

**UPDATE: SEC Revises Emergency Order**

**Please Route To:** Head Traders; Technical Contacts; Compliance Officers

**What you need to know:**

The Securities and Exchange Commission (SEC) revised order amends the Emergency Order issued on September 19<sup>th</sup> rules in five ways:

1. Included Financial Firms: the Order applies to "the publicly traded common equity securities of any issuer identified by any national securities exchange listing such securities as being a financial institution ("Covered Securities")." NASDAQ and other listing exchanges were instructed to select listed companies that are in one of the following categories:

- \* banks, as defined in 15 U.S.C. 78c(a)(6)
- \* savings associations, as defined in 15 U.S.C. 78c(a)(46)
- \* registered brokers or dealers, as defined in 15 U.S.C. 78c(a)(48)
- \* insurance companies, as defined in 15 U.S.C. 80a-2(a)(17)
- \* banks, savings associations, brokers, dealers and insurance companies that are similar to those covered by the foregoing statutory definitions but which are regulated by a foreign (rather than U.S.) regulatory authority
- \* U.S. and foreign investment advisors, both registered and unregistered
- \* companies that control or have majority ownership of companies that meet one of the above criteria.

NASDAQ has posted two lists of Covered Securities, one set selected from Appendix A to the Emergency Order and a second set of additional companies that also meet the criteria above but that were not included in Appendix A to the Emergency Order.

2. Options and Futures Contract Expiration: the requirements of the Order do not apply to "any person that effects a short sale in any Covered Security as a result of automatic exercise or assignment of an equity option, or in connection with settlement of a futures contract, that is held prior to effectiveness of the Order due to expiration of the option or futures contract."

3. Options Assignments: the requirements of the Order do not apply to "the writer of a call option that effects a short sale in any Covered Security as a result of assignment following exercise by the holder of the call."

4. Market Making: the requirements of this Order do not apply to "any person that is a market maker, including an over-the-counter market maker, that effects a short sale as part of a bona fide market making and hedging activity related directly to bona fide market making in (a) derivative securities based on Covered Securities, or (b) exchange traded funds and exchange traded notes of which Covered Securities are a component. Provided, however, if a customer or counterparty position in a derivative security based on a Covered Security is established after 12:01 a.m. E.D.T on September 22, 2008, a market maker may not effect a short sale in the Covered Security if the market maker knows that the customer's or counterparty's transaction will result in the customer or counterparty establishing or increasing an economic net

short position (i.e., through actual positions, derivatives, or otherwise) in the issued share capital of a firm covered by this Order."

"All market makers relying on this exception to the limitation on short selling shall, as soon as operationally practicable, publish a notice on their internet Web site that, pursuant to this Order, the market maker may not knowingly effect a short sale as part of bona fide market making and hedging activity related directly to bona fide market making in a derivative security based on a Covered Security, if the customer's or counterparty's transaction will result in the customer or counterparty establishing or increasing an economic net short position (i.e., through actual positions, derivatives, or otherwise) in the issued share capital of a firm covered by the Order."

5. Restricted Stock: the Order does not apply to "any person that effects a sale pursuant to Rule 144 of the Securities Act of 1933 (17 CFR 230.144) in a Covered Security."

### Where can I get additional information?

- View press release [#218](#) on the SEC website for details.
- View [SEC Release #58611](#).
- [Final NASDAQ Supplemental List for SEC Short Sale](#).
- [SEC Original List of NASDAQ Issues for SEC Short Sale](#).
- Contact [NASDAQ Market Operations](#) +1 212 231 5100.
- Contact NASDAQ MarketWatch at +1 800 211 4953.

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