted from use by the enterprises that require it.

Reinstating the rule will also help alleviate problems for which more direct remedies will take some time to implement. One is that the existence of the rule tends to pre-empt certain manipulative forms of behavior entirely, reducing the enforcement burden on regulators.

Another is the fact that the absence of the rule tends to amplify the volatility-inducing tendencies inherent in legitimate market practices involving basket execution. The reinstatement of the rule will in particular address influences unique to today's market that exacerbate those imbalances. It will have more relative power today, even, than it might at another time.

Since the rule was eliminated, the number of products and AUM of ETFs has exploded higher. ETF sponsors, of course, are only responding to demand, and the asset-based fees they charge directly are generally lower than those charged by active managers. However, the execution practices of the ETF sponsors are subject to issues present whenever groups of securities are executed simultaneously and with formulaic relationships to other members of the group, as in baskets, but without the tempering influence of the desire to profit by achieving an execution superior to the execution which occurs later when the group position is unwound.

A ubiquitous conclusion has been that the diversification of positions within the basket, and the resultant variety of individual trade outcomes will lead to the *apparent* experience that some trades will be executed really well, and others not so well, and that the overall effect will be that the average execution level will be pretty good. This theory reduces the concern facing those trying to figure out whether the best price obtainable was achieved when they are working a single order, rather than a basket.

I refer to the "apparent experience" of best execution because there is a glaring problem with the measurement of 'best execution' as it applies to buy and sell orders in securities. This problem is shared with all kinds of scientific measurements needing an effective 'control' group for accurate measurement.

The basic measurement tool of best execution is called the Volume-Weighted Average Price, or something derived from it, which kind of means what it says. If you are a big part of the volume, the price you get is going to materially affect the benchmark by which your skill in execution will be judged. In this way, when your order is big enough to affect the market, “best execution” is kind of up to you- and whomever you can convince to be the other side of your trade. As with any transaction, and with all other things being equal, if your size is large relative to the overall market you might be expected to get a better price if you can be patient, and remain relatively anonymous. However, there is no real way to determine that- the price you get is the price available for your size at the time, and if you are a large part of the volume, the VWAP- your standard of measurement- will simply reflect that truth.

In other words, it is impossible to derive the ‘best execution’ level for a given trade when the trade itself influences what that level might be. This is a common problem found in many fields of science- how to observe the behavior of what you study without affecting the way it works. It follows that it is exceptionally difficult, and eventually impossible, to compare yourself with absolute accuracy against a market in which you are a large player.

Unfortunately, this is a fundamental and intractable problem. With no simple way to resolve the issue, the best-effort solution is what remains. The original defect still exists, lurking in the background, however, and relatively large orders have so much of an effect on the VWAP calculation that the original argument for making the calculation at all becomes less relevant for that big order.

The active manager or trader trying to make money on the trade itself has a natural limit on the overall price he or she will be willing to pay or receive for the basket, where the facilitator may not be so constrained. In each case, the emphasis on getting the best execution can shift from the individual position level to the basket itself.

While the original self-fulfilling flaw remains even at this basket level of focus, another problem arises at the individual-security level. As long as the overall basket price remains within range, the price variance acceptable at the individual security level gets larger as more positions are executed.

Index strategies are passive, and index weightings are generally fixed over long periods of time. A central tenet of capitalism suggests that individual enterprises should be rewarded with valuations which validate differences in their success levels. Given the fixed relationship between prices of individual securities in index world alone, it would seem to follow that investment flows outside of those made via indices would determine the rewards for the performance of individual enterprises.

However, index quantitative strategies proved out pretty well for a long time, so they have attracted lots of capital. Further, the success of broader index investing spawned lots more index investing, and in turn, index-based ETF’s, and now levered index-based ETF’s. If a 3x index ETF is purchased using Regulation T margin leverage, 6x the number of underlying shares of stock are affected as would be in an unlevered purchase. The result of all of this is increasing correlations between individual securities, and a weakening of the link between individual performance and individual reward for that performance.

In this way 10a-1, a regulation lifted in the name of promoting free market ideals, was, I believe, actually more effective in doing so when applied than after it was removed.

This letter is based on information I believe to be accurate and current. Any mistakes or inaccuracies are mine and unintentional.

I believe very strongly that the plus-tick rule is an integral part of well-functioning capital markets. It provides a balancing force, a counterweight, to factors that might otherwise grow to permanently impair the effectiveness of our capital markets. In the over 70 years it was in place, it did not keep the stocks of unsuccessful companies up, nor did it protect against large fluctuations in market valuations. When and if it is reinstated, markets will still go down, and up. The ability to profit by correctly taking a negative view of a company's, or the market's, prospects by shorting securities, will not only remain, but be improved as investors again discriminate between individual companies. The rule is simply one extremely important tool, similar to regulating the extension of credit or the dissemination of material non-public information, which should be wielded for the greater good of healthy capital markets.

Thank you very much for your consideration.

Sincerely,

William Furber
High Street Advisors, L.P.