

**ALBERTA SECURITIES COMMISSION**  
**AMENDED TEMPORARY ORDER REGARDING SHORT SALES**  
**OF CERTAIN INTER-LISTED SECURITIES**

**Background**

1. On September 19, 2008, the Alberta Securities Commission (**Commission**) issued an order entitled *Temporary Order Regarding Short Sales of Certain Inter-Listed Securities*, 2008 ABASC 543 (**ASC Temporary Order**) as a precautionary measure in response to a September 18, 2008 order of the United States Securities and Exchange Commission (**SEC**) prohibiting short sales of securities of certain financial firms (**SEC Order**). A copy of the ASC Temporary Order is attached to this order as Schedule A.
2. The ASC Temporary Order was issued in support of and with reference to a September 19, 2008 Temporary Order of the Ontario Securities Commission (**OSC**) prohibiting short sales of securities of certain Financial Sector Issuers as specified in Schedule A to this order.
3. On September 21, 2008, the SEC issued an amending order (**SEC Amending Order**) to address current and anticipated technical and operational concerns resulting from the requirements of the SEC Order.
4. On September 22, 2008, the OSC issued an amending order (**OSC Amending Order**) to prevent regulatory arbitrage and to maximize consistency with the SEC Amending Order as it affects trading in common equity securities of the Financial Sector Issuers.
5. Staff of the Commission consider it to be in the public interest to take similar measures to those taken by the OSC in the OSC Amending Order, in order to prevent regulatory arbitrage and to maximize consistency with the SEC Amending Order and the OSC Amending Order.

**Interpretation**

6. Unless otherwise defined, terms used in this order have the same meaning as in the Act or in National Instrument 14-101 *Definitions*.
7. Terms defined in the ASC Temporary Order shall have the same meaning in this order.

**Decision**

8. The Commission considers it necessary and appropriate to vary section 8 of the ASC Temporary Order to temporarily prohibit short sales of common equity securities of the Financial Sector Issuers on terms similar to those in the OSC Amending Order.

9. Pursuant to section 214 of the Act, the Commission orders that section 8 of the ASC Temporary Order is revoked and replaced by the following:
8. Pursuant to section 211.5 of the *Securities Act* (Alberta) (**Act**), the Commission prohibits trading that constitutes a short sale in the common equity securities of the Financial Sector Issuers unless the short sale is:
- (a) conducted in accordance with UMIR Rule 3.1 *Restrictions on Short Selling*, sections 2(a), (b), (d) and (g); provided, 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;
  - (b) conducted by a registered dealer acting as principal to facilitate a transaction with a client 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;
  - (c) conducted in order to comply with UMIR Rule 5.2 *Best Price Obligation*;
  - (d) 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 this order due to expiration of the option or futures contract;
  - (e) a sale of a security identified in paragraph 6(g) of the definition of "short sale" in the ASC Temporary Order, 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; or
  - (f) conducted to adjust a pre-existing hedged derivative position in order to maintain the risk exposure that existed at the time the ASC Temporary Order became effective.
10. This Order shall take effect immediately and shall expire on October 3, 2008, unless extended by further order of the Commission.

"original signed by"  
William S. Rice, Q.C.  
Alberta Securities Commission

"original signed by"  
Glenda Campbell, Q.C.  
Alberta Securities Commission

## SCHEDULE A

Citation: Short Sales Temporary Order, 2008 ABASC 543

Date: 20080919

### ALBERTA SECURITIES COMMISSION TEMPORARY ORDER REGARDING SHORT SALES OF CERTAIN INTER-LISTED SECURITIES

#### Background

1. On September 18, 2008, the United States Securities and Exchange Commission (**SEC**) issued an order pursuant to section 12(k)(2) of the *Securities Exchange Act* of 1934 (the **SEC Order**) that “all persons are prohibited from short selling [as defined in the SEC Order] any publicly traded securities” of a defined list of financial firms, subject to certain exceptions.
2. Attached as Appendix A to this order is a list of financial sector issuers (the **Financial Sector Issuers**) that
  - (a) are listed on the Toronto Stock Exchange (TSX); and
  - (b) are interlisted in the United States or, in the case of one issuer, has outstanding securities that are interchangeable into securities of a financial firm listed in the SEC Order.
3. In cooperation with the Alberta Securities Commission (**Commission**) and other provincial and territorial Securities Regulatory Authorities, the Ontario Securities Commission issued a Temporary Order on September 19, 2007 prohibiting short-sales of securities of the Financial Sector Issuers, in the form attached to this order as Appendix B (the **Ontario Short Sales Temporary Order**).
4. Staff of the Commission consider it to be in the public interest to take similar precautionary measures as set out in the Ontario Short Sales Temporary Order to prevent regulatory arbitrage and to ensure a fair and orderly market in Alberta with respect to securities of the Financial Sector Issuers.

#### Interpretation

5. Unless otherwise defined, terms used in this order have the same meaning as in the Act or in National Instrument 14-101 *Definitions*.
6. For the purposes of this Order, “short sale” is defined as follows:

“**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 quotation and trade reporting system 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.

## **Decision**

7. For the reasons set out above, the Commission considers it necessary and appropriate to temporarily prohibit short sales of securities of the Financial Sector Issuers, on terms similar to those in the Ontario Short Sales Temporary Order.

8. Pursuant to section 211.5 of the *Securities Act* (Alberta) (the **Act**), the Commission hereby prohibits trading that constitutes a short sale in the securities of the Financial Sector Issuers unless the short sale is:
- (a) conducted in accordance with Universal Market Integrity Rule (**UMIR**) 3.1 *Restrictions on Short Selling*, sections 2(a), (b), and (d);
  - (b) conducted in order to comply with UMIR Rule 5.2 *Best Price Obligation*; or
  - (c) conducted by a person or company as a result of the automatic exercise or assignment of an equity option held prior to the effective date of this order due to expiration of the option.
9. This Order shall take effect immediately and shall expire on October 3, 2008, unless extended by further order of the Commission.

*“original signed by”*

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William S. Rice, Q.C.  
Alberta Securities Commission

*“original signed by”*

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Glenda Campbell, Q.C.  
Alberta Securities Commission

## APPENDIX A

### List of Financial Sector Issuers

<u>Name</u>	<u>Root Ticker</u>
Aberdeen Asia-Pacific Income Investment Company Ltd.	FAP
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. <sup>1</sup>	MLC

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

**APPENDIX “B”**

**IN THE MATTER OF THE SECURITIES ACT  
R.S.O. 1990, c. S.5, AS AMENDED**

**- and -**

**IN THE MATTER OF CERTAIN FINANCIAL SECTOR ISSUERS  
set forth on Schedule A attached**

**TEMPORARY ORDER  
(Sections 127(1), (2) and (5))**

**WHEREAS** it appears to the Ontario Securities Commission (the Commission) that:

1. On September 18, 2008, the United States Securities and Exchange Commission (SEC) issued an order pursuant to section 12(k)(2) of the *Securities Exchange Act* of 1934 (the SEC Order) that “all persons are prohibited from short selling [as defined in the SEC Order] any publicly traded securities” of a defined list of financial firms, subject to certain exceptions;
2. Attached as Schedule A is a list of financial sector issuers that (a) are listed on the Toronto Stock Exchange (TSX) and are reporting issuers in Ontario; and (b) are interlisted in the United States or, in the case of one issuer, has outstanding securities that are interchangeable into securities of a financial firm listed in the SEC Order (the Financial Sector Issuers). Most of the Financial Sector Issuers are subject to the SEC Order; and
3. This order is being issued as a precautionary matter to prevent regulatory arbitrage with respect to short selling in Ontario of the securities of the Financial Sector Issuers and to promote fair and orderly markets in Ontario for the Financial

Sector Issuers. Accordingly, it is in the public interest to temporarily prohibit any 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) in the securities of the Financial Sector Issuers;

**AND WHEREAS** the Commission is of the opinion that it is in the public interest to make this order and that the time required to conclude a hearing could be prejudicial to the public interest;

**IT IS ORDERED** pursuant to subsections 127(1), (2) and (5) of the Act that trading that constitutes a short sale (as defined in Schedule B) in the securities of the Financial Sector Issuers is hereby prohibited, unless the short sale is:

- (i) conducted in accordance with UMIR Rule 3.1 *Restrictions on Short Selling*, sections 2(a), (b), and (d);
- (ii) conducted in order to comply with UMIR Rule 5.2 *Best Price Obligation*;  
or
- (iii) conducted by a person or company as a result of the automatic exercise or assignment of an equity option held prior to the effectiveness of this order due to expiration of the option; and

**IT IS FURTHER ORDERED** that pursuant to section 127(6) of the Act this order shall take effect immediately and shall expire on October 3, 2008, unless extended by order of the Commission.

**DATED** at Toronto this 19<sup>th</sup> day of September, 2008.

"original signed by"  
James E. A. Turner

"original signed by"  
Suresh Thakrar



## Schedule A

### List of Financial Sector Issuers

<u>Name</u>	<u>Root Ticker</u>
Aberdeen Asia-Pacific Income Investment Company Ltd.	FAP
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. <sup>1</sup>	MLC

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<sup>1</sup> This company is not interlisted in the US. However, it is included on this list because its securities are interchangeable 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.***