

MEMO# 22956

October 2, 2008

SEC States Intention to Extend All Short Sale Emergency Orders; Extends Two Orders

[22956]

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TO: SEC RULES MEMBERS No. 111-08

ETF ADVISORY COMMITTEE No. 30-08

CLOSED-END INVESTMENT COMPANY MEMBERS No. 48-08

EQUITY MARKETS ADVISORY COMMITTEE No. 51-08

INVESTMENT ADVISER MEMBERS No. 13-08

COMPLIANCE ADVISORY COMMITTEE No. 16-08

ACCOUNTING/TREASURERS MEMBERS No. 24-08 RE: SEC STATES INTENTION TO EXTEND ALL SHORT SALE EMERGENCY ORDERS; EXTENDS TWO ORDERS

The Securities and Exchange Commission has announced that it will extend all of the emergency orders concerning short selling until October 17, 2008. [\[1\]](#) This determination has been based on the conclusion that such action is necessary in the current market environment to maintain fair and orderly securities markets and for the protection of investors.

At this time, the Commission only has extended two of the emergency orders: (1) the easing of restrictions on the ability of issuers to repurchase their securities [\[2\]](#) and (2) the creation of Rule 204T, imposing a hard T+3 close-out requirement for “naked” short selling with a mandatory pre-borrow penalty for further short sales. [\[3\]](#) As part of the order extending the duration of Rule 204T, the Commission has adopted the guidance issued by the Staff of the Division of Trading and Markets addressing technical and operational concerns resulting from the requirements of the rule, including the guidance regarding the sale of loaned but recalled securities. [\[4\]](#) In its press release discussing the new orders, the Commission has stated its intention that the order extending the time period for Rule 204T would continue in effect beyond October 17, 2008 without interruption in the form of an interim final rule.

The Commission also has announced that it will modify the emergency order requiring that institutional money managers report their short positions of certain publicly traded

securities. [5] According to the Commission's press release, "disclosure under the emergency order will be made only to the SEC." The Commission has not yet issued an order taking this action or extending the temporary requirement that institutional money managers report their short positions to the Commission. However, in its press release, the Commission has announced its intention that the forthcoming order would continue in effect beyond October 17, 2008 without interruption in the form of an interim final rule.

Similarly, the Commission has yet to issue an order extending the temporary ban on short selling of financial company stocks. [6] It has announced its intention to do so, and has stated that the proposed order would expire on the third business day after enactment of anticipated legislation, but in any case no later than October 17, 2008.

Heather L. Traeger
Assistant Counsel

endnotes

[1] See Statement of Securities and Exchange Commission Concerning Short Selling, Press Release No. 2008-235, October 1, 2008. The press release may be found at: <http://www.sec.gov/news/press/2008/2008-235.htm>.

[2] See Order Extending Emergency Order Easing Restrictions on Issuers to Re-Purchase Their Securities , SEC Release No. 34-58703 (October 1, 2008).

[3] See Order Extending Emergency Order to Enhance Investor Protections Against Naked Short Selling, SEC Release No. 34-58711 (October 1, 2008).

[4] See Guidance Regarding Sale of Loaned but Recalled Securities, Division of Trading and Market, Securities and Exchange Commission (September 28, 2008) and Guidance Regarding the Commission's Emergency Order Concerning Rules to Protect Investors Against "Naked" Short Selling Abuses, Division of Trading and Markets, Securities and Exchange Commission (September 24, 2008).

[5] See Amendment to Emergency Order Requiring Institutional Money Managers to Report New Short Sales, SEC Release No. 34-58591A (September 21, 2008) and Emergency Order Requiring Institutional Money Manager to Report New Short Sales, SEC Release No. 34-58591 (September 18, 2008).

[6] See Amended Order Halting Short Selling in Financial Stocks, SEC Release No. 34-58611 (September 21, 2008) and SEC Order Halting Short Selling in Financial Stocks, SEC Release No. 34-58592 (September 18, 2008).