

THE SECURITIES ACT) Order No. 5783
)
Section 148(1) and 148(2)) September 23, 2008

Amended and Restated

**IN THE MATTER OF FINANCIAL SECTOR ISSUERS
[as detailed on Schedule A attached]**

TEMPORARY ORDER

(A) WHEREAS it appears to The Manitoba 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), as amended on September 21, 2008, that “all persons are prohibited from short selling [as defined in the SEC Order] any publicly traded common equity 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 are listed on the Toronto Stock Exchange (TSX) and are interlisted in the United States or, in the case of one issuer, has outstanding securities that are exchangeable 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 Manitoba of the securities of the Financial Sector Issuers and to promote fair and orderly markets in Manitoba 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;
4. The Commission issued Order No. 5774 on September 19, 2008. This Order is an amendment and restatement of Commission Order No. 5774.

(B) 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

1. THAT, under sections 148(1) and 148(2) of the Act, trading that constitutes a short sale (as defined in Schedule B) in the common equity 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), (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;

(ii) 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.

(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 this order due to expiration of the option or futures contract;

(v) 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; or

(vi) conducted to adjust a pre-existing hedged derivative position in order to maintain the risk exposure that existed at the time the Original Order became effective; and

2. THAT under section 148(2) of the Act, this order shall take effect immediately and shall expire on October 3, 2008, unless extended by order of the Commission.

BY ORDER OF THE COMMISSION

Deputy Director

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. ¹	MLC

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.

¹ 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.