

OPTIONS EXCHANGE			
Regulatory Information Circular			
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Subject: Application of SEC Rule 204T to Option Market Makers

Pursuant to Section 12(k)(2) of the Securities Exchange Act of 1934, on September 17, 2008, the Securities and Exchange Commission (“Commission”) issued an Emergency Order temporarily strengthening the delivery requirements for all equity securities <http://www.sec.gov/rules/other/2008/34-58572.pdf>. This order was amended on September 18, 2008 <http://sec.gov/rules/other/2008/34-58592.pdf>. The Division of Trading and Markets then issued guidance on the Emergency Order (the “Guidance”) <http://www.sec.gov/divisions/marketreg/204faq.htm>.

- **Close-Out Requirement:** Temporary Rule 204(a) provides that if a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in any equity security for a long or short sale transaction in that equity security, the participant shall, by no later than the beginning of regular trading hours on the settlement day following the settlement date, immediately close out the fail to deliver position by borrowing or purchasing securities of like kind and quantity.
 - Under the Guidance, the close-out requirement in Rule 204(a) for fails to deliver attributable to bona fide market making activities by registered market makers, options market makers, or other market makers obligated to quote in the over-the-counter market (collectively, "Market Makers") has been extended temporarily. Thus, a participant must close out the fail to deliver position attributable to a Market Maker by no later than the beginning of regular trading hours on the morning of the third settlement day after the settlement date for the transaction that resulted in the fail to deliver position.
 - Under the Guidance, any Market Maker to which a fail to deliver position at a registered clearing agency is attributable must attest in writing to the market on which it is registered that the fail to deliver position at issue was established solely for the purpose of meeting its bona fide market making obligations. In addition, such written attestation must describe the steps the Market Maker has taken in an effort to deliver securities to its registered clearing agency. Please submit all attestations to surveillance@ise.com using the attached template.

- **Pre-Borrow Requirement:** Temporary Rule 204(b) provides that if a participant of a registered clearing agency has a fail to deliver position in any equity security at a registered clearing agency and does not close out the fail to deliver position in accordance with the rule's requirements, the participant and any broker-dealer from which it receives trades for clearance and settlement, including market makers, may not accept a short sale order in the equity security from another person, or effect a short sale in the equity security for its own account, without first borrowing the security, or entering into a bona-fide arrangement to borrow the security, until the participant closes out the fail to deliver position by purchasing securities of like kind and quantity and that purchase has cleared and settled at a registered clearing agency.
- Under the Guidance, the pre-borrow requirement in Temporary Rule 204(b) will not apply to Market Makers, provided that the Market Maker can show that it does not have an open fail to deliver position at the time of any additional short sales.

Attestation

Failure to Deliver “Included Financial Firm” Security Pursuant to SEC’s Temporary Emergency Order of 9/18/2008

I, _____ (name), of _____ (name of firm), hereby attest that the fail to deliver position in _____ (symbol) in the amount of _____ shares as of _____ (date) was established solely for the purpose of meeting my bona fide market making obligations.

The following are the steps I have taken in an effort to deliver these securities to my registered clearing agency: