

MEMORANDUM

TO: Members, Member Organizations, Participants, Participant Organizations

FROM: Richard S. Rudolph, Vice President and Counsel
Legal Department

DATE: July 17, 2008

RE: Emergency Order
Pre-Borrowing Requirement for Short Sales in Certain Financial Stocks

The Securities and Exchange Commission (“SEC” or “Commission”) has issued an **Emergency Order (“Order”)** concerning short sales of certain equity securities. The Order will include a “pre-borrowing” requirement for short sellers in certain securities, which are listed below (the “affected securities”).

Current SEC rules permit broker/dealers to sell stock short as long as they reasonably believe they can locate the needed shares and deliver them on time. Beginning Monday, July 21, 2008 at 12:01 a.m., and extending through Tuesday July 29, 2008 at 11:59 p.m., short sellers, **including options market makers**, will need to make formal arrangements to borrow the shares before selling them.

Specifically, the Order states in relevant part:

“[N]o person may effect a short sale in these securities [affected securities]...unless such person or its agent has borrowed or arranged to borrow the security or otherwise has the security available to borrow in its inventory prior to effecting such short sale and delivers the security on settlement date.”

The Order also notes that short sales to be effected as a result of a put options exercise are subject to the Order, and short sales used to hedge are also subject to the Order.

Phlx staff, in conjunction with representatives from the other options exchanges, discussed the Order with senior Commission staff yesterday and expressed our concern over the potential impact of the Order on the options markets and market participants. Phlx, together with the other options exchanges, intends to request today that the Commission grant some form of exemptive relief to options market makers concerning the “pre-borrowing” requirement in the Order. We will also request that this exemption apply to short sales occurring as a result of the exercise of long put options and as a result of the assignment of short call option positions. **At this time it is not clear whether the SEC will grant such relief. We will keep you updated.**

The Order will apply to the following affected securities:

<u>Company</u>	<u>Ticker Symbol(s)</u>
BNP Paribas Securities Corp.	BNPQF or BNPQY
Bank of America Corporation	BAC
Barclays PLC	BCS
Citigroup Inc.	C
Credit Suisse Group	CS
Daiwa Securities Group Inc.	DSECY
Deutsche Bank Group AG	DB
Allianz SE	AZ
Goldman, Sachs Group Inc	GS
Royal Bank ADS	RBS
HSBC Holding PLC ADS	HBC and HIS
J.P.Morgan Chase & Co.	JPM
Lehman Brothers Holdings Inc.	LEH
Merrill Lynch & Co., Inc.	MER
Mizuho Financial Group, Inc.	MFG
Morgan Stanley	MS
UBS AG	UBS
Freddie Mac	FRE
Fannie Mae	FNM

The Order states that the SEC may extend the duration of the Order by way of further rulemaking. We will follow this and keep membership informed. Questions concerning the Order may be addressed to Rick Rudolph in the Phlx Legal Department at (215) 496-5074.