Restoring Market Confidence and Securing America Requires More Than Reinstating an Up Tick Rule

Our Country's wealth and future prosperity are under attack by the uncontrolled evolution of our own financial systems. Recent economic events involving greed, new technology and a lack of self regulation by financial markets both domestic and foreign have stolen much of the wealth of America and have put America at risk. We need to restore market order by eliminating the consumer fraud and the counterfeiting of corporate stock associated with short selling.

To fix the financial meltdown, we need to change the market psychology so that it aligns with our overall objectives for capital growth… not its destruction. We must quit listening to the players in the financial industry who have a conflict of interest and now "*do what is right"*. We need to permanently halt the short selling of corporate stock as it rewards the destruction of corporations and the jobs they provide by parties with no investment at risk in the company.

Restoring Confidence in the stock market for long term investors can only be accomplished by eliminating short selling.

A reinstatement of an up tick rule is not a solution to prevent similar future events with new technology now available to short sellers. New technology has made the market a casino with the odds overwhelming favoring short selling in economic downturns. It is evident technology improvements providing market simulations and instantaneous trades, new forms of communication and the expansion of hedge funds and private money managers allow the quick assembling of capital by opportunists to timely short the market and increase the velocity of a market freefall. (The new vogue in a down turn is to short stocks, for example, The Paulson Fund had an estimated $18 Billion under management in 2007 and grew it to an estimated $36 Billion in 2008 to capitalize on short selling in the real estate finance sector). In just weeks, the rapid piling on by short sellers in aggregate has needlessly wiped out more than a generation of investment. The result is a catastrophe for our financial system and a cost to our society the magnitude of which we do not know.

If we want to get control of our economy we need to get control of equity markets and restore confidence so investments can be made without fear of raiders attacking and stealing long term capital being invested. Specifically we need to change the recent market psychology that it is acceptable to profit by destroying the constructive efforts of others. Short sellers are obstructionists with no money at risk in the company to make it grow. Their sole objective is to squeeze a profit out of businesses owned by others without investing in them. Instead of identifying problems an industry might have and working in an orderly manner to fix them; they raid the company's equity by artificially increasing the supply of the company's stock, instilling fear and pushing down the value of a stressed industry, profiting as they do so. The further down they can push the value of a company the more they profit. They seek to profit where they have not made any productive investment.

We need to take away incentive for those who have not worked, invested or taken risk in an entity from profiting by tearing that entity down through short selling. As there is no law allowing or entitling a right to "short sell", we can accomplish this by simply passing a law to ban the short selling of equities or by taxing 100% of any profit made by short sellers.

Why do we continue patronizing parties whose activities are costing taxpayers billions and billions of dollars on top of the enormous losses to investors and our economy? Short selling is in conflict with of our Government's objectives.   Problems that arise in a business sector can be resolved without outside parties (short sellers) raiding them, striping them of their equity and forcing insolvency.

Is short selling a stock a legal activity or a disguise for counterfeiting and consumer fraud?

When a company can make Billions of Dollars in one year selling stock of companies they don't own; it makes you ask if it was done legally. Is short selling legal or is it an accepted wrongful practice that just hasn't been enforced and it is assumed to be legal? Is it right for funds in aggregate to amass some $300Billion to $1trillion to use to drive the price of companies stocks down and profit like this by adding shares to the marketplace and have nothing invested in those companies? Is the borrowing of shares just smoke and mirrors for what is really counterfeiting the corporate currency (stock)?   Is it or should it be legal to counterfeit a corporation's currency, some which have more capital and do more commerce than many nations? Remember country's have laws to prevent counterfeiting the currency of any nation because in doing so would make that currency worthless.

Most short selling involves fraud and counterfeiting.

Counterfeiting: Definition according to Webster's Collegiate Dictionary*; "That which is made in* ***imitation*** *of something, with a view to* ***deceive****".*

Short sellers **imitate** actual stock owners as sellers of stock and **deceive** the marketplace by selling shares that would not be sold by rightful owners at that time; thereby **artificially** increasing the supply of stock available for sale. Short sellers do not have any financial risk in a company with respect to the shares they sell. They are making the marketplace believe that more partial owners of a company want to liquidate their positions than actually do. This imbalance and timely manipulation pushes the stock price down and they benefit at the expense of real shareholders. (Naked shorts outright counterfeit new unauthorized shares and sell them).

Shares of corporate stock are ownership interests in a company. While certain rights of ownership can be rented or loaned to others, the actual transfer of ownership/title would require a sale, not a loan. Shares that are borrowed might be used as collateral but not sold without title being transferred to the buyer. Any future buyer of those shares would not have clear title to them as there would now be two parities claiming such an ownership position. Short sellers are borrowing shares and selling certain rights they do not own, the title, the full right of ownership the shares represent. As short sellers are actually selling title to shares, to another party without owning them, they are counterfeiting shares.

The basic economic laws of supply and demand clearly demonstrate the aggregate effect of short selling. By increasing the supply of anything with the same demand you will lower the equilibrium market price and reduce aggregate value. In simple terms the price goes down.

Fraud: It is common practice for Mutual Funds and Pension Funds to loan shares of stock for shorting but perhaps this is not a legal practice--- Pension funds and Mutual fund companies/managers are defrauding consumers when they loan shares for short selling.

The pensions and brokerage firms sponsoring the funds/managers have solicited consumers to be shareholders; to manage their money with the expectation of protecting shareholder investments and seeking positive returns. As a result of managing entities loaning fund shares to shorts sellers and receiving transaction fees or other benefits from such transactions there is a conflict of interest.

Consumers/investors have been deceived by fund managers when shares are loaned to others who will short sell them. The managers are breaching their fiduciary responsibility to the share holders of the funds knowing the intent of short sellers (successful or not) is to return them at a lower value with the managing firm getting some benefits either way in the form of trading fees or other goodwill from the short sellers. While share holders may have protection on the up side when shares are loaned, share holders are fully exposed to total loss on the down side as those shares can not be sold by the fund until returned by the short seller.

The managing firms of these funds justify the loaning of shares saying they have title for the shares in their name because they executed the transaction for the shareholders of the funds in their name. But in reality they are an agent and not legally at financial risk for those shares; that risk is with the shareholders of the fund, the shareholders whose money was used to buy those shares. The shareholders of the fund are the recipients of the gains and losses for the stock until sold, they are the owners.

In the recent market freefall, shareholders in funds that loaned shares lost the majority of their equity as the loaned shares could not be sold by the fund until returned by short sellers. When returned many companies had been driven to insolvency with little or no value left for share holders. The managers, the brokerages and the short sellers won at the expense of the consumer who was deceived and lost most of their money.

Many other shares are held by brokerages with title in the name of the broker as a convenience for individual clients of broker accounts or trust accounts. Again the brokerages are really agents for clients, ***the rightful owners are those at financial risk and not those in title***. The brokerages should not be able to loan out these shares for any reason without written approval of the rightful owners.

For the very reason we have copyright, patent and counterfeiting laws to protect those who have investments at risk from those who seek to reap where they did not sow, we need a new law banning short selling stocks. The law would be consistent with other laws we support to protect the property rights of company's owners and to maintain an orderly market for stock. Further the law should make certain that these managers and brokerages can't add new language to their prospectus allowing them to claim ownership of these shares unless they take all financial risk for any loss incurred.

We may have been lucky this time but left in place shorting stocks risks the future of Capitalism and wealth of our Country.

The current events clearly show short selling is now more intense, a danger to the marketplace and how shorts sellers in aggregate can quickly assemble large sums of money and put our money system at risk; creating a security threat to our Country. The greed of short sellers and the objectives of government are in conflict, world governments have invested trillions of dollars to stabilize financial institutions and other industries only to have short sellers short the very companies they are trying to stabilize.

According to a Reuters story on short selling dated March 24, 2009, short interest on stocks in the NYSE increased by 10.8% since February 10, 2009, and almost One Billion shares of Citi Bank were shorted, a 392% increase bringing the stock price down as the Government invested tens of Billions of Dollars to prop it up. That's a lot of shares and one should question whether that many investors with real financial risk would have loaned these shares to short sellers verses just selling them. Only institutional managers of mutual and pension funds could assemble these large quantities of shares in such a short time period by drawing them from managed funds. Again greed is in play as the institutions are not at financial risk for the shares loaned and are in conflict with their fiduciary duty to fund shareholders, for their own benefit.

In summary**,** the residual effects of short selling stock are wrong, perhaps illegal and now are a threat to our Country. Short selling is counterfeiting a corporation's currency, its stock. With the help of new technology, new methods to communicate, and day trading, the aggregate result of short selling in this economic down turn has been the transfer of enormous wealth "earned" over many generations to a group of "corporate raiders" likely from all over the world in a period of only a few months. For National Security short selling needs to be stopped immediately to protect capitalism from enemies who could orchestrate a plan to use this newly discovered model of financial terror to bring capitalism as we know it to an end.

Back to the Basics…..

The market system for trading ownership interests of companies should be returned to the <u>productive</u> use for which it originated; capital formation through investment, to create <u>jobs</u> that will provide necessary goods and services to people through the world; and a market place for the buying and selling of fractional interests in companies. A true marketplace provides access to enough ready willing and able buyers to provide liquidity for fractional shares of the company's stock at any point in time at a price determined by the supply of and demand for the company's stock. (Simple economics, where the demand curve crosses the supply curve). We have that without short sellers.