Comment to SEC on reinstatement of the uptick rule

I have written many editorials on the desperate need to reinstate the uptick rule. They focused on the obvious damage done to the equity markets in general and to specific securities, since the original rule was repealed in July 2007. Many included specific price-volume data that supported this belief (such as Bear Sterns and Lehman Bros stocks trading 3-4 times their entire floats in their final 4 days ending in collapse). I would be happy to supply you with copies of these if you would like. I agree most strongly with the statement of your Director of SEC Division of Trading and Markets, Eric Sirri, when he said of market action since the July, 2007 uptick rule repeal, "we have seen market conditions and events that differ sharply from those of previous years."

In reference to your most recent proposal (alternative uptick rule), I have some specific concerns.

1) The new uptick rule should use a tick test based on THE LAST SALE, not the "CURRENT NATIONAL BEST BID". In today's fragmented electronic markets with dozens of separate platforms and untold secretive "dark pools", best bid is difficult to establish with any certainty. Moreover, in a severely declining stock (or market in general), when the uptick rule is needed most, a "nervous bid" can easily be intimidated to cancel by a large short offering up 1 cent. This, in aggregate, could result in a precipitous decline in the bids of a particular security without a material sale taking place as the shorts "follow down" successively lower bids. This would result in unsettling gap sales sending shivers through already reluctant buyers and making chart patterns look weaker than otherwise.

   The reason that the "last sale" is a better tick test is that, even dark pools, print a sale as soon as it happens and once it hits the tape, it can't fade until a subsequent sale takes place. This makes for a more reliable tick that is both easier to understand and easier to police. You might respond that the stock will go down anyway, but that is not the point. The rule is not supposed to either prevent a stock from going down or eliminate short selling. It's function is to slow down the process giving both buyers and sellers a little more time to evaluate their decision (time is a rare commodity in today's electronic markets).

2) CIRCUIT BREAKERS are not a good solution. They are difficult to understand, difficult to police and inherently unfair since all stocks trade differently. A 5% or 10% decline in one stock might not be a big deal, while, in another stock, it could be devastating. Making circuit breakers fair and equitable would require cumbersome and time-consuming analysis of price-volume action. More importantly, in the heat of battle, they would create confusion

among investors, putting some at severe disadvantage. Circuit breakers are needlessly complicated and unnecessary. The beauty of the original rule was its simplicity and fairness.

3) "Market-wide and permanent basis" is the best single phrase you used in your memo to describe the different versions you are considering. By using the last sale as tick test and making it market-wide and permanent you are creating a simple, easy to understand and easy to police rule that is inherently fair and equitable to all investors making circuit breakers in individual stocks unnecessary and irrelevant.

4) EXCEPTIONS to the rule are a problem. I realize that modern markets with many different platforms, procedures and inter-related derivatives, create many options for "deserving exceptions." However, "short exempt" in its most universal sense refers to a short order that is imminently "deliverable" as would be the case when the seller holds convertible bonds in the particular security. You put forward many cloudy exceptions that sound problematic to me. For example, "transactions on a VWAP basis" makes no sense. Most institutional orders are VWAP orders. If you mean that the final average price given to the customer is irrelevant to the tick, then that's obvious and OK. If, however, you mean each individual transaction within the order is exempt, then that is totally inappropriate. You also throw out the option of having market makers and option market makers exempt. This makes no sense. As a specialist on the NYSE I was not exempt from the uptick rule and I believe that was appropriate. Once again, the more exceptions you include, the more confusion and unfairness you invite. You have a better view of the problems of coordinating today's complex and diverse markets than I do, but I feel strongly that "short exempt", as much as possible, should identify a **deliverable sale, not privileged market participant.**

5) IN SUMMARY, it is crucial that you reinstate the uptick rule. It is needed desperately. The evidence is overwhelming. It needs to be market-wide and permanent. It also needs to be based on the last sale, not the best bid. Circuit breakers in individual stocks are unnecessary, complicated, confusing and inherently unfair. Finally, exceptions need to be kept to a minimum. I believe these suggestions would result in a rule that is fair, simple, easy to understand, able to be policed and, most importantly, would restore a sense of confidence in our public perception of our markets. Not only do our bruised and battered investors need that, but I believe that, in the end, is your mandate. Thanks in advance for the time you have spent considering my opinions.