BRAVO MARY SCHAPIRO – NOW KEEP UPTICK RULE SIMPLE

We commend the courage of the SEC and Mary Schapiro in reinstating some version of the Uptick Rule and resisting the intense pressure from Hedge Fund, ETF managers and other profession trading groups. Now, as we enter the 60-day comment period, it is essential that the SEC keeps its eye on the ball and conducts a "deliberative process to determine what is in the best interest of investors". IBD has repeatedly called for reinstatement of the rule on this page and following are some key highlights of our opinions.

Guns can kill people: While most gun owners, hunters and collectors are respectful and responsible about their weapons, the fact is that, in the wrong hands, guns can threaten public safety. As a result we need some sort of regulation but not an all-out ban. So it is with short sellers. We have often pointed out on this page that short selling has been an important part of our securities markets forever. In 1938, when our first SEC Chairman, Joseph P. Kennedy, Sr. enacted the Uptick Rule, he asserted that the public must be protected from the bear raids on individual securities that reeked such havoc on our securities markets from 1929-1933. The Market events of the past year have brought out similar comments.

Short sellers say they are being unfairly targeted; The Uptick does not "outlaw" short sellers; it only takes the assault rifle out of their hands. They say there is no "downtick" rule for buyers, but we don't need one precisely because short sellers exist. When stocks get overheated on the upside, the Uptick Rule has no effect, allowing short sellers to step in and sell as much as they want on the way up (assuming they can borrow the stock). It is a perfect marriage where shorts help to restore rational valuations and they can often profit handsomely and justifiably. Even in down markets, short sellers can operate since, even the weakest of stocks, have intermittent rallies that permit periodic sales on upticks. Ask any Specialist or other market maker who has watched the shorts follow a weak stock down, constantly offering at the nearest uptick, until a price is reached where buyers step in and "take out the shorts". Quite simply, the enlightened original rule allows shorts to function openly, but prevents them from driving an, already reeling stock, into default.

Mary Schapiro says she's not aware of any "empirical evidence" that the elimination of the Uptick Rule in 2007 contributed to recent "volatility "in US stock prices. We think there is: The examples of evidence are numerous and powerful. On July 6, 2007, the SEC repealed the Rule and, according to a study by the respected stock market research firm Brinyi Associates, the Volatility Index (VIX) spiked immediately from 13.25 to 23.55 and the absolute dollar value of the daily change in each stock in the S & P 500 increased to $1.77 from the previous level of $1.02. In addition, the VIX made an eye popping all-time high of 89.53 this past October 24, 2008 in the mist of our current financial crisis. Its average reading since inception (1993) is 19.04 and its prior high, of slightly less than 50, was set on September 20, 2001, just nine days and four trading sessions after the World Trade Center Attacks, a time of, arguably, unprecedented fear (the Uptick Rule was still in place).

There are so many other examples of evidence that point to the value of the original Uptick Rule in reducing volatility, fear and "loss of investor confidence". No one is saying that the devastating Bear Market of the past year was caused by the repeal of the Uptick Rule in 2007. Clearly the problems in our economy and markets were (and are) serious and pervasive. However, the fact is that the Dow set an all-time high of 14,164 three months after repeal and then proceeded to a 54%, basically uninterrupted, low of 6469.95 that was reached on Monday, March 9, the very day that Senators Barney Frank and Christopher Dodd announced that the Uptick Rule would likely be brought back by the SEC. The market then immediately staged a 20% rally to 8,075.73 last week on April 2 (which is being approached again at the time of this writing). Most pundits submit that short covering was a major contributor, but the fact is that investor sentiment has clearly turned (as have some economic indicators). Are all these things coincidence? Was it a coincidence, also, that Bear Sterns' stock traded 4.2 TIMES ITS ENTIRE SHARES OUTSTANDING during its final four days of trading while crashing from $61.58 to $2.84? Lehman Brothers suffered a similar fate. The devastating magnitude and speed of these declines made failure a certainty. Clearly, both firms had serious problems, but would they have been forced into default if the Uptick Rule had been in place? The debate will go on forever, but what can't be debated is the effect that both had on overall investor psychology and when it comes to the Stock Market, psychology outweighs everything else.

The SEC should keep the new Rule simple and equitable; The original rule functioned efficiently for 69 years, tempering market reactions to numerous economic calamities and political shocks. Its greatest asset was its simplicity and fairness. Some of the four proposals being considered now by the SEC involve banning shorting for a stock that is down 10%. That 10% decline if accompanied by well placed rumors (see Jon Stewart, Jim Cramer video on You Tube) could be enough to set off an avalanche of fear. Also, such a rule would create confusion and require difficult surveillance. The SEC should avoid such selective additions to the rule and keep it simple and easy to understand. That is in the "best interest of investors", the best way to heal market psychology and the best way to bring the Public back into our Public Markets.