SEC ISSUES ADDITIONAL ORDERS REGARDING SHORT SELLING

On the night of September 18, 2008, the Securities and Exchange Commission ("SEC") took additional unprecedented steps using its emergency authority in Section 12(k)(2) of the Securities Exchange Act of 1934 ("Exchange Act") to combat market volatility and perceived abusive short selling, and to increase transparency of short selling activity. Some of the orders have immediate effect, and all of the orders expire at 11:59 p.m. on October 2, 2008, unless extended by further order.[1]

Short selling prohibited in certain financial securities.[2] Effective immediately, short sales are prohibited in the publicly traded securities of certain banks, insurance companies, and securities firms, the names and symbols of which are listed in Appendix A to the SEC's order. The order includes exemptions for:

1. bona fide market making by registered market makers, block positioners, and other market makers obligated to quote in the over-the-counter markets;

2. bona fide market making and hedging activity related directly to bona fide market making in derivatives on the identified securities. The order provides, in effect, that this exemption will expire at 11:59 p.m. on September 19.[3] This exemption is apparently designed to permit options market makers to deal with the quarterly expiration of options that occurs on September 19, 2008. While this exemption was directed at options market makers, the order extends to bona fide market making more generally in derivatives; and

3. short sales that occur as a result of automatic exercise or assignment of an equity option held *prior* to September 19, 2008.

Comment

a. The short selling ban applies to "the publicly traded securities of certain financial firms, which entities are identified in Appendix A." We understand that the ban applies only to the security ticker symbols listed in Appendix A, *i.e.*, the common stock of the issuers.

b. The definition of "short sale" for purposes of the order is the same as Rule 200(a) of Regulation SHO under the Exchange Act.

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1 We understand that the SEC staff intends to publish guidance on the operation of the orders.

2 SEC Release No. 34-58592 (Sept. 18, 2008).

3 On September 19, 2008, the SEC published a statement by its Division of Trading and Markets that it had recommended that the SEC extend this exemption for the duration of the order. SEC Press Release No. 2008-213 (Sept. 19, 2008).

c. The order appears to treat options exercises that require delivery of securities as a sale.[4] For example, this means that a voluntary exercise of a put option by a person that did not have a net long position in the underlying security to deliver on the exercise would be engaging in a short sale.

Short position reporting requirement.[5] All asset managers that filed or were required to file Form 13F under the Exchange Act for the quarter ended June 30, 2008 must file the new Form SH weekly with the SEC starting on Monday, September 29, 2008, reporting daily short selling activity over the preceding week. Managers must begin collecting data on September 22, 2008. The report requires for each day that short sales were made:

1. the name of the issuer and CUSIP number;
2. the opening short position;
3. the number and value of securities sold short;
4. the closing short position;
5. the largest intraday short position; and
6. the time of the largest intraday short position.

De minimis short positions (less than 0.25 percent of the issuer's outstanding securities and valued at less than $1 million) need not be reported.

Form SH must be filed with the SEC's EDGAR system and will be publicly available.

Comment

a. All short positions extant prior to 12:01 a.m. on September 22, 2008 do not have to be reported on Form SH. Special Instruction 10.a.iii. to Form SH states that the short position for Monday, September 22, 2008 shall be zero. This means that only short sales and related short positions occurring on or after September 22 need to be reported on the form.

b. Form SH will require managers to begin capturing a large volume of data beginning on September 22, 2008. The form is attached to this Client Memorandum. It is expected that managers will use their regular Form 13F filing processes to file with the SEC's EDGAR system. We can provide assistance in filing the form with the SEC.

c. The list of securities that must be reported on Form SH is contained in the official list of Exchange Act Section 13(f) securities published by the SEC.[6] Short positions in these securities must be reported, except that options positions are excluded.

d. The definition of "short sale" for purposes of Form SH is the same as in Rule 200(a) of Regulation SHO.

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[4] This would be consistent with the approach taken in connection with the emergency order issued by the SEC in July 2008. *See* SEC Release No. 34-58161 n.3 (July 15, 2008); "Guidance Regarding the Commission's Emergency Order Concerning Short Selling," Question 4 (July 18, 2008).

[5] SEC Release No. 34-58591 (Sept. 18, 2008).

[6] *See* General Instruction 4 to Form SH.

e. Form SH must be filed on the Monday of each week to report the required data for the preceding week. Although the SEC order expires on October 2, 2008, and so requires only the filing on September 29, 2008, we expect that the order will be extended to October 18, 2008, and that the SEC may propose rulemaking to make the requirement permanent.

f. A Form SH need not be filed if the manager engaged in no short sales since the filing of the previous form.

Rule 10b-18 modifications.[7] The SEC enhanced the ability of issuers to repurchase their own common stock within the "safe harbor" from manipulation charges provided by Exchange Act Rule 10b-18. The order is effective from 12:01 a.m. on September 19, 2008, and expires at 11:59 p.m. on October 2, 2008, unless extended. During the period of the order, issuers can:

1. bid for and purchase their shares during the entire primary trading session in the market where the purchase is made; and
2. purchase up to 100 percent of the average daily trading volume in their shares each day.

The price and single broker conditions of Rule 10b-18 are unchanged.

Attachment: Form SH

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September 19, 2008

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[7] SEC Release No. 34-58588 (Sept. 18, 2008).

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 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	Name
28-_____	_____

[Repeat as necessary.]

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	Name
____	28-_____	_____

[Repeat as necessary.]

FORM SH INFORMATION TABLE –PAGE 1

MONDAY, _____[Month, Day, Year]______

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Name of Issuer	CUSIP	Short Position (Start of Day)	Number of Securities Sold Short (Day)	Value of Securities Sold Short (Day)	Short Position (End of Day)	Largest Intra-Day Short Position	Time of Day of Largest Intra-Day Short Position

FORM SH INFORMATION TABLE –PAGE 2
TUESDAY, ____[Month, Day, Year]_____

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Name of Issuer	CUSIP	Short Position (Start of Day)	Number of Securities Sold Short (Day)	Value of Securities Sold Short (Day)	Short Position (End of Day)	Largest Intra-Day Short Position	Time of Day of Largest Intra-Day Short Position

FORM SH INFORMATION TABLE –PAGE 3

WEDNESDAY, ________[Month, Day, Year]______

Column 1 Name of Issuer	Column 2 CUSIP	Column 3 Short Position (Start of Day)	Column 4 Number of Securities Sold Short (Day)	Column 5 Value of Securities Sold Short (Day)	Column 6 Short Position (End of Day)	Column 7 Largest Intra-Day Short Position	Column 8 Time of Day of Largest Intra-Day Short Position

FORM SH INFORMATION TABLE –PAGE 4
THURSDAY, ___[Month, Day, Year]______

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Name of Issuer	CUSIP	Short Position (Start of Day)	Number of Securities Sold Short (Day)	Value of Securities Sold Short (Day)	Short Position (End of Day)	Largest Intra-Day Short Position	Time of Day of Largest Intra-Day Short Position

FORM SH INFORMATION TABLE –PAGE 5

FRIDAY, ______[Month, Day, Year]______

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Name of Issuer	CUSIP	Short Position (Start of Day)	Number of Securities Sold Short (Day)	Value of Securities Sold Short (Day)	Short Position (End of Day)	Largest Intra-Day Short Position	Time of Day of Largest Intra-Day Short Position

FORM SH INFORMATION TABLE –PAGE 6

SATURDAY-SUNDAY, ________ [Month, Day, Year] ______

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Name of Issuer	CUSIP	Short Position (Start of Day)	Number of Securities Sold Short (Day)	Value of Securities Sold Short (Day)	Short Position (End of Day)	Largest Intra-Day Short Position	Time of Day of Largest Intra-Day Short Position