

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
RELEASE NO. 58591 / September 18, 2008

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

The Commission is aware of the continued potential of sudden and excessive fluctuations of securities prices and disruption in the functioning of the securities markets that could threaten fair and orderly markets. As evidenced by our recent publication of emergency orders under Section 12(k) of the Securities Exchange Act of 1934 (“Exchange Act”),¹ we are concerned about the possible unnecessary or artificial price movements based on unfounded rumors regarding the stability of financial institutions and other issuers exacerbated by short selling. We also believe that some persons may take advantage of issuers that have become temporarily weakened by current market conditions to engage in inappropriate short selling in the securities of such issuers.

Given the importance of confidence in our financial markets as a whole, we have become concerned about sudden and unexplained declines in the prices of securities. Such price declines can give rise to questions about the underlying financial condition of an issuer, which in turn can create a crisis of confidence without a fundamental underlying basis. This crisis of confidence can impair the liquidity and ultimate viability of an issuer, with potentially broad market consequences.

¹ See Exchange Act Release No. 58166 (July 15, 2008), Exchange Act Release No. 58572 (September 17, 2008).

As a result of these recent developments, the Commission concluded that there continues to exist the potential of sudden and excessive fluctuations of securities prices generally and disruption in the functioning of the securities markets that could threaten fair and orderly markets. Based on this conclusion, the Commission is exercising its powers under Section 12(k)(2) of the Exchange Act.² Pursuant to Section 12(k)(2), in appropriate circumstances the Commission may by order summarily take action to alter, supplement, suspend, or impose requirements or restrictions with respect to matters or actions subject to regulation by the Commission.

We have concluded that it is necessary to require certain institutional investment managers to report information concerning daily short sales of securities. For purposes of this Order, we believe that section 13(f) of the Exchange Act and Rule 13f-1 provide useful and tested terms and definitions that provide a basis for requiring new disclosure. The Order therefore requires that an institutional investment manager that exercises investment discretion³ with respect to accounts holding section 13(f) securities⁴ having an aggregate fair market value on the last trading day of any month of any calendar year of at least \$100,000,000 must file a new form with the Commission. Specifically, an institutional investment manager who has filed or was required to file a Form 13F for the calendar quarter ended June 30, 2008 under section 13(f) of the Exchange Act and Rule 13f-1(a) thereunder will be required to file a report on new Form SH with the

² This finding of an “emergency” is solely for purposes of Section 12(k)(2) of the Exchange Act and is not intended to have any other effect or meaning or to confer any right or impose any obligation other than set forth in this Order.

³ The term “investment discretion” has the same meaning as in Exchange Act Rule 13f-1(b). See 17 CFR § 240.13f-1(b).

⁴ The term “section 13(f) securities” has the same meaning as in Exchange Act Rule 13f-1(c). See 17 CFR § 240.13f-1(c).

Commission on the first business day⁵ of every calendar week immediately following a week in which it effected short sales.

The Form SH, which must be filed electronically and will be publicly available on our EDGAR system,⁶ must include disclosure of the number and value of securities sold short for each section 13(f) security, except for short sales in options, and the opening short position, closing short position, largest intraday short position, and the time of the largest intraday short position, for that security during each calendar day of the prior week. No filing, however, will be required when no short sales of a section 13(f) security have been effected since the previous filing of a Form SH. In addition, this disclosure requirement will only apply to short sales effected after the effective date of the Order. Finally, an institutional investment manager need not report short positions otherwise reportable if: (i) the short position in the section 13(f) securities constitutes less than one-quarter of one per cent of the class of the issuer's section 13(f) securities issued and outstanding as reported on the issuer's most recent annual or quarterly report, and any current report subsequent thereto, filed with the Commission pursuant to the Exchange Act, unless the manager knows or has reason to believe the information contained therein is inaccurate; and (ii) the fair market value of the short position in the section 13(f) securities is less than \$1,000,000.

We believe that the extraordinary circumstances we now confront require the new disclosure requirements we are imposing today. We also believe such disclosure

⁵ See Exchange Act Rule 0-2 for a description of the business hours of the Commission. 17 CFR § 240.0-2.

⁶ No Commission procedure for seeking confidential treatment of information filed with or transmitted to the Commission, such as those in 17 C.F.R. §§ 200.80, 200.83, or 240.24b-2, shall apply to the information that this Order requires to be filed.

requirements are in the public interest for the protection of investors and will ensure transparency in short selling.

IT IS ORDERED that, pursuant to our Section 12(k)(2) powers:

Every institutional investment manager that exercises investment discretion with respect to accounts holding section 13(f) securities and that has filed or was required to file a Form 13F for the calendar quarter ended June 30, 2008, as required under section 13(f) of the Exchange Act and Rule 13f-1(a) thereunder, must file a report on Form SH with the Commission. The Form SH filing must be made on the first business day of each week immediately following a week in which the institutional investment manager has effected any short sale with respect to any section 13(f) security that is not an option. With respect to each section 13(f) security that is not an option, the Form SH filing must reflect the number and value of securities sold short during the day as well as the opening short position, closing short position, largest intraday short position, and the time of the largest intraday short position, for that security on each calendar day of the prior week in which the institutional investment manager engaged in trading activity with respect to short sales.

Finally, an institutional investment manager need not report short positions otherwise reportable if: (i) the short position in the section 13(f) securities constitutes less than one-quarter of one per cent of the class of the issuer's section 13(f) securities issued and outstanding as reported on the issuer's most recent annual or quarterly report, and any current report subsequent thereto, filed with the Commission pursuant to the Exchange Act, unless the manager knows or has reason to believe the information contained therein is inaccurate; and (ii) the fair market value of the short position in the section 13(f) securities is less than \$1,000,000.

Short sale has the meaning set forth in Rule 200 of Regulation SHO (17 CFR § 242.200), and terms referenced in that provision shall have the same meaning as set forth in Regulation SHO; and *short positions* to be reported are those resulting from "short sales" as that term is defined in SEC Rule 200(a) of Regulation SHO.

IT IS FURTHER ORDERED that, pursuant to our Section 12(k)(2) powers, the text of Form SH be as set forth in the attachment to this Order.

This Order shall be effective at 12:01 a.m. EDT on September 22, 2008, the first Form SH shall be required to be filed on September 29, 2008, and this Order shall terminate at 11:59 p.m. on October 2, 2008 unless further extended by the Commission.

By the Commission.

Lynn J. Taylor
Assistant Secretary