OLSHAN
OLSHAN GRUNDMAN FROME ROSENZWEIG & WOLOSKY LLP

Client Alert

Corporate Department September 22, 2008

SEC Issues Temporary Emergency Orders Prohibiting Short Selling of Financial Stocks and Requiring Institutional Investment Managers to File New Forms SH Disclosing Daily Short Sales and Short Positions

On September 18, 2008, the Securities and Exchange Commission (the "SEC") issued temporary emergency orders in response to the recent turmoil in the securities markets that is believed to have been caused by "naked" short selling and irregular price movements based on rumors regarding the financial soundness of certain financial institutions. The SEC subsequently amended the orders on September 21, 2008. Specifically, the emergency orders temporarily:

- halt short selling in specified financial, banking and insurance stocks, and
- require institutional investment managers to report short sales and short positions.[1]

These orders are effective until 11:59 p.m. EDT on October 2, 2008, unless further extended by the SEC.

Prohibition on Short Selling of Financial Stocks

Subject to certain limited exceptions, investors are prohibited from shorting the securities of financial institutions covered by the applicable order, which financial institutions are to be selected by each national securities exchange. The SEC expects each national securities exchange to publish its list of financial institutions on such exchange's website. The exchanges are authorized to exclude from the lists issuers who choose not to be covered by the order. The lists are expected to include banks, savings associations, broker-dealers, investment advisers and insurance companies. At the time of the release of this Client Alert, most of the national securities exchanges had already posted their lists of covered securities. The links to these lists are attached to this Client Alert.

The SEC also determined that the prohibition on short selling will not apply to:

- any person that effects a short sale in any covered security as a result of an automatic exercise or assignment of an equity option, or in connection with settlement of a futures contract, held prior to 11:59 p.m. EDT on September 19, 2008 due to the expiration of the option or futures contract,
- any writer of a call option that effects a short sale in any covered security as a result of an assignment following exercise by the holder of the call, and
- any person that effects a sale in a covered security pursuant to Rule 144 of the Securities Act of 1933, as amended.

The SEC also exempted market makers from engaging in specified short selling of covered securities that is part of a bona fide market making and hedging activity related directly to bona fide market

[1] The SEC also issued an emergency order temporarily easing restrictions on the ability of issuers to re-purchase their securities under Rule 10b-18 and adopted Rule 10b-21, which subjects short sellers who deceive market participants about their intention or ability to timely deliver securities for settlement to regulatory claims of fraud.

making in covered securities and in exchange traded funds and exchange traded notes of which covered securities are a component.

Reporting Short Sales and Positions on New Form SH

Institutional investment managers who have filed, or were required to file, a Form 13F for the calendar quarter ended June 30, 2008 will be required to file a report on new Form SH (attached) disclosing information concerning their daily short sales and short positions involving 13F securities. The Form SH is due on the first business day of each week immediately following a week in which the investment manager effected any new short sale or closed part of or all of any short positions with respect to 13F securities. The Form SH will report the short sales and short positions for the Monday-Sunday immediately preceding the Monday on which the Form SH is due. **Short sales and short positions for options are not required to be disclosed in the Form SH. In addition, these new disclosure requirements will only apply to short sales effected after 12:01 a.m. EDT on September 22, 2008.**

The Form SH, which must be filed electronically with the SEC, must include for each calendar day of the prior week:

- the number and value of securities sold short for each 13F security;
- the opening short position;
- the closing short position;
- the largest intraday short position; and
- the time of the largest intraday short position.

A short position that constitutes less than one-quarter of one percent of the class of the issuer's 13F securities issued and outstanding as reported in the issuer's most recent annual or quarterly report and any subsequently filed current report (unless the manager knows or has reason to believe the information contained therein is inaccurate) <u>and</u> has a market value of less than $1,000,000 is not required to be disclosed.

The Form SH filings will initially be non-public, but will be publicly available on the SEC's website two weeks after they are filed with the SEC. The phrase "**NON-PUBLIC**" (in bold and capital letters) must appear on the top and bottom of each page of the Form SH to indicate that the Form SH is non-public upon the initial filing. **The first Form SH is due on or before 5:30 p.m. EDT on Monday, September 29, 2008.**

Please feel free to contact either of the partners listed below or any corporate partner with whom you work if you would like to discuss the emergency orders or if you require assistance with the preparation of your Form SH.

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LINKS TO LISTS OF COVERED SECURITIES PUBLISHED BY NATIONAL SECURITIES EXCHANGES AS OF THE CLOSE OF MARKET ON SEPTEMBER 22, 2008

American Stock Exchange
www.amex.com/amextrader/tdrInfo/data/axNotices/2008/reg08040.ShortSaleBanList.pdf

The Nasdaq Stock Market LLC
www.nasdaqtrader.com/TraderNews.aspx?id=RA2008-021

New York Stock Exchange
www.nyse.com/about/listed/1222078675703.html?sa_campaign=/internal_ads/callouts/09222008seclist

OMB Number: 3235-0646

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM SH

FORM SH COVER PAGE

Report for the Period Ended: _____[Month, Day, Year]_____

Check here if Amendment [ ]; Amendment Number: _____
This Amendment (Check only one): [ ] is a restatement.
[ ] adds new entries.

Institutional Investment Manager Filing this Report:

Name: _____
Address: _____
_____
_____

Form 13F File Number: 28-_____

The institutional investment manager filing this report and the person by whom it is signed hereby represent that the person signing the report is authorized to submit it, that all information contained herein is true, correct and complete, and that it is understood that all required items, statements, schedules, lists, and tables, are considered integral parts of this form.

Person Signing this Report on Behalf of Reporting Manager:

Name: _____
Title: _____
Phone: _____

Signature, Place, and Date of Signing

_____ _____ _____
[Signature] [City, State] [Date]

Report Type (Check only one):

[ ] FORM SH ENTRIES REPORT. (Check here if all entries of this reporting manager are reported in this report.)
[ ] FORM SH NOTICE. (Check here if no entries reported are in this report, and all entries are reported by other reporting manager(s).)
[ ] FORM SH COMBINATION REPORT. (Check here if a portion of the entries for this reporting manager is reported in this report and a portion is reported by other reporting manager(s).)

List of Other Managers Reporting for this Manager:
[If there are no entries in this list, omit this section.]

Form 13F File Number Name

28-_____ _____
[Repeat as necessary.]

OMB Number: 3235-0646

FORM SH SUMMARY PAGE

Report Summary:

Number of Other Included Managers: _____

Form SH Information Table Entry Total: _____

Form SH Information Table Value Total: _____
(thousands)

List of Other Included Managers:

Provide a numbered list of the name(s) and Form 13F file number(s) of all institutional investment managers with respect to which this Form SH report is filed, other than the manager filing this report.

[If there are no entries in this list, state "NONE" and omit the column headings and list entries.]

No.	Form 13F File Number	Name
____	28-_____	_____

[Repeat as necessary.]

OMB Number: 3235-0646

FORM SH INFORMATION TABLE –PAGE 1

MONDAY, _____[Month, Day, Year]_______

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Name of Issuer	CUSIP	Short Position (Start of Day)	Number of Securities Sold Short (Day)	Value of Securities Sold Short (Day)	Short Position (End of Day)	Largest Intra-Day Short Position	Time of Day of Largest Intra-Day Short Position

OMB Number: 3235-0646

FORM SH INFORMATION TABLE –PAGE 2

TUESDAY, _____[Month, Day, Year]_______

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Name of Issuer	CUSIP	Short Position (Start of Day)	Number of Securities Sold Short (Day)	Value of Securities Sold Short (Day)	Short Position (End of Day)	Largest Intra-Day Short Position	Time of Day of Largest Intra-Day Short Position

OMB Number: 3235-0646

FORM SH INFORMATION TABLE –PAGE 3
WEDNESDAY, _____[Month, Day, Year]_______

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Name of Issuer	CUSIP	Short Position (Start of Day)	Number of Securities Sold Short (Day)	Value of Securities Sold Short (Day)	Short Position (End of Day)	Largest Intra-Day Short Position	Time of Day of Largest Intra-Day Short Position

OMB Number: 3235-0646

FORM SH INFORMATION TABLE –PAGE 4
THURSDAY, _____[Month, Day, Year]_______

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Name of Issuer	CUSIP	Short Position (Start of Day)	Number of Securities Sold Short (Day)	Value of Securities Sold Short (Day)	Short Position (End of Day)	Largest Intra-Day Short Position	Time of Day of Largest Intra-Day Short Position

OMB Number: 3235-0646

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FRIDAY, _____[Month, Day, Year]_______

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Name of Issuer	CUSIP	Short Position (Start of Day)	Number of Securities Sold Short (Day)	Value of Securities Sold Short (Day)	Short Position (End of Day)	Largest Intra-Day Short Position	Time of Day of Largest Intra-Day Short Position

OMB Number: 3235-0646

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SATURDAY-SUNDAY, _____[Month, Day, Year]_______

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Name of Issuer	CUSIP	Short Position (Start of Day)	Number of Securities Sold Short (Day)	Value of Securities Sold Short (Day)	Short Position (End of Day)	Largest Intra-Day Short Position	Time of Day of Largest Intra-Day Short Position