

## Update on Emergency Orders for Short Selling

As you are undoubtedly aware, over the past few weeks the SEC has adopted several emergency orders relating to the short sale of securities. One of these orders is set to automatically terminate tomorrow night (Oct. 8, 2008) unless the SEC takes further action in the interim.

### Ban on Short Sales of Financials Stocks

This emergency order was initially scheduled to terminate as of midnight on Oct. 2, 2008, but the SEC extended the order until the earlier of (i) midnight on Friday, Oct. 17, 2008, or (ii) three business days after the signing of the Emergency Economic Stabilization Act of 2008 (H.R. 1424) by the President. Since that legislation was signed by the President last Friday, Oct. 3, 2008, the order will expire as of midnight on Wednesday, Oct. 8, 2008, unless the SEC takes additional action before that time.

### Ban on Naked Short Selling

This emergency order was initially scheduled to terminate as of midnight on Oct. 1, 2008, but the SEC extended the order until midnight on Friday, Oct. 17, 2008. As a reminder, this emergency order requires delivery of borrowed stock in connection with a short sale within the normal T+3 settlement window and requires broker-dealers to be more proactive in preventing broken short sales due to failure to deliver. Effectively, this emergency order requires short sellers to arrange the related stock borrow prior to executing a short sale.

### Short Sale Reporting for Institutional Managers

This emergency order was initially scheduled to terminate as of Oct. 2, 2008, but the SEC extended the order until Friday, Oct. 17, 2008, which means that absent further SEC action, institutional managers subject to this emergency order will be required to make one more filing on Form SH on Monday, Oct. 13, 2008.

Additionally, there is speculation in the industry that the SEC intends to make the ban on naked short selling and the Form SH filing requirement permanent rules. We would

expect that the SEC would issue interim final regulations prior to the termination of these emergency orders if that is its intent, at which time we will review the interim final regulations and issue additional guidance.

If you have any questions relating to these SEC emergency orders, please contact your regular Drinker Biddle lawyer or any member of our Investment Management Group.

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