

To: Members

From: Legal and Regulatory Services Divisions

Date: September 22, 2008

Re: SEC's Amended Emergency Order Prohibiting Short Sales in Certain Securities

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The SEC has amended its emergency order that prohibits short selling in any publicly traded securities of certain financial institutions. The amended emergency order, which remains in effect until 11:59 p.m. EDT on Thursday, October 2, 2008, is available at <http://www.sec.gov/rules/other/2008/34-58611.pdf>.

The order has been amended as follows:

- Options Market Maker Exception: The exception that applied to options market makers that effect short sales as part of bona fide market making and hedging activity related directly to bona fide market making in derivatives on securities in financial institutions that are subject to the order has been extended for the duration of the order. The order is being amended to clarify that exception applies to all market makers, including OTC market makers, in (i) derivative securities based on covered securities, or (ii) ETFs or ETNs of which covered securities are a component. In addition, to help ensure that this hedging exception does not result in increased short exposure in covered securities, the order limits the exception so that if a customer or counterparty in a derivative security based on a covered security is established after 12:01 a.m. EDT on September 22, 2008, a market maker may not effect a short sale in a 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 the order. In addition, as detailed in the order, please be aware there is a requirement to publish a notice on the market maker's website that the market maker is relying on the exception as soon as operationally practicable (assuming the market maker has a website).
- Option Assignment Exception: The order now has an exception from its requirements for short sales that occur as a result of the assignment of short calls upon exercise.
- Options and Futures Contract Expiration Exception: The original order includes an exception to allow short sales that occur as the result of an automatic exercise or assignment of an equity option held prior to the effectiveness of the order due to expiration of the option. The order was amended to also allow short sales that occur as a result of futures contracts held prior to the effectiveness of the order due to the expiration of the future.

- Included Financial Firms: The order has been amended to provide that the listing markets shall select the individual financial institutions whose securities are covered by the order. The categories include banks, saving associations, broker-dealers, investment advisers, and insurance companies, whether domestic or foreign, and the owners of any of these entities. Issuers can opt out by notifying the exchange to exclude their securities from the list.
- Sales of Rule 144 Restricted Securities: The order has been amended to clarify that it does not apply to persons that effect sales of covered securities pursuant to Rule 144 of the Exchange Act. (Rule 144 securities sales are sales of owned securities and are not considered short sales.)

Any questions about this circular may be directed to Bob Gardner at [gardner@cboe.com](mailto:gardner@cboe.com) or 312-786-7937, Jim Adams at [adamsj@cboe.com](mailto:adamsj@cboe.com) or 312-786-7718, or Jennifer Lamie at [lamie@cboe.com](mailto:lamie@cboe.com) or 312-786-7576.

(See also Regulatory Circulars RG08-106, RG08-110, RG08-112 and RG08-113)