SEWARD & KISSEL LLP

PRIVATE FUNDS AND CAPITAL MARKETS BULLETIN

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U.S. SECURITIES AND EXCHANGE COMMISSION AMENDS EMERGENCY ORDER TO PROVIDE EXCEPTION FOR BONA FIDE MARKET MAKERS

On July 15, 2008, the U.S. Securities and Exchange Commission (the "SEC") issued an emergency order (the "Emergency Order") designed to curtail so-called "naked" short selling in the securities of Fannie Mae, Freddie Mac, and certain commercial and investment banks that are primary dealers of Fannie Mae and Freddie Mac securities ("Subject Securities"). We reported that order to you in our previous *Private Funds and Capital Markets Bulletin*.

On July 18, 2008 the SEC amended the Emergency Order to create an exception to its borrow and arrange-to-borrow requirements for certain bona fide market makers. The exception applies to registered market makers, block positioners or other market makers obligated to quote in the over-the-counter market, in each case, that are selling short as part of bona fide market making, and hedging activities related directly to bona fide market making, in (i) Subject Securities, (ii) derivative securities (including standardized options) of Subject Securities and (iii) exchange traded funds of which Subject Securities are a component. The SEC noted that the settlement date securities delivery requirement of the Emergency Order continues to apply regardless of the application of the market maker exception.

The SEC further clarified that:

- Brokers and dealers must document compliance with the Emergency Order using the same processes and procedures as used for compliance with Regulation SHO;

- The Emergency Order does not apply to short sales of Subject Securities that are effected pursuant to Rule 144 under the Securities Act of 1933; however, such sales remain subject to the requirements of Regulation SHO; and

- The Emergency Order does not apply to short sales of Subject Securities by underwriters or members of an underwriting syndicate or group participating in distributions in connection with an over-allotment of Subject Securities or any lay-off sale through a rights or standby underwriting commitment.

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IF YOU HAVE ANY QUESTIONS OR COMMENTS ABOUT THIS BULLETIN, PLEASE CONTACT YOUR SEWARD & KISSEL ATTORNEY

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