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VIA EMAIL AND U.S. MAIL

November 4, 2009

The Honorable Mary L. Schapiro
Chairman
Securities and Exchange Commission
100 F. Street, NE
Washington, DC 20549-1090

Dear Chairman Schapiro,

Overstock.com is disappointed that the SEC allowed only one issuer representative to speak in favor of the pre-borrow requirement at the September 30 roundtable. Overstock.com is not alone in that view. Senators Kaufman, Tester, Isakson and Specter sent the enclosed October 14 letter to their Senate colleagues that in part criticizes what they termed as the “stacked” panelists of the pre-borrow roundtable.

Despite incremental steps taken by the SEC, academics, issuers, and Congressional leaders believe that naked short selling *continues* at unconscionable levels, poses a threat to an orderly market recovery, and remains a tool for certain malefactors to thwart the long-term viability of U.S. companies. Proponents of a pre-borrow requirement point out that massive amounts of failures-to-deliver contributed to the disorderly demise Lehman Brothers and Bear Stearns and the resulting shock to global markets in 2008 and note that while the current levels of failures-to-deliver have decreased, nothing prevents them from recurring in the future¹.

As detailed in the enclosed October 15 *Rolling Stone* article “Wall Street’s Naked Swindle” by the magazine’s political reporter Matt Taibbi and the Editor’s Note “Taibbi vs. Wall Street,” the illicit practice of naked short selling contributed to the disorderly demise of two venerable investment banks. Mr. Taibbi is just the latest journalist to report that naked short selling facilitates clear, massive stock manipulation that could be eliminated by requiring the pre-borrowing of shares before execution of a short sale. Mr. Taibbi’s article presents serious evidence. It also represents mainstream views of the markets.

Given the fragile state of the economic recovery, as the federal agency charged with maintaining investor protection and confidence, the SEC must address the issue of naked short selling as a prophylactic against another market crisis. Overstock.com believes that it would be a dereliction

¹ See, for example the study entitled “The Impact of a Pre-Borrow Requirement for Short Sales on Failures-to-Deliver and Market Liquidity” by Drs. Robert J. Shapiro and Nam D. Pham which Overstock.com has previously provided to the SEC at <http://www.sec.gov/comments/s7-08-09/s70809-2850.pdf>.

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of duty for the SEC to continue to ignore deep investor suspicions that major market participants are flagrantly engaged in abusive market manipulation.

Given the demands for the SEC to act now on improving short selling controls, Overstock.com, as well as Senator Kaufman and others, believe that the SEC should, at the very least, pursue a pilot program to test the real world effectiveness and market impact of a pre-borrow requirement. Overstock.com continues to believe that only a pre-borrow requirement will effectively stop the illegal and wealth-destruction effects of abusive naked short selling and prevent its future reappearance. The markets, and all publicly traded companies and their shareholders, expect and deserve this protection from the SEC.

As mentioned in a previous comment letter², Overstock.com believes that from the SEC's standpoint a pilot program should be an ideal compromise: not only does it appease a steadfast Congress and issuer base calling for immediate action, but it fulfills the securities industry and some of your staff's demand for empirical data. A well administered pilot program should be an easy the first necessary step for the SEC to take towards effecting a truly informed, comprehensive rule-making on naked short selling.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Jonathan E. Johnson III". The signature is written in a cursive style with a large, looped initial 'J'.

Jonathan E. Johnson III
President

Enclosures

cc: The Honorable Luis A. Aguilar, Securities and Exchange Commission
The Honorable Kathleen L. Casey, Securities and Exchange Commission
The Honorable Troy A. Paredes, Securities and Exchange Commission
The Honorable Elisse B. Walter, Securities and Exchange Commission

² See <http://sec.gov/comments/s7-08-09/s70809-4703.pdf>. This letter also includes proposed elements of a pre-borrow program.

October 14, 2009

**Please Cosponsor S. 605 to Help Send a Strong Message to the
Securities and Exchange Commission to Stop
Abusive 'Naked Short Selling'**

Dear Colleague:

We are writing to urge you to join as a cosponsor of S. 605 to send a strong signal to the Securities and Exchange Commission (SEC) that it should act decisively and immediately to end the kind of "naked short selling" that helped send our nation's financial markets into a tailspin last year.

Among the recklessness that led to the financial meltdown of 2008 were decisions by banks and investment banks to use excessive leverage to buy up what turned out to be toxic sub-prime pools of mortgages. The results for the nation were disastrous. But as Bloomberg reported last March ("Naked Short Sales Hint Fraud in Bringing Down Lehman," Bloomberg, March 19, 2009), and even a recent Rolling Stone article describes in intense detail ("Wall Street's Naked Swindle," Rolling Stone, Oct. 15, 2009), it was "bear raiders" who used "naked short selling" to drive down the price and ruin the stocks of Bear Stearns and Lehman Brothers in their final days, providing the last straw that crushed our financial system.

Five months ago, we introduced S. 605, a bill urging the Securities and Exchange Commission to reinstate the substance of the prior "uptick" rule and to require those who engage in short selling of stocks first to obtain a contractual "hard locate" of specified shares of stock.

Today, more than a year after the financial collapse, the SEC still has yet to reinstate some form of the "uptick rule" or adopt strong enforceable rules that finally would end manipulative short selling in a bear market. In the words of Dow Jones Market Watch, "***More than a year after short-sellers allegedly sucked the broader market lower by concentrating negative bets in troubled financial firms, the nation's securities regulators appear to be backing off curbing the practice.***" ("SEC Loses Taste for Short Selling Fight," MarketWatch, Sept. 30, 2009).

Last week, instead of taking action, the SEC held a roundtable stacked with industry panelists on the need for a pre-borrow or "hard locate" requirement to end naked short selling. So far, the SEC has given the impression that it will do neither. In the words of Forbes magazine, "***We have become a nation that ponders everything without resolution.***" ("At the Head of the Roundtable," Forbes, Oct. 2, 2009).

The price of inaction is that our TARP banks and other stocks remain vulnerable to bear raids and naked short selling. The SEC's current rules leave its Enforcement Division unable to stop manipulative short selling; it has yet to bring a single case against those involved with the naked short selling debacle of last year. This is unacceptable.

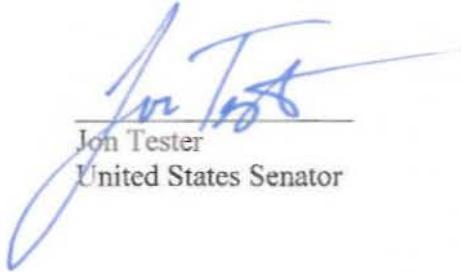
U.S. credit and equity markets should be a crown jewel. Only a year ago, we suffered a credit market debacle that led to devastating consequences for millions of Americans. We must put an end to known abusive financial practices in other markets, including equities, before new problems arise. It is essential to ensure the integrity of U.S. capital markets.

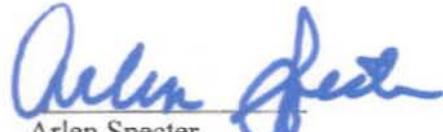
If you wish to cosponsor S. 605, please contact Jeff Connaughton with Senator Kaufman (x44216) or Chris Cook with Senator Isakson (x43643).

Sincerely,


Edward E. Kaufman
United States Senator


Johnny Isakson
United States Senator


Jon Tester
United States Senator


Arlen Specter
United States Senator

Attachments

- (1) S. 605
- (2) Press Articles Mentioned Above

Copyrighted material redacted. Author cites Matt Taibbi, " Wall Street's Naked Swindle," Rolling Stone, October 15, 2009.