MEMO# 22428

April 15, 2008

SEC Issues Exemptions From Trade-Through Rule

[22428]

April 15, 2008

TO: EQUITY MARKETS ADVISORY COMMITTEE No. 18-08 RE: SEC ISSUES EXEMPTIONS FROM TRADE-THROUGH RULE

The Securities and Exchange Commission has issued an order exempting non-convertible preferred securities ("NCPS") from the trade-through provisions in Regulation NMS and an order modifying a 2006 exemptive order for qualified contingent trades ("QCT").*

The SEC determined to issue an order exempting NCPS from the trade-through rule due to the many characteristics such securities hold in common with fixed-income securities. Fixed-income securities, as a general matter, are not subject to the trade-through rule. Specifically, the SEC noted in its order that NCPS are priced like, and trade like, fixed-income securities, not common stock. They typically trade on the fixed-income desks of broker-dealers, and the SEC has previously treated them differently from common stock in recognition of their similarities to fixed-income securities.

The SEC also has modified the 2006 QCT exemptive order to remove the minimum size limitation, requiring that an eligible contingent trade involve at least 10,000 shares or have a market value of at least $200,000. The change was requested by the Chicago Board Options Exchange which argued that the limitation unduly inhibited retail investors who wanted to complete smaller-sized contingent trades (e.g., buy-write transactions). In issuing its order, the SEC determined that the exemption applied to "a very small portion of the overall amount of stock executions in listed stocks" and that the remaining conditions from the exemption would continue to ensure that the exemption is narrowly drawn. The

SEC concluded its order by stating its expectation that QCTs would continue to be used for the same valid trading purposes as they are currently and any material change to the nature or frequency of such trades could cause the SEC to reconsider the exemption. The SEC also noted that the QCT exemption would not apply to statistical arbitrage transactions, absent some other derivative or merger arbitrage relationship between component orders.

Heather L. Traeger
Assistant Counsel