Senator from Mississippi (Mr. COCHRAN).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 61, nays 31, as follows:

[Rollcall Vote No. 107 Ex.]

YEAS—61

Akaka	Gillibrand	Mikulski
Baucus	Gregg	Nelson (FL)
Bayh	Hagan	Nelson (NE)
Begich	Harkin	Pryor
Bennet	Hatch	Reed
Bingaman	Inouye	Reid
Brown	Johnson	Rockefeller
Burris	Kaufman	Sanders
Byrd	Kerry	Schumer
Cantwell	Kohl	Shaheen
Cardin	Kyl	Snowe
Carper	Landrieu	Stabenow
Casey	Lautenberg	Tester
Coburn	Leahy	Udall (CO)
Collins	Levin	Udall (NM)
Conrad	Lieberman	Warner
Dodd	Lincoln	Webb
Dorgan	Lugar	Whitehouse
Durbin	McCaskill	Wyden
Feingold	Menendez	
Feinstein	Merkley	

NAYS—31

Alexander	DeMint	Risch
Barrasso	Enzi	Roberts
Bennett	Grassley	Sessions
Bond	Hutchison	Shelby
Brownback	Inhofe	Specter
Bunning	Isakson	Thune
Burr	Johanns	Vitter
Chambliss	Martinez	Voinovich
Corker	McCain	Wicker
Cornyn	McConnell	
Crapo	Murkowski	

NOT VOTING—7

Boxer	Graham	Murray
Cochran	Kennedy	
Ensign	Klobuchar	

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid upon the table.

The President will be immediately notified of the Senate's action.

Mr. McCAIN. The President nominated Elena Kagan, currently dean of Harvard Law School, for Solicitor-General of the United States. While I do not share many of Dean Kagan's views, I especially disagree with Dean Kagan on the constitutionality of the Solomon amendment.

In 2005, Dean Kagan and 53 other law school faculty members filed an amicus brief to declare the Solomon amendment unconstitutional. The Solomon amendment, named for former Congressman Jerry Solomon, alloys military recruiters to meet with students on college campuses and allows the Reserve Officers' Training Corps, ROTC, to train on college campuses. The Supreme Court found Dean Kagan's arguments to be unpersuasive and declared the Solomon Amendment to be constitutional. I believe the Supreme Court was absolutely correct in its decision.

It is my hope that as Solicitor General, Dean Kagan will not allow her personal viewpoint on this important issue to prohibit the implementation of the Solomon amendment and that our military recruiters continue to recruit the best and brightest at our Nation's colleges to serve in our military.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will resume legislative session.

The majority leader is recognized.

UNANIMOUS CONSENT REQUEST— H.R. 1586

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 1586, an act to impose an additional tax on bonuses received from certain TARP recipients, just received from the House and at the desk; that the Baucus-Grassley amendment, which is the text of S. 651, which was introduced today by Senators BAUCUS, GRASSLEY, and others, be considered and agreed to, the motions to reconsider be laid upon the table, the bill, as amended, be read three times, passed, and the motion to reconsider be laid on the table.

The PRESIDING OFFICER. Is there objection?

Mr. KYL. Mr. President, reserving the right to object, I don't believe Congress should rush to pass yet another piece of hastily crafted legislation in this very toxic atmosphere, at least without understanding the facts and the potential unintended consequences. Frankly, I think that is how we got into the current mess.

As the chairman of the Finance Committee said last week:

> Frankly it was such a rush—we're talking about the stimulus bill now—to get it passed, I didn't have time and other conferees didn't have time to address the provisions that were modified significantly.

I don't know what is in this legislation. Nobody else knows what is in this legislation. There have been no hearings. It seems to me the Banking Committee should have a hearing. The Finance Committee should have a hearing. Obviously, any tax legislation should be vetted through the Finance Committee. I am a member of that committee. We haven't had any meetings to talk about this. Other Senators need time to consider the bill and offer amendments through the regular order through the committee process. More importantly, because of the public interest, the public ought to have the right to review this legislation to make sure it doesn't have any additional loopholes or unintended consequences.

The Baucus bill, as I understand it, is retroactive, not something we ordinarily do with tax policy. It seems to me we ought to have these hearings before we let this legislation come to the body. Therefore, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. REID. Mr. President, before my friend leaves, I appreciate the statement of my friend from Arizona. At least he is willing to look at it and study it, and I appreciate that very much. The Republican leader in the House, of course, was opposed to it, so we are glad the Republican assistant leader, the Republican whip, as a member of the Finance Committee, will look at it. The bill has been filed on our side and, hopefully, we can work toward getting something done. I appreciate the statement of the Senator from Arizona.

I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. KAUFMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KAUFMAN. Mr. President, I ask unanimous consent to proceed as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

FAIRNESS OF FINANCIAL MARKETS

Mr. KAUFMAN. Mr. President, I wish to spend a few minutes talking about action that needs to be taken to restore the credibility of the fairness of the American financial markets.

On Monday, Senators ISAKSON, TESTER, and I introduced S. 605, which directs the Securities and Exchange Commission to write regulations that will deal effectively with abusive short selling.

One of the abusive techniques addressed in the bill is so-called ''naked short selling.'' Naked short selling is when traders sell shares they don't own and have no ability to deliver at the time of sale—which dilutes the value of a company's shares and can drive prices down artificially.

Before the ink on our bill was even dry, we received a profoundly disappointing report from the SEC's inspector general entitled ''Practices Related to Naked Short Selling Complaints and Referrals,'' a report detailing the results of an audit on the SEC Division of Enforcement's policies, procedures and practices for processing complaints about naked short selling.

An astounding 5,000 complaints about abusive short selling were sent to the SEC's Enforcement Division between January 1, 2007 and June 1, 2008. There could be no mistaking the scale of the potential problem that that number of complaints reflected. Incredibly, a mere 123 complaints were referred for further investigation. Worse, and I quote: ''none of the forwarded complaints resulted in enforcement actions . . .'' five thousand complaints, zero enforcement actions.

Not surprisingly, the SEC inspector general has concluded that the processes for dealing with such complaints need a fundamental overhaul.

Accordingly, the IG made 11 suggestions for improvements. And how did the Enforcement Division respond? It agreed to one of the IG's recommendations, and declined to move on the rest.

I have been around Washington and the Senate for 36 years, but rarely have

I seen an inspector general's call for action so summarily dismissed.

In its comments to the IG report, the SEC Enforcement Division stated:

there is hardly unanimity in the investment community or the financial media on either the prevalence, or the dangers, of "naked" short selling.

I ask my colleagues: Why would the SEC Enforcement Division want to wait until there is unanimity in the investment community and the financial media to enforce the law? Why would the SEC Enforcement Division in its comments to the IG report want to give a virtual "green light" to continued abusive naked short selling? That is an enforcement division that is not worthy of its name.

In the IG's response to the Enforcement Division, the IG notes that it is "disappointed" that the Enforcement Division only concurred with one of the 11 recommendations in the audit report. The IG is "particularly concerned" that the Enforcement Division did not concur in its first three recommendations—that the Division should develop a written in-depth triage analysis for naked short selling complaints.

Moreover, the IG notes:

SEC has repeatedly recognized that naked short selling can depress stock prices and have harmful effects on the market. In adopting a naked short selling antifraud rule, Rule 10b–21, in October 2008, the Commission stated, 'We have been concerned about "naked" short selling and, in particular, abusive 'naked' short selling, for some time.

Where does this leave us, Mr. President? We have an SEC that is ostensibly concerned about abusive naked short selling, but we have an enforcement division—after receiving literally thousands and thousands of complaints about naked short selling—that has brought no enforcement actions and doesn't take seriously an IG audit and recommendations.

This is an outrage.

I want to be clear, this was the record from a review of last year's examination of short selling complaints. This is an issue Mary Schapiro, the new SEC chair, has inherited. She just got to the SEC. But this is a strong indication of the need for real leadership at the SEC. Unless and until that happens, investors will have reason to worry that markets are not yet free of manipulation and abuse.

Of all the challenges confronting our financial system, none is more important than restoring investors' trust and confidence in the market—the belief that the game isn't rigged against them. After the disastrous and unprecedented losses of the past year, millions of Americans will refuse to put their resources back into the stock market until they believe the system is once again sound, fair and adequately overseen by the SEC.

In the not-so-distant past, a strategy of long-term buying-and-holding offered a roadmap for comfortable living in retirement and the ability to provide to our children and grandchildren that all-important economic head start in life.

Then, the market valued companies based on economic fundamentals and expected future profits.

Today, too many people view the stock markets as another gambling casino, dominated by volatility and susceptible to predatory short sellers who profit from false rumors and bear raids.

To restore faith in our securities markets, the Securities and Exchange Commission urgently needs to reflect a clear commitment to meaningful change.

It is time to restore the integrity, efficiency and fairness of our securities markets by preventing manipulative short selling, ensuring that the market fairly values the actual shares issued by a company, and outlawing the creation of "phantom shares" by abusive short sellers.

Let's remember how we got here. The opaque derivatives market allowed some people to play a shell game by leveraging to the hilt and buying and selling synthetic instruments that ultimately crashed in value. The same thing happens through abusive short selling, when traders sell shares they do not own and have no ability to deliver at the time of sale.

It is like making copies of your car's title, and then selling the title to the car three times, while hoping you can find other cars to deliver if the buyer proceeds.

In some cases, the short interest in a particular company's stock on a given day has spiked dramatically after false rumors have circulated about the company. The data further show that "fails" to deliver are large and problematic.

That is evidence of manipulation. It distorts the market. It must end now.

Let me be clear: the problem isn't short selling itself, which can enhance market efficiency and price discovery.

The problem is that, under current rules, short sellers can sell stocks they haven't actually borrowed in advance of their short sale—and with no uptick rule in place as a circuit breaker. The current standard requires only a "reasonable belief" that a short seller can locate the necessary shares by the delivery date; that is no standard at all and subjects the market to rife abuse.

For the market to flourish again, the SEC must issue rules and enforce them in a way that convinces investors the system is not rigged against them.

One important step the SEC should take now is to reinstate the substance of its former "uptick" rule.

The uptick rule served us well for 70 years until the SEC rescinded it in July 2007. It required short sellers to take a breath and wait for a sale at a higher price before continuing to sell short in declining markets. According to one survey, 85 percent of CEOs, and professionals at NYSE-listed companies favor reinstating it. Fed Chairman Bernanke, bipartisan Members of Congress, and former regulators favor reinstating it. The SEC should do that now.

Restoring the uptick rule is necessary, but not sufficient, to rein in abusive short selling. If the SEC is to alter fundamentally the way stocks trade today, it must also require—and enforce—short sellers possessing at the time of the sale a demonstrable legally enforceable right to deliver the shares—a so-called "pre- borrow" requirement. We simply can't tolerate a market that permits short sellers to create phantom shares that dilute a company's value, erode the value of investors' holdings and manipulate share prices downward.

A recent Bloomberg news report based on SEC data confirmed that so-called "naked" short selling contributed significantly to the demise of Lehman Brothers and Bear Stearns. Those companies took horrendous gambles and their share values had to reflect those serious missteps, but in the absence of "naked" short selling both might nevertheless have survived.

Abusive short selling is gasoline on the fire for distressed stocks and distressed markets. And the knowledge that it is still tolerated rattles small investors and shakes confidence in our markets.

Mr. President, I ask unanimous consent that this story be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From Bloomberg.com, Mar. 19, 2009]

NAKED SHORT SALES HINT FRAUD IN BRINGING DOWN LEHMAN (CORRECT)

(By Gary Matsumoto)

(Corrects levels of failed-to-deliver shares in second and 18th paragraphs.)

The biggest bankruptcy in history might have been avoided if Wall Street had been prevented from practicing one of its darkest arts.

As Lehman Brothers Holdings Inc. struggled to survive last year, as many as 32.8 million shares in the company were sold and not delivered to buyers on time as of Sept. 11, according to data compiled by the Securities and Exchange Commission and Bloomberg. That was a more than 57-fold increase over the 2007 peak of 567,518 failed trades on July 30.

The SEC has linked such so-called fails-to-deliver to naked short selling, a strategy that can be used to manipulate markets. A fail-to-deliver is a trade that doesn't settle within three days.

"We had another word for this in Brooklyn," said Harvey Pitt, a former SEC chairman. "The word was 'fraud.'"

While the commission's Enforcement Complaint Center received about 5,000 complaints about naked short-selling from January 2007 to June 2008, none led to enforcement actions, according to a report filed yesterday by David Kotz, the agency's inspector general.

The way the SEC processes complaints hinders its ability to respond, the report said.

Twice last year, hundreds of thousands of failed trades coincided with widespread rumors about Lehman Brothers. Speculation that the company was being acquired at a discount and later that it was losing two trading partners both proved untrue.

After the 158-year-old investment bank collapsed in bankruptcy on Sept. 15, listing $613 billion in debt, former Chief Executive Officer Richard Fuld told a congressional panel on Oct. 6 that naked short sellers had midwifed his firm's demise.

GASOLINE ON FIRE

Members of the House Committee on Government Oversight and Reform weren't buying that explanation.

''If you haven't discovered your role, you're the villain today,'' U.S. Representative John Mica, a Florida Republican, told Fuld.

Yet the trading pattern that emerges from 2008 SEC data shows naked shorts contributed to the fall of both Lehman Brothers and Bear Stearns Cos., which was acquired by JPMorgan Chase & Co. in May.

''Abusive short selling amounts to gasoline on the fire for distressed stocks and distressed markets,'' said U.S. Senator Ted Kaufman, a Delaware Democrat and one of the sponsors of a bill that would make the SEC restore the uptick rule. The regulation required traders to wait for a price increase in the stock they wanted to bet against; it prevented so-called bear raids, in which successive short sales forced prices down.

DRIVING DOWN PRICES

Reinstating the rule would end the pattern of fails-to-deliver revealed in the SEC data, Kaufman said.

''These stories are deeply disturbing and make a compelling case that the SEC must act now to end abusive short selling—which is exactly what our bill, if enacted, would do,'' the senator said in an e-mailed statement.

Short sellers arrange to borrow shares, then dispose of them in anticipation that they will fall. They later buy shares to replace those they borrowed, profiting if the price has dropped. Naked short sellers don't borrow before trading—a practice that becomes evident once the stock isn't delivered. Such trades can generate unlimited sell orders, overwhelming buyers and driving down prices, said Susanne Trimbath, a trade-settlement expert and president of STP Advisory Services, an Omaha, Nebraska-based consulting firm.

The SEC last year started a probe into what it called ''possible market manipulation'' and banned short sales in financial stocks as the number of fails-to-deliver climbed.

'UNSUBSTANTIATED RUMORS'

The daily average value of fails-to-deliver surged to $7.4 billion in 2007 from $838.5 million in 1995, according to a study by Trimbath, who examined data from the annual reports of the National Securities Clearing Corp., a subsidiary of the Depository Trust & Clearing Corp.

Trade failures rose for Bear Stearns as well last year. They peaked at 1.2 million shares on March 17, the day after JPMorgan announced it would buy the investment bank for $2 a share. That was more than triple the prior-year peak of 364,171 on Sept. 25.

Fuld said naked short selling—coupled with ''unsubstantiated rumors''—played a role in the demise of both his bank and Bear Stearns.

''The naked shorts and rumor mongers succeeded in bringing down Bear Stearns,'' Fuld said in prepared testimony to Congress in October. ''And I believe that unsubstantiated rumors in the marketplace caused significant harm to Lehman Brothers.''

DEVALUING STOCK

Failed trades correlate with drops in share value—enough to account for 30 to 70 percent of the declines in Bear Stearns, Lehman and other stocks last year, Trimbath said.

While the correlation doesn't prove that naked shorting caused the lower prices, it's ''a good first indicator of a statistical relationship between two variables,'' she said.

Failing to deliver is like ''issuing new stock in a company without its permission,'' Trimbath said. ''You increase the number of shares circulating in the market, and that devalues a stock. The same thing happens to a currency when a government prints more of it.''

Trimbath attributes the almost ninefold growth in the value of failed trades from 1995 to 2007 to a rise in naked short sales.

''You can't have millions of shares fail to deliver and say, 'Oops, my dog ate my certificates,' '' she said.

EXPLANATION REQUIRED

On its Web site, the Federal Reserve Bank of New York lists several reasons for fails-to-deliver in securities trading besides naked shorting. They include misunderstandings between traders over details of transactions; computer glitches; and chain reactions, in which one failure to settle prevents delivery in a second trade.

Failed trades in stocks that were easy to borrow, such as Lehman Brothers, constitute a ''red flag,'' said Richard H. Baker, the president and CEO of the Washington-based Managed Funds Association, the hedge fund industry's biggest lobbying group.

''Suffice it to say that in a readily available stock that is traded frequently, there has to be an explanation to the appropriate regulator as to the circumstances surrounding the fail-to-deliver,'' said Baker, who served in the U.S. House of Representatives as a Republican from Louisiana from 1986 to February 2008.

''If it's a pattern and a practice, there are laws and regulations to deal with it,'' he said.

FINES AND PENALTIES

Lehman Brothers had 687.5 million shares in its float, the amount available for public trading. In float size, the investment bank ranked 131 out of 6,873 public companies—or in the top 1.9 percent, according to data compiled by Bloomberg.

While naked short sales resulting from errors aren't illegal, using them to boost profits or manipulate share prices breaks exchange and SEC rules and violators are subject to penalties. If investigators determine that traders engaged in the practice to try to influence markets, the Department of Justice can file criminal charges.

Market makers, who serve as go-betweens for buyers and sellers, are allowed to short stock without borrowing it first to maintain a constant flow of trading.

Since July 2006, the regulatory arm of the New York Stock Exchange has fined at least four exchange members for naked shorting and violating other securities regulations. J.P. Morgan Securities Inc. paid the highest penalty, $400,000, as part of an agreement in which the firm neither admitted nor denied guilt, according to NYSE Regulation Inc.

ENFORCEMENT 'RELUCTANT'

In July 2007, the former American Stock Exchange, now NYSE Alternext, fined members Scott and Brian Arenstein and their companies $3.6 million and $1.2 million, respectively, for naked short selling. Amex ordered them to disgorge a combined $3.2 million in trading profits and suspended both from the exchange for five years. The brothers agreed to the fines and the suspension without admitting or denying liability, according a release from the exchange.

Of about 5,000 e-mailed tips related to naked short-selling received by the SEC from January 2007 to June 2008, 123 were forwarded for further investigation, according to the report released yesterday by Kotz, the agency's internal watchdog. None led to enforcement actions, the report said.

Kotz, the commission's inspector general, said the enforcement division ''is reluctant to expend additional resources to investigate'' complaints. He recommended in his report yesterday that the division step up analysis of tips, designating an office or person to provide oversight of complaints.

SCHAPIRO'S PLANS

The enforcement division, in a response included in the report, said ''a large number of the complaints provide no support for the allegations'' and concurred with only one of the inspector general's 11 recommendations.

SEC Chairman Mary Schapiro, who took office in January, has vowed to reinvigorate the enforcement unit after it drew fire from lawmakers and investors for failing to follow up on tips that New York money manager Bernard Madoff's business was a Ponzi scheme. She has ''initiated a process that will help us more effectively identify valuable leads for potential enforcement action,'' John Nester, a commission spokesman, said in response to the Kotz report.

Last September, the agency instituted the temporary ban on short sales of financial stock. It also has announced an investigation into ''possible market manipulation in the securities of certain financial institutions.''

NO EFFECTIVE ACTION

Christopher Cox, who was SEC chairman last year; Erik Sirri, the commission's director for market regulation; and James Brigagliano, its deputy director for trading and markets, didn't respond to requests for interviews. John Heine, a spokesman, said the commission declined to comment for this story.

''It has always puzzled me that the SEC didn't take effective action to eliminate naked shorting and the fails-to-deliver associated with it,'' Pitt, who chaired the commission from August 2001 to February 2003, said in an e-mail. The agency began collecting data on failed trades that exceed 10,000 shares a day in 2004.

''All the SEC need do is state that at the time of the short sale, the short seller must have (and must maintain through settlement) a legally enforceable right to deliver the stock at settlement,'' Pitt wrote. He is now the CEO of Kalorama Partners LLC, a Washington-based consulting firm. In August, he and some partners started RegSHO.com, a Web-based service that locates stock to help sellers comply with short-selling rules.

POSTPONED 'INDEFINITELY'

Pitt began his legal career as an SEC staff attorney in 1968, and eventually became the commission's general counsel. In 1978, he joined Fried Frank Harris Shriver & Jacobson LLP, where as a senior corporate partner he represented such clients as Bear Stearns and the New York Stock Exchange. President George W. Bush appointed him SEC chairman in 2001.

The flip side of an uncompleted transaction resulting from undelivered stock is called a ''fail-to-receive.'' SEC regulations state that brokers who haven't received stock 13 days after purchase can execute a so-called buy-in. The broker on the selling side of the transaction must buy an equivalent number of shares and deliver them on behalf of the customer who didn't.

A 1986 study done by Irving Pollack, the SEC's first director of enforcement in the 1970s, found the buy-in rules ineffective with regard to Nasdaq securities. The rules permit brokers to postpone deliveries ''indefinitely,'' the study found.

The effect on the market can be extreme, according to Cox, who left office on Jan. 20. He warned about it in a July article posted on the commission's Web site.

TURBOCHARGED DISTORTION

When coupled with the propagation of rumors about the targeted company, selling shares without borrowing ''can allow manipulators to force prices down far lower than would be possible in legitimate short-selling conditions,'' he said in the article.

'''Naked' short selling can turbocharge these 'distort-and- short' schemes,'' Cox wrote.

''When traders spread false rumors and then take advantage of those rumors by short selling, there's no question that it's fraud,'' Pollack said in an interview. ''It doesn't matter whether the short sales are legal.''

On at least two occasions in 2008, fails-to-deliver for Lehman Brothers shares spiked just before speculation about the bank began circulating among traders, according to SEC data that Bloomberg analyzed.

On June 30, someone started a rumor that Barclays Plc was ready to buy Lehman for 25 percent less than the day's share price. The purchase didn't materialize.

'GREEN CHEESE'

On the previous trading day, June 27, the number of shares sold without delivery jumped to 705,103 from 30,690 on June 26, a 23–fold increase. The day of the rumor, the amount reached 814,870—more than four times the daily average for 2008 to that point. The stock slumped 11 percent and, by the close of trading, was down 70 percent for the calendar year.

''This rumor ranks up there with the moon is made of green cheese in terms of its validity,'' Richard Bove, who was then a Ladenburg Thalmann & Co. analyst, said in a July 1 report.

Bove, now vice president and equity research analyst with Rochdale Securities in Lutz, Florida, said in an interview this month that the speculation reflected ''an unrealistic view of Lehman's portfolio value.'' The company's assets had value, he said.

'OBSCENE' LEVERAGE

During the first six days following the Barclays hearsay, the level of failed trades averaged 1.4 million. Then, on July 10, came rumors that SAC Capital Advisors LLC, a Stamford, Connecticut-based hedge fund, and Pacific Investment Management Co. of Newport Beach, California, had stopped trading with Lehman Brothers.

Pimco and SAC denied the speculation. The bank's share price dropped 27 percent over July 10–11.

Banks and insurers wrote down $969.3 billion last year—and that gave legitimate traders plenty of reason to short their stocks, said William Fleckenstein, founder and president of Seattle-based Fleckenstein Capital, a short-only hedge fund. He closed the fund in December, saying he would open a new one that would buy equities too.

''Financial stocks imploded because of the drunkenness with which executives buying questionable securities levered-up in obscene fashion,'' said Fleckenstein, who said his firm has always borrowed stock before selling it short. ''Short sellers didn't do this. The banks were reckless and they held bad assets. That's the story.

'MARKET DISTRESS'

On May 21, David Einhorn, a hedge fund manager and chairman of New York-based Greenlight Capital Inc., announced he was shorting stock in Lehman Brothers and said he had ''good reason to question the bank's fair value calculations'' for its mortgage securities and other rarely traded assets.

Einhorn declined to comment for this story. Monica Everett, a spokeswoman who works for the Abernathy Macgregor Group, said Greenlight properly borrows shares before shorting them.

Even when they're legitimate, short sales can depress share values in times of market crisis—in effect turning the traders' negative bets into self-fulfilling prophecies, says Pollack, the former SEC enforcement chief who is now a securities litigator with Fulbright & Jaworski in Washington.

The SEC has been concerned about the issue since at least 1963, when Pollack and others at the commission wrote a study for Congress that recommended the ''temporary banning of short selling, in all stocks or in a particular stock'' during ''times of general market distress.''

AIRPORT RUNWAY

On Sept. 17, two days after Lehman Brothers filed for Chapter 11 bankruptcy, the number of failed trades climbed to 49.7 million, 23 percent of overall volume in the stock.

The next day, the SEC announced its ban on shorting financial companies in 2008. The number of protected stocks ultimately grew to about 1,000. On Sept. 19, the commission announced ''a sweeping expansion'' of its investigation into possible market manipulation.

The ban, which lasted through Oct. 17, didn't eliminate shorting, according to data from the SEC, the NYSE Arca exchange and Bloomberg. Throughout the period, short sales averaged 24.7 percent of the overall trading in Morgan Stanley, Merrill Lynch & Co. and Goldman Sachs Group Inc. on NYSE Arca. In 2008, short sales averaged 37.5 percent of the overall trading on the exchange in the three companies.

To date, the commission hasn't announced any findings of its investigation.

Pollack, the former SEC regulator, wonders why.

''This isn't a trail of breadcrumbs; this audit trail is lit up like an airport runway,'' he said. ''You can see it a mile off. Subpoena e-mails. Find out who spread false rumors and also shorted the stock and you've got your manipulators.''

Mr. KAUFMAN. The new SEC leadership has the opportunity to make the SEC a ''can do'' agency once more. The SEC is scheduled to meet on April 8 to discuss the uptick rule and abusive short selling. The Chair and commissioners should move quickly to adopt the uptick rule and a pre-borrow requirement.

If not, Congress should do its part and direct the SEC to do that quickly.

After yesterday's IG report and the Enforcement Division's response to it, I am even more convinced that SEC Chair Schapiro needs to grab the reins quickly at the SEC, and get back to standing up for investor interests to restore confidence in the markets. If the SEC won't do it, Congress should require them to do it.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. ALEXANDER. I thank the Chair.

(The remarks of Mr. ALEXANDER pertaining to the introduction of S. 659 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Ms. STABENOW. Mr. President, before the Senator from Tennessee leaves, I wish to say how much I enjoyed his comments, and I think no matter which side of the aisle we are on, we get up in the morning wanting to try to make a difference. So I appreciate his sentiments and I appreciate his comments very much, as it relates to what we hope we will all instill in our students and teachers and those who love our country. I appreciate his comments.

AMERICAN AUTOMOBILE INDUSTRY

Ms. STABENOW. Mr. President, I wish to speak a little bit today about a subject near and dear to my heart, and that is our American auto industry.

Before the global credit crisis happened, our American auto industry was undertaking ambitious restructuring plans. I know there are those who haven't been aware of that up until now but in fact it is true.

For the past decade, our American auto industry has been moving toward improved fuel efficiency, improved quality, and advanced technologies. I am very proud of what the men and women in our country do in terms of building our American automobiles. This was clearly shown as the auto industry laid out the plans before Congress last December. The companies and the workers have been making tremendous sacrifices even before they were asked to do so, to level the playing field with foreign competitors. The idea of cutting, restructuring, layoffs, plant closings are not new. They are, unfortunately, a way of life at the moment in Michigan and other manufacturing States where there have had to be major sacrifices, particularly for workers and their families.

By the end of the current 2005 and 2007 contracts for workers, the labor cost gap between domestic and foreign automakers would have been largely eliminated. They also eliminated 50 percent of the companies' liability for retiree health benefits, and that is before any of the current debate. It was also before the global credit crunch happened. The global credit crunch has hit everybody—every business, large and small, every consumer, every family, every homeowner.

Certainly our auto industry has seen the brunt of the inability to get capital, the inability of people to get a car loan, our auto dealers and the challenges they have had, our auto suppliers, as well as the OEMs.

The failure of our auto industry, if we allow them to go down because of a global credit crisis, would mean a loss of over 400,000 supplier jobs and over 450,000 jobs in the service sector, national deficits, and reductions in personal income. It would be a huge catastrophe if we were to allow the global credit crisis to create a situation in which we would no longer have an American auto industry.

It is important for us to understand that this crisis has similarly affected