United States Senate
WASHINGTON, DC 20510

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,

Ted Kaufman

Edward E. Kaufman
United States Senator

Johnny Isakson
United States Senator

Jon Tester

Jon Tester
United States Senator

Arlen Specter

Arlen Specter
United States Senator

Attachments

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

111TH CONGRESS
1ST SESSION

S. 605

To require the Securities and Exchange Commission to reinstate the uptick rule and effectively regulate abusive short selling activities.

IN THE SENATE OF THE UNITED STATES

MARCH 16, 2009

Mr. KAUFMAN (for himself, Mr. ISAKSON, and Mr. TESTER) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

---

A BILL

To require the Securities and Exchange Commission to reinstate the uptick rule and effectively regulate abusive short selling activities.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REINSTATEMENT REQUIRED.

Not later than 60 days after the date of enactment of this Act, the Securities and Exchange Commission (in this Act referred to as the "Commission") shall—

(1) reinstate the substance of that portion of the regulations in effect on July 5, 2007, that prohibited short sales not effected on a plus tick;

(2) rescind rule 201 of regulation SHO, at section 242.201 of title 17, Code of Federal Regulations, as in effect on the date of enactment of this Act;

(3) require trades by short sellers of securities to yield priority and preference to transactions effected by long sellers of securities;

(4) with the concurrence of the Secretary of the Treasury and the Chairman of the Board of Governors of the Federal Reserve System, prohibit short sales of the securities of any financial institution, unless that trade is effected at a price (in minimum lots, as specified by the Commission) that is at least 5¢ higher than the immediately preceding transaction in such securities;

(5) adopt such rules and regulations, consistent with paragraphs (1) through (4), as necessary to prohibit any person from engaging in any conduct that artificially would create a plus tick or satisfy the price requirements set forth in the short sales regulations of the Commission; and

(6) take such other actions as may be necessary or appropriate to make the regulation of short sales by the Commission consistent with the requirements of this Act.

SEC. 2. MANDATORY SETTLEMENT PREPAREDNESS REQUIREMENT.

Not later than 60 days after the date of enactment of this Act, the Commission shall issue regulations prohibiting any person from selling securities short, unless that person demonstrates, at the time of the sale, that such person possesses, at the time of the sale, a demonstrable, legally enforceable right to deliver the securities at the required delivery date.

SEC. 3. MANDATORY SETTLEMENT TIMES FOR SHORT SALES.

Not later than 60 days after the date of enactment of this Act, the Commission shall issue regulations to require that all short sales settle on the same time frame employed for long sales of the same securities.

○