Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 58611]

Securities Exchange Act of 1934 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

September 21, 2008.

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 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

[1] 15 U.S.C. 78*l*(k)(2).

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

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.

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[3] 17 CFR 230.144.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 58591A]

Securities Exchange Act of 1934; 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

September 21, 2008.

Pursuant to Section 12(k)(2) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] on September 18, 2008, the Securities and Exchange Commission (''Commission'') issued an Emergency Order (''Order'') requiring institutional investment managers to report short sales of certain publicly traded securities.[2] The Order takes effect on September 22, 2008 and requires the filing of a Form SH on September 29, 2008. This amendment relates to the public availability of the information provided by the institutional investment managers when they report such sales and also includes technical amendments.

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 Exchange Act,[3] 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.

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.[4] 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 discretion[5] with respect to accounts holding section 13(f) securities[6] 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 Commission on the first business day[7] of every calendar week immediately following a week in which it effected short sales.

The Form SH, which must be filed electronically using the Commission's EDGAR system,[8] 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.[9] This disclosure requirement will apply only to short sales effected after the effective date of

[1] 15 U.S.C. 78 l(k)(2).

[2] *See* Exchange Act Release No. 58591 (September 18, 2008).

[3] *See* Exchange Act Release No. 58166 (July 15, 2008), Exchange Act Release No. 58572 (September 17, 2008).

[4] 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.

[5] The term ''investment discretion'' has the same meaning as in Exchange Act Rule 13f–1(b). *See* 17 CFR 240.13f–1(b).

[6] 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).

[7] See Exchange Act Rule 0–2 for a description of the business hours of the Commission. 17 CFR 240.0–2.

[8] Although we are requiring managers to electronically file Forms SH using our EDGAR system, the Forms SH will be filed on a non-public basis. The Commission is permitting the non-public filing of Form SH in order to maintain fair and orderly securities markets and prevent substantial disruption in the securities markets. The Commission believes that the non-public submission of Form SH may help prevent artificial volatility in securities as well as further downward swings that are caused by short selling, while at the same time, providing the Commission with useful information to combat market manipulation that threatens investors and capital markets. Two weeks after the due date for the Forms SH, the Commission will make the Forms available to the public. We believe that by two weeks after the due date the reasons to maintain the information as non-public will have diminished.

[9] No Commission procedure for seeking confidential treatment of information filed with or transmitted to the Commission, such as those in 17 CFR 200.80, 200.83, or 240.24b–2, shall apply to the information that this Order requires to be filed.