

MEMO# 22716

July 18, 2008

SEC Issues Amendment to Emergency Order to Prohibit Naked Short Selling

[22716]

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TO: EQUITY MARKETS ADVISORY COMMITTEE No. 32-08
SEC RULES COMMITTEE No. 51-08 RE: SEC ISSUES AMENDMENT TO EMERGENCY ORDER
TO PROHIBIT NAKED SHORT SELLING

The Securities and Exchange Commission has issued an amendment [\[1\]](#) to its emergency order requiring that anyone effecting a short sale in the securities of certain specified financial services (“subject securities”) companies arrange beforehand to borrow the securities and deliver them at settlement. [\[2\]](#) The Amendment to the Order includes four areas of accommodation to assist market participants in making adjustments to their operations to comply with the Order.

First, the Amendment exempts from the requirements of the Order registered market makers, block positioners, and other market makers obligated to quote in the over-the-counter market, that are selling short as part of bona fide market making and hedging activities, in the subject securities, derivative securities based on the subject securities, and ETFs of which the subject securities are a component. It also clarifies that the settlement date delivery requirement of the Order will apply to these market makers.

Second, the Amendment states that brokers and dealers may use the same processes and procedures used for compliance with Regulation SHO [\[3\]](#) to documenting compliance with the Order.

Third, the Amendment states that the Order will not apply to short sales of subject securities effected pursuant to Rule 144 of the Securities Act of 1933, although such sales will remain subject to the requirements of Regulation SHO.

Fourth, the Amendment states that the Order will not apply to shorts sales by underwriters, or members of a syndicate or group participating in distributions of subject securities in connection with an over-allotment of securities, or any law-off sale by such person in connection with a distribution of subject securities through a rights or a standby underwriting commitment. Further, the Order will not apply with respect to a net syndicate short position created in connection with a distribution of a subject security, that is part of a fail to deliver position, if action is taken to close out the net syndicate short position no later than the 30th day after commencement of sales in the distribution.

The Amendment also corrects an inaccurate reference in the Order to a ticker symbol for HSBC Holdings PLC ADS.

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endnotes

[1] See Amendment to Emergency Order Pursuant to Section 12(k)(2) of the Securities Exchange Act of 1934 Taking Temporary Action to Respond to Market Development, SEC Release No. 34-58190 (July 18, 2008) (“Amendment”). The Amendment may be found at <http://www.sec.gov/rules/other/2008/34-58190.pdf>.

[2] See Memorandum to Equity Markets Advisory Committee No. 30-08 Committee and SEC Rules Committee No. 48-08, dated July 16, 2008 [22700], and Emergency Order Pursuant to Section 12(k)(2) of the Securities Exchange Act of 1934 Taking Temporary Action to Respond to Market Developments, SEC Release No. 34-58166 (July 15, 2008) (“Order”). The Order may be found at <http://www.sec.gov/rules/other/2008/34-58166.pdf>.

[3] See Short Sales, SEC Release No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004) (adopting Regulation SHO).