



MEMO #: 1687-08

MEMORANDUM

TO: Options Members and Member Organizations
DATE: September 24, 2008
RE: **SHORT SALES – ATTESTATIONS**

As stated in Memo # 1685-08 this morning, the Division of Trading and Markets of the Securities and Exchange Commission (“Commission”) is “extending temporary Rule 204(a)'s close-out requirement for fails to deliver attributable to bona fide market making activities by registered market makers, options market makers, or other market makers obligated to quote in the over-the-counter market (collectively, "Market Makers").”

As a result, Phlx Market Makers must “close out the fail to deliver position attributable to a Market Maker by no later than the beginning of regular trading hours on the morning of the third settlement day after the settlement date for the transaction that resulted in the fail to deliver position.”

In order to receive such relief, a Phlx Market Maker to which a fail to deliver position at a registered clearing agency is attributable, must per security, per event:

- (1) attest in writing to the market on which it is registered that the fail to deliver position at issue was established solely for the purpose of meeting its bona fide market making obligation inclusive of the following information:
 1. MPID(s) associated with fails
 2. Contact Info (phone and email)
 3. Option Symbol
 4. Underlying Equity Symbol
 5. Trade Date
 6. Execution Time Range (to and from)
 7. Execution Price Range (to and from)
 8. Number of contracts

and

- (2) describe the steps the Market Maker has taken in an effort to deliver securities to its registered clearing agency.

Phlx Market Makers wishing to invoke this temporary relief should fax such attestations to Stephen Pettibone, Head of Options Reviews at Phlx at (215) 496-5567. Attestations may be made on the attached form.

Fax To: (215) 496-5567 Number of Pages: _____

**NASDAQ OMX PHLX OPTIONS MARKET MAKER WRITTEN ATTESTATION AND
NOTICE RELATING TO THE CLOSEOUT REQUIREMENTS OF RULE 204T OF
REGULATION SHO**

Request Date: _____ Member Firm Symbol: _____

The above-referenced firm, a registered NASDAQ OMX PHLX Options Market Maker, attests that it is subject to the closeout requirements of Rule 204T of Regulation SHO with respect to the position(s) referenced below, which it acquired solely for the purpose of meeting applicant's bona fide market making obligations. The firm understands that the extension of its close-out requirements under SEC Rule 204T applies only to those transactions in which it is acting as a bona fide Market Maker and that the firm must close out the fail to deliver position(s) no later than the beginning of regular trading hours on the morning of the third settlement day after the settlement date for the transaction(s) that resulted in the fail to deliver position (T+6).

Member Organization: _____

Option Symbol(s): _____ Underlying Issue Symbol(s): _____

Trade Date of Relevant Activity: _____

Settlement Date of Relevant Activity: _____

Total Fail to Deliver Position (# of contracts) as-of Settlement Date: _____

Amount of Fail to Deliver Position to be Closed Out by the Morning of Settlement Date +3:

Reason and circumstances for the fail to deliver position (e.g., Market Maker obligation to maintain the market):

Specific actions taken by the market maker, including dates, in an effort to deliver the securities to its registered clearing agency (including the identity of all parties contacted for attempts to cover the position; attach additional sheets if necessary):

Extenuating circumstances (if any):

MEMBER FIRM ACKNOWLEDGES THAT THE SECURITIES AND EXCHANGE COMMISSION CAN WITHDRAW THIS GUIDANCE AT ANY TIME.

Officer's Signature

Print Name & Title

Phone Number