

ALBERTA SECURITIES COMMISSION

EXTENDED 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**).
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 Temporary Order**) prohibiting short sales of securities of certain financial sector issuers.
3. On September 23, 2008, the Commission issued an order entitled *Amended Temporary Order Regarding Short Sales of Certain Inter-Listed Securities*, 2008 ABASC 545 (**ASC Amended Temporary Order**) to support various amendments made to the SEC Order and to the OSC Temporary Order.
4. On October 1, 2008 the SEC issued a further order with the effect of amending and extending the SEC Order and previous amendments thereto (**October 1, 2008 SEC Order**). On October 3, 2008 the Ontario Securities Commission (**OSC**) held a hearing and issued an order (**October 3, 2008 OSC Order**), with the effect of amending and extending its OSC Temporary Order and previous amendments thereto.
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 October 3, 2008 OSC Order, in order to prevent regulatory arbitrage and to maximize consistency with the October 1, 2008 SEC Order and the October 3, 2008 OSC 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. For the purposes of this order:
  - (a) “**Financial Sector Issuers**” means the issuers listed in Appendix A to this order.
  - (b) “**short sale**” means short sale as defined in section 1.1 of the Investment Industry Regulatory Organization of Canada’s Universal Market Integrity Rules (UMIR), as set out in Appendix B to this order.

## Decision

8. The Commission considers it necessary and appropriate to further temporarily prohibit short sales of common equity securities of the Financial Sector Issuers on terms similar to those in the October 3, 2008 OSC Order.
9. Pursuant to section 211.5 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, that 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 with a client or counterparty,
    - (i) 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
    - (ii) 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;
  - (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 the ASC Temporary Order due to expiration of the option or futures contract;

- (e) a sale of a security identified in paragraph (g) of the definition of “short sale” in this 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;
  - (f) conducted to adjust a hedged derivative position in order to maintain the risk exposure either hedged under paragraph (b) above or that existed at the time the ASC Temporary Order became effective; or
  - (g) 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.
10. This Order shall take effect immediately and shall expire at 11:59 pm on October 8, 2008, unless varied, extended, or revoked by further order of the Commission.

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

“original signed by”  
Kenneth Potter  
Alberta Securities Commission

## APPENDIX 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. <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

“**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.***