

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
RELEASE NO. 58591A / September 21, 2008

AMENDMENT TO 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”),¹ on September 18, 2008, the Securities and Exchange Commission (“Commission”) issued an Emergency Order (“Order”) requiring institutional investment managers to report short sales of certain publicly traded securities.² The Order takes effect on September 22, 2008 and requires the filing of a Form SH on September 29, 2008. This amendment relates to the public availability of the information provided by the institutional investment managers when they report such sales and also includes technical amendments.

The Commission is aware of the continued potential of sudden and excessive fluctuations of securities prices and disruption in the functioning of the securities markets that could threaten fair and orderly markets. As evidenced by our recent publication of emergency orders under Section 12(k) of the Exchange Act,³ we are concerned about the possible unnecessary or artificial price movements based on unfounded rumors regarding the stability of financial institutions and other issuers exacerbated by short selling. We

¹ 15 USC 78 l(k)(2).

² See Exchange Act Release No. 58591 (September 18, 2008).

³ See Exchange Act Release No. 58166 (July 15, 2008), Exchange Act Release No. 58572 (September 17, 2008).

also 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.

Given the importance of confidence in our financial markets as a whole, we have become concerned about sudden and unexplained declines in the prices of securities. Such price declines can give rise to questions about the underlying financial condition of an issuer, which in turn can create a crisis of confidence without a fundamental underlying basis. This crisis of confidence can impair the liquidity and ultimate viability of an issuer, with potentially broad market consequences.

As a result of these recent developments, the Commission concluded that there continues to exist the potential of sudden and excessive fluctuations of securities prices generally and disruption in the functioning of the securities markets that could threaten fair and orderly markets. Based on this conclusion, the Commission is exercising its powers under Section 12(k)(2) of the Exchange Act.⁴ Pursuant to Section 12(k)(2), in appropriate circumstances the Commission may by order summarily take action to alter, supplement, suspend, or impose requirements or restrictions with respect to matters or actions subject to regulation by the Commission.

We have concluded that it is necessary to require certain institutional investment managers to report information concerning daily short sales of securities. For purposes of this Order, we believe that section 13(f) of the Exchange Act and Rule 13f-1 provide useful and tested terms and definitions that provide a basis for requiring new disclosure.

⁴ This finding of an “emergency” is solely for purposes of Section 12(k)(2) of the Exchange Act and is not intended to have any other effect or meaning or to confer any right or impose any obligation other than set forth in this Order.

The Order therefore requires that an institutional investment manager that exercises investment discretion⁵ with respect to accounts holding section 13(f) securities⁶ having an aggregate fair market value on the last trading day of any month of any calendar year of at least \$100,000,000 must file a new form with the Commission. Specifically, an institutional investment manager who has filed or was required to file a Form 13F for the calendar quarter ended June 30, 2008 under section 13(f) of the Exchange Act and Rule 13f-1(a) thereunder will be required to file a report on new Form SH with the Commission on the first business day⁷ of every calendar week immediately following a week in which it effected short sales.

The Form SH, which must be filed electronically using the Commission's EDGAR system,⁸ must include disclosure of the number and value of securities sold short for each section 13(f) security, except for short sales in options, and the opening short position, closing short position, largest intraday short position, and the time of the largest intraday short position, for that security during each calendar day of the prior

⁵ The term "investment discretion" has the same meaning as in Exchange Act Rule 13f-1(b). See 17 CFR § 240.13f-1(b).

⁶ The term "section 13(f) securities" has the same meaning as in Exchange Act Rule 13f-1(c). See 17 CFR § 240.13f-1(c).

⁷ See Exchange Act Rule 0-2 for a description of the business hours of the Commission. 17 CFR § 240.0-2.

⁸ Although we are requiring managers to electronically file Forms SH using our EDGAR system, the Forms SH will be filed on a non-public basis. The Commission is permitting the non-public filing of Form SH in order to maintain fair and orderly securities markets and prevent substantial disruption in the securities markets. The Commission believes that the non-public 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. Two weeks after the due date for the Forms SH, the Commission will make the Forms available to the public. We believe that by two weeks after the due date the reasons to maintain the information as non-public will have diminished.

week.⁹ This disclosure requirement will apply only to short sales effected after the effective date of the Order. In addition, no filing will be required when no short sales of a section 13(f) security have been effected since the previous filing of a Form SH. Finally, an institutional investment manager need not report short positions otherwise reportable if: (i) the short position in the section 13(f) security constitutes less than one-quarter of one per cent of that class of the issuer's section 13(f) securities issued and outstanding as reported on the issuer's most recent annual or quarterly report, and any current report subsequent thereto, filed with the Commission pursuant to the Exchange Act, unless the manager knows or has reason to believe the information contained therein is inaccurate; and (ii) the fair market value of the short position in the section 13(f) security is less than \$1,000,000.

We believe that the extraordinary circumstances we now confront require the new disclosure requirements we are imposing today. We also believe such disclosure requirements are necessary to protect the integrity and quality of the securities markets and strengthen investor confidence.

IT IS ORDERED that, pursuant to our Section 12(k)(2) powers:

Every institutional investment manager that exercises investment discretion with respect to accounts holding section 13(f) securities and that has filed or was required to file a Form 13F for the calendar quarter ended June 30, 2008, as required under section 13(f) of the Exchange Act and Rule 13f-1(a) thereunder, must file a report on Form SH with the Commission. The Form SH filing must be made on the first business day of each week immediately following a week in which the institutional investment manager has effected any short sale with respect to any section 13(f) security that is not an option. With respect to each section 13(f) security that is not an option, the Form SH filing must reflect the number and value of securities sold short during the day as well as the opening short position, closing short position, largest intraday short position, and the time

⁹ No Commission procedure for seeking confidential treatment of information filed with or transmitted to the Commission, such as those in 17 C.F.R. §§ 200.80, 200.83, or 240.24b-2, shall apply to the information that this Order requires to be filed.

of the largest intraday short position, for that security on each calendar day of the prior week in which the institutional investment manager engaged in trading activity with respect to short sales.

The disclosure requirement will apply only to short sales effected after the effective date of the Order. In addition, no filing will be required when no short sales of a section 13(f) security have been effected since the previous filing of a Form SH.

Finally, an institutional investment manager need not report short positions otherwise reportable if: (i) the short position in the section 13(f) security constitutes less than one-quarter of one per cent of that class of the issuer's section 13(f) securities issued and outstanding as reported on the issuer's most recent annual or quarterly report, and any current report subsequent thereto, filed with the Commission pursuant to the Exchange Act, unless the manager knows or has reason to believe the information contained therein is inaccurate; and (ii) the fair market value of the short position in the section 13(f) security is less than \$1,000,000.

Short sale has the meaning set forth in Rule 200(a) of Regulation SHO (17 CFR § 242.200(a)), and terms referenced in that provision shall have the same meaning as set forth in Regulation SHO; and *short positions* to be reported are those resulting from "short sales" as that term is defined in Rule 200(a) of Regulation SHO.

IT IS FURTHER ORDERED that, pursuant to our Section 12(k)(2) powers, the text of Form SH be as set forth in the attachment to this Order.

This Order shall be effective at 12:01 a.m. EDT on September 22, 2008, the first Form SH shall be required to be filed on September 29, 2008, and this Order shall terminate at 11:59 p.m. on October 2, 2008 unless further extended by the Commission.

By the Commission.

Florence E. Harmon
Acting Secretary