September 26, 2009

To: Securities and Exchange Commission

From: Alan H. Martin

Re: Short Selling Proposals

Dear SEC,

This letter is in response to the recent request for comments regarding recently proposed short sale regulations. I have been an active trader for many years in equity securities, options, and commodities. In some years, I have traded very large volumes of shares in NYSE and NASDAQ listed common stocks. **For reasons set forth below, I believe there should be no uptick rule of any kind. If there is, the Commission should limit it to a "circuit-breaker" approach that will only take effect when there has been a material decline in a security.**

Historically, the up-tick rule may have played a small role in limiting market participants from executing a bear raid on a listed stock. After decimalization, the uptick rule had less of an impact as it became much easier to create an uptick, which would activate the short sale transaction. Furthermore, the increased trading conducted by the electronic communication networks (ECN) created a newly fragmented marketplace which also diminished the impact of any uptick rule. The further impact from the implementation of Regulation NMS further limited any potential impact from the uptick rule.

As the Commission is aware, the uptick rule was rescinded in recent years. First there was a pilot period where certain securities were traded without any uptick rule. This pilot was expanded over time and the SEC conducted a study of securities trading during the pilot. The Commission's study concluded that the removal of the uptick rule did not increase the volatility in the exempted securities and they saw no evidence of increased manipulation when compared to the other stocks still subject to the rule.

The SEC eventually completely removed the uptick rule for all securities. Stocks continued to trade in an orderly manner following the full repeal of the uptick rule. Sometime in 2008 our financial markets experienced a market crisis unlike any other since at least the Great Depression. Considering the magnitude of the crisis and the incredible volatility that ensued, the trading markets performed incredibly well. The sharp declines in many financial stocks were not precipitated by the lack of an uptick rule, but rather by the very real precarious financial conditions these firms faced. Any exaggerated selling in financial stocks was much more likely predicated upon the massive derivative positions in the unlisted credit default swap market and the effect these positions had on counterparty risk assessments.

Regardless, the SEC and other market centers choose to restrict short selling in hopes that unhindered short selling was the problem. The short selling ban was completely ineffective. In fact, after the ban, securities continued to fall day after day after day. In today's complex markets there are many different ways to short stocks without selling the equity short. There are option contracts as well as swap arrangements that can essentially do the same thing. There are also futures contracts that can be used.

I think the SEC should not re-institute the uptick rule in any form. However, if they insist on it, then the circuit breaker approach is far more logical and appropriate. If the desire is to prevent a bear raid on a security, then the circuit breaker should work fine, assuming there is any validity to the uptick rule to begin with. They could also consider linking any circuit breaker to the current program trading circuit breakers already in place. In today's highly liquid and connected markets, there is no reason to have an uptick rule, especially on highly liquid securities. Remember, markets are now global in nature and any restriction here, (ineffective though it may be) will only encourage competing markets in London or elsewhere to facilitate the short sellers.

Aside from my belief that the uptick rule should not be re-implemented, the Commission should be applauded in their continuing mission to eliminate other short sale abuses that apparently were prevalent. Eliminating these "naked" short sales is far more important and effective than any uptick rule would be.

Sincerely,

Alan H. Martin