

SEC Issues Emergency Order Temporarily Regulating Short-Sales of Certain Financial Institutions' Securities

Pursuant to its powers under Section 12(k)(2) of the Securities Exchange Act of 1934, the Securities and Exchange Commission (“SEC”) has issued an Emergency Order declaring that no person may effect a short sale¹ in the securities of certain substantial financial firms² using the means or instrumentalities of interstate commerce, 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.³ The SEC is taking this action in response to what it perceives as the spread of “false rumors” regarding certain large financial firms that continue to threaten “significant market disruption.”⁴

The Emergency Order takes effect on July 21, 2008 and will expire on July 29, 2008, unless further extended by the SEC. The Emergency Order seeks to curb “naked” short selling in the publicly traded securities of substantial financial institutions, which the SEC says results in the “artificial[] and unnecessar[y] decline [of the securities’ value,] well below the price level that would have resulted from the normal price discovery process.”⁵ This action is being taken in concert with ongoing SEC investigations into the possible “intentional spreading of false information intended to manipulate securities prices” in order to “provide powerful disincentives to those who might otherwise engage in illegal market manipulation through the dissemination of false rumors.”⁶

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email Charles A. Gilman at 212.701.3403 or cgilman@cahill.com; Jon Mark at 212.701.3100 or jmark@cahill.com; John Schuster at 212.701.3323 or jschuster@cahill.com.

¹ The definition of “short sale” shall be the same definition used in Rule 200(a) of Regulation SHO and the requirements for marking orders “long” or “short” shall be the same as provided in Regulation SHO.

² Listed in Appendix A of the Order as: BNP Paribas Securities Corp.; Bank of America Corporation BAC; Barclays PLC; Citigroup Inc.; Credit Suisse Group; Daiwa Securities Group Inc.; Deutsche Bank Group AG; Allianz SE; Goldman, Sachs Group Inc; Royal Bank ADS; HSBC Holdings PLC ADS; J. P. Morgan Chase & Co.; Lehman Brothers Holdings Inc.; Merrill Lynch & Co., Inc.; Mizuho Financial Group, Inc.; Morgan Stanley; UBS AG; Freddie Mac; and Fannie Mae.

³ The SEC notes that short sales to be effected as a result of a put option exercise are subject to this Order. In addition, the SEC notes that short sales used to hedge are also subject to this Order.

⁴ *Emergency Order Pursuant to Section 12(k)(2) of the Securities Exchange Act of 1934 Taking Temporary Action to Respond to Market Developments*, Exchange Act Release No. 58166 (July 15, 2008), at 3-4.

⁵ *Emergency Order* at 1.

⁶ *Id.* at 2.