Response to written questions from Senator Specter
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July 11, 2006

1) As a factual matter, I would guess that by far the majority of illegal manipulation is done on the long side, typically with the collusion of management (as in the case of Enron). While I don't have any statistics to prove this assertion, I think it is obviously true on a dollar-weighted basis, and almost certainly true in general. If you were to count SEC enforcement actions or investigations over the years, I am quite sure that the vast majority would not involve short selling. The classic Wall Street scam is "pump-and-dump".

As a conceptual matter, there are several reasons to believe that the long side is more likely involved in manipulation than the short side. First, short sellers face many regulations and technical hurdles that are not faced by other market participants. The law seems in some ways biased against short sellers. In my written testimony, I mentioned the case of Solv-Ex, where Solv-Ex orchestrated a public manipulation of the securities loan market. This type of manipulation appears to be legal. I do not understand why manipulation designed to drive the price up should be legal (as in the Solv-Ex case), but manipulation designed to drive down the price should be illegal.

Second, the long side typically controls the flow of information. For example, Enron had the ability to doctor accounting statements, issue false press releases, etc.

Third, in cases of manipulation by management, the long side is typically stealing from the shareholders, and thus has the ability to spend the shareholder's money on fraudulent schemes. For example, they can hire lawyers, private investigators, and so on, all using company funds. The short sellers don't have this ability.

2) I have no specific policy recommendation to make, and certainly no comment on any specific cases. What I am suggesting is that policy makers should consider steps to reduce suits aimed at stifling free speech. How to accomplish that goal, I don't know.

3) Yes, false information is one problem. However, even if no one anywhere ever lied, we still want to ensure the collection of true negative information. A world where only truthful optimists were allowed to speak, but truthful pessimists were not, is not ideal.