

# 2008 BCSECCOM 537

COR# 08/172

## Order

### Financial Sector Issuers

[as listed in Schedule A]

### Sections 161(1) and 167.6 of the *Securities Act*, RSBC 1996, c. 418

#### Introduction

- ¶ 1 This is an order under sections 161(1) and 167.6 of the *Securities Act*, RSBC 1996, c. 418.

#### Background

- ¶ 2 On September 18, 2008, the United States Securities and Exchange Commission (the SEC) issued an order under section 12(k)(2) of the *Securities Exchange Act* of 1934 (the SEC Order) prohibiting short sales in the securities of a defined list of financial firms, subject to certain exceptions.
- ¶ 3 On September 19, 2008, in support of the SEC Order, the Ontario Securities Commission (OSC) issued an order under section 127 of the Ontario *Securities Act*, R.S.O. 1990, s. S.5 (the OSC order) temporarily prohibiting short sales in the securities of certain financial sector issuers.
- ¶ 4 On September 19, 2008, the Commission issued an order (the Original Order) on the same terms as the OSC Order.
- ¶ 5 On September 21, 2008, the SEC issued an order (the SEC Amending Order) amending the SEC Order.
- ¶ 6 On September 22, 2008, the OSC issued an order (the Amended OSC Order) amending and restating the OSC Order in support of the SEC Amending Order and to address certain technical and operational issues.
- ¶ 7 On September 23, 2008, the Commission issued an order on the same terms as the Amended OSC Order.
- ¶ 8 On October 1, 2008, the SEC announced that it had extended the SEC Amending Order.

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- ¶ 9 On October 3, 2008, the OSC issued an Order (the OSC Extension Order) extending the Amended OSC Order with respect to the securities of the financial sector issuers listed in Schedule A (the Financial Sector Issuers).

### **Order**

- ¶ 10 The Commission, considering that it would be in the public interest to issue an order on the same terms as the OSC Extension Order, orders under section 161(1) and 167.6 of the Act that, for a period expiring on October 8, 2008, trading that constitutes a short sale (as defined in Schedule B) in the common equity securities of the Financial Sector Issuers is prohibited, unless the short sale is:
1. 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 this Order;
  2. 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;
  3. conducted in order to comply with UMIR Rule 5.2 *Best Price Obligation*;
  4. 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

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futures contract, held prior to the effectiveness of the Original Order due to expiration of the option or futures contract;

5. 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;
6. conducted to adjust a hedged derivative position in order to maintain the risk exposure either hedged under paragraph 2 above or that existed at the time the Original Order became effective; or
7. 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.

¶ 11 October 3, 2008

¶ 12 Douglas M. Hyndman  
Chair

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## 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.	MLC

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### 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.

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*Terms used in this schedule that are defined in the Universal Market Integrity Rules (UMIR) have the meaning ascribed to them in UMIR.*