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Market's Dramatic Response to Naked Short Sale Restrictions
Underscores Need for Additional SEC Action

Last Tuesday, the SEC issued an emergency order barring naked short sales in the stocks of nineteen major financial firms in response to what it called a "substantial threat of sudden and excessive fluctuations of securities prices." Since the Commission's announcement, other issuers, including banks, facing significant short interests in their stocks, have questioned why they were excluded from the list. While the Commission's effort to respond to abusive and illegal short sale practices is notable, the market's reaction to the emergency order underscores the urgent need for a more comprehensive approach.

Under the emergency order, which took effect today, short sales in the selected securities are prohibited unless a seller borrows or enters into a "bona fide" agreement to borrow the shares prior to effecting the sale. By contrast, shares in other securities may be sold short if the seller has "reasonable grounds" to believe the securities can be borrowed in time to be delivered on the settlement date.

As an important first step toward protecting the markets, the Commission should take swift action to enforce its existing authority, by strictly looking for abuses of the "reasonable grounds" requirement. Additionally, the SEC should work quickly to expand the emergency order's reach to all publicly traded securities on an extended basis.

The SEC should also take additional measures to ensure the stability and integrity of the securities markets. We have continuously urged the Commission to heed market participants' calls to immediately re-impose the "Uptick Rule," and believe doing so is vital to any attempt to maintain investor confidence in the fairness of the markets and prevent "bear raids." The Commission must also promptly complete its ongoing investigations into abusive and manipulative short-selling and the spread of false rumors, bring enforcement actions against those who have engaged in such practices, and publicly report on the results of its investigation.

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