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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

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January 20, 2009

The Honorable Gary Ackerman
U.S. House of Representatives
2243 Rayburn House Office Building
Washington, DC 20515-3203

Dear Representative Ackerman:

In the cauldron of the market crisis last fall, you wrote to recommend reinstatement of the "uptick rule" to regulate short selling in the financial markets. As I prepare to leave the SEC, I wanted to report to you where this issue stands with the Commission and the agency's professional staff, as well as to share my own views.

Even before you wrote, I had asked the Division of Trading and Markets and the Office of Economic Analysis to re-evaluate the recommendation they made to the Commission in the summer of 2007 that led to the repeal of the uptick rule, formally known as Rule 10a-1, which was originally adopted in 1938. These offices did so, and reported that on the basis of updated analysis they stood by their recommendation. TM and OEA also explained why, for operational reasons, it would be impossible simply to "reinstate" the uptick rule, and difficult to introduce a revised rule that accounts for those operational issues. A summary of key portions of their analysis is set forth in the two memoranda enclosed herewith.

In light of these recommendations, I have been interested in proposing an updated "uptick rule" with a higher increment than one penny. I believe the Commission's understanding of the complex variables of this issue would be improved by the public comment that such a proposal would generate, after which the issue could be reconsidered. However, as you know, the SEC is a Commission of five members. Throughout 2008 there was not a majority interested in re-considering the 2007 decision to repeal the uptick rule, or in proposing some modernized variant of it.

As an alternative approach, therefore, I worked closely for several months in the latter part of 2008 with the leadership of NYSE Euronext and NASDAQ on various proposals for exchange rules, harmonized across exchanges, that would establish an updated uptick rule. Such a rule might, for example, restrict the limit price at which a short sale order may be entered, by providing that a short sale order could only be entered at a specified price increment above the National Best Bid price at the time of order arrival.

Such a rule would in some ways be more restrictive than the old-style uptick rule that was based on execution price. (For example, it would prevent short-sellers from getting trades

executed immediately at the ask price, and it would prevent short-sellers from submitting market orders that would be executable at the next available opportunity.) However, it would allow a short sale order to be executed if the market rises after the order is submitted.

To date there is no agreement among the exchanges on the acceptability of this or any particular proposal for a modernized uptick rule. In addition, NASDAQ and BATS have informed the Commission of their opposition to either the old or a reconfigured uptick rule as a general matter.

Despite the difficulty in finding common ground among the Commissioners and the exchanges on this important issue, there is unanimity of opinion among the Commission and the SEC's professional staff that the stated aim of the rule -- to discourage manipulative conduct -- remains an important regulatory objective. It is our universally-held view that stock prices should fully reflect the best available information about the current and future prospects of the underlying companies, free of any manipulative bias. For my part, I sincerely hope that the Commission, in the year ahead, continues to reassess this issue in light of the extraordinary market events of the last several months, with a view to implementing a modernized version of the uptick rule.

I hope this update is helpful to you. Although I will no longer be Chairman, please feel free to contact the Office of Legislative and Intergovernmental Affairs with any recommendations or inquiries on this or other topics within the purview of the SEC.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Cox", with a stylized flourish at the end.

Christopher Cox
Chairman