



MEMO #: 1685-08

MEMORANDUM

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

The Division of Trading and Markets of the Securities and Exchange Commission (“Commission”) has issued further guidance regarding the Commission's Emergency Order concerning rules to protect investors against “naked” short selling abuses (“Guidance”).

The Guidance includes answers to four questions regarding the Emergency Order and can be accessed at:

<http://www.mmsend2.com/ls.cfm?r=148939456&sid=4874004&m=571785&u=NASDAQ&s=http://www.sec.gov/divisions/marketreg/204tfaq.htm>.

In the Answer to Question 4 in the Guidance the Commission states regarding “attestations” by Market Makers:

In addition, any Market Maker to which a fail to deliver position at a registered clearing agency is attributable *must 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 obligations. In addition, such *written attestation* must describe the steps the Market Maker has taken in an effort to deliver securities to its registered clearing agency.