

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
RELEASE NO. 58611 / September 21, 2008

AMENDMENT TO EMERGENCY ORDER PURSUANT TO SECTION 12(k)(2) OF
THE SECURITIES EXCHANGE ACT OF 1934 TAKING TEMPORARY ACTION TO
RESPOND TO MARKET DEVELOPMENTS

Pursuant to Section 12(k)(2) of the Securities Exchange Act of 1934,¹ on September 18, 2008, the Securities and Exchange Commission (“Commission”) issued an Emergency Order (the “Order”) related to short selling the publicly traded securities of certain financial firms.² The Order was effective immediately. The Commission is issuing this amendment to address current and anticipated technical and operational concerns resulting from the requirements of the Order.

A. Included Financial Firms

The Order applies to the publicly traded securities of certain financial firms, which entities are identified in Appendix A to the Order (“Included Financial Firms”). We are amending the Order to modify the list of Included Financial Firms. As we stated in the Order, recent market conditions have raised concerns that short selling in the securities of a wide range of financial institutions may be causing sudden and excessive fluctuations of the prices of such securities in such a manner to threaten fair and orderly markets. Difficulties with the classification criteria led to the omission of financial institutions falling within these categories. In light of the familiarity of the exchanges listing financial institutions with the nature of their respective businesses, the

¹ 15 USC 78l(k)(2).

² See Securities Exchange Act Release No. 58592 (Sept. 18, 2008)

Commission has determined to amend this Order to provide that the listing markets shall select the individual financial institutions with securities covered by the Order. The Commission expects each national securities exchange listing financial institutions to immediately publish a list, on its internet Web site, of individual listed companies with common equity that will be covered by the Order's prohibition on short sales. The Commission expects these lists to cover banks, savings associations, broker-dealers, investment advisers, and insurance companies, whether domestic or foreign, and the owners of any of these entities.

To the extent an issuer chooses not to be covered by the Order's prohibition on short sales, we have authorized the applicable national securities exchange to exclude that issuer from its list of covered financial firms.

IT IS THEREFORE ORDERED that, pursuant to our Section 12(k)(2) powers, the Order applies to the publicly traded common equity securities of any issuer identified by any national securities exchange listing such securities as being a financial institution (each a "Covered Security" and collectively, "Covered Securities").

B. Options and Futures Contract Expiration

The Order includes an exception from its requirements to allow short sales that occur as a result of automatic exercise or assignment of an equity option held prior to effectiveness of the Order due to expiration of the option. We are amending the Order to also allow short sales that occur as a result of the expiration of futures contracts held prior to effectiveness of the Order.

IT IS THEREFORE ORDERED that, pursuant to our Section 12(k)(2) powers, the requirements of the Order shall not apply to any person that effects a short sale in any

Covered Security as a result of automatic exercise or assignment of an equity option, or in connection with settlement of a futures contract, that is held prior to effectiveness of the Order due to expiration of the option or futures contract.

C. Options Assignments

To allow for creation of long call options, we are amending the Order to except from its requirements, short sales that occur as a result of assignment to call writers upon exercise.

IT IS THEREFORE ORDERED that, pursuant to our Section 12(k)(2) powers, the requirements of the Order shall not apply to the writer of a call option that effects a short sale in any Covered Security as a result of assignment following exercise by the holder of the call.

D. Market Making and Derivatives

In the Order we included an exception until 11:59 p.m. on September 19, 2008 for any person that is a market maker that effects a short sale as part of bona fide market making and hedging activity related directly to bona fide market making in derivatives on the publicly traded securities of any Included Financial Firm. We are amending the exception so that it continues for the duration of the Order. In addition, we are clarifying that the exception applies to all market makers, including over-the-counter market makers, and that it applies to bona fide market making and hedging activity related directly to bona fide market making in exchange traded funds and exchange traded notes of which Covered Securities are a component. The purpose of this accommodation is to permit market makers to continue to provide liquidity to the markets.

To help ensure that this hedging exception does not result in increased short exposure in Covered Securities, we are limiting the exception so that if a customer or counterparty position in a derivative security based on a Covered Security is established after 12:01 a.m. E.D.T on September 22, 2008, a market maker may not effect a short sale in the Covered Security if the market maker knows that the customer's or counterparty's transaction will result in the customer or counterparty establishing or increasing an economic net short position (i.e., through actual positions, derivatives, or otherwise) in the issued share capital of a firm covered by this Order.

IT IS THEREFORE ORDERED that, pursuant to our Section 12(k)(2) powers, the requirements of this Order shall not apply to any person that is a market maker, including an over-the-counter market maker, that effects a short sale as part of a bona fide market making and hedging activity related directly to bona fide market making in (a) derivative securities based on Covered Securities, or (b) exchange traded funds and exchange traded notes of which Covered Securities are a component. Provided, however, if a customer or counterparty position in a derivative security based on a Covered Security is established after 12:01 a.m. E.D.T on September 22, 2008, a market maker may not effect a short sale in the Covered Security if the market maker knows that the customer's or counterparty's transaction will result in the customer or counterparty establishing or increasing an economic net short position (i.e., through actual positions, derivatives, or otherwise) in the issued share capital of a firm covered by this Order.

All market makers relying on this exception to the limitation on short selling shall, as soon as operationally practicable, publish a notice on their internet Web site that, pursuant to this Order, the market maker may not knowingly effect a short sale as part of

bona fide market making and hedging activity related directly to bona fide market making in a derivative security based on a Covered Security, if the customer's or counterparty's transaction will result in the customer or counterparty establishing or increasing an economic net short position (i.e., through actual positions, derivatives, or otherwise) in the issued share capital of a firm covered by the Order.

E. Sales of Restricted Securities

We are also amending the Order to clarify that the Order does not apply to persons that effect sales of Covered Securities pursuant to Rule 144 of the Securities Act of 1933 ("Rule 144 Securities").³ This accommodation is necessary because sales of Rule 144 Securities are sales of owned securities.

IT IS THEREFORE ORDERED that, pursuant to our Section 12(k)(2) powers, the Order does not apply to any person that effects a sale pursuant to Rule 144 of the Securities Act of 1933 (17 CFR 230.144) in a Covered Security.

We believe that these amendments are necessary in the public interest and for the protection of investors to maintain fair and orderly securities markets, and to prevent substantial disruption to securities markets.

By the Commission.

Florence E. Harmon
Acting Secretary

³ 17 CFR 230.144.