

# **Kaufman Turns Up Heat on SEC to Curb Abusive Short Sales**

**Kaufman: "There is a fierce urgency to fix this problem now"**

June 25, 2009

WASHINGTON, D.C. - In a floor statement last night and letter to SEC Chair Mary Schapiro, Sen. Ted Kaufman (D-DE) outlined the ways abusive short selling exacerbated the recent financial crisis - especially with Bear Stearns and Lehman Bros. - and warned that, if it is not prohibited and effectively policed, it could cause substantial harm during another market decline.

"Let me be clear: The public believes and the SEC has yet to discount that the effects of abusive naked short selling practices helped cement the demise of Bear Stearns and Lehman Brothers, as well as made it significantly harder for banks to raise critical capital in the throes of the financial crisis," Sen. Kaufman said on the floor. "It is no exaggeration to say that abusive short selling at a critical moment further endangered our financial system and economy and thereby helped lead to taxpayer bailouts that have totaled hundreds of billions of dollars."

Sen. Kaufman urged that if this period of market rally slows, Bear Stearns and Lehman Bros. may not be the only victims of a market free of restrictions on abusive short selling.

"There is a fierce urgency to fix this problem now," Sen. Kaufman said. "If the markets or certain stocks fall back precipitously again, and if bear market raiders act again using abusive naked short selling practices to damage and possibly destroy the stocks of banks and other companies, the SEC will have a lot of explaining to do - unless we see responses from the agency in the near term."

Sen. Kaufman first notified the Securities and Exchange Commission (SEC) on March 3 that it should move to curb abusive short selling, followed by legislation, floor statements, and letters from Sen. Kaufman and several colleagues. After three months, Sen. Kaufman again joined his colleagues in reiterating the urgency of the situation.

Sen. Kaufman was joined in the letter to Chairman Schapiro by Sens. Johnny Isakson (R-GA), Jon Tester (D-MT), and Rep. Carolyn Maloney (D-NY), who co-chairs the Joint Economic Committee. The letter details why focusing on reinstatement of the uptick rule alone puts too narrow a frame on the problems associated with naked short selling.

"The problem at its root may be that the current rules against naked short selling are both inadequate and impossible to enforce," the senators said in the letter. "The

other half of the problem may be that the systems by which stocks currently are loaned and borrowed can and should be greatly improved, leading to greater efficiency and cost savings. ... A pre-borrow requirement would seem to address the problem at its most fundamental level and should be seriously and urgently considered by the SEC as it rethinks its regulations and enforcement approach in this area."

Recently, Sens. Carl Levin (D-MI), Charles Grassley (R-IA) and Arlen Specter (D-PA) - in connection with the release of a Government Accountability Office study analyzing recent SEC actions to curb naked short selling - also called for the SEC to consider imposing a strict pre-borrow requirement on short sales as the best way of ending abusive short selling.

In March, Sens. Kaufman, Isakson and Tester introduced bipartisan legislation that directs the SEC to write regulations within 60 days to end abusive short selling. While the SEC has outlined five options for reinstating some form of the uptick rule, the efficacy of a pre-borrow agreement has yet to be examined.