

Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: October 1, 2008.

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-23835 Filed 10-7-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934 Release No. 58724/October 2, 2008]

### Amendment to Order and Order Extending 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 ("Exchange Act"),<sup>1</sup> on September 18, 2008, the Securities and Exchange Commission ("Commission") issued an Emergency Order,<sup>2</sup> as amended on September 21, 2008 (the "Order"),<sup>3</sup> requiring institutional investment managers to report short sales of certain publicly traded securities. That Order took effect on September 22, 2008, and required the filing of a Form SH on September 29, 2008. The Order is currently set to terminate on October 2, 2008.

Pursuant to its authority under Section 12(k)(2)(C) of the Exchange Act, the Commission is extending the Order. Section 12(k)(2)(C) authorizes the Commission to extend an emergency order issued pursuant to Section 12(k)(2)(A) of the Exchange Act for a total effective period of up to 30 calendar days, if the Commission finds that the emergency still exists and determines that an extension is necessary in the public interest and for the protection of investors to maintain fair and orderly securities markets. As a result of the extension, Forms SH shall be required to be filed on October 6, 2008, and October 14, 2008.<sup>4</sup> The Commission is also making technical amendments to Form SH and its accompanying Instructions.

The Commission continues to be concerned about the potential for

sudden and excessive fluctuations of securities prices and disruption in the functioning of the securities markets that could threaten fair and orderly markets. The Commission also continues to 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. Therefore, the Commission has concluded that it remains necessary to require certain institutional investment managers to report information concerning short sales of securities. Accordingly, the Commission has determined that extending the Order is necessary in the public interest and for the protection of investors to maintain fair and orderly securities markets.

The Commission believes that the nonpublic 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. Also, the Commission has considered further the reasons to maintain the information as nonpublic in the current market environment, and is concerned that publicly available Form SH data could give rise to additional, imitative short selling that was not intended by the Commission's Order. Accordingly, the Commission has determined that Forms SH filed under the Order including those that were due on September 29, 2008, will remain nonpublic to the extent permitted by law without the filer needing to submit a confidential treatment request.

Therefore, it is ordered, pursuant to Section 12(k)(2)(C) of the Exchange Act, that the Order is extended such that it will terminate at 11:59 p.m. EDT on Friday, October 17, 2008.

By the Commission.

**Florence E. Harmon,**

*Acting Secretary.*

**Form SH—Information Required of Institutional Investment Managers Pursuant to Emergency Order, Securities Exchange Act of 1934 Release No. 58591a, September 21, 2008, and Emergency Order, Securities Exchange Act of 1934 Release No. 58724, October 2, 2008**

#### General Instructions

1. *Rule as to Use of Form SH.* Institutional investment managers ("Managers") must use Form SH for reports to the Commission required by the Commission's Emergency Order, Securities Exchange Act of 1934 Release No. 58591A, September 21, 2008, and Emergency Order, Securities Exchange

Act Release No. 58724, dated October 2, 2008 (together, the "Form SH Emergency Orders"). The Form SH Emergency Orders provide that every Manager that exercises investment discretion with respect to accounts holding section 13(f) securities, as defined in rule 13f-1(c) under the Securities Exchange Act of 1934 [15 U.S.C. 78m(f)] ("Exchange Act"), who has filed or was required to file a Form 13F for the calendar quarter ended June 30, 2008, must file a non-public report on Form SH with the Commission to report certain information about short sales and short positions. The non-public Form SH filing must be made on the Monday (or, if Monday is a federal holiday, the first business day thereafter) of each calendar week immediately following a Form SH reporting period (i.e., the preceding Sunday-Saturday calendar week) in which the Manager has entered into any new short positions with respect to any section 13(f) securities except for any short position(s) for options ("SH Short Positions"). The non-public Form SH will report SH Short Positions for the Sunday-Saturday calendar week that precedes the date on which the Form SH is due to be filed.

#### 2. Rules to Prevent Duplicative Reporting.

If two or more Managers, each of which is required by the Form SH Emergency Orders to file a report on Form SH for the reporting period, exercise investment discretion with respect to the same securities, only one such Manager must include information in its reports on Form SH.

A Manager having information that is required by the Form SH Emergency Orders to be reported on Form SH, and such information is reported by another Manager (or Managers), such Manager must identify the Manager(s) reporting on its behalf in the manner described in Special Instruction 6.

3. *Filing of Form SH.* A Form SH report that is filed by a Manager with the Commission shall be non-public upon filing. A Manager must label its Form SH as non-public by adding the phrase NON-PUBLIC (in bold and capital letters) at the top and bottom of each page of the entire form, i.e., each page(s) of the Form SH Cover Page (the "Cover Page"), the Form SH Summary Page (the "Summary Page"), and the Form SH Information Table (the "Information Table").

A Manager must file a Form SH report with the Commission on or before 5:30 p.m. Eastern Daylight Time on the Monday (or, if Monday is a federal holiday, the first business day thereafter) of each week immediately following the preceding seven calendar day period in which the Manager has entered into any new SH Short Position(s). The Form SH must be filed electronically using the Commission's EDGAR system.

#### 4. Official List of Section 13(f) Securities.

The official list of section 13(f) securities published by the Commission (the "13F List") lists the securities the holdings of which a Manager is to report on Form 13F. See rule 13f-1(c) [17 CFR 240.13f-1(c)]. Form SH filers may rely on the current 13F List in determining whether they need to report on Form SH information about any particular equity security, excluding short positions for options that are on the 13F List. The 13F List

<sup>1</sup> 15 U.S.C. 78j(k)(2).

<sup>2</sup> See Exchange Act Release No. 58591 (September 18, 2008).

<sup>3</sup> See Exchange Act Release No. 58591A (September 21, 2008).

<sup>4</sup> These reports must be filed electronically using the Commission's EDGAR system.

is available on the SEC's Web site, at <http://www.sec.gov/divisions/investment/13flists.htm>. Paper copies are available at a reasonable fee from the Securities and Exchange Commission, Public Reference Room, 100 F Street, NE., Washington, DC 20549.

#### Special Instructions

1. This form consists of three parts: the Cover Page, the Summary Page, and the Information Table.

2. When preparing the report, omit all bracketed text. Include brackets used to form check boxes.

#### The Cover Page:

3. The period end date used in the report (and in the EDGAR submission header) is the Saturday before the Form SH is filed. The date should name the month, and express the day and year in Arabic numerals, with the year being a four-digit numeral (*i.e.*, 2008).

4. Amendments to a Form SH must either restate the Form SH in its entirety or include only entries that are being reported in addition to those already reported in a current Form SH for the same period. If the Manager is filing the Form SH report as an amendment, then the Manager must check the amendment box on the Cover Page; enter the amendment number; and check the appropriate box to indicate whether the amendment (a) is a restatement or (b) adds new entries. Each amendment must include a complete Cover Page and, if applicable, a Summary Page and Information Table. Amendments must be filed sequentially.

5. Present the Cover Page and the Summary Page information in the format and order provided in the form. The Cover Page may include information in addition to the required information, so long as the additional information does not, either by its nature, quantity, or manner of presentation, impede the understanding or presentation of the required information. Place all additional information after the signature of the person signing the report (immediately preceding the Report Type section). Do not include any additional information on the Summary Page or in the Information Table.

6. Designate the Report Type for the Form SH by checking the appropriate box in the Report Type section of the Cover Page, and include, where applicable, the List of Other Managers Reporting for this Manager (on the Cover Page), the Summary Page and the Information Table, as follows:

a. If all of the information that a Manager is required by the Form SH Emergency Orders to report on Form SH is reported by another Manager (or Managers), check the box for Report Type "FORM SH NOTICE," include (on the Cover Page) the List of Other Managers Reporting for this Manager, and omit both the Summary Page and the Information Table.

b. If all of the information that a Manager is required by the Form SH Emergency Orders to report on Form SH is reported in this report, check the box for Report Type "FORM SH ENTRIES REPORT," omit from the Cover Page the List of Other Managers Reporting for this Manager, and include both the Summary Page and the Information Table.

c. If only a part of the information that a Manager is required by the Form SH Emergency Orders to report on Form SH is reported in this report, check the box for Report Type "FORM SH COMBINATION REPORT," include (on the Cover Page) the List of Other Managers Reporting for this Manager, and include both the Summary Page and the Information Table.

#### Summary Page:

7. Include on the Summary Page the Report Summary, containing the Number of Other Included Managers, the Information Table Entry Total and the Information Table Value Total.

a. Enter as the Number of Other Included Managers the total number of other Managers listed in the List of Other Included Managers on the Summary Page, not counting the Manager filing this report. See Special Instruction 8. If none, enter the number zero ("0").

b. Enter as the Information Table Entry Total the total number of line entries providing issuer information included in the Information Table.

c. Enter as the Information Table Value Total the aggregate fair market value in U.S. dollars ( $\times \$1000$ ) of all securities sold short during the reporting period that are required to be reported on Form SH. The Information Table Value Total is determined by multiplying the Number of Securities Sold Short (Day) (Column 4) by the closing market price of the security on that day, or, when applicable, the most recent business day. The Manager must express this total as a rounded figure. See Special Instruction 9.

8. Include on the Summary Page the List of Other Included Managers. Use the title, column headings and format provided.

a. If this Form SH does not report the information that a Manager is required by the Form SH Emergency Orders to report on Form SH of any Manager other than the Manager filing this report, enter the word "NONE" under the title and omit the column headings and list entries.

b. If this Form SH reports the information that a Manager is required by the Form SH Emergency Orders to report on Form SH of one or more Managers other than the Manager filing this report, enter in the List of Other Included Managers all such Managers together with their respective Form 13F file numbers, if known. (The Form 13F file numbers are assigned to Managers when they file their first Form 13F). Assign a number to each Manager in the List of Other Included Managers, and present the list in sequential order. The numbers need not be consecutive. The List of Other Managers cannot include the Manager filing this report.

#### Information Table:

9. In determining the fair market value of securities sold short, a Manager must use the market price of the section 13(f) securities as of the close of floor trading on the New York Stock Exchange ("NYSE") for the day in question. If the securities are sold short on a non-business day, a Manager must use the market price of the section 13(f) securities as of the close of the NYSE for the most recent business day. Such market closing time shall be used to determine the price for all SH Short Positions, irrespective of which U.S.

equity market the issuer trades on. Enter values rounded to the nearest one thousand dollars (with "000" omitted).

10. Furnish the Information Table using the table title, column headings and format provided. Provide column headings once at the beginning of each page of the Information Table. Present the table in accordance with the column instructions provided in Special Instructions 10.a.i through 10.a.viii. Do not include any additional information in the Information Table. Begin the Information Table on a new page for each day of the prior calendar week, and number any supplemental pages for a day using the page number and upper case letters (e.g., Monday-Page 2, Monday-Page 2A, Monday-Page 2B, etc.). Do not include any portion of the Information Table on either the Cover Page or the Summary Page.

a. Instructions for each column in the Information Table:

i. *Column 1. Name of Issuer.* Enter in Column 1 the name of the issuer as it appears in the current 13F List. Reasonable abbreviations are permitted.

ii. *Column 2. CUSIP Number.* Enter in Column 2 the nine (9) digit CUSIP number of the security for which information is being reported.

iii. *Column 3. Short Position (Start of Day).* Enter in Column 3 the number of securities that represent the Manager's short position in the issuer as of the start of each calendar day during the reporting period. The Short Position (Start of Day) for Monday, September 22, 2008 shall be zero.

iv. *Column 4. Number of Securities Sold Short (Day).* Enter in Column 4 the aggregate number of securities in the issuer that the Manager sold short for each calendar day during the reporting period.

v. *Column 5. Value of Securities Sold Short (Day).* Enter in Column 5 the market value in U.S. dollars ( $\times \$1,000$ ) of the number of securities reported in Column 4. In valuing such securities, use the fair market value for each security. See Special Instruction 9.

vi. *Column 6. Short Position (End of Day).* Enter in Column 6 the number of securities that represent the Manager's short position in the issuer as of the end of each calendar day during the reporting period.

vii. *Column 7. Largest Intraday Short Position.* Enter in Column 7 the number of securities that represent the Manager's largest single short position in the issuer for each calendar day during the reporting period.

viii. *Column 8. Time of Day of Largest Intraday Short Position.* Enter in Column 7 the time of day (Eastern Daylight Time) that the Manager had the largest single short position in the issuer, as reported in Column 7.

11. Preparation of the electronic filing: Filing documents may be submitted in either ASCII or HTML document format. For ASCII submissions, please note items a, b, and c. Preparation of the filing document should follow instructions in the EDGAR Filer Manual, (Volume 2) EDGAR Filing available on the SEC's website at <http://www.sec.gov/info/edgar/edmanuals.htm>.

a. No line on the Cover Page or the Summary Page may exceed 80 characters in length. See rule 305 of Regulation S-T [17

CFR 232.305]. The EDGAR <TABLE> tag may be used if it is necessary to increase the width of a line on the Cover Page or the Summary Page in a Form SH that is formatted in ASCII. See EDGAR Filer Manual (Volume 2) for details on the use of this tag.

b. No line in the Form SH Information Table may exceed 132 characters in length. See rule 305 of Regulation S-T [17 CFR 232.305].

c. If the Form SH Report Type is "SH ENTRIES REPORT" or "SH COMBINATION REPORT," then place one EDGAR <PAGE> tag at the end of the Cover Page and one <PAGE> tag at the end of the Summary Page. Additional EDGAR <PAGE> tags are not required. Those electing to include additional <PAGE> tags should, for each page containing a <PAGE> tag, include no more than sixty (60) lines per page, including the line on which the <PAGE> tag is placed.

d. In preparing the Form SH report for electronic filing, a Manager may omit underscoring used in the form to indicate the placement of information that the Manager is to furnish.

e. Use the following EDGAR submission types for the following Form SH Report Types:

Form SH report type	EDGAR submission type
FORM SH ENTRIES REPORT:	
Initial Filing .....	SH-ER
Amendments .....	SH-ER/A
FORM SH NOTICE:	
Initial Filing .....	SH-NT
Amendments .....	SH-NT/A
FORM SH COMBINATION REPORT:	
Initial Filing .....	SH-ER
Amendments .....	SH-ER/A

Filings with the form types set forth in this instruction will be filed on a non-public basis.

#### Paperwork Reduction Act Information

The Office of Management and Budget has approved this collection of information pursuant to 44 U.S.C. 3507 and 5 CFR

1320.13. The OMB control number for this collection of information is 3235-0646. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. We estimate that providing the requested information will take, on average, approximately 5 hours. Any member of the public may direct to the Commission any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden. See Form SH Emergency Orders regarding confidentiality.

#### UNITED STATES SECURITIES AND EXCHANGE COMMISSION, Washington, DC 20549

##### FORM SH

##### FORM SH COVER PAGE

Report for the Period Ended:

[Month, Day, Year]

Check here if Amendment ☐:

Amendment Number: \_\_\_\_\_

This Amendment (Check only one):

☐ is a restatement.

☐ adds new entries.

Institutional Investment Manager Filing this Report:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Form 13F File Number: 28- \_\_\_\_\_

The institutional investment manager filing this report and the person by whom it is signed hereby represent that the person signing the report is authorized to submit it, that all information contained herein is true, correct and complete, and that it is understood that all required items, statements, schedules, lists, and tables, are considered integral parts of this form.

Person Signing this Report on Behalf of Reporting Manager:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Phone: \_\_\_\_\_

Signature, Place, and Date of Signing: \_\_\_\_\_

[Signature] \_\_\_\_\_

[City, State] \_\_\_\_\_

[Date] \_\_\_\_\_

Report Type (Check only one):

☐ FORM SH ENTRIES REPORT. (Check here if all entries of this reporting manager are reported in this report.)

☐ FORM SH NOTICE. (Check here if no entries reported are in this report, and all entries are reported by other reporting manager(s).)

☐ FORM SH COMBINATION REPORT. (Check here if a portion of the entries for this reporting manager is reported in this report and a portion is reported by other reporting manager(s).)

List of Other Managers Reporting for this Manager:

[If there are no entries in this list, omit this section.]

Form 13F File Number:

28-[Repeat as necessary.] \_\_\_\_\_

Name: \_\_\_\_\_

##### FORM SH SUMMARY PAGE

Report Summary:

Number of Other Included Managers: \_\_\_\_\_

Form SH Information Table Entry Total: \_\_\_\_\_

Form SH Information Table Value Total: \_\_\_\_\_

(thousands)

List of Other Included Managers:

Provide a numbered list of the name(s) and Form 13F file number(s) of all institutional investment managers with respect to which this Form SH report is filed, other than the manager filing this report.

[If there are no entries in this list, state "NONE" and omit the column headings and list entries.]

No. \_\_\_\_\_

Form 13F File Number:

28- \_\_\_\_\_

Name: \_\_\_\_\_

[Repeat as necessary.]

#### FORM SH INFORMATION TABLE—PAGE 1

Sunday [Month, Day, Year]

Name of issuer	CUSIP	Short position (start of day)	Number of securities sold short (day)	Value of securities sold short (day) (X \$1,000)	Short position (end of day)	Largest intraday short position	Time of day of largest intraday short position
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8

## FORM SH INFORMATION TABLE—PAGE 1—Continued

Sunday [Month, Day, Year]

Name of issuer	CUSIP	Short position (start of day)	Number of securities sold short (day)	Value of securities sold short (day) (X \$1,000)	Short position (end of day)	Largest intraday short position	Time of day of largest intraday short position
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8

## FORM SH INFORMATION TABLE—PAGE 2

Monday [Month, Day, Year]

Name of issuer	CUSIP	Short position (start of day)	Number of securities sold short (day)	Value of securities sold short (day) (X \$1,000)	Short position (end of day)	Largest intraday short position	Time of day of largest intraday short position
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8

## FORM SH INFORMATION TABLE—PAGE 3

Tuesday [Month, Day, Year]

Name of issuer	CUSIP	Short position (start of day)	Number of securities sold short (day)	Value of securities sold short (day) (X \$1,000)	Short position (end of day)	Largest intraday short position	Time of day of largest intraday short position
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8

Tuesday [Month, Day, Year]

[illegible]

Wednesday [Month, Day, Year]

[illegible]

Thursday [Month, Day, Year]

[illegible]

Friday [Month, Day, Year]

[illegible]

Saturday [Month, Day, Year]

[illegible]

**BILLING CODE 8011-01-P**

[Release No. 34-58695, File No. 4-518]

# Joint Industry Plan; Notice of Filing and Order Granting Temporary Effectiveness of Amendment To Plan Establishing Procedures Under Rule 605 of Regulation NMS

September 30, 2008.

Pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 608 of Regulation NMS,<sup>2</sup> notice is hereby given that on September 19, 2008, the BATS Exchange, Inc. (“BATS” or “BATS Exchange”) submitted to the Securities and Exchange Commission (“SEC” or “Commission”) an amendment to the national market system plan that establishes procedures under Rule 605 of Regulation NMS (“Joint-SRO Plan” or “Plan”).<sup>3</sup> The amendment proposes to

<sup>1</sup> 15 U.S.C. 78k-1(a)(3).

<sup>2</sup> 17 CFR 242.608.

3 17 CFR 242.605. On April 12, 2001, the  
 Commission approved a national market system  
 plan for the purpose of establishing procedures for  
 market centers to follow in making their monthly  
 reports available to the public under Rule 11Ac1-  
 5 under the Act (n/k/a Rule 605 of Regulation  
 NMS). See Securities Exchange Act Release No.

add BATS as a participant to the Joint-SRO Plan. The Commission is publishing this notice and order to solicit comments from interested persons on the proposed Joint-SRO Plan amendment, and to grant temporary effectiveness to the proposed amendment through February 5, 2009.

## I. Description and Purpose of the Amendment

The current participants to the Joint-SRO Plan are the American Stock Exchange LLC, Boston Stock Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., Cincinnati Stock Exchange, Inc. (n/k/a National Stock Exchange<sup>SM</sup>), International Securities Exchange, LLC, The NASDAQ Stock Market LLC, National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.), New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC), Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.), and Philadelphia Stock Exchange, Inc. (n/k/a NASDAQ OMX PHLX, Inc.). The proposed amendment would add BATS as a participant to the Joint-SRO Plan.

BATS has submitted a signed copy of the Joint-SRO Plan to the Commission in accordance with the procedures set

forth in the Plan regarding new participants. Section III(b) of the Joint-SRO Plan provides that a national securities exchange or national securities association may become a party to the Plan by: (i) Executing a copy of the Plan, as then in effect (with the only changes being the addition of the new participant's name in Section 11(a) of the Plan and the new participant's single-digit code in Section VI(a)(1) of the Plan) and (ii) submitting such executed plan to the Commission for approval.

## II. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Joint-SRO Plan amendment is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number 4-518 on the subject line.

## Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange