

# Client Alert

A report  
for clients  
and friends  
of the Firm      September 2008

## SEC Amends Emergency Orders on Short Sales

### Short Sale Disclosure

On September 21, 2008, the Securities and Exchange Commission (the "SEC") amended the Emergency Order adopted on September 18, 2008, requiring the filing of a new weekly disclosure form, Form SH, by all investment managers who filed or who were required to file a Form 13F for the calendar quarter ended June 30, 2008.

The amended Order provides that the weekly Form SH will be filed on a non-public basis, and will be made public via the SEC's EDGAR system two weeks after the Form is filed.

The Order, and therefore the Form SH reporting requirement, will still terminate on October 2, 2008, unless the SEC extends its effectiveness.

### Expansion of Short Selling Ban and Technical Amendment to Market-Maker Exception

On September 21, 2008, the SEC also made certain amendments to its Emergency Order regarding the prohibition on short sales of certain financial services firms' publicly traded securities.

The SEC expanded the list of financial services firms covered by the original Order. The Order now covers the publicly traded common equity securities of any issuer identified by any national securities exchange listing such securities as being a financial institution, and a list of such securities will be published by each exchange. In addition, the amended Order provides exceptions to allow short sales that occur (i) as a result of automatic exercise or assignment of an equity option held prior to the effectiveness of the Order due to expiration of the option, (ii) as a result of the expiration of futures contracts held prior to the effectiveness of the Order, or (iii) as a result of assignment to call writers upon exercise. The Order also does not cover sales of "covered securities"

pursuant to Rule 144 of the Securities Act of 1933, as amended.

The amended Order changes the exception for registered market makers, block positioners, or other market makers that effect 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 of the listed financial services firms. Under the amended Order, this exception may not be used to justify a short sale if the market maker knows that the transaction of the derivative customer or counterparty 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 listed financial services firm.

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