

PRIVATE FUNDS
AND
CAPITAL MARKETS BULLETIN

September 19, 2008

**U.S. SECURITIES AND EXCHANGE COMMISSION
ISSUES EMERGENCY ORDER PROHIBITING SHORT
SALES OF FINANCIAL COMPANIES' SECURITIES**

On September 18, 2008, the U.S. Securities and Exchange Commission (the "SEC") issued an emergency order prohibiting short selling of publicly traded securities of financial companies identified in the emergency order. The emergency order does not require that existing short positions be closed or otherwise eliminated; however, no new short sales may be made. The emergency order will expire at 11:59 p.m., Eastern time, on October 2, 2008, unless extended by the SEC.

The SEC refers to a "short sale" as that term is defined in the SEC's Regulation SHO, which is either a sale of a security that is consummated by delivery of a security borrowed by (or for the account of) the seller, or where the seller does not "own" the security. This includes, among other things, any sale of a security in which the seller does not have a net long position.

The SEC emergency order contains three exceptions to the prohibition on short selling:

- **Bona fide market maker exception** – Covers registered market makers, certain other market makers and block positioners, in each case who sell short as part of their bona fide market making activities.

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- **Option expiration exception** – Covers short positions that are created by the automatic exercise or assignment of an equity option that was held prior to the effectiveness of the emergency order due to the expiration of the option.
- **Exception to facilitate September 20, 2008 option expirations** – Covers any short sale effected by a market maker as part of bona fide market making activity and related hedging activity in derivatives (*i.e.*, options) on the securities that are the subject of the emergency order. This exception applies only until 11:59 p.m. on September 19, 2008.

The SEC emergency order, which contains the list of included financial companies, can be viewed on its website at the following web address:

<http://www.sec.gov/rules/other/2008/34-58592.pdf>

The SEC has also issued a related emergency order, effective September 22, 2008, that will require certain institutional investment managers to report information concerning daily short sales of securities. We will describe that emergency order in a separate memorandum to our clients.

IF YOU HAVE ANY QUESTIONS OR
COMMENTS ABOUT THIS
BULLETIN, PLEASE CONTACT
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