

**IN THE MATTER OF  
THE SECURITIES ACT, R.S.O. 1990, CHAPTER S.5, AS AMENDED (the Act)**

**AND**

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

**Order**

**(Subsections 127(1), (2) and (5) and 144(1) of the Act)**

Whereas on September 19, 2008 the Ontario Securities Commission (the Commission) issued a temporary order with respect to the Financial Sector Issuers set forth on Schedule A pursuant to subsections 127(1), (2) and (5) of the Act (the Original 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 21, 2008, the SEC issued an amendment to the SEC Order (the "SEC Amending Order") to address current and anticipated technical and operational concerns resulting from the requirements of the SEC Order;

And Whereas the Executive Director has applied to the Commission to vary and restate the Original Order to support the changes made by the SEC Amending Order and to address certain other technical and operational concerns;

And Whereas the Commission has determined that it is not prejudicial to the public interest to issue an order that varies and restates the Original Order;

It is ordered, pursuant to subsection 144(1) of the Act, that the Original Order be varied and restated as follows:

**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  
(Subsections 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), 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 (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 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 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 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

**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 22<sup>nd</sup> day of September, 2008.

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James E. A. Turner

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Lawrence Ritchie

## 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.***