



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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IN THE MATTER OF THE *SECURITIES ACT*

R.S.O. 1990, c. S.5, AS AMENDED (the Act)

- and -

**IN THE MATTER OF CERTAIN FINANCIAL SECTOR ISSUERS
set forth on Schedule A attached (the Respondents)**

**ORDER
(subsections 127(1), (2) and (7) and subsection 144(1))**

WHEREAS on September 19, 2008 the Ontario Securities Commission (the Commission) issued a temporary order with respect to certain financial sector issuers pursuant to subsections 127(1), (2) and (5) of the Act (the Temporary Order), which issuers were interlisted in the United States or, in the case of one issuer, had outstanding securities that were exchangeable into securities of a certain financial issuer in the United States;

AND WHEREAS the Commission made the Temporary Order in support of an order made by the United States Securities and Exchange Commission (SEC) on September 18, 2008 (the SEC Order);

AND WHEREAS on September 22, 2008, the Commission issued an order amending and restating the Temporary Order (the Amended Temporary Order) in support of amendments made to the SEC Order on September 21, 2008, (the SEC Amending Order) to address current and anticipated technical and operational issues resulting from the requirements of the SEC Order;

AND WHEREAS the Amended Temporary Order prohibited trading that constituted a short sale (as defined in section 1.1 of the Investment Industry Regulatory Organization of Canada's Universal Market Integrity Rules) in the common equity securities of certain financial sector issuers, subject to certain exceptions;

AND WHEREAS the Amended Temporary Order expires October 3, 2008 unless extended by order of the Commission;

AND WHEREAS the Commission stated that the Amended Temporary Order was issued as a precautionary matter to prevent regulatory arbitrage with respect to short selling in Ontario of the common equity securities of certain financial sector issuers and to promote fair and orderly markets in Ontario for those issuers and that it was in the public interest to temporarily prohibit any short sale in the common equity securities of those issuers;

AND WHEREAS Aberdeen Asia-Pacific Income Investment Company Ltd. is subject to the Amended Temporary Order but staff are not seeking to continue the Amended Temporary Order in respect of that issuer as that issuer is not a financial sector issuer interlisted in the United States;

AND WHEREAS on October 1, 2008 the SEC announced that it extended the SEC Amending Order (originally set to expire on October 2, 2008) until 11:59 p.m. ET on the third business day after enactment of contemplated legislation in the United States, but in any case no later than 11:59 p.m. ET on October 17, 2008;

AND WHEREAS on October 3, 2008 the President of the United States signed into law the Emergency Economic Stabilization Act of 2008 and, therefore, the SEC Amending Order will terminate on the third business day thereafter, being October 8, 2008 at 11:59 p.m. ET;

AND WHEREAS on October 2, 2008, the Commission issued a Notice of Hearing to consider the extension of the Amended Temporary Order to be held on October 3, 2008 at 3:00 p.m.;

AND WHEREAS on October 3, 2008, the Commission held a hearing and counsel for Staff and counsel for Kingsway Financial Services Inc. attended before the Commission;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order:

IT IS ORDERED pursuant to subsections 127 (1), (2) and (7) and subsection 144(1) of the

Act that the prohibition on trading in common equity securities that constitutes a short sale (as defined in section 1.1 of the Investment Industry Regulatory Organization of Canada's Universal Market Integrity Rules (UMIR) which is attached as Schedule B) is extended until 11:59 p.m. on October 8, 2008 only with respect to those financial sector issuers listed in the attached Schedule A (the Financial Sector Issuers) and only with the exception of a short sale:

- (i) conducted in accordance with UMIR Rule 3.1 *Restrictions on Short Selling*, sections 2(a), (b), (d) and (g); provided that, however, a dealer fulfilling market maker obligations (market maker) may not effect a short sale in the common equity securities of the Financial Sector Issuers if the market maker ought reasonably to know that the client's or counterparty's transaction will result in the client or counterparty establishing or increasing an economic net short position (i.e. through actual positions, derivatives, or otherwise) in the issued share capital of a Financial Sector Issuer covered by the Temporary Order;
- (ii) conducted by a registered dealer acting as principal to facilitate with a client or counterparty (a) a securities transaction that has a current market value of \$200,000 or more in a single transaction, or in several transactions at approximately the same time, provided that the position is liquidated or hedged as soon as possible; or (b) a derivatives transaction that has a notional value of \$200,000 or more in a single transaction, or in several transactions at approximately the same time, provided that the position is liquidated or hedged as soon as possible; provided, however, that with respect to (a) and (b) a dealer facilitating the transactions in paragraphs (a) and (b) may not effect a short sale in the common equity securities of the Financial Sector Issuers if the dealer ought reasonably to know that the transaction will result in the client or counterparty establishing or increasing an economic net short position (i.e. through actual positions, derivatives, or otherwise) in the issued share capital of a Financial Sector Issuer covered by this order (the "Extension Order");
- (iii) conducted in order to comply with UMIR Rule 5.2 *Best Price Obligation*;

(iv) conducted by a person or company as a result of the automatic exercise or assignment of an equity option, or in connection with settlement of a futures contract, held prior to the effectiveness of the Temporary Order due to expiration of the option or futures contract;

(v) that is a sale of a security identified in paragraph (g) of Schedule B, where the security is beneficially owned by the seller and the sale is made under an exemption from the prospectus requirements in accordance with applicable securities legislation;

(vi) conducted to adjust a hedged derivative position in order to maintain the risk exposure either hedged under paragraph (ii) above or that existed at the time the Temporary Order became effective; or

(vii) conducted by a writer of a call option that effects a short sale in a common equity security of a Financial Sector Issuer as a result of assignment following exercise by the holder of the call.

IT IS FURTHER ORDERED that pursuant to section 127(7) of the Act this order shall expire at 11:59 p.m. on October 8, 2008, unless further extended by order of the Commission, varied or revoked.

DATED at Toronto this 3rd day of October 2008.

“Lawrence E. Ritchie “
Lawrence E. Ritchie

“Paul K. Bates”
Paul K. Bates

Schedule A

List of Financial Sector Issuers

<u>Name</u>	<u>Root Ticker</u>
Bank of Montreal	BMO
Bank of Nova Scotia (The)	BNS
Canadian Imperial Bank of Commerce	CM
Fairfax Financial Holdings Limited	FFH
Kingsway Financial Services Inc.	KFS
Manulife Financial Corporation	MFC
Quest Capital Corp.	QC
Royal Bank of Canada	RY
Sun Life Financial Inc.	SLF
Thomas Weisel Partners Group Inc.	TWP
Toronto-Dominion Bank (The)	TD
Merrill Lynch & Co., Canada Ltd. ¹	MLC

¹ This company is not interlisted in the US. However, it is included on this list because its securities are exchangeable into securities of Merrill Lynch & Co. Inc. (listed in the US), which is subject to the SEC Order.

Schedule B

“short sale” means a sale of a security, other than a derivative instrument, which the seller does not own either directly or through an agent or trustee and, for this purpose, a seller shall be considered to own a security if the seller:

- (a) has purchased or has entered into an unconditional contract to purchase the security, but has not yet received delivery of the security;
- (b) has tendered such other security for conversion or exchange or has issued irrevocable instructions to convert or exchange such other security;
- (c) has an option to purchase the security and has exercised the option;
- (d) has a right or warrant to subscribe for the security and has exercised the right or warrant;
or
- (e) is making a sale of a security that trades on a when issued basis and the seller has entered into a contract to purchase such security which is binding on both parties and subject only to the condition of issuance of distribution of the security,

but a seller shall be considered not to own a security if:

- (f) the seller has borrowed the security to be delivered on the settlement of the trade and the seller is not otherwise considered to own the security in accordance with this definition;
- (g) the security held by the seller is subject to any restriction on sale imposed by applicable securities legislation or by an Exchange or QTRS as a condition of the listing or quoting of the security; or
- (h) the settlement date or issuance date pursuant to:
 - (i) an unconditional contract to purchase,
 - (ii) a tender of a security for conversion or exchange,
 - (iii) an exercise of an option, or
 - (iv) an exercise of a right or warrant

would, in the ordinary course, be after the date for settlement of the sale.

Terms used in this schedule that are defined in UMIR have the meaning ascribed to them in UMIR.