

MEMORANDUM

TO: Members, Member Organizations, Participants, Participant Organizations

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

DATE: July 18, 2008

RE: Relief From SEC Emergency Order
Short Sales

As previously reported in Phlx Memorandum No. 1385-08 (July 17, 2008), 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 will need to make formal arrangements to borrow the shares before selling them.

The Order initially applied to all short sellers, including market makers. As set forth in detail below, the Commission has granted certain relief from the requirements of the Order to *bona fide* market makers.

Relief From the “Pre-Borrowing” Requirement

After discussions with representatives from Phlx and the other options exchanges in which we expressed our concern over the potential impact of the Order on the options markets and market participants, followed by a written request from the U.S. options exchanges, the Commission has granted certain exceptions to *bona fide* market makers concerning the “pre-borrowing” requirement in the Order.

Specifically, the exemptive relief to *bona fide* market makers provides:

“ [t] the following entities are excepted from the requirement of the Order that any person effecting a short sale in the [affected securities], ... must borrow or arrange to borrow the security or otherwise have the security available to borrow in its inventory prior to effecting the short sale: registered market makers, block positioners, or other market makers obligated to quote the over-the-counter market, that are selling short as

part of *bona fide* market making and hedging activities related directly to bona fide market making in: (a) [the affected securities]; (b) derivative securities based on [the affected securities]; and (c) exchange traded funds of which [affected securities] are a component.

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.